

# PIEDMONT UNIFIED SCHOOL DISTRICT

## Administrative Regulation

Students

AR 5144.2

### Suspension and Expulsion Due Process (Students With Disabilities)

~~(Note: AB 1859 ((Ch. 492, Statutes of 2002)), amended sections in state law relative to the discipline of special education students to conform to federal law, including the 1997 reauthorization of the Individuals with Disabilities Education Act (20 USC 1400-1487) and its implementing regulations (34 CFR 300.1-300.756). Education Code 48915.5, as amended, no longer mandates that districts develop procedures and timelines governing the expulsion of special education students.~~

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

### Procedures for Students Not Yet Eligible for Special Education Services

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(k)(8))

The District shall be deemed to have knowledge that the student had a disability if one of the following conditions exists: (20 USC 1415(k)(8); 34 CFR 300.527-534)

1. The parent/guardian has expressed concern in writing, ~~or orally if the parent/guardian does not know how to write or has a disability that prevents a written statement~~ to an administrator or teacher, that the student is in need of special education or related services.

~~The behavior or performance of the student demonstrates the need for such services, in accordance with 34 CFR 300.7.~~

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 concern about the behavior ~~or performance~~ of the student to the district's director of special education or to other personnel in accordance with the District's established special education referral system.

The District would be deemed to not have knowledge as specified in items #1-~~3~~ 4 above if, as a result of receiving such information, the District either conducted an evaluation and determined that the student was not a student with a disability or determined that an

evaluation was not necessary and provided notice to the parent/guardian of its determination (34 CFR 300.527 534).

If it is determined that the District did not have knowledge that the student was disabled prior to taking disciplinary action against the student, then the student shall be disciplined in accordance with procedures established for students without disabilities (~~20 USC 1415(k)(8)~~) (34 CFR 300.534).

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 (34 CFR 300.527).

### **Suspension**

~~Note: Pursuant to 20 USC 1415(k)(1), 34 CFR 300.520, and a 1988 U.S. Supreme Court decision (Honig v. Doe), districts receiving funds under the IDEA may suspend a student for no more than 10 consecutive school days, as long as the removal does not constitute a change in placement. Although federal law places no limits on the total number of days a student may be suspended, state law does. Education Code 48903 provides that a student may not be suspended for more than 20 cumulative school days in a school year.~~

~~Note: The Analysis of Comments to the federal regulations, FR 12619 (34 CFR 300.a1), explains that portions of a school day in which a student has been removed would count towards the total of 10 consecutive days. For example, whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is part of the student's individualized education plan (IEP). Therefore, school personnel should carefully monitor the days and/or hours a disabled student is removed from class in order to determine if either the total amount of time or the pattern (proximity and length) of the removal constitutes a change of placement.~~

~~Note: AB 1849 (Ch. 492, Statutes of 2002) amended Education Code 48911 to delete the provision that authorized suspension when a student posed an immediate threat.~~

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) do not constitute a change in placement pursuant to 34 CFR 300.519 530. (~~Education Code 48903; 34 CFR 300.520~~)

### **Services During Suspension**

~~Note: Pursuant to 20 USC 1412(a)(1)(A) and 34 CFR 300.520, a "free and appropriate public education" (FAPE) must be available to all children, including those students with disabilities who have been suspended for more than 10 school days in a year. The Analysis of Comments to the federal regulations, FR 12618 (34 CFR 300.a1), clarifies that it is the USDOE's opinion that FAPE need not be provided when a student is removed for 10 school days or less, as long as no further removal beyond 10 days is contemplated.~~

Students suspended for more than 10 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) (cf. 3541.2 - Transportation for Students with Disabilities)

### **Interim Alternative 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 when he/she commits one of the following acts: ~~(20 USC 1415(k)(1))~~ (34 CFR 300.520 530)

1. Carries a dangerous weapon, as defined in 18 USC 930, to school or to a school function.
2. Knowingly possesses, uses or sells 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 activity as identified in 21 USC 812(c), Schedules I-V~~
3. Inflicts serious bodily injury upon another person while at school or a school function.

The student's alternative educational setting shall be determined by the student's IEP team (20 USC 1415(k)(2)).

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(k)(2))~~ (34 CFR 300.521 532)

1. Determines that the District has established ~~by substantial evidence, meaning beyond a preponderance of the 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 proposed by school personnel who have met with the student's special education teacher allows the student to:~~
  - a. ~~Progress in the general curriculum and continue to receive those services and modifications, including those described in his/her IEP, to enable the student to meet the goals of the IEP~~
  - b. ~~Receive services and modifications designed to address the behavior and ensure that the behavior does not recur~~

The student may be placed in the interim alternative educational setting for up to 45 days, or until the conclusion of any due process hearing proceedings requested by the parent/guardian. (20 USC 1415(k)(2))

### **Behavioral Assessment and Intervention Plan**

~~Note: The following section applies both to students who have been suspended for more than 10 consecutive school days, thus constituting a change of placement, and students who have been placed in an interim alternative setting, as described above.~~

~~Not later than 10 business days after a student has been suspended for more than 10 school 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(k)(1); 34 CFR 300.520)~~

~~(cf. 6159 – Individualized Education Program)~~

~~(cf. 6159.4 – Behavioral Interventions for Special Education Students)~~

~~As soon as practicable after developing the behavioral intervention plan and completing the required assessments, the IEP team shall meet to develop appropriate behavioral interventions to address the behavior and shall implement those interventions. (34 CFR 300.520)~~

### **Procedural Safeguards/Manifestation Determination**

Note: The following "manifestation determination" is required when a district wishes to change a student's education placement pursuant to 34 CFR 300.519 (e.g., removal for more than 10 consecutive school days or removal that constitutes a pattern), when the student has been placed in an interim alternative setting pursuant to 34 CFR 300.520, or if the district wishes to expel a student in accordance with procedures for students without disabilities. According to the Analysis of Comments to the federal regulations, FR 12416 (34 CFR 300.a1), this manifestation determination is not required prior to a removal for 10 school days or less when that removal does not constitute a change in placement.

