

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] The group must have available to it evaluation data that is recent enough to afford an understanding of the student's current behavior. At a minimum, the group shall include persons knowledgeable about the student and the meaning of the evaluation data. 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 Student Code of Conduct] 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 under Section 504 who is currently engaging in the illegal use of drugs or in the use of alcohol to the same extent that disciplinary action would be taken against nondisabled students. Furthermore, the due process procedures afforded under Section 504 do not apply to such disciplinary action. *29 U.S.C. 705(20)(C)*

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

CHANGE IN
PLACEMENT

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 a student with a disability who receives special education services that would constitute a change in placement under federal law may be taken only after the student's ARD committee conducts a manifestation determination review under 20 U.S.C. 1415(k)(4) and its subsequent amendments. Any disciplinary action regarding the student

shall be determined in accordance with federal law and regulations, including laws or regulations requiring the provision of:

1. Functional behavioral assessments;
2. Positive behavioral interventions, strategies, and supports;
3. Behavioral intervention plans; and
4. The manifestation determination review.

A student with a disability who receives special education services may not be placed in an disciplinary alternative education program (DAEP) solely for educational purposes. A teacher in a DAEP under Education Code 37.008 who has a special education assignment must hold an appropriate certificate or permit for that assignment. *Education Code 37.004*

A change in placement occurs if a child with a disability is:

1. Removed from the child'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 child is removed, and the proximity of the removals to one another.

34 CFR 300.519

REMOVALS OF
LESS THAN TEN
DAYS

To the extent removal would apply to students without disabilities, school personnel may order the removal of a student with a disability from the child's current placement:

1. For not more than ten consecutive school days for any violation of school rules; and
2. 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 above).

34 CFR 300.520(a)

SERVICES

The District is not required to provide services to a student with a disability during periods of removal if the student has not been removed from his or her current placement for ten school days or less in that school

year. *34 CFR 300.121(d)(1)*

MORE THAN TEN
DAYS OF
REMOVAL IN A
SCHOOL YEAR

Either before or not later than ten business days after removing a child for more than ten consecutive school days or commencing a removal that constitutes a change in placement:

IF NOT DONE
ALREADY,
DEVELOP FBA
AND BIP

1. If the District did not conduct a functional behavioral assessment (FBA) and implement a behavioral intervention plan (BIP) for the student before the behavior that resulted in the removal, the District shall convene an ARD committee meeting to develop an assessment plan. As soon as practicable after developing the plan and completing the assessments, the ARD committee shall meet to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

IF BIP
ALREADY IN
PLACE,
REVIEW IT

2. If the child already has a behavioral intervention plan, the ARD committee shall meet to review the plan and its implementation, and modify the plan and its implementation, as necessary, to address the behavior.

SUBSEQUENT
REMOVALS
THAT ARE NOT
A CHANGE IN
PLACEMENT

3. If the student is subsequently removed and that removal is not a change in placement, the ARD committee does not have to meet to review the behavioral intervention plan unless one or more members of the committee believes that modifications are needed to the plan or the plan's implementation. If modification is deemed necessary, the committee shall meet to modify the plan and its implementation. *34 CFR 300.520(b), (c)*

CONTINUED
SERVICES ON
ELEVENTH
DAY

After a child with a disability 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 set in the student's IEP.

NO CHANGE
IN
PLACEMENT

If the removal does not constitute a change in placement, school personnel, in consultation with the student's special education teacher, determine the extent to which such services are 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(d), 300.520(a)

**WEAPONS / DRUG
OFFENSES**

School personnel may order a change in the placement of a student with a disability to an appropriate interim alternative educational setting, which must be determined by the ARD committee, for the same amount of time a student without a disability would be subject to discipline, but for not more than 45 calendar days if:

1. The student carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of the state or the District; or
2. The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of the state or the District.

20 U.S.C. 1415(k); 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 not include a pocket knife with a blade of less than two and a half inches in length. *20 U.S.C. 1415(k)(10)(D); 18 U.S.C. 930(g)(2); 34 CFR 300.520(d)(3)*

**`CONTROLLED
SUBSTANCE'**

"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 that Act or any other provision of federal law. *20 U.S.C. 1415(k)(10)(A),(B); 34 CFR 300.520(d)(1), (2)*

**REMOVAL BY A
HEARING
OFFICER**

A hearing officer may order a change in placement of a student with a disability to an appropriate interim alternative educational setting for not more than 45 calendar days, if the hearing officer, in an expedited due process hearing:

1. Determines that the District has demonstrated beyond a preponderance of the 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; and

4. Determines that the interim alternative educational setting, which is proposed by school personnel who have consulted with the student's special education teacher, meets the criteria described below at CRITERIA FOR THE ALTERNATIVE SETTING.

