

Suspension and Expulsion/Due Process (Students With Disabilities)

BP 5117

Students

A student identified as an individual with disabilities pursuant to the Individuals with Disabilities Education Act (IDEA) is subject to the same grounds 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)

(cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)

Suspension

The Superintendent or designee may suspend a student with a disability for up to 5 consecutive school days for a single incident of misconduct, unless the suspension has been extended pending expulsion, and for up to 20 school days in a school year, as long as the suspension(s) do not constitute a change in placement pursuant to 34 CFR 300.536. (Education Code); 48903, 48911; 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 of 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, and the behavior has been determined not to be a manifestation of his/her disability, 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. If the student's behavior is determined to be a manifestation of his/her disability, the student shall stay put unless a change of placement has been made in accordance with the IEP. (20 USC [1412](#)(a)(1)(A), 1415 (k); 34 CFR [300.530](#))

If a 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 in the student's IEP. (Education Code 48915.5)

(cf. 3541.2 - Transportation for Students with Disabilities)

Interim Alternative Educational Placement Due to Dangerous Behavior

A student with a disability may unilaterally be placed 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 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 alternative educational setting shall be determined by the student's 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](#))

Procedural Safeguards/Manifestation Determination

The following procedural safeguards shall apply when a student is suspended for more than 10 consecutive school days, when disciplinary action is contemplated for a dangerous behavior as described above, or when a change of placement is contemplated: (20 USC 1415(k)(4); 34 CFR 300.523)

1. The parents/guardians of the student shall be immediately notified of the decision and provided the procedural safeguards notice pursuant to 34 CFR 300.504 on the day the decision to take action is made.
2. 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](#))

Emergency interventions which require the completion of a behavioral emergency report per Education Code 56521.1 (cf. [6159.4](#) - Behavioral Interventions for Special Education Students), shall be reviewed by the district's Special Education Department following the process established in BP 5415.10, Police Assistance and Student Referral.

4. Determination that Behavior is Not a Manifestation of the Student's Disability: If the team determines that the student's behavior was not a manifestation of his/her disability, then the student may be disciplined in accordance with the procedures for students without disabilities. Any discipline shall be consistent with state and federal laws regarding changes in educational placement. In addition, 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](#))

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 initiates a due process hearing to challenge the interim alternative educational setting or the manifestation determination, the student shall remain in the interim alternative setting pending the decision of the hearing officer or 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 used for all students. Upon readmission, an IEP team meeting shall be convened to review and, as necessary, modify the student's IEP.

Suspension of Expulsion

The 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 and/or Referrals of Students with Disabilities to Law Enforcement Authorities

Prior to the suspension or expulsion of any student, the principal or designee shall notify appropriate city or county law enforcement authorities of any student acts of assault which may have violated Penal Code 245. (Education Code 48902)

The principal or designee also shall notify appropriate city or county law enforcement authorities of any student acts which may involve the possession or sale of narcotics or of a controlled substance or possession of weapons or firearms in violation of Penal Code 626.9 and 626.10. (Education Code 48902)

Within one school day after a student's suspension or expulsion, the principal or designee shall notify appropriate city or county law enforcement authorities, by telephone or other appropriate means, of any student acts which may violate Education Code 48900(c) or (d), relating to the possession, use, offering or sale of controlled substances, alcohol or intoxicants of any kind. (Education Code 48902)

Law enforcement notification requirements involving students with disabilities, along with any referral to law enforcement by a site administrator, shall be consistent with federal and state disability laws and done in accordance with BP and AR 5415.10, - Police Assistance and Student Referrals, and with the E 5144 – “Student Behavior Intervention and Discipline Matrix”.

Students with disabilities who are exhibiting indicators of mental health needs or who are experiencing a mental health crisis, shall be referred to district mental health professionals to determine any appropriate services or placements. In such a situation, SUSD PD shall only be contacted for the limited purpose of determining whether the student should be taken to a mental health evaluation and treatment facility for assessment, evaluation, crisis intervention, or placement in the facility for evaluation and treatment under Welfare and Institution Code §§ 5150 et seq. See E 5141.8, “Protocol for Responding to Students Experiencing Mental Health Needs/Crisis”.

When giving any required notification concerning a student with disabilities to law enforcement, the principal or designee shall require the officer 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 who has violated the district's disciplinary procedures may nevertheless assert any of the protections under the IDEA if the district had knowledge of the student's disability. (20 USC 1415(k)(5); 34 CFR 300.534)

Knowledge of a student's disability means that before 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 has expressed concern in writing to district supervisory or administrative personnel, or to a teacher of the student, or orally if the parent/guardian does not know how to write or has a disability that prevents a written statement, that the student is in need of special education or related services.
2. The behavior or performance of the student demonstrates the need for such services or are otherwise suspected being a student with a disability. (34 CFR 300.111, 300.534.)
3. 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 of Individuals for Special Education)

4. The teacher of the student or other district personnel has expressed specific concerns directly to the district's director of special education or to other 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.

If it is determined that the district did not have knowledge of a student's disability, then the student may 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 Individual 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(c) 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

300.530-300.537 Discipline procedures

COURT DECISIONS

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 S.D. Cal). 858
F.Supp. 1044

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

Doe v. Maher, (1986) 793 F.2d 1470

Management Resources:

FEDERAL REGISTER

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

WEB SITES

CDE, Special Education:: <http://www.cde.ca.gov/sp/se>

USDOE, Office of Special Education Programs:: <http://www.ed.gov/about/offices/list/osep>