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SUSPENSION AND EXPULSION: GENERAL PROCEDURES

9.1 GROUNDS FOR SUSPENSION OR EXPULSION (Ed Code 48900)

A pupil shall not be suspended from school or recommended for expulsion, unless the superintendent of the school district or the principal of the school in which the pupil is enrolled determines that the pupil has committed an act as defined:

- (a)
 - (1) Caused, attempted to cause, or threatened to cause physical injury to another person.
 - (2) Willfully used force or violence upon the person of another, except in self-defense.
- (b) Possessed, sold, or otherwise furnished a firearm, knife, explosive, or other dangerous object, unless, in the case of possession of an object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.
- (c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of an alcoholic beverage or an intoxicant of any kind.
- (d) Unlawfully offered, arranged, or negotiated to sell a controlled substance, an alcoholic beverage, or an intoxicant of any kind, and either sold, delivered, or otherwise furnished to a person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.
- (e) Committed or attempted to commit robbery or extortion.
- (f) Caused or attempted to cause damage to school property or private property.
- (g) Stole or attempted to steal school property or private property.
- (h) Possessed or used tobacco, or products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit the use or possession by a pupil of his or her own prescription products.
- (i) Committed an obscene act or engaged in habitual profanity or vulgarity.
- (j) Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell drug paraphernalia.
- (k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

Exception: A pupil enrolled in kindergarten or any of grades 1 to 3, inclusive, shall not be suspended for any of the acts enumerated in this subdivision, and this subdivision shall not constitute grounds for a pupil enrolled in kindergarten or any of grades 1 to 12, inclusive, to be recommended for expulsion.
- (l) Knowingly received stolen school property or private property.
- (m) Possessed an imitation firearm.
- (n) Committed or attempted to commit a sexual assault or committed a sexual battery.
- (o) Harassed, threatened, or intimidated a pupil who is a complaining witness or a witness in a school disciplinary proceeding for purposes of either preventing that

- pupil from being a witness or retaliating against that pupil for being a witness, or both.
- (p) Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.
 - (q) Engaged in, or attempted to engage in, hazing. For purposes of this subdivision, “hazing” means a method of initiation or pre-initiation into a pupil organization or body, whether or not the organization or body is officially recognized by an educational institution, that is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective pupil. For purposes of this subdivision, “hazing” does not include athletic events or school-sanctioned events.
 - (r) Engaged in an act of bullying.

A pupil shall not be suspended or expelled for any of the acts enumerated in this section unless the act is related to a school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to a school activity or school attendance that occur at any time, including, but not limited to, any of the following:

- (1) While on school grounds.
- (2) While going to or coming from school.
- (3) During the lunch period whether on or off the campus.
- (4) During, or while going to or coming from, a school-sponsored activity.

A pupil who aids or abets the infliction or attempted infliction of physical injury to another person may be subject to suspension, but not expulsion, except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to discipline.

For a pupil subject to discipline under this section, a superintendent of the school district or principal may use his or her discretion to provide alternatives to suspension or expulsion that are age appropriate and designed to address and correct the pupil’s specific misbehavior.

A pupil may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed sexual harassment. The conduct must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual’s academic performance or to create an intimidating, hostile, or offensive educational environment. This shall not apply to pupils enrolled in kindergarten and grades 1 to 3, inclusive.

A pupil in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which

the pupil is enrolled determines that the pupil has caused, attempted to cause, threatened to cause, or participated in an act of hate violence.

A pupil enrolled in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has intentionally engaged in harassment, threats, or intimidation, directed against school district personnel or pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment.

A pupil may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has made terroristic threats against school officials or school property, or both.

9.2 Suspension and Other Means of Correction

Suspension, including supervised suspension, shall be imposed only when other means of correction fail to bring about proper conduct. A school district may document the other means of correction used and place that documentation in the pupil's record, which may be accessed. However, a pupil, including an individual with exceptional needs, may be suspended for any of the reasons enumerated upon a first offense, if the principal or superintendent of schools determines that the pupil violated subdivision (a), (b), (c), (d), or (e) of Section 48900 or that the pupil's presence causes a danger to persons.

