

**Section 6. - DISCIPLINE**  
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## Section 6. - DISCIPLINE SECTION

### I. STUDENT CODE OF CONDUCT

#### §300.530 Authority of school personnel.

- (a) **Case-by-case determination.** School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

#### TEC §37.001. Student Code of Conduct.

- (a) The board of trustees of Devine Independent School District shall, with the advice of its district-level committee established under Subchapter F, Chapter 11, adopt a student code of conduct for the district. The student code of conduct must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal. In addition to establishing standards for student conduct, the student code of conduct must:
- (1) specify the circumstances, in accordance with this subchapter, under which a student may be removed from a classroom, campus, or disciplinary alternative education program;
  - (2) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a disciplinary alternative education program;
  - (3) outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007;
  - (4) specify whether consideration is given to self-defense as a factor in a decision to order suspension, removal to a disciplinary alternative education program, or expulsion;
  - (5) provide guidelines for setting the length of a term of:
    - (A) a removal under Section 37.006; and
    - (B) an expulsion under Section 37.007; and
  - (6) address the notification of a student's parent or guardian of a violation of the student code of conduct committed by the student that results in suspension, removal to a disciplinary alternative education program, or expulsion.
- (b) Repealed by Acts 2003, 78th Leg., ch. 1055, Sec. 30.
- (c) Once the student code of conduct is promulgated, any change or amendment must be approved by the board of trustees.
- (d) Each school year, DISD shall provide parents notice of and information regarding the student code of conduct.

### II. CHANGE OF PLACEMENT DECISIONS – Change of Placement Analysis

*The local campus administrator is responsible for maintaining records on student discipline. Students with disabilities must be monitored by the local campus for total number of removals in order to follow state and federal disciplinary requirements outlined in this section.*

#### **Change of Placement Analysis**

*When a principal or other appropriate administrator recommends disciplinary removal from the student's current IEP placement, conduct a Change of Placement Analysis.*

- (a) *Count the days of disciplinary removal from the student's current educational placement.*
1. *Portions of a school day that a child had been suspended would be included in determining whether the child had been removed for more than 10 cumulative school days or subjected to a change of placement.*

2. *An in-school suspension would not be considered a part of the days of suspension as long as the child is afforded the opportunity to:*
    - a. *Appropriately progress in the general curriculum,*
    - b. *Continue to receive the services specified on his or her IEP, and*
    - c. *Continue to participate with nondisabled children to the extent they would have in their current placement*
  3. *Whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is a part of the child's IEP.*
    - a. *If the bus transportation is a part of the child's IEP, a bus suspension would be treated as a suspension unless DISD provides the bus service in some other way.*
    - b. *If the bus transportation is not a part of the child's IEP, a bus suspension would not be a suspension.*
- (b) *Determine whether the disciplinary removal(s) constitute(s) a change of placement. A disciplinary change of placement occurs if:*
1. *The removal is for more than 10 consecutive school days, or*
  2. *The student is subject to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year and because of factors 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.*

#### **A. Less than 10 School Day Removals**

- (a) *DISD is not required to provide services for removal of a student with a disability who has been removed from the current placement for 10 school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.*
- (b) *DISD may choose to provide the IEP services to the student with disabilities during any short term removal in order to prevent counting those days of removal toward the 10 cumulative.*
- (c) *In the case of a student whose behavior impedes his or her learning or that of others, convene an ARD meeting, if appropriate, to consider completing an FBA/BIP including positive behavior interventions, strategies, and supports to address that behavior.*

#### **B. More than 10 School Day Removals**

##### **1. Consecutive or Cumulative – Pattern**

##### **§300.536 Change of placement because of disciplinary removals.**

**For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if--**

- (a) **The removal is for more than 10 consecutive school days; or**
- (b) **The child has been subjected to a series of removals that constitute a pattern--**
  - (1) **Because the series of removals total more than 10 school days in a school year;**
  - (2) **Because the child's behavior is substantially similar to the child's behavior in the incidents that resulted in the series of removals, taken cumulatively, is determined, under §300.530(f), to have been a manifestation of the child's disability; and**
  - (3) **Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. (Authority: 20 U.S.C. 1415(k))**

*Additional (beyond 10 cumulative days in a school year) short-term removals (of 10 consecutive days or less) for separate incidents of misconduct, are permitted, to the extent removals would be applied to nondisabled students (as long as those removals do not constitute a Change of Placement described in 300.536 above).*

An ARD/IEP Committee will:

- (a.) consider special education and disciplinary records of the student with a disability prior to the final determination regarding the disciplinary action;
- (b.) review the student's BIP and its implementation to determine if accommodations / modifications are necessary;
- (c.) consult with one or more of the child's teachers determine the extent to which services are needed and the location necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.
- (d.) If DISD initiates disciplinary procedures applicable to all students, the special education and disciplinary records of the student with a disability are transmitted for consideration by the person or persons making the final determination regarding disciplinary action.

## **2. Manifestation Determination**

If a disciplinary removal constitutes a change in placement, within 10 school days of any decision to change the placement because of a violation of a code of student conduct, DISD must convene an ARD/IEP meeting to conduct a manifestation determination and address the two questions in §300.530(e)(1) below.

### **§300.530 Authority of school personnel.**

#### **(e) Manifestation determination.**

- (1) Except for removals that will be for not more than 10 consecutive school days and will not constitute a change of placement under §300.536, within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, DISD, the parent, and **relevant members of the child's IEP Team** (as determined by the parent and DISD) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--

- (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

- (ii) If the conduct in question was the direct result of DISD's failure to implement the IEP.

