

AMENDED IN SENATE JUNE 7, 2001

AMENDED IN ASSEMBLY APRIL 30, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 379**

**Introduced by Assembly Member Papan**

February 20, 2001

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~~An act to amend Section 48902 of, to add Sections 48915.51, 48915.52, 48915.53, 48915.54, 48915.55, 48915.56, 48915.57, 48915.58, 48915.59, and 48915.61 to, to repeal Section 62000.8 of, and to repeal and add Sections 48915.5 and 48915.6 of, the Education Code, An act to repeal Section 62000.8 of the Education Code, relating to special education, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 379, as amended, Papan. Special education.

~~(1) Existing law requires the principal of a school or the principal's designee to notify appropriate law enforcement authorities of certain acts committed by a pupil that may violate certain criminal laws.~~

~~This bill would require a principal of a school or the principal's designee to ensure that copies of the special education and disciplinary records of an individual with exceptional needs are transmitted for consideration by the appropriate authorities when a criminal act committed by that pupil is reported.~~

~~(2) Existing law authorizes a governing board of a school district to expel a pupil with previously identified exceptional needs who is currently enrolled in a special education program if certain conditions~~

~~are met and requires each local educational agency to develop procedures and timelines governing expulsion procedures for those purposes.~~

~~This bill would delete these provisions and instead authorize the suspension or expulsion of an individual with exceptional needs. The bill would require the local educational agency to provide certain services if the pupil is removed from his or her current placement for more than 10 schooldays in the same school year. The bill would authorize a change in placement for the pupil to an appropriate interim alternative educational setting for not more than 45 days if certain events occur. The bill would require a local educational agency to follow certain procedures before removing the pupil for more than 10 schooldays in a school year or commencing a removal that constitutes a change of placement. The bill would authorize a due process hearing officer to order a change in the placement of an individual with exceptional needs to an appropriate interim alternative educational setting in an expedited due process hearing if certain conditions are met. The bill would require parental or guardian notification and a review of the relationship between the pupil's disability and behavior if the pupil is subject to certain disciplinary action or a removal that constitutes a change of placement. The bill would authorize the application of the disciplinary procedures applicable to pupils without disabilities to individuals with exceptional needs if the behavior of the pupil was not a manifestation of the pupil's disability, allow a parent or guardian to request a due process hearing to challenge such a finding, and require the local educational agency to arrange for an expedited hearing on the matter. The bill would authorize a pupil who has not been determined to be eligible for special education and who has engaged in behavior that violated any rule or code of conduct of the local educational agency to assert the protections afforded to pupils in special education programs if the agency had knowledge that the pupil was an individual with exceptional needs.~~

~~(3) Existing law requires the special education program to sunset on June 30, 2001.~~

~~This bill would delete this provision. *To the extent that the deletion of this provision would extend the imposition of certain duties on school districts regarding the provision of the special education program on and after June 30, 2001, the bill would impose a state mandated local program.*~~



~~(4) By requiring school principals and local educational agencies to perform certain actions and services and follow certain procedures, this bill would impose a state-mandated local program.~~

~~(5)~~

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(6)~~

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. Section 48902 of the Education Code is~~  
2 ~~amended to read:~~

3 ~~48902. (a) The principal of a school or the principal's~~  
4 ~~designee shall, prior to the suspension or expulsion of any pupil,~~  
5 ~~notify the appropriate law enforcement authorities of the county~~  
6 ~~or city in which the school is situated, of any acts of the pupil which~~  
7 ~~may violate Section 245 of the Penal Code.~~

8 ~~(b) The principal of a school or the principal's designee shall,~~  
9 ~~within one schoolday after suspension or expulsion of any pupil,~~  
10 ~~notify, by telephone or any other appropriate method chosen by the~~  
11 ~~school, the appropriate law enforcement authority of the county or~~  
12 ~~the school district in which the school is situated of any acts of the~~  
13 ~~pupils which may violate subdivision (e) or (d) of Section 48900.~~

14 ~~(c) Notwithstanding subdivision (b), the principal of a school~~  
15 ~~or the principal's designee shall notify the appropriate law~~  
16 ~~enforcement authorities of the county or city in which the school~~  
17 ~~is located of any acts of a pupil that may involve the possession or~~  
18 ~~sale of narcotics or of a controlled substance or a violation of~~  
19 ~~Section 626.9 or 626.10 of the Penal Code.~~

