

**Board Manual Policy
Perris Union High School District**

Regulation 5144.2: Suspension and Expulsion/Due Process (Students with Disabilities)

Original Adopted Date: 07/18/2012

New Revised Date: 08/16/2023 (Pending Board Approval)

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.

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

Suspension

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. (Education Code 56521.2; 20 USC 1414)

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. (Education Code_48903; 34 CFR_300.530)

~~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.~~

~~(cf. 6159—~~

~~Individualized Education Program)~~

The Superintendent or designee shall determine, on a case-by-case basis, whether a pattern of removals of a student from his/her the student's 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: (34 CFR_300.536)

1. ~~1.~~ The removal is for more than 10 consecutive school days.

2. ~~2.~~ The student has been subjected to a series of removals that constitute a pattern because of all of the following:

- ~~a.~~ a. The series of removals total more than 10 school days in a school year.
- ~~b.~~ b. The student's behavior is substantially similar to ~~his/her~~ the student's behavior in previous incidents that resulted in the series of removals.
- ~~c.~~ 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~~ 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~~ the student's IEP, and to address the student's behavior violation so that it does not recur. (20 USC_ 1412(a)(1)(A); 34 CFR_ 300.530)

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 ~~him/her~~ the student or to ~~his/her~~ the student's parent/guardian when ~~he/she is to be,~~ as a result of a suspension, the student is excluded from school bus transportation. (Education Code_ 48915.5)
(cf. 3541.2 – Transportation for Students)

The principal or designee shall monitor the number of days, including portions of days, in which a student with Disabilities)

an IEP has been suspended during the school year.

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)

1. ~~1.~~ Carries or possesses a weapon, as defined in 18 USC 930
2. ~~2.~~ Knowingly possesses or uses illegal drugs
3. ~~3.~~ Sells or solicits the sale of a controlled substance as identified in 21 USC 812(c), Schedules I-V
4. ~~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~~ the student's IEP team. ~~(20 USC- 1415(k)(1)(G); 34 CFR- 300.531)~~

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. ~~(20 USC- 1415(k)(1)(H); 34 CFR- 300.530)~~

A student who has been removed from ~~his/her~~ the student's current placement because of dangerous behavior shall receive services, although in another setting, to the extent necessary to allow ~~him/her~~ the student 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:

1. ~~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. ~~(20 USC 1415(k)(1)(H); 34 CFR 300.530)~~ 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 an Indian child, the student's tribal social worker and, if applicable, county social

worker. (Education Code 48853.5; 20 USC 1415(k)(1)(H); 34 CFR 300.530)

~~(cf. 5145.6 – Parental Notifications)~~

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

~~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. (20 USC 1415(k)(1)(E); 34 CFR 300.530)~~

2. (20 USC 1415(k)(1)(E); 34 CFR 300.530)

If the student is a foster youth or Indian child, the foster youth's educational rights holder, attorney, or county social worker, or the Indian child's tribal social worker and, if applicable, county social worker, shall be invited to participate in the manifestation determination review. (Education Code 48915.5)

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)

- a. ~~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

b.

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 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 student's conduct has been determined to be a manifestation of his/her 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. (20 USC 1415(k)(1)(F); 34 CFR 300.530)~~

3.

The student shall be returned to the placement from which he/she the student was

removed, unless the parent/guardian and Superintendent or designee 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)

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

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 ~~the~~ 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 him/her ~~the~~ student to participate in the general education curriculum in another setting and to allow him/her ~~the~~ student to progress toward meeting the goals set out in his/her ~~the~~ IEP. (20 USC- 1415(k)(1)(D); 34 CFR- 300.530)

4.

