

**TULARE COUNTY/DISTRICT SELPA**

**POLICY # 8080**

**STUDENT SERVICES–  
MISC.  
LP**

**Adopted: 7/11/07  
Revised: April 2020**

## ***Suspension and Expulsion Due Process –***

A student with exceptional needs is subject to the same grounds for suspension and expulsion which apply to students without disabilities; unless and until the removals from the educational setting results in a change of placement and it is determined by relevant members of the child's IEP team, including parent/guardian, determine that the behavior in question was a manifestation of the child's disability.

### ***Suspension***

The Superintendent or designee may suspend a student with a disability for up to five (5) consecutive school days for a single incident of misconduct, and for up to twenty (20) school days in a school year. An additional ten (10) days is allowed for reassignment purposes of readjustment. However, when suspending a special education student for more than cumulative ten days, an examination must be made as to whether the removal constitutes a change in placement. The principal or designee shall monitor the number of days, including portions of days in which a student with an 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:

1. The removal is for more than ten (10) consecutive school days in a school year;  
or
2. The student has been subjected to a series of removals that constitute a pattern, defined as
  - a. Removal for a total of more than ten (10) cumulative days; or
  - b. The behavior is substantially similar to the previous incidents that resulted in the series of removals; and
  - c. The removals are close in amount of time and proximity of time.

### ***Services During Suspension***

Students with disabilities suspended for more than ten (10) school days in the same school year shall continue to receive special education and related services as specified on the IEP, during the term of the suspension. The services during suspension are intended to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals as set out in his or her IEP.

### ***Transportation as Suspension***

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.

### ***Procedural Safeguards***

On the date the decision is made to make a removal that constitutes a change in placement because of a violation of the code of conduct, the district shall notify the parents/guardians of the decision and provide the parents with their procedural safeguards.

### ***Manifestation Determination***

In no case later than ten (10) school days after the date of the decision to take disciplinary action is made, a manifestation determination review meeting shall be convened to determine the relationship between the student's disability and the behavior subject to the disciplinary action.

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:

- a. Caused by, or had a direct and substantial relationship to the student's disability; and/or
- b. A direct result of the District's failure to implement the student's IEP.

The manifestation determination team must address both questions, even if the answer to Question (a) is yes.

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. If the District, parent/guardian, and relevant members of the IEP team determine that the conduct in question resulted from the district's failure to implement the student's IEP, the district must take immediate steps to remedy those deficiencies.

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 the District shall implement a positive behavioral intervention plan for the student. If a positive 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.

When the conduct in question was determined to be a manifestation of the student's disability, 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. 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. However, as noted above, as of the eleventh (11<sup>th</sup>) day of removal, the student shall be provided his or her supports and services to enable the student to progress in the general education curriculum and make progress on his or her goals.

### ***Interim Alternative Educational Setting***

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:

1. Carries or possesses a weapon as defined at 18 USC §930(g)(2);
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; or
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. A manifestation determination must be made prior the IEP team reaching a decision to place a child in an interim alternative education setting. The interim alternative educational setting meeting can, but is not required to, immediately follow the manifestation determination meeting.

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. Where 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.

### ***Due Process Appeals***

If the parent/guardian disagrees with any District decision regarding placement under 34 C.F.R. 300.530 (suspension and removal for dangerous circumstances) or 34 C.F.R. 300.531 (interim alternative educational setting), or the manifestation determination under 34 C.F.R. 300.530(e), the parent/guardian may appeal the decision by requesting a due process hearing.

The District may also 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, regardless of whether the behavior was determined to be a manifestation of the child's disability.

Under each circumstance, 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, for the due process hearing shall be scheduled as an expedited due process hearing, without allowances for a continuance.

If the student's parent/guardian or the District initiates a due process hearing under Title 34 C.F.R. 300.532, the student shall remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the 45-day time period, whichever occurs first, unless the parent/guardian and District agree otherwise.

### ***Readmission***

Readmission procedures for students with *exceptional needs* shall be the same as those used for all students. Upon readmission, an IEP team meeting shall be convened.

### ***Suspension of Expulsion***

The District's Board criteria for suspending the enforcement of an expulsion order shall be applied to students with exceptional needs in the same manner as they are applied to all other students.

### ***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.

Within one school day after a suspension or expulsion of a student with exceptional needs, the principal or designee shall notify appropriate city or county law enforcement authorities, by telephone or other appropriate method chosen by the school, 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.

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 sections 626.9 and 626.10.

The principal or principal designee shall report any act specified in Education Code section 48915 (c) (1) or (5), committed by a student or non-student on a school site to the city police or county sheriff with jurisdiction over the school and the school security department or the school police department, as applicable.

To the extent permitted under the federal Family Education Rights Privacy Act, the principal or principal designee reporting a criminal act committed by a school aged student with exceptional needs shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom he or she reports the criminal act.

### ***Report to County Superintendent of Schools***

The Superintendent or designee shall report to the Tulare 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.

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

A student who has not been identified as an individual with *exceptional needs* pursuant to the IDEA and who has violated the District's code of student conduct may assert the procedural safeguards granted under this administrative regulation if the district had knowledge that the student was disabled before the behavior that precipitated the disciplinary action occurred.

The District shall be deemed to have knowledge that the student had a disability if, before the behavior that precipitated the disciplinary action one of the following conditions exists:

1. The parent/guardian 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 requested an evaluation of the student for special education.
3. The teacher of the student or other District personnel 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.

Exceptions:

The District would be deemed to not have knowledge that a student is a child with exceptional needs if any of the following apply:

- The parent/guardian has not allowed the student to be evaluated for special education services;
- The parent/guardian refused special education and/or related services.
- The District conducted an evaluation 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. 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.

**References:**

EC 35146,  
EC 35291,  
EC 48203,  
EC 48900-48925,  
EC 56000  
EC 56320  
EC 56321  
EC 56329  
EC 56340-56347  
EC 56505

Penal Code 245,  
Penal Code 626.2  
Penal Code 626.9  
Penal Code 626.10

Title 34 C.F.R. 104.35,  
Title 34 C.F.R. 104.36  
Title 34 C.F.R. 300.1-300.18  
Title 34 C.F.R. 300.503-300.537

20 U.S.C. 1414, 1  
20 U.S.C. 415

18 U.S.C. 930, 1365

| **8080** – *Suspension and Expulsion\_Due Process*  
7

| 21 U.S.C. 812

| 29 U.S.C. 706, 794