20 ~~(d) A principal, the principal's designee, or any other person~~  
21 ~~reporting a known or suspected act described in subdivision (a) or~~  
22 ~~(b) is not civilly or criminally liable as a result of making any~~



1 ~~report authorized by this article unless it can be proven that a false~~  
2 ~~report was made and that the person knew the report was false or~~  
3 ~~the report was made with reckless disregard for the truth or falsity~~  
4 ~~of the report.~~

5 ~~(e) The willful failure to make any report required by this~~  
6 ~~section is an infraction punishable by a fine to be paid by the~~  
7 ~~principal or principal's designee who is responsible for the failure~~  
8 ~~of not more than five hundred dollars (\$500).~~

9 ~~(f) A principal of a school or the principal's designee reporting~~  
10 ~~a criminal act committed by a schoolage individual with~~  
11 ~~exceptional needs, as defined in Section 56026, shall ensure that~~  
12 ~~copies of the special education and disciplinary records of the~~  
13 ~~pupil are transmitted, pursuant to paragraph (9) of subsection (k)~~  
14 ~~of Section 1415 of Title 20 of the United States Code, for~~  
15 ~~consideration by the appropriate authorities to whom he or she~~  
16 ~~reports the criminal act. Copies of the pupil's special education and~~  
17 ~~disciplinary records may be transmitted only to the extent that the~~  
18 ~~transmission is permitted by the Family Educational Rights and~~  
19 ~~Privacy Act of 1974 (20 U.S.C. Sec. 1232g et seq.).~~

20 ~~SEC. 2.—Section 48915.5 of the Education Code is repealed.~~

21 ~~SEC. 3.—Section 48915.5 is added to the Education Code, to~~  
22 ~~read:~~

23 ~~48915.5. (a) An individual with exceptional needs, as~~  
24 ~~defined in Section 56026, may be suspended or expelled from~~  
25 ~~school in accordance with this section and Sections 48915.1 to~~  
26 ~~48915.61, inclusive, as follows:~~

27 ~~(1) (A) To the extent removal would be applied to pupils~~  
28 ~~without disabilities, an individual with exceptional needs may be~~  
29 ~~removed from his or her current placement for not more than 10~~  
30 ~~consecutive schooldays for any violation of school rules, and~~  
31 ~~additional removals of not more than 10 consecutive schooldays~~  
32 ~~in the same school year for separate incidents of misconduct as~~  
33 ~~long as those removals do not constitute a change of placement as~~  
34 ~~described in subdivision (d).~~

35 ~~(B) After an individual with exceptional needs has been~~  
36 ~~removed from his or her current placement for more than 10~~  
37 ~~schooldays in the same school year, during any subsequent days of~~  
38 ~~removal the local educational agency shall provide services to the~~  
39 ~~extent required pursuant to Section 48915.61.~~



1 ~~(2) An individual with exceptional needs may be subject to a~~  
2 ~~change in placement to an appropriate interim alternative~~  
3 ~~educational setting for the same amount of time that a pupil~~  
4 ~~without a disability would be subject to discipline, but for not more~~  
5 ~~than 45 days, if either of the following occurs:~~

6 ~~(A) The pupil carries or possesses a weapon to or at school, on~~  
7 ~~the school premises, or to or at a school function under the~~  
8 ~~jurisdiction of a state or a local educational agency.~~

9 ~~(B) The pupil knowingly possesses or uses illegal drugs or sells~~  
10 ~~or solicits the sale of a controlled substance while at school or a~~  
11 ~~school function under the jurisdiction of a state or a local~~  
12 ~~educational agency.~~

13 ~~(b) (1) Either before or not later than 10 business days after~~  
14 ~~either first removing the individual with exceptional needs for~~  
15 ~~more than 10 schooldays in a school year or commencing a~~  
16 ~~removal that constitutes a change of placement pursuant to~~  
17 ~~subdivision (d), including the action described in paragraph (2) of~~  
18 ~~subdivision (a), the local educational agency shall do all of the~~  
19 ~~following:~~

20 ~~(A) If the local educational agency did not conduct a functional~~  
21 ~~behavioral assessment and implement a behavioral intervention~~  
22 ~~plan for the pupil before the behavior that resulted in the removal~~  
23 ~~described in subdivision (a), the local educational agency shall~~  
24 ~~convene an individualized education program meeting to develop~~  
25 ~~an assessment plan.~~