- (2) The conduct must be determined to be a manifestation of the child's disability if DISD, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

- *Previously, any tangential or attenuated relationship between the discipline infraction and the child's disability was sufficient to determine that the infraction was a "manifestation" of the child's disability. In IDEA 2004, the House Committee FAQ says to be a manifestation "it is the intention that the conduct in question was caused by, or has a direct and substantial relationship to the child's disability, and is not an attenuated association or mere correlation, such as low self-esteem, to the child's disability."*
- *Relevant Members of the IEP Team: depending on the type of discipline infraction, when the infraction occurred and who was present, some members of the IEP Team may not be relevant to the discussion of the discipline event. Nonetheless, in each instance the relevant members should be determined in collaboration by the parents and DISD.*

- (f) **Determination that behavior was a manifestation.** If DISD, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--

- (1) **Either--**

- (i) Conduct a functional behavioral assessment, unless DISD had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

- (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

- (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and DISD agree to a change of placement as part of the modification of the behavioral intervention plan.
- (g) **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 child's disability, if the child--
- (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
  - (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 an SEA or an LEA; 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 an SEA or an LEA.

### **3. FBA (Functional Behavioral Assessment) / Behavior Intervention Plan (BIP)**

#### **§300.324 Development, review, and revision of IEP**

- (a) (2) Consideration of special factors. The IEP Team must--
- (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

#### **§300.530 Authority of school personnel.**

- (d) (1) a child with a disability who is removed from the child's current placement must--
- (i) Continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
  - (ii) 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.

*The Functional Behavioral Assessment (FBA) must be completed when:*

- \* *removal is more than 10 school days due to any other violation of code (FBA to prevent recurrence)*
- \* *removals due to drugs, weapons or serious bodily injury*
- \* *if behavior is a manifestation(unless FBA/BIP is already in place / then review, revise as needed)*

*Ensure the relevant members (including the general education teacher) participate in providing information for the FBA and develop the BIP:*

1. *target the specific behavior that is impeding learning by clearly defining and describing the observable behavior(s).*
2. *obtain information from a variety of sources including but not limited to: discussions, interviews, records, and direct observation. Also use any standardized instruments if available. Determine duration, frequency, and intensity of any patterns of behavior.*
3. *identify and describe any antecedents - events that logically serve as the stimulus for the behavior.*
4. *identify and describe any consequences - this is the action that is following and causes the student to maintain specific behavior - determine effectiveness of each.*
5. *determine the purpose of the student's behavior - usually to get something, avoid or escape something, or to control the antecedent event.*
6. *describe the relationship of the behavior to the event and provide possible variables that can be changed in the setting or the situation.*
7. *develop the behavioral intervention plan and accommodations (BIP). Teach alternatives to the behavior and include positive reinforcement along with consequences.*

8. *consistently implement, allow enough time for the behavioral intervention plan and accommodations to work, and then review as needed.*

### **C. Placement made by ARD/IEP Committee**

#### **TEC §37.004. Placement of Students with Disabilities**

- (a) 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 committee.
- (b) Any disciplinary action regarding a student with a disability who receives special education services that would constitute a change in placement under federal law may be taken only after the student's admission, review, and dismissal committee conducts a manifestation determination review under 20 U.S.C. Section 1415(k)(4) and its subsequent amendments. Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations, including laws or regulations requiring the provision of:
  - (1) functional behavioral assessments;
  - (2) positive behavioral interventions, strategies, and supports;
  - (3) behavioral intervention plans; and
  - (4) the manifestation determination review.
- (c) A student with a disability who receives special education services may not be placed in alternative education programs solely for educational purposes.
- (d) A teacher in an alternative education program under Section 37.008 who has a special education assignment must hold an appropriate certificate or permit for that assignment.

#### **Text of subsection (e) effective until September 1, 2005**

- (e) Notwithstanding any other provision of this subchapter, in a county with a juvenile justice alternative education program established under Section 37.011, the expulsion under a provision of Section 37.007 described by this subsection of a student with a disability who receives special education services must occur in accordance with this subsection and Subsection (f). The school district from which the student was expelled shall, in accordance with applicable federal law, provide the administrator of the juvenile justice alternative education program or the administrator's designee with reasonable notice of the meeting of the student's admission, review, and dismissal committee to discuss the student's expulsion. A representative of the juvenile justice alternative education program may participate in the meeting to the extent that the meeting relates to the student's placement in the program. This subsection applies only to an expulsion under:
  - (1) Section 37.007(b), (c), or (f); or
  - (2) Section 37.007(d) as a result of conduct that contains the elements of any offense listed in Section 37.007(b)(3) against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district.

#### **Text of subsection (f) effective until September 1, 2005**

- (f) If, after placement of a student in a juvenile justice alternative education program under Subsection (e), the administrator of the program or the administrator's designee has concerns that the student's educational or behavioral needs cannot be met in the program, the administrator or designee shall immediately provide written notice of those concerns to the school district from which the student was expelled. The student's admission, review, and dismissal committee shall meet to reconsider the placement of the student in the program. The district shall, in accordance with applicable federal law, provide the administrator or designee with reasonable notice of the meeting, and a representative of the program may participate in the meeting to the extent that the meeting relates to the student's continued placement in the program.