Other means of correction include, but are not limited to, the following:

- (1) A conference between school personnel, the pupil's parent or guardian, and the pupil.
- (2) Referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support service personnel for case management and counseling.
- (3) Study teams, guidance teams, resource panel teams, or other intervention-related teams that assess the behavior, and develop and implement individualized plans to address the behavior in partnership with the pupil and his or her parents.
- (4) Referral for a comprehensive psychosocial or psychoeducational assessment, including for purposes of creating an individualized education program, or a plan adopted.
- (5) Enrollment in a program for teaching pro-social behavior or anger management.
- (6) Participation in a restorative justice program.
- (7) A positive behavior support approach with tiered interventions that occur during the school day on campus.
- (8) After-school programs that address specific behavioral issues or expose pupils to positive activities and behaviors, including, but not limited to, those operated in collaboration with local parent and community groups.
- (9) Any of the alternatives: As part of or instead of disciplinary action prescribed by this article, the principal of a school, the principal's designee, the superintendent of schools, or the governing board may require a pupil to perform community service on

school grounds or, with written permission of the parent or guardian of the pupil, off school grounds, during the pupil's non-school hours. This section does not apply if a pupil has been suspended, pending expulsion. However, this section applies if the recommended expulsion is not implemented or is, itself, suspended by stipulation or other administrative action.

9.3 Total Days of Suspension in a School Year

The total number of days for which a pupil may be suspended from school shall not exceed 20 schooldays in any school year, unless for purposes of adjustment, a pupil enrolls in or is transferred to another regular school, an opportunity school or class, or a continuation education school or class, in which case the total number of school days for which the pupil may be suspended shall not exceed 30 days in any school year.

A school district may count suspensions that occur while a pupil is enrolled in another school district toward the maximum number of days for which a pupil may be suspended in any school year.

9.4 Suspension by Teacher

A teacher may suspend any pupil from class, for any of the acts enumerated in Section 48900, for the day of the suspension and the day following. The teacher shall immediately report the suspension to the principal of the school and send the pupil to the principal or the designee of the principal for appropriate action. If that action requires the continued presence of the pupil at the school site, the pupil shall be under appropriate supervision. As soon as possible, the teacher shall ask the parent or guardian of the pupil to attend a parent-teacher conference regarding the suspension. If practicable, a school counselor or a school psychologist may attend the conference. A school administrator shall attend the conference if the teacher or the parent or guardian so requests. The pupil shall not be returned to the class from which he or she was suspended, during the period of the suspension, without the concurrence of the teacher of the class and the principal.

A pupil suspended from a class shall not be placed in another regular class during the period of suspension. However, if the pupil is assigned to more than one class per day, suspension shall apply only to other regular classes scheduled at the same time as the class from which the pupil was suspended.

A teacher may also refer a pupil to the principal or the designee of the principal for consideration of a suspension from the school.

The teacher of any class from which a pupil is suspended may require the suspended pupil to complete any assignments and tests missed during the suspension.

9.5 Maximum Days of Suspension

The principal of the school, the principal's designee, or the district superintendent of schools may suspend a pupil from the school for any of the acts enumerated in Section 48900 for no more than five consecutive school days.

9.6 Informal Conference

Suspension by the principal, the principal's designee, or the district superintendent of schools shall be preceded by an informal conference conducted by the principal, the principal's designee, or the district superintendent of schools between the pupil and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the district superintendent of schools. At the conference, the pupil shall be informed of the reason for the disciplinary action and the evidence against him or her, and shall be given the opportunity to present his or her version and evidence in his or her defense.

A principal, the principal's designee, or the district superintendent of schools may suspend a pupil without affording the pupil an opportunity for a conference only if the principal, the principal's designee, or the district superintendent of schools determines that an emergency situation exists. If a pupil is suspended without a conference before suspension, both the parent and the pupil shall be notified of the pupil's right to a conference and the pupil's right to return to school for the purpose of a conference. The conference shall be held within two schooldays, unless the pupil waives this right or is physically unable to attend for any reason, including, but not limited to, incarceration or hospitalization. The conference shall then be held as soon as the pupil is physically able to return to school for the conference.