26 ~~(B) If the pupil already has a behavioral intervention plan, the~~  
27 ~~individualized education program team shall meet to review the~~  
28 ~~plan and its implementation, and modify the plan and its~~  
29 ~~implementation as necessary, to address the behavior.~~

30 ~~(2) As soon as practicable after developing the plan described~~  
31 ~~in subparagraph (A) of paragraph (1), and completing the~~  
32 ~~assessments required by the plan, the local educational agency~~  
33 ~~shall convene an individualized education program meeting to~~  
34 ~~develop appropriate behavioral interventions to address that~~  
35 ~~behavior and shall implement those interventions.~~

36 ~~(e) (1) If an individual with exceptional needs who has a~~  
37 ~~behavioral intervention plan and who has been removed from the~~  
38 ~~pupil's current educational placement for more than 10 schooldays~~  
39 ~~in a school year is subjected to a removal that does not constitute~~  
40 ~~a change of placement pursuant to subdivision (d), the~~



1 individualized education program team members shall review the  
2 behavioral intervention plan and its implementation to determine  
3 if modifications are necessary.

4 (2) If one or more of the individualized education program  
5 team members believe that modifications are needed, the team  
6 shall meet to modify the plan and its implementation, to the extent  
7 the team determines necessary.

8 (d) For purposes of removal of an individual with exceptional  
9 needs from the pupil's current educational placement under this  
10 section, a change of placement occurs if either of the following  
11 occurs:

12 (1) The removal is for more than 10 consecutive schooldays.

13 (2) The pupil is subjected to a series of removals that constitute  
14 a pattern because they cumulate to more than 10 schooldays in a  
15 school year, and because factors such as the length of each  
16 removal, the total amount of time the pupil is removed, and the  
17 proximity of the removals to one another.

18 SEC. 4. Section 48915.51 is added to the Education Code  
19 immediately following Section 48915.5, to read:

20 48915.51. A due process hearing officer may, pursuant to the  
21 procedures set forth in Chapter 5 (commencing with Section  
22 56500) of Part 30, order a change in the placement of an individual  
23 with exceptional needs to an appropriate interim alternative  
24 educational setting for not more than 45 days if the due process  
25 hearing officer, in an expedited due process hearing, does all of the  
26 following:

27 (a) Determines that the local educational agency has  
28 demonstrated by substantial evidence that maintaining the current  
29 placement of the pupil is substantially likely to result in injury to  
30 the pupil or to others.

31 (b) Considers the appropriateness of the pupil's current  
32 placement.

33 (c) Considers whether the local educational agency has made  
34 reasonable efforts to minimize the risk of harm in the pupil's  
35 current placement, including the use of supplementary aids and  
36 services.

37 (d) Determines that the interim alternative educational setting  
38 that is proposed by school personnel who have consulted with the  
39 pupil's special education teacher, meets the requirements of  
40 subdivision (b) of Section 48915.52.



1 ~~SEC. 5. Section 48915.52 is added to the Education Code~~  
2 ~~immediately following Section 48915.51, to read:~~

3 ~~48915.52. (a) The interim alternative educational setting~~  
4 ~~referred to in paragraph (2) of subdivision (a) of Section 48915.5~~  
5 ~~shall be determined by the individualized education program~~  
6 ~~team.~~

7 ~~(b) Any interim alternative educational setting in which an~~  
8 ~~individual with exceptional needs is placed pursuant to paragraph~~  
9 ~~(2) of subdivision (a) of Section 48915.5 or Section 48915.51 shall~~  
10 ~~include all of the following:~~

11 ~~(1) Selection of a setting that will enable the pupil to continue~~  
12 ~~to progress in the general curriculum, although in another setting,~~  
13 ~~and to continue to receive those services and modifications,~~  
14 ~~including those described in the pupil's current individualized~~  
15 ~~education program, that will enable the pupil to meet the goals set~~  
16 ~~out in that individualized education program.~~

17 ~~(2) Include services and modifications to address the behavior~~  
18 ~~resulting in the disciplinary action described in paragraph (2) of~~  
19 ~~subdivision (a) of Section 48915.5 or Section 48915.51, that are~~  
20 ~~designed to prevent the behavior from recurring.~~

