

# Discipline

## SPECIAL CIRCUMSTANCES

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Model operating procedures created by



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## SPECIAL CIRCUMSTANCES

### What is Required

In certain special circumstances, a student with a disability may be removed to an interim alternative educational placement (“IAES”) for no more than 45 school days, regardless of whether the student’s behavior is a manifestation of the student’s disability.

Special circumstances allowing for this removal exist if the student:

- Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the District;
- 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 the District; and/or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the District.

If one or more of the above three special circumstances exist, Campus Administration may remove a student with a disability for up to 45 school days.

However, if the removal is for more than 10 consecutive school days, Campus Administration must still make a Change of Placement analysis, and the ARD Committee must conduct a manifestation determination review (“MDR”). See [MANIFESTATION DETERMINATION], [AUTHORITY OF SCHOOL PERSONNEL], and [DISCIPLINARY CHANGE OF PLACEMENT]. Regardless, even if the ARD Committee determines that the student’s behavior is a manifestation of the student’s disability, Campus Administration may still remove the student to an IAES for up to 45 school days, as long as special education and related services are still provided, as determined by the student’s ARD Committee. See [SERVICES DURING PERIODS OF REMOVAL].

Any time a change in placement occurs, including when the student is removed due to special circumstances under this section, the district must, no later than 10 school days after the change in placement is made:

1. Seek consent from the parent to conduct an Functional Behavioral Assessment (“FBA”) if the student has never had an FBA or the existing FBA is more than one year old;
2. Review any previously conducted FBAs and any Behavior Intervention Plans (“BIPs”) developed for the student based on that FBA; and



3. As necessary, develop a BIP, if the student does not have a plan, or revise the existing BIP.

## **Definitions**

“Dangerous weapon” is a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocketknife with a blade of less than 2 ½ inches in length.

“Controlled substance” is a drug or other substance identified by the Drug Enforcement Agency under Schedules I, II, III, IV, or V. In other words, a drug which has been declared by federal or state law to be illegal for sale or use but may be dispensed under a physician’s prescription.

“Illegal drug” means a controlled substance that that is illegally possessed or not used under the supervision of a licensed healthcare professional or one that is illegally possessed or used under any authority under the Controlled Substance Act or under the other provision of federal law.

“Serious bodily injury” is bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

## **Additional Procedures**

The ARD Committee will convene an MDR ARD meeting within 10 school days of the decision to remove the student due to special circumstances to determine if the behavior is a manifestation of the student’s disability. If the behavior is determined to be a manifestation of the disability, the Campus Administrator may still assign the student to an IAES for no more than 45 school days (as long as that is the same amount of time that a student without a disability would be subject to discipline for similar conduct). If the ARD Committee determines that the behavior was not a manifestation of the student’s disability, the Campus Administrator may apply the relevant disciplinary procedures to the student with a disability in the same manner and for the same duration as the procedures would be applied to the student without disabilities.

If a student is removed for more than 10 school days for a drug or weapon offense or for inflicting serious bodily injury, the ARD Committee must determine educational services for a FAPE which may be provided in an IAES to enable the child to continue to participate in the general education curriculum and to enable the student to progress toward meeting the goals set out in the student’s IEP. Finally, the ARD Committee should determine the IAES for services. See [SERVICES DURING PERIODS OF REMOVAL] and [DISCIPLINARY CHANGE OF PLACEMENT].

Campus Special Education Personnel will provide the student’s parent Prior Written



Notice, as well as the *Notice of Procedural Safeguards*, within 5 days prior to the assignment of the alternative placement.

## Examples

The ARD Committee must consider whether a special circumstance exists on a case-by-case analysis. It may not always be clear whether a situation falls into the special circumstance category. For example, hearing officers have held that a metal awl, scissors, and a cigarette lighter with a retractable blade constitute a weapon justifying the removal under this exception. However, pulling on a Campus Administrator's necktie, a paper clip used to scratch another student, a pencil used to stab a classmate, and dull scissors not capable of inflicting serious bodily injury do not.

It is particularly challenging to determine whether an act caused serious bodily injury. Most assaults will not qualify as an assault causing serious bodily injury. For example, where pain caused by the injury does not last for more than a day and/or does not require medical attention, the student likely did not inflict serious bodily injury. But where an individual is forced to miss a substantial amount of time away from school or work due to the injury or is in extreme physical pain for a prolonged period of time, the student may be deemed to have inflicted serious bodily injury.

The District will maintain documentation requirements of compliance associated with Texas Student Data System (TSDS), Public Education Information Management System (PEIMS), and State Performance Plan (SPP). District staff will provide training, with follow up, to ensure the documentation required is in place and compliant.

## Evidence of Implementation

- Notice of MDR Meeting
- *Notice of Procedural Safeguards*
- Prior Written Notice
- MDR Agenda
- Manifestation Determination Form
- ARD/IEP
- MDR ARD
- Behavior Documentation
- Disciplinary Hearing Documentation
- Teacher Observations
- Documentation/Information Provided by Parent
- Documentation of Implementation of IEP/BIP
- FBA Consent
- Documentation for the state in TSDS, PEIMS, and SPP



## **Resources**

[The Legal Framework for the Child-Centered Special Education Process: Special Circumstances - Region 18](#)

[Questions and Answers on Discipline Procedures \(Revised June 2009\) - U.S. Department of Education](#)

[Drug Scheduling - Drug Enforcement Agency](#)

[House Bill \(HB\) 785: Frequently Asked Questions - Texas Education Agency](#)

## **CITATIONS**

Board Policy FOB, FOD, FOF, and FNCG; 18 USC 930(g)(2), 1365(h)(3); 21 USC 812;  
34 CFR 300.530(g),(i)