20 U.S.C. 1415(k)(2); 34 CFR 300.521

CRITERIA FOR THE ALTERNATIVE SETTING

Any interim alternative education setting in which a student with a disability is placed as a result of conduct described above at WEAPONS/DRUG OFFENSES or that was ordered by a hearing officer shall be determined by the ARD committee. The setting shall be selected so as to enable the child 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. *20 U.S.C. 1415(k)(3); 34 CFR 300.522*

REMOVAL THAT IS A CHANGE IN PLACEMENT

If a disciplinary action involving (1) a 45-day removal for weapons or drugs or (2) a change in placement is contemplated for a student with a disability who has engaged in other behavior that violated any rule or code of conduct of the District that applies to all children, the District shall:

1. Not later than the date on which the decision to take the disciplinary action is made, notify the student's parents of the decision and of all procedural safeguards [see EHBAD];
2. Conduct a functional behavioral assessment and develop a behavioral intervention plan, or if it has already done so, review the existing behavior intervention plan, as described above; and
3. Immediately, if possible, but in no case later than ten school days after the date on which the decision to take that action is made, conduct a review of the relationship between the student's disability and the behavior subject to disciplinary action.

MANIFESTATION DETERMINATION REVIEW

The review shall be conducted by the ARD committee and other qualified personnel. In carrying out the review, the ARD committee and other qualified personnel may determine that the student's behavior was not a manifestation of the student's disability only if the ARD committee and other qualified personnel:

1. First consider, in terms of the behavior subject to disciplinary action, all relevant information, including:

- a. Evaluation and diagnostic results, including such results or other relevant information supplied by the parents,
 - b. Observations of the student, and
 - c. The student's IEP and placement; and
2. Then determine that:
- a. In relationship to the behavior subject to disciplinary action, the student's IEP and placement were appropriate, and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's IEP and placement;
 - b. The student's disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to the disciplinary action; and
 - c. The student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.

20 U.S.C. 1415(k)(4); 34 CFR 300.520(b), 300.523(a)-(c)

JJAEP
REPRESENTATIVE

Notwithstanding any other provision of Subchapter A, Chapter 37 of the Education Code, in a county with a juvenile justice alternative education program (JJAEP) established under Education Code 37.011, the expulsion of a student with a disability who receives special education services under Education Code 37.007(b), (c), or (f), or 37.007(d) as a result of conduct that contains the elements of any offense listed in Education Code 37.007(b)(3) against any employee or volunteer in retaliation for or as a result of the person's employment or association with the District, must occur in accordance with these provisions. The district from which the student was expelled shall, in accordance with applicable federal law, provide the administrator of the JJAEP or the administrator's designee with reasonable notice of the meeting of the student's ARD committee to discuss the student's expulsion. A representative of the JJAEP may participate in the meeting to the extent that the meeting relates to the student's placement in the program.

In a county with a JJAEP, a school district shall invite the administrator of the JJAEP or the administrator's designee to an ARD committee meeting convened to discuss a student's expulsion under Education Code 37.004(e). The reasonable notice of the ARD committee meeting must be provided consistent with 34 CFR 300.345 and 300.503 and 19 TAC 89.1015, and a copy of the student's current IEP must be provided to the JJAEP administrator or designee with the notice. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means including conference telephone calls.

Education Code 37.004(e), (f); 19 TAC 89.1052(b)

CONDUCT NOT RELATED TO DISABILITY

If the result of the manifestation determination (described above) 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 in which they would be applied to students without disabilities, except that the District shall still provide services, as described below. *20 U.S.C. 1415(k)(5); 34 CFR 300.121(d), 300.524*

CONTINUED SERVICES-CHANGE IN PLACEMENT

If the student is suspended, expelled, or removed from his or her current placement for more than ten school days, and the removal constitutes a change in placement, the student's ARD committee shall determine the services 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. *20 U.S.C. 1412(a)(1), 1413(a)(1); 34 CFR 300.121(d)*

JJAEP

If, after placement of a student in a JJAEP, the administrator of the program or the administrator's designee has concerns that the student's educational or behavioral needs cannot be met in the program, the administrator or designee shall immediately provide written notice of those concerns to the district from which the student was expelled. The student's ARD committee shall meet to reconsider the placement of the student in the program. The District shall, in accordance with applicable federal law, provide the administrator or designee with reasonable notice of the meeting, and a representative of the program may participate in the meeting to the extent that the meeting relates to the student's continued placement in the program. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means including conference telephone calls. *Education Code 37.004(e), (f); 19 TAC 89.1052(c)*

Note: These provisions expire September 1, 2005.

TRANSFER OF RECORDS

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. *20 U.S.C. 1415(k)(5)(B); 34 CFR 300.524(b)*

PARENTAL APPEAL

A parent may request a hearing if the parent disagrees with:

1. The determination that student's behavior was not a manifestation of the student's disability; or

2. Any decision regarding a disciplinary placement.

The District shall arrange for an expedited hearing in any such case.