21 ~~SEC. 6. Section 48915.53 is added to the Education Code~~  
22 ~~immediately following Section 48915.52, to read:~~

23 ~~48915.53. (a) If an action is contemplated regarding~~  
24 ~~behavior resulting in the disciplinary action described in~~  
25 ~~paragraph (2) of subdivision (a) of Section 48915.5 or Section~~  
26 ~~48915.51, or involving a removal that constitutes a change of~~  
27 ~~placement pursuant to subdivision (d) of Section 48915.5, for an~~  
28 ~~individual with exceptional needs who has engaged in other~~  
29 ~~behavior that violated any rule or code of conduct of the local~~  
30 ~~educational agency that applies to all pupils, both of the following~~  
31 ~~shall occur:~~

32 ~~(1) Not later than the date on which the decision to take that~~  
33 ~~action is made, the parents or guardians of the pupil shall be~~  
34 ~~notified of that decision and provided the procedural safeguards~~  
35 ~~notice described in Section 56301.~~

36 ~~(2) Immediately, if possible, but in no case later than 10~~  
37 ~~school days after the date on which the decision to take that action~~  
38 ~~is made, a review shall be conducted of the relationship between~~  
39 ~~the pupil's disability and the behavior subject to the disciplinary~~  
40 ~~action.~~



1 ~~(b) A review, as described in subdivision (a), shall be~~  
2 ~~conducted by the individualized education program team and~~  
3 ~~other qualified personnel in a meeting.~~

4 ~~(c) In carrying out a review described in paragraph (2) of~~  
5 ~~subdivision (a), the individualized education program team and~~  
6 ~~other qualified personnel may determine that the behavior of the~~  
7 ~~pupil was not a manifestation of the pupil's disability only if the~~  
8 ~~individualized education program team and other qualified~~  
9 ~~personnel do all of the following:~~

10 ~~(1) Consider, in terms of the behavior subject to disciplinary~~  
11 ~~action, all relevant information, including all of the following:~~

12 ~~(A) Assessment and diagnostic results, including the results or~~  
13 ~~other relevant information supplied by the parents or guardians of~~  
14 ~~the pupil.~~

15 ~~(B) Observations of the pupil.~~

16 ~~(C) The pupil's individualized education program and~~  
17 ~~placement.~~

18 ~~(2) Determine all of the following:~~

19 ~~(A) In relationship to the behavior subject to disciplinary~~  
20 ~~action, the pupil's individualized education program and~~  
21 ~~placement were appropriate and the special education services,~~  
22 ~~supplementary aids and services, and behavior intervention~~  
23 ~~strategies were provided consistent with the pupil's individualized~~  
24 ~~education program and placement.~~

25 ~~(B) The pupil's disability did not impair the ability of the pupil~~  
26 ~~to understand the impact and consequences of the behavior subject~~  
27 ~~to disciplinary action.~~

28 ~~(C) The pupil's disability did not impair the ability of the pupil~~  
29 ~~to control the behavior subject to disciplinary action.~~

30 ~~(d) If the individualized education program team and other~~  
31 ~~qualified personnel determine that any of the requirements of~~  
32 ~~paragraph (2) of subdivision (c) were not met, the behavior shall~~  
33 ~~be considered a manifestation of the pupil's disability.~~

34 ~~(e) The review described in paragraph (2) of subdivision (a)~~  
35 ~~may be conducted at the individualized education program~~  
36 ~~meeting that is convened pursuant to subparagraph (A) of~~  
37 ~~paragraph (1) of subdivision (b) of Section 48915.5.~~

38 ~~(f) If, in the review described in subdivisions (b) and (c), a local~~  
39 ~~educational agency identifies deficiencies in the pupil's~~  
40 ~~individualized educational program or placement or in their~~



1 ~~implementation, it shall take immediate steps to remedy those~~  
2 ~~deficiencies.~~

3 ~~SEC. 7. Section 48915.54 is added to the Education Code~~  
4 ~~immediately following Section 48915.53, to read:~~

5 ~~48915.54. (a) If the result of the review described in Section~~  
6 ~~48915.53 is a determination, consistent with subdivision (d) of~~  
7 ~~Section 48915.53, that the behavior of the individual with~~  
8 ~~exceptional needs was not a manifestation of the pupil's disability,~~  
9 ~~the relevant disciplinary procedures applicable to pupils without~~  
10 ~~disabilities may be applied to the individual with exceptional~~  
11 ~~needs in the same manner in which they would be applied to pupils~~  
12 ~~without disabilities, except as provided in Section 48915.61.~~

