

School Discipline and Students with Special Needs

When a school is considering a SARB referral, suspension, or expulsion for a child's behavior, policies and education code guide each of these disciplinary measures. There is a process that must be followed in a certain order. Knowing your child's rights and protections is one step in managing these difficult and worrisome situations.

A student in special education can be disciplined the same as a student in general education; however, federal and state law provides special protections. If a child is not yet in Special Education but the school knows that the student may have a disability, these same protections may apply.

This packet includes information on what to know and do about:

- School Attendance Review Board (SARB) referrals
- suspensions
- expulsions
- Special Education and 504 protections
- Manifestation Determinations

Behavior that results in school discipline is a message that the student needs more support to learn positive behaviors. The Matrix packet "Behavior Issues and Special Education" explains what Special Education provides for students with challenging behavior.

Besides the information in this packet, talk with someone who has experience with challenging behavior and school discipline. Our Parent Advisors can guide you in this process.

On our website, Matrix offers related Help! sheets as well as the following information packets:

- Individual Education Plans (IEPs)
- Assessments
- Section 504 Plans
- Behavior Issues and Special Education
- Resolving Disagreements
- Advocating for Your Child with Special Needs

School Discipline Resources

Websites

Center for Parent Information and Resources, www.parentcenterhub.org

Positive Behavioral Interventions and Supports, California Dept. of Education, www.pbis.org

Positive Environments, Network of Trainers, www.pent.ca.gov

Disability Rights California, www.disabilityrightsca.org

Wrightslaw, www.wrightslaw.com

California Department of Education, www.cde.ca.gov

Books or Articles

From Emotions to Advocacy: The Special Education Survival Guide (2006) – Peter Wright, Esq., & Pamela Wright

All About IEPs: Answers to Frequently asked Questions about IEPs (2010) – Peter Wright, Esq.

Responding to Problem Behavior in Schools: The Behavior Education Program (Practical Interventions in the Schools, 2010) – Deanne Crone, Robert Horner, and Leanne Hawken

Special Education Rights and Responsibilities (2011) – CASE and Disability Rights California, <http://www.disabilityrightsca.org/pubs/504001Ch04.pdf>

The Complete Guide to Special Education: Expert Advice on Evaluations, IEPs and Helping Kids Succeed (2010) – Linda Wilmshurst, PhD, and Alan W. Brue

SARB Handbook on the California Department of Education website

“Eek! My Child with a Disability Keeps Getting Suspended,” Disability Rights California

“Yikes! My Child with a Disability is Being Considered for Expulsion,” Disability Rights California

School Discipline Overview

Students in Special Education with an Individual Education Plan (IEP) might have behavior problems that result in school discipline. Some students with special needs may not understand what can happen as a result of their behavior. They may not be able to manage their behavior well enough to stay within the school's behavior standards.

Special Education laws and regulations spell out requirements for discipline. They also spell out what an IEP team should do to provide positive behavioral supports that can prevent problems from getting worse. When students with disabilities break school rules, they can be treated the same as their non-disabled peers up to a certain point. If a student is not yet in Special Education but the school knows that your child might have a disability, protections may also apply.

If there is a suspension, it might be wise to ask for an IEP meeting to discuss what can be done to prevent future suspensions. If there isn't a behavior plan, one might be added. If there is a behavior plan, discuss ways to change the behavior plan to address the behavior that resulted in a suspension. Maybe your student would benefit from Special Education counseling to help with strong emotions that cause problem behavior.

Suspensions

Students in Special Education cannot be suspended for more than 10 days without a manifestation determination meeting, because a change in their Special Education placement can't happen without an IEP meeting.

Expulsions

Certain behaviors directly result in possible expulsion. A student in Special Education can be expelled just like students in general education, depending on certain factors. These are decided in what is called an "IEP manifestation determination" meeting.

Manifestation Determination Meetings in Special Education

If 10 days of suspension will happen, or if a student is up for expulsion, there must be an IEP meeting called a "manifestation determination." As a member of the IEP team, parents attend this important meeting. At this meeting, the IEP team discusses and answers two questions:

- Was the behavior caused by or directly related to the student's disability; is it a "manifestation" of the disability?
- Was the behavior a direct result of the district not following the IEP?

If the answer to either of the above questions is yes, the student cannot be suspended longer than 10 days or expelled. The IEP team must decide what changes are needed in the student's IEP to support the student.

If the behavior is determined to not be a manifestation of the student's disability, then the student will be disciplined just like any other student.

The laws and rules regarding the discipline of students with disabilities are complicated and can feel overwhelming. However, there is a process and sequence that must be used by schools and the IEP team. Keep in mind, if you disagree with a decision, you can appeal. This should be done in writing and as soon as possible. See page 10 of this packet for more information about filing an appeal.

