

STUDENT DISCIPLINE
STUDENTS WITH DISABILITIES

FOF
(LEGAL)

STUDENTS WITH
DISABILITIES UNDER
SECTION 504

A student with a disability under Section 504 shall not be removed from school for more than ten consecutive school days unless the District first determines that the misbehavior is not a manifestation of the student's disability. That determination may be made by the same group of people who make placement decisions. [See FB] At a minimum, the group shall include persons knowledgeable about the student and the meaning of the evaluation data. The group must have available to it evaluation data that is recent enough to afford an understanding of the student's current behavior.

If it is determined that the misconduct is not caused by the student's disability, the student may be excluded from school in the same manner as similarly situated nondisabled students. [See FO] If it is determined that the misconduct is caused by the student's disability, the District must determine whether the student's current educational placement is appropriate.

34 CFR 104.35; 17 IDELR 609; 16 IDELR 491

The District may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student with a disability who is currently engaging in the illegal use of drugs or in the use of alcohol to the same extent that the District would take disciplinary action against nondisabled students. The due process procedures afforded under Section 504 do not apply to such disciplinary action. *29 U.S.C. 705(20)(C)(iv)*

Note: The provisions below apply only to students eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA).

SPECIAL EDUCATION
STUDENTS

Except as set forth below, the placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal (ARD) committee. Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations. *Education Code 37.004*

The methods adopted in the Student Code of Conduct [see FO] for preventing and intervening in student discipline problems must provide that a student who is enrolled in a special education program under Education Code Chapter 29, Subchapter A, may not be disciplined for bullying, harassment, or making hit lists until an ARD committee meeting has been held to review the conduct. *Education Code 37.001(b-1)*

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DAEP PLACEMENT NOT SOLELY FOR EDUCATIONAL PURPOSES	A student with a disability who receives special education services may not be placed in a disciplinary alternative education program (DAEP) solely for educational purposes. A teacher in a DAEP who has a special education assignment must hold an appropriate certificate or permit for that assignment. <i>Education Code 37.004</i>
CONTINUATION OF SERVICES	The District is not required to provide services to a student during periods of removal if the student has been removed from his or her current placement for ten school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed. <i>34 CFR 300.121(d)(1)</i>
SUBSEQUENT REMOVALS	<p>After a student has been removed from his or her current placement for more than ten school days in the same school year, during any subsequent days of removal, the District shall provide the services necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the student's IEP. This requirement applies if the subsequent removal is not a change in placement (defined below) or the behavior is determined not to be a manifestation of the student's disability.</p> <p>If the removal is not a change in placement, school personnel, in consultation with the student's special education teacher, determine the extent to which these services are necessary.</p> <p>If the student is removed because of behavior that is determined not to be a manifestation of the student's disability, the student's IEP team determines the extent to which these services are necessary.</p> <p><i>20 U.S.C. 1412(a)(1), 1413(a)(1); 34 CFR 300.121(d)</i></p>
NOTICE OF PROCEDURAL SAFEGUARDS	<p>Not later than the date on which the decision to take the disciplinary action is made, the District shall notify the student's parents of the decision and of all procedural safeguards [see EHBAE].</p> <p><i>20 U.S.C. 1415(k)(1)(H)</i></p>
REMOVALS OF TEN DAYS OR LESS	<p>To the extent removal would apply to students without disabilities, school personnel may remove a student with a disability who violates a code of student conduct from the current placement to an appropriate interim alternative educational setting, another setting, or suspension for not more than ten school days.</p> <p>School personnel may order additional removals of not more than ten consecutive school days in the same school year for separate incidents of misconduct, so long as those removals do not constitute a change in placement (defined below).</p> <p><i>20 U.S.C. 1415(k)(1)(B); 34 CFR 300.520(a)</i></p>

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REMOVALS OF MORE
THAN TEN DAYS —
CHANGE IN
PLACEMENT

Any disciplinary action that would constitute a change in placement may be taken only after the student's ARD committee conducts a manifestation determination review (see MANIFESTATION DETERMINATION, below) *Education Code 37.004*

