

# PROCEDURAL HANDBOOK

## SECTION

### 10

#### *Expulsion Process for Special Education Students Under IDEA and the California Education Code*

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This section contains information you should know about...

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**Updated June 1, 2020**

## **STEPS IN EXPULSION PROCESS FOR SPECIAL EDUCATION STUDENTS UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AND THE CALIFORNIA EDUCATION CODE**

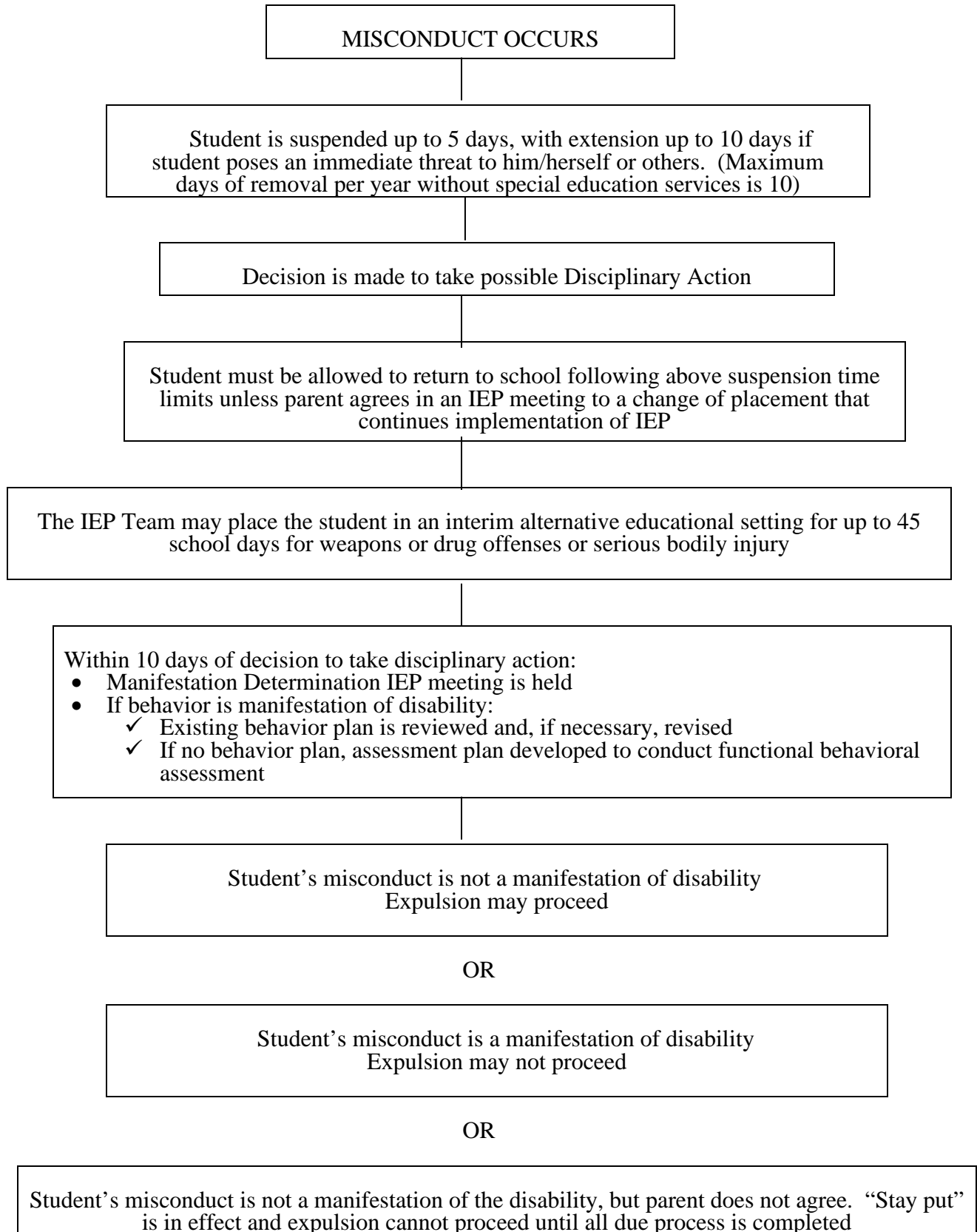
1. Special education students may be suspended for up to 10 consecutive school days when the decision is made to consider expulsion. Under the California Education Code, a 5-day suspension may be extended to 10 consecutive school days in cases when expulsion has been recommended following a meeting in which the pupil and the pupil's parent, guardian, or surrogate is invited to participate where it is determined that the presence of the student would cause a danger to persons or property or a threat of disrupting the educational process.
2. In all instances, educational services must be provided to any special education student once the student has been suspended for 10 days during a school year.
3. If a special education student is being considered for expulsion and the maximum allowable days of suspension in the school year has already been reached, then the student must either be allowed to return to school or moved to another appropriate special education setting through the IEP process and with parent consent.
4. If the student is in possession of a weapon at school or at a school function or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function, or inflicts serious bodily injury upon another individual while at school or on school premises or at a school function, the IEP Team may place the student in an interim alternative educational setting for up to 45 school days. The student may remain in the interim alternative educational setting for up to the full 45 days even if the IEP Team determines that the misconduct was a manifestation of the disability. Parents may request an expedited due process hearing to challenge the appropriateness of the interim alternative educational setting.
5. A hearing officer may order a change in placement for a special education student to an interim alternative educational setting for up to 45 school days if the hearing officer determines that maintaining the student's current placement is substantially likely to result in injury to the student or to others.
6. Any interim alternative educational setting must be selected so as to enable the student to continue to participate in the general curriculum and to progress toward meeting the IEP goals. The student must also receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications designed to address the behavior violation so that it does not recur.
7. Parents must be notified of the decision to pursue expulsion of a special education student and of all procedural safeguards no later than the date on which the decision to take that action is made.
8. Within 10 school days of any decision to take disciplinary action involving expulsion, the Local Education Agency, the parent, and relevant members of the IEP Team (as determined by the LEA and the parent) shall meet in order to determine whether the misbehavior was a manifestation of the disability (manifestation determination).