13 ~~(b) If a local educational agency initiates disciplinary~~  
14 ~~procedures applicable to all pupils, the agency shall ensure that the~~  
15 ~~special education and disciplinary records of the individual with~~  
16 ~~exceptional needs are transmitted for consideration by the person~~  
17 ~~or persons making the final determination regarding the~~  
18 ~~disciplinary action.~~

19 ~~(c) Except as provided in Section 48915.56, subdivision (d) of~~  
20 ~~Section 56505 shall apply if a parent or guardian requests a due~~  
21 ~~process hearing to challenge a determination, made through the~~  
22 ~~review described in Section 48915.53, that the behavior of the~~  
23 ~~individual with exceptional needs was not a manifestation of the~~  
24 ~~pupil's disability.~~

25 ~~SEC. 8. Section 48915.55 is added to the Education Code~~  
26 ~~immediately following Section 48915.54, to read:~~

27 ~~48915.55. (a) If the parent or guardian of an individual with~~  
28 ~~exceptional needs disagrees with a determination that the pupil's~~  
29 ~~behavior was not a manifestation of the pupil's disability or with~~  
30 ~~any decision regarding placement pursuant to Sections 48915.5 to~~  
31 ~~48915.58, inclusive, the parent or guardian may request a due~~  
32 ~~process hearing.~~

33 ~~(b) The state or local educational agency shall arrange for an~~  
34 ~~expedited due process hearing in any case described in subdivision~~  
35 ~~(a) if a hearing is requested by a parent or guardian.~~

36 ~~(c) (1) In reviewing a decision with respect to the~~  
37 ~~determination of whether a behavior was a manifestation of a~~  
38 ~~pupil's disability, the due process hearing officer shall determine~~  
39 ~~whether the local educational agency has demonstrated that the~~  
40 ~~pupil's behavior was not a manifestation of the pupil's disability~~



1 consistent with the requirements of subdivision (c) of Section  
2 48915.53.

3 (2) In reviewing a decision pursuant to paragraph (2) of  
4 subdivision (a) of Section 48915.5 to place an individual with  
5 exceptional needs in an interim alternative educational setting, the  
6 due process hearing officer shall apply the standards prescribed in  
7 Section 48915.51.

8 SEC. 9. Section 48915.56 is added to the Education Code  
9 immediately following Section 48915.55, to read:

10 48915.56. (a) If a parent or guardian requests a due process  
11 hearing or appeal regarding a disciplinary action described in  
12 paragraph (2) of subdivision (a) of Section 48915.5 or Section  
13 48915.51 to challenge the interim alternative educational setting  
14 or the determination of whether a behavior was a manifestation of  
15 a pupil's disability, the individual with exceptional needs shall  
16 remain in the interim alternative educational setting pending the  
17 decision of the due process hearing officer or until the expiration  
18 of the time period provided for in paragraph (2) of subdivision (a)  
19 of Section 48915.5 or Section 48915.51, whichever occurs first,  
20 unless the parent or guardian and the local educational agency  
21 agree otherwise.

22 (b) If an individual with exceptional needs is placed in an  
23 interim alternative educational setting pursuant to paragraph (2) of  
24 subdivision (a) of Section 48915.5 or Section 48915.51 and  
25 school personnel propose to change the pupil's placement after  
26 expiration of the interim alternative placement, during the  
27 pendency of any proceeding to challenge the proposed change in  
28 placement the pupil shall remain in his or her current placement,  
29 which he or she was in prior to the interim alternative educational  
30 setting, except as provided in subdivision (c).

31 (c) (1) If school personnel maintain that it is dangerous for the  
32 individual with exceptional needs to be in his or her current  
33 placement, which he or she was in prior to the interim alternative  
34 educational setting, during the pendency of the due process  
35 proceedings, the local educational agency may request an  
36 expedited due process hearing.

37 (2) In determining whether the pupil may be placed in the  
38 alternative educational setting or in another appropriate placement  
39 ordered by the due process hearing officer, the hearing officer shall  
40 apply the standards in Section 48915.51.



