

San Dieguito Union High School District

Suspension and Expulsion/Due Process (Students With Disabilities)

AR 5144.2

Students

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.

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.

The Superintendent or designee shall determine, on a case-by-case basis, whether a pattern of removal of students from their 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:

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 their behavior in previous incidents that resulted in the series of removals.

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.

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 to

the student's parent/guardian/educational rights holder when , as a result of a suspension, the student is excluded from school bus transportation.

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:

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.

On the date the decision to take disciplinary action is made, the student's parent/guardian/educational rights holder shall be notified of the decision and provided the procedural safeguards notice pursuant to 34 CFR 300.504.

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 student's 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.

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/educational rights holder 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 a student of Native American descent, the student's tribal social worker and, if applicable, county social worker.
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.

If the student is a foster youth or a student of Native American descent, the foster youth's educational rights holder, attorney, or county social worker, or the student of Native American descent's tribal social worker and,

if applicable, county social worker, shall be invited to participate in the manifestation determination review.

At the manifestation determination review, the district, the student's parent/guardian/educational rights holder, and relevant members of the IEP team (as determined by the district and parent/guardian/educational rights holder) 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/educational rights holders, to determine whether the conduct in question was either of the following:

- 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.

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.

The student shall be returned to the placement from which the student was removed, unless the parent/guardian/educational rights holder and Superintendent or designee agree to a change of placement as part of the modification of the behavioral intervention plan.

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 student's 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.

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.

Due Process Appeals

If the parent/guardian/educational rights holder disagrees with any district decision regarding placement under 34 CFR 300.530 (suspension and removal for dangerous circumstances) or 34 CFR 300.531(interim alternative placement), or the manifestation determination under 34 CFR 300.530(e), the parent/guardian/educational rights holder 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).

Whenever a hearing is requested as specified above, the parent/guardian/educational rights holder 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/educational rights holder 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/educational rights holder and district agree otherwise.

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.

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 they will not disclose the student's information or records to any other person without the prior written consent of the student's parent/guardian/educational rights holder.

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.

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.

Knowledge means that, before the occurrence of the behavior that precipitated the disciplinary action, one of the following occurred:

1. The parent/guardian/educational rights holder, 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/educational rights holder 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/educational rights holder 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.

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.

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.

State

Ed. Code 35146
Ed. Code 35291
Ed. Code 48203
Ed. Code 48853.5

Ed. Code 48900-48925
Ed. Code 49076
Ed. Code 56000
Ed. Code 56320
Ed. Code 56321
Ed. Code 56329
Ed. Code 56340-56347
Ed. Code 56505
Ed. Code 56521.2
Pen. Code 245
Pen. Code 626.10
Pen. Code 626.2

Pen. Code 626.9

Federal

18 USC 1365
18 USC 930
20 USC 1412
20 USC 1414

20 USC 1415
21 USC 812
29 USC 794
34 CFR 104.35
34 CFR 104.36
34 CFR 300.1-300.818
34 CFR 300.530-300.537

Management Resources

Court Decision

Description

Closed sessions regarding suspensions
Rules of governing board
Reports of severance of attendance of disabled students
Foster youth and Indian child's representatives' right to receive notices
Suspension and expulsion
Access to student records
Special education; legislative findings and declarations
Educational needs; requirements
Development or revision of individualized education program
Independent educational assessment
Individualized education program teams
State hearing
Behavioral interventions
Assault with deadly weapon
Dirks, daggers, knives, razors, or stun guns
Entry upon campus after written notice of suspension or dismissal without permission
Gun-Free School Zone Act of 1995

Description

Serious bodily injury
Weapons
State eligibility
Evaluations, eligibility determinations, individualized education programs, and educational placements
Procedural safeguards
Schedule of controlled substances
Rehabilitation Act of 1973; Section 504
Evaluation and placement
Procedural safeguards
Assistance to states for the education of students with disabilities
Discipline procedures

Description

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.) 3 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
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. Dept of Education Office for Civil Rights Pub	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. Dept of Education Office for Civil Rights Pub	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

Board Adopted: August 22, 2019
Revised: August 17, 2023