

# Discipline

## AUTHORITY OF SCHOOL PERSONNEL

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Model operating procedures created by



Student Solutions

and

**Thompson  
& Horton** LLP  
ATTORNEYS | COUNSELORS

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## **AUTHORITY OF SCHOOL PERSONNEL**

### **What is Required**

Under the IDEA, a student with a disability is entitled to certain procedural requirements before being removed from his/her current placement for disciplinary reasons. This section also applies to any student who has not yet been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct if the District had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. See [PROTECTIONS FOR CHILDREN NOT YET DETERMINED ELIGIBLE].

### **Authority to Remove for Not More than 10 Consecutive School Days**

Campus Administration may remove a student with a disability who violates the student code of conduct from the student's current placement to an appropriate interim alternative educational setting ("IAES"), another setting, or suspension for no more than 10 consecutive school days to the extent such discipline is applied to children without disabilities. Campus Administration can remove the student for additional removals of not more than 10 consecutive school days during that same school year for separate incidents of misconduct, so long as the removals do not constitute a disciplinary change of placement.

A disciplinary change of placement occurs if the removal is for more than 10 consecutive school days or the child has been subjected to a series of removals that constitute a pattern:

- Because the series of removals total more than 10 school days in a school year;
- Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
- Because of additional factors such as the length of the removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

See [DISCIPLINARY CHANGE OF PLACEMENT].

### **Authority to Remove for More Than 10 Consecutive School Days**

To apply relevant discipline procedures in accordance with the Student Code of Conduct to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities for more than 10 consecutive

school days (or for a removal that constitutes a change of placement), Campus Administration may only do so in certain circumstances and only after providing certain procedural protections to the student with a disability.

Specifically, Campus Administration may only remove a student with a disability for more than 10 consecutive days (or less if the removal constitutes a change in placement) if it is determined by the student's ARD Committee in a Manifestation Determination Review ("MDR") ARD that the behavior giving rise to the violation of the student code of conduct is not a manifestation of the student's disability. See [MANIFESTATION DETERMINATION] and [WHEN BEHAVIOR IS NOT A MANIFESTATION]. The student must still be provided special education and related services during the period of removal. This is considered a disciplinary change of placement.

In addition, on the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of the Student Code of Conduct, the parent/adult student must be notified of the decision and provided a copy of the *Notice of Procedural Safeguards*. See [SERVICES DURING PERIODS OF REMOVAL] and [DISCIPLINARY CHANGE OF PLACEMENT]. The notice must also inform the parent of the Campus's obligation to provide the student with the opportunity to complete the coursework required for graduation and of all methods available for completing the coursework. The notice must further state that the methods available for completing the coursework are available at no cost to the student. For students who are homeless or in substitute care, Campus Personnel must provide this notice to the student's educational decision-maker and caseworker.

After completing the Manifestation Determination Review ARD and providing the appropriate notice, Campus Administration may remove the student to an alternative setting for not more than 45 school days regardless of whether the behavior is determined to be a manifestation of the student's disability if the student:

- Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the District;
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the District; or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the District.

See [SPECIAL CIRCUMSTANCES].

If disciplinary action that constitutes a change of placement (i.e. removal for 10 or more days or removal that constitutes a "pattern" of removals), is taken for a student with a disability, the district must, no later than 10 school days after the change in placement is

made:

1. Seek consent from the parent to conduct a Functional Behavioral Assessment (FBA) if the student has never had an FBA or the existing FBA is more than one year old;
2. Review any previously conducted FBAs and any Behavior Intervention Plans (“BIPs”) developed for the student based on that FBA; and
3. As necessary, develop a BIP, if the student does not have a plan, or revise the existing BIP.

### **Limitation on General Authority – Bullying, Harassment, or Making a Hit List**

A student with a disability cannot be disciplined for bullying, harassment, or making a hit list until the ARD Committee convenes to review the conduct.

“Bullying” is a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves engaging in written or verbal expression, expression through electronic means (including cyberbullying), or physical conduct and that:

- Has the effect or will have the effect of physically harming a student, damaging a student’s property, or placing a student in reasonable fear of harm to the student’s person or of damage to the student’s property;
- Is sufficiently severe, persistent, or pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student;
- Materially and substantially disrupts the educational process or the orderly operation of a classroom or school; or
- Infringes on the rights of the victim at school.

