

# **Mt. Diablo Unified School District**

## **Administrative Regulation**

### **Suspension and Expulsion/Due Process (Students with Disabilities)**

#### **AR 5144.2** **Students**

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.

(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 identified as an individual with disabilities pursuant to IDEA and who has violated the district's disciplinary procedures may assert the procedural safeguards granted under this administrative regulation only if the district had knowledge that the student was disabled before the behavior occurred. (20 USC 1415(k)(8))

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)(8); ~~(5); 34 CFR 300.527-534~~

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, that the student is in need of special education or 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~~; 300-300.311

(cf. ~~6164.4 - Identification of Individuals for Special Education~~) and Evaluation 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~~ Administrator or to other personnel in accordance with the district's established child find or special education referral system.

A 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, then the student shall be disciplined in accordance with procedures established for students without disabilities. (20 USC 1415(k)(8)) 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, 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. (34 CFR 300.527) (20 USC 1415K (5); 34 CRF 300.534)

### Suspension

The 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. 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)

The principal or designee shall monitor the number of days, including portions of days, students with a valid individualized education program (IEP) have been suspended during the school year. (CF 6159- Individual Education Program)

If the student poses an immediate threat to the safety of himself/herself or others, the Superintendent or designee may suspend the student for up to, but not more than, 10 consecutive school days if the student's parent/guardian agrees or a court order so provides. (Education Code 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 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) (34 CFR 300.520)

### Interim Alternative Placement Due to Dangerous Behavior

A student with a disability may be placed in an appropriate interim alternative educational setting when he/she commits one of the following acts: (20 USC 1415(k)(1))

1. Carries a weapon, as defined in 18 USC 930, to school or to a school function
2. Knowingly possesses or uses illegal drugs while at school or a school function
3. Sells or solicits the sale of a controlled substance while at school or a school function
4. Inflicts serious bodily injury upon another person as defined in 18USC 1365.

A hearing officer may order a change in placement of a student with a disability to an appropriate interim educational setting if the hearing officer: (20 USC 1415(k)(2))

1. Determines that the district has established 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 allows the student to participate in general curriculum, to continue to receive IEP services and to receive services designed to ensure that the behavior does not recur

The student may be placed in the interim alternative educational setting for up to 45 days, or until the conclusion of any due process hearing proceedings requested by the parent/guardian. (20 USC 1415(k)(2))

The student's alternative educational setting shall be determined by the student's IEP team. (20 USC 1415(k)(2))

(cf. 6159 - Individualized Education Program)

### Manifestation Determination

#### Procedural Safeguards/Manifestation Determination

~~Either before or not later than 10 business days after a student has been suspended for more than 10 school days or placed in an alternative educational setting, the district shall convene an IEP team meeting to conduct a functional behavior assessment and implement a behavioral intervention plan. If the student already has a behavioral intervention plan, the IEP team shall rev~~

The following procedural safeguards 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 a change of placement of a student 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)

(cf. 5145.6 - Parental Notifications)

(cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)

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, the district, the 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 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 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)

(cf. 6159.4 - Behavioral Interventions for Special Education Students)

As soon as practicable after developing the behavioral intervention plan and completing the required assessments, the IEP team shall meet to develop appropriate behavioral interventions to address the behavior and shall implement those interventions. (34 CFR 300.520)

If a student with disabilities who has a functional behavioral plan is subject to a removal for more than 10 school days in a school year that does not constitute a change in placement, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. (34 CFR 300.520)

The following procedural safeguards shall apply when a student is suspended for more than 10 school days, when disciplinary action is contemplated for a dangerous behavior as described above, or when a change of placement of more than 10 school days is contemplated: (20 USC 1415(k)(4); 34 CFR 300.523)

1. The parents/guardians of the student shall be immediately notified of the decision and provided all procedural safeguards on the day the decision to take action is made.
2. Immediately if possible, but in no case later than 10 school days after the date of the decision, a manifestation determination shall be made of the relationship between the student's disability and the behavior subject to the disciplinary action by the IEP team and other qualified personnel.

