

PROCEDURAL SAFEGUARDS: SPECIAL EDUCATION STUDENTS

A student with exceptional needs currently enrolled in a special education program is expected to follow behavioral standards in the same manner as other students. A student with exceptional needs may not be suspended or expelled solely by reason of the student's disability.

Suspension

Suspension procedures for a student with exceptional needs are the same as the procedures specified in Regulation 5710. Additionally, under federal regulations, a school or district administrator may unilaterally place a student with exceptional needs in an alternative interim educational setting for up to 45 days for bringing a weapon to school or for knowingly selling, possessing, or using illegal drugs. Also, a hearing officer may place a student with exceptional needs in an alternative interim educational setting for up to 45 days for behavior that is substantially likely to result in injury to the student or to others [20 U.S.C. Section 1415 (k) (1)]. Any suspension of a student with exceptional needs for a period of ten days or more would constitute a substantial change in the student's placement and would be considered equivalent to an expulsion. Should this occur, the procedures specified for expulsion under Board Policy 5710 would apply.

Whenever a student with exceptional needs is suspended more than one time in a semester, an Individualized Education Program (IEP) meeting should be held to determine whether the student's misconduct is a manifestation of the student's identified disability and to determine the appropriateness of the placement.

Expulsion

The procedures for expelling a student with exceptional needs are different from expulsion procedures for non-handicapped students. Expulsion is a substantive change in placement, and as such, must comply with federal and state requirements relating to placement of students with exceptional needs. Any change in the placement of a student with exceptional needs must be determined by the IEP team after consideration of the student's needs and appropriate educational program. The team may decide that a more restrictive or controlled placement, rather than expulsion, is warranted.

Prior to the student's referral for expulsion, the IEP team shall resolve the following issues:

1. Whether the student's misconduct was caused by or is a manifestation of the student's identified disability; and
2. Whether the student was receiving an appropriate education at the time of the misconduct; that is, whether the student was appropriately placed and whether the student's established IEP was appropriate and being implemented at the time of the misconduct.

Fullerton Joint Union High School District
AR 5705(b)

Prior to implementing any disciplinary procedures under Board Policy 5700 or 5710 that could lead to suspension for more than ten consecutive school days or expulsion, an IEP meeting must be held and conducted pursuant to Education Code Sections 56340-56347.

The parent/guardian has a right to participate in the IEP meeting through actual participation, representation, or a telephone conference call, and shall be notified of the meeting at least 48 hours prior to the meeting. The parent/guardian may request that the meeting be postponed for up to three additional school days. Unless the parent/guardian requests a postponement, the meeting may be conducted without the parent/guardian's participation if proper notice has been provided. See Board Policy 5710 for further details about suspension of a special education student pending an IEP meeting.

The IEP team shall base its decision on recent and relevant information regarding the student acquired within one year of the date of the alleged misconduct and including a review of the student's progress and behavior, if available, including but not limited to:

1. A review of the student's IEP;
2. Teacher progress reports and comments;
3. School health records and comments;
4. School discipline records;
5. A review of the ability of the student to conform behavior to prescribed standards;
6. A determination of the relationship, if any, between the student's behavior and the student's disability and condition.

The parent/guardian is entitled to a written notice of the governing board's intent to conduct a pre-expulsion assessment. The parent/guardian shall make the student available for the assessment at a site designated by the governing board without delay. The parent/guardian has a right to an independent assessment.

If it is determined by the IEP team that there is no causal relationship between the student's misconduct and the student's identified disability and that the student was appropriately placed, then the student may be appropriately referred to the disciplinary procedures established pursuant to Board Policy 5710. If, however, it is determined that there was a causal relationship between the student's misconduct and the student's identified disability or an inappropriate placement, then the team shall further designate the appropriate placement for the student and revise the student's IEP if necessary. The team may decide that a more restrictive or controlled placement, rather than expulsion, is warranted.

Any disagreement between the parent and the District regarding the appropriateness of the student's placement or recommended change of placement, including expulsion, is subject to administrative fair hearing procedures. All federal and state laws and regulations regarding the administrative hearing procedures apply. If the Assistant Superintendent, Education and Assessment Services, or designee upholds the IEP recommendation for expulsion, then the District can proceed through the normal expulsion proceedings.

If there is no disagreement regarding the IEP team's decision that a change in placement is warranted, and that change is exclusion of the student through expulsion proceedings, the student has a right to an expulsion hearing, pursuant to Education Code Section 48915.5.

An individual with exceptional needs who is expelled by action of the Board of Trustees is still the responsibility of the resident district and an appropriate placement outside of the district shall be made.

Reference: Education Code Sections 35145, 35146, 35291, 48900, 48901, 48903, 48903.6, 48907.5 48914, 48915, 48915.5, 48917, 48918, ; Health and Safety Code Section 11007; Government Code Section 54950

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