“Harassment” means threatening to cause harm or bodily injury to another student, engaging in sexually intimidating conduct, causing physical damage to the property of another student, subjecting another student to physical confinement or restraint, or maliciously taking any action that substantially harms another student’s physical or emotional health or safety.

“Hit List” is a list of people targeted to be harmed using a firearm, a knife, or any other object to be used with intent to cause bodily harm.

### **Referral to Law Enforcement and Courts**

Campus Administration may report a crime committed by a student with a disability to appropriate authorities in the same manner they would for students without disabilities. Likewise, state law enforcement and judicial authorities may exercise their responsibilities regarding the application of federal and state law to crimes committed by a student with a disability. However, when reporting a crime committed by a student with a disability, Campus Administration must ensure that copies of the student's special education and disciplinary records are provided to the appropriate authorities to whom the crime is reported, but only to the extent allowed under the Family Educational Rights and Privacy Act ("FERPA"). See [CONSENT FOR DISCLOSURE OF CONFIDENTIAL INFORMATION]. In addition, if the student is homeless or in substitute care, Campus Administration must provide notice to the student's educational decision-maker and case worker concerning any citation issued for Class C misdemeanor offenses on school property or at school-sponsored activities.

The criminal procedures, including the filing of a criminal complaint, regarding students who commit a school offense under Texas Education Code Chapter 37 apply to students with disabilities in the same manner as they do to students without disabilities. A school offense means an offense committed by a student who is at least 10 years of age and younger than 18 years of age that is a Class C misdemeanor other than a traffic offense that is committed on District property. Campus Administration must include a statement of whether the student is eligible for or received special education services in the complaint. If the District commissions peace officers under the Texas Education Code, it may also develop a system of graduated sanctions that the District may require be imposed on the student before a complaint is filed against the student with a criminal court for the following school offenses:

- Intentionally disrupting the conduct of classes or other school activities as defined by Texas Education Code 37.124;
- Intentionally disrupting, preventing, or interfering with the lawful transportation of students to or from school on a vehicle owned or operated by a county or the District or to or from an activity sponsored by a school on a vehicle owned or operated by the county or District;
- Intentionally or knowingly using abusive, indecent, profane, or vulgar language in a public place, and the language tends to incite an immediate breach of the peace;
- Intentionally or knowingly making an offensive gesture or display in a public place that tends to incite an immediate breach of the peace;
- Intentionally or knowingly creating, by chemical means, a noxious and unreasonable odor in a public place;
- Intentionally or knowingly abusing or threatening a person in a public place in an obviously offensive manner; or
- Intentionally or knowingly making an unreasonable noise in a public place (other than a sport shooting range) or in or near a private residence that the student has no right to occupy.

## **Additional Procedures**

Discipline is part of the educational process and prepares a student to work with other people in a socially acceptable manner. A student with a disability is subject to the school's Student Code of Conduct unless otherwise stated in the student's IEP. Students with disabilities are expected to obey school rules. They are also subject to disciplinary action if those rules are broken. However, because of the possibility that a student's disability may interfere with his/her ability to understand and/or obey school rules and because of the need to ensure that the student's educational program is not disrupted inappropriately, more care must be taken to protect the rights of the student with disabilities during disciplinary actions. The procedures in this section are designed to provide guidelines to follow when unacceptable behaviors occur and ensure that any disciplinary action necessary is administered with regard to the student's disability.

Most students with disabilities are capable of adhering to the Student Code of Conduct. However, Campus Administration must review the student's IEP and BIP to determine whether there might be special circumstances that would prevent the use of a particular disciplinary action with the student with a disability. Decisions regarding the removal of a student with a disability will be determined on a case-by-case basis, considering the student's unique needs and the circumstances surrounding the conduct. In determining whether a change in placement that is otherwise permitted under disciplinary procedures is appropriate for a student with a disability, Campus Personnel may consider any unique circumstances, including, but not limited to, the student's:

- Disciplinary history;
- Ability to understand consequences;
- Expression of remorse; and/or
- The supports provided to the student prior to the violation of the Student Code of Conduct.