At the time of suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. If a pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension.

A school employee shall report the suspension of the pupil, including the cause for the suspension, to the governing board of the school district or to the district superintendent of schools in accordance with the regulations of the governing board of the school district.

The parent or guardian of a pupil shall respond without delay to a request from school officials to attend a conference regarding his or her child's behavior. No penalties shall be imposed on a pupil for failure of the pupil's parent or guardian to attend a conference with school officials. Reinstatement of the suspended pupil shall not be contingent upon attendance by the pupil's parent or guardian at the conference.

In a case where expulsion from a school or suspension for the balance of the semester from continuation school is being processed by the governing board of the school district, the district superintendent of schools or other person designated by the district superintendent of schools in writing may extend the suspension until the governing board of the school district has rendered a decision in the action. However, an extension may be granted only if the district superintendent of schools or the district superintendent's designee has determined, following a meeting in which the pupil and the pupil's parent or guardian are invited to participate, that the presence of the pupil at the school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process. If the pupil is a foster child, the district

superintendent of schools or the district superintendent's designee, including, but not limited to, the educational liaison for the school district, shall also invite the pupil's attorney and an appropriate representative of the county child welfare agency to participate in the meeting. If the pupil or the pupil's parent or guardian has requested a meeting to challenge the original suspension, the purpose of the meeting shall be to decide upon the extension of the suspension order and may be held in conjunction with the initial meeting on the merits of the suspension.

9.7 Supervised Suspension Classroom

A pupil suspended from a school may be assigned by the principal or the principal's designee to a supervised suspension classroom for the entire period of suspension if the pupil poses no imminent danger or threat to the campus, pupils, or staff, or if an action to expel the pupil has not been initiated.

Pupils assigned to a supervised suspension classroom shall be separated from other pupils at the school site for the period of suspension in a separate classroom, building, or site for pupils under suspension.

Each pupil is responsible for contacting his or her teacher or teachers to receive assignments to be completed while the pupil is assigned to the supervised suspension classroom. The teacher shall provide all assignments and tests that the pupil will miss while suspended. If no classroom work is assigned, the person supervising the suspension classroom shall assign schoolwork.

At the time a pupil is assigned to a supervised suspension classroom, a school employee shall notify, in person or by telephone, the pupil's parent or guardian. Whenever a pupil is assigned to a supervised suspension classroom for longer than one class period, a school employee shall notify, in writing, the pupil's parent or guardian.

9.8 Mandatory Recommendation for Expulsion

The principal or the superintendent of schools shall recommend the expulsion of a pupil for any of the following acts committed at school or at a school activity off school grounds, unless the principal or superintendent determines that expulsion should not be recommended under the circumstances or that an alternative means of correction would address the conduct:

- (A) Causing serious physical injury to another person, except in self-defense.
- (B) Possession of any knife or other dangerous object of no reasonable use to the pupil.
- (C) Unlawful possession of any controlled substance
- (D) Robbery or extortion.
- (E) Assault or battery upon any school employee.

If the principal or the superintendent of schools makes a determination, he or she is encouraged to do so as quickly as possible to ensure that the pupil does not lose instructional time.

Upon recommendation by the principal or the superintendent of schools, or by a hearing officer or administrative panel appointed, the governing board of a school district may order a pupil expelled. A decision to expel a pupil for any of those acts shall be based on a finding of one or both of the following:

- (1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.
- (2) Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

9.8 Mandatory Suspension and Recommendation for Expulsion

The principal or superintendent of schools shall immediately suspend and shall recommend expulsion of a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds:

- (1) Possessing, selling, or otherwise furnishing a firearm.
- (2) Brandishing a knife at another person.
- (3) Unlawfully selling a controlled substance.
- (4) Committing or attempting to commit a sexual assault or committing a sexual battery
- (5) Possession of an explosive.