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)

~~(cf. 6158 Independent Study)~~

~~(cf. 6185 Community Day School)~~

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 ~~the~~ parent/guardian 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). (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 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. (Education Code- 48917)

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 will not be disclosed to any other person without the prior written consent of the student's parent/guardian. (Education Code- 49076)
~~(cf. 5131.7-~~

~~Weapons and Dangerous Instruments)~~

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. (Education Code- 48203)

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. (20 USC- 1415(k)(5); 34 CFR- 300.534)

Knowledge means that, before the occurrence of the behavior that precipitated the disciplinary action, one of the following occurred: (20 USC- 1415(k)(5); 34 CFR- 300.534)

1. ~~1.~~ The parent/guardian, 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. ~~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.

~~(cf. 6164.4 – Identification and Evaluation of Individuals for Special Education)~~

3. ~~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 has not allowed him/her 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 he/she the student was not an individual with a disability.

(20 USC 1415(k)(5); 34 CFR 300.534)

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. (20 USC- 1415(k)(5); 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 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. (20 USC- 1415(k)(5); 34 CFR- 300.534)

Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
Ed. Code 35146	Closed sessions regarding suspensions Closed sessions regarding suspensions
Ed. Code 35291	Rules of governing board Rules of governing board
Ed. Code 48203	Reports of severance of attendance of disabled students Reports of severance of attendance of disabled students
Ed. Code 48853.5	Foster youth and Indian child's representatives' right to receive notices Foster youth and Indian child's representatives' right to receive notices
Ed. Code 48900-48925	Suspension and expulsion Suspension and expulsion
Ed. Code 49076	Access to student records Access to student records
Ed. Code 56000	Special education; legislative findings and declarations Special education; legislative findings and declarations
Ed. Code 56320	Educational needs; requirements Educational needs; requirements
Ed. Code 56321	Development or revision of individualized education program Development or revision of individualized education program
Ed. Code 56329	Independent educational assessment Independent educational assessment
Ed. Code 56340-56347	Individualized education program teams Individualized education program teams
Ed. Code 56505	State hearing State hearing
Ed. Code 56521.2	Behavioral interventions Behavioral interventions
Pen. Code 245	Assault with deadly weapon Assault with deadly weapon
Pen. Code 626.10	Dirks, daggers, knives, razors, or stun guns Dirks, daggers, knives, razors, or stun guns
Pen. Code 626.2	Entry upon campus after written notice of suspension or dismissal without permission Entry upon campus after written notice of suspension or dismissal without permission

Pen. Code 626.9

~~Gun-Free School Zone Act of 1995~~ [Gun-Free School Zone Act of 1995](#)

Federal

Description

18 USC 1365

~~Serious bodily injury~~ [Serious bodily injury](#)

18 USC 930

~~Weapons~~ [Weapons](#)

20 USC 1412

~~State eligibility~~ [State eligibility](#)

20 USC 1414

~~Evaluations, eligibility determinations, individualized education programs, and educational placements~~ [Evaluations, eligibility determinations, individualized education programs, and educational placements](#)

20 USC 1415

~~Procedural safeguards~~ [Procedural safeguards](#)

21 USC 812

~~Schedule of controlled substances~~ [Schedule of controlled substances](#)

29 USC 794

~~Rehabilitation Act of 1973; Section 504~~ [Rehabilitation Act of 1973; Section 504](#)

34 CFR 104.35

~~Evaluation and placement~~ [Evaluation and placement](#)

34 CFR 104.36

~~Procedural safeguards~~ [Procedural safeguards](#)

34 CFR 300.1-300.818

~~Assistance to states for the education of students with disabilities~~ [Assistance to states for the education of students with disabilities](#)

34 CFR 300.530-300.537

~~Discipline procedures~~ [Discipline procedures](#)

Management Resources

Description

Court Decision

~~Honig v. Doe (1988) 484 U.S. 305~~ [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~~ [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.) 31 F.3d 1489~~ [Parents of Student W. v. Puyallup School District \(1994 9th Cir.\) 31 F.3d 1489](#)

Court Decision

~~Schaffer v. Weast (2005) 546 U.S. 49~~ [Schaffer v. Weast \(2005\) 546 U.S. 49](#)

