

**SUSPENSION AND EXPULSION/DUE PROCESS  
(STUDENTS WITH DISABILITIES)**

A student identified as an individual with disabilities pursuant to the Individuals with Disabilities Education Act is subject to the same grounds for suspension and expulsion which apply to regular education students.

*(cf. 5144.1 - Suspension and Expulsion/Due Process)*

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

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. (20 USC 1415)

The District shall be deemed to have knowledge that the student had a disability if one of the following conditions exists: (20 USC 1415)

1. The parent/guardian has expressed concern in writing 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
3. The parent/guardian has requested an evaluation of the student for special education

*(cf. 6164.4 - Identification of Individuals for Special Education)*

4. The teacher, Director of Special Education or other District personnel has expressed concern about the behavior or performance of the student to other District personnel

If it is determined that the District did not have knowledge that the student was disabled, then the student shall be disciplined in accordance with procedures established for students without disabilities. (20 USC 1415)

**Suspension**

The Superintendent or designee may suspend a student with disability for up to five school days for a single incident of misconduct, and for up to 20 school days in a school year. If the student is transferred to another school or alternative educational program, the student may be suspended for up to 30 school days in a school year, but still no more than five days for a single incident of misconduct, unless the student is suspended by the Board of Trustees pursuant to Education Code 48912. (Education Code 48903, 48911)

If the student poses an immediate threat to the safety of himself/herself or others, the Superintendent or designee may suspend the student for up to, but not more than, 10 consecutive school days. (Education Code 48911)

**SUSPENSION AND EXPULSION/DUE PROCESS  
(STUDENTS WITH DISABILITIES) continued**

**Services During Suspension**

Students suspended for more than 10 school days shall continue to receive a free and appropriate public education during the term of the suspension.

**Interim Alternative Placement Due to Dangerous Behavior**

A student with a disability may be placed in an appropriate interim alternative educational setting when he/she commits one of the following acts: (20 USC 1415)

1. Carries a weapon, as defined in 18 USC 930, to school or to a school function
2. Knowingly possesses or uses illegal drugs while at school or a school function
3. Sells or solicits the sale of a controlled substance while at school or a school function

A hearing officer may order a change in placement of a student with a disability to an appropriate interim educational setting if the hearing officer: (20 USC 1415)

1. Determines that the District has established by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or others
2. Considers the appropriateness of the student's current placement
3. Considers whether the District has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services
4. Determines that the interim alternative educational setting allows the student to participate in general curriculum, to continue to receive IEP services and to receive services designed to ensure that the behavior does not recur

The student may not be placed in the interim alternative educational setting for more than 45 days, or until the conclusion of any due process hearing proceedings requested by the parent/guardian. (20 USC 1415)

The student's alternative educational setting shall be determined by the student's individualized educational program (IEP) team. (20 USC 1415)

(*cf.* 6159 - Individualized Education Program)

**SUSPENSION AND EXPULSION/DUE PROCESS  
(STUDENTS WITH DISABILITIES) continued**

**Procedural Safeguards/Manifestation Determination**

Either before or not later than 10 days after a student has been suspended for more than 10 days or placed in an alternative educational setting, the District shall convene an IEP team meeting to conduct a functional behavior assessment and implement a behavioral intervention plan. If the student already has a behavioral intervention plan, the IEP team shall review the plan and modify it as necessary to address the behavior. (20 USC 1415)

*(cf. 6159.4 - Behavioral Interventions for Special Education Students)*

The following procedural safeguards shall apply when a student is suspended for more than 10 days, when disciplinary action is contemplated for a dangerous behavior as described above, or when an change of placement of more than 10 days is contemplated: (20 USC 1415)

1. The parents/guardians of the student shall be immediately notified of the decision and all procedural safeguards on the day the decision to take action is made.
2. No later than 10 school days after the date of the decision, a manifestation determination shall be made of the relationship between the student's disability and the behavior subject to the disciplinary action by the IEP team.

At this hearing, the IEP team shall consider:

- a. Evaluation and diagnostic results
- b. Observations of the student
- c. The student's IEP placement

The team shall then determine whether the IEP and placement were appropriate; supplementary aids, services, and behavioral interventions were provided; and the student understood and could control his/her behavior. (20 USC 1415)

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. (20 USC 1415)

If the team determines that the student's behavior was a manifestation of his/her disability, then the student's placement may only be changed via the IEP team process. (20 USC 1415)

**SUSPENSION AND EXPULSION/DUE PROCESS  
(STUDENTS WITH DISABILITIES) continued****Pre-Expulsion Assessment and Meeting**

Procedures and timelines governing the expulsion of students with disabilities shall be the same as those for all other students, except that a manifestation determination and a pre-expulsion assessment shall be made and an IEP team meeting held under conditions and with possible consequences indicated below.