Behavior and Special Education An Overview

When the behavior of a student with an IEP gets in the way of his or her learning or that of others, the IEP team must develop behavior goals, supports and services or a behavior plan. Behavior plans are not punitive. They are positive plans describing how the school will support positive behavior through instruction or changing the environment. Behavior plans also describe how often the behavior happens, how long it lasts, and how intense it is. Triggers for the behavior and the purpose the behavior serves also are described.

Examples of Behavior That May Get in the Way of Learning

- not completing assignments or turning in work
- outbursts (talking out of turn, screams, swearing), aggression (pushing, kicking)
- not being able to pay attention
- poor attendance
- leaving classroom/school without permission
- using materials dangerously (putting chairs on tables, eating crayons)



What Can Behavior Be Saying?

Understanding difficult behavior is challenging. Behaviors serve a purpose: to either avoid something or to get something. Because of disabilities, some students can't manage their environment without behavior issues. Challenges in the school environment may be academic work that is too hard or too easy, settings that are over-stimulating or under-stimulating, bullying, or peer pressure. Finding out what causes the behavior is key in deciding what skill instruction is needed to learn positive behaviors, or how the environment might be changed so the behavior is less likely to happen.

Levels of Support

The team may first develop an IEP goal for the behavior. If the behavior continues even with the goal, then a Behavior Intervention Plan (BIP) is written. If behavior is serious and is getting in the way of progress with IEP goals, and behavior strategies already in the IEP have not worked, more must be done. A timely and appropriate functional behavior assessment would be next and information from that used to revise the BIP.

Link to Home

When students are struggling with behavior at school, a coordinated plan for home/school communication is important. Provide incentives or ways at home to reinforce positive school days.

School Discipline

When behaviors result in school discipline, Special Education regulations describe when and how students can be disciplined for their difficult behaviors. Adding or reviewing an existing behavior plan is key.

NOTE: Special Education behavior plans are not behavior contracts, which are sometimes used in general ed; they tend to be punitive and put the responsibility on students to change their behavior on their own.

School Discipline and Children Not Yet Eligible for Special Education

Students not yet in Special Education may, in some cases, still have the same protections as Special Education students. Protections apply if you can prove that the school district or local educational agency knew your student had a disability prior to the behavior. The district has knowledge if:

1. the parent expressed concern in writing to school personnel that their child is in need of Special Education services; or
2. the parent has requested an evaluation for Special Education eligibility in writing; or
3. the teacher or other school staff expressed “specific concerns” about “a pattern of behavior” demonstrated by the child, and these concerns were expressed directly to the Special Education director or other supervisory personnel.

If you request that your child be assessed for Special Education eligibility after the conduct in question, that assessment must be expedited, but the student is to remain in the placement determined by school authorities, including suspension of services.

Students with 504 Plans

Students protected under this law who violate school rules must be re-evaluated before “a significant change in placement” (removal from school for 10 days or more) due to their behavior. If the behavior is a “manifestation” of their disability, the appropriateness of the placement must be examined. If the behavior is not a “manifestation” of their disability, they may be expelled from school. Under federal law, educational services would not be required, but California law requires that all students who are expelled receive alternative educational services.

What to Do — Suspensions, SARBs, Expulsions

CHECKLIST

When your child gets in trouble at school, it is easy to feel overwhelmed, panicky, and desperate for answers. There are things you can do, and there is a sequence of events that must take place.

- First: Take a deep breath. Next, review this list of what you can do.
- Learn about the specific procedures for a student in Special Education.
- If your child is not receiving Special Education services and if your child has or may have a disability that is causing the problems, make a request to the school in writing to have your child assessed to see if he or she may be eligible for Special Education.
- Get a copy of your school district's suspension, SARB, and expulsion policies.
- Make sure you have a written document from the school about the disciplinary measure and that you understand the specifics of the behavior and discipline.
- If this is a suspension and your child has an IEP, immediately put in writing a request for an IEP meeting to discuss what should be changed in the IEP to support positive behavior. If there is a Behavior Support Plan (BSP) or Behavior Intervention Plan (BIP), the plan needs to be reviewed. Was the plan appropriate? Was it being implemented? If there isn't a behavior plan, ask for one in writing. Does your student need counseling as part of his or her IEP?

NOTE: If a suspension results in your student missing 10 school days or more in a school year, the district must immediately schedule a special IEP meeting called a Manifestation Determination. Learn about this on page 10.

