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Ventura County SELPA

*Guidelines for
Suspension and Expulsion
of
Special Education Students
2009*

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Suspension shall be imposed only when other means of correction fail to bring about proper conduct. EC48900.5
See alternative to suspension at the end of this booklet.

I. SUSPENSION

A. FIRST TEN DAYS AND DETERMINATION OF "PATTERN":

1. First 10 days – no need for services during this time. A Behavior Plan should be considered and behavior services and modifications may be provided if needed (300.530 (d)(1)(ii)). The "Positive Behavior Support Plan" form in the IEP may be used. No single suspension may exceed 5 consecutive days. (EC 48911)(a).
2. The maximum number of days a special education student can be suspended is 20 in any school year at the current school site, with a maximum of 30 days if the pupil is transferred to another regular or continuation school (EC 48903)(a). The 20 days include any portion of a school day that a student is suspended (CFR 300.11 (c)). An in-school suspension does not count as a day of suspension if the student had a chance to work on their school work and receive special education services and the amount of integration with non-disabled peers specified in IEP. EC 48925(d)(1).
3. School Personnel (at minimum the school principal or district office representative and special education case manager) must determine if subsequent suspensions will result in a change of placement. To determine if it constitutes a *pattern* which results in a change of placement, the school personnel consider:
 - a. Total suspensions more than 10 days
 - b. Behavior substantially similar to behavior in previous incidents
 - c. Length, time, or proximity of removals

(CFR 300.536)(a)(2)

Personnel should include, at minimum the school principal or district office representative and special education case manager. Use the form "Determination of Pattern of Suspension Resulting in Change of Placement" (attachment). This form is necessary for any suspension beyond 10 days.

4. ***If it is determined that no pattern exists, subsequent suspensions are not considered to be a change of placement.*** You may implement additional suspensions for separate incidents up to 20 days at one school site (same limit as for general education students). Any subsequent incidents of behavior which result in suspension must be reviewed by school personnel to determine if it constitutes a pattern resulting in a change of placement using criteria above.

Between 10-20 days, **if no pattern exists**, the school is not required to provide special education services during the period of suspension. From the 11th day on, upon each incident, the school personnel, in consultation with at least one of the student's teachers, must determine *what services* are necessary to allow the student to progress in the general education curriculum and advance toward goals and objectives, and *where* those services should be provided – note on the “Determination of Pattern of Suspension” form. (CFR 300.530 (d) (4)).

5. ***If it is determined that a pattern exists, then it is a change of placement*** (CFR 300.536) (b)) Before suspending beyond ten days, a Manifestation Determination IEP meeting must be held within 10 school days and parents given the procedural safeguards. (Full version - not abbreviated) (CFR 300.530 (e)).

B. MANIFESTATION DETERMINATION REVIEW (CFR 300.530 (e))

1. Required for suspension beyond 10 days when subsequent suspensions will result in a change of placement (because a pattern exists) or when expulsion is being considered.
2. The parent and district members determine the relevant members of the IEP Team to participate in the review. If any required members are not considered relevant, use the “Team Member Excusal” to document the decision.
3. If a student is being considered for suspension beyond ten days, the Manifestation Review IEP team meeting must be held before imposing suspensions beyond ten days.

If a student is being considered for expulsion, the Manifestation Review IEP team meeting must be held within 10 days of the incident and prior to the principal recommending that the student be expelled.

4. The IEP Team conducts the Manifestation Determination Review to determine the relationship between the disability and the **behavior subject to disciplinary action**. At the meeting, the team will consider all relevant information in the student's file, the IEP, any teacher observations, and any relevant information provided to the parents. (CFR 300.530 (e)(1)) Review of existing data does not require parent consent. (CFR 300.300 (d)(i).) The team will determine if the behavior in question:
 - was caused by, or had a direct and substantial relationship to the disability
 - was the direct result of the district's failure to implement the IEP.

Assessment is not required. However, if the district wishes to assess, and can demonstrate that it made reasonable attempts to obtain consent, (two in writing/one by phone) parent has failed to respond, district may conduct needed assessment without permission. (CFR 300.300 (c)(2)(i)(ii).)