The governing board of a school district shall order a pupil expelled upon finding that the pupil committed an act listed above and shall refer that pupil to a program of study that meets all of the following conditions:

- (1) Is appropriately prepared to accommodate pupils who exhibit discipline problems.
- (2) Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school.
- (3) Is not housed at the school site attended by the pupil at the time of suspension.

9.9 Discretionary Expulsions

Upon recommendation by the principal or the superintendent of schools, or by a hearing officer or administrative panel, the governing board of a school district may order a pupil expelled upon finding that the pupil committed the following acts at school or at a school activity off of school grounds and that other means of correction are not feasible or have repeatedly failed to bring about proper conduct or that due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others:

- (1) Caused or attempted to cause damage to school property or private property.
- (2) Stole or attempted to steal school property or private property.
- (3) Possessed or used tobacco, or products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel.
- (4) Committed an obscene act or engaged in habitual profanity or vulgarity.
- (5) Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell drug paraphernalia.

- (6) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.
- (7) Knowingly received stolen school property or private property.
- (8) Possessed an imitation firearm.
- (9) Committed sexual harassment.
- (10) Caused, attempted to cause, threatened to cause, or participated in an act of hate violence.
- (11) Intentionally engaged in harassment, threats, or intimidation, directed against school district personnel or pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment.

SUSPENSION AND EXPULSION: PLACEMENT IN ALTERNATIVE SETTINGS

9.10 Case-by-Case Determination

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

9.11 Removals of Less than 10 days

School personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement).

9.12 Manifestation Determination

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parent to determine -

- (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that conduct (1) was caused by, or had a direct and substantial relationship to, the child's disability or (2) was the direct result of the LEA's failure to implement the IEP.

If the LEA, the parent, and relevant members of the child's IEP Team determine the conduct in question was the direct result of the LEA's failure to implement the IEP, the LEA must take immediate steps to remedy those deficiencies.

If the individual with exceptional needs is a foster child and the local educational agency has proposed a change of placement due to an act for which a decision to recommend expulsion is at the discretion of the principal or the district superintendent of schools, the attorney for the individual with exceptional needs and an appropriate representative of the county child welfare agency shall be invited to participate in the individualized education program team meeting that makes a manifestation determination. The invitation may be made using the most cost-effective method possible, which may include, but is not limited to, electronic mail or a telephone call.

If the individual with exceptional needs is a homeless child or youth and the local educational agency has proposed a change of placement due to an act for which a decision to recommend expulsion is at the discretion of the principal or the district superintendent of schools, the local educational agency liaison for homeless children and youth designated shall be invited to participate in the individualized education program team meeting that makes a manifestation determination. The invitation may be made using the most cost-effective method possible, which may include, but is not limited to, electronic mail or a telephone call.

9.12.A Conduct was a Manifestation of the Child's Disability

If the LEA, the parent and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must -

- (1) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

- (2) Return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

9.12.B Conduct was Not a Manifestation of the Child's Disability

For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities.

9.12.C Special Circumstance

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child -

- (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the LEA;
- (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the; or
- (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the LEA.

9.13 Change of Placement

For purposes of removals of a child with a disability from the child's current educational placement, a change of placement occurs if -

- (1) The removal is for more than 10 consecutive school days; or
- (2) The child has been subjected to a series of removals that constitute a pattern -

- (i) Because the series of removals total more than 10 school days in a school year;
- (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
- (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

The LEA determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. Change of placement determination is subject to review through due process and judicial proceedings

On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice.

9.14 Services

9.14.A Removal of 10 days or Less

The LEA is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

9.14.B Subsequent Removals After 10 Days

After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal, the LEA must provide service.

After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

9.14.C Change in Placement

A child with a disability who is removed from the child's current placement (more than 10 days and not a manifestation of the child's disability or special circumstance), shall

- (1) continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
- (2) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

The services may be provided in an interim alternative educational setting.

The child's IEP Team determines appropriate services.

9.14.D Transportation

If an individual with exceptional needs is excluded from school bus transportation, the pupil is entitled to be provided with an alternative form of transportation at no cost to the pupil or parent or guardian provided that transportation is specified in the pupil's individualized education program

9.15 Appeal

The parent of a child with a disability who disagrees with any decision regarding placement or the manifestation determination, or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint.