- If this is an expulsion, learn as much as you can about your child's disability and the behavior that occurred, so that at the manifestation determination IEP meeting (see page 9), you can actively discuss whether the disability had a direct relationship to behavior.
- Does your child understand the school rules? If your child has an IEP, that question should be asked and answered on the IEP document.
- Talk through the situation with others who have experience in this area. Matrix Parent Advisors are one source of help.

Suspensions

Students with disabilities are generally treated the same as other students when they violate school rules. The difference is that students with an IEP (and sometimes students who may be eligible for an IEP) have limits on how many days they can be suspended before legal safeguards and protections are triggered, such as:

- During the first 10 days of suspension, the student is not entitled to instruction, either as a general education or Special Education student.
- In California, no student can be suspended for more than 20 days without instruction.
- A student with an IEP may not be suspended or removed from school for more than 10 consecutive school days, and sometimes 10 cumulative school days, without a “manifestation determination” IEP meeting to decide if the behavior is related to the student’s disability (a “manifestation” of the disability).
- If a student with an IEP is suspended for longer than 10 school days, the school must give educational services to provide “a free, appropriate public education,” even if the student is not in his or her current IEP placement.
- Being repeatedly suspended for the same or similar behavior may be a pattern of behavior. Those suspensions may be considered a change in the student’s placement which requires an IEP manifestation determination.

NOTE: In the case of both suspensions and expulsions, these are to be used only when “other means of correction fail to bring about proper conduct” [California Ed Code sections 48900.5 and 48915(b)(1)]. Mandatory expulsions are required when the behavior involves firearms, brandishing a knife, selling controlled substances, sexual assault or battery, or possession of an explosive. Mandatory suspensions and recommendation for expulsion are required for possession of a firearm, brandishing a knife, selling of controlled substances, sexual assault, and possession of an explosive.

Length, Types and Location of Suspensions

- A teacher, principal, or superintendent may suspend a student for any offense that is listed in the California Education Code (Section 48900).
- A teacher may suspend a student for no more than two days.
- Suspension by a principal requires an informal conference with the student within two days of the suspension. Every effort must be made to notify the parent at the time of the suspension. Schools have their own policies on having parents at the conference.
- Suspensions longer than five days require the superintendent to decide that the student is a danger or a threat of disruption.
- “In school” suspension is considered a day of suspension if it consists of simply sitting in the principal’s office. However, if the student receives instruction as listed in an IEP, but in a different location, it is not a day of suspension.

School Attendance Review Board (SARB)

When students are absent or tardy for a certain number of school days, a district can make a referral to School Attendance Review Board (SARB) and require you to attend a meeting. SARB is how California school districts make sure that the law of mandatory school attendance is followed. Students with special needs can sometimes have challenges that result in absences or tardiness: depression, school phobia or school refusal due to anxiety, the desire to avoid bullying, difficulty waking up in the morning due to sleep problems or medication, or time management problems. It is important to address any problems early before a SARB referral.

- If a medical condition is the reason, a letter from a physician documenting this is critical. Medical conditions include mental illness.
- Home-Hospital instruction can be put in place based on a decision by the school after reviewing information by medical professionals
- If a parent is considering keeping a student home from school due to a situation at school, inform the school in writing of the situation, ask for a meeting to address the concerns, and make every effort to support your child in getting to school.
- For a student in Special Education, have an IEP meeting to discuss changes in the IEP. These might include adding a nurse to the IEP team, revising the IEP to include a behavior plan, adding counseling as a related service, or specifying accommodations for a temporarily shortened day until the situation improves.
- If a student does not have Special Education or a 504 plan and you suspect a disability that you think is getting in the way of school attendance, put in writing your request for an assessment to determine if your student may be eligible (*refer to our Assessments packet*).

If a SARB is being considered and your student has an IEP, immediately put in writing a request for an IEP meeting. The IEP team must determine that attendance concerns are not part of the student's disability before making a referral.

If you have a notice to attend a SARB meeting, gather your documents that explain the absence, why your student's special needs are getting in the way of school attendance, and your efforts to resolve this.

At the SARB meeting, after considering the evidence and talking with you and your student, the board will decide what steps are needed. This might be a referral to community resources such as counseling, or a warning with requirements to avoid further truancy. Actions can be mandated: referral to probation or the district attorney, or assignment to a school that is tailored for students with attendance and other behavioral problems. If your student has an IEP, and a change in placement is being considered, a manifestation determination IEP meeting must be held.

Learn more about SARBs through the link to the CDE website provided on the Resources page of this packet.

