

# KNOW YOUR RIGHTS: SUSPENSION/EXPULSION FOR STUDENTS WITH EXCEPTIONAL NEEDS OR A DISABILITY

## AM I AN INDIVIDUAL WITH EXCEPTIONAL NEEDS OR A CHILD WITH A DISABILITY?

If you qualify for an Individualized Education Program (IEP) under the Individuals with Disabilities Education Act (IDEA) or a 504 Plan under Section 504 of the Rehabilitation Act of 1973, you are considered to have exceptional needs and/or a disability and have extra protections if you are suspended or expelled (Cal. Educ. Code §§56026, 48915.5, 20 U.S.C. §1401(3), 29 U.S.C. §794, 34 C.F.R. §104.3(j)). For more information about whether or not you qualify for special education services (SPED), see our fact sheet "I Think I Need Special Education Services. What Do I Do?"

## HOW ARE MY RIGHTS DIFFERENT FROM THOSE OF GENERAL EDUCATION STUDENTS?

If you have or qualify for an IEP or 504 Plan, you have additional protections related to suspension and expulsion that are described below (20 U.S.C. §1415(k)(5), 29 U.S.C. §794, 34 C.F.R. §104.35(a)).

Your school is required to evaluate you before making a significant change in your school placement for more than 10 days, including expulsion or suspension (34 C.F.R. §104.35(a)). If you have an IEP, this evaluation is called a "manifestation determination" (20 U.S.C. §1415(k)(1)(B)).<sup>i</sup>

You must be provided with a free and appropriate public education (FAPE) during any period of alternative placement or expulsion, or a suspension over 10 days (Cal. Educ. Code §48915.5, 20 U.S.C. §§1412(a)(1), 1415(k)(1)(D), 34 C.F.R. §§300.530(d), 300.536). This means that services you receive during these periods must enable you to participate in the general curriculum, make progress toward your IEP goals, and receive any necessary behavioral assessments and services (20 U.S.C. §§1412(a)(1), 1415(k)(1)(D), 34 C.F.R. §300.530(d)).

## WHAT IS A "MANIFESTATION DETERMINATION"?

It is a meeting of your IEP team to determine whether you can be expelled or suspended for more than 10 consecutive school days that must be held within 10 days of the school's recommendation to do so (34 C.F.R. § 300.530(e)).

At the meeting, your IEP team reviews information from your file, teachers, and your parents/guardians. The team then decides (20 U.S.C. 1415(k)(1)(E)(i), 34 C.F.R. § 300.530(e)):

1. Was your behavior caused by, or did it have "a direct and substantial relationship" to, your disability?
2. Was your behavior the direct result of the district's failure to implement your IEP?

If your IEP team answers "Yes" to **either** question, you **can not** be expelled and must be allowed to return to your school unless your parent/guardian consents to a placement change (20 U.S.C. §1415(k)(1)(F), 34 C.F.R. §300.530(f)). Your school must do a functional behavioral assessment when you return and develop, review, or modify your behavior intervention plan (20 U.S.C. §1415(k)(1)(F), 34 C.F.R. §300.530(f)).

The only exception to this is if you committed one of the following "zero tolerance" offenses while at school, on school premises, or at a school function:

1. Carried or possessed a weapon (including on the way to school, school premises, or a school function)
2. Knowingly possessed or used illegal drugs, sold or solicited the sale of a controlled substance,
3. Inflicted serious bodily injury upon another person.

Then, even if your IEP team answers "Yes" to either question, they can place you in an alternative educational setting for up to 45 days (20 U.S.C. §1415(k)(1)(G), 34 C.F.R. §§300.530(g), 300.531).

If your IEP team answers "No" to **both** questions, you can be referred for expulsion and will have a hearing. For information about expulsion generally, see our fact sheet "Know Your Rights: Expulsion".

## CAN I APPEAL MY MANIFESTATION DETERMINATION?

Yes. If you appeal your IEP team's review, you will have an expedited due process hearing within 20 school days of your request and a decision will be made within 10 school days of the hearing (20 U.S.C. § 1415(k)(3) and (4)(B)).

<sup>i</sup> If you have a 504 plan, you are entitled to similar procedural safeguards that include notice, an opportunity to examine records, an impartial hearing, representation by counsel, and a review procedure (34 C.F.R. §104.36, *see also* 34 C.F.R. §104.35(a)). The procedures vary by district, but are often the same or similar to the ones described here.



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