

SUSPENSION AND EXPULSION/DUE PROCESS (STUDENTS WITH DISABILITIES) UNDER SECTION 504 (ONLY)

Suspension

A student identified as an individual with disabilities pursuant to Section 504 of the federal Rehabilitation Act of 1973 is subject to the same grounds for suspension and expulsion which apply to non-disabled students.

(cf. 5144.1 - Suspension and Expulsion/Due Process)

(cf. 6159.1 - Procedural Safeguards and Complaints for Section 504)

When a school district proposes to sanction the misconduct of a disabled student by expulsion, or long term suspension, or a change in placement to an interim alternative educational setting, it must determine if the student's misconduct was caused by the student's disability under Section 504.

The determination as to the relationship between misconduct and disability is known as "Manifestation Determination". It is a determination of the relationship between the student's disability and the behavior subject to the disciplinary action.

(Reference Visalia Unified School District Manifestation Determination Addendum-Section 504)

For students who are protected under Section 504 of the ADA and are not protected under IDEA:

Section 512(a) of the ADA permits school districts to discipline students with disabilities for the use or possession of illegal drugs or alcohol to the same extent as nondisabled students and without the due process protections of Section 504, as long as the student is currently using such substances. However, if a disabled student is not a current user, then the protections of the law apply.

The Superintendent or designee may suspend a student with a disability for incident(s) of misconduct for a maximum of 10 school days per school year without educational services. (See Honig v. Doe, 1987/88 EHLR 559:231 (1988))

SUSPENSION AND EXPULSION/DUE PROCESS (STUDENTS WITH DISABILITIES) UNDER SECTION 504 (ONLY) (continued)

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. In the case of a dangerous child, a suspension may exceed 10 consecutive school days, and/or the student's placement may be changed, if the parent/guardian so agrees or if a court order so provides. (Education Code 48911)

A student identified as disabled under the Section 504 and the ADA who possess at school or at a school activity a weapon as defined in the United States Code, Title 18, Section 921, shall be immediately suspended. The 504 Team reconvenes completing a Manifestation

Determination which determines student's eligibility for the Expulsion Process and/or an alternative education setting.

When a student identified as disabled under Section 504 and ADA is removed for over 10 schools days in a given school year, LEA must, within 10 business days of decision to impose the discipline, conduct a functional behavioral assessment and implement a behavior intervention plan as developed by the 504 Team AND must conduct a manifestation determination with the parents' participation. Based on its findings, the 504 Team shall determine whether to initiate alternatives to suspensions, a change in placement, or other changes to the student's 504 Accommodation Plan.

Expulsion

When a student with a disability violates the Code of Conduct, the site administrative panel shall notify the parents/guardians of their intent to go forth with the Expulsion Process. Within 10 days of the administrative panel's decision, a pre expulsion assessment is conducted and a Manifestation Determination Meeting held to determine if the student is eligible for the Expulsion Process.

Procedures and timelines governing the expulsion of students with disabilities eligible for the Expulsion Process shall be the same as non-disabled students.

**SUSPENSION AND EXPULSION/DUE PROCESS (STUDENTS WITH
DISABILITIES) UNDER SECTION 504 (ONLY)(continued)**

**Pre-Expulsion Assessment and Manifestation Determination
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 the Code of Federal Regulations, Title 34, Section 104.35, which shall include but not be limited to: (Education Code 48915.5)
 - a. A review and consideration of the student's health records
 - b. School discipline records
 - c. Evaluations and diagnostic results
 - d. Observations of the student
 - e. Information provided by student's parent/guardians(s)
 - f. Review of student's 504 Accommodation Plan
 - g. Student's educational placement at the time of the alleged misconduct and a determination of relationship if any between the student's behavior and his/her disabilities (Education Code 48915.5)
3. The 504 Team shall hold a Manifestation Determination Meeting 10 days from the day the parent/guardian was notified of the administrative panel's recommendation. The Manifestation Determination Meeting shall be held at a time and place mutually convenient to the parent/guardian and district. The parent/guardian's participation may be made through actual participation, representation, or a telephone conference call. (Education Code 48915.5)

**SUSPENSION AND EXPULSION/DUE PROCESS (STUDENTS WITH
DISABILITIES) UNDER SECTION 504 (ONLY) (continued)**

4. The parent/guardian shall be notified of his/her right to participate in the Manifestation Determination 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, and
 - 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: (Code of Federal Regulations, Title 34, Part 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 Manifestation Determination 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, hearing officer, or court order. If the parent/guardian refuses to consent to an extension beyond 10 consecutive school days and chooses not