20 U.S.C. 1615(k)(6); 34 CFR 300.525; 19 TAC 89.1151

**PLACEMENT
DURING
APPEALS**

When a parent requests a hearing or an appeal to challenge the manifestation determination or the interim alternative setting related to:

1. A student's placement in an interim alternative setting as a result of a removal for a weapon or drug offense; or
2. A student's placement in an interim alternative setting ordered by a hearing officer;

the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the time period for which the student is assigned to the alternative setting has expired, whichever occurs first, unless the parent and the District agree otherwise.

20 U.S.C. 1415(k)(7); 34 CFR 300.526

**PROPOSED
CHANGE
AFTER
INTERIM
PLACEMENT**

If a student is placed in an interim alternative educational setting for weapons or drugs [see above at WEAPONS/DRUG OFFENSES] or because the placement was ordered by a hearing officer [see above at REMOVAL BY A HEARING OFFICER], and 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 prior to the interim alternative educational setting), unless the District requests an expedited hearing. *20 U.S.C. 1415(k)(7)(B); 34 CFR 300.526(b)*

**EXPEDITED
HEARING**

If school personnel maintain that it is dangerous for a student to be in the current placement (placement prior to removal to the interim alternative educational setting) during the pendency of the due process proceedings, the District may request an expedited hearing. *20 U.S.C. 1415(k)(7)(C); 34 CFR 300.526(c); 19 TAC 89.1191*

**REPORTING
CRIMES**

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 committed by a student with a disability, 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). *20 U.S.C. 1415(k)(9); 34 CFR 300.529 [See FL]*

STUDENTS NOT

A student who has not been determined to be eligible for special education

YET IDENTIFIED

and related services and who has engaged in behavior that violated any rule or code of conduct of the District may assert any of the protections provided for in the Individuals with Disabilities Education Act (IDEA) if the District had knowledge that the student was a student with a disability before the behavior that precipitated that disciplinary action occurred.

The District will be deemed to have knowledge that a student is a student with a disability if:

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 personnel of the appropriate educational agency 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; or
4. The student's teacher, or other District personnel, has expressed concern about the behavior or performance of the student to the special education director or to other District personnel in accordance with the District's established child find or special education referral system.

In addition, the District would not be deemed to have knowledge if, as a result of receiving information specified in items 1-4, above, the District either:

1. Conducted an evaluation and determined that the student was not eligible for special education and related services; or
2. Determined that an evaluation was not necessary and provided the student's parents with results of its determination.

If the District has no knowledge (as described above), prior to 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, which can include suspension or expulsion without

education services.

If the student is determined to be a student with a disability, taking into consideration information from the evaluation and information provided by the parents, the District shall provide special education and related services as required by federal law.

20 U.S.C. 1415(k)(8); 34 CFR 300.527

USE OF
CONFINEMENT,
RESTRAINT,
SECLUSION, AND
TIME-OUT

A student with a disability who receives special education services under Education Code Chapter 29, Subchapter A, 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.

"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.

"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.

"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.

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

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 the District.

The Commissioner by rule shall adopt procedures for the use of restraint and time-out by a District employee or volunteer or an independent

contractor of the District in the case of a student with a disability receiving special education services under Subchapter A, Chapter 29 of the Education Code. A procedure adopted under this subsection must:

1. Be consistent with:
 - a. Professionally accepted practices and standards of student discipline and techniques for behavior management and
 - b. Relevant health and safety standards; and
2. Identify any discipline management practice or behavior management technique that requires a District employee or volunteer or an independent contractor of the District to be trained before using that practice or technique.

In the case of a conflict between a rule adopted by the Commissioner under these provisions and a rule adopted under Subchapter A, Chapter 29 of the Education Code, the rule adopted under these provisions controls.

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

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.
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.

"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 for school employees, volunteers, or independent contractors shall be provided according to the following requirements:

1. Not later than April 1, 2003, a core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.
2. After April 1, 2003, personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.
3. Training on the use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.
4. All trained personnel shall receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.

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.
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 behavioral intervention plan (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.

For purposes of 19 TAC 89.1053(c), (d), (e), 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.

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.

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.

Training for school employees, volunteers, or independent contractors shall be provided according to the following requirements:

1. Not later than April 1, 2003, general or special education personnel who implement time-out based on requirements established in a student's IEP and/or BIP must be trained in the use of time-out.
2. After April 1, 2003, newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or BIP must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.
3. Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, and must address the impact of time-out on 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.
4. All trained personnel shall receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.

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.

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.

Beginning with the 2003-04 school year, with the exception of actions covered under 19 TAC 89.1053(f), cumulative data regarding the use of restraint must be reported through the Public Education Information Management System (PEIMS).

19 TAC 89.1053

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UPDATE 72

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