

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

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. (cf. 5144.1 – Suspension and Expulsion/Due Process)

Procedures for Students Not Yet Eligible for Special Education Services

A student who has not been officially identified as a student with disabilities pursuant to IDEA and who has violated the District's code of student conduct may assert the procedural safeguards granted under this Administrative Regulation only if the District had knowledge that the student is disabled before the behavior that precipitated the disciplinary action occurred. (20 USC 1415(k)(5))

1. The parent/guardian has expressed concern to supervisory or administrative District personnel in writing, 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 parent/guardian has requested an evaluation of the student for special education pursuant to 34 CFR 300.530-300.536. (cf. 6164.4 – Identification of Individuals for Special Education)
3. 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 supervisory District personnel about a pattern of behavior demonstrated by the student.

The District would be deemed to not have knowledge that a student is disabled if the parent/guardian has not allowed the student to be evaluated for special education services or has refused services. In addition, the District would be deemed to not have knowledge if the District conducted an evaluation and determined that the student was not an individual with a disability. When the District is deemed to not have knowledge of the disability, the student shall be disciplined in accordance with procedures established for students without disabilities. (20 USC 1415(k)(5))

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. (20 USC 1415(k)(5); 34 CFR 300.527)

Suspension

The Superintendent or designee may suspend a student with a disability for up to ten consecutive school days for a single incident of misconduct, and for up to 20 school days in a school year, as long as the suspension(s) does not constitute a change in placement pursuant to 34 CFR 300.519. (Education Code Section 48903; 34 CFR 300.520)

Services During Suspension

Any student suspended for more than ten school days in a school year shall continue to receive services during the term of the suspension, to the extent necessary to provide the student a free and appropriate public education. (20 USC 1412(a)(1)(A); 34 CFR 300.520)

If a student with disabilities is excluded from school bus transportation, the student shall 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 Individualized Education Program (IEP). (Education Code Section 48915.5) (cf. 3541.2 – Transportation for Students with Disabilities)

Interim Educational Placement Due to Dangerous Behavior

A student with a disability may be placed in an appropriate interim alternative educational setting for up to 45 school days, without regard as 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 300.520)

1. Carries or possesses a weapon, as defined in 18 USC 930.
2. Knowingly possesses or used 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))

Procedural Safeguards/Manifestation Determination

The following procedural safeguards shall apply when a student is suspended for more than ten consecutive school days, when disciplinary action is contemplated for a dangerous behavior as described above, or when a change of placement is contemplated due to a violation of the District's code of conduct:

1. The parents/guardians of the student shall be immediately notified of the decision and provided the procedural safeguards notice pursuant to 34 CFR 3200.504 on the day the decision to take action is made. (20 USC 1415(k)(1)(H)) (cf. 5145.6 – Parental Notifications) (cf. 6159.1 – Procedural Safeguards and Complaints for Special Education)
2. Immediately if possible, but in no case later than ten school days after the date of the decision, 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))

At the manifestation determination review, the relevant members of the IEP team, the District, and parent/guardian shall review all relevant information in the student’s file including the student’s IEP, any teacher observations, and 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))

- 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.

If the manifestation review team determines that the conduct was caused by either #a or #b above, the conduct shall be determined to be a manifestation of the student’s disability. (20 USC 1415(k)(1)(F))

3. If the manifestation determination review team has determined that the conduct was a result of the student’s disability, the IEP team shall conduct a functional behavioral assessment as specified below. The student shall be returned to the placement from which the student was removed, unless the parent/guardian and District agree to a change of placement as part of the modification of the behavioral intervention plan. (20 USC 1415(k)(1)(F))
4. If the manifestation determination review team determines that the student’s behavior was not a manifestation of the student’s disability, the student may be disciplined in accordance with the procedures for students without disabilities. The student shall continue to receive services to the extent necessary to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student’s IEP. (20 USC 1415(k)(1)(D))

#### Behavioral Assessment and Intervention Plan

The IEP team shall conduct a functional behavioral assessment and implementation plan for a student who has been removed because of dangerous behavior, or whose behavior was determined to be a manifestation of the student’s disability, or whose behavior was determined not to be a manifestation of the student’s disability. If the student already has an existing functional behavioral assessment, the team shall modify the assessment, as

appropriate, to address the behavioral violation so that it does not recur. (20 USC 1415(k)(1) (C), (D), (F)) (cf. 6159.4 – Behavioral Interventions for Special Education Students)

### Due Process Appeals

If the parent/guardian disagrees with the determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement, the parent/guardian has a right to appeal the decision to a hearing officer. (20 USC 1415(k)(3); 34 CFR 300.525)

If the student's parent/guardian initiates a due process hearing to challenge the interim alternative educational placement or the manifestation determination, the student shall remain in the interim alternative educational 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 300.526)

If school personnel maintain that it is dangerous for the student to be placed in the current placement (placement prior to removal to the interim alternative education setting) while the due process proceedings are pending, the Superintendent or designee may request an expedited due process hearing. (20 USC 1415(k)(4); 34 CFR 300.526)

### Services During Expulsion

Any student with a disability who is expelled shall continue to receive services during the term of the expulsion to the extent necessary to provide the student a free and appropriate public education. Any alternative program must provide services to the extent necessary to enable the student to appropriately progress in the general curriculum, although in another setting, and appropriately advance toward achieving the goals set out in the student's IEP. (20 USC 1412(a)(1)(A); 34 CFR 300.121, 300.520) (cf. 6158 – Independent Study) (cf. 6185 – Community Day School)

### 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.

### Suspension of Expulsion

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 Section 48917)

### Notification to Law Enforcement Authorities

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

The principal or designee also shall notify appropriate city or county law enforcement authorities of acts by any student with a disability 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 Section 48902)

Within one school day after a suspension or expulsion of a student with disabilities, the principal or designee shall notify appropriate city or county law enforcement authorities, by telephone or other appropriate means, of any act by the student which may violate Education Code Section 48900(c) or (d), relating to the possession, use, offering, or sale of controlled substances, alcohol, or intoxicants of any kind. (Education Code Section 48902) (cf. 5131.7 – Weapons and Dangerous Instruments)

References: Education Code Sections 35146, 35291, 48900-48925, 56000, 56320, 56321, 56329, 56340-56347, 56505; Penal Code 245, 626.2, 626.9, 626.10; United States Code, Title 18 930, 1365; United States Code, Title 20 1412, 1415; United States Code, Title 21 812(c), United States Code, Title 29 706, 794; Code of Federal Regulations, Title 34 104.35, 104.36, 300.1-300.756; Federal Register 34 CFR 300.a Appendix A to Part 300, 34 CFR 300a1

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