Use the Manifestation Determination Review form to document the team's decision.

5. Any deficiencies in implementing the IEP found during review must be remedied immediately before further suspension is imposed, or expulsion recommended. (CFR 300.530 (e)(3))
6. If no link is found between the behavior subject to the disciplinary action and the disability and, the IEP was implemented appropriately, the child may continue to be suspended in the same manner as a child without a disability, or recommended for expulsion. (300.530 (c)). A Behavior Plan should be considered to address the behavior. (CFR 300.530 (d)(1))
7. If there is a link found between the behavior subject to the disciplinary action and the disability, then the student shall not be suspended for the behavior and the student will be returned to the placement from which s/he was removed, unless the parent or district agree to a change of placement as part of the Behavior Plan. 300.530 (f)(2) The Behavior Plan shall be modified/developed to attempt to address factors leading to the behavior. (CFR 300.530 (f)(1)(i)(ii)) (See next section).
8. If the parent disagrees with the Manifestation Determination, s/he may appeal the decision by requesting a due process hearing. An expedited Due Process Hearing must occur within 20 school days. The district should not impose additional disciplinary action until resolved.

C. FUNCTIONAL BEHAVIOR ASSESSMENT AND BEHAVIOR INTERVENTION PLANS.

The functional behavioral assessment and behavior intervention plan described in this document are different from the Functional Analysis Assessment and Behavior Intervention Plan required under California Code of Regulations for students who exhibit serious behaviors or for whom a behavior emergency has occurred (known as "Hughes bill") (CA Code of Regs 3052.) However, if there is already a plan under this requirement, it will meet the requirements for a plan at 10th day of suspension.

1. If a manifestation:
 - a. The IEP team must either develop a Functional Behavior Assessment (FBA) or review existing Positive Behavior Support Plan or Behavior Intervention Plan. (Hereafter referred to as a "Behavior Plan") (CFR 300.530(f)(1)(i)(ii))
 - b. If the student already has a Behavior Plan the IEP team must review the plan and its implementation, and modify the plan as necessary to address the behavior.
 - c. If no Behavior Plan has been developed for the behavior for which the student is being removed, the IEP team will review existing data about the behavior to determine if it is sufficient to address the various

situational, environmental and behavioral circumstances surrounding the behavior:

- 1) If data is sufficient, conduct the Functional Behavioral Assessment at the IEP meeting and develop a Behavioral Plan and implement immediately.
- 2) If sufficient data is not available, an Assessment Plan for a Functional Behavioral Assessment is developed. A best practice would be that the team recommends an interim Positive Behavior Support Plan for the behavior while the Functional Behavioral Assessment is being conducted.

The Functional Behavioral Assessment should be conducted as soon as possible (no later than 60 days) after the Assessment Plan is signed, and an IEP meeting scheduled to develop a Behavior Intervention Plan as soon as the assessment is completed. The plan is implemented immediately.

2. Not a manifestation:
 - a. The IEP team should determine whether a Functional Behavior Assessment and Behavior Plan are appropriate. CFR 300.530 (d)(Q)(1)(ii) (if so, see 1b and 1c above)

II. EXPULSION

- A. There are five violations of the Ed Code that result in mandatory recommendation for expulsion. These violations are:
 1. Possessing, selling or furnishing a firearm. Ed. Code 48915 (c)(1)
 2. Brandishing a knife to another person. Ed. Code 48915 (c)(2)
 3. Unlawfully selling a controlled substance. Ed. Code 48915 (c)
 4. Committing or attempting to commit sexual assault or sexual battery. Ed. Code 48915 (c)(4)
 5. Possession of an explosive. Ed. Code. 48915 (c) (5)
- B. A Manifestation Determination IEP Review meeting must be held within 10 school days of the incident for all special education students for whom expulsion is being considered. (300.530 (e)) (See Section I-B)
- C. If the Manifestation Determination Review team determines that the behavior subject to disciplinary action is a manifestation of the student's disability, the team shall not recommend expulsion. The placement, supports and services (and Behavior Plan, if one exists) in the IEP should be implemented and/or revised as appropriate to address factors leading to the behavior. (CFR 300.530 (e)(3)). The student shall be returned to the placement from which s/he was removed, unless the IEP team agrees to a change of placement as part of a modification to the Behavior Plan. (CFR 300.530 (f)(2))

