

Administrative Regulation

Suspension and Expulsion – Students with Disabilities

Applicability of This Administrative Regulation:

This administrative regulation applies to students who are protected under the Individuals with Disabilities Education Act (IDEA), 20 USC 1400-1482. (Note: The section below entitled “Suspension” also shall apply to students who are not protected under the IDEA but who are eligible for services under Section 504 of the Rehabilitation Act of 1973; in addition, the district will hold a manifestation meeting for such students within 10 days of the incident and will determine whether the behavior was a manifestation of the disability. If the 504 team determines the behavior is not a manifestation of the disability, the parent/guardian will be provided a copy of the “Notification of Parent/Child Rights Afforded by Section 504 of the Rehabilitation Act of 1973” and afforded the rights provided thereunder.)

Grounds for Suspension and Expulsion:

A student identified as an individual with a disability pursuant to the IDEA is subject to the same grounds for suspension and expulsion which apply to students without disabilities.

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 school days in a school year, as long as the suspension(s) does not constitute a change in placement pursuant to 34 CFR 300.536. (34 CFR 300.530; EC 48903)

The principal or designee shall monitor the number of days, including portions of days, in which a student with a valid individualized education program (IEP) has been suspended during the school year.

The district shall determine, on a case-by-case basis, whether a pattern of removals of a student from his/her current educational placement for disciplinary reasons constitutes a change of placement. A change of placement shall be deemed to have occurred under any of the following circumstances: (34 CFR 300.536)

- A. The removal is for more than 10 consecutive school days.
- B. The student has been subjected to a series of removals that constitute a pattern because of all of the following:
 1. The series of removals total more than 10 school days in a school year.

2. The student's behavior is substantially similar to his/her behavior in previous incidents that resulted in the series of removals.
3. 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, indicate a change of placement.

If the removal has been determined to be a change of placement as specified in items A-B above, the student's IEP team shall determine the appropriate educational services. (34 CFR 300.530)

Services During Suspension:

Any student suspended for more than 10 school days in the same school year shall continue to receive services during the term of the suspension. School personnel, in consultation with at least one of the student's teachers, shall determine the extent to which services are needed as provided in 34 CFR 300.101(a), so as to enable the student to continue to participate in the general education curriculum in another setting and to progress toward meeting the goals as set out in his/her IEP. (20 USC 1412(a)(1)(A); 34 CFR 300.530)

If a student with a disability is excluded from school bus transportation, the student shall be provided with an alternative form of transportation at no cost to the student or his/her parent/guardian, provided that transportation is specified in his/her IEP. (Education Code 48915.5)

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: (20 USC 1415(k)(1)(G); 34 CFR 300.530)

- A. Carries or possesses a weapon, as defined in 18 USC 930.
- B. Knowingly possesses or uses illegal drugs.
- C. Sells or solicits the sale of a controlled substance as identified in 21 USC 812(c), Schedules I-V.
- D. Inflicts serious bodily injury upon another person as defined in 18 USC 1365.

The student's interim alternative educational setting shall be determined by his/her IEP team. (20 USC 1415(k)(1)(G); 34 CFR 300.531)

On the date the decision to take disciplinary action is made, the parents/guardians of the student shall be notified of the decision and provided the procedural safeguards notice pursuant to 34 CFR 300.504. (20 USC 1415(k)(1)(H); 34 CFR 300.530)

A student who has been removed from his/her current placement because of dangerous behavior shall receive services, although in another setting, to the extent necessary to allow him/her to participate in the general education curriculum and to progress toward meeting the goals set out in his/her 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. (20 USC 1415(k)(1)(D); 34 CFR 300.530)

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:

- A. Notice: On the date the decision to take disciplinary action is made, the parents/guardians of the student shall be notified of the decision and provided the procedural safeguards notice pursuant to 34 CFR 300.504. (20 USC 1415(k)(1)(H); 34 CFR 300.530)
- B. 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. (20 USC 1415(k)(1)(E); 34 CFR 300.530)

At the manifestation determination review, the district, the student's parent/guardian, and relevant members of the IEP team (as determined by the district and parent/guardian) 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, to determine whether the conduct in question was either of the following: (20 USC 1415(k)(1)(E); 34 CFR 300.530)

1. Caused by or had a direct and substantial relationship to the student's disability.
2. 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 a condition in either 1 or 2 above was met, the conduct shall then be determined to be a manifestation of the student's disability. (20 USC 1415(k)(1)(E); 34 CFR 300.530)

3. Determination that Behavior is a Manifestation of the Student's Disability: When the conduct has been determined to be a manifestation of the student's disability, the IEP team shall conduct a functional behavioral assessment, unless a functional behavioral assessment 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. (20 USC 1415(k)(1)(F); 34 CFR 300.530)

The student shall be returned to the placement from which he/she 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); 34 CFR 300.530)

4. Determination that Behavior is Not a Manifestation of the Student's Disability: If the manifestation determination review team determines that the student's behavior was not a manifestation of his/her disability, the student may be disciplined in accordance with the procedures for students without disabilities. (20 USC 1415(k)(1)(D); 34 CFR 300.530)

The student shall receive services to the extent necessary to participate in the general education curriculum in another setting and to allow him/her to progress toward meeting the goals set out in his/her 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. (20 USC 1415(k)(1)(D); 34 CFR 300.530)

Due Process Appeals:

If the parent/guardian 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), he/she 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 hearing, the requesting party shall file a complaint pursuant to 34 CFR 300.507 and 300.508(a) and (b). (20 USC 1415(k)(3); 34 CFR 300.532)

Whenever a hearing is requested as specified above, the parent/guardian 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 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 and district agree otherwise. (20 USC 1415(k)(4); 34 CFR 300.533)

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 Board of Education'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. (EC 48917)

Notification to Law Enforcement Authorities:

Law enforcement notification requirements involving students with disabilities shall be the same as those specified for all students.

Report to County Superintendent of Schools:

The superintendent or designee shall report to the Orange 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. (EC 48203)

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Ref: EC Section 48917

18 USC 930; 18 USC 1365; 20 USC 1400-1412

34 CFR 300

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