

## **ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT SPECIAL EDUCATION OPERATING PROCEDURES**

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Ector County Independent School District Board Policy along with these *Special Education Operating Procedures* constitute the Policies and Procedures of Ector County Independent School District, designed to be consistent with the State policies and procedures developed pursuant to the IDEA. Ector County Independent School District *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 Ector County Independent School District website. These *Special Education Operating Procedures* should be interpreted consistent with the IDEA. Ector County Independent School District *Special Education Operating Procedures* are reviewed and updated, as needed, on at least an annual basis. Ector County Independent School District 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 Ector County Independent School District into compliance with the requirements of IDEA. Ector County Independent School District 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. Ector County Independent School District 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.

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### **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.<sup>1</sup> Also, for example, the Campus Behavior Coordinator shall promptly notify the parent when taking certain disciplinary actions as provided in State law.<sup>2</sup>

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?

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<sup>1</sup> TEC § 37.005(d).

<sup>2</sup> TEC § 37.0012(d).

The building principal 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.<sup>3</sup>

When making a case-by-case determination regarding how to proceed, the building principal 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.<sup>4</sup> 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.<sup>5</sup>

To the extent that Ector County Independent School District 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.<sup>6</sup> 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 building principal 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.”<sup>7</sup> Where such need is indicated, building principal 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 Ector County Independent School District Special Education Operating Procedures, upon repeated incidents of student misconduct or classroom disruption, the building principal may call an ARD committee meeting to review and consider revising the student’s behavioral supports.<sup>8</sup>

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<sup>3</sup> 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.”)

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

<sup>5</sup> TEC § 37.005(d).

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

<sup>7</sup> DCL Letter, OSERS (August 2014).

<sup>8</sup> 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).

**PRACTICE GUIDE**—There are many requirements in State law applicable to all students that go hand in hand with requirements specific to students with disabilities.

For example, under State law, TEC § 37.005(e), a school district shall provide to a student during the period of the student's suspension, regardless of whether the student is placed in in-school or out-of-school suspension, an alternative means of receiving all course work provided in the classes in the foundation curriculum under Section 28.002(a)(1) that the student misses as a result of the suspension. The district must provide at least one option for receiving the course work that does not require the use of the Internet.<sup>1</sup>

Additionally, under State law, TEC § 37.0013 (Positive Behavior Program), each district may develop and implement a program, in consultation with campus behavior coordinators, that provides a disciplinary alternative for a student enrolled in a grade level below grade three who engages in conduct described by Section 37.005(a) and is not subject to Section 37.005(c). If a district chooses to develop such a program, the program must:

- Be age-appropriate and research-based;
- Provide models for positive behavior;
- Promote a positive school environment;
- Provide alternative disciplinary courses of action that do not rely on the use of in-school suspension, out-of-school suspension, or placement in a disciplinary alternative education program to manage student behavior; and
- Provide behavior management strategies, including (A) positive behavioral intervention and support; (B) trauma-informed practices; (C) social and emotional learning; (D) a referral for services, as necessary; and (E) restorative practices.

Moreover, under State law, each district may annually conduct staff training on the adopted program. When adopting, implementing, and training on such programs, integrating requirements for students with disabilities may be useful. Additionally, training the Campus Behavior Coordinator in the requirements specific to students with disabilities may enhance effectiveness.

## **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.<sup>9</sup> The person designated may be the principal of the campus or any other campus administrator selected by the principal.<sup>10</sup> 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 building principal 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**.<sup>11</sup> The Campus Behavior Coordinator 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.<sup>12</sup>

The authority of the building principal 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**).<sup>13</sup> The U.S. Department of Education recognizes the importance of giving school personnel such authority.<sup>14</sup>

Ector County Independent School District understands the term “consecutive” to permit the building principal 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**.<sup>15</sup> The building principal 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.<sup>16</sup>

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 circumstances.<sup>17</sup> 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**.<sup>18</sup>

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<sup>9</sup> TEC § 37.0012(a).

<sup>10</sup> TEC § 37.0012(a).

<sup>11</sup> 34 C.F.R. § 300.530(b)(1).

<sup>12</sup> TEC §§ 37.0012(d)-(f).

<sup>13</sup> 34 C.F.R. § 300.530(b)(1).

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

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

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

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

<sup>18</sup> 34 C.F.R. § 300.530(b)(2).

