

TULARE COUNTY/DISTRICT SELPA	POLICY #	7077
STUDENT IDENTIFICATION – RECORDS – SERVICES – MISC. LP	Adopted:	7/11/07
	Revised:	4/24/07

*Suspension and Expulsion/Due Process –
Students with Disabilities*

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.

Procedures for Students Not Yet Eligible for Special Education Services

A student who has not been officially identified as an individual with disabilities pursuant to IDEA and who has violated the district's code of student conduct may assert the procedural safeguards granted under this administrative regulation only if the district had knowledge that the student was disabled before the behavior that precipitated the disciplinary action occurred. (20 USC 1415(k)(5); CFR 300.534)

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)(5); 34 CFR 300.534)

1. The parent/guardian has expressed concern to supervisory or administrative district personnel or to a teacher of the student, in writing, or orally if the parent/guardian does not know how to write or has a disability that prevents a written statement, 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 34 CFR 300.300 – 300.311.
3. The teacher of the student or other district personnel has expressed specific concerns directly to the district's director of special education or to other supervisory district personnel about a pattern of behavior demonstrated by the student.

The district would be deemed to not have knowledge that a student is disabled if the parent/guardian has not allowed the student to be evaluated for special education services or has refused services. In addition, the district would be deemed to not have knowledge if the district conducted an evaluation pursuant to 34 CFR 300.300-300.311 and determined that the student was not an individual with a disability. When the district is deemed to not have knowledge of the 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)

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. (EC 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.

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)

1. The removal is for more than 10 consecutive school days in a school year.
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 20 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 change of placement.

If the removal has been determined to be a change of placement as specified in items #1-2 above, the student's IEP team shall determine the appropriate educational services. (34 CFR 300.530)

Services During Suspension

Students with disabilities suspended for more than 20 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 disabilities is excluded from school bus transportation, the student shall be provided with an alternative form of transportation at no cost to the student or parent/guardian, provided that transportation is specified in the student's IEP. (EC 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)

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 education setting shall be determined by 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 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 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)

Procedural Safeguards/Manifestation Determination

The following procedural safeguards shall apply when a student is suspended for more than 10 consecutive school days or when a series of removals of a student constitutes a pattern, or when a change of placement is contemplated due to a violation of the district's code of conduct.

1. 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)

2. Manifestation Determination Review: Immediately if possible, but in no case later than 10 school days after the date of 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, 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. 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.

If the manifestation review team determines that a condition in either #a or #b 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 behavior 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 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)

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 initiates a due process hearing under 34 CFR 300.532, 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 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

Prior to the suspension or expulsion of any student with a disability, the principal or designee shall notify appropriate city or county law enforcement authorities of any act of assault with a deadly weapon 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 acts by any student with a disability 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 suspension or expulsion of a student with disabilities, the principal or designee shall notify appropriate city or county law enforcement authorities, by telephone or other appropriate means, of any act by the student 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).

Report to County Superintendent of Schools

The Superintendent or designee shall report to the County Superintendent 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)

References:

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*
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*
1365 *Serious bodily injury*

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

300.1-300.18 Assistance to states for the education of students with disabilities, especially

300.530-300.537 Discipline procedures

COURT DECISIONS

Schaffer v. Weast (2005) 125S. Ct. 528

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

FEDERAL REGISTER

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

WEBSITES

California Department of Education: <http://www.cde.ca.gov>

US Department of Education, Office of Special Education and Rehabilitative Services:

<http://www.ed.gov/about/offices/list/osep/index.html>

SELPA PUBLICATIONS

Over the Rainbow Book

Response to Hughes Bill – Positive Behavioral Intervention Program Guidelines

Support for School Staff Dealing with Students with Behavior Problems