9. In conducting the manifestation determination, the Team shall review all relevant information in the student's file including;
  - The student's IEP
  - Any teacher observations
  - Any relevant information provided by the parents.
10. The Team must then determine whether, in relationship to the behavior subject to disciplinary action:
  - The conduct in question was caused by, or had a direct and substantial relationship to, the student's disability, or
  - The conduct in question was the direct result of the Local Education Agency's failure to implement the IEP.

If the LEA, the parent, and relevant members of the IEP Team determine that either of the above conditions is applicable in the case of the disciplinary incident, the conduct shall be determined to be a manifestation of the student's disability.

11. If it is determined that the conduct in question was a manifestation of the student's disability, the IEP Team shall:
  - a. conduct a functional behavioral assessment and implement a behavior intervention plan, if the student did not have a behavior intervention plan in place prior to the misbehavior or
  - b. review any existing behavior intervention plan and modify it, as necessary, to address the behavior.
12. When it has been determined that a student's misbehavior was a manifestation of the disability, the expulsion process may not proceed. In such cases, the student must be returned to his or her prior placement, unless the parent and the LEA agree to a change of placement as part of the modification of the behavior intervention plan.
13. If the result of the IEP Team manifestation determination is that the misbehavior of the student was not a manifestation of the student's disability, the relevant disciplinary procedures applicable to all students may be applied to the special education student in the same manner in which they would be applied to students without disabilities except that provision of appropriate special education services must continue.
14. If the student's parent disagrees with a determination that the misbehavior was not a manifestation of the student's disability or with any decision regarding placement, the parent may request a due process hearing. In such cases, the student must remain in his/her current educational placement until the conclusion of the due process proceedings, or, for placement interim alternative education settings, until the expiration of the disciplinary placement, whichever occurs first, unless the parent and district agree otherwise.
15. If the district recommends expulsion for a special education student, the student's special education and disciplinary records shall be transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

# SPECIAL EDUCATION PRE-EXPULSION PROCEDURES FLOW CHART



6/28/06

## ***Protections for Students Not Yet Eligible for Special Education***

A student who has not been identified as an individual with disabilities pursuant to the IDEA and who has violated the code of conduct of the LEA may assert the procedural safeguards of the IDEA only if the LEA had knowledge that the student was disabled before the behavior occurred.

The LEA shall be deemed to have knowledge that the student had a disability if one of the following conditions exists:

1. The parent/guardian has expressed concern in writing, to supervisory or administrative personnel, or to a teacher of the student that the student is in need of special education or related services; and
2. The parent/guardian has requested an initial evaluation of the student for special education pursuant to federal law; or
3. The teacher of the student or other LEA personnel has expressed specific concern about a pattern of behavior demonstrated by the student to the Director of Special Education of the LEA or to other supervisory personnel.

The LEA would be deemed to not have knowledge as specified in items 1-3 above if the parent/guardian has not allowed an initial evaluation of the student or has refused services, or if the student has been evaluated and it was determined that the student was not a child with a disability.

If it is determined that the LEA did not have knowledge that the student was disabled prior to taking disciplinary action against the student, then the student shall be disciplined in accordance with procedures established for students without disabilities.

If a request is made for an evaluation of a student during the time period in which the student is subject to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities.

## WHAT FORMS SHOULD BE USED

The following forms should be used during the pre-expulsion process for special education students.

- SELPA36:** Notice of Decision to Take Disciplinary Action and Notice of Assessment  
This sample letter may be used as the format for sending written notification the parents of a special education student regarding the notice of decision to take disciplinary action and the steps that will follow.
- NC 3:** Prior Written Notice and Assessment Plan (E & S)  
The Assessment Plan form should indicate the areas to be assessed as part of any necessary assessments and behavior assessment if the student does not already have a behavior plan.
- IEP 15:** Consent to Bill Medical (E &S)
- NC 1:** Notice of Rights and Safeguards  
A copy of the Parental and Adult Students' Rights and Procedural Safeguards for Special Education must be sent to the parent along with the Assessment Plan.
- NC 6A:** Notice of Meeting (E & S)  
The Parent/Guardian Notification of Meeting & Intent to Participate form is to be used to notify the parent of the date time and location of the Manifestation Determination IEP meeting.
- SUPP26:** IEP Team Checklist for Special Education Discipline – Manifestation Determination (E & S)  
The IEP Team Checklist is to be used by the IEP Team to document its conclusions regarding the Manifestation Determination.
- IEP:** IEP Forms (E & S)  
SIRAS IEP forms should be used, as needed, to complete the Manifestation Determination IEP meeting. At minimum, the SIRAS: Consent and Signature form must be used to indicate who participated in the meeting and whether the parent agreed with the IEP Team's Manifestation Determination
- IEP 6G-1:** Behavior Intervention Plan 6 page or 2 page. (E & S)  
This form is to be used to develop the support plan for behavior interfering with learning of students or peers within 60 days of signed parental consent to conduct a functional behavioral assessment.
- SELPA47:** Functional Behavior Assessment Summary (E)  
This form is to be used when conducting a functional behavioral assessment.

**E = ENGLISH and S = SPANISH**

Appendix A references the forms highlighted throughout this handbook. SELPA and Supplemental IEP forms can be found on our county's on-line *SIRAS Systems*, [www.sirassystems.org](http://www.sirassystems.org).