'CHANGE IN
PLACEMENT'

A change in placement occurs if a student is:

1. Removed from the student's current educational placement for more than ten consecutive school days; or
2. Subjected to a series of removals that constitute a pattern because they cumulate to more than ten school days in a school year, and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

34 CFR 300.519

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a student who violates a code of student conduct. *20 U.S.C. 1415(k)(1)(A)*

MANIFESTATION
DETERMINATION

Except as set forth below at WEAPONS/DRUG OFFENSES, within ten school days of any decision to change the placement of a student because of a violation of a code of student conduct, the District, parents, and relevant members of the ARD committee 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 to determine whether the conduct in question was:

1. Caused by, or had a direct and substantial relationship to, the student's disability; or
2. The direct result of the District's failure to implement the IEP.

If the District, the parent, and relevant members of the ARD committee determine that either of the above is applicable, the conduct shall be determined to be a manifestation of the student's disability.

20 U.S.C. 1415(k)(1)(E); 34 CFR 300.523(a)-(c)

NOT A
MANIFESTATION

If the determination is that the student's behavior was not a manifestation of the student's disability, the disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner and for the same duration in which they would be applied to students without disabilities, except that the District shall still provide services, although they may be provided in an interim alternative educational setting. *20 U.S.C. 1412(a)(1), 1415(k)(1)(C); 34 CFR 300.121(d), 300.524*

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BEHAVIORAL
INTERVENTION
PLAN

If the District, the parents, and relevant members of the ARD committee determine that the conduct was a manifestation of the student's disability, the ARD committee shall:

IF NOT DONE
ALREADY,
DEVELOP FBA
AND BIP

1. Conduct a functional behavioral assessment (FBA) and implement a behavioral intervention plan (BIP) if the District had not conducted an FBA before the manifestation determination and before the behavior that resulted in the change in placement.

IF BIP ALREADY
IN PLACE,
REVIEW IT

2. If a BIP has already been developed, review the BIP and modify it, as necessary, to address the behavior.
3. Except as provided at WEAPONS/DRUG OFFENSES, below, return the student to the placement from which the student was removed, unless the parent and the District agree to a change in placement as part of the modification of the BIP.

20 U.S.C. 1415(k)(1)(F); 34 CFR 300.520(b)(1)

SUBSEQUENT
REMOVALS THAT
ARE NOT A
CHANGE IN
PLACEMENT

If a student with a BIP is subsequently removed and that removal is not a change in placement, the ARD committee shall review the BIP and its implementation to determine if modifications are necessary. If one or more members of the ARD committee believe that modifications are needed, the committee shall meet to modify the plan and its implementation, to the extent the committee determines necessary. *34 CFR 300.520(c)*

INTERIM
ALTERNATIVE
EDUCATIONAL
SETTING

School personnel may remove a student to an interim alternative educational setting, for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

WEAPONS / DRUG
OFFENSES

1. Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a state or a school district; or
2. 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 a state or a school district;
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the state or the District.

20 U.S.C. 1415(k)(1)(G); 34 CFR 300.520(a)(2), (b)

'WEAPON'

In this policy, "weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, but does

