

**SECTION 5000
STUDENTS**

**ADMINISTRATIVE REGULATION
AR 5144**

SUSPENSION & EXPULSION/DUE PROCESS (STUDENTS WITH DISABILITIES)

A student identified as an individual with a disability pursuant to the Individuals with Disabilities Education Act (IDEA), 20 USC [1400-1482](#), is subject to the same grounds and procedures for suspension and expulsion which apply to students without disabilities, except as otherwise specified in this administrative regulation. (cf. [5144.1](#) - Suspension and Expulsion/Due Process)

Suspension

The Superintendent or designee may suspend a student with a disability for up to 10 consecutive school days for a single incident of misconduct, and for up to 20 school days in a school year, as long as the suspension(s) does not constitute a change in placement pursuant to 34 CFR [300.536](#). (Education Code [48903](#); 34 CFR [300.530](#))

The Superintendent or designee shall determine, on a case-by-case basis, whether a pattern of removals of a student from his/her current educational placement for disciplinary reasons constitutes a change of placement. A change of placement shall be deemed to have occurred under either of the following circumstances: (34 CFR [300.536](#))

1. The removal is for more than 10 consecutive school days.
2. The student has been subjected to a series of removals that constitute a pattern because of all the following:
 - a. The series of removals total more than 10 school days in a school year.
 - b. The student's behavior is substantially similar to his/her behavior in previous incidents that resulted in the series of removals.
 - c. Additional factors, such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another, indicate a change of placement.

If a student's removal is determined to be a change of placement as specified in items #1-2 above, or the student is suspended for more than 10 school days in the same school year, the student's IEP team shall determine the appropriate educational services. Such services shall be designed to enable the student to continue to participate in the general education curriculum in another setting, to progress toward meeting the goals set out in his/her IEP, and to address the student's behavior violation so that it does not recur. (20 USC [1412\(a\)\(1\)\(A\)](#); 34 CFR [300.530](#))

If the IEP of a student with a disability requires the district to provide the student with transportation, the district shall provide the student with an alternative form of transportation at no cost to him/her or to his/her parent/guardian when he/she is to be excluded from school bus transportation. (Education Code [48915.5](#))

Interim Alternative Educational Placement Due to Dangerous Behavior

The district may unilaterally place a student with a disability in an appropriate interim alternative educational setting for up to 45 school days, without regard to whether the behavior is a manifestation of the student's disability, when the student commits one of the following acts while at school, going to or from school, or at a school-related function: (20 USC [1415\(k\)\(1\)\(G\)](#); 34 CFR [300.530](#))

1. Carries or possesses a weapon, as defined in 18 USC 930
2. Knowingly possesses or uses illegal drugs
3. Sells or solicits the sale of a controlled substance as identified in 21 USC 812(c), Schedules I-V
4. Inflicts serious bodily injury upon another person as defined in 18 USC 1365

The student's interim alternative educational setting shall be determined by his/her IEP team. (20 USC [1415\(k\)\(1\)\(G\)](#); 34 CFR [300.531](#))

On the date the decision to take disciplinary action is made, the student's parent/guardian shall be notified of the decision and provided the procedural safeguards notice pursuant to 34 CFR [300.504](#). (20 USC [1415\(k\)\(1\)\(H\)](#); 34 CFR [300.530](#))

A student who has been removed from his/her current placement because of dangerous behavior shall receive services, although in another setting, to the extent necessary to allow him/her to participate in the general education curriculum and to progress toward meeting the goals set out in his/her IEP. As appropriate, the student shall also receive a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. (20 USC [1415\(k\)\(1\)\(D\)](#); 34 CFR [300.530](#))

Manifestation Determination

The following procedural safeguards shall apply when a student with a disability is suspended for more than 10 consecutive school days, when a series of removals of a student constitutes a pattern, or when a change of placement of a student is contemplated due to a violation of the district's code of conduct:

1. Notice: On the date, the decision to take disciplinary action is made, the student's parent/guardian shall be notified of the decision and provided the procedural safeguards notice pursuant to 34 CFR [300.504](#). (20 USC [1415\(k\)\(1\)\(H\)](#); 34 CFR [300.530](#)) (cf. [5145.6](#) - Parental Notifications)(cf. [6159.1](#) - Procedural Safeguards and Complaints for Special Education)
2. Manifestation Determination Review: Immediately if possible, but in no case later than 10 school days after the date the decision to take disciplinary action is made, a manifestation determination review shall be made of the relationship between the student's disability and the behavior subject to the disciplinary action. (20 USC [1415\(k\)\(1\)\(E\)](#); 34 CFR [300.530](#))

