

Special Education Discipline



CALIFORNIA FOSTER YOUTH EDUCATION TASK FORCE

INTRODUCTION

The law governing school discipline of students with disabilities in California appears primarily in federal statute, 20 U.S.C. § 1415(k), and regulations, 34 C.F.R. §§ 300.530-536. EC § 48915.5.

For general school discipline law, including some discipline terms used in this Factsheet, see the School Discipline Factsheet. For other special education laws, see the Special Education Factsheet.

Students With Disabilities

For purposes of this Factsheet, the protections for “students with disabilities” apply to the following two groups:

- Students who have Individualized Education Programs (IEPs) under special education law.
- Students with disabilities, as defined by special education law, who do not yet have IEPs but whose school district “had knowledge” of their disabilities before the conduct that led to the disciplinary action. Some bases for knowledge are the student’s educational rights-holder’s having expressed written concern about the need for special education to school or district staff or having requested a special education evaluation, so long as the evaluation or services were not later refused.

Students who do not fall into these categories may be disciplined as students without disabilities are disciplined.

If a request for a special education evaluation is made during the disciplinary period, it must be conducted in an expedited manner. 20 U.S.C. § 1415(k)(5); 34 C.F.R. § 300.534.

NOTICE OF DISCIPLINARY ACTION

A student’s educational rights-holder is entitled to be notified of a school district’s decision to take disciplinary action and of her/his procedural rights on the same day the decision is made. 20 U.S.C. § 1415(k)(1)(H).

10-DAY THRESHOLD

A student with a disability who violates a student code of conduct may be removed from her/his current placement to an appropriate “interim alternative educational setting,” other setting, or suspension for up to 10 school days, so long as similar disciplinary measures are taken against students without disabilities. 20 U.S.C. § 1415(k)(1)(B).

If a school wants to change the placement of a student with a disability for more than

10 school days, it must convene an IEP meeting to make a “manifestation determination.” The meeting must be held within 10 school days of the school’s decision to seek the change in placement. 20 U.S.C. § 1415(k)(1)(E).

A change of placement of more than 10 school days could result from the following:

- An extended suspension of more than 10 consecutive school days.
- A pattern of suspensions or removals of more than 10 school days in a school year based on similar behavior.
- An expulsion. 34 C.F.R. § 300.536.

After a student with a disability has been removed from her/his placement for more than 10 school days in the same school year, s/he is entitled to a free appropriate public education (FAPE) during any subsequent days of removal. 34 C.F.R. § 300.530(b)(2).

MANIFESTATION DETERMINATION

At the manifestation determination meeting, the IEP team must consider all relevant information to determine whether the conduct in question:

- was caused by, or had a direct and substantial relationship to, the student’s disability; or
- was the direct result of the school district’s failure to implement the student’s IEP.

If the answer to either item is “yes,” the conduct is considered to be a manifestation of the student’s disability. 20 U.S.C. § 1415(k)(1)(E).

Finding of Manifestation

If the IEP team finds a manifestation:

- A functional behavioral assessment (FBA) must be conducted, if one has not already been done. (See *FBA/FAA Factsheet*.)
- A behavioral intervention plan (BIP) must be developed and implemented or, if one already exists, reviewed and modified to address the behavior.
- The student must be returned to the placement from which s/he was removed, unless the IEP team agrees to a change of placement as part of the BIP or s/he was moved to an “interim alternative educational setting.” 20 U.S.C. § 1415(k)(1)(F).

Finding of No Manifestation

If the IEP team finds no manifestation:

- The school may discipline the student in the same manner and for the same dura-

tion as it would a student without disabilities.

- The student must continue to receive FAPE, enabling her/him to participate in the general education curriculum and progress toward her/his IEP goals.
- The student must receive, as appropriate, an FBA and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur. 20 U.S.C. § 1415(k)(1)(C)-(D).

IEP Team Disagreements

Any disagreement related to the manifestation determination or placement may be resolved through an expedited due process hearing, which must be held within 20 school days of a request. The hearing officer can return the student to the placement from which s/he was removed or temporarily place the student in an appropriate “interim alternative educational setting” (IAES). Pending the hearing decision, a student who was placed in an IAES must remain in that setting unless the placement expires or the IEP team agrees otherwise. 20 U.S.C. § 1415(k)(3)-(4); 34 C.F.R. § 300.532.

INTERIM ALTERNATIVE SETTING

A school may move a student with a disability to an “interim alternative educational setting,” for no more than 45 days, regardless of whether the conduct was a manifestation of her/his disability, if the student, in connection with a school activity, possesses a weapon; knowingly possesses, uses, sells, or solicits the sale of a controlled substance; or inflicts serious bodily injury on another person. 20 U.S.C. § 1415(k)(1)(G).

The setting must be determined by the IEP team. 20 U.S.C. § 1415(k)(2). Students in these settings have the same rights to FAPE, an FBA, and behavioral intervention services as students for whom no manifestation was found (see above). 20 U.S.C. § 1415(k)(1)(D).

The California Foster Youth Education Task Force is a coalition of organizations dedicated to improving educational outcomes for foster youth. For more information, please visit our website at www.cfyetf.org or contact Mia Stizzo at mia.stizzo@cfpic.org.

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