9.15.A Hearing Officer

A hearing officer hears and makes a determination regarding an appeal. In making the determination, the hearing officer may -

- (1) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation or that the child's behavior was a manifestation of the child's disability; or
- (2) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

These procedures may be repeated if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

9.15.B Expedited Due Process Hearing

Whenever a hearing is requested, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing.

The State or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

Unless the parents and LEA agree in writing to waive the resolution meeting or agree to use the mediation process -

- (1) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and
- (2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

The decisions on expedited due process hearings are appealable

9.15.C Placement During Appeal

When an appeal has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

9.16 Protections for Children Not Yet Eligible for Special Education and Related Services

A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for if the LEA had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

9.16.A Basis of Knowledge

A LEA shall be deemed to have knowledge that a child is a child with a disability if, before the behavior precipitated the disciplinary action occurred:

- (1) The parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services.
- (2) The parent of the child has requested an evaluation of the child.
- (3) The teacher of the child, or other personnel of the LEA, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

Exception:

The LEA shall not have been deemed to have knowledge if –

- (1) The parent of the child has not allowed an evaluation of the child or has refused services, or
- (2) The child has been evaluated and it was determined that the child was not a child with a disability.

9.16.B Conditions that Apply if No Basis of Knowledge

- (1) If the LEA does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities, who engage in comparable behaviors.

- (2) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the LEA and information provided by the parents, the LEA must provide special education and related services. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

APPENDIX

APPENDIX A: Special Education Removals for Disciplinary Purposed Flowchart
(Fagen, Friedman and Fulfrost)



SPECIAL EDUCATION REMOVALS FOR DISCIPLINARY PURPOSES

Category 1	Category 2	Category 3	Category 4
Less Than 10 Days	More Than 10 Cumulative Days No Change In Placement	More Than 10 Cumulative Days Change In Placement	More Than 10 Consecutive Days
<p>Disciplinary Action: Disabled student may be disciplined in the same manner as a non-disabled student. 34 C.F.R. § 300.530(d)</p> <p>Educational Services: School district need only provide educational services to a disabled student if the services are offered to non-disabled students. 34 C.F.R. § 300.530(d)</p>	<p>Disciplinary Action: Disabled student may be disciplined in the same manner as a nondisabled student.</p> <p>Educational Services: On the 11th day of removal, school personnel must consult with at least one of the student's teachers to determine the extent to which special education services must be provided to enable the student to continue to participate in general education curriculum (although in a different setting) and progress toward meeting the goals delineated in the student's IEP. 34 C.F.R. § 300.530(d)(4)</p>	<p>Disciplinary Action: If the behavior is not a manifestation of the student's disability, the student may be disciplined as a general education student. 20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. § 300.530(c)</p> <p>If the behavior is a manifestation of the student's disability, the school district must conduct a functional behavioral assessment and implement a behavioral intervention plan (provided that the school district had not conducted such assessment prior to the determination before the behavior resulted in a change of placement), and return the student to the previous placement unless the school district and parent agree to a change of placement or the student is placed in an interim alternative educational setting. If student already has a behavioral intervention plan, the IEP team must review and modify it, as necessary, to address the behavior. 20 U.S.C. § 1415(k)(1)(F); 34 C.F.R. § 300.530(f)</p> <p>Educational Services: On the 11th day of removal, the IEP team must decide on services to (1) enable the student to continue to participate in general education curriculum, (2) progress toward the IEP goals, and (3) receive a functional behavioral assessment, as appropriate, and behavioral intervention services and modifications. 20 U.S.C. § 1415(k)(1)(D); 34 C.F.R. § 300.530(b)(2)</p>	
	<p>Determine Whether Removal Constitutes Change in Placement: School district must determine whether a series of removals constitutes a change in placement. Must consider the length of each removal, whether the behavior in each incident is substantially similar, total time removed, and proximity in time of removals. Must be determined on a case-by-case basis. 20 U.S.C. § 1415 (k)(1)(A); 34 C.F.R. §§ 300.530, 300.536</p> <p>Interim Alternative Educational Setting: School officials may remove a student to an interim alternative educational setting for no more than 45 school days regardless of whether the behavior was a manifestation of the student's disability if the student:</p> <ol style="list-style-type: none"> 1. Carried or possessed a weapon on the way to or at school, on school premises, or to/or at a school function; 2. Knowingly possessed or used illegal drugs, or sold or solicited the sale of a controlled substance, while at school, on school premises or at a school function; or 3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function. <p>The IEP team must determine the interim alternative education setting. 20 U.S.C. §§ 1415(k)(1)(G), 1415(k)(2); 34 C.F.R. § 300.530(g)</p>		
		<p>Manifestation Determination: Within 10 days of the decision to change the student's placement for disciplinary reasons, the school district, parent, and relevant IEP team members must meet to determine whether the student's conduct was:</p> <ol style="list-style-type: none"> 1. Caused by, or had a direct and substantial relationship to, the student's disability; or 2. The direct result of the school district's failure to implement the IEP. <p>The parents and the school district determine who qualifies as "relevant IEP team members." The team conducting the manifestation determination must review all relevant information in the student's file, including the student's IEP, teacher observations, and any relevant information provided by the parent. 20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e)</p>	