If there is no Behavioral Plan in place, the IEP team must initiate a Functional Behavioral Assessment to develop a Behavior Plan. If there is adequate data, the Functional Behavioral Assessment may be conducted and Behavior Plan developed at the Manifestation Determination meeting. See Section C (1)(c))

- D. If the Review team determines that the behavior is not a manifestation of the student's disability, the School Board may consider the student for expulsion. (CFR 300.530 (c))

If the Review team feels the student should receive a Functional Behavior Assessment to develop a Behavior Plan, or the team should review an existing plan, follow the process in Section C (1)(b and c). (CFR 300.530 (d)(2))

- E. Under the provisions of Ed Code 48911 (g), an extension of a suspension pending an expulsion recommendation is allowed, following a meeting with the Superintendent or designee and the parent where it is determined that the presence of the student would cause a danger to persons or property, or a threat of disrupting the instructional process.
- F. If the Board decides to expel a student with an IEP who has committed an expellable act, which has been determined NOT to be a manifestation of the child's disability, the IEP team must determine how special education and services specified in the IEP will continue to be provided (CFR 300.101 (a)) in order to enable the student to advance in the core curriculum and achieve the IEP goals.

III. INTERIM ALTERNATIVE EDUCATIONAL SETTINGS (IAES)

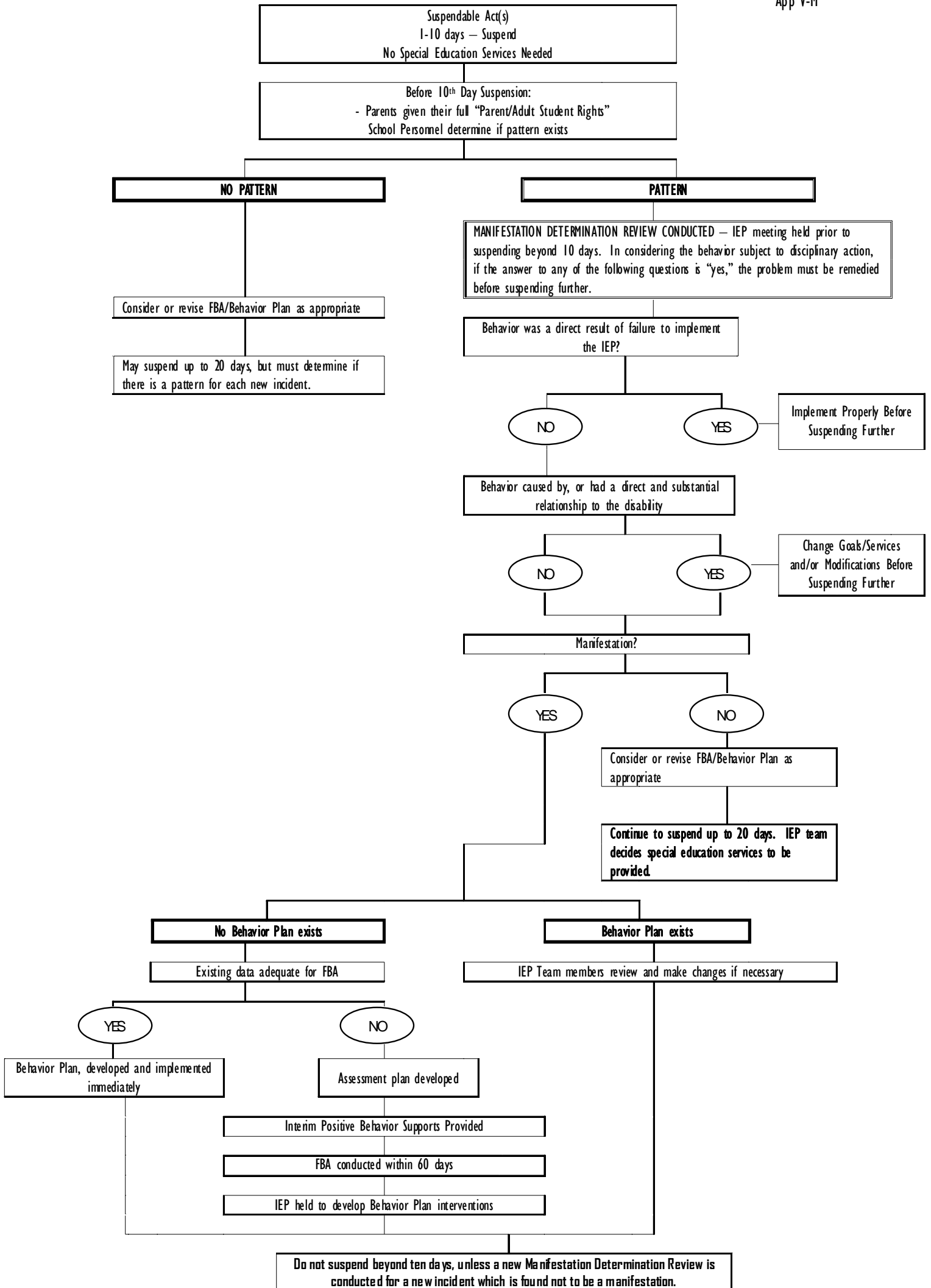
- A. Special Education students may be recommended for an Interim Alternative Educational Setting (IAES) if any of the following occur at school or school function:
- Carries or posses a weapon
 - Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance
 - Has inflicted serious bodily injury upon another person (CFR 300.530 (g))
- B. The special education director can request a Due Process Hearing to order an IAES for a student who has *not* committed a weapons, drug offense or serious bodily injury. If the district can show evidence that maintaining the current placement is substantially likely to result in an injury to the student or others. (CFR 300.532 (a))