1 ~~(3) A placement ordered pursuant to paragraph (2) of~~  
2 ~~subdivision (e) may not be longer than 45 days.~~

3 ~~(4) The procedure in subdivision (c) may be repeated, as~~  
4 ~~necessary.~~

5 ~~SEC. 10. Section 48915.57 is added to the Education Code~~  
6 ~~immediately following Section 48915.56, to read:~~

7 ~~48915.57. (a) A pupil who has not been determined to be~~  
8 ~~eligible for special education and related services under Part 30~~  
9 ~~(commencing with Section 56000) and who has engaged in~~  
10 ~~behavior that violated any rule or code of conduct of the local~~  
11 ~~educational agency, including any behavior described in~~  
12 ~~subdivision (a) of Section 48915.5 or Section 48915.51, may~~  
13 ~~assert any of the protections provided for in Part 30 (commencing~~  
14 ~~with Section 56000) if the local educational agency had~~  
15 ~~knowledge, as determined in accordance with subdivision (b), that~~  
16 ~~the pupil was an individual with exceptional needs before the~~  
17 ~~behavior that precipitated the disciplinary action occurred.~~

18 ~~(b) A local educational agency shall be deemed to have~~  
19 ~~knowledge that a pupil is an individual with exceptional needs if~~  
20 ~~any of the following exists:~~

21 ~~(1) The parent or guardian of the pupil has expressed concern~~  
22 ~~in writing, or orally if the parent or guardian does not know how~~  
23 ~~to write or has a disability that prevents a written statement, to~~  
24 ~~personnel of the appropriate educational agency that the pupil is~~  
25 ~~in need of special education and related services.~~

26 ~~(2) The behavior or performance of the pupil demonstrates the~~  
27 ~~need for these services, in accordance with Section 300.7 of Title~~  
28 ~~34 of the Code of Federal Regulations.~~

29 ~~(3) The parent or guardian of the pupil has requested an~~  
30 ~~assessment of the pupil pursuant to Section 56302 and Article 2~~  
31 ~~(commencing with Section 56320) of Chapter 4 of Part 30.~~

32 ~~(4) The teacher of the pupil, or other personnel of the local~~  
33 ~~educational agency, has expressed concern about the behavior or~~  
34 ~~performance of the pupil to the director of special education of the~~  
35 ~~agency or to other personnel in accordance with the local~~  
36 ~~educational agency's established child-find or special education~~  
37 ~~referral system pursuant to Section 56301.~~

38 ~~(c) A local educational agency shall not be deemed to have~~  
39 ~~knowledge under subdivision (b), if as a result of receiving the~~  
40 ~~information described in that paragraph, the agency performed~~



1 either of the actions set forth in paragraph (1) and the action set  
2 forth in paragraph (2).

3 (1) (A) Conducted an assessment under Article 2  
4 (commencing with Section 56320) of Chapter 4 of Part 30, and  
5 determined that the pupil was not an individual with exceptional  
6 needs under Section 56026.

7 (B) Determined that an assessment under Article 2  
8 (commencing with Section 56320) of Chapter 4 of Part 30 was not  
9 necessary.

10 (2) Provided notice to the pupil's parents or guardians of the  
11 local educational agency's determination under subparagraph (A);  
12 consistent with the notice of parent or guardian rights described in  
13 Section 300.503 of Title 34 of the Code of Federal Regulations.

14 (d) (1) If a local educational agency does not have knowledge  
15 that a pupil is an individual with exceptional needs in accordance  
16 with subdivisions (b) and (c) prior to taking disciplinary measures  
17 against the pupil, the pupil may be subjected to the same  
18 disciplinary measures as measures applied to pupils who are not  
19 disabled who engaged in comparable behaviors consistent with  
20 paragraph (2) of subdivision (b).

21 (2) (A) If a request is made for an assessment of a pupil during  
22 the time period in which the pupil is subjected to disciplinary  
23 measures under Section 48915.5 or 48915.51, the assessment shall  
24 be conducted in an expedited manner.

25 (B) Until the assessment is completed, the pupil shall remain in  
26 the educational placement determined by school authorities,  
27 which can include suspension or expulsion without educational  
28 services.