STUDENT DISCIPLINE

Suspendable and Expellable Offenses

Students may be suspended or recommended for expulsion if the student has committed one of the following offenses:

- Caused, attempted to cause, or threatened to cause physical injury to another person.
- Willfully used force or violence upon the person of another, except in self-defense.
- Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object.
- Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, any controlled substance.
- Unlawfully offered, arranged, or negotiated to sell any controlled substance.
- Committed or attempted to commit robbery or extortion.
- Caused or attempted to cause damage to school or private property.
- Stole or attempted to steal school or private property.
- Possessed or used tobacco or any tobacco product.
- Committed an obscene act or habitual profanity.
- Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia.
- Disrupted school activities or otherwise willfully defied valid authority.
- Knowingly received stolen school or private property.
- Possessed an imitation firearm.
- Committed or attempted to commit a sexual assault or committed sexual battery.
- Harassed, threatened, or intimidated a pupil witness in order to prevent testimony or to retaliate for giving testimony.
- Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.
- Engaged in, or attempted to engage in, hazing.
- Engaged in an act of bullying, including, but not limited to, bullying committed by means of an electronic act, directed specifically toward a student or school personnel.
- Sexual harassment.
- Hate violence, if the student is in grades 4 through 12.
- Intentionally engaged in harassment, threats, or intimidation that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting, creating substantial disorder, or invading rights.
- Made terrorist threats against school officials or school property.

AUTHORITY: Ed. Code §§ 48900; 48900.2; 48900.3; 48900.4; 48900.7

Mandatory Recommendation for Expulsion

Administration must immediately suspend and recommend expulsion of a student who commits one of the following offenses, either on school grounds or at an off-campus school-sponsored event:

- Possessing, selling or furnishing a firearm. Note: This does not apply to "imitation" firearms.
- Brandishing a knife at another person.
- Unlawfully selling a controlled substance.
- Committing or attempting to commit a sexual assault or committing sexual battery.
- Possessing an explosive.

The governing board shall order a pupil expelled upon finding that the pupil committed one of these acts.

AUTHORITY: Ed. Code § 48915(c)

Mandatory Unless Inappropriate Recommendation for Expulsion

Administration must recommend expulsion of a student who commits one of the following offenses unless it believes the expulsion is inappropriate due to the particular circumstance, or that an alternative means of correction would address the conduct:

- Causing serious physical injury to another person, except in self-defense.
- Possession of a knife or other dangerous object.
- Unlawful possession of any controlled substance (except for the first offense of possession of less than one ounce of marijuana, possession of over-the-counter medication for use by the pupil for medical purposes or medication prescribed for the pupil by a physician).
- Robbery or extortion.
- Assault or battery upon a school employee.

The governing board may order a pupil expelled upon finding that the pupil committed one of these acts if it finds that (1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct; or (2) Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

AUTHORITY: Ed. Code § 48915(a)

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