A Hearing Officer will decide whether to return the child to the original placement or to an IAES for 45 school days, during the pendency of the Due Process Hearing. (300.532 (b)(2)(i)(ii)). An expedited Due Process hearing must be held within 20 school days of the district's request. (CFR 300.532 (c)(2))

- C. The Alternative Educational Setting shall be determined by the IEP Team and shall not exceed 45 school days, unless extended by the Hearing Officer. If the school year ends before the 45 school days is over, the IAES may continue for the remainder of the 45 school days in the new school year. (Federal Register Vol. 71, No. 156 p. 46722.)
- D. Any Interim Alternative Educational Setting (IAES) in which a child is placed shall be selected by the IEP Team. (CFR 300.531) The IAES must:
 - 1. Be selected so as to enable the student to continue to receive services so s/he can participate in the general curriculum, although in another setting, and to progress toward meeting the IEP goals.
 - 2. Include Behavior Interventions services and modifications designed to address the behavior so that it does not recur. (CFR 300.530 (d)(1)(2))
- E. If the parent does not agree with the IAES placement, the district may move forward with placement in the IAES. The parent can appeal by requesting a Due Process Hearing to determine the appropriateness of the placement.
- F. During the pendency of due process, the IAES becomes the stay-put placement until a hearing officer decision or until the 45 school days expire, whichever comes first (CFR 200.533). The IAES may include home/hospital instruction, alternative or non-public schools.