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

**PRACTICE GUIDE— School personnel have discretion to impose disciplinary sanctions to maintain safety and order in the school environment. When exercising this discretion, teachers and administrators may take immediate action consistent with the Student Code of Conduct and State law; however, they should be prepared to articulate the rationale for any action taken. It is important to have a campus administrator, which may include a Campus Behavior Coordinator, to document any disciplinary removals. It is also important that should the student have a Behavior Intervention Plan (BIP), school authorities are cognizant of any restrictions on discipline that may be imposed, and that any disciplinary action be consistent with the BIP. Be reminded that BIPs or positive behavioral strategies are not required to limit consequences for students with disabilities unless the ARD committee determines, based on evaluation or other data, that such is necessary for FAPE. If appropriate, it may be good practice to attempt other interventions as an alternative to removal from class. Moreover, teacher removals should comply with TEC § 37.002 including involvement by the Campus Behavior Coordinator.**

### *What if the district believes the student is dangerous?*

As discussed below, an employee of Ector County Independent School District may report a crime witnessed at the school to any peace office with authority to investigate the crime.<sup>19</sup> Nothing in the Individuals with Disabilities Education Act or Ector County Independent School District 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.<sup>20</sup>

If Ector County Independent School District 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.<sup>21</sup> That decision shall be made by the Executive Director of Special Services in consultation with the Superintendent, and only after a manifestation determination has been completed.

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<sup>19</sup> TEC § 37.148(a)

<sup>20</sup> 34 C.F.R. §300.535(a)

<sup>21</sup> 34 C.F.R. § 300.532(a).

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

The hearing officer assigned by TEA may... “[o]rder 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.”<sup>24</sup>

#### **PRACTICE GUIDE—**

- **Confidentiality continues to apply to students who have committed or may commit violent acts in school. However, the District may disclose personally identified information (PII) to appropriate parties in connection with a health or safety emergency.**
- **This exception is limited to the period of the emergency and generally does not allow for a blanket release of PII from a student’s education records. The District may disclose PII to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or others. In making that determination, the district may take into account the totality of the circumstances pertaining to the threat to the health and safety of the student or others. If the district determines that there is an articulable and significant threat to the health or safety of student or others, it may disclose PII to any person whose knowledge of the information is necessary.**

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<sup>22</sup> 34 C.F.R. § 300.532(c).

<sup>23</sup> 34 C.F.R. § 300.533.

<sup>24</sup> 34 C.F.R. § 300.532(b)(2)(ii).

- **Consistent with the District’s Board Policy FFB (Legal), the District may conduct a threat assessment by the Superintendent’s designated Threat Assessment Team, for the purpose of assessing and reporting individuals who make threats of violence or exhibit harmful, threatening, or violent behavior in accordance with district policies and procedures. This Threat Assessment Team may be allowed access to PII consistent with Board Policies FFB and FL. The District should ensure that school personnel involved in screening for and conducting, threat or risk assessments of students with disabilities are aware that the child has a disability and are and are sufficiently knowledgeable about the LEA’s obligation to ensure FAPE to the child, including IDEA’s discipline provisions. Where appropriate, the LEA can ensure that the school personnel conducting the threat or risk assessment have access to, and are coordinating with, the child’s IEP Team.**
- **Additionally, if during a psychological evaluation, a student provides names of students that he or she wants to injure or to inflict fatal injury upon and the requirements of the health or safety emergency exception set out above have been satisfied, this information may be shared with law enforcement.**
- **If a student is receiving counseling services and during a counseling session a student reveals intent to commit violent acts, the counselor may inform law enforcement officials if the health or safety emergency exception set out above is satisfied.**
- **Since the rise of school violence in recent years, IDEA has not been amended to afford schools greater flexibility to remove students with mental health challenges than already provided. Schools are required to simultaneously maintain an orderly school environment while appropriately serving students in the least restrictive environment. It is important to note that nothing in the federal law prohibits a school from reporting a crime committed by a student with a disability to a law enforcement agency.**

## REFERRAL TO LAW ENFORCEMENT

### *Is the District prohibited from making referrals to law enforcement?*

An employee of Ector County Independent School District may report a crime witnessed at the school to any peace officer with authority to investigate the crime.<sup>25</sup> 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.<sup>26</sup>

Ector County Independent School District 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.<sup>27</sup>

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.

**PRACTICE GUIDE— Police intervention may be necessary to deal with a violent and escalating situation such as a student assaulting a teacher. When a student’s behavior poses a substantial risk of serious injury to himself or others, police intervention may be necessary.**

### *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.<sup>28</sup>

### *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, building principal 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

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<sup>25</sup> TEC § 37.148(a)

<sup>26</sup> 34 C.F.R. §300.535(a)

<sup>27</sup> TEC § 37.148(b)

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



extent permitted under the Family Educational Rights and Privacy Act.<sup>29</sup> In order to satisfy this obligation, building principal 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, building principal must take steps to transmit the records to the appropriate authorities.

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

### ***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.<sup>30</sup>

“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.<sup>31</sup>

“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.<sup>32</sup>

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<sup>29</sup> 34 C.F.R. §300.535(b)

<sup>30</sup> TEC §37.001(b-1)

<sup>31</sup> TEC §37.001(b)(1); TEC §37.0832(a)(1)

<sup>32</sup> TEC §37.0832(a)(2)

“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.<sup>33</sup>

“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.<sup>34</sup>

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<sup>33</sup> TEC §37.001(b)(2)

<sup>34</sup> TEC §37.001(b)(3)