



BIRDVILLE INDEPENDENT SCHOOL DISTRICT SPECIAL EDUCATION OPERATING PROCEDURES AUTHORITY OF SCHOOL PERSONNEL

Birdville ISD Board Policy along with these *Special Education Operating Procedures* constitute the Policies and Procedures of Birdville ISD, designed to be consistent with the State policies and procedures developed pursuant to the IDEA. Birdville ISD *Special Education Operating Procedures* are not to be for the purpose of creating a requirement that is not otherwise imposed by the Individuals with Disabilities Education Improvement Act (“IDEA”), together with its implementing federal regulations, state statutes and rules, as they shall from time to time be amended, and shall not be construed to create a higher standard than that established by IDEA. These *Special Education Operating Procedures* will be posted on Birdville ISD’s website. These *Special Education Operating Procedures* should be interpreted consistent with the IDEA. Birdville ISD’s *Special Education Operating Procedures* are reviewed and updated, as needed, on at least an annual basis. Birdville ISD will make timely changes to policies and procedures in response to IDEA amendments, regulatory or rule changes, changes to state policy, or new legal interpretation as are necessary to bring Birdville ISD into compliance with the requirements of IDEA. Birdville ISD maintains systems to ensure that all students with disabilities residing in the District, including students with disabilities attending non-public schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and provided a free appropriate public education. Birdville ISD maintains systems to ensure that students with disabilities and their parents are afforded the procedural safeguards required under the IDEA (and its implementing federal regulations, state statutes and rules) including with respect to the confidentiality of records and personally identifiable information.

AUTHORITY OF DISTRICT PERSONNEL TO ASSIGN DISCIPLINARY CONSEQUENCES FOR VIOLATIONS OF THE STUDENT CODE OF CONDUCT

Students with disabilities shall be afforded all of the protections provided to students without disabilities, in addition to the protections and procedural safeguards afforded students with disabilities. For example, a student with disabilities who is homeless shall receive the same protections available for all homeless students, when contemplating an out-of-school suspension.¹ Also, for example, the Campus Behavior Coordinator shall promptly notify the parent when taking certain disciplinary actions as provided in State law.²

When determining what disciplinary action(s) may be appropriate for a student with a disability who violates the Student Code of Conduct, three questions should be considered:

- (1) Has the misconduct been identified by an administrator as bullying, harassment, or making a “hit list,” which require an ARD committee convene *prior to* disciplining a student with a disability; or
- (2) does the disciplinary authority of school personnel, which does not require an ARD meeting, apply; and
- (3) Does the proposed disciplinary action constitute a disciplinary change of placement, which requires an ARD meeting and relevant procedures? The Campus Administrator

¹ TEC § 37.005(d).

² TEC § 37.0012(d).

may consider any unique circumstances on a case-by-case basis when determining whether a disciplinary change in placement is appropriate for a student with a disability who violates a code of student conduct.³

When making a case-by-case determination regarding how to proceed, the Campus Administrator may consider factors such as the student’s disciplinary history, ability to understand consequences, expression of remorse, and supports provided to a student with a disability prior to the violation of the Student Code of Conduct.⁴ For a student who is homeless, the Campus Behavior Coordinator may coordinate with the school district’s homeless education liaison to identify appropriate alternatives to out-of-school suspension.⁵

To the extent that Birdville ISD could be construed as having “a zero tolerance” policy(ies), such policies are not relevant and do not apply when making a **DISCIPLINARY CHANGE OF PLACEMENT** under the IDEA.⁶ Moreover, although the Texas Education Code describes some misconduct as requiring a “mandatory” expulsion or placement in a disciplinary alternative education program (DAEP), federal law requires that a **MANIFESTATION DETERMINATION** be completed for any conduct that results in a **DISCIPLINARY CHANGE OF PLACEMENT**, and accordingly conduct that is found to be a manifestation of a student’s disability may not be the basis of a **DISCIPLINARY CHANGE OF PLACEMENT**, except where **SPECIAL CIRCUMSTANCES** exist, as described in these Operating Procedures. Federal law requirements prevail over any State law “mandatory” disciplinary requirements.

As part of this case-by-case determination regarding how to proceed, the Campus Administrator may look at whether incidents of student misconduct, classroom disruptions and violations of the Student Code of Conduct, indicate that the student’s IEP needs to include behavioral supports. “This is especially true when a pattern of misbehavior is apparent or can be reasonably anticipated based on the [student]’s present levels of performance and needs.”⁷ Where such need is indicated, the Campus Administrator may call an ARD committee meeting or consult with the appropriate special education team member. If the student’s IEP already addresses the student’s behavior through positive behavioral interventions and supports and other strategies as described in Birdville ISD’s Special Education Operating Procedures, upon repeated incidents of student misconduct or classroom disruption, the Campus Administrator may call an ARD committee meeting to review and consider revising the student’s behavioral supports.⁸

³ 34 C.F.R. § 300.530(a); U.S. Dept. of Education, 71 Fed. Reg. 46714 (August 14, 2006) (“This does not independently authorize school personnel, on a case-by-case basis, to institute a change in placement that would be inconsistent with § 300.530(b) through (i), including the requirement in paragraph (e) of this section regarding manifestation determinations. We are revising § 300.530(a) to clarify that any consideration regarding a change in placement under paragraph (a) of this section must be consistent with all other requirements in § 300.530.”)