Ventura County SELPA – Special Education
SUSPENSION FLOWCHART

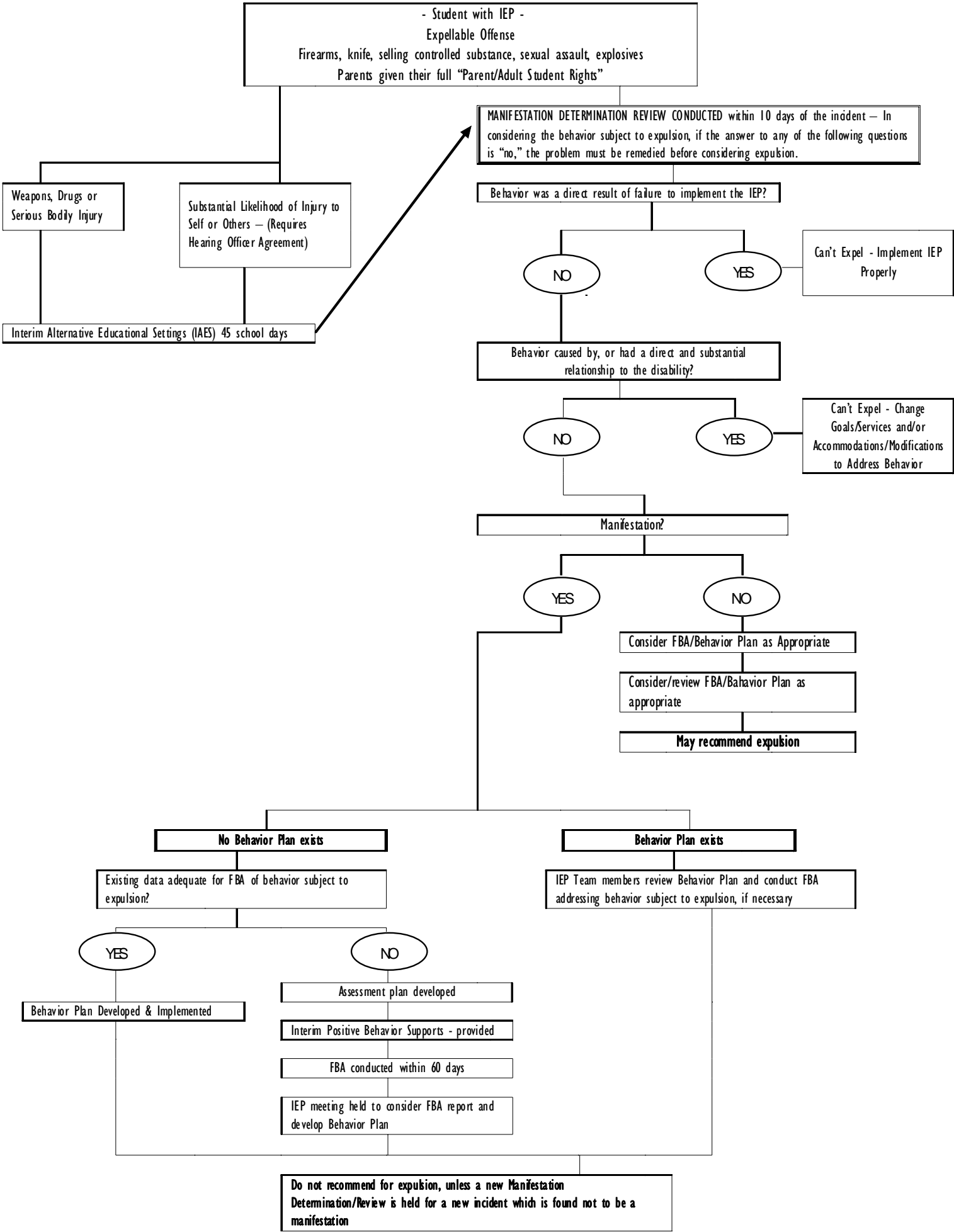
34 Code of Regulations
 (CFR) 300.530-300.533
 App V-M



Definitions:
(BEHAVIOR PLAN) Behavior Intervention Plan – A plan (including the SELPA’s Positive Behavior Support Plan (PBS)) which is part of an IEP and is based on information gathered by a Functional Behavioral Assessment, or a Functional Analysis Assessment as per California Code of Regulations (CCR) 3052(b).
(FBA) Functional Behavior Assessment – An assessment which addresses the various situational, environmental and behavioral circumstances surrounding the behavior. It may be an evaluation requiring parental consent, or it may be a review of existing data at the IEP meeting called to develop the Behavior Plan. (CFR) 300.530 (d)(1)(ii) & (f)

**Ventura County SELPA – Special Education
EXPULSION FLOWCHART**

**DRAFT
App V-N**



Definitions:
(BIP) Behavior Intervention Plan – A plan (including the SELPA’s Positive Behavior Support Plan (PBS)) which is part of an IEP and is based on information gathered by a Functional Behavioral Assessment, or a Functional Analysis Assessment as per California Code of Regulations (CCR) 3052(b).
(FBA) Functional Behavior Assessment – An assessment which addresses the various situational, environmental and behavioral circumstances surrounding the behavior. It may be an evaluation requiring parental consent, or it may be a review of existing data at the IEP meeting called to develop the BIP.
 Updated: August 19, 2009

