

Introduction

California special education discipline law incorporates federal law (IDEA) through Cal. Ed Code §48915.5.

Disabled students may be disciplined in the same manner as non-disabled students so long as the method of discipline does not constitute a *change in placement*. "Placement" refers to how and where the disabled student receives services listed in her IEP (see *fact sheet on special education*).

Even if a disabled student meets the legal criteria for expulsion or suspension, he/she is still entitled to receive a free, appropriate public education (FAPE) while suspended or expelled for a period of longer than 10 days per school year.

34 CFR §300.530(b)(2); 34 CFR §300.530

Students not yet found eligible for special education services are eligible for the protections afforded to children with disabilities IF the school district had knowledge that the child might have a disability, *unless* the person who holds education rights refused to allow an evaluation or refused services. 20 USC §1415(k)(5). See *fact sheet on education rights*.

Change in Placement – *manifestation determination meeting required* If discipline constitutes a *change in placement*, the school district must hold an IEP Team Meeting within 10 days of the decision to discipline the youth in order to determine whether the behavior was a manifestation of the child's disability. 34 CFR §300.530(e)

Which School Disciplinary Punishments Constitute a Change in Placement?

Some suspensions = change in placement

If a student is suspended for more than 10 consecutive school days, the suspension constitutes a change in placement. 20 USC §1415(k)(1); 34 CFR §300.536

Patterns of Suspension

If the student is suspended on separate occasions for more than 10 school days in a given year, and the suspensions

constitute a pattern, then the suspensions are a change in placement. A pattern is shown by considering the length of each suspension, the total amount of time the student is suspended, and the proximity of the suspensions to one another. 34 CFR §300.536

All expulsions = change in placement

No special education student can be expelled unless the district follows the procedures described below.

Manifestation Determination

At the manifest determination meeting, the IEP team will determine whether or not the student's misconduct was a manifestation of her disability. The team will consider the following two questions:

- Whether the conduct in question was caused by, or had a direct and substantial relationship to the student's disability, or
- Whether the conduct in question was the direct result of the school district's failure to implement the student's IEP. 20 USC § 1415 (k)(1)(E)(i); 34 CFR § 300.530(e)

Appeals

Any appeal of the manifestation determination shall result in an expedited due process hearing which shall occur within 20 days of the request for a hearing. 20 USC §1415(k)(4)(B); 34 CFR §300.532(c)

After the Manifestation Determination Meeting

If the IEP team determines that the student's behavior was a manifestation of his/her disability, then the student shall return to the placement from which he/she was removed, *unless* the parent or person with education rights agrees to the change in placement, or the student committed a zero tolerance offense. The zero tolerance offenses are:

- Possession of a weapon at school or at a school function;
- Possession/use/sale of illegal drugs at school or at a school function;
- Infliction of a serious bodily injury on another person while at school or at a school function. 20 USC §1415 (k)(1)(G); 34 CFR §300.530(g)

If the student returns to school, then the school district shall conduct a functional behavioral assessment (FBA) and implement a behavior intervention plan (BIP) unless an FBA and BIP had been conducted and developed prior to the manifestation determination. In this case, the BIP shall be modified as necessary. 20 USC §1415(k)(1)(F); 34 CFR §300.530(f) See *fact sheet on FBA/BIP*.

If the IEP Team determines that the behavior was *not* a manifestation of the student's disability, or the student committed a zero-tolerance offense [as listed previously], then the student can be disciplined like a non-disabled student and placed in an Interim Alternative Educational Setting (IAES). The student, however, must still be provided with FAPE. A student with special needs may be moved to an IAES for not more than 45 school days if:

- The IEP Team determines that behavior was *not* a manifestation of the student's disability, or
- The student committed a zero tolerance offense [see above]. 20 USC §1415(k)(1)(C) & (G); 34 CFR §§300.530(g), 300.531

The California Foster Youth Education Task Force is a coalition of more than 35 organizations dedicated to improving educational outcomes for foster youth. For more information, please contact Erin Saberi, Casey Family Programs, at 916.503.2950 or esaberi@casey.org.

Fact sheets produced April 2005. Third edition - October 2008.