## Regulation 5144.2: Suspension And Expulsion/Due Process (Students With Disabilities)

**Adopted Date: 12/13/2023**

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.

Suspension or expulsion of a student with disabilities shall be in accordance with Board Policy 5144.1 - Suspension and Expulsion/Due Process and this administrative regulation.

When a student with disabilities exhibits behavior which impedes the student's own learning or that of others, the student's individualized education program (IEP) team shall consider positive behavioral interventions and supports, and other strategies, to address the behavior. (Education Code 56521.2; 20 USC 1414)

**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 cumulative school days in a school year as long as the pattern of 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 the student's 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 the student's 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

If a student's removal is determined to be a change of placement as specified in Items #1-2 above, 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 the student's 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 the student or the student's parent/guardian when, as a result of a suspension, the student is excluded from school bus transportation. (Education Code 48915.5)

The principal or designee shall monitor the number of days, including portions of days, in which a student with an IEP has been suspended during the school year.

**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 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 the student's current placement because of dangerous behavior shall receive services, although in another setting, to the extent necessary to allow the student to participate in the general education curriculum and to progress toward meeting the goals set out in the 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. If the student is a foster youth, the notice shall be given to the student's educational rights holder, attorney, and county social worker, and, if the student is an Indian child, the student's tribal social worker and, if applicable, county social worker. (Education Code 48853.5; 20 USC 1415(k)(1)(H); 34 CFR 300.530)
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)

If the student is a foster youth or Indian child, the foster youth's educational rights holder, attorney, or county social worker, or the Indian child's tribal social worker and, if applicable, county social worker, shall be invited to participate in the manifestation determination review. (Education Code 48915.5)

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 the student's 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 the student's 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 the student 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)

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 the 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 the student to participate in the general education curriculum in another setting and to allow the student to progress toward meeting the goals set out in the 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), 34 CFR 300.531 (interim alternative placement), or the manifestation determination under 34 CFR 300.530(e), the parent/guardian 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 the student's information or records will not be disclosed to any other person without the prior written consent of the student's parent/guardian. (Education Code 49076)

**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

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 the student 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 the student was not an individual with a disability. (20 USC 1415(k)(5); 34 CFR 300.534)

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)

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**Policy Reference Disclaimer:**
These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

| State | Description |
|---|---|
| Ed. Code 35146 | Closed sessions regarding suspensions |
| Ed. Code 35291 | Rules of governing board |
| Ed. Code 48203 | Reports of severance of attendance of disabled students |
| Ed. Code 48853.5 | Foster youth and Indian child's representatives' right to receive notices |
| Ed. Code 48900-48925 | Suspension and expulsion |
| Ed. Code 49076 | Access to student records |
| Ed. Code 56000 | Special education; legislative findings and declarations |
| Ed. Code 56320 | Educational needs; requirements |
| Ed. Code 56321 | Development or revision of individualized education program |
| Ed. Code 56329 | Independent educational assessment |
| Ed. Code 56340-56347 | Individualized education program teams |
| Ed. Code 56505 | State hearing |

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| Ed. Code 56521.2 | Behavioral interventions |
| Pen. Code 245 | Assault with deadly weapon |
| Pen. Code 626.10 | Dirks, daggers, knives, razors, or stun guns |
| Pen. Code 626.2 | Entry upon campus after written notice of suspension or dismissal without permission |
| Pen. Code 626.9 | Gun-Free School Zone Act of 1995 |

| **Federal** | **Description** |
|---|---|
| 18 USC 1365 | Serious bodily injury |
| 18 USC 930 | Weapons |
| 20 USC 1412 | State eligibility |
| 20 USC 1414 | Evaluations, eligibility determinations, individualized education programs, and educational placements |
| 20 USC 1415 | Procedural safeguards |
| 21 USC 812 | Schedule of controlled substances |
| 29 USC 794 | Rehabilitation Act of 1973; Section 504 |
| 34 CFR 104.35 | Evaluation and placement |
| 34 CFR 104.36 | Procedural safeguards |
| 34 CFR 300.1-300.818 | Assistance to states for the education of students with disabilities |
| 34 CFR 300.530-300.537 | Discipline procedures |

| **Management Resources** | **Description** |
|---|---|
| Court Decision | Honig v. Doe (1988) 484 U.S. 305 |
| Court Decision | M.P. v. Governing Board of Grossmont Union High School District (1994) 858 F.Supp. 1044 |
| Court Decision | Parents of Student W. v. Puyallup School District (1994 9th Cir.) 31 F.3d 1489 |
| Court Decision | Schaffer v. Weast (2005) 546 U.S. 49 |
| Federal Register | Rules and Regulations, August 14, 2006, Vol. 71, Number 156, pages 46539-46845 |
| Ofc of Special Education & Rehabilitative Svcs Pub | Letter Commenting on Hearing Officer Authority to Determine whether Conduct is a Violation of Student Code of Conduct, July 2012 |
| Ofc of Special Education & Rehabilitative Svcs Pub | Dear Colleague Letter on Supporting the Needs of Students with Disabilities, July 2022 |
| Ofc of Special Education & Rehabilitative Svcs Pub | Dear Colleague Letter on Supporting the Needs of Students with Disabilities, July 2022 |