VENTURA COUNTY SELPA

<p>WORKSHEET FOR DETERMINATION OF PATTERN OF SUSPENSION RESULTING IN CHANGE OF PLACEMENT (CFR 300.536)</p>
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Student name: _____ D.O.B. _____

1. Suspensions this school year: (Suspension includes any time student is sent home from school all or part of the school day including both formal and informal suspensions.)

Dates	Reason

Total days: _____

Check any of the following that apply:

- The behaviors resulting in the suspensions were substantially similar to each other
- One or more suspensions were unusually long (causing a disruption to the student's education)
- The suspensions were close enough together to cause a disruption to the student's education

If any of the above are checked, the suspensions are considered to be a pattern (resulting in a change of placement). A Manifestation Determination Review must be conducted, prior to suspending student beyond ten cumulative school days.

If not a pattern, note the services needed to enable the student to participate in the general curriculum and make progress toward IEP goals, if suspended beyond ten days. (CFR 300.530 (d)(4)) (Requires at least one of the student's teachers)

Signature	Title

MANIFESTATION DETERMINATION REVIEW WORKSHEET (CFR 300.530)

(for behavior subject to suspension beyond ten days or expulsion)

VENTURA COUNTY SELPA IEP

Student Name _____ D.O.B. _____ Meeting Date _____

Describe behavior subject to disciplinary action: _____

Disciplinary action proposed: Suspension beyond 10 days (if pattern of removals) Expulsion proceedings

The district, parent, and relevant members of the IEP team must review all pertinent information in the student's file, to include:

- *IEP*
- *Teacher observations*
- *Relevant information provided by the parent and/or student*
- *Health, counseling, discipline, confidential file records (as appropriate)*

The team agrees:

- The behavior in question was caused by, or had a direct and substantial relationship to, the student's disability. Yes No
- The behavior in question was a direct result of the district's failure to implement the IEP. Yes No

(If either of the items is checked "yes," the behavior must be considered a manifestation of the disability.)

THE IEP TEAM AGREES THAT THE BEHAVIOR IS A MANIFESTATION OF THE STUDENT'S DISABILITY. Yes No

If yes:

1. If the IEP was not implemented appropriately, the following steps will be taken to remedy the problem: _____
2. The team must conduct a functional behavioral assessment (FBA) and develop a behavior intervention plan (BIP) for the student. If a BIP based on a FBA has already been developed, it will be reviewed and modified as appropriate to address the behavior. The student will return to his/her current program, unless a change is agreed to by the IEP team.
3. The student will not be recommended for expulsion or suspended further at this time. If the behavior was a result of the district's failure to implement the IEP, and that failure is resolved, a Manifestation Determination review may be conducted if the behavior occurs again.

If no:

The relevant disciplinary procedures applicable to all students may be used.

- Student placed in Interim Alternative Education Setting (IAES) per CFR 300.530(a).
Dates (not to exceed 45 business days): From _____ To _____ Location _____

