

WESTMORLAND UNION ELEMENTARY SCHOOL DISTRICT

**Board Policy No. 5014: SUSPENSION OR EXPULSION OF PUPILS WITH
EXCEPTIONAL NEEDS**

- A. It is the intent of the Board that its policies and regulations be consistent with current law. Any part of this Policy which is not consistent with current law is void. This Policy shall apply to pupils with previously identified exceptional needs. Except as specified herein, such students shall, with respect to all other requirements contained in Board Policy 5013, be treated the same as pupils without previously identified exceptional needs. Suspension or expulsion of pupils with exceptional needs shall be in accordance with subsection (k) of Section 1415 of Title 20 of the United States Code, the discipline provisions contained in Sections 300-519 through 300.529 of Title 34 of the Code of Federal Regulations and those provisions of the Education Code which do not conflict with Federal law.
- B. For the purposes of this Policy, a “pupil with previously identified exceptional needs” means a pupil who meets the requirements of Education Code section 56026 and who, at the time the alleged misconduct occurred, was enrolled in a special education program.
- C. The Superintendent or designee may expel or suspend a pupil with previously identified exceptional needs from school for any of the reasons enumerated in Board Policy 5013 for not more than 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 not more than 5 consecutive school days for a single incident of misconduct unless the student is suspended by the Board pursuant to Education Code section 48912. However, a pupil with exceptional needs may be suspended for up to, but not more than, 10 consecutive school days if such pupil poses an immediate threat to the safety of himself or herself or to others. In the case of a truly dangerous pupil with exceptional needs, a suspension may exceed ten consecutive school days, or the pupil's placement may be changed, or both, if either the pupil's parent or legal guardian agrees or a court order so provides. Such pupils shall continue to receive a free and appropriate public education during the term of the suspension.
- D. The Board may order the expulsion of a pupil with previously identified exceptional needs pursuant to Education Code section 48915(b) or (d) consistent with current law only if all of the following conditions are met:
1. An individualized education program team meeting is held and conducted pursuant to Education Code sections 56340 *et seq.*;
 2. The team determines that the misconduct was not caused by, or was not a direct

manifestation of, the pupil's identified disability;

3. The team determines that the pupil was appropriately placed at the time the misconduct occurred;
- E. The parent of each pupil with previously identified exceptional needs has the right to participate in the individualized education program team meeting preceding the commencement of expulsion proceedings, following the completion of a pre-expulsion assessment, through actual participation, representation, or a telephone conference call. The meeting shall be held at a time and place mutually convenient to the parent and the District within the period, if any, of the pupil's pre-expulsion suspension. A telephone conference call may be substituted for the meeting.
 - F. Each parent or guardian shall be notified of his or her right to participate in the meeting identified in paragraph D above at least 48 hours prior to the meeting. Unless a parent has requested a postponement, the meeting may be conducted without the parent's participation if the notice has been provided. The notice shall specify that the meeting may be held without the parent's participation, unless the parent requests a postponement for up to 3 additional schooldays. Each parent may request that the meeting be postponed for up to 3 additional school days. If a postponement has been granted, the District may extend any suspension of a pupil for the period of the postponement if the pupil continues to pose an immediate threat to the safety of himself, herself or others, and the District notifies the parent that the suspension will be continued during the postponement. However, the suspension shall not be extended beyond ten consecutive school days unless agreed to by the parent, or by a court order. If a parent who has received proper notice of the meeting refuses to consent to an extension beyond 10 consecutive schooldays and chooses not to participate, the meeting may be conducted without the parent's consent.
 - G. In determining whether a pupil should be expelled, the individualized education program team shall base its decision on the results of a pre-expulsion educational assessment conducted in accordance with Title 34 C.F.R. section 104.35 which shall include a review of the appropriateness of the pupil's placement at the time of the alleged misconduct, and a determination of the relationship, if any, between the pupil's behavior and his or her disability. In addition, the team shall also review and consider the pupil's health records and school discipline records. The District shall provide written notice to the parent of its intent to conduct a pre-expulsion assessment. The parent shall make the pupil available for the assessment at a site designated by the District.
 - H. If the individualized education program team determines that the alleged misconduct was not caused by, or a direct manifestation of, the pupil's disability, and if it is determined that the pupil was appropriately placed, the pupil shall be subject to the same disciplinary actions and procedures applied to other pupils who are not disabled.

- I. The parent of each pupil with previously identified exceptional needs has the right to a due process hearing if the parent disagrees with the decision of the team or if the parent disagrees with the decision to rely upon information obtained, or proposed to be obtained for the pre-expulsion assessment.
- J. No expulsion hearing shall be conducted for an individual with previously identified exceptional needs until all of the following have occurred:
1. A pre-expulsion assessment is conducted.
 2. The individualized education program team meets.
 3. Due process hearings and appeals, if initiated, are completed.
- K. The statutory times prescribed for expulsion proceedings for individuals with previously identified exceptional needs shall commence after the completion of the requirements contained in Section I above.
- L. If an individual with previously identified needs is excluded from school bus transportation, the pupil is entitled to be provided with an alternative form of transportation at not cost to the pupil or parent provided that transportation is specified in the pupil's individualized education program.
- M. When any pupil with previously identified exceptional needs engages in conduct that would warrant suspension for more than 10 days or expulsion for any pupil, there must be a pre-expulsion educational assessment before any determination is made that the pupil should be suspended for more than 10 days or expelled. The pre-expulsion educational assessment shall be conducted in accordance with the guidelines of Section 104.35 of Title 34 of the Code of Federal Regulations, and shall include a review of the appropriateness of the pupil's placement at the time of the alleged misconduct.
- N. When any pupil with previously identified exceptional needs engages in conduct that would warrant suspension for more than 10 days or expulsion, each of the pupil's parents or guardian shall be notified of their right(s) to participate in an IEP team meeting at least forty-eight hours prior to the meeting. Unless a parent or guardian has requested a postponement, the meeting may be conducted without the parent's participation if the notice has been provided. The notice shall specify that the meeting may be held without the parent's participation unless the parent requests a postponement for up to three additional schooldays. If a postponement is granted the District may extend any suspension of a pupil for the period of postponement if the pupil continues to pose an immediate threat to the safety of himself, herself, or others and the District notifies the parent that the suspension will be continued during the postponement. The suspension shall not be extended beyond 10 consecutive school days unless agreed to by the parent,