29 (C) If the pupil is determined to be an individual with  
30 exceptional needs, taking into consideration information from the  
31 assessment conducted by the local educational agency and  
32 information provided by the parents or guardians, the local  
33 educational agency shall provide special education and related  
34 services in accordance with Part 30 (commencing with Section  
35 56000), including the requirements of Sections 48915.5 to  
36 48915.58, inclusive, and the provision of a free appropriate public  
37 education pursuant to subparagraph (A) of paragraph (1) of  
38 subsection (a) of Section 1412 of Title 20 of the United States  
39 Code.



1 ~~SEC. 11. Section 48915.58 is added to the Education Code~~  
2 ~~immediately following Section 48915.57, to read:~~

3 ~~48915.58. (a) Expedited due process hearings pursuant to~~  
4 ~~Sections 48915.51 to 48915.56, inclusive, shall meet both of the~~  
5 ~~following requirements:~~

6 ~~(1) Except as provided in paragraph (2), meet the requirements~~  
7 ~~of paragraphs (6) and (7) of subdivision (e) of Section 56505.~~

8 ~~(2) For purposes of expedited due process hearings pursuant to~~  
9 ~~Sections 48915.5 to 48915.56, inclusive, the time periods for~~  
10 ~~exchanging issues and their proposed resolution and the time~~  
11 ~~period for exchanging a copy of all documents and a list of all~~  
12 ~~witnesses and their general area of testimony that the parties intend~~  
13 ~~to present at the hearing shall be determined by the due process~~  
14 ~~hearing office based on factors related to the case, including the~~  
15 ~~urgency of the request and the scheduling of the hearing, and shall~~  
16 ~~not be less than two business days or more than five business days.~~

17 ~~(b) Expedited due process hearings shall be conducted by a due~~  
18 ~~process hearing officer who satisfies the requirements in~~  
19 ~~subdivision (a) of Section 56504.5.~~

20 ~~(c) A written decision in an expedited due process hearing shall~~  
21 ~~be mailed to the parties to a hearing within 45 days of the written~~  
22 ~~request to the Superintendent of Public Instruction for the hearing,~~  
23 ~~without exceptions or extensions. This time line is the same for~~  
24 ~~hearings requested by parents or guardians or local educational~~  
25 ~~agencies.~~

26 ~~(d) The decisions on expedited due process hearings are~~  
27 ~~appealable consistent with subdivision (i) of Section 56505.~~

28 ~~SEC. 12. Section 48915.59 is added to the Education Code~~  
29 ~~immediately following Section 48915.58, to read:~~

30 ~~48915.59. If an individual with exceptional needs is excluded~~  
31 ~~from schoolbus transportation, the pupil is entitled to be provided~~  
32 ~~with an alternative form of transportation at no cost to the pupil or~~  
33 ~~parent or guardian.~~

34 ~~SEC. 13. Section 48915.6 of the Education Code is repealed.~~

35 ~~SEC. 14. Section 48915.6 is added to the Education Code, to~~  
36 ~~read:~~

37 ~~48915.6. For purposes of Sections 48915.5 to 48915.61,~~  
38 ~~inclusive, the following definitions apply:~~

39 ~~(a) "Business day" means Monday through Friday, except for~~  
40 ~~federal and state holidays.~~



1 ~~(b) “Controlled substance” means a drug or other substance~~  
2 ~~identified under Schedule I, II, III, IV, or V of subsection (c) of~~  
3 ~~Section 812 of Title 21 of the United States Code.~~

4 ~~(c) “Illegal drug” means a controlled substance, but does not~~  
5 ~~include a substance that is legally possessed or used under the~~  
6 ~~supervision of a licensed health care professional or that is legally~~  
7 ~~possessed or used under any other authority under any provision~~  
8 ~~of federal or state law.~~

9 ~~(d) “Substantial evidence” means beyond a preponderance of~~  
10 ~~the evidence.~~

11 ~~(e) “Weapon” has the meaning given the term “dangerous~~  
12 ~~weapon” under paragraph (2) of subsection (g) of Section 930 of~~  
13 ~~Title 18 of the United States Code. This provision of the United~~  
14 ~~States Code defines “dangerous weapon” to mean a weapon,~~  
15 ~~device, instrument, material, or substance, animate or inanimate,~~  
16 ~~that is used for, or is readily capable of, causing death or serious~~  
17 ~~bodily injury, except that the term does not include a pocketknife~~  
18 ~~with a blade of less than 2½ inches in length.~~

