



# Administrative Regulations

South San Antonio Independent School District

F– Student Discipline	FOF
Page 1 of 10	
Students with Disabilities	

## Students Receiving Special Education Services

All disciplinary actions regarding students with disabilities must be determined in accordance with 34 C.F.R. 300.101(a) and 300.530–300.536; Education Code Chapter 37, Subchapter A; and 19 Administrative Code 89.1053 (Procedures for Use of Restraint and Time-Out). *19 TAC 89.1050(k)*

### ARD Committee Required

Except as set forth below, the placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal (ARD) committee. Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations. *Education Code 37.004(a)–(b)*

The methods adopted in the Student Code of Conduct [see FO] for discipline management and for preventing and intervening in student discipline problems must provide that a student who is enrolled in the special education program may not be disciplined for bullying, harassment, or making hit lists until an ARD committee meeting has been held to review the conduct. *Education Code 37.001(b-1)*

A student with a disability who receives special education services may not be placed in a disciplinary alternative education program (DAEP) solely for educational purposes. A teacher in a DAEP who has a special education assignment must hold an appropriate certificate or permit for that assignment.

### Removal for Ten Days or Less

School personnel may remove a student with a disability who violates a student code of conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days, to the extent those alternatives are applied to children without disabilities. *20 U.S.C. 1415(k)(1)(B); 34 C.F.R. 300.530(b)(1)*

The district is required to provide services during the period of removal if the district provides services to a child without disabilities who is similarly removed. *34 C.F.R. 300.530(d)*

School personnel may remove the student for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change in placement (see below).

### Services During Removal



# Administrative Regulations

## South San Antonio Independent School District

---

After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent removal of ten consecutive school days or less, school personnel, in consultation with at least one of the student's teachers, shall determine the extent to which services are needed so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's individualized education program (IEP).

Not later than the date on which the decision to take the disciplinary action is made, a district shall notify the student's parents of the decision and of all procedural safeguards.

### **Removals That Are a Change in Placement**

Any disciplinary action that would constitute a change in placement may be taken only after the student's ARD committee conducts a manifestation determination review.

Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations, including laws or regulations requiring the provision of functional behavioral assessments; positive behavioral interventions, strategies, and supports; behavioral intervention plans; and the manifestation determination review [see Manifestation Determination, below].

### **Behavior Assessment and Intervention**

If a district takes a disciplinary action regarding a student with a disability who receives special education services that constitutes a change in placement under federal law, the district shall:

1. Not later than the tenth school day after the change in placement:
  - a. Seek consent from the student's parent or person standing in parental relation to the student 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; and
  - b. 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; and
2. 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.

### **Change in Placement**

For purposes of disciplinary removal of a student with a disability, a change in placement occurs if a student is:



# Administrative Regulations

## South San Antonio Independent School District

---

1. Removed from the student's current educational placement for more than ten consecutive school days; or
2. Subjected to a series of removals that constitute a pattern because:
  - a. The series of removals total more than ten school days in a school year;
  - b. The student's behavior is substantially similar to the student's behavior in the previous incidents that resulted in the series of removals; and
  - c. Additional factors exist, such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

The district determines, on a case-by-case basis, whether a pattern of removals constitutes a change in placement. The district's determination is subject to review through due process and judicial proceedings.

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a student who violates a code of student conduct.

### **Manifestation Determination**

Within ten school days of any decision to change the placement of a student because of a violation of a code of student conduct, a district, parents, and relevant members of the ARD committee (as determined by the parent and the district) shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine whether the conduct in question was:

1. Caused by, or had a direct and substantial relationship to, the student's disability; or
2. The direct result of the district's failure to implement the IEP.

If the district, the parent, and relevant members of the ARD committee determine that either of the above is applicable, the conduct shall be determined to be a manifestation of the student's disability.

If the district, the parent, and relevant members of the ARD committee determine the conduct was the direct result of the district's failure to implement the IEP, the district must take immediate steps to remedy those deficiencies.

### **Not a Manifestation**

If the determination is that the student's behavior was not a manifestation of the student's disability, school personnel may apply the relevant disciplinary procedures to the student in the same manner and for the same duration as for students without disabilities. The ARD committee shall determine the interim alternative educational setting. *20 U.S.C. 1415(k)(1)(C), (k)(2); 34 C.F.R. 300.530(c)*

### **Expulsion**

In a county with a juvenile justice alternative education program (JJAEP) [see FODA], a district must invite the administrator of the JJAEP or the administrator's designee to an ARD committee meeting convened to



# Administrative Regulations

## South San Antonio Independent School District

---

discuss the discretionary expulsion under Education Code 37.007 of a student with a disability. The district must provide written notice of the meeting at least five school days before the meeting or a shorter timeframe agreed to by the student's parents. A copy of the student's current IEP must be provided to the JJAEP representative with the notice. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means, including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's placement in the JJAEP and implementation of the student's current IEP in the JJAEP. *19 TAC 89.1052*

### Services During Removal

The student must:

1. Continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP.
2. Receive, 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.