or by a court order. If a parent who has received proper notice of the meeting refuses to consent to an extension beyond 10 consecutive schooldays and chooses not to participate, the meeting may be conducted without the parent's participation. Parents will also be informed that the IEP team may recommend expulsion as a result of this meeting, and the right to have a representative present at the meeting. Parental participation may be through actual participation, representation or a conference call. A pupil with exceptional needs may be suspended for ten days or less in a school year, without the suspension constituting a change in placement.

- O. In reaching its decision about any proposed suspension for more than ten days or an expulsion, the IEP team shall base its decision on results of a pre-expulsion educational assessment conducted in accordance with the guidelines of Section 104.35 of Title 34 of the Code of Federal Regulations. In addition, it may base its decision on relevant information that has been acquired within three (3) years of the date of the alleged misconduct.

Relevant information shall include all of the following:

1. A review of the pupil's school progress and behavior, if available, including, but not limited to, a review of the pupil's individualized education program, teacher progress reports and comments, school health records, and school discipline records.
 2. A review of the ability of the pupil to conform his/her behavior to the prescribed standards, and a determination of the relationship, if any, between the pupil's behavior and his/her disability.
- P. If the IEP team concludes that the misconduct was not caused by or was not a direct manifestation of the pupil's disability and that the pupil was appropriately placed, the pupil may be disciplined under the District's procedures for other pupils. The parents or guardian shall be informed of all procedural and due process rights, including the right to a due process hearing if the parent disagrees with the decision to rely upon information obtained.
 - Q. If the pupil's misconduct was caused by or was a direct manifestation of his or her disability and maintaining the pupil in his or her current placement is substantially likely to result in injury either to the pupil or to others, the Superintendent, pursuant to applicable federal laws, may seek an order from a court of competent jurisdiction to expel the pupil or suspend the pupil for more than ten days.
 - R. The statutory times and those contained in Board Policy 5013 prescribed for expulsion proceedings shall commence after the completion of the pre-expulsion assessment, the IEP team meeting and all due process hearings and appeals available under federal law.

- S. The term "pupil with previously identified exceptional needs" means a pupil who meets the requirements of Section 56926 of the Education Code and who, at the time the alleged misconduct occurred, was enrolled in a special education program, including enrollment in nonpublic schools pursuant to Section 56365 of the Education Code and state special schools.
- T. An expulsion hearing may be conducted if a pre-expulsion assessment has been conducted, an IEP meeting has been held, the 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, and due process hearings and appeals have been completed if initiated pursuant to 20 U.S.C. section 1415.
- U. The restrictions and special procedures provided above for the expulsion of a pupil with previously identified exceptional needs shall not apply when the pupil possessed a firearm, knife, explosive or other dangerous object of no reasonable use to the pupil, or the pupil committed or attempted to commit a sexual assault or committed sexual battery, at school or at a school activity off school grounds, unless for these acts the procedures in section A through T above are mandated under federal law.
- V. Interim Alternative Placement

A student with a disability may be placed by the pupil's IEP team in an appropriate interim alternative educational setting when he/she commits one of the following acts:

1. Carries a weapon as defined in 18 U.S.C. 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

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:

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 pupil or others.
2. Considers the appropriateness of the pupil's current placement.
3. Considers whether the District has made reasonable efforts to minimize the risk of

harm in the pupil's current placement, including the use of supplementary aids and services.

4. Determines that the interim alternative educational setting allows the pupil to participate in the general curriculum, to continue to receive IEP services and to receive services designed to ensure that the behavior does not recur.

A 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 or guardian.

W. A student who has not been identified as an individual with disabilities may assert the procedural safeguards under this Policy only if the District had knowledge that the student was disabled before the behavior occurred. The District shall be presumed to have knowledge if one of the following conditions exists.

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 pupil demonstrates the need for such services in accordance with 34 C.F.R. section 300.7.
3. The parent/guardian has requested an evaluation of the student for special education pursuant to 34 C.F.R. 300.530-300.536.
4. The teacher of the student or other District personnel has expressed concern about the behavior or performance of the student to District administration in accordance with the District's established child find or special education referral system.

The District is not 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. If it is determined that the District did not have knowledge that the pupil was disabled, the pupil shall be disciplined in accordance with the procedures contained in Board Policy 5013.

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 the District.

- X. If the parent/guardian disagrees with a decision that the behavior was not a manifestation of the pupil's disability or with any decision regarding placement, he/she has the right to appeal that decision. The expulsion hearing shall not be conducted, and the 30-day expulsion proceedings time limit shall not commence until completion of the:
1. Pe-expulsion assessment and the manifest determination
 2. IEP team meeting
 3. Due process hearings and appeal, if initiated, have been completed.

Legal Reference:

Education Code section 48911, 48903, 48915.5, 56329
Title 34 Code of Federal Regulation sections 104.35, 300.7,
300.121, 300.545, 300.520, 300.527, 300.527, 300.530-300.537 6
20 U.S.C. section 1415

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