#### **Text of subsection (g) effective until September 1, 2005**

- (g) **Subsections (e) and (f) and this subsection expire September 1, 2005.**

### **III. REMOVALS OF STUDENTS WITH DISABILITIES**

#### **A. Teacher Removal**

##### **TEC §37.002. Removal by Teacher**

- (a) A teacher may send a student to the principal's office to maintain effective discipline in the classroom. The principal shall respond by employing appropriate discipline management techniques consistent with the student code of conduct adopted under Section 37.001.
- (b) A teacher may remove from class a student:
  - (1) who has been documented by the teacher to repeatedly interfere with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn; or
  - (2) whose behavior the teacher determines is so unruly, disruptive, or abusive that it seriously interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn.
- (c) If a teacher removes a student from class under Subsection (b), the principal may place the student into another appropriate classroom, into in-school suspension, or into a disciplinary alternative education program as provided by Section 37.008. The principal may not return the student to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available. The terms of the removal may prohibit the student from attending or participating in school-sponsored or school-related activity.
- (d) A teacher shall remove from class and send to the principal for placement in a disciplinary alternative education program or for expulsion, as appropriate, a student who engages in conduct described under Section 37.006 or 37.007. The student may not be returned to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available.

*Special Education teachers in DISD will follow the ARD/IEP process for any consideration of inappropriate placement in the resource or self-contained classroom.*

##### **TEC §37.003. Placement Review Committee**

- (a) Each school shall establish a three-member committee to determine placement of a student when a teacher refuses the return of a student to the teacher's class and make recommendations to the district regarding readmission of expelled students. Members shall be appointed as follows:
  - (1) the campus faculty shall choose two teachers to serve as members and one teacher to serve as an alternate member; and
  - (2) the principal shall choose one member from the professional staff of a campus.
- (b) The teacher refusing to readmit the student may not serve on the committee.
- (c) The committee's placement determination regarding a student with a disability who receives special education services under Subchapter A, Chapter 29, is subject to the requirements of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) and federal regulations, state statutes, and agency requirements necessary to carry out federal law or regulations or state law relating to special education.

#### **B. ISS – In School Suspension**

- (a) The local campus administrator is responsible for maintaining records on student discipline. Students with disabilities must be monitored by the local campus for total number of removals in*

*order to follow state and federal disciplinary requirements outlined in this section.*  
*(b) Follow section II. Change of Placement found beginning on page 601.*

### **C. Suspension**

#### **TEC §37.005. Suspension.**

- (a) The principal or other appropriate administrator may suspend a student who engages in conduct identified in the student code of conduct adopted under Section 37.001 as conduct for which a student may be suspended.
- (b) A suspension under this section may not exceed three school days.

#### **TEC §33.081. Extracurricular Activities**

- (e) Suspension of a student with a disability that significantly interferes with the student's ability to meet regular academic standards must be based on the student's failure to meet the requirements of the student's individualized education program. The determination of whether a disability significantly interferes with a student's ability to meet regular academic standards must be made by the student's admission, review, and dismissal committee. For purposes of this subsection, "student with a disability" means a student who is eligible for a district's special education program under Section 29.003(b).
- (f) A student suspended under this section may practice or rehearse with other students for an extracurricular activity but may not participate in a competition or other public performance.
- (g) An appeal to the commissioner is not a contested case under Chapter 2001, Government Code, if the issues presented relate to a student's eligibility to participate in extracurricular activities, including issues related to the student's grades or DISD's grading policy as applied to the student's eligibility. The commissioner may delegate the matter for decision to a person the commissioner designates. The decision of the commissioner or the commissioner's designee in a matter governed by this subsection may not be appealed except on the grounds that the decision is arbitrary or capricious. Evidence may not be introduced on appeal other than the record of the evidence before the commissioner.

#### **§300.170 Suspension and expulsion rates.**

- (a) **General.** The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--
  - (1) Among LEAs in the State; or
  - (2) Compared to the rates for nondisabled children within those agencies.
- (b) **Review and revision of policies.** If the discrepancies described in paragraph (a) of this section are occurring, the SEA reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act. (Authority: 20 U.S.C. 1412(a)(22))

### **D. IAES - (Interim Alternative Educational Setting) Removals for Drugs, Weapons, Serious Bodily Injury**

**45 School Day Rule** *{administrator may take action regardless of the MDR result in 3 specific situations listed below §300.530 (g)}*

**§300.530 Authority of school personnel.**

- (g) **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 child's disability, if the child--
- (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
  - (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 an SEA or an LEA; 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 an SEA or an LEA.
- (i) **Definitions.** For purposes of this section, the following definitions apply:
- (1) **Controlled substance** means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
  - (2) **Illegal drug** means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
  - (3) **Serious bodily injury** has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code. Serious bodily injury is defined as: 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.
  - (4) **Weapon** has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (Authority: 20 U.S.C. 1415(k)(1) and (7))

**§300.531 Determination of setting.**

The interim alternative educational setting referred to in §300.530(c) and (g) is determined by the IEP Team. (Authority: 20 U.S.C. 1415(k)(2))

*There is nothing in the regulations that mandate DISD must have multiple possible interim alternative educational settings. The ARD committee will assure that the student will receive appropriate services in the IAES assigned.*

**DAEP (Disciplinary Alternative Education Programs)**

**TEC §37.008. Disciplinary Alternative Education Programs (DAEP)**

- (a) DISD shall provide a disciplinary alternative education program that:
- (1) is provided in a setting other than a student's regular classroom;
  - (2) is located on or off of a regular school campus;
  - (3) provides for the students who are assigned to the disciplinary alternative education program to be separated from students who are not assigned to the program;
  - (4) focuses on English language arts, mathematics, science, history, and self-discipline;
  - (5) provides for students' educational and behavioral needs;
  - (6) provides supervision and counseling;
  - (7) requires that to teach in an off-campus disciplinary alternative education program, each teacher meet all certification requirements established under Subchapter B, Chapter 21; and
  - (8) notwithstanding Subdivision (7), requires that to teach in a disciplinary alternative education program of any kind, each teacher employed by a school district during the 2003-2004 school year or an earlier school year meet, not later than the beginning of the 2005-2006 school year, all certification requirements established under Subchapter B, Chapter 21.
- (b) A disciplinary alternative education program may provide for a student's transfer to:
- (1) a different campus;
  - (2) a school-community guidance center; or
  - (3) a community-based alternative school.