At the manifestation determination review, the district, the student's parent/guardian, and relevant members of the IEP team (as determined by the district and parent/guardian) shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents/guardians, to determine whether the conduct in question was either of the following: (20 USC [1415\(k\)\(1\)\(E\)](#); 34 CFR [300.530](#))

- a. Caused by or had a direct and substantial relationship to the student's disability
- b. A direct result of the district's failure to implement the student's IEP, in which case the district shall take immediate steps to remedy those deficiencies

If the manifestation review team determines that either of the above conditions applies, the student's conduct shall then be determined to be a manifestation of his/her disability. (20 USC [1415\(k\)\(1\)\(E\)](#); 34 CFR [300.530](#))

3. Determination that Behavior is a Manifestation of the Student's Disability: When the student's conduct has been determined to be a manifestation of his/her disability, the IEP team shall conduct a functional behavioral assessment, unless one had been conducted before the occurrence of the behavior that resulted in the change of placement, and shall implement a behavioral intervention plan for the student. If a behavioral intervention plan has already been developed, the IEP team shall review the behavioral intervention plan and modify it as necessary to address the behavior. (20 USC [1415\(k\)\(1\)\(F\)](#); 34 CFR [300.530](#))

The student shall be returned to the placement from which he/she was removed, unless the parent/guardian and Superintendent or designee agree to a change of placement as part of the modification of the behavioral intervention plan. (20 USC [1415\(k\)\(1\)\(F\)](#); 34 CFR [300.530](#)) (cf. [6159.4](#) - Behavioral Interventions for Special Education Students)

4. Determination that Behavior is Not a Manifestation of the Student's Disability: When it has been determined that the student's conduct was not a manifestation of his/her disability, the student may be disciplined in accordance with the procedures for students without disabilities. However, the student's IEP team shall determine services necessary to enable him/her to participate in the general education curriculum in another setting and to allow him/her to progress toward meeting the goals set out in his/her IEP. (20 USC [1415\(k\)\(1\)\(D\)](#); 34 CFR [300.530](#))

As appropriate, the student also shall receive a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. (20 USC [1415\(k\)\(1\)\(D\)](#); 34 CFR [300.530](#)) (cf. [6158](#) - Independent Study)

Due Process Appeals

If the parent/guardian disagrees with any district decision regarding placement under 34 CFR [300.530](#) (suspension and removal for dangerous circumstances) or 34 CFR [300.531](#) (interim alternative placement), or the manifestation determination under 34 CFR [300.530\(e\)](#), he/she may appeal the decision by requesting a hearing. The district may request a hearing if the district believes that maintaining the student's current placement is substantially likely to result in injury to the student or others. In order to request a due process hearing, the requesting party shall file a complaint pursuant to 34 CFR [300.507](#) and [300.508\(a\)](#) and (b). (20 USC [1415\(k\)\(3\)](#); 34 CFR [300.532](#))

Whenever a hearing is requested as specified above, the parent/guardian or the district shall have an opportunity for an expedited due process hearing consistent with requirements specified in 34 CFR [300.507](#), [300.508](#) (a)-(c), and 300.510-300.514.

If the student's parent/guardian or the district has initiated a due process hearing under 34 CFR [300.532](#) as detailed above, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the 45-day time period, whichever occurs first, unless the parent/guardian and district agree otherwise. (20 USC [1415\(k\)\(4\)](#); 34 CFR [300.533](#))

Readmission

Readmission procedures for students with disabilities shall be the same as those adopted for students without disabilities. Upon readmission of a student with disabilities, an IEP team meeting shall be convened to review and, as necessary, modify the student's IEP.

Decision Not to Enforce Expulsion Order

The Governing Board's criteria for suspending the enforcement of an expulsion order shall be applied to students with disabilities in the same manner as they are applied to all other students. (Education Code [48917](#))

Notification to Law Enforcement Authorities

Law enforcement notification requirements involving students with disabilities shall be the same as those specified for all students in AR 5144.1 - Suspension and Expulsion/Due Process.