⁴ U.S. Dept. of Education, 71 Fed. Reg. 46714 (August 14, 2006).

⁵ TEC § 37.005(d).

⁶ U.S. Dept. of Education, 71 Fed. Reg. 46728 (August 14, 2006).

⁷ DCL Letter, OSERS (August 2014).

⁸ DCL Letter, OSERS (August 2014); *OSERS, Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, Q/A A-3 (Revised July 2022).

AUTHORITY OF SCHOOL PERSONNEL TO REMOVE STUDENTS WITH DISABILITIES OR IMPOSE DISCIPLINE THAT DOES NOT REQUIRE AN ARD COMMITTEE

School authority shall be exercised consistent with [The Legal Framework for the Child-Centered Process](#), State law, Board Policy, the Student Code of Conduct and these Operating Procedures. As required by State law, a person at each campus shall be designated to serve as the Campus Behavior Coordinator.⁹ The person designated may be the principal of the campus or any other campus administrator selected by the principal.¹⁰ The duties of the Campus Behavior Coordinator shall be as prescribed in State law and local policy.

What authority does school personnel have to discipline a student with a disability independent of an ARD Committee?

Unless limited by the student’s IEP, the Campus Administrator may remove a student with a disability who violates the Student Code of Conduct from his or her current IEP placement to any other setting authorized by State law, Board Policy and the Student Code of Conduct (to the extent those alternatives are applied to students without disabilities) on a short-term basis (less than 10 consecutive school days) as long as the short-term removal does not constitute a **DISCIPLINARY CHANGE OF PLACEMENT**.¹¹ The Campus Administrator shall promptly notify the student’s parent of any proposed ISS, out of school suspension, DAEP, expulsion and when taken into the custody by a law enforcement officer, as required by State law.¹²

The authority of the Campus Administrator to remove a student with a disability on a short-term basis extends to additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a **DISCIPLINARY CHANGE OF PLACEMENT**).¹³ The U.S. Department of Education recognizes the importance of giving school personnel such authority.¹⁴

Birdville ISD understands the term “consecutive” to permit the Campus Administrator to remove students with disabilities who violate the Student Code of Conduct from their current educational placement for not more than 10 consecutive school days at a time, and that additional removals of 10 consecutive school days or less in the same school year is possible, as long as any removal does not constitute a **DISCIPLINARY CHANGE IN PLACEMENT**.¹⁵ The Campus Administrator may not, however, use repeated disciplinary removals of 10 school days or less as a means of avoiding the protections in connection with a change in placement.¹⁶

The District need only provide **SERVICES DURING PERIODS OF REMOVAL** to a student with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a student without disabilities under similar

⁹ TEC § 37.0012(a).

¹⁰ TEC § 37.0012(a).

¹¹ 34 C.F.R. § 300.530(b)(1).

¹² TEC §§ 37.0012(d)-(f).

¹³ 34 C.F.R. § 300.530(b)(1).

¹⁴ U.S. Dept. of Education, 71 Fed. Reg. 46715 (August 14, 2006).

¹⁵ U.S. Dept. of Education, 71 Fed. Reg. 46714 (August 14, 2006).

¹⁶ U.S. Dept. of Education, 71 Fed. Reg. 46715 (August 14, 2006).

circumstances.¹⁷ For any short-term removals that do not constitute a disciplinary change of placement beyond the ten cumulative school days in the same school year, services must be provided as set out in **SERVICES DURING PERIODS OF REMOVAL**.¹⁸

School personnel have the authority to take non-disciplinary action such as confinement and restraint in response to an emergency consistent with district Operating Procedures. School personnel may also utilize behavior management techniques such as time-out consistent with the district Operating Procedures.

What if the district believes the student is dangerous?

As discussed below, an employee of Birdville ISD may report a crime witnessed at the school to any peace officer with authority to investigate the crime.¹⁹ Nothing in the Individuals with Disabilities Education Act or Birdville ISD’s operating procedures prohibit an employee from reporting a crime committed by a student with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a student with a disability.²⁰

If Birdville ISD believes that maintaining the current placement of the student is “substantially likely to result in injury” to the student or others, it may request a special education due process hearing, from the Texas Education Agency (TEA), to appeal the results of a manifestation determination based on dangerousness.²¹ That decision shall be made by the Campus Administrator, Executive Director of Specialized Services and Support and the Executive Director of Student Services in collaboration with the Superintendent, and only after a manifestation determination has been completed.