1. The parent/guardian shall receive written notice of the District's intent to conduct the pre-expulsion assessment and shall make the student available for the assessment without delay at a site designated by the District. The parent/guardian shall also have the right to an independent assessment as provided in Education Code 56329. (Education Code 48915.5)
2. The pre-expulsion assessment shall be conducted in accordance with the guidelines of the 34 CFR 104.35, which shall include a review of the student's placement at the time of the alleged misconduct and a determination of the relationship, if any, between the student's behavior and his/her disability. (Education Code 48915.5)
3. The IEP team shall meet to determine if an expulsion hearing is appropriate. This meeting shall be held at a time and place mutually convenient to the parent/guardian and District within the period, if any, of the student's pre-expulsion suspension. The parent/guardian's participation may be made through actual participation, representation, or a telephone conference call. (Education Code 48915.5)
4. The parent/guardian shall be notified of his/her right to participate in the meeting at least 48 hours before the meeting. This notice shall specify: (Education Code 48915.5)
  - a. That the meeting may be held without the parent/guardian's participation unless he/she requests a postponement for up to three additional school days
  - b. That the suspension will be continued during the postponement if the student continues to pose an immediate threat to the safety of himself/herself or others

In order to make a record of its attempts to arrange the meeting at a mutually convenient time and place, the District shall keep documentation such as: (34 CFR 300.345)

- a. Detailed records of telephone calls made or attempted and the results of those calls
- b. Copies of correspondence sent to parents/guardians and any responses received
- c. Detailed records of visits made to the parent/guardian's home or place of employment and the results of those visits

**SUSPENSION AND EXPULSION/DUE PROCESS  
(STUDENTS WITH DISABILITIES) continued**

5. The District shall grant a parent/guardian's request that the meeting be postponed for up to three additional school days and may extend a student's suspension for the period of postponement if he/she continues to pose an immediate threat to the safety of himself/herself or others. However, the suspension shall not be extended beyond 10 consecutive school days unless agreed to by the parent/guardian or by court order. If the parent/guardian refuses to consent to an extension beyond 10 consecutive school days and chooses not to participate, the meeting may be conducted without the parent/guardian's participation. (Education Code 48915.5)
6. The IEP team shall consider the pre-expulsion assessment results and shall also review and consider the student's health records and school discipline records. (Education Code 48915.5)
7. If the IEP team determines that the alleged misconduct was caused by, or was a direct manifestation of, the student's disability or that the student was not appropriately placed, the expulsion shall not proceed. (Education Code 48915.5)
8. If the IEP team determines that the alleged misconduct was not caused by, or a direct manifestation of, the student's disability, and if it is determined that the student was appropriately placed, the student shall be subject to expulsion in accordance with procedures that apply to all students. (Education Code 48915.5)
9. When expulsion is ordered, the Board shall recommend a rehabilitation plan for the student. (Education Code 48916)

**Due Process Appeals**

If the parent/guardian disagrees with a decision that the behavior was not a manifestation of the student's disability or with any decision regarding placement, he/she has a right to appeal the decision. (20 USC 1415)

Due process appeals must be initiated within 15 days of the decision of the IEP team.

The expulsion hearing shall not be conducted, and the 30-day expulsion proceedings time limit shall not commence, until after completion of the:

1. The pre-expulsion assessment and the manifestation determination (Education Code 48915.5, 20 USC 1415)
2. The IEP team meeting (Education Code 48915.5)
3. Due process hearings and appeals, if initiated (Education Code 48915.5)

**SUSPENSION AND EXPULSION/DUE PROCESS  
(STUDENTS WITH DISABILITIES) continued**

The Board may expel a student with disability only if an IEP team has determined that the misconduct was not caused by, or a direct manifestation of, the student's identified disability, and the student was appropriately placed at the time the misconduct occurred. (Education Code 48915.5)

**Services During Expulsion**

During the term of the expulsion, a student with a disability shall continue to be offered a program of free and appropriate public education. Such services may include independent study, home instruction, or another appropriate alternative program.

*(cf. 6158 - Independent Study)*

*(cf. 6183 - Home and Hospital Instruction)*

**Readmission**

Readmission procedures for students with disabilities shall be the same as those used for all students. The Superintendent or designee may consider the input of the student's IEP team when developing recommendations to the Board regarding a request for readmission. Upon readmission, an IEP team meeting shall be convened to determine whether a new IEP needs to be established.

**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 students. (Education Code 48917)

*Legal Reference: (see next page)*

**SUSPENSION AND EXPULSION/DUE PROCESS  
(STUDENTS WITH DISABILITIES) continued**

*Legal Reference:*

EDUCATION CODE

35146 Closed sessions (re suspensions)

35291 Rules (of governing board)

48900-48925 Suspension and expulsion

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

626.2 Unauthorized entry on campus after written notice of suspension or dismissal

UNITED STATES CODE, TITLE 18

930 Weapons

UNITED STATES CODE, TITLE 20

1412 State eligibility

1415 Procedural safeguards

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

300.345 Parent participation

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

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

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

M.P. v. Board of Trustees of Grossmont Union High School District, (1994) U.S. Dist. Ct., S.D. Cal. 858 F.Supp. 1044

Rock Island School District #41, IDELR 353:364

San Juan Unified School District, 20 IDELR 549

*Management Resources:*

CDE LEGAL ADVISORIES

0123.91 Clarification of Education Code Amendments, LO: 1-91

0623.89 Suspension and Expulsion of Handicapped Pupils, LO: 3-89

CDE PROGRAM ADVISORIES

0122.90 Suspension and Expulsion Procedures for Individuals with Exceptional Needs, SPB:89/90-9

**Regulation**

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**FORTUNA UNION HIGH SCHOOL DISTRICT  
Fortuna, California**