

Discipline

PROTECTIONS FOR CHILDREN NOT YET DETERMINED ELIGIBLE

August 31, 2022

Model operating procedures created by



Student Solutions

and

**Thompson
& Horton** LLP
ATTORNEYS | COUNSELORS

Disclaimer: This information is provided for educational purposes only to facilitate a general understanding of the law or other regulatory matter. This information is neither an exhaustive treatment on the subject nor is this intended to substitute for the advice of an attorney or other professional advisor. Consult with your attorney or professional advisor to apply these principles to specific fact situations.

©2021 by Texas Association of School Boards, Inc.

TASB grants members/subscribers of TASB Student Solutions™ the limited right to customize this publication for internal (non-revenue generating) purposes only.



CONTENTS

PROTECTIONS FOR CHILDREN NOT YET DETERMINED ELIGIBLE.....	1
What is Required.....	1
Basis of Knowledge	1
Protections If No Basis of Knowledge	1
Additional Procedures	2
Basis of Knowledge	2
Knowledge of a Possible Disability.....	2
Request for an Evaluation.....	3
Evidence of Implementation	3
Resources	4
CITATIONS	4



PROTECTIONS FOR CHILDREN NOT YET DETERMINED ELIGIBLE

What is Required

Procedural safeguards relating to discipline under the IDEA generally do not apply to a student without a disability. However, a student who has not yet been determined eligible for special education and related services and who has violated the student code of conduct is entitled to the same protections as a student with a known disability that receives special education and related services if the District had knowledge that the student was a student with a disability before the behavior that led to the disciplinary action occurred.

Basis of Knowledge

The District has knowledge that a student has a disability if the following occurred prior to the occurrence of the behavior leading to the disciplinary action:

- The student's parent expressed concern in writing to Campus or District Administration or the student's teacher that the student needed special education and related services;
- The parent requested an evaluation for special education and related services; or
- The student's teacher, or other Campus Personnel, expressed concerns about a pattern of behavior demonstrated by the student directly to the Director of Special Education or other Campus or District Administration.

However, if the student's parent has not allowed the District to conduct a special education evaluation of the student or has refused special education services for the student, or if the student has been evaluated by the District and determined not to have a disability, the District is not deemed to have knowledge that the student has a disability, and the protections of the IDEA applicable to the discipline of students with disabilities do not apply.

Protections If No Basis of Knowledge

The District may discipline the student in the same way as it would discipline students without disabilities if the District has no basis of knowledge prior to taking the disciplinary measures. However, if a request is made for an initial evaluation during the period of time when the student is subjected to disciplinary measures and the District agrees to conduct the evaluation, District Assessment Personnel must conduct an expedited evaluation. See [REFERRAL FOR POSSIBLE SPECIAL EDUCATION SERVICES] and [EVALUATION PROCEDURES]. Until the evaluation is complete, the



student shall remain in the educational placement determined to be appropriate by the District, which can include suspension or expulsion without educational services. If the student is determined to be a student with a disability eligible for special education and related services, the ARD Committee must convene an ARD meeting in accordance with the IDEA to determine eligibility and place the student in special education. See [EVALUATION PROCEDURES], [ADMISSION, REVIEW, AND DISMISSAL COMMITTEE MEETING], and [DETERMINATION OF ELIGIBILITY]. The District must also comply with the discipline procedures of the IDEA. See [AUTHORITY OF SCHOOL PERSONNEL].

Additional Procedures

Basis of Knowledge

The basis of knowledge regarding the disability does not need to be in writing. However, the student’s teacher or other Campus Personnel must express their specific concerns directly to the Director of Special Education and/or Other Campus or District Administration to impute knowledge on the District. Upon learning such information, Campus or District Administration will document in writing the information that was received, when the information was received, and the individual who provided the information. This information should be maintained on the campus in the student’s Student Support Team file and included in the referral for special education evaluation.

Knowledge of a Possible Disability

If the District has knowledge that a student has a disability but is not yet eligible for special education services and the District has recommended a disciplinary removal for more than 10 consecutive school days, the Student Support Team, which should include Campus Special Education Personnel, will meet to review the situation. The Student Support Team should discuss whether the behavior was likely a manifestation of the student’s disability, determine the status of the initial evaluation, and compose a plan to support the student in the current placement until the evaluation is completed by District Assessment Personnel. A student engaged in an infraction involving weapons, drugs, or serious bodily injury at school, on school premises, or at a school function may still be removed to a disciplinary placement for up to 45 school days while the evaluation is conducted. If the student is found eligible for special education, a Manifestation Determination Review (“MDR”) ARD will take place as soon as the evaluation is completed to determine if the student’s conduct is a manifestation of their disability. See [AUTHORITY OF SCHOOL PERSONNEL] and [MANIFESTATION DETERMINATION].

In addition, if disciplinary action that constitutes a change of placement (i.e. removal for 10 or more days or removal that constitutes a “pattern” of removals), is taken for a student with a disability, the district must, no later than 10 school days after the change in placement is made:



1. Seek consent from the parent to conduct a 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.

However, if the student receives Section 504 services, the student’s Section 504 Committee will conduct the MDR in a Section 504 meeting. All documentation related to this process shall be documented in writing and placed in the student’s referral folder.

Where a parent has revoked consent for the provision of special education and related services, the student is no longer considered a student with a known disability. Campus Special Education Personnel will explain this to the parent once the parent has communicated the desire to revoke consent and clarify that the student will no longer be eligible for protections as a student with a disability under the IDEA and will be subject to the same disciplinary procedures and timelines as general education students. See [CONSENT FOR SERVICES].

Request for an Evaluation

Where the parent requests an evaluation for a student not yet known to have a disability during the time of disciplinary measures, District Assessment Personnel will either provide the parent Prior Written Notice of the refusal to conduct an evaluation or conduct an expedited evaluation to determine if the student has a disability. See [EVALUATION PROCEDURES]. While the IDEA does not define “expedited,” the evaluation should be completed in fewer than the 45 school days typically required by law to complete an initial evaluation. Once the student is properly referred for a special education evaluation, the District is considered to have knowledge of the student’s disability. See [REFERRAL FOR POSSIBLE SPECIAL EDUCATION SERVICES].

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

- Student Code of Conduct
- *Notice of Procedural Safeguards*
- Discipline Documentation
- Documentation Related to Evaluation Request



- Parent Concerns Documentation
- Student Support Team Documentation
- Teacher Documentation
- FIE
- Timeline for Completion of FIE
- Documentation of Services Provided During Disciplinary Placement
- ARD/IEP
- Prior Written Notice
- Revocation of Consent for FIE
- Revocation of Consent for Services
- FBA Consent
- Documentation for the state in TSDS, PEIMS, and SPP

Resources

[The Legal Framework for the Child-Centered Special Education Process: Protections for Children Not Yet Determined Eligible - Region 18](#)

[OSERS Questions and Answers on Discipline Procedures \(Revised June 2009\) - Texas Education Agency](#)

[OSERS Questions and Answers on Response to Intervention \(RTI\) and Early Intervening Services \(EIS\) \(Jan. 1, 2007\) - Texas Education Agency](#)

[OSEP Letter to Combs \(Aug. 15, 2008\) - Texas Education Agency](#)

[OSEP Letter to Anonymous \(Sept. 5, 2007\) - Texas Education Agency](#)

[Special Education Discipline Q&A - Region 13](#)

CITATIONS

Board Policy FOF; 34 CFR 300.534