

Federal Assurance Policy

Special Education Local Plan

FAP 22

SUSPENSION/EXPULSION

The LEA assures that data on suspension and expulsion rates will be provided in a manner prescribed by the CDE. When indicated by data analysis, the LEA further assures that policies, procedures and practices related to the development and implementation of the IEPs will be revised.

Legal References

EDUCATION CODE:

FEDERAL REFERENCES

20 USC 1412(a)(22)

34 CFR 300.170

Federal Assurance Administrative Regulation

Special Education Local Plan

FAAR 22

SUSPENSION/EXPULSION

A student identified as an individual with disabilities pursuant to the Individuals with Disabilities Education Act (IDEA) is subject to the same grounds for suspension and expulsion which apply to students without disabilities.

cf. 51441.1 - Suspension and Expulsion/Due Process

cf. 6159.1 - Procedural Safeguards and Complaints for Special Education

Procedures for Student Not Yet Eligible for Special Education Services

A student who has not been identified as an individual with disabilities pursuant to IDEA and who has violated the LEA's disciplinary procedures may assert the procedural safeguards granted under this administrative regulation only if the LEA has knowledge that the student was disabled before the behavior occurred.

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

- The parent of the child 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.
- The parent of the child requested an evaluation of the child pursuant to CFR 300.300 through 300.311.
- The teacher of the child or other personnel of the LEA expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

Public agency would not be deemed to have knowledge that a child has a disability if:

- The parent of the child has not allowed evaluations for special education or 504.
- The parent has refused special education or 504 services.
- The child was evaluated and determined not to be a child with a disability.

Procedures for student who is eligible for special education services***Suspension******Definitions of Disciplinary Change Placement******Manifestation Determination***

Under both the IDEA and Section 504, a district is required to follow specific heightened procedures if it makes or contemplates making a disciplinary change in a disabled student's educational placement.

Removal for 10 Day or Less

A change in placement does not occur when a disabled student is removed from his or her educational placement for 10 school days or less in a school year. A school district is not required to provide the disabled child with any services during removals for 10 school days or less in a school year unless the school district provides services to children without disabilities who are similarly removed.

Removal for More Than 10 Consecutive School Days

A change in placement occurs when a disabled student is removed from his or her current placement for more than 10 consecutive school days in the same school year. Thus, a change of placement has occurred when a special education student is suspended or expelled for more than 10 consecutive school days in a given school year.

A Series of Removals for More Than 10 School Days that Constitute a Pattern

A change in placement also occurs when a district removes a disabled student from school for a series of days that constitute a pattern. In order for a pattern of removals to exist, the series of removals must total more than 10 school days in one school year, the child's behavior must be "substantially similar to the child's behavior in previous incidents that resulted in the series of removals," and additional factors support a pattern, such as the length of each removal, total amount of time removed, and proximity of the removals to one another. The public agency determines on a case-by-case basis whether a pattern of removal constitutes a change of placement.

Factors such as a child's disciplinary history, ability to understand consequences, expression of remorse, and sports provided to a child with a disability prior to the violation of a school code could be unique circumstances considered by school personnel when determining whether a disciplinary change in placement is appropriate for a child with a disability.

In School Suspensions

Days of in school suspension (“ISS”) will not be considered a day of “removal” and trigger the IDEA due process requirements, if the ISS placement meets three factors:

- The student has the opportunity to continue to appropriately progress in the general education curriculum;
- The district provides the services in the student’s IEP
- The student continues to participate with nondisabled students to the same extent as he does in his current placement.

Notice to Parents

The district must notify the parents of the date on which the district decides to make a removal that constitutes a change in placement because of a violation of the code of student conduct. In addition, the district must provide parents with a copy of the procedural safeguards notice.

When an identified student with a disability reaches removal for 10 consecutive days or more than 10 school days that constitute a pattern, a manifestation determination must take place because the length of time is considered a change of placement.

The term “manifestation determination” means the evaluation of the relationship between a student’s disability and act of misconduct that must be undertaken when a student placement has changed as result of disciplinary actions.

Removal for More Than 10 Days

Identical to the IDEA, under Section 504, OCR considers the removal, i.e., suspension or expulsion, of a disabled student for more than 10 consecutive school days in the same school year a significant change in placement.

Cumulative Suspensions That Create a Pattern

Identical to the IDEA, under Section 504 a series of suspensions that are each 10 days or fewer in duration may create a pattern that constitutes a significant change in placement.