At this hearing, the IEP team and other qualified personnel shall consider, in terms of the behavior subject to the disciplinary action, all relevant information, including: (20 USC 1415(k)(4); 34 CFR 300.523)

- a. Evaluation and diagnostic results, including the results or other relevant information supplied by the student's parents/guardians
- b. Observations of the student
- c. The student's IEP and placement

In relationship to the behavior subject to the disciplinary action, the team shall then determine whether the IEP and placement were appropriate and whether supplementary aids, services, and behavioral interventions were provided. The team shall also determine that the student's disability did not impair the ability of the student to understand the impact and consequences of the behavior, nor did it impair his/her ability to control the behavior subject to the disciplinary action. (20 USC 1415(k)(4); 34 CFR 300.523)

If the 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. (20 USC 1415(k)(4))

If the 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)(4))

#### Pre-Expulsion Assessment and Meeting

1. The parent/guardian shall receive written notice of the district's intent to conduct the pre-expulsion assessment and shall make the student available for the assessment without delay at a

site designated by the district. The parent/guardian shall also have the right to an independent assessment as provided in Education Code 56329. (Education Code 48915.5)

2. The pre-expulsion assessment shall be conducted in accordance with the guidelines of 34 CFR 104.35, which shall include a review of the student's placement at the time of the alleged misconduct and a determination of the relationship, if any, between the student's behavior and his/her disability. (Education Code 48915.5)

3. The IEP team shall meet to determine if an expulsion hearing is appropriate. This meeting shall be held at a time and place mutually convenient to the parent/guardian and district within the period, if any, of the student's pre-expulsion suspension. The parent/guardian's participation may be made through actual participation, representation, or a telephone conference call. (Education Code 48915.5)

4. The parent/guardian shall be notified of his/her right to participate in the meeting at least 48 hours before the meeting. This notice shall specify: (Education Code 48915.5)

a. That the meeting may be held without the parent/guardian's participation unless he/she requests a postponement for up to three additional school days

b. That the suspension will be continued during the postponement if the student continues to pose an immediate threat to the safety of himself/herself or others

In order to make a record of its attempts to arrange the meeting at a mutually convenient time and place, the district shall keep documentation such as: (34 CFR 300.345)

a. Detailed records of telephone calls made or attempted, and the results of those calls

b. Copies of correspondence sent to parents/guardians and any responses received

c. Detailed records of visits made to the parent/guardian's home or place of employment, and the results of those visits

5. The district shall grant a parent/guardian's request that the meeting be postponed for up to three additional school days and may extend a student's suspension for the period of postponement if he/she continues to pose an immediate threat to the safety of himself/herself or others. However, the suspension shall not be extended beyond 10 consecutive school days unless agreed to by the parent/guardian or required by court order. If the parent/guardian refuses to consent to an extension beyond 10 consecutive school days and chooses not to participate, the meeting may be conducted without the parent/guardian's participation. (Education Code 48915.5)

6. The IEP team shall consider the pre-expulsion assessment results and shall also review and consider the student's health records and school discipline records. (Education Code 48915.5)

7. If the IEP team determines that the alleged misconduct was caused by, or was a direct manifestation of, the student's disability or that the student was not appropriately placed, the expulsion shall not proceed. (Education Code 48915.5)

8. If the IEP team determines that the alleged misconduct was not caused by, or a direct manifestation of, the student's disability, and if it is determined that the student was appropriately placed, the student shall be subject to expulsion in accordance with procedures that apply to all students. (Education Code 48915.5)

9. When expulsion is ordered, the Board shall recommend a rehabilitation plan for the student. (Education Code 48916)

#### 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 of assault 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)

Within one school day after a student's suspension or expulsion, the principal or designee shall notify appropriate city or county law enforcement authorities, by telephone or other appropriate means, of any student acts 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)

#### Due Process Appeals

~~If the parent/guardian disagrees with a decision that the behavior was not a manifestation of the student's disability or with any decision regarding placement, he/she has a right to appeal the decision. (20 USC 1415(k)(6))~~

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)

The expulsion hearing shall not be conducted, and the 30-day expulsion proceedings time limit shall not commence, until after completion of the:

1. Pre-expulsion assessment and the manifestation determination (Education Code 48915.5; 20 USC 1415(k))
2. IEP team meeting (Education Code 48915.5)
3. Due process hearings and appeals, if initiated (Education Code 48915.5)

The Board may expel a student with disability only if an IEP team has determined that the misconduct was not caused by, or a direct manifestation of, the student's identified disability, and the student was appropriately placed at the time the misconduct occurred. (Education Code 48915.5)

#### 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. 6185 - Community Day School)

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, an 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 all other students. (Education Code 48917)

#### Legal Reference:

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 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

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) U.S. Dist. Ct., S.D. Cal. 858 F.Supp. 1044

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

Doe v. Maher, (1986) 793 F.2d 1470

Rock Island School District #41, IDELR 353:364

San Juan Unified School District, 20 IDELR 549

Management Resources:

FEDERAL REGISTER

34 CFR 300.a Appendix A to Part 300 - Questions and Answers

34 CFR 300a1 Attachment 1: Analysis of Comments and Changes

WEB SITES

CDE: <http://www.cde.ca.gov>

USDE: <http://www.ed.gov>

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

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

Regulation MT. DIABLO UNIFIED SCHOOL DISTRICT

approved: December 10, 2002 Concord, California