- (c) An off-campus disciplinary alternative education program is not subject to a requirement imposed by this title, other than a limitation on liability, a reporting requirement, or a requirement imposed by this chapter or by Chapter 39.
- (d) A school district may provide a disciplinary alternative education program jointly with one or more other districts.
- (e) DISD shall cooperate with government agencies and community organizations that provide services in the district to students placed in a disciplinary alternative education program.
- (f) A student removed to a disciplinary alternative education program is counted in computing the average daily attendance of students in the district for the student's time in actual attendance in the program.
- (g) DISD shall allocate to a disciplinary alternative education program the same expenditure per student attending the disciplinary alternative education program, including federal, state, and local funds, that would be allocated to the student's school if the student were attending the student's regularly assigned education program, including a special education program.
- (h) DISD may not place a student, other than a student suspended as provided under Section 37.005 or expelled as provided under Section 37.007, in an unsupervised setting as a result of conduct for which a student may be placed in a disciplinary alternative education program.
- (i) On request of a school district, a regional education service center may provide to the district information on developing a disciplinary alternative education program that takes into consideration the district's size, wealth, and existing facilities in determining the program best suited to the district.
- (j) If a student placed in a disciplinary alternative education program enrolls in another school district before the expiration of the period of placement, the board of trustees of the district requiring the placement shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the placement order. The district in which the student enrolls may continue the disciplinary alternative education program placement under the terms of the order or may allow the student to attend regular classes without completing the period of placement. A district may take any action permitted by this subsection if:
  - (1) the student was placed in a disciplinary alternative education program by an open-enrollment charter school under Section 12.131 and the charter school provides to the district a copy of the placement order; or
  - (2) the student was placed in a disciplinary alternative education program by a school district in another state and:
    - (A) the out-of-state district provides to the district a copy of the placement order; and
    - (B) the grounds for the placement by the out-of-state district are grounds for placement in the district in which the student is enrolling.
- (j-1) If a student was placed in a disciplinary alternative education program by a school district in another state for a period that exceeds one year and a school district in this state in which the student enrolls continues the placement under Subsection (j), the district shall reduce the period of the placement so that the aggregate period does not exceed one year unless, after a review, the district determines that:
  - (1) the student is a threat to the safety of other students or to district employees; or
  - (2) extended placement is in the best interest of the student.
- (k) A program of educational and support services may be provided to a student and the student's parents when the offense involves drugs or alcohol as specified under Section 37.006 or 37.007. A disciplinary alternative education program that provides chemical dependency treatment services must be licensed under Chapter 464, Health and Safety Code.
- (l) DISD is required to provide in the district's disciplinary alternative education program a course necessary to fulfill a student's high school graduation requirements only as provided by this subsection. DISD shall offer a student removed to a disciplinary alternative education program an opportunity to complete coursework before the beginning of the next school year. DISD may provide the student an opportunity to complete coursework through any method available, including a

correspondence course, distance learning, or summer school. The district may not charge the student for a course provided under this subsection.

- (m) The commissioner shall adopt rules necessary to evaluate annually the performance of each district's disciplinary alternative education program established under this subchapter. The evaluation required by this section shall be based on indicators defined by the commissioner, but must include student performance on assessment instruments required under Sections 39.023(a) and (c). Academically, the mission of disciplinary alternative education programs shall be to enable students to perform at grade level.
- (m-1) The commissioner shall develop a process for evaluating a school district disciplinary alternative education program electronically. The commissioner shall also develop a system and standards for review of the evaluation or use systems already available at the agency. The system must be designed to identify districts that are at high risk of having inaccurate disciplinary alternative education program data or of failing to comply with disciplinary alternative education program requirements. The commissioner shall notify the board of trustees of a district of any objection the commissioner has to the district's disciplinary alternative education program data or of a violation of a law or rule revealed by the data, including any violation of disciplinary alternative education program requirements, or of any recommendation by the commissioner concerning the data. If the data reflect that a penal law has been violated, the commissioner shall notify the county attorney, district attorney, or criminal district attorney, as appropriate, and the attorney general. The commissioner is entitled to access to all district records the commissioner considers necessary or appropriate for the review, analysis, or approval of disciplinary alternative education program data.

#### TEC §37.006. Removal for Certain Conduct

- (a) A student shall be removed from class and placed in a disciplinary alternative education program as provided by Section 37.008 if the student:
  - (1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code; or
  - (2) commits the following on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:
    - (A) engages in conduct punishable as a felony;
    - (B) engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(1), Penal Code;
    - (C) sells, gives, or delivers to another person or possesses or uses or is under the influence of:
      - (i) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.; or
      - (ii) a dangerous drug, as defined by Chapter 483, Health and Safety Code;
    - (D) sells, gives, or delivers to another person an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code, commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage;
    - (E) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Sections 485.031 through 485.034, Health and Safety Code; or
    - (F) engages in conduct that contains the elements of the offense of public lewdness under Section 21.07, Penal Code, or indecent exposure under Section 21.08, Penal Code.
- (b) Except as provided by Section 37.007(d), a student shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 if the student engages in conduct on or off of school property that contains the elements of the offense of retaliation under Section 36.06, Penal Code, against any school employee.

