Suspension And Expulsion/Due Process (Students With Disabilities)

This administrative regulation applies only to students with disabilities under the Individuals with Disabilities Act (IDEA). For suspension and expulsion/due process procedures for students with disabilities under Section 504 of the Rehabilitation Act of 1973, please reference AR 6144.4.

A student identified as an individual with disabilities pursuant to the IDEA, 20 USC 1400-1482, is subject to the same grounds for suspension and expulsion which apply to students without disabilities.

(cf. 5144.1 - Suspension and Expulsion/Due Process)
(cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)

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 pursuant to IDEA and who has violated the district's disciplinary procedures may assert the procedural safeguards of the IDEA only if the district had knowledge that the student was a child with a disability before the behavior occurred. (20 USC 1415 (k)(8))

The district shall be deemed to have knowledge that the student is a child with a disability if one of the following conditions exist: (20 USC 1415(k)(8); 34 CFR 300.527)

1. The parent/guardian has expressed concern in writing (or orally if the parent/guardian does not know how to write or has a disability that prevents a written statement) to the district that the student is in need of special education and related services.
2. The behavior or performance of the student demonstrates the need for such services, in accordance with 34 CFR 300.7.
3. The parent/guardian has requested an evaluation of the student for special education pursuant to 34 CFR 300.530-300.536.
   (cf. 6164.4 - Identification of Individuals for Special Education)
4. The teacher of the student (or other district personnel) has expressed concern about the behavior or performance of the student to the district's Director of Special Education or to other personnel in accordance with the district's established child find or special education referral system.

The district would not be deemed to "have knowledge" as specified in items #1-4 above, if, as a result of receiving such information, the district either (1) conducted an evaluation and determined that the student was not a student with a disability, or (2) determined that an evaluation was not necessary and provided notice to the parent/guardian of its determination. (34 CFR 300.527)

If it is determined that the district did not have knowledge that the student was disabled prior to taking disciplinary measures against the student, then the student shall be disciplined in accordance with the same procedures established for students without disabilities who engaged in comparable behaviors. (20 USC 1415(k)(8))

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 education placement determined by school authorities. (34 CFR 300.527)

Suspension

The Superintendent or designee may suspend a student with a disability for up to five school days for a single incident of misconduct, and for up to 20 school days in a school year. If the student is transferred to another school or alternative educational program, the student may be suspended for up to 30 school days in a school year, but still no more than five days for a single incident of misconduct, unless the student is suspended by the Governing Board pursuant to Education Code 48912. (Education Code 48903, 48911)

Services During Suspension

Students suspended for more than 10 school days in a school year shall continue to receive a free and appropriate public education during any subsequent days of removal. (34 CFR 300.520)

Interim Alternative Placement Due to Dangerous Behavior

A student with a disability may be unilaterally placed in an appropriate interim alternative educational setting (IAES) for not more than 45 days, without regard to whether the behavior is a manifestation of the student’s disability, when he/she 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))

1. Carries 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 under 21 USC 812(c), Schedules I-V
4. Inflicts serious bodily injury upon another person defined in 18 USC 1365

The student's IAES shall be determined by the student's individualized educational program (IEP) team. (20 UCS 1415(k)(2); 34 CFR 300.530)

A hearing officer may order a change in placement of a student with a disability to an IAES if the hearing officer; (20 USC 1415 (k)(2))

1. Determines that the district has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or others.
2. Considers the appropriateness of the student's current placement.
3. Considers whether the district has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services.
4. Determines that the interim alternative educational setting enables the student to participate in general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP and include services and modifications designed to address the behavior so it does not recur.

The student may not be placed in the IAES for more than 45 days, or until the conclusion of any due process hearing proceedings requested by the parent/guardian. (20 USC 1415)
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 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)

Procedural Safeguards/Manifestation Determination

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

1. The parents/guardians of the student shall be immediately notified of the decision and provided notice of all procedural safeguards on the day the decision to take action is made. (20 USC 1415(k)(1)(H); 34 CFR 300.530)
2. Immediately if possible, but in no case later than 10 school days after the date of the decision, a manifestation determination review must be conducted of the relationship between the student's disability and the behavior subject to the disciplinary action by the IEP team and other qualified personnel. (20 USC 1415(k)(1)(E); 34 CFR 300.530)

At this review, the IEP team and other qualified personnel may determine that the behavior of the student was not a manifestation of the child's disability only if the IEP team considers, in terms of the behavior subject to the disciplinary action, all relevant information, including; (USC 1415 (k)(1)(E); 34 CFR 300.530)

   i Evaluation and diagnostic results, including the results or other relevant information supplied by the student's parents/guardians;
   ii Observations of the student;
   iii The student's IEP and placement;
   iv All relevant information in the student’s record.

After considering this information, the IEP team shall then determine whether the conduct in question was either of the following: (20 USC 1415 (k)(1)(E); 34 CFR 300.530)

   1. Caused by or had a direct and substantial relationship to the student's disability
   2. 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 determination IEP 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)

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)

If the IEP team determines that the student's behavior was not a manifestation of his/her disability, then 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)

If the IEP team determines that the student's behavior was a manifestation of his/her disability, then the student's placement may only be changed via the IEP team process. (20 USC 1415(k)(1)(F); 34 CFR 300.530)

Notification to Law Enforcement Authorities

Prior to the suspension or expulsion of any student, the principal or designee shall notify appropriate city or county law enforcement authorities of any student acts 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 any student acts 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)

Due Process Appeals

If the parent/guardian disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement, he/she may appeal the decision by requesting a due process hearing. (20 USC 1415 (k)(3)).

If the student's parent/guardian initiates a due process hearing to challenge the IAES or manifestation determination, the student shall remain in the alternative educational setting pending the decision of the hearing officer or expiration of the 45-day time limit, whichever occurs first, unless the parent/guardian and district agree otherwise.

Services During Expulsion

During the term of the expulsion, a student with a disability shall continue to be offered a program of free and appropriate public education. Such services may include independent study, home instruction, or another appropriate alternative program.

(cf. 6158 - Independent Study)
(cf. 6183 - Home and Hospital Instruction)
The alternative program must provide services to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP. (34 CFR 300.121)

Readmission

Readmission procedures for students with disabilities shall be the same as those used for all students. The Superintendent or designee may consider the input of the student's IEP team when developing recommendations to the Board regarding a request for readmission. Upon readmission, and IEP team meeting shall be convened to determine whether a new IEP needs to be established.

Suspension of Expulsion

The 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 "general education" students. (Education Code 48917)

Fresno Unified School District does not harass, intimidate, or discriminate on the basis of race, color, ethnicity, national origin, ancestry, age, creed, religion, political affiliation, gender, gender identity or expression or genetic information, mental or physical disability, sex, sexual orientation, parental or marital status, military veteran status, or any other basis protected by law or regulation, in its educational program(s) or employment.

Legal Reference:

EDUCATION CODE
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 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
300.1-300.756 Assistance to states for the education of students with disabilities
300.530-300.537 Discipline procedures

COURT DECISIONS
Parents of Student W. v. Puyallup School District, (1994 9th Cir.) 31 F.3d 1489

Management Resources:

WEB SITES
CDE: http://www.cde.ca.gov
USDOE: http://www.ed.gov

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