

# ECTOR 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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## DISCIPLINARY CHANGE OF PLACEMENT

Before taking disciplinary action, the building principal shall determine whether such action will result in a change of placement<sup>1</sup> as provided in [The Legal Framework for the Child-Centered Process](#) and these Operating Procedures. Whether a proposed disciplinary action will constitute a change of placement shall be made on a case-by-case basis.<sup>2</sup>

When considering whether to propose a disciplinary change of placement, the building principal may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a student with a disability who violates the Student Code of Conduct.<sup>3</sup> To the extent that Ector County Independent School District has “a zero tolerance” policy, such policies are not applicable to what constitutes a change in placement for disciplinary removals under the IDEA.<sup>4</sup>

### *What is a disciplinary change of placement?*

A removal or series of removals shall be considered by the building principal to constitute a disciplinary change of placement if:

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<sup>1</sup> 34 C.F.R. § 300.536(a).

<sup>2</sup> 34 C.F.R. § 300.536(b)(1).

<sup>3</sup> *Id.*; see also, 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. 46728 (August 14, 2006).

- The removal is for more than 10 consecutive school days; or
- The student has been subjected to a series of removals that constitute a pattern—
  - Because the series of removals total more than 10 school days in a school year;
  - Because the student’s behavior is substantially similar to the student’s behavior in previous incidents that resulted in the series of removals; and
  - Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.<sup>5</sup>

“Substantially similar behaviors” do not need to be recognized by the ARD committee or included in the student’s IEP, and instead will be determined by the building principal. In making the determination as to “substantially similar behavior,” the building principal shall consider any relevant information regarding the student’s behaviors, including, where appropriate, any information in the student’s IEP. Although “substantially similar behavior” is a subjective determination, the building principal will objectively examine the student’s behaviors cumulatively, in the context of all the criteria for determining whether the series of removals constitutes a change in placement, to make a reasonable determination as to whether a change in placement will occur.<sup>6</sup>

**PRACTICE GUIDE**—When documenting student misconduct, administrators are encouraged to describe the student’s behavior objectively and with specificity rather than in generalities, like “disrespect” or “verbal aggression.” Consider that “disrespect” could mean anything from not saying thank you, to making derogatory comments and “verbal aggression” could mean anything from use of profanity to threats of physical harm. Use specific descriptions of the student’s behavior in any documentation, data and discipline reports, so as to distinguish among dissimilar behaviors. Also, don’t rely on checkboxes and prepopulated software to describe the behavior at issue. Review any disciplinary documents prepared by the administrator related to considerations given to intent or lack of intent, self defense, or a disability that substantially impairs student’s capacity to appreciate the wrongfulness of the behavior.

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<sup>5</sup> 34 C.F.R. § 300.536(a). *OSERS Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, Q/A C-1 & C-6 (Revised July 2022).

<sup>6</sup> U.S. Dept. of Education, 71 Fed. Reg. 46729 (August 14, 2006).

<sup>7</sup> *OSERS Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, Q/A C-1 (Revised July 2022).

**PRACTICE GUIDE**— Be sure to train staff and administrators about how to properly count the 10-days referenced above. For example as discussed below, In-School Suspension (ISS) that does not provide special education services, may count as a day out of placement. Similarly, if the school initiates calling a parent to pick up a student for disciplinary reasons, prior to the end of the instructional day, this may also count towards the 10-days. Partial days out of placement will also count. Avoid written or verbal communications with the parent that could be construed as the District requesting/suggesting the student be picked up from school, as such could later be viewed as constituting a disciplinary removal.

### ***When should in-school suspension be counted?***

Ector County Independent School District follows U.S. Department of Education policy regarding in-school suspensions. The building principal will count days of in-school suspension that are exclusionary, consistent with U.S. Department of Education policy, as days of disciplinary removal. The building principal will not count an in-school suspension as a removal that could constitute a change of placement as long as the student is afforded the opportunity to:

- continue to appropriately participate in the general curriculum;
- continue to receive the services specified on the student’s IEP; and
- continue to participate with non-disabled students to the extent they would have in their current placement.<sup>8</sup>

For students placed in ISS who meet all three criteria above, those days need not be counted as days of removal for change of placement purposes. For example, arrangements such as having a student’s special education teacher come to the ISS and provide the 1 hour of special education services, called for in the IEP schedule of services, can help avoid a change of placement.

### ***When should days of bus suspension be counted?***

Whether the building principal counts a bus suspension as a removal that could constitute a change of placement depends on whether the bus transportation is part of the student’s IEP. If bus transportation is part of the student’s IEP (e.g., the student receives special transportation as a related service), the building principal will count the bus suspension as a removal that could constitute a change of placement, unless the District provides the transportation in some other way at no cost to the parent.<sup>9</sup> In these instances, even if the student’s parent voluntarily chooses

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<sup>8</sup> U.S. Dept. of Education, 71 Fed. Reg. 46715 (August 14, 2006); *OSERS Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, Q/A I-8 (Revised July 2022).