- (c) In addition to Subsections (a) and (b), a student shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:
  - (1) the student receives deferred prosecution under Section 53.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code;
  - (2) a court or jury finds that the student has engaged in delinquent conduct under Section 54.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code; or
  - (3) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in a conduct defined as a felony offense in Title 5, Penal Code.
- (d) In addition to Subsections (a), (b), and (c), a student may be removed from class and placed in a disciplinary alternative education program under Section 37.008 based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:
  - (1) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in conduct defined as a felony offense other than those defined in Title 5, Penal Code; and
  - (2) the continued presence of the student in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.
- (e) In determining whether there is a reasonable belief that a student has engaged in conduct defined as a felony offense by the Penal Code, the superintendent or the superintendent's designee may consider all available information, including the information furnished under Article 15.27, Code of Criminal Procedure.
- (f) Subject to Section 37.007(e), a student who is younger than 10 years of age shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 if the student engages in conduct described by Section 37.007. An elementary school student may not be placed in a disciplinary alternative education program with any other student who is not an elementary school student.
- (g) The terms of a placement under this section must prohibit the student from attending or participating in a school-sponsored or school-related activity.
- (h) On receipt of notice under Article 15.27(g), Code of Criminal Procedure, the superintendent or the superintendent's designee shall review the student's placement in the disciplinary alternative education program. The student may not be returned to the regular classroom pending the review. The superintendent or the superintendent's designee shall schedule a review of the student's placement with the student's parent or guardian not later than the third class day after the superintendent or superintendent's designee receives notice from the office or official designated by the court. After reviewing the notice and receiving information from the student's parent or guardian, the superintendent or the superintendent's designee may continue the student's placement in the disciplinary alternative education program if there is reason to believe that the presence of the student in the regular classroom threatens the safety of other students or teachers.
- (i) The student or the student's parent or guardian may appeal the superintendent's decision under Subsection (h) to the board of trustees. The student may not be returned to the regular classroom pending the appeal. The board shall, at the next scheduled meeting, review the notice provided under Article 15.27(g), Code of Criminal Procedure, and receive information from the student, the student's parent or guardian, and the superintendent or superintendent's designee and confirm or reverse the decision under Subsection (h). The board shall make a record of the proceedings. If the board confirms the decision of the superintendent or superintendent's designee, the board shall inform the student and the student's parent or guardian of the right to appeal to the commissioner under Subsection (j).
- (j) Notwithstanding Section 7.057(e), the decision of the board of trustees under Subsection (i) may be appealed to the commissioner as provided by Sections 7.057(b), (c), (d), and (f). The student may not be returned to the regular classroom pending the appeal.

- (k) Subsections (h), (i), and (j) do not apply to placements made in accordance with Subsection (a).
- (l) Notwithstanding any other provision of this code, other than Section 37.007(e)(2), a student who is younger than six years of age may not be removed from class and placed in a disciplinary alternative education program.
- (m) Removal to a disciplinary alternative education program under Subsection (a) is not required if the student is expelled under Section 37.007 for the same conduct for which removal would be required.
- (n) A principal or other appropriate administrator may but is not required to remove a student to a disciplinary alternative education program for off-campus conduct for which removal is required under this section if the principal or other appropriate administrator does not have knowledge of the conduct before the first anniversary of the date the conduct occurred.

**TEC § 37.0081. Placement of Certain Students in Disciplinary Alternative Education Programs**

- (a) Notwithstanding any other provision of this subchapter, the board of trustees of DISD, or the board's designee, after an opportunity for a hearing may elect to place a student in a disciplinary alternative education program under Section 37.008 if:
  - (1) the student:
    - (A) has received deferred prosecution under Section 53.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code; or
    - (B) has been found by a court or jury to have engaged in delinquent conduct under Section 54.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code; and
  - (2) the board or the board's designee determines that the student's presence in the regular classroom:
    - (A) threatens the safety of other students or teachers;
    - (B) will be detrimental to the educational process; or
    - (C) is not in the best interests of the district's students.
- (b) Any decision of the board of trustees or the board's designee under this section is final and may not be appealed.
- (c) The board of trustees or the board's designee may order placement in accordance with this section regardless of:
  - (1) the date on which the student's conduct occurred;
  - (2) the location at which the conduct occurred;
  - (3) whether the conduct occurred while the student was enrolled in the district; or
  - (4) whether the student has successfully completed any court disposition requirements imposed in connection with the conduct.
- (d) Notwithstanding Section 37.009(c) or any other provision of this subchapter, the board of trustees or the board's designee may order placement in accordance with this section for any period considered necessary by the board or the board's designee in connection with the determination made under Subsection (a)(2). A student placed in a disciplinary alternative education program in accordance with this section is entitled to the periodic review prescribed by Section 37.009(e).

**JJAEP (Juvenile Justice Alternative Education Programs)**

**TAC §89.1052. Discretionary Placements in Juvenile Justice Alternative Education Programs (JJAEP).**

- (a) In a county with a JJAEP, a local school district shall invite the administrator of the JJAEP or the administrator's designee to an admission, review, and dismissal (ARD) committee meeting convened to discuss a student's expulsion under the provisions listed in Texas Education Code (TEC), §37.004(e), relating to offenses for which a school district may expel a student. The reasonable notice of the ARD committee meeting must be provided consistent with 34 CFR, §300.345 and §300.503, and §89.1015 of this title (relating to Time Line for All Notices), and a copy of the student's current individualized education program (IEP) must be provided to the JJAEP administrator or designee

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.