The LEA has 10 school days to convene the IEP meeting to conduct a manifestation determination review after the decision is made to suspend a student for more that 10 school days or to expel a student.

The manifestation determination review must be conducted by the school district, the parent, and relevant members of the IEP team as determined by the parent and the LEA. “The team 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 parents.”

It is recommended that the school psychologist participate, even if that individual does not otherwise serve on the student’s IEP team.

SUSPENSION/EXPULSION (continued)

FAAR 22(c)

The IEP team must determine the following:

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

Behavioral Assessment and Intervention Plan

If the IEP Team makes the determination that the conduct was a manifestation of the child's disability the LEA shall convene an IEP team meeting to conduct a functional behavior assessment and implement a Positive Behavior Support Plan or Behavioral Intervention Plan (depending on severity of behavior) no later than ten business days after a student has been suspended for more than ten school days, or placed in an alternative educational setting. If the student already has a Positive Behavior Support Plan or Behavioral Intervention Plan, the IEP team shall review the plan and modify it as necessary to address the behavior.

As soon as practicable after developing the Positive Behavior Support Plan or Behavioral Intervention Plan and completing the required assessments, the IEP team shall meet to develop appropriate behavioral interventions to address the behavior and shall implement those interventions.

Special Circumstances – Interim Alternative Placement

A student with a disability may be removed to an alternative educational setting for up to 45 school days without regard for whether the behavior is a manifestation of the child's disability, if the child:

- Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a SEA or LEA.
- 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 an SEA or LEA.
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or LEA.

Parents must be notified and given their procedural safeguards on the date the decision is made to remove the child.

Services during Suspension

Students suspended for more than ten school days in a school year shall continue to receive services during the term of the suspension, to the extent necessary to provide the student a free appropriate public education.

SUSPENSION/EXPULSION (continued)

FAAR 22(d)

If a student with disabilities is excluded from school bus transportation, the student is entitled to be provided with an alternative form of transportation at no cost to the student, parent, or guardian, provided that transportation is specified in the student's IEP.

Section 504

Under Section 504, a district is required to follow specific heightened procedures if it makes or contemplates making a disciplinary change in a disabled student's educational placement.

Although the term "manifestation determination" does not appear in the regulatory language of Section 504, the same review is required under Section 504 in connection with disciplinary actions that constitute a significant change in placement, under 34 CFR Section 104.35. (OSEP memorandum 95-16 12 IDELR 531 (1995).

Legal References

EDUCATION CODE:

48915.5

FEDERAL REFERENCES

34 CFR 300.530, 34 CFR 300.534, 34 CFR 300.546

20 USC 1415 (k)(1)(2)

Federal Assurance Administrative Exhibit

Special Education Local Plan

FAE 22

MANIFESTATION DETERMINATION FORM:

**TRINITY COUNTY SELPA
INDIVIDUALIZED EDUCATION PROGRAM
MANIFESTATION DETERMINATION FINDINGS
ADDENDUM TO IEP DATED: _____**

STUDENT: _____ DATE: _____.

Description of behavior/actions of student:

Disciplinary action taken _____

Dates of Suspension(s): _____

In determining whether the student's behavior was a manifestation of his/her disability, the IEP Team considered the following in relation to the behavior subject to disciplinary action:

Information from the parent/guardian: _____

Information from the student _____

**TRINITY COUNTY SELPA
INDIVIDUALIZED EDUCATION PROGRAM
MANIFESTATION DETERMINATION FINDINGS
ADDENDUM TO IEP DATED: _____**

STUDENT: _____ **DATE:** _____.

Evaluation and diagnostic results: _____

Observations of the student: _____

Student's IEP, services, and placement: _____

Health records: _____

School discipline records: _____

Functional assessment and behavioral plan required? Yes No If yes, date developed: _____

Behavior Intervention Plan in place? Yes No

Date Implemented: _____

**TRINITY COUNTY SELPA
INDIVIDUALIZED EDUCATION PROGRAM
MANIFESTATION DETERMINATION FINDINGS
ADDENDUM TO IEP DATED: _____**

STUDENT: _____ **DATE:** _

The IEP Team determined that:

Yes No The conduct in question was caused by, or had a direct and substantial relationship to, the child's disability.

Comments: _____

Yes No The conduct in question was the direct result of the local educational agency's failure to implement the IEP.

Comments: _____

FINDINGS OF THE IEP TEAM:

The student's behavior was was not a manifestation of his/her disability.