

Suspension and Expulsion/Due Process and Students with Disabilities

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SUSPENSION AND EXPULSION/DUE PROCESS – STUDENTS WITH DISABILITIES

This policy is designed to provide support to Local Education Agencies in the Marin SELPA in determining appropriate options in the discipline of students with disabilities. This policy does not supersede district policies and procedures with respect to Board Policies on Discipline, Suspension or Expulsion. It is designed to provide support to school districts that may choose to use the opportunities outlined in this document.

A student identified as an individual with disabilities pursuant to the Individuals with Disabilities Education Improvement Act (IDEA 2004) is subject to the same grounds for suspension and expulsion that apply to students without disabilities.

Procedures for Students Not Yet Eligible for Special Education Services

A student who has not been identified as an individual with disabilities pursuant to IDEA and who has violated the district's disciplinary procedures may assert the procedural safeguards granted under this administrative regulation only if the district had knowledge that the student was disabled before the behavior occurred.

The district shall be deemed to have knowledge that the student had a disability if one of the following conditions exists:

1. The parent/guardian has expressed concern in writing, to supervisory or administrative personnel, or to a teacher of the student that the student is in need of special education or related services; and
2. The parent/guardian has requested an initial evaluation of the student for special education pursuant to federal law; or
3. The teacher of the student or other district personnel has expressed specific concern about a pattern of behavior demonstrated by the student to the district's Director of Special Education or to other supervisory personnel.

The district would be deemed to not have knowledge as specified in items # 1-3 above if the parent/guardian has not allowed an initial evaluation of the student or has refused services, or if the student has been evaluated and it was determined that the student was not a child with a disability.

If it is determined that the district did not have knowledge that the student was disabled prior to taking disciplinary action against the student, then the student shall be disciplined in accordance with procedures established for students without disabilities.

If a request is made for an evaluation of a student during the time period in which the student is subject to disciplinary measures, 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.

Disciplinary Change of Placement.

A disciplinary change of placement always includes a recommendation for expulsion and an extension of a student's suspension pending an expulsion decision, if the extension of suspension exceeds a total of ten (10) school days of suspension. A disciplinary change in placement may also include suspensions during the school year in excess of ten (10) school days, as determined at the discretion of the school or district personnel when a "change of placement" has occurred based on analysis of the following factors:

- A. The student has been subjected to a series of removals that constitute a pattern—
 - 1. because the series of removals total more than ten (10) school days in a school year;
 - 2. because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
 - 3. because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another .

If a student with a disability is recommended for a disciplinary change of placement such as expulsion, the District must take the following steps before making a final decision:

- A. Manifestation Determination.
 - 1. A manifestation determination must be made if school personnel seek to impose a suspension beyond ten (10) school days in a school year that will change the student's placement, or if school personnel have recommended an expulsion.
 - 2. Within ten (10) school days of the decision to change the placement of a student with a disability for disciplinary reasons, the District, the parent, and relevant members of the student's IEP Team (as determined by the District and parent) shall review all relevant information in the student's file, including:
 - a. the student's IEP;
 - b. any teacher observations;
 - c. any relevant information provided by the parents.
 - 3. During the review of all relevant information, the District, the parent, and relevant members of the student's IEP Team must determine:
 - a. if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
 - b. if the conduct in question was the direct result of the District's failure to implement the IEP.
 - 4. Not a Manifestation of the Student's Disability. If it is determined that the conduct in question was not a manifestation of the student's disability, the action described in A.1., above, may proceed following the same process used for general education students. In the case of a recommendation for expulsion, see paragraph C.4., below, regarding placement during the pendency of an expulsion proceeding.

5. Is a Manifestation of the Student's Disability. If it is determined that the conduct in question was a manifestation of the student's disability, the action described in A.1., above, may not proceed. Instead, the student's IEP Team shall do one of the following:
 - a. If the student did not have a behavior intervention plan in place prior to the misconduct:
 - i. conduct a functional behavioral assessment of the student;
 - ii. implement a behavioral intervention plan for the student; and
 - iii. return the student to the placement from which the student was removed (except as provided in paragraph B, below), or obtain agreement from the parent to change the student's placement as part of the behavior intervention plan.
 - b. If the student did have a behavior intervention plan in place prior to the misconduct:
 - i. review the behavior intervention plan; and
 - ii. modify the plan, as necessary, to address the behavior; and
 - iii. return the student to the placement from which the student was removed (except as provided in paragraph B, below), or obtain agreement from the parent and the District to change the student's placement as part of the modification of the behavior intervention plan.