The District does not need to provide special education or related services to a student with a disability removed for less than 10 cumulative days. However, once the student has been removed for 10 cumulative school days, Campus Personnel will need to provide services for any subsequent removal. Campus Personnel shall consult with the student's general and special education teacher(s) to determine the extent to which services must be provided to ensure that the student can access the general education curriculum and make progress towards IEP goals.

### **Summary of Disciplinary Steps for Students with Disabilities**

1. Student commits offense that violates Student Code of Conduct.
2. Campus Administrator determines whether the student has been identified or referred as a student with a disability.

3. Campus Administrator makes a preliminary decision and conducts a formal hearing.
4. Campus Administrator with input from Campus Special Education Personnel makes a determination as to whether or not the disciplinary action constitutes a change of placement. If the disciplinary action is for more than 10 consecutive school days or is a pattern of removals of more than 10 school days in a school year, it constitutes a change of placement.
5. If the disciplinary action does not constitute a change in placement, regular discipline procedures apply as long as these procedures are in accordance with the student's BIP, should the student have one.
6. If the disciplinary consequence constitutes a change in placement an MDR ARD meeting will be scheduled (within 10 school days for long term removals).
  - If the behavior is determined to be a manifestation of the student's disability, the student is not subject to removal from school, unless special circumstances exist.
  - If the behavior is determined not to be a manifestation of the student's disability, the student will be removed to an IAES.

### **In School Suspensions (ISS)**

In school suspensions are counted in the total number of removal days unless the student is afforded an opportunity to continue to appropriately participate in the general curriculum, the student continues to receive all the special education and related services specified in his/her IEP, and the student continues to participate with his/her nondisabled peers to the extent he/she would have participated in his/her current placement. However, once a student has been placed in ISS for 10 or more cumulative days in a school year, even if services are provided, an ARD Committee meeting should be held to determine if the behaviors should be addressed through the student's IEP or BIP. Campus Administration should work closely with the Campus Special Education Personnel to ensure that the services specified in the student's IEP can be effectively delivered in the ISS setting.

### **Interim Alternative Educational Setting ("IAES")**

The ARD Committee will determine whether an IAES placement is appropriate, and if so, which IAES placement the student will attend. A student may not be placed in an IAES setting solely for educational purposes. When the ARD Committee decides to place a student at an IAES, the Campus Personnel will provide the parent of the student with written notice of the Campus's obligation to provide the student the opportunity to complete the coursework for graduation at no cost to the student. Any teacher in an IAES with a special education assignment must be appropriately certified or otherwise permitted to teach special education. See [DISCIPLINARY CHANGE OF PLACEMENT].

### **Subsequent Short-Term Removals**



For subsequent short term removals (of less than 10 school days) after the student has already been removed for more than 10 school days in the school year and an MDR ARD has been held, the Campus members of the ARD Committee will review the student's IEP and BIP and its implementation to determine if modifications are necessary. If one or more members of the ARD Committee believe that modifications are needed, an ARD Committee meeting must be held to modify the IEP and/or BIP. If a parent requests a review of the student's IEP or BIP, Campus Special Education Personnel shall schedule and hold an ARD Committee meeting.

Each campus must have in place a process for the IEP/BIP review of students who experience short term removals following an MDR ARD. The student's special education case manager should be in close contact with the Campus Administrator in charge of discipline in order to determine when an examination of additional removals is needed by the ARD Committee.

### **Bus Suspension of a Student with Disabilities**

A student with a disability may be suspended from the school bus for violations of the Student Code of Conduct. However, such suspension will count as a removal if the special transportation is a part of the student's IEP. If special transportation is not a related service as part of the student's IEP, a bus suspension would not be considered a removal, as long as the student can still access his/her special education and related services during this interval. If the student's behavior on the bus is similar to behavior addressed in the student's IEP, the ARD Committee should consider whether the bus behavior needs to be also addressed in the student's IEP and/or whether the student needs special transportation as a related service.

### **Teacher Removal of a Student with a Disability**

A teacher may send a student with a disability to the Campus Administrator's Office to maintain effective discipline in the classroom. The Campus Administrator shall respond by employing appropriate discipline management techniques consistent with the Student Code of Conduct and the student's IEP/BIP that can reasonably be expected to improve the student's behavior before returning the student to the classroom.