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	<p>not include a pocket knife with a blade of less than two and a half inches in length. <i>20 U.S.C. 1415(k)(7)(C); 18 U.S.C. 930(g)(2); 34 CFR 300.520(d)(3)</i></p>
<p>'CONTROLLED SUBSTANCE'</p>	<p>"Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812[c]). "Illegal drug" means a controlled substance, but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any authority under the Controlled Substance Act or any other provision of federal law. <i>20 U.S.C. 1415(k)(7)(A), (B); 34 CFR 300.520(d)(1), (2)</i></p>
<p>'SERIOUS BODILY INJURY'</p>	<p>"Serious bodily injury" means bodily injury that involves:</p> <ol style="list-style-type: none">1. A substantial risk of death;2. Extreme physical pain;3. Protracted and obvious disfigurement; or4. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty. <p><i>20 U.S.C. 1415(k)(7)(D); 18 U.S.C. 1365(h)(3)</i></p>
<p>REMOVAL BY A HEARING OFFICER</p>	<p>A hearing officer may order a change in placement of a student to an appropriate interim alternative educational setting for not more than 45 calendar days. <i>20 U.S.C. 1415(k)(2); 34 CFR 300.521</i></p>
<p>CRITERIA FOR ALTERNATIVE SETTING</p>	<p>The ARD committee shall determine the interim alternative education setting. <i>20 U.S.C. 1415(k)(2)</i></p> <p>The setting shall be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP. The setting shall also include services and modifications designed to address the behavior that caused the student to be placed in the alternative setting so that the behavior does not recur. <i>20 U.S.C. 1415(k)(3); 34 CFR 300.522</i></p>
<p>PROPOSED CHANGE AFTER INTERIM PLACEMENT</p>	<p>If school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed placement, the student shall remain in the current placement (the student's placement before the interim alternative educational setting), unless the District requests an expedited hearing. <i>20 U.S.C. 1415(k)(7)(B); 34 CFR 300.526(b)</i></p>

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EXPEDITED HEARING	<p>If school personnel maintain that it is dangerous for a student to be in the current placement (placement before removal to the interim alternative educational setting) during the pendency of the due process proceedings, the District may request an expedited hearing. <i>20 U.S.C. 1415(k)(7)(C); 34 CFR 300.526(c); 19 TAC 89.1191</i></p>
APPEALS	<p>A parent who disagrees with a placement decision or the manifestation determination may request a hearing.</p> <p>A district that believes that maintaining a current placement of a student is substantially likely to result in injury to the student or others may request a hearing.</p> <p><i>20 U.S.C. 1615(k)(3)(A); 34 CFR 300.525; 19 TAC 89.1151</i></p> <p>A hearing officer may hear and decide the appeal. <i>20 U.S.C. 1415(k)(3)(B)</i></p>
PLACEMENT DURING APPEALS	<p>When an appeal has been requested by a parent or the District:</p> <ol style="list-style-type: none">1. The student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the student's assignment to the alternative setting, whichever occurs first, unless the parent and District agree otherwise; and2. The state or District shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination ten school days after the hearing. <p><i>20 U.S.C. 1415(k)(3)(B), 1415(k)(7); 34 CFR 300.526</i></p>
TRANSFER OF RECORDS	<p>If the District initiates disciplinary procedures applicable to all students, the District shall ensure that the student's special education and disciplinary records are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action. <i>20 U.S.C. 1415(k)(5)(B); 34 CFR 300.524(b)</i></p>
REPORTING CRIMES	<p>Federal law does not prohibit the District from reporting a crime committed by a student with a disability to appropriate authorities. If the District reports a crime, the District shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities. The District may transmit records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA). <i>20 U.S.C. 1415(k)(6); 34 CFR 300.529 [See FL]</i></p>
STUDENTS NOT YET IDENTIFIED	<p>A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct may assert any of the pro-</p>

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tections provided for in the IDEA if the District had knowledge that the student had a disability before the behavior that precipitated that disciplinary action occurred. *20 U.S.C. 1415(k)(5)(A)*

DISTRICT
KNOWLEDGE

The District shall be deemed to have knowledge that a student has a disability if, before the behavior that precipitated the disciplinary action occurred:

1. The parent of the student has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to supervisory or administrative personnel of the District or to the teacher of the student that the student is in need of special education and related services;
2. The behavior or performance of the student demonstrates the need for such services;
3. The parent of the student has requested an evaluation of the student for special education and related services; or
4. The student's teacher, or other District personnel, has expressed specific concerns about a pattern of behavior demonstrated by the student directly to the special education director or to other supervisory personnel of the District.

20 U.S.C. 1415(k)(5)(B)

EXCEPTION

The District shall not be deemed to have knowledge that the student had a disability if:

1. The parent has not allowed an evaluation of the student;
2. The parent has refused services; or
3. The student has been evaluated and it was determined that the student did not have a disability.