These services may be provided in an interim alternative educational setting.

*34 C.F.R. 300.530(d)(1)-(2)*

For a student with a disability who was expelled under a discretionary expulsion under Education Code 37.007, an ARD committee meeting must be convened to reconsider placement of the student in the JJAEP if the JJAEP provides written notice to the district of specific concerns that the student's education or behavioral needs cannot be met in JJAEP.

The district must invite the JJAEP administrator or the administrator's designee to the meeting and must provide written notice of the meeting at least five school days before the meeting or a shorter timeframe agreed to by the student's parents. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means, including conference telephone calls. The JJAEP may participate in the meeting to the extent that the meeting relates to the student's continued placement in JJAEP.

### Manifestation

If the district, the parents, and relevant members of the ARD committee determine that the conduct was a manifestation of the student's disability, the ARD committee shall:

1. Conduct a functional behavioral assessment (FBA), unless the district had conducted an FBA before the behavior that resulted in the change in placement occurred, and implement a behavioral intervention plan (BIP) for the student; or



# Administrative Regulations

## South San Antonio Independent School District

---

2. If a BIP has already been developed, review the BIP and modify it, as necessary, to address the behavior.

Except as provided at Special Circumstances, below, the ARD committee shall return the student to the placement from which the student was removed, unless the parent and the district agree to a change in placement as part of the modification of the BIP.

### Special Circumstances

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

1. Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of the Texas Education Agency (TEA) or a school district;
2. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of TEA or a school district; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of TEA or the district.

### Services During Removal

The student must:

1. Continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP.
2. Receive, 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.

These services may be provided in an interim alternative educational setting.

### Appeals

A parent who disagrees with a placement decision or the manifestation determination may request a hearing. A district that believes that maintaining a current placement of a student is substantially likely to result in injury to the student or others may request a hearing.

### Placement During Appeals

When an appeal has been requested by a parent or a district, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the



# Administrative Regulations

## South San Antonio Independent School District

---

student's assignment to the alternative setting, whichever occurs first, unless the parent and district agree otherwise.

### **Reporting Crimes**

Federal law does not prohibit a district from reporting a crime committed by a student with a disability to appropriate authorities. If a district reports a crime, the district shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the district reported the crime. A district may transmit records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

### **Students Not Yet Identified**

A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in the IDEA if a district had knowledge that the student had a disability before the behavior that precipitated that disciplinary action occurred.

### **District Knowledge**

The district shall be deemed to have knowledge that a student has a disability if, before the behavior that precipitated the disciplinary action occurred:

1. The parent of the student expressed concern in writing to supervisory or administrative personnel of the district, or to the teacher of the student, that the student needed special education and related services;
2. The parent requested an evaluation of the student for special education and related services; or
3. The student's teacher, or other district personnel, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the special education director or to other supervisory personnel of the district.

### **Exception**

A district shall not be deemed to have knowledge that the student had a disability if:

1. The parent has not allowed an evaluation of the student;
2. The parent has refused services; or
3. The student has been evaluated and it was determined that the student did not have a disability.

If a district does not have knowledge (as described above), before taking disciplinary measures, that a student has a disability, the student may be subjected to the same disciplinary measures applied to students without disabilities who engaged in comparable behaviors.



# Administrative Regulations

## South San Antonio Independent School District

---

However, if a request is made for an evaluation during the time period in which the student is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

### Rules on Restraint and Seclusion

South San Antonio ISD will ensure that behavior management techniques or discipline management practices for students with disabilities will be implemented in such a way as to protect the health and safety of the student and others. The district will follow the state's specific requirements and procedures when the use of physical restraint or time-out for a student with a disability is necessary. State regulations are intended to ensure that all students are treated with dignity and respect, as well as educated in a safe environment. Any behavior management technique and/or discipline management practice used in the district must be implemented in such a way as to protect the health and safety of the child and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the child of basic human necessities.

Training for school employees, volunteers, or independent contractors regarding the use of restraint shall be provided.

"Restraint" means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student's body.

The following provisions do not apply to the use of physical force or a mechanical device that does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced above does not include:

1. Physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;
2. Limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort;
3. Limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the IEP as required by 34 C.F.R. 300.324(a)(2)(i) to promote student learning and reduce and/or prevent the need for ongoing intervention; or
4. Seat belts and other safety equipment used to secure students during transportation.