Plan for providing special education services in IAES _____

SPECIAL EDUCATION STUDENT SUSPENSION CHECKLIST FOR SITE ADMINISTRATORS

- When suspending a student on consecutive occasions, check if the student is receiving any special education services. If yes, consult with your school psychologist.
- Short-term suspension, 0 – 10 cumulative days **does not require** IEP services or other special procedures.
- Use in-school suspensions and/or in school restrictions whenever possible. These do not count as days of suspension, as long as student works in the curriculum and receives special education services.
- Use out of school suspension for **as few days as possible**. After 10 days (any portion of day) of suspension for students with IEPs, you must follow all procedural safeguards.
- Before 10 days of suspension in one academic year:
 - Conduct a “Determination of Pattern of Suspension Review”
 - If not a pattern, you may continue to suspend beyond ten days, but you must conduct the “Determination of Pattern” review at the time of each suspension and must note services will receive on bottom of the form.
 - If a pattern, conduct a Manifestation Determination IEP Review meeting before imposing further suspensions.
 - If a Manifestation:
 - Remedy deficiencies in IEP implementation
 - Develop a Behavior Plan or review/revise the existing one.
 - If not a Manifestation:
 - Consider developing a Behavior Plan to address the behavior
 - You may suspend further for this behavior
 - Regardless of whether or not a Manifestation, if student becomes subject to suspension for a new behavior, you must conduct the Manifestation Review again to determine if the conduct in question is a manifestation of the disability.
 - If drugs, weapons, or serious bodily injury a reason for suspension you may place the student in an Interim Alternative Educational Setting (IAES) for no more than 45 school days.
 - IEP meeting held to determine IAES. If parents disagree with the IAES, the student remains in the IAES pending the Due Process Hearing.

Instead of Suspending, Have You Considered.....

- **Problem-Solving Approach** - Work with student to identify alternatives to behavior.
- **Behavior Contract** - A simple agreement with the student who can “earn” something in exchange for a desired behavior (or lack of behavior)
- **Positive Behavior Support Plan (PBSP)** - Part of the IEP, the Special Education team works together on a coordinated plan to change the student’s behavior
- **Change in Programming** - Changes in the student’s schedule, classes or course content, to make the school day more interesting and motivating to the student
- **In-School Suspension** - Student completes the school day in an alternative setting on campus, with the opportunity to work in the general education curriculum, receive Special Education services and work on goals and/or objectives
- **Counseling** - There are many free and low-cost counseling options available to students. Short term “topic” groups can be provided, in addition to one-on-one counseling
- **SAP Groups** - Informal groups provided on campus to address specific issues
- **Parent Conference** - Work with parents to provide insight and support with appropriate consequences.
- **Community Service** - Required amount of time in community service in school or community
- **Restitution** - Financial or “in kind.” Permits the student to restore or improve the school environment.
- **Change in Overall School Program** - Alternative school or program, independent study or work experience. Requires IEP team agreement.

RECORD OF SUSPENSIONS
Ventura County Special Education Local Plan Area (SELPA)

Student Name _____ D.O.B. _____ Date _____

If a student is excluded from school for all or any portion of a school day, it counts as one day of suspension.

In-school suspensions do not count as a day of suspension if the student has the opportunity to work on curriculum and receives special education services.

Check if student has:

- Behavior Intervention Plan Positive Behavior Support Plan

	Date of Suspension	Number of Days	Reason
1st Incident			
2nd Incident:			
3rd Incident:			
4th Incident:			
5th Incident:			
6th Incident:			
7th Incident:			
8th Incident:			
9th Incident:			
10th Incident:			

*Consider using the "Worksheet for Determination of Pattern of Suspensions" before student reaches the tenth day of suspension. May not suspend beyond ten days if the suspensions are a "pattern," and determined to be a manifestation of the disability.

Sample

RECORD OF SUSPENSIONS
Ventura County Special Education Local Plan Area (SELPA)

Student Name Jeremy R. D.O.B. 3/5/99 Date 1/14/09

If a student is excluded from school for all or any portion of a school day, it counts as one day of suspension.

In-school suspensions do not count as a day of suspension if the student has the opportunity to work on curriculum and receives special education services.

Check if student has:

- Behavior Intervention Plan Positive Behavior Support Plan

	Date of Suspension	Number of Days	Reason
1 st Incident	11/13/08	2	Damage to school property. Lit fire in boy's room trashcan.
2 nd Incident:	12/1/09	1	Bullying - student in wheelchair.
3 rd Incident:	3/29/09	1	Obscene act/vulgarity - used a sexual term with a female student.
4 th Incident:	4/6/09	2	Stealing - money from the cafeteria cash register.
5 th Incident:	4/30/09	2	School property damage. Lit fire in playground trashcans.
6 th Incident:			
7 th Incident:			
8 th Incident:			
9 th Incident:			
10 th Incident:			

*Consider using the "Worksheet for Determination of Pattern of Suspensions" before student reaches the tenth day of suspension. May not suspend beyond ten days if the suspensions are a "pattern," and determined to be a manifestation of the disability.