- (b) In accordance with TEC, §37.004(f), when the JJAEP administrator or designee provides written notice of specific concerns to the school district from which a student was expelled under one of the provisions listed in TEC, §37.004(e), relating to offenses for which a school district may expel a student, an ARD committee meeting must be convened to reconsider placement of the student in the JJAEP. The reasonable notice of the ARD committee meeting must be provided consistent with 34 CFR, §300.345 and §300.503, and §89.1015 of this title (relating to Time Line for All Notices). 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 continued placement in the JJAEP.

TEC §37.011. Juvenile Justice Alternative Education Program

- (a) The juvenile board of a county with a population greater than 125,000 shall develop a juvenile justice alternative education program, subject to the approval of the Texas Juvenile Probation Commission. The juvenile board of a county with a population of 125,000 or less may develop a juvenile justice alternative education program. For the purposes of this subchapter, only a disciplinary alternative education program operated under the authority of a juvenile board of a county is considered a juvenile justice alternative education program. A juvenile justice alternative education program in a county with a population of 125,000 or less:
  - (1) is not required to be approved by the Texas Juvenile Probation Commission; and
  - (2) is not subject to Subsection (c), (d), (f), or (g).
- (b) If a student admitted into the public schools of a school district under Section 25.001(b) is expelled from school for conduct for which expulsion is required under Section 37.007(a), (d), or (e), the juvenile court, the juvenile board, or the juvenile board's designee, as appropriate, shall:
  - (1) if the student is placed on probation under Section 54.04, Family Code, order the student to attend the juvenile justice alternative education program in the county in which the student resides from the date of disposition as a condition of probation, unless the child is placed in a post-adjudication treatment facility;
  - (2) if the student is placed on deferred prosecution under Section 53.03, Family Code, by the court, prosecutor, or probation department, require the student to immediately attend the juvenile justice alternative education program in the county in which the student resides for a period not to exceed six months as a condition of the deferred prosecution;
  - (3) in determining the conditions of the deferred prosecution or court-ordered probation, consider the length of the school district's expulsion order for the student; and
  - (4) provide timely educational services to the student in the juvenile justice alternative education program in the county in which the student resides, regardless of the student's age or whether the juvenile court has jurisdiction over the student.
  - (b-1) Subsection (b)(4) does not require that educational services be provided to a student who is not entitled to admission into the public schools of a school district under Section 25.001(b).
- (c) A juvenile justice alternative education program shall adopt a student code of conduct in accordance with Section 37.001.
- (d) A juvenile justice alternative education program must focus on English language arts, mathematics, science, social studies, and self-discipline. Each school district shall consider course credit earned by a student while in a juvenile justice alternative education program as credit earned in a district school. Each program shall administer assessment instruments under Subchapter B, Chapter 39, and shall offer a high school equivalency program. The juvenile board or the board's designee, with the parent

or guardian of each student, shall regularly review the student's academic progress. In the case of a high school student, the board or the board's designee, with the student's parent or guardian, shall review the student's progress towards meeting high school graduation requirements and shall establish a specific graduation plan for the student. The program is not required to provide a course necessary to fulfill a student's high school graduation requirements other than a course specified by this subsection.

- (e) A juvenile justice alternative education program may be provided in a facility owned by a school district. A school district may provide personnel and services for a juvenile justice alternative education program under a contract with the juvenile board.
- (f) A juvenile justice alternative education program must operate at least seven hours per day and 180 days per year, except that a program may apply to the Texas Juvenile Probation Commission for a waiver of the 180-day requirement. The commission may not grant a waiver to a program under this subsection for a number of days that exceeds the highest number of instructional days waived by the commissioner during the same school year for a school district served by the program.
- (g) A juvenile justice alternative education program shall be subject to a written operating policy developed by the local juvenile justice board and submitted to the Texas Juvenile Probation Commission for review and comment. A juvenile justice alternative education program is not subject to a requirement imposed by this title, other than a reporting requirement or a requirement imposed by this chapter or by Chapter 39.
- (h) Academically, the mission of juvenile justice alternative education programs shall be to enable students to perform at grade level. For purposes of accountability under Chapter 39, a student enrolled in a juvenile justice alternative education program is reported as if the student were enrolled at the student's assigned campus in the student's regularly assigned education program, including a special education program. Annually the Texas Juvenile Probation Commission, with the agreement of the commissioner, shall develop and implement a system of accountability consistent with Chapter 39, where appropriate, to assure that students make progress toward grade level while attending a juvenile justice alternative education program. The Texas Juvenile Probation Commission shall adopt rules for the distribution of funds appropriated under this section to juvenile boards in counties required to establish juvenile justice alternative education programs. Except as determined by the commissioner, a student served by a juvenile justice alternative education program on the basis of an expulsion required under Section 37.007(a), (d), or (e) is not eligible for Foundation School Program funding under Chapter 42 or 31 if the juvenile justice alternative education program receives funding from the Texas Juvenile Probation Commission under this subchapter.
- (i) A student transferred to a juvenile justice alternative education program must participate in the program for the full period ordered by the juvenile court unless the student's school district agrees to accept the student before the date ordered by the juvenile court. The juvenile court may not order a period of transfer under this section that exceeds the term of any probation ordered by the juvenile court.
- (j) In relation to the development and operation of a juvenile justice alternative education program, a juvenile board and a county and a commissioners court are immune from liability to the same extent as a school district, and the juvenile board's or county's professional employees and volunteers are immune from liability to the same extent as a school district's professional employees and volunteers.
- (k) Each school district in a county with a population greater than 125,000 and the county juvenile board shall annually enter into a joint memorandum of understanding that:
  - (1) outlines the responsibilities of the juvenile board concerning the establishment and operation of a juvenile justice alternative education program under this section;
  - (2) defines the amount and conditions on payments from the school district to the juvenile board for students of the school district served in the juvenile justice alternative education program whose placement was not made on the basis of an expulsion required under Section 37.007(a), (d), or (e);