~~Note: As amended by AB 1859 (Ch. 492, Statutes of 2002), Education Code 48915.5 now conforms with federal law. Therefore, state law no longer requires that a "pre-expulsion assessment" be conducted in addition to the manifestation determination review specified below.~~

The following procedural safeguards shall apply when a student is suspended for more than 10 consecutive school days, when disciplinary action is contemplated for a dangerous behavior as described above, or when a change of placement is contemplated: ~~(20 USC 1415(k)(4) 34 CFR 300.523 530)~~

~~Note: For requirements of the procedural safeguards notice as specified in 34 CFR 300.503, see AR 6159.1 – Procedural Safeguards and Complaints for Special Education.~~

1. The parents/guardians of the student shall be immediately notified of the decision and provided the procedural safeguards notice pursuant to 34 CFR 300.504 on the day the decision to take action is made.
2. ~~Immediately if possible, but in no case~~ Not later than 10 school days after the date of the decision, a manifestation determination review shall be made to determine

the relationship between the student's disability and the behavior subject to the disciplinary action.

3. At this review, the IEP team and other qualified personnel shall consider, in terms of the behavior subject to the disciplinary action, all relevant information, including: ~~(20 USC 1415(k)(4) (34 CFR 300.523 530)~~
  - a. ~~Evaluation and diagnostic results, including the results or other relevant~~ Information supplied by the student's parents/guardians
  - b. Teacher observations of the student
  - c. The student's IEP and placement

In relationship to the behavior subject to the disciplinary action, the team shall then determine whether ~~the IEP and placement were appropriate and whether supplementary aids, services, and behavioral intervention strategies were provided consistent with the student's IEP and placement. The team shall also determine that the student's disability did not impair the ability of the student to understand the impact and consequences of the behavior, nor did it impair his/her ability to control the behavior subject to the disciplinary action.~~ (a) the conduct in question was caused by, or had a direct and substantial relationship to, the child disability; or (b) if the conduct was the direct result of the District's failure to implement the IEP. ~~(20 USC 1415(k)(4) (34 CFR 300.523 530)~~

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, as long as the student continues to receive services to the extent necessary to provide that student a free and appropriate public education. (20 USC 1415(k)(4); 34 CFR 300.524 530)

If the team determines that the student's behavior was a manifestation of his/her disability, then the student's placement may be changed only via the IEP process. Further the District will conduct a functional behavior assessment, or review the student's existing behavior intervention plan. (20 USC 1415(k)(4))

~~Note: Pursuant to 34 CFR 300.524, the district must also ensure that the student's special education and disciplinary records are sent either to the Board, the hearing officer or the administrative panel for consideration at the expulsion hearing.~~

### **Due Process Appeals**

~~Note: As amended by AB 1859 (Ch. 492, Statutes of 2002), Education Code 48915.5 now conforms with federal law. Therefore, state law no longer contains timelines regarding 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(k)(6); 34 CFR 300.525 532)

If the student's parent/guardian initiates a due process hearing to challenge the interim alternative educational setting or the manifestation determination, the student shall remain in the interim alternative 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. (34 CFR 300.526 533)

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), during the pendency of the due process proceedings, the Superintendent or designee may request an expedited due process hearing. (34 CFR 300.526)

### **Services During Expulsion**

Expelled students and students suspended for more than ten (10) days in a school year 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 and appropriately advance toward achieving the goals set out in the student's IEP. (20 USC 1412(a)(1)(A); 34 CFR 300.121, 300.520 530)

(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 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 48917)

### **Notification to Law Enforcement Authorities**

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

The principal or designee also shall notify appropriate city or county law enforcement authorities of any student acts 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 48902)

Within one school day after a student's suspension or expulsion, the principal or designee shall notify appropriate city or county law enforcement authorities, by telephone or other appropriate means, of any student acts which may violate Education Code 48900(c) or (d), relating to the possession, use, offering or sale of controlled substances, alcohol or intoxicants of any kind. (Education Code 48902)

Legal Reference:

EDUCATION CODE

35146 Closed sessions (re suspensions)

35291 Rules (of governing board)

48900-48925 Suspension and expulsion

56000 Special education; legislative findings and declarations

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

245 Assault with deadly weapon

626.2 Entry upon campus after written notice of suspension or dismissal without permission

626.9 Gun-Free School Zone Act

626.10 Dirks, daggers, knives, razors or stun guns

UNITED STATES CODE, TITLE 18

930 Weapons

UNITED STATES CODE, TITLE 20

1412 State eligibility

1415 Procedural safeguards

UNITED STATES CODE, TITLE 21

812(c) Controlled substances

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

300.1-300.756 Assistance to states for the education of students with disabilities

COURT DECISIONS

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

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

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

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

Management Resources:

FEDERAL REGISTER

34 CFR 300.a Appendix A to Part 300 - Questions and Answers

34 CFR 300a1 Attachment 1: Analysis of Comments and Changes

WEB SITES

CDE: <http://www.cde.ca.gov>

USDOE: <http://www.ed.gov>

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