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| Ofc of Special Education & Rehabilitative Svcs Pub | Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions, July 2022 |
| Ofc of Special Education & Rehabilitative Svcs Pub | Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders, July 2022 |
| Office of Administrative Hearings | Parent v. Fairfield-Suisun Unified School District (2012) Case No. 2012030917 |
| U.S. DOE, Office for Civil Rights Publication | Fact Sheet: Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973, July 2022 |
| U.S. DOE, Office for Civil Rights Publication | Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973, July 2022 |
| Website | CSBA District and County Office of Education Legal Services |
| Website | U.S. Department of Education, Office of Special Education and Rehabilitative Services |
| Website | California Department of Education, Special Education |
| Website | U.S. Department of Education, Office for Civil Rights |

**Cross References**

| Code | Description |
|---|---|
| 0430 | Comprehensive Local Plan For Special Education |
| 0430 | Comprehensive Local Plan For Special Education |
| 0450 | Comprehensive Safety Plan |
| 0450 | Comprehensive Safety Plan |
| 0460 | Local Control And Accountability Plan |
| 0460 | Local Control And Accountability Plan |
| 3513.4 | Drug And Alcohol Free Schools |
| 3541.2 | Transportation For Students With Disabilities |
| 4118 | Dismissal/Suspension/Disciplinary Action |
| 4118 | Dismissal/Suspension/Disciplinary Action |
| 4158 | Employee Security |
| 4158 | Employee Security |
| 4258 | Employee Security |
| 4258 | Employee Security |
| 4358 | Employee Security |
| 4358 | Employee Security |
| 5113.11 | Attendance Supervision |

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| 5116.2 | Involuntary Student Transfers |
| 5125 | Student Records |
| 5125 | Student Records |
| 5131 | Conduct |
| 5131.2 | Bullying |
| 5131.2 | Bullying |
| 5131.4 | Student Disturbances |
| 5131.4 | Student Disturbances |
| 5131.62 | Tobacco |
| 5131.62 | Tobacco |
| 5131.7 | Weapons And Dangerous Instruments |
| 5131.7 | Weapons And Dangerous Instruments |
| 5137 | Positive School Climate |
| 5138 | Conflict Resolution/Peer Mediation |
| 5144 | Discipline |
| 5144 | Discipline |
| 5144.1 | Suspension And Expulsion/Due Process |
| 5144.1 | Suspension And Expulsion/Due Process |
| 5144.4 | Required Parental Attendance |
| 5144.4 | Required Parental Attendance |
| 5145.2 | Freedom Of Speech/Expression |
| 5145.2 | Freedom Of Speech/Expression |
| 5145.3 | Nondiscrimination/Harassment |
| 5145.3 | Nondiscrimination/Harassment |
| 5145.6 | Parent/Guardian Notifications |
| 5145.6-E(1) | Parent/Guardian Notifications |
| 5145.7 | Sexual Harassment |
| 5145.7 | Sexual Harassment |
| 5145.9 | Hate-Motivated Behavior |
| 6120 | Response To Instruction And Intervention |
| 6145 | Extracurricular And Cocurricular Activities |
| 6145 | Extracurricular And Cocurricular Activities |
| 6145.2 | Athletic Competition |

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| 6145.2 | Athletic Competition |
| 6159 | Individualized Education Program |
| 6159 | Individualized Education Program |
| 6159.1 | Procedural Safeguards And Complaints For Special Education |
| 6159.1 | Procedural Safeguards And Complaints For Special Education |
| 6159.3 | Appointment Of Surrogate Parent For Special Education Students |
| 6159.3 | Appointment Of Surrogate Parent For Special Education Students |
| 6159.4 | Behavioral Interventions For Special Education Students |
| 6163.4 | Student Use Of Technology |
| 6163.4-E(1) | Student Use Of Technology |
| 6164.4 | Identification And Evaluation Of Individuals For Special Education |
| 6164.4 | Identification And Evaluation Of Individuals For Special Education |
| 6164.5 | Student Success Teams |
| 6164.5 | Student Success Teams |
| 6164.6 | Identification And Education Under Section 504 |
| 6164.6 | Identification And Education Under Section 504 |
| 6173 | Education For Homeless Children |
| 6173 | Education For Homeless Children |
| 6173-E(1) | Education For Homeless Children |
| 6173-E(2) | Education For Homeless Children |
| 6173.1 | Education For Foster Youth |
| 6173.1 | Education For Foster Youth |
| 6173.4 | Education For American Indian Students |
| 6184 | Continuation Education |
| 6184 | Continuation Education |
| 6185 | Community Day School |
| 6185 | Community Day School |
| 9321 | Closed Session |
| 9321-E(1) | Closed Session |
| 9321-E(2) | Closed Session |