- (3) identifies those categories of conduct that the school district has defined in its student code of conduct as constituting serious or persistent misbehavior for which a student may be placed in the juvenile justice alternative education program;
  - (4) identifies and requires a timely placement and specifies a term of placement for expelled students for whom the school district has received a notice under Section 52.041(d), Family Code;
  - (5) establishes services for the transitioning of expelled students to the school district prior to the completion of the student's placement in the juvenile justice alternative education program;
  - (6) establishes a plan that provides transportation services for students placed in the juvenile justice alternative education program;
  - (7) establishes the circumstances and conditions under which a juvenile may be allowed to remain in the juvenile justice alternative education program setting once the juvenile is no longer under juvenile court jurisdiction; and
  - (8) establishes a plan to address special education services required by law.
- (l) The school district shall be responsible for providing an immediate educational program to students who engage in behavior resulting in expulsion under Section 37.007(b), (c), and (f) but who are not eligible for admission into the juvenile justice alternative education program in accordance with the memorandum of understanding required under this section. The school district may provide the program or the school district may contract with a county juvenile board, a private provider, or one or more other school districts to provide the program. The memorandum of understanding shall address the circumstances under which such students who continue to engage in serious or persistent misbehavior shall be admitted into the juvenile justice alternative education program.
  - (m) Each school district in a county with a population greater than 125,000 and the county juvenile board shall adopt a joint memorandum of understanding as required by this section not later than September 1 of each school year.
  - (n) If a student who is ordered to attend a juvenile justice alternative education program moves from one county to another, the juvenile court may request the juvenile justice alternative education program in the county to which the student moves to provide educational services to the student in accordance with the local memorandum of understanding between the school district and juvenile board in the receiving county.
  - (o) In relation to the development and operation of a juvenile justice alternative education program, a juvenile board and a county and a commissioners court are immune from liability to the same extent as a school district, and the juvenile board's or county's employees and volunteers are immune from liability to the same extent as a school district's employees and volunteers.
  - (p) If a district elects to contract with the juvenile board for placement in the juvenile justice alternative education program of students expelled under Section 37.007(b), (c), and (f) and the juvenile board and district are unable to reach an agreement in the memorandum of understanding, either party may request that the issues of dispute be referred to a binding arbitration process that uses a qualified alternative dispute resolution arbitrator in which each party will pay its pro rata share of the arbitration costs. Each party must submit its final proposal to the arbitrator. If the parties cannot agree on an arbitrator, the juvenile board shall select an arbitrator, the school districts shall select an arbitrator, and those two arbitrators shall select an arbitrator who will decide the issues in dispute. An arbitration decision issued under this subsection is enforceable in a court in the county in which the juvenile justice alternative education program is located. Any decision by an arbitrator concerning the amount of the funding for a student who is expelled and attending a juvenile justice alternative education program must provide an amount sufficient based on operation of the juvenile justice alternative education program in accordance with this chapter. In determining the amount to be paid by a school district for an expelled student enrolled in a juvenile justice alternative education program, the arbitrator shall consider the relevant factors, including evidence of:
    - (1) the actual average total per student expenditure in the district's alternative education setting;
    - (2) the expected per student cost in the juvenile justice alternative education program as described and agreed on in the memorandum of understanding and in compliance with this chapter; and

- (3) the costs necessary to achieve the accountability goals under this chapter.
- (q) In accordance with rules adopted by the board of trustees for the Teacher Retirement System of Texas, a certified educator employed by a juvenile board in a juvenile justice alternative education program shall be eligible for membership and participation in the system to the same extent that an employee of a public school district is eligible. The juvenile board shall make any contribution that otherwise would be the responsibility of the school district if the person were employed by the school district, and the state shall make any contribution to the same extent as if the person were employed by a school district.

*Other TEC regulations for JJAEP are addressed local board policy..*

## **E. Expulsion**

### **TEC §37.007. Expulsion for Serious Offenses**

- (a) A student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property:
- (1) uses, exhibits, or possesses:
    - (A) a firearm as defined by Section 46.01(3), Penal Code;
    - (B) an illegal knife as defined by Section 46.01(6), Penal Code, or by local policy;
    - (C) a club as defined by Section 46.01(1), Penal Code; or
    - (D) a weapon listed as a prohibited weapon under Section 46.05, Penal Code;
  - (2) engages in conduct that contains the elements of the offense of:
    - (A) aggravated assault under Section 22.02, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;
    - (B) arson under Section 28.02, Penal Code;
    - (C) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;
    - (D) indecency with a child under Section 21.11, Penal Code;
    - (E) aggravated kidnapping under Section 20.04, Penal Code;
    - (F) aggravated robbery under Section 29.03, Penal Code;
    - (G) manslaughter under Section 19.04, Penal Code; or
    - (H) criminally negligent homicide under Section 19.05, Penal Code; or
  - (3) engages in conduct specified by Section 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

Text of subsec. (b) as amended by Acts 2003, 78th Leg., ch. 1055, Sec. 10

- (b) A student may be expelled if the student:
- (1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code;
  - (2) while on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:
    - (A) sells, gives, or delivers to another person or possesses, uses, or is under the influence of any amount of:
      - (i) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;
      - (ii) a dangerous drug, as defined by Chapter 483, Health and Safety Code; or
      - (iii) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;
    - (B) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Sections 485.031 through 485.034, Health and Safety Code;