Expulsions

The legal procedures for expulsions are quite detailed. Here are a few notes:

- Only a school board can expel a student, although the board may appoint an administrative panel or hire a hearing officer to hold the hearing where evidence is presented by the school and by the student.
- When a district decides to expel a Special Education student, the rules regarding manifestation determinations apply. An IEP team manifestation review meeting must be held within 10 days. The team considers any relevant information in the student's file, including the IEP, teacher observations, and any relevant information provided by the parent. The team decides whether:
 1. the behavior was caused by, or had a direct and substantial relationship to, the child's disability; or
 2. the behavior was the direct result of the district's failure to implement the IEP, including a behavior support plan.
- While waiting for the expulsion proceedings, on the 11th day of a student's removal from school, educational services must be provided in order to allow the student to progress in the general curriculum and make progress toward achieving their IEP goals.
- An expulsion hearing is to be held within 30 school days of a decision by the school principal that an expellable offense has been committed and the school wishes to move forward with expulsion.
- The school board must have a policy and rules on the expulsion process (how the expulsion hearing is conducted) that conform to the law described in California Education Code sections 48900 and forward. Read your school board policy!
- A school board may, after voting to expel a student, suspend the expulsion with conditions that the student must follow. Sometimes arguing for a suspended expulsion can satisfy the district need for a serious consequence while addressing student needs for appropriate services.
- A school board decision can be appealed to the County Board of Education within 30 days of the expulsion order.

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Manifestation Determination IEP Meeting

Within 10 school days of a suspension of a student who is being considered for expulsion — or if the student has been suspended for 10 days — the IEP team, including the parent, must meet and review all information to decide:

1. “If the behavior was caused by or had a direct and substantial relationship to, the child’s disability; or
2. If the behavior was the direct result of the school not implementing the IEP.”

If the IEP team finds that either of the above is true, the behavior is considered a manifestation of the child’s disability. A student then should not be punished for his or her disability and will *not* be disciplined in the same manner as a student in general education.

IEP team decision: *Not* a manifestation of the disability

The student can then be disciplined as a non-disabled student — even if you disagree — unless you appeal.

Filing an appeal: If you disagree with a determination by the rest of the IEP team that the behavior was *not* a “manifestation” of your child’s disability:

- State your disagreement on the manifestation IEP form.
- Appeal the decision quickly.
 - » Note your disagreement in writing, definitely before the district school board’s administrative panel or the board’s own expulsion meeting.
 - » The school needs to give you information about how to file the appeal.
 - » An expedited due process hearing will be scheduled. A state administrative hearing officer will hold a hearing. The hearing is to be “expedited,” or held within 20 school days of your request.

IEP team decision: *Yes* a manifestation of the disability

The IEP team must do the following:

- conduct a functional behavioral assessment (unless one has already been done) and put in place a behavioral intervention plan.
- review and revise, if needed, a behavior intervention plan that was in place when the behavior took place.
- return the student to the placement from which he or she was removed (except under special circumstances). If the parent and district agree, the placement can be changed as part of the behavior intervention plan.

Manifestation Determination IEP Meeting

Special Circumstances

Students may be removed by school staff to an appropriate Interim Alternative Educational Setting (IAES) for not more than 45 school days without regard to whether the behavior is a manifestation of the disability, if the student:

1. carries a weapon to or possesses a weapon at school, on school premises, or to a school function.
2. knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or a school function.
3. Inflicts serious bodily injury upon another person while at school, on school premises, or at a school function.

Common Questions

If my child is expelled, where will she go to school?

California provides schools called County Community Schools. These are schools run by county offices of education. They educate students in kindergarten through grade twelve who are expelled from school or who are referred because of attendance or behavior problems. They also serve students who are homeless, on probation or parole, and who are not attending any school. Upon placement at a county community school, an IEP meeting is held to revise the IEP for that setting.

If I can move to another district, can I avoid my child being expelled?

Not necessarily. Upon enrollment at another district, you will be asked if your student has been expelled. The new district can decide to uphold the other district's expulsion decision.

What options do I have other than county community school?

Choices would be to home school your student or find a private, charter, or parochial school that will accept your student. Keep in mind that a behavior that results in expulsion is a message that your student needs behavior or mental health help. If you opt out of the public school system, find help for your student.

Should I get legal advice if my child is facing an expulsion?

This is an important question that is best discussed with our Matrix Parent Advisors or anyone else who is familiar with Special Education and expulsion. Sometimes a parent can prepare for a manifestation determination meeting or an appeal of the expulsion decision on their own.

I am worried about my child and this situation, what will the future hold?

Worry in a situation such as this is normal. A worry might be about the future and that the disciplinary action may add to a downward spiral for your child. Worry might come from knowing your child is struggling and having to deal with negative consequences of their behavior.

A challenging situation and the associated worry and anxiety can be a step to finding help for both your child and you. Reach out to others. Never worry alone. Call us at Matrix. Our network of parents are here for you.