<sup>9</sup> U.S. Dept. of Education, 71 Fed. Reg. 46715 (August 14, 2006); see also, *OSERS Questions and Answers on Serving Children with Disabilities Eligible for Transportation*, 53 IDELR 268 (November 1, 2009); *OSERS Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, Q/A C-9 (Revised July 2022).

to provide transportation to his or her child during a period of bus suspension, that does not relieve Ector County Independent School District of its duties to provide transportation at no cost or consider it as a removal that could constitute a change of placement.<sup>10</sup> The [building principal will consider other ways to provide the transportation called for in the student’s IEP at no cost before suspending the student from the bus and counting it as a removal.

In contrast, if bus transportation is not part of the student’s IEP, the building principal will not count a bus suspension as a removal that could constitute a change of placement. “In those cases, the child and the child’s parent have the same obligations to get the child to and from school as a non-disabled child who has been suspended from the bus.”<sup>11</sup>

Even when the bus suspension does not count as a removal, the building principal shall “consider whether the behavior on the bus is similar to behavior in a classroom that is addressed in an IEP and whether the child’s behavior on the bus should be addressed in the IEP or a behavioral intervention plan for the child.”<sup>12</sup>

**PRACTICE GUIDE—If the IEP includes transportation as a related service and the student experiences behavioral difficulties during transport which needs to be addressed going forward, consider contracting with the parent for mileage reimbursement to transport the student while the District works to address the underlying problem, instead of suspending the student from transportation. This or similar practices may allow the District to avoid accruing days of removal due to bus suspensions while maintaining safety.**

### ***Do we count removals for portions of a school day?***

The building principal will consider portions of a school day in which a student has been suspended as a day of removal that could constitute a change of placement.<sup>13</sup>

### ***Do we count time-out, after school detention or lunch detention?***

Normal procedures such as detentions are not considered removals that could constitute a change of placement.<sup>14</sup> The same is true of time-outs that are part of the student’s IEP. School personnel

<sup>10</sup> *Letter to Sarzynski*, 59 IDELR 141 (OSEP 2012).

<sup>11</sup> U.S. Dept. of Education, 71 Fed. Reg. 46715 (August 14, 2006); see also, *OSERS Questions and Answers on Serving Children with Disabilities Eligible for Transportation*, 53 IDELR 268 (November 1, 2009); *OSERS Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, Q/A C-9 (Revised July 2022).

<sup>12</sup> U.S. Dept. of Education, 71 Fed. Reg. 46715 (August 14, 2006); see also, *OSERS Questions and Answers on Serving Children with Disabilities Eligible for Transportation*, 53 IDELR 268 (November 1, 2009); *OSERS Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, Q/A C-9 (Revised July 2022).

<sup>13</sup> U.S. Dept. of Education, 71 Fed. Reg. 46715 (August 14, 2006).

<sup>14</sup> *Honig v. Doe*, 559 IDELR 231 (1988).

may utilize behavior management techniques, such as time-out, consistent with [DISTRICT ISD]'s Special Education Operating Procedures.

***What must be provided if the disciplinary removal will not result in a change of placement but will exceed 10 school days in a school year?***

If the building principal determines that the proposed disciplinary removal will not result in a disciplinary change of placement, but will result in more than 10 days of disciplinary removals in a school year, the building principal, in consultation with at least one of the child's teachers, determine the **SERVICES DURING PERIODS OF REMOVAL** to be provided during any days of removal beyond the first ten cumulative school days of removal in a school year and ensure the provision of such services.

**PRACTICE GUIDE— Keep in mind that short-term removals that exceed 10 school days may be utilized as long as there is no DISCIPLINARY CHANGE OF PLACEMENT and special education services are provided. Consultation with the student's special education teacher, who is aware of the services the student needs, may be necessary to ensure the student continues to progress toward meeting the goals set out in the student's IEP.**

***What steps must be followed if the disciplinary removal will result in a change of placement?***

The building principal will determine whether a proposed disciplinary action would constitute a removal resulting in a disciplinary change of placement as described above.

The building principal shall notify the parents of the proposed disciplinary action to be taken.<sup>15</sup>

The building principal shall take the following additional actions:

- schedule and provide the parents notice of the MDR/ARD committee meeting to be held within 10 school days after any decision to change the placement of a student with a disability because of a violation of the student code of conduct;
- seek consent from the student's parent to conduct a functional behavioral assessment of the student, if a functional behavioral assessment has never been conducted on the student or the student's most recent functional behavioral assessment is more than one year old;<sup>16</sup> and
- determine the **SERVICES DURING PERIODS OF REMOVAL** to be provided for any days of removal beyond the first ten cumulative school days of removal in a school year pending the MDR/ARD committee meeting and ensure the provision of such services.

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<sup>15</sup> Tex. Ed. Code §37.0012(d)

<sup>16</sup>Tex. Ed. Code §37.004(b-1);

Also, within 10 school days after any decision to change the placement of a student with a disability because of a violation of the student code of conduct, the Student's ARD Committee shall:

- convene and conduct a **MANIFESTION DETERMINATION**;
- 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;
- 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; and
- provide Prior Written Notice in accordance with Ector County Independent School District Special Education Operating Procedures

The District shall provide due process in the same manner as would be applied to all students including students without disabilities.<sup>17</sup>

### ***When do we give the Procedural Safeguards?***

On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the building principal shall notify the parents of that decision, and provide the parents Notice of Procedural Safeguards.<sup>18</sup>

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<sup>17</sup> 34 C.F.R. § 300.530(c).

<sup>18</sup> 34 C.F.R. § 300.530(h).