A teacher may remove a student from class in accordance with Texas Education Code 37.002. However, before a teacher removes a student with disabilities, the teacher should carefully review with special education support personnel and with school administrators:

- The student's IEP;
- The student's BIP; and
- Appropriate documentation to assure that all elements of the IEP and BIP have been properly implemented.

If the teacher's written reports of violations of the District's Board-approved Student Code of Conduct indicate a pattern of inappropriate behaviors or an increase in the frequency of inappropriate behavior, an ARD Committee should be convened to consider any needed changes in program or behavior intervention strategies as soon as there is evidence that the student's placement and/or BIP are no longer effective in meeting the student's individual needs.

If a teacher requests that a student with a disability be removed from a class, the Campus Administrator will arrange for an interim placement pending a conference. Following the conference, which must be held within three school days, the Campus Administrator can:

- Place the student in another appropriate setting that is compatible with the requirements in the student's IEP and BIP; or
- Return the student to the same classroom with the teacher's consent.

If the student's IEP/BIP is appropriate, and the teacher refuses to consent to the principal's decision to return the student to his/her classroom, the principal or designee may:

- Place the student in another comparable classroom (i.e., regular classroom, resource room, PE class, etc.) that is consistent with the placement specified in the student's IEP; or
- Convene a placement review committee to consider the teacher's refusal. The placement review committee may return the student to the teacher's class without the teacher's consent if the committee determines that such placement is the best or only alternative available. Such determination is subject to the requirements of the IDEA and federal regulations, state statutes, and agency requirements necessary to carry out the laws or regulations relating to special education.

### **Referral to Law Enforcement and Courts**

Although the IDEA does not specify how much information the Campus Administrator must provide the authorities when making a referral, the Campus Administrator will provide sufficient information to provide the authorities an accurate picture of the student's current level of functioning and performance. The Campus Administrator will first attempt to seek parental consent to provide records to the authorities. However, if the parent refuses to consent, the Campus Administrator may only release the records to the extent allowed under FERPA. See [CONFIDENTIALITY OF INFORMATION] and [CONSENT FOR DISCLOSURE OF CONFIDENTIAL INFORMATION] and [WHEN CONSENT IS NOT REQUIRED TO DISCLOSE INFORMATION].

The District may not prohibit an employee from reporting a crime witnessed at the Campus to any peace officer with authority to investigate the crime.

The District will maintain documentation requirements of compliance associated with Texas Student Data System (TSDS), Public Education Information Management System (PEIMS), and State Performance Plan (SPP). District staff will provide training, with follow up, to ensure the documentation required is in place and compliant.

[ADD ADDITIONAL DISTRICT PROCEDURES AS APPROPRIATE]

## **Evidence of Implementation**

- Student Code of Conduct
- *Notice of Procedural Safeguards*
- ARD/IEP
- MDR ARD
- FIE
- BIP
- Behavior Documentation
- Prior Written Notice
- Documentation of Communication With Parents
- Parental Consent Disclose Confidential Information to Authorities
- Special Education Discipline Flow Chart
- FBA Consent
- Documentation for the state in TSDS, PEIMS, and SPP
- [DISTRICT FORMS]

## **Resources**

[The Legal Framework for the Child-Centered Special Education Process: Authority of School Personnel – Region 18](#)

[Discipline and School Removals - Texas Education Agency](#)

[Special Education Discipline Q&A - Region 13](#)

[OSEP Questions and Answers on Discipline Procedures \(Revised June 2009\) - U.S. Department of Education](#)

[Chapter 37 Discipline Chart - Texas Association of School Boards](#)

[Notice of Procedural Safeguards - Texas Education Agency](#)

[U.S. Department of Education - School Climate and Discipline](#)

[ADDITIONAL DISTRICT RESOURCES]

## CITATIONS

Board Policy FOF, FOC, and FFB; 34 CFR 300.530, 300.535, 300.536(a); Texas Education Code 25.007, 37.001, 37.002, 37.0022, 37.003, 37.008, 37.124, 37.126, 37.141, 38.144–38.146, 37.148; Texas Penal Code 42.01(a)(1)–(5)