STUDENTS WITH DISABILITIES UNDER SECTION 504

The District shall conduct an evaluation in accordance with 34 CFR 104.35(b) before taking any action with respect to any significant change in placement of a student with a disability who needs or is believed to need special education and related services. *34 CFR 104.35(a)*

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 discipline management and for preventing and intervening in student discipline problems must provide that a student who is enrolled in the special education program 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)*

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. *Education Code 37.004(c)–(d)*

REMOVAL FOR TEN DAYS OR LESS

School personnel may remove a student with a disability who violates a student code of conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days, to the extent those alternatives are applied to children without disabilities. *20 U.S.C. 1415(k)(1)(B); 34 CFR 300.530(b)(1)*

SERVICES DURING REMOVAL

The District is required to provide services during the period of removal if the District provides services to a child without disabilities who is similarly removed. *34 CFR 300.530(d)*

SUBSEQUENT REMOVALS OF TEN DAYS OR LESS

School personnel may remove the student for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change in placement (see below). *34 CFR 300.530(b)(1)*

SERVICES DURING REMOVAL

After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent removal of ten consecutive school days or less, school personnel, in consultation with at least one of the student's teachers, shall determine the extent to which services are needed so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. *20 U.S.C. 1415(k)(1)(D); 34 CFR 300.530(d)(4)*

NOTICE OF PROCEDURAL SAFEGUARDS

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]. *20 U.S.C. 1415(k)(1)(H)*

REMOVALS THAT ARE A 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'

For purposes of disciplinary removal of a student with a disability, 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:
   a. The series of removals total more than ten school days in a school year;
   b. The student's behavior is substantially similar to the student's behavior in the previous incidents that resulted in the series of removals; and
   c. Additional factors exist, 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.

The District determines, on a case-by-case basis, whether a pattern of removals constitutes a change in placement. The District's determination is subject to review through due process and judicial proceedings.

*34 CFR 300.536*

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

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 (as determined by the parent and the District) 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 300.530(e)*

NOT A MANIFESTATION

If the determination is that the student's behavior was not a manifestation of the student's disability, school personnel may apply the relevant disciplinary procedures to the student in the same manner and for the same duration as for students without disabilities. The ARD committee shall determine the interim alternative educational setting. *20 U.S.C. 1415(k)(1)(C), (k)(2); 34 CFR 300.530(c)*

SERVICES DURING REMOVAL

The student must:

1. Continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP.
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

These services may be provided in an interim alternative educational setting.

*34 CFR 300.530(d)(1)–(2)*

MANIFESTATION

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:

1. Conduct a functional behavioral assessment (FBA), unless the District had conducted an FBA before the behavior that resulted in the change in placement occurred, and implement a behavioral intervention plan (BIP) for the student; or

2. If a BIP has already been developed, review the BIP and modify it, as necessary, to address the behavior.

Except as provided at SPECIAL CIRCUMSTANCES, below, the ARD committee shall 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 300.530(f)*

SPECIAL CIRCUMSTANCES

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:

1. Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of TEA or the 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 TEA or the 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 TEA or the District.

*20 U.S.C. 1415(k)(1)(G); 34 CFR 300.530(g)*

The ARD committee shall determine the interim alternative education setting. *20 U.S.C. 1415(k)(2)*

SERVICES DURING REMOVAL

The student must:

1. Continue to receive educational services so as to enable the student to continue to participate in the general education cur-

riculum, although in another setting, and to progress toward meeting the goals in the student's IEP.

2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

These services may be provided in an interim alternative educational setting.

*34 CFR 300.530(d)(1)*

APPEALS

A parent who disagrees with a placement decision or the manifestation determination may request a hearing. 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. *20 U.S.C. 1415(k)(3)(A); 34 CFR 300.532(a); 19 TAC 89.1151*

PLACEMENT DURING APPEALS

When an appeal has been requested by a parent or the District, 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. *20 U.S.C. 1415(k)(4); 34 CFR 300.533*

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, the District shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the District reported the crime. 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)(6); 34 CFR 300.535* [See FL]

STUDENTS NOT YET IDENTIFIED

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 protections 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); 34 CFR 300.534(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 expressed concern in writing to supervisory or administrative personnel of the District, or to the

teacher of the student, that the student was in need of special education and related services;

2. The parent requested an evaluation of the student for special education and related services; or

3. The student's teacher, or other District personnel, 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); 34 CFR 300.534(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); 34 CFR 300.534(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 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. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

*20 U.S.C. 1415(k)(5)(D); 34 CFR 300.534(d)*

BEHAVIOR MANAGEMENT TECHNIQUES

It is the policy of the state to treat all students with dignity and respect, including students with disabilities who receive special education services. 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. *Education Code 37.0021(a); 19 TAC 89.1053(j)*

This section and any rules or procedures adopted under this section apply to a peace officer only if the peace officer:

1. Is employed or commissioned by the District; or
2. Provides, as a school resource officer, a regular police presence on a District campus under a memorandum of understanding between the District and a local law enforcement agency.

*Education Code 37.0021(h)*

EXCEPTIONS

Education Code 37.0021 (regarding use of confinement, seclusion, restraint, and time-out) does not apply to:

1. A peace officer, while performing law enforcement duties, except as provided by Education Code 37.0021(i) [see RESTRAINT—DOCUMENTATION, below]; or
2. 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.

LAW ENFORCEMENT DUTIES

"Law enforcement duties" means activities of a peace officer relating to the investigation and enforcement of state criminal laws and other duties authorized by the Code of Criminal Procedure.

*Education Code 37.0021(b)(4), (g); 19 TAC 89.1053(l)*

Further, 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(f)*

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(a)*

SECLUSION

A District employee or volunteer or an independent contractor of the District may not place a student in seclusion. *Education Code 37.0021(c)*

"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(b)(2)*

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.
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.

*19 TAC 89.1053(c)*

"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.

"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.

*19 TAC 89.1053(b)(1)–(2)*

TRAINING

Training for school employees, volunteers, or independent contractors regarding the use of restraint shall be provided according to the requirements set forth at 19 Administrative Code 89.1053(d).

DOCUMENTATION

In a case in which restraint is used, school employees, volunteers, or independent contractors shall implement the documentation requirements set forth at 19 Administrative Code 89.1053(e).

The District shall report electronically to TEA, in accordance with standards provided by Commissioner rule, information relating to the use of restraint by a peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity. The report must be consistent with the require-

ments adopted by Commissioner rule for reporting the use of restraint involving students with disabilities. *Education Code 37.0021(i)*

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.
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.

*19 TAC 89.1053(g)*

"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.

*19 TAC 89.1053(b)(3)*

TRAINING

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

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(i)*