



BIRDVILLE INDEPENDENT SCHOOL DISTRICT SPECIAL EDUCATION OPERATING PROCEDURES WHEN BEHAVIOR IS NOT A MANIFESTATION OF THE DISABILITY

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.

WHEN BEHAVIOR IS NOT A MANIFESTATION OF THE DISABILITY

When behavior is not a manifestation of the student’s disability, the student may be disciplined in a manner that constitutes a **DISCIPLINARY CHANGE OF PLACEMENT** consistent with [The Legal Framework for the Child-Centered Process](#), Board Policy, the Student Code of Conduct and these Operating Procedures.

What discipline can be assigned if the behavior is not a manifestation of the student’s disability?

Students with disabilities may be disciplined “in the same manner and for the same duration” as students without disabilities, except that services must be provided as described in **SERVICES DURING PERIODS OF REMOVAL**.¹

What is the role of the ARD Committee when behavior is not a manifestation of the disability?

The Educational Diagnostician shall ensure that the ARD committee perform the following specific functions when the student’s behavior is not a manifestation of the disability:

¹ 34 C.F.R. § 300.530(c).

- Ensure that the student receives “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.”²
- Determine services as outlined in **SERVICES DURING PERIODS OF REMOVAL**.³
- Determine the “interim alternative educational setting” for the provision of the services.⁴ The setting may be the DAEP if the ARD committee determines that the services can be provided in that setting.⁵
- Review any previously conducted functional behavioral assessment of the student and any behavior improvement plan or behavioral intervention plan developed for the student based on that assessment.⁶
- As necessary, develop a behavior improvement plan or behavioral intervention plan for the student if the student does not have a plan; or if the student has a behavior improvement plan or behavioral intervention plan, revise the student's plan;⁷ and
- Provide Prior Written Notice in accordance with Birdville ISD’s Special Education Operating Procedures

When determining the setting, to what extent must we consider the student’s Least Restrictive Environment (“LRE”)?

The law does not require that students with disabilities “who have been suspended or expelled for disciplinary reasons continue to be educated with children who are not disabled during the period of their removal.”⁸ Birdville ISD does not “necessarily have to provide exactly the same service, in the same settings.”⁹

Can the home setting be the interim alternative educational setting?

Birdville ISD does not limit the ARD committee to only one option when determining the appropriate interim alternative educational setting (IAES) for a **DISCIPLINARY CHANGE OF PLACEMENT** that is not a manifestation of the student’s disability.¹⁰ The Educational

² 34 C.F.R. § 300.530(d)(1)(ii).

³ 34 C.F.R. § 300.530(d)(5).

⁴ 34 C.F.R. § 300.531.

⁵ *OSERS Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, Q/A D-3 (Revised July 2022).

⁶ Tex. Ed. Code § 37.004(b-1)(1)(B)

⁷ Tex. Ed. Code § 37.004(b-1)(2)

⁸ U.S. Dept. of Education, 71 Fed. Reg. 46586.

⁹ U.S. Dept. of Education, 71 Fed. Reg. 46580.

¹⁰ *OSERS Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, Q/A D-3 (Revised July 2022).

Diagnostician shall facilitate the ARD committee’s discussion of an appropriate IAES including when the disciplinary assignment is to a DAEP.

Whether a student’s home would be an appropriate IAES “would depend on the particular circumstances of an individual case such as the length of the removal, the extent to which the student previously has been removed from his or her regular placement, and the student’s individual needs and educational goals.”¹¹ For short-term removals that are a change of placement, the ARD committee may decide that home instruction is the appropriate IAES to provide the **SERVICES DURING PERIODS OF REMOVAL**.¹²

Where the removal is for a longer period such as to a DAEP, “special care should be taken to ensure that the services required” under **SERVICES DURING PERIODS OF REMOVAL** can be properly provided in the IAES/DAEP. The ARD committee determines the criteria of the IAES/DAEP based on the needs of the student as specified in the IEP. The District may have available more than one IAES/DAEP that meets the criteria chosen by the ARD committee.¹³

¹¹ U.S. Dept. of Education, 71 Federal Register 46722

¹² *OSERS Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, Q/A D-5 (Revised July 2022).

¹³ 71 Fed. Reg. 46719 (August 14, 2006)