SUSPENSION AND EXPULSION/DUE PROCESS (STUDENTS WITH DISABILITIES) UNDER SECTION 504 (ONLY)(continued)

to participate, the Manifestation Determination Meeting may be conducted without the parent/guardian's participation. (Education Code 48915.5)

At the Manifestation Determination Meeting, the 504 Team determines: (Education Code 48915.5)

- a. If the misconduct **was/was not** a direct manifestation of the student's identified disability.
- b. The Individualized 504 Accommodation Plan **was/was not** in place and **implemented** to ensure the student receives a free appropriate public education at the time of the alleged misconduct.

If the Manifestation Determination Meeting concludes the student is **eligible** for the Expulsion Process, the student shall be subject to the Expulsion Process in accordance with procedures that apply to all students. (Education Code 48915.5)

If the Manifestation Determination Meeting concludes the student is **not eligible** for the Expulsion Process, the Expulsion Process shall not proceed. (Education Code 48915.5)

When expulsion is recommended, the 504 Team should also recommend a potential rehabilitation plan for the student, if appropriate.

Due Process and Expulsion Hearings

If the parent/guardian disagrees with the decision of the 504 Team, he/she has a right to a due process hearing conducted pursuant to United States Code, Title 20, Section 1415 or the Code of Federal Regulations, Title 34, Section 104.36. (Education Code 48915.5)

**SUSPENSION AND EXPULSION/DUE PROCESS (STUDENTS WITH
DISABILITIES) UNDER SECTION 504 (ONLY) (continued)**

Services During Long Term Suspensions/Expulsion

For a student covered under Section 504 and the ADA, OCR permits school districts to cease educational services during periods of exclusion from school that exceed 10 days, if nondisabled students in similar circumstances do not continue to receive educational services. OCR memorandum, EHLR 307:05 (OCR 1988). OCR interprets the ADA as consistent with Section 504.

The Board shall consider the recommendations of the 504 Team when developing a rehabilitation plan for an expelled student with a disability.

Readmission

Readmission procedures for students with disabilities shall parallel those used for all students. The Superintendent or designee may consider the input of the student's 504 Team when developing recommendations to the Board regarding a request for readmission. Upon readmission, a 504 Team meeting shall be convened to determine changes to the 504 Accommodation Plan.

Suspension of Expulsion

The Board's criteria for suspending the enforcement of an expulsion order shall be applied to students with disabilities just as they are applied to non-disabled students. (Education Code 48917)

Legal Reference: (see next page)

**SUSPENSION AND EXPULSION/DUE PROCESS (STUDENTS WITH
DISABILITIES) UNDER SECTION 504 (ONLY) (continued)**

Legal Reference:

EDUCATION CODE

35146 Closed sessions (re suspensions)
35291 Rules (of governing board)
48900-48925 Suspension and expulsion
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

626.2 Unauthorized entry on campus after written notice of suspension
or dismissal

UNITED STATES CODE, TITLE 18

921 Firearms; definitions

UNITED STATES CODE, TITLE 20

1415 Procedural Safeguards

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

300.345 Parent participation

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

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

Parents of Student W. v. Puvallup 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

Rock Island School District #41, IDELR 353:364

San Juan Unified School District, 20 IDELR 549

Management Resources:

CDE LEGAL ADVISORIES

0123.91 Clarification of Education Code Amendments, L0: 1-91

0623.89 Suspension and Expulsion of Handicapped Pupils, L0: 3-89

CDE PROGRAM ADVISORY

0122.90 Suspension and Expulsion Procedures for Individuals with
Exceptional Needs, SPB:89/90-9

EHLR 559:231 (1988) Honig v. Doe

IDEA amended 1415 (k)(4)(A) Suspensions/Expulsions of Students with
Disability/Individuals with Disabilities Education Act amended 6/4/97

IDEA amended 1415 (k)(4)(A)(ii) Manifestation Determination/Expulsions
of Student with Disability

IDEA amended 1415 (k)(2) Alternative Educational Placement

Section 512(a) of the ADA-OCR Amendment

Regulation

approved: February 23, 1999

VISALIA UNIFIED SCHOOL DISTRICT

Visalia, California