

**Suspension and Expulsion/Due Process (Students with Disabilities)**

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**

The Principal 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.

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 Principal or designee 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 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 his/her behavior in previous incidents that resulted in the series of removals.
  - c) 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 a student's removal is determined to be a change of placement as specified in items #1-2 above, or the student is suspended for more than 10 school days in the same school year, 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 his/her IEP, and to address the student's behavior violation so that it does not recur.

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## **Administrative Regulation 5144.2(b)**

If the IEP of a student with a disability requires the Humboldt County Office of Education to provide the student with transportation, the Office of Education shall provide the student with an alternative form of transportation at no cost to him/her or to his/her parent/guardian when he/she is to be excluded from school bus transportation.

### **Interim Alternative Educational Placement Due to Dangerous Behavior**

The Office of Education 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 his/her IEP team.

On the date the decision to take disciplinary action is made, the student's parent/guardian 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 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.

### **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 Office of Education's code of conduct:

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

At the manifestation determination review, the Office of Education, the student's parent/guardian, and relevant members of the IEP team (as determined by the Office of Education 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:

- a) Caused by or had a direct and substantial relationship to the student's disability.
- b) A direct result of the Office of Education's failure to implement the student's IEP, in which case the Office of Education 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 his/her 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 his/her 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 he/she was removed, unless the parent/guardian and Principal 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 his/her disability, the student may be disciplined

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### **Administrative Regulation 5144.2(d)**

in accordance with the procedures for students without disabilities. However, the student's IEP team shall determine services necessary to enable him/her 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.

### **Due Process Appeals**

If the parent/guardian disagrees with any Office of Education 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 Office of Education may request a hearing if the Office of Education 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 or the Office of Education 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 Office of Education 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 Office of Education 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 he/she will not disclose the student's information or records to any other person without the prior written consent of the student's parent/guardian.

**Report to County Superintendent of Schools**

The Principal 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 Office of Education's code of student conduct may nevertheless assert any of the protections under IDEA, if the Office of Education 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, in writing, has expressed concern to 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 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 Office of Education personnel has expressed specific concerns directly to the Office of Education's director of special education or other supervisory Office of Education personnel about a pattern of behavior demonstrated by the student.

However, the Office of Education shall not be deemed to have knowledge of a student's disability if the student's parent/guardian has not allowed him/her 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 Office of Education determined that he/she was not an individual with a disability.

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## Administrative Regulation 5144.2(f)

When the Office of Education 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.

### *Legal Reference:*

#### EDUCATION CODE

35146 *Closed sessions re: suspensions*

35291 *Rules of governing board*

48203 *Reports of severance of attendance of disabled students*

48900-48925 *Suspension and expulsion*

49076 *Access to student records*

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 *Individualized 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*

1365 *Serious bodily injury*

#### UNITED STATES CODE, TITLE 20

1412 *State eligibility*

1415 *Procedural safeguards*

#### UNITED STATES CODE, TITLE 21

812 *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*

300.1-300.818 *Assistance to states for the education of students with disabilities, especially: 300.530-300.537 Discipline procedures*

#### COURT DECISIONS

*Schaffer v. Weast, (2005) 546 U.S. 549*

*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) 858 F.Supp. 1044*

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