When giving any required notification concerning a student with disabilities to any law enforcement official, the principal or designee shall require the law enforcement official to certify in writing that he/she will not disclose the student's information or records to any other person without the prior written consent of the student's parent/guardian. (Education Code [49076](#)) (cf. [5131.7](#) - Weapons and Dangerous Instruments)

Report to County Superintendent of Schools

The Superintendent or designee shall report to the County Superintendent of Schools when any special education student has been expelled or suspended for more than 10 school days. The report shall include the student's name, last known address, and the reason for the action. (Education Code [48203](#))

Procedures for Students Not Yet Eligible for Special Education Services

A student who has not been determined to be eligible for special education and related services and who has violated the district's code of student conduct may nevertheless assert any of the protections under IDEA, if the district had knowledge of the student's disability. (20 USC [1415\(k\)\(5\)](#); 34 CFR [300.534](#))

Knowledge means that, before the occurrence of the behavior that precipitated the disciplinary action, one of the following occurred: (20 USC [1415\(k\)\(5\)](#); 34 CFR [300.534](#))

1. The parent/guardian, in writing, has expressed concern to district supervisory or administrative personnel, or to a teacher of the student, that the student is in need of special education or related services.
2. The parent/guardian has requested an evaluation of the student for special education pursuant to 20 USC [1414\(a\)\(1\)\(B\)](#) or 34 CFR [300.300-300.311](#).

(cf. [6164.4](#) - Identification and Evaluation of Individuals for Special Education)

3. The teacher of the student or other district personnel has expressed specific concerns directly to the district's director of special education or other supervisory district personnel about a pattern of behavior demonstrated by the student.

However, the district shall not be deemed to have knowledge of a student's disability if the student's parent/guardian has not allowed him/her to be evaluated for special education services or has refused services or, after evaluating the student pursuant to 34 CFR [300.300-300.311](#), the district determined that he/she was not an individual with a disability.

When the district is deemed to not have knowledge of a student's disability, the student shall be disciplined in accordance with procedures established for students without disabilities who engage in comparable behavior. (20 USC [1415\(k\)\(5\)](#); 34 CFR [300.534](#))

If a request is made for an evaluation of a student during the time period in which the student is subject to disciplinary measures pursuant to 34 CFR [300.530](#), the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities. (20 USC [1415\(k\)\(5\)](#); 34 CFR [300.534](#))

Legal Reference:

EDUCATION CODE

[35146](#) Closed sessions re: suspensions

[35291](#) Rules of governing board

[48203](#) Reports of severance of attendance of disabled students

[48900-48925](#) Suspension and expulsion

[49076](#) Access to student records

[56000](#) Special education; legislative findings and declarations

[56320](#) Educational needs; requirements

[56321](#) Development or revision of individualized education program

[56329](#) Independent educational assessment

[56340-56347](#) Individualized education program teams

[56505](#) State hearing

PENAL CODE

[245](#) Assault with deadly weapon

[626.2](#) Entry upon campus after written notice of suspension or dismissal without permission

[626.9](#) Gun-Free School Zone Act

[626.10](#) Dirks, daggers, knives, razors, or stun guns

UNITED STATES CODE, TITLE 18

930 Weapons

1365 Serious bodily injury

UNITED STATES CODE, TITLE 20

[1412](#) State eligibility

[1415](#) Procedural safeguards

UNITED STATES CODE, TITLE 21

812 Controlled substances

UNITED STATES CODE, TITLE 29

[706](#) Definitions

[794](#) Rehabilitation Act of 1973, Section 504

CODE OF FEDERAL REGULATIONS, TITLE 34

[104.35](#) Evaluation and placement

[104.36](#) Procedural safeguards

[300.1-300.818](#) Assistance to states for the education of students with disabilities, especially:

[300.530-300.537](#) Discipline procedures

COURT DECISIONS

Schaffer v. Weast, (2005) 546 U.S. 549

Parents of Student W. v. Puyallup School District, (1994 9th Cir.) 31 F.3d 1489

M.P. v. Governing Board of Grossmont Union High School District, (1994) 858 F.Supp. 1044

Honig v. Doe, (1988) 484 U.S. 305

Management Resources:

FEDERAL REGISTER

Rules and Regulations, August 14, 2006, Vol. 71, Number 156, pages 46539-46845

WEB SITES

California Department of Education, Special Education: <http://www.cde.ca.gov/sp/se>

U.S. Department of Education, Office of Special Education Programs:

<http://www.ed.gov/about/offices/list/osers/osep>

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