### Seclusion

"Seclusion" means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:



# Administrative Regulations

## South San Antonio Independent School District

---

1. Is designed solely to seclude a person; and
2. Contains less than 50 square feet of space.

A district employee or volunteer or an independent contractor of a district may not place a student in seclusion.

### Exception

A school employee, volunteer, or independent contractor may use restraint only in an emergency and with the following limitations:

1. Restraint shall be limited to the use of such reasonable force as is necessary to address the emergency.
2. Restraint shall be discontinued at the point at which the emergency no longer exists.
3. Restraint shall be implemented in such a way as to protect the health and safety of the student and others.
4. Restraint shall not deprive the student of basic human necessities.

"Emergency" means a situation in which a student's behavior poses a threat of:

1. Imminent, serious physical harm to the student or others; or
2. Imminent, serious property destruction.

South San ISD will also ensure that all instances where restraint or containment is necessary for a student with a disability are documented on the *Written Summary of Restraint Use* form (EXHIBIT A) in eSped, which automatically generates necessary PEIMS records. Parents of students with disabilities/adult students and campus administrators will be notified in writing within 24 hours of any instance of use of containment or restraint.

### Campus De-escalation/Restraint Team

Each campus will designate a Campus De-escalation/Restraint Team comprised of general education and special education staff members. Teams will be trained on the Texas Behavior Support Initiative and Crisis Prevention Institute (CPI) and will receive bi-annual refresher training. Campus teams will use the CPI approach in deescalating students who exhibit behaviors that present a danger to themselves and others. For purposes of this Operating Procedure, the following definitions are applicable:

- **Restraint** means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the child's body. Restraint must:
  - Be limited to the use of such reasonable force as is necessary to address the emergency;





# Administrative Regulations

## South San Antonio Independent School District

---

- Be discontinued at the point at which the emergency no longer exists;
  - Be implemented in such a way as to protect the health and safety of the child and others; and
  - Not deprive the child of basic human necessities.
- **Confinement** means the child with a disability, who receives special education services, must not be confined in a locked box, locked closet, or other specially-designed locked space as either a discipline management practice or a behavior management technique. This does not prevent the child's locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement personnel if the child possesses a weapon and the confinement is necessary to prevent the child from causing bodily harm to the child or another person.
  - **Emergency** means a situation in which the child's behavior poses a threat of imminent, serious physical harm to the child or others or b) property destruction.

### **Exclusions to Restraint Definition:**

Restraint **does not** include the use of:

- Physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;
- Limited physical contact with the child to promote safety (e.g., holding the child's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, or provide comfort;
- Limited physical contact or appropriately prescribed adaptive equipment to prevent the child from engaging in ongoing, repetitive self-injurious behaviors; or
- Seat belts and other safety equipment used to secure children during transportation.

*\*For purposes of this Regulation, "parent" is defined as: The biological or adoptive parent of child; A foster parent of a child who meets the requirements set forth in rule; A guardian (but not the state if the child is a ward of the state); An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, An individual who is legally responsible for the child's welfare; or An individual assigned to be a surrogate parent*

### **Peace Officers**

This provision of the regulation and any rules or procedures adopted apply to a school district peace officer.

"Law enforcement duties" means activities of a peace officer relating to the investigation and enforcement of state criminal laws and other duties authorized by the Code of Criminal Procedure.

Further, Education Code 37.0021 does not prevent a student's locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement personnel if:



# Administrative Regulations

## South San Antonio Independent School District

---

1. The student possesses a weapon; and
2. The confinement is necessary to prevent the student from causing bodily harm to the student or another person.

For these purposes, "weapon" includes any weapon described under Education Code 37.007(a)(1). [See FNCG LEGAL]

A student with a disability who receives special education services may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique.

### **Time Out**

"Time-out" means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:

1. That is not locked; and
2. From which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

A school employee, volunteer, or independent contractor may use time-out with the following limitations:

1. Physical force or threat of physical force shall not be used to place a student in time-out.
2. Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or behavior improvement plan or behavioral intervention plan if it is utilized on a recurrent basis to increase or decrease targeted behavior.
3. Use of time-out shall not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

Training for school employees, volunteers, or independent contractors regarding the use of time-out shall be provided.

Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP and/or behavior improvement plan or behavioral intervention plan. If a student has a behavior improvement plan or behavioral intervention plan, the district must document each use of time-out prompted by a behavior of the student specified in the student's behavior improvement plan or behavioral intervention plan, including a description of the behavior that prompted the time-out. The ARD committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.