

**SANTA CLARA COUNTY
NORTH WEST SPECIAL EDUCATION LOCAL PLAN AREA**

SUSPENSION AND EXPULSION DUE PROCESS

9.1 DISCIPLINE

A student identified as an individual with disabilities pursuant to IDEA and 504 is subject to the same grounds for suspension and expulsion which apply to students without disabilities.

A student with a disability can be expelled for violation of school conduct codes only when certain procedural safeguards are followed.

If an action is contemplated regarding behavior resulting in consideration for expulsion or involving a removal that constitutes a change of placement, the parents must be notified of that decision no later than the date on which the decision to take that action is made.

Immediately, if possible, but in no case later than ten (10) school days after the date on which the decision to take that action is made, the IEP team must meet to review the relationship between the child's disability and the behavior subject to the disciplinary action.

9.2 SUSPENSION

The superintendent or designee may suspend a student with a disability for up to **five (5) consecutive school days** for a single incident of misconduct and up to **20 school days in a school year**. The principal or designee shall monitor the number of days, including portions of days that students with valid IEPs have been suspended or otherwise removed from instruction based on a violation of a code of student conduct during the school year.

9.3 SERVICES DURING SUSPENSION

Students suspended for more than ten (10) school days in a school year shall continue to receive services, during the period of suspension, to enable the child to participate in the general curriculum and to progress toward meeting the goals in the student's IEP, as determined by appropriate school personnel, in consultation with the teacher.

9.4 TRANSPORTATION DURING SUSPENSION

If the 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 or parent/guardian, provided that transportation is specified on the IEP.

9.5 PROCEDURAL SAFEGUARDS

The following procedural safeguards shall apply when a student is suspended for more than 10 cumulative school days, when a student is placed in an interim alternative educational setting (IAES), or when a change of placement is contemplated.

Not later than the date on which the decision to take action is made, the parents/guardians of the student shall be notified of the decision and provided the procedural safeguards notice.

9.6 MANIFESTATION DETERMINATION

Within ten (10) school days of any decision to change the placement of a child with a disability, because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the IEP Team (as determined by the parent and the LEA) shall 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 to determine:

1. if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or
2. if the conduct in question was the direct result of the LEA's failure to implement the IEP.

If the LEA, the parent, and relevant members of the IEP Team determine that either of the above is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

9.6.A Determination that Behavior was a Manifestation

In determining that the behavior **was** a manifestation of the child's disability, the IEP Team must:

- (1) Conduct a functional behavioral assessment, and implement a behavioral intervention plan for the child, provided that the LEA had not conducted such assessment prior to such determination before the behavior resulted in change of placement.
- (2) In the situation where a behavioral intervention plan has been developed, review behavioral intervention plan and modify it, as necessary, to address the behavior; and
- (3) Except under special circumstances, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

9.6.B Determination that Behavior was NOT a Manifestation of the Disability

If the team determines that the behavior **was not** a manifestation of the disability:

- (1) Student must continue to receive services to enable the student to participate in the general curriculum and to progress toward meeting the goals in the student's IEP.
- (2) If appropriate, receive a functional behavioral assessment, behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.
- (3) District may continue through the expulsion process including a change of placement to alternative setting for duration of the expulsion process.

(See [IEP 6F]- Manifestation Determination form by logging in to SIRAS → Tools → Document Library → Blank/Emergency use forms.)

[↓ \[IEP 6F\] Manifestation Determination](#)

9.7 45-DAY REMOVAL TO INTERIM ALTERNATIVE EDUCATIONAL SETTING (IAES) SPECIAL CIRCUMSTANCES

School personnel may remove a student to an IAES for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child:

1. Carries or possesses a weapon to or at school, on school premises, or at a school function under the jurisdiction of the LEA.
2. Knowingly possesses or uses illegal drugs, or sells a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the LEA; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at school function under the jurisdiction of a State or LEA.

The IAES shall be determined by the IEP Team.

Definition of *Serious Bodily Injury*

Serious bodily injury means bodily injury which involves:

1. A substantial risk of death
2. Extreme physical pain
3. Protracted and obvious disfigurement; or
4. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

18-U.S.C. 1365(h) (3)

9.8 SERVICES DURING 45-DAY PLACEMENT

A student who is removed from current placement to 45-day placement must:

1. Student must continue to receive services to enable the student to participate in the general curriculum and to progress toward meeting the goals in the student's IEP.
2. Receive, as appropriate, a functional behavioral assessment, behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.

9.9 DISCIPLINARY APPEAL PROCESS

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination, or the LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others may request a hearing.

9.10 PLACEMENT DURING APPEAL PROCESS

When an appeal has been requested by either the parent or the LEA, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer until the expiration of the 45-day placement provided whichever occurs first unless the State or LEA agree otherwise.

9.11 EXPEDITED HEARING

The State or LEA shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

9.12 AUTHORITY OF ADMINISTRATIVE LAW JUDGE (ALJ)

The ALJ shall hear and make determination regarding an appeal request. In making the determination, the ALJ may order a change in placement of a child with a disability. In such situations, the ALJ may:

1. Return the child with a disability to the placement from which the child was removed; or
2. Order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days, if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

9.13 PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the LEA had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

9.13.A Basis of Knowledge

An LEA shall be deemed to have knowledge that a child is a child with a disability if, before the behavior precipitated the disciplinary action occurred:

- (1) The parent of the child has 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.
- (2) The parent of the child has requested an evaluation of the child.
- (3) The teacher of the child, or other personnel of the LEA, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

9.13.B Exception

An LEA shall not have been deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child or has refused services if the child has been evaluated and it was determined that the child was not a child with a disability.

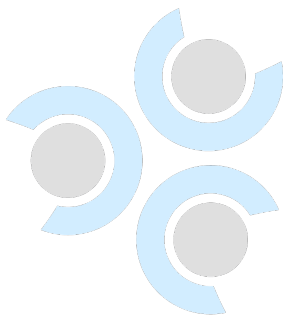
9.14 CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE

1. If a LEA does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities, who engage in comparable behaviors.

2. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the LEA and information provided by the parents, the LEA shall provide special education and related services. Pending the results, the child shall remain in the educational placement determined by school authorities.

Approved by Executive Council:

<i>SELPA I</i>	<i>1/25/24</i>
<i>SELPA II</i>	<i>1/26/24</i>
<i>SELPA III</i>	<i>1/25/24</i>
<i>SELPA IV</i>	<i>1/26/24</i>
<i>SELPA VII</i>	<i>1/24/24</i>



SELPA

Santa Clara County  Office of Education