

Series 5000 – STUDENTS

Policy 5144.2

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.

Suspension

The County 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. (Education Code [E.C.] § 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 Solano County Office of Education (SCOE) shall determine, on a case-by-case basis, whether a pattern of removals of a student from the 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.
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 the student's 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 the student's 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

Any student suspended for more than 10 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 the student's IEP. (20 USC 1412(a)(1)(A); 34 CFR 300.530)

If a student with a disability is excluded from school bus transportation, the student shall be provided with an alternative form of transportation at no cost to the student or the student's parent/guardian, provided that transportation is specified in the student's IEP. (E.C. § 48915.5)

Interim Alternative Educational Placement Due to Dangerous Behavior

SCOE 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 the IEP team.

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.

Manifestation Determination

The following procedural safeguards shall apply when a student is suspended for more than 10 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 SCOE'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 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, pertinent SCOE staff members, the student's parent/guardian, and relevant members of the IEP team (as determined by SCOE 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
- b. A direct result of SCOE's failure to implement the student's IEP, in which case SCOE 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 student's conduct shall then be determined to be a manifestation of the student's disability.

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)

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The student shall be returned to the placement from which they were removed, unless the parent/guardian and SCOE agree to a change of placement as part of the modification of the behavioral intervention plan.

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 the student's 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 them to progress toward meeting the goals set out in the 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.

Due Process Appeals

If the parent/guardian disagrees with any SCOE 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), they may appeal the decision by requesting a hearing. SCOE may request a hearing if it 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).

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 SCOE 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 SCOE 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 students without disabilities. Upon readmission, an IEP team meeting shall be convened.

Notification to Law Enforcement Authorities

Law enforcement notification requirements involving students with disabilities shall be the same as those specified for all students in policy 5144.1 - Suspension and Expulsion/Due Process.

Procedures for Students Not Yet Eligible for Special Education Services

A student who has not been officially identified as a student with a disability pursuant to IDEA and who has engaged in behavior that violated SCOE's code of student conduct may assert any of the protections under IDEA only if SCOE had knowledge that the student is disabled before the behavior that precipitated the disciplinary action occurred.

SCOE shall be deemed to have knowledge that the student has a disability if one of the following conditions exists:

1. The parent/guardian has expressed concern to SCOE supervisory or administrative personnel in writing, or to a teacher of the student, that the student is in need of special education or related services.

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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 SCOE personnel has expressed specific concerns directly to SCOE's director of special education or to other SCOE supervisory personnel about a pattern of behavior demonstrated by the student.

SCOE 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, SCOE would be deemed to not have knowledge if it conducted an evaluation pursuant to 34 CFR 300.300-300.311 and determined that the student was not an individual with a disability. When SCOE 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 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.

Legal Reference:

EDUCATION CODE

- 35146 Closed sessions (re suspensions)
- 35291 Rules (for government and discipline of schools)
- 48203 Reports of severance of attendance of disabled students
- 48900-48927 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 of 1995
- 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

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Legal Reference: *(Continued)*

CODE OF FEDERAL REGULATIONS, 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) 125 S. 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) 858 F.Supp.
1044

Honig v. Doe, (1988) 484 U.S. 305

Policy Cross-Reference:

3541.2 Transportation for Students with Disabilities

5131.7 Weapons and Dangerous Instruments

5144.1 Suspension and Expulsion/Due Process

5145.6 Parental Notifications

6158 Independent Study

6159 Individualized Education Program

6159.1 Procedural Safeguards and Complaints for Special Education

6159.4 Behavioral Interventions for Special Education Students

6164.4 Identification and Evaluation of Individuals for Special Education

6185 Community Day School