19 ~~SEC. 15.—Section 48915.61 is added to the Education Code,~~  
20 ~~to read:~~

21 ~~48915.61.—(a) A local educational agency is not required to~~  
22 ~~provide special education and related services during periods of~~  
23 ~~removal under paragraph (1) of subdivision (a) of Section 48915.5~~  
24 ~~to an individual with exceptional needs who has been removed~~  
25 ~~from his or her current placement for 10 schooldays or less in that~~  
26 ~~school year, if services are not provided to a pupil without a~~  
27 ~~disability who has been similarly removed.~~

28 ~~(b) In the case of an individual with exceptional needs who has~~  
29 ~~been removed from his or her current placement for more than 10~~  
30 ~~schooldays in that school year, the local educational agency, for the~~  
31 ~~remainder of the removals, shall do the following:~~

32 ~~(1) Provide services to the extent necessary to enable the pupil~~  
33 ~~to progress appropriately in the general curriculum and advance~~  
34 ~~appropriately toward achieving the goals set out in the pupil’s~~  
35 ~~individualized education program, if the removal is for one of the~~  
36 ~~following:~~

37 ~~(A) Under the school personnel’s authority to remove for not~~  
38 ~~more than 10 consecutive schooldays as long as that removal does~~  
39 ~~not constitute a change of placement under paragraph (2) of~~  
40 ~~subdivision (d) of Section 48915.5.~~



1 ~~(B) For a behavior that is not a manifestation of the pupil's~~  
2 ~~disability, consistent with Section 48915.54.~~

3 ~~(2) Provide services consistent with Section 48915.52,~~  
4 ~~regarding determination of the appropriate interim alternative~~  
5 ~~educational setting, if the removal is for one of the following:~~

6 ~~(A) For drug or weapons offenses under subparagraph (A) or~~  
7 ~~(B) of paragraph (2) of subdivision (a) of Section 48915.5.~~

8 ~~(B) Based on a determination by a due process hearing officer~~  
9 ~~that maintaining the current placement of the pupil is substantially~~  
10 ~~likely to result in injury to child or to others if he or she remains~~  
11 ~~in the current placement, consistent with Section 48915.51.~~

12 ~~(c) (1) The principal of a school, or the principal's designee,~~  
13 ~~in consultation with the pupil's special education teacher, shall~~  
14 ~~determine the extent to which services are necessary to enable the~~  
15 ~~pupil to progress appropriately in the general curriculum and~~  
16 ~~progress appropriately toward achieving the goals set out in the~~  
17 ~~pupil's individualized education program if the pupil is removed~~  
18 ~~pursuant to the authority of school personnel to remove a pupil for~~  
19 ~~not more than 10 consecutive schooldays as long as that removal~~  
20 ~~does not constitute a change of placement under subdivision (d) of~~  
21 ~~Section 48915.5.~~

22 ~~(2) The pupil's individualized education program team shall~~  
23 ~~determine the extent to which services are necessary to enable the~~  
24 ~~pupil to progress appropriately in the general curriculum and~~  
25 ~~advance appropriately toward achieving the goals set out in the~~  
26 ~~pupil's individualized education program if the pupil is removed~~  
27 ~~because of behavior that has been determined not to be a~~  
28 ~~manifestation of the pupil's disability, consistent with Section~~  
29 ~~48915.54.~~

30 ~~SEC. 16.~~

31 ~~SECTION 1.~~ Section 62000.8 of the Education Code is  
32 repealed.

33 ~~SEC. 17.~~

34 ~~SEC. 2.~~ No reimbursement is required by this act pursuant to  
35 Section 6 of Article XIII B of the California Constitution because  
36 this act implements a federal law or regulation and results only in  
37 costs mandated by the federal government, within the meaning of  
38 Section 17556 of the Government Code.

39 ~~SEC. 18.~~



1     *SEC. 3.* This act is an urgency statute necessary for the  
2 immediate preservation of the public peace, health, or safety  
3 within the meaning of Article IV of the Constitution and shall go  
4 into immediate effect. The facts constituting the necessity are:

5     In order to make state laws relating to pupils with exceptional  
6 needs conform to federal law, thereby ensuring that educational  
7 agencies that comply with state laws are also in compliance with  
8 current federal laws, it is necessary that this act take effect  
9 immediately.

