



BIRDVILLE INDEPENDENT SCHOOL DISTRICT SPECIAL EDUCATION OPERATING PROCEDURES MANIFESTATION DETERMINATION

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.

MANIFESTATION DETERMINATION REVIEW

Manifestation Determination Reviews shall be conducted prior to any **DISCIPLINARY CHANGE OF PLACEMENT** consistent with [The Legal Framework for the Child-Centered Process](#) and these Operating Procedures.

Who must participate in the Manifestation Determination Review?

Birdville ISD shall conduct the Manifestation Determination Review (MDR) in the context of an ARD committee meeting that has been established in accordance with Birdville ISD’s Special Education Operating Procedures. The Educational Diagnostician shall ensure that the members include a Birdville ISD representative, the parent, and relevant members of the ARD committee (as determined by the parent and the Campus Administrator).¹

What are the timelines for conducting the MDR?

The Educational Diagnostician shall ensure that the MDR takes place within 10 school days of any decision to make a **DISCIPLINARY CHANGE OF PLACEMENT**.²

¹ 34 C.F.R. § 300.530(e)(1).

² 34 C.F.R. § 300.530(e)(1).

When scheduling the ARD committee meeting, the Educational Diagnostician shall ensure that the parent is given notice of the meeting. The Educational Diagnostician shall include in the notice “[t]he purpose, time, and location of the meeting and who will be in attendance.”³

What must the ARD Committee consider when conducting an MDR?

The Educational Diagnostician shall ensure that the ARD committee reviews all relevant information in the student’s file, including the IEP, any teacher observations, and any relevant information provided by the parents before making the manifestation determination.⁴ Additionally, if the ARD committee is considering a change of placement based upon a series of removals that constitute a pattern, each of the behaviors underlying the removals that constitute a pattern should be considered.

What are the manifestation determination questions the ARD Committee must answer?

The Educational Diagnostician shall ensure that the ARD committee answers the following two manifestation determination questions:

- Was the conduct in question the direct result of Birdville ISD’s failure to implement the student’s IEP?⁵
- Was the conduct in question caused by, or did it have a direct and substantial relationship to, the student’s disability?⁶

When determining whether the conduct in question was caused by or had a direct and substantial relationship to the student’s disability, the School Psychologist shall facilitate the ARD committee’s analysis of the student’s behavior as demonstrated across settings and across time.⁷ The School Psychologist shall also assist the ARD committee, as needed, in understanding that this requires more than an attenuated association, such as low self-esteem, to the student’s disability. Instead, the disciplinary infraction must be caused by or be the direct result of the student’s disability, and not a mere correlation or attenuation.⁸

If the ARD committee answers yes to either question, the conduct shall be determined to be a manifestation of the student’s disability.⁹

³ 34 C.F.R. § 300.322(a)(1)(A)(i).

⁴ 34 C.F.R. § 300.530(e)(1).

⁵ 34 C.F.R. § 300.530(e)(1)(ii).

⁶ 34 C.F.R. § 300.530(e)(1)(i).

⁷ U.S. Dept. of Education, 71 Fed. Reg. 46720 (August 14, 2006).

⁸ Note 237–245 of the Conf. Rpt., p. 225; see also, U.S. Dept. of Education, 71 Fed. Reg. 46720 (August 14, 2006).

⁹ 34 C.F.R. § 300.530(e)(2).

What occurs if the parent disagrees with the decision concerning the manifestation determination?

The ARD committee is not required to offer the parent a ten-day recess “when the student's presence on the campus presents a danger of physical harm to the student or others, or when the student has committed an expellable offense or an offense that may lead to a placement in a disciplinary alternative education program.”¹⁰

When consensus cannot be reached, the Birdville ISD through its Educational Diagnostician member of the ARD committee, must make the determination and provide the parent with prior written notice consistent with Birdville ISD’s Special Education Operating Procedures. The parent of the student with a disability has the right to request mediation and/or a due process hearing to resolve the disagreement. The due process hearing will be expedited. The parent can also file a State complaint.¹¹ If the parent exercises any of these options, the student will remain in the disciplinary placement during the pendency of these procedures.¹²

¹⁰ 19 T.A.C. § 89.1050(g)(1)

¹¹ *OSERS, Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, Q/A F-6 (Revised July 2022).

¹² 34 C.F.R. § 300.533 for due process hearings requested under 34 C.F.R. § 300.532.