B. Interim Alternative Educational Setting.

1. School personnel may remove a student to an interim alternative educational setting determined by the student's IEP Team for not more than 45 school days regardless of whether the behavior is determined to be a manifestation of the student's disability if the student commits one or more of the following offenses:
 - a. carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of any State or local educational agency;

Weapon is defined as:

A weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, but not including a pocket knife with a blade of less than 2½ inches in length.
 - b. knowingly possesses or uses illegal drugs or sells a controlled substance while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency;

Illegal Drug is defined as:

A controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed

health-care professional or that is legally possessed or used under any other authority of the Controlled Substances Act or any other provision of Federal law.

Controlled Substance is defined as:

A drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

- c. inflicts serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

Serious Bodily Injury is defined as:

Bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

- C. Extension of Suspension. When a student with a disability is recommended for expulsion, the student's initial suspension may be extended in the following manner:
 - 1. The Superintendent or designee may extend the student's suspension so that the total number of days suspended does not exceed 10 consecutive school days. For example, if the student is initially suspended for 5 school days, the student's suspension typically may be extended for up to an additional 5 school days for a total suspension of 10 school days.
 - 2. The extension of suspension may only be imposed if the Superintendent or designee has determined, following a meeting to which the student and the student's parent are invited to participate, that the presence of the student at the school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process.
 - 3. If a student or the student's parent requests a meeting to discuss the original suspension, the Superintendent may determine at that meeting whether to extend the suspension.
 - 4. If it is determined that the student's misconduct was not a manifestation of his or her disability, and if the student's suspension was extended, the student shall:
 - a. be placed in, or continue in, an interim alternative educational placement as set forth in B., above, for not more than 45 school days; or
 - b. be placed in an interim alternative educational setting determined by the student's IEP Team pending the Governing Board's decision on the recommendation for expulsion.

- D. Free, Appropriate Public Education. If a student with a disability is removed from the current placement or suspended for more than ten days in a school year, the student shall continue to receive a free and appropriate public education as determined by the IEP team so as to enable the student to continue to participate in the general education curriculum in another setting and to progress toward meeting the student's IEP goals. The student shall also receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the misconduct so that it does not recur.
- E. Appeal. If the parent of a student with a disability disagrees with the manifestation determination or with a decision regarding the student's placement, the parent may request an expedited due process hearing. If the District believes that maintaining a student's current placement is substantially likely to result in injury to the student or to others, the District may request an expedited due process hearing. While the parent or the District's due process hearing request is pending resolution, the student shall remain in his or her interim alternative educational placement until a decision by the administrative law judge or until the expiration of the disciplinary placement, whichever occurs first, unless the parent and the District agree otherwise.
- F. Notification. Not later than the date on which the decision to take disciplinary action that will result in a change in placement is made, the District shall notify the parents of that decision, and notify the parents of their special education procedural safeguards.
- G. Student with a Disability Defined. For purposes of these regulations, the use of the term "student with a disability" refers to a student with exceptional needs who is eligible for special education services pursuant to the Individuals with Disabilities Education Improvement Act (IDEA 2004) (20 U.S.C. § 1415 and following).

Notification 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.

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.

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

35146 *Closed sessions (re suspensions)*
35291 *Rules (of governing board)*
48900-48925 *Suspension and expulsion*
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*
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 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*
1412 *State eligibility*

UNITED STATES CODE, TITLE 20

1415 *Procedural safeguards*

UNITED STATES CODE, TITLE 21

812(c) *Controlled substances*

CODE OF FEDERAL REGULATIONS, TITLE 34

104.35 *Evaluation and placement*
104.36 *Procedural safeguards*
300.1-300.756 *Assistance to states for the education of students with disabilities*

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

FEDERAL REGISTER

34 CFR 300.a *Appendix A to Part 300 – Questions and Answers*
34 CFR 300al *Attachment 1: Analysis of Comments and Changes*