Once requested from TEA, the hearing that is held is an expedited hearing.²² Stay-put is the interim alternative educational setting.²³

The hearing officer assigned by TEA may... “[order a change of placement of the student with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement is substantially likely to result in injury to the child or to others.”²⁴

REFERRAL TO LAW ENFORCEMENT

Is the District prohibited from making referrals to law enforcement?

¹⁷ 34 C.F.R. § 300.530(d)(3); see also, U.S. Dept. of Education, 71 Fed. Reg. 46718 (August 14, 2006).

¹⁸ 34 C.F.R. § 300.530(b)(2).

¹⁹ TEC § 37.148(a)

²⁰ 34 C.F.R. §300.535(a)

²¹ 34 C.F.R. § 300.532(a).

²² 34 C.F.R. § 300.532(c).

²³ 34 C.F.R. § 300.533.

²⁴ 34 C.F.R. § 300.532(b)(2)(ii).

An employee of Birdville ISD may report a crime witnessed at the school to any peace officer with authority to investigate the crime.²⁵ Nothing in the Individuals with Disabilities Education Act prohibits an agency from reporting a crime committed by a student with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a student with a disability.²⁶

Birdville ISD may not adopt a policy requiring a school employee to: (1) refrain from reporting a crime witnessed at the school; or (2) report a crime witnessed at the school only to certain persons or peace officers.²⁷

The IDEA does not prohibit a District from reporting a crime committed by a child with a disability to appropriate law enforcement agencies, (local police departments, sheriff departments). IDEA does not prevent law enforcement from exercising their responsibilities under state or Federal Law to crimes committed by a child with a disability. 34 CFR § 300.535.

Must a student’s Behavior Intervention Plan (BIP) specify that law enforcement may be contacted?

No. Police intervention is not required to be part of a BIP or delineated as a listed behavior. At times, police intervention may be requested for aggressive behavior.²⁸

If the district reports a crime committed by a student with a disability, are there additional steps that the district takes?

When reporting a crime committed by a student with a disability, the Campus Administrator or designee must ensure that copies of the student’s special education and disciplinary records are transmitted for consideration by the appropriate authorities to whom the District reports the crime only to the extent permitted under the Family Educational Rights and Privacy Act.²⁹ In order to satisfy this obligation, the Campus Administrator or designee must first seek a parent’s written consent for disclosure of these confidential education records. Then, if the parent provides written consent for the disclosure of these records to law enforcement, the Campus Administrator or designee must take steps to transmit the records to the appropriate authorities.

LIMITATION ON GENERAL AUTHORITY – BULLYING, HARASSMENT, AND MAKING HIT LISTS

²⁵ TEC § 37.148(a)

²⁶ 34 C.F.R. §300.535(a)

²⁷ TEC § 37.148(b)

²⁸ *Spring Branch v. O.W., by Hannah W.*, 961 F.3d 781 (2020)

²⁹ 34 C.F.R. §300.535(b)

Can a student served through special education be disciplined for bullying harassment and/or making a hit list in accordance with Texas Education Code §37.001

A special education student cannot be disciplined for conduct related to “bullying, harassment and making hit lists” until an ARD Committee meeting has been held to review the conduct.³⁰

“Bullying” means 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, through electronic means, or physical conduct that occurs on school property, at a school-sponsored or school-related activity on or off school property, or in a vehicle being used for transportation of students to or from school or a school-sponsored or school-related activity that:

- (i) 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;
- (ii) is sufficiently severe, persistent, or pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student;
- (iii) materially and substantially disrupts the educational process or the orderly operation of a classroom or school; or
- (iv) infringes on the rights of the victim at school.³¹

“Bullying” also includes Cyberbullying, which is bullying done through the use of any electronic communication device, including through the use of a cellular or other type of telephone, a computer, a camera, electronic mail, instant messaging, text messaging, a social media application, or any other Internet-based communication tool.³²

“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.³³

“Hit list” means a list of people targeted to be harmed using (a) a firearm, as defined by Section 46.01(3) of the Texas Penal Code; (b) a knife, as defined by Section 46.01(7) of the Texas Penal Code; or (c) any other object to be used with intent to cause bodily harm.³⁴

³⁰ TEC §37.001(b-1)

³¹ TEC §37.001(b)(1); TEC §37.0832(a)(1)

³² TEC §37.0832(a)(2)

³³ TEC §37.001(b)(2)

³⁴ TEC §37.001(b)(3)