20 U.S.C. 1415(k)(5)(C)

If the District does not have knowledge (as described above), before taking disciplinary measures, that a student has a disability, the student may be subjected to the same disciplinary measures as are applied to students without disabilities who engaged in comparable behaviors.

However, if a request is made for an evaluation during the time period in which the student is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Pending the results of the evaluation, the student shall remain in the educational placement determined by school authorities.

20 U.S.C. 1415(k)(5)(D); 34 CFR 300.527

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BEHAVIOR
MANAGEMENT
TECHNIQUES

Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.

CONFINEMENT

A student with a disability who receives special education services may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique.

Education Code 37.0021 does not prevent a student's locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement personnel if:

1. The student possesses a weapon; and
2. The confinement is necessary to prevent the student from causing bodily harm to the student or another person.

For these purposes, "weapon" includes any weapon described under Education Code 37.007(a)(1). [See FNCG]

Education Code 37.0021

SECLUSION

A District employee or volunteer or an independent contractor of the District may not place a student in seclusion.

"Seclusion" means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:

1. Is designed solely to seclude a person; and
2. Contains less than 50 square feet of space.

Education Code 37.0021 and any rules or procedures adopted under Education Code 37.0021 do not apply to a peace officer, while performing law enforcement duties; juvenile probation, detention, or corrections personnel; or an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

Education Code 37.0021

RESTRAINT

A school employee, volunteer, or independent contractor may use restraint only in an emergency and with the following limitations:

1. Restraint shall be limited to the use of such reasonable force as is necessary to address the emergency.

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2. Restraint shall be discontinued at the point at which the emergency no longer exists.
3. Restraint shall be implemented in such a way as to protect the health and safety of the student and others.
4. Restraint shall not deprive the student of basic human necessities.

“Restraint” means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student’s body.

“Restraint” does not include the use of:

1. Physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;
2. Limited physical contact with a student to promote safety (e.g., holding a student’s hand), prevent a potentially harmful action (e.g., running into a street), teach a skill, or provide comfort;
3. Limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors; or
4. Seat belts and other safety equipment used to secure students during transportation.

“Emergency” means a situation in which a student’s behavior poses a threat of:

1. Imminent, serious physical harm to the student or others; or
2. Imminent, serious property destruction.

TRAINING

Training for school employees, volunteers, or independent contractors shall be provided according to the requirements set forth at 19 TAC 89.1053.

DOCUMENTATION

In a case in which restraint is used, school employees, volunteers, or independent contractors shall implement the following documentation requirements:

1. On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.

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2. On the day restraint is utilized, a good faith effort shall be made to verbally notify the parent(s) regarding the use of restraint.
3. Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.
4. Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the ARD committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of the BIP.
5. Written notification to the parent(s) and documentation to the student's special education eligibility folder shall include the following:
 - a. Name of the student;
 - b. Name of the staff member(s) administering the restraint;
 - c. The date of the restraint and the time the restraint began and ended;
 - d. Location of the restraint;
 - e. Nature of the restraint;
 - f. A description of the activity in which the student was engaged immediately preceding the use of restraint;
 - g. The behavior that prompted the restraint;
 - h. The efforts made to de-escalate the situation and alternatives to restraint that were attempted; and
 - i. Information documenting parent contact and notification.

TIME-OUT

A school employee, volunteer, or independent contractor may use time-out with the following limitations.

1. Physical force or threat of physical force shall not be used to place a student in time-out.
2. Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or BIP if it is utilized on a recurrent basis to increase or decrease targeted behavior.

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3. Use of time-out shall not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

"Time-out" means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:

1. That is not locked; and
2. From which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

TRAINING

Training regarding the use of time-out for school employees, volunteers, or independent contractors shall be provided according to the requirements set forth at 19 TAC 89.1053.

DOCUMENTATION

Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP or BIP. The ARD committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

19 TAC 89.1053