Federal Register

~~Rules and Regulations, August 14, 2006, Vol. 71, Number 156, pages 46539-46845~~ [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~~ [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~~ [Dear Colleague](#)

Ofc of Special Education & Rehabilitative Svcs Pub	<u>Letter on Supporting the Needs of Students with Disabilities, July 2022</u> Dear Colleague Letter on Supporting the Needs of Students with Disabilities, July 2022 <u>Dear Colleague Letter on Supporting the Needs of Students with Disabilities, July 2022</u>
Ofc of Special Education & Rehabilitative Svcs Pub	Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions, July 2022 <u>Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions, July 2022</u>
Ofc of Special Education & Rehabilitative Svcs Pub	Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders, July 2022 <u>Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders, July 2022</u>
Office of Administrative Hearings	Parent v. Fairfield-Suisun Unified School District (2012) Case No. 2012030917 <u>Parent v. Fairfield-Suisun Unified School District (2012) Case No. 2012030917</u>
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>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>
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 <u>Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973, July 2022</u>
Website	CSBA District and County Office of Education Legal Services <u>CSBA District and County Office of Education Legal Services</u>
Website	U.S. Department of Education, Office of Special Education and Rehabilitative Services <u>U.S. Department of Education, Office of Special Education and Rehabilitative Services</u>
Website	California Department of Education, Special Education <u>California Department of Education, Special Education</u>
Website	U.S. Department of Education, Office for Civil Rights <u>U.S. Department of Education, Office for Civil Rights</u>

Cross References

Code	Description
0430	Comprehensive Local Plan For Special Education Comprehensive Local Plan For Special Education
0430	Comprehensive Local Plan For Special Education Comprehensive Local Plan For Special Education
0450	Comprehensive Safety Plan Comprehensive Safety Plan
0450	Comprehensive Safety Plan Comprehensive Safety Plan
0460	Local Control And Accountability Plan Local Control And Accountability Plan
0460	Local Control And Accountability Plan Local Control And Accountability Plan
3513.4	Drug And Alcohol Free Schools Drug And Alcohol Free Schools
3541.2	Transportation For Students With Disabilities Transportation For Students With Disabilities
4118	Dismissal/Suspension/Disciplinary Action Dismissal/Suspension/Disciplinary Action
4118	Dismissal/Suspension/Disciplinary Action Dismissal/Suspension/Disciplinary Action
4158	Employee Security Employee Security
4158	Employee Security Employee Security
4258	Employee Security Employee Security
4258	Employee Security Employee Security
4358	Employee Security Employee Security
4358	Employee Security Employee Security
5113.11	Attendance Supervision Attendance Supervision
5116.2	Involuntary Student Transfers Involuntary Student Transfers
5125	Student Records Student Records
5125	Student Records Student Records
5131	Conduct Conduct
5131.2	Bullying Bullying
5131.2	Bullying Bullying
5131.4	Student Disturbances Student Disturbances
5131.4	Student Disturbances Student Disturbances
5131.62	Tobacco Tobacco
5131.62	Tobacco Tobacco
5131.7	Weapons And Dangerous Instruments Weapons And Dangerous Instruments
5131.7	Weapons And Dangerous Instruments Weapons And Dangerous Instruments
5137	Positive School Climate Positive School Climate
5137	Positive School Climate
5138	Conflict Resolution/Peer Mediation Conflict Resolution/Peer Mediation
5144	Discipline Discipline

5144	Discipline Discipline
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5145.2	Freedom Of Speech/Expression Freedom Of Speech/Expression
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5145.9	Hate-Motivated Behavior Hate-Motivated Behavior
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6145	Extracurricular And Cocurricular Activities Extracurricular And Cocurricular Activities
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6159.3	Appointment Of Surrogate Parent For Special Education Students Appointment Of Surrogate Parent For Special Education Students
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6159.4	Behavioral Interventions For Special Education Students Behavioral Interventions For Special Education Students

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