

## FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

**Students****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 County Superintendent or designee may suspend a student with a disability for up to five 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. (Education Code 48903; Education Code 48911; 34 CFR 300.530)

The lead site administrator 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 County Superintendent 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: (34 CFR 300.536)

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 and to progress toward meeting the goals set out in his/her IEP. The student shall also receive, as appropriate, a functional behavioral assessment, and behavior intervention services and modifications, that are designed to address the behavior violation so that it does not recur. (20 USC 1412(a)(1)(A); 34 CFR 300.530)

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If the IEP of a student with a disability requires the County Superintendent to provide the student with transportation, the County Superintendent 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. (Education Code 48915.5)

Notice of Procedural Safeguards

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. 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)

Interim Alternative Educational Placement Due to Dangerous Behavior

The County Superintendent 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. 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. (20 USC 1415(k)(1)(G); 34 CFR 300.531)

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 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

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a change of placement of a student is contemplated due to a violation of the County Superintendent's code of conduct:

1. **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)

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 County Superintendent, the student's parent/guardian, and relevant members of the IEP team (as determined by the County Superintendent 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. Caused by or had a direct and substantial relationship to the student's disability.
- b. A direct result of the County Superintendent's failure to implement the student's IEP, in which case the County Superintendent 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. (20 USC 1415(k)(1)(E); 34 CFR 300.530)

2. **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. (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 County 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)

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3. 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 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. (20 USC 1415(k)(1)(D); 34 CFR 300.530)

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 County Superintendent 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 due process hearing. The County Superintendent may request a hearing if the County Superintendent 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 with the California Office of Administrative Hearings 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 County Superintendent 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 County Superintendent 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 time period specified in 34 CFR 300.530(a) or (g), whichever occurs first, unless the parent/guardian and County Superintendent agree otherwise. (20 USC 1415(k)(4); 34 CFR 300.533)

Notification to Law Enforcement Authorities

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

When giving any required notification concerning a student with disabilities to any law enforcement official, the lead site administrator 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. (Education Code 49076)

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

However, the County Superintendent 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 County Superintendent determined that he/she was not an individual with a disability.

When the County Superintendent 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)

Adopted: undated

Amended: 10/15/2020, 04/20/2023

## Legal Reference

Education Code

35146 Closed sessions re: suspensions

48203 Reports of severance of attendance of disabled students

48900-48925 Suspension and expulsion

49076 Access to student records

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

- 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 Regulation, 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

Management Resources

Federal Register

Rules and Regulations, August 14, 2006, Vol. 71, Number 156, pages 46539-46845

Websites

California Department of Education, Special Education: <http://www.cde.ca.gov/sp/se>

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U.S. Department of Education, Office of Special Education Programs:  
<http://www.ed.gov/about/offices/list/osep>

5144.2, 03/2023; Doc# 123035-2