- (C) engages in conduct that contains the elements of an offense under Section 22.01(a)(1), Penal Code, against a school district employee or a volunteer as defined by Section 22.053; or
  - (D) engages in conduct that contains the elements of the offense of deadly conduct under Section 22.05, Penal Code; or
- (3) subject to Subsection (d), while within 300 feet of school property, as measured from any point on the school's real property boundary line:
- (A) engages in conduct specified by Subsection (a); or
  - (B) possesses a firearm, as defined by 18 U.S.C. Section 921.
- (c) A student may be expelled if the student, while placed in an alternative education program for disciplinary reasons, continues to engage in serious or persistent misbehavior that violates the district's student code of conduct.
- (d) A student shall be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection (a), and may be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection (b)(2)(C), against any employee or volunteer in retaliation for or as a result of the person's employment or association with DISD, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property.
- (e) In accordance with 20 U.S.C. Section 7151, a local educational agency, including DISD, home-rule school district, or open-enrollment charter school, shall expel a student who brings a firearm, as defined by 18 U.S.C. Section 921, to school. The student must be expelled from the student's regular campus for a period of at least one year, except that:
- (1) the superintendent or other chief administrative officer of DISD or of the other local educational agency, as defined by 20 U. S.C. Section 7801, may modify the length of the expulsion in the case of an individual student;
  - (2) the district or other local educational agency shall provide educational services to an expelled student in a disciplinary alternative education program as provided by Section 37.008 if the student is younger than 10 years of age on the date of expulsion; and
  - (3) the district or other local educational agency may provide educational services to an expelled student who is 10 years of age or older in a disciplinary alternative education program as provided in Section 37.008.
- (f) A student who engages in conduct that contains the elements of the offense of criminal mischief under Section 28.03, Penal Code, may be expelled at the district's discretion if the conduct is punishable as a felony under that section. The student shall be referred to the authorized officer of the juvenile court regardless of whether the student is expelled.
- (g) The DISD shall inform each teacher who has regular contact with a student through a classroom assignment of the conduct of a student who has engaged in any violation listed in this section. A teacher shall keep the information received in this subsection confidential. The State Board for Educator Certification may revoke or suspend the certification of a teacher who intentionally violates this subsection.
- (h) Subject to Subsection (e), notwithstanding any other provision of this section, a student who is younger than 10 years of age may not be expelled for engaging in conduct described by this section.
- (i) A student who engages in conduct described by Subsection (a) may be expelled from school by the district in which the student attends school if the student engages in that conduct:
- (1) on school property of another district in this state; or
  - (2) while attending a school-sponsored or school-related activity of a school in another district in this state.

## **F. Emergency Placement**

### **TEC §37.019. Emergency Placement of Expulsion**

- (a) This subchapter does not prevent the principal or the principal's designee from ordering the immediate placement of a student in a disciplinary alternative education program if the principal or the principal's designee reasonably believes the student's behavior is so unruly, disruptive, or abusive that it seriously interferes with a teacher's ability to communicate effectively with the students in a class, with the ability of the student's classmates to learn, or with the operation of school or a school-sponsored activity.
- (b) This subchapter does not prevent the principal or the principal's designee from ordering the immediate expulsion of a student if the principal or the principal's designee reasonably believes that action is necessary to protect persons or property from imminent harm.
- (c) At the time of an emergency placement or expulsion, the student shall be given oral notice of the reason for the action. The reason must be a reason for which placement in a disciplinary alternative education program or expulsion may be made on a nonemergency basis. Within a reasonable time after the emergency placement or expulsion, but not later than the 10th day after the date of the placement or expulsion, the student shall be accorded the appropriate due process as required under Section 37.009. If the student subject to the emergency placement or expulsion is a student with disabilities who receives special education services, the emergency placement or expulsion is subject to federal law and regulations and must be consistent with the consequences that would apply under this subchapter to a student without a disability.
- (d) A principal or principal's designee is not liable in civil damages for an emergency placement under this section. Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2001, 77th Leg., ch. 767, Sec. 7, eff. June 13, 2001; Acts 2003, 78th Leg., ch. 1055, Sec. 20, eff. June 20, 2003.

#### **IV. FREE APPROPRIATE PUBLIC EDUCATION (FAPE) FOR STUDENTS** **REMOVED**

##### **§300.530 Authority of school personnel.**

- (a) **Case-by-case determination.** School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.
- (b) **General.**
  - (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for 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 change of placement under §300.536).
  - (2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.
- (c) **Additional authority.** For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.
- (d) **Services.**
  - (1) Except as provided in paragraphs (d)(3) and (d)(4) of this section, a child with a disability who is removed from the child's current placement pursuant to paragraphs (b), (c), or (g) of this section must--

- (i) Continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
- (ii) 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.
- (2) The services required by paragraph (d)(1) of this section may be provided in an interim alternative educational setting.
- (3) A public agency need not provide services during periods of removal under paragraph (b) of this section to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed.
- (4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed under paragraph (d)(1) of this section, if any, and the location in which services, if any, will be provided.
- (5) If the removal is for more than 10 consecutive school days or is a change of placement under §300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section and the location in which services will be provided.
- (e) **Manifestation determination.**
  - (1) Except for removals that will be for not more than 10 consecutive school days and will not constitute a change of placement under §300.536, within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, DISD, the parent, and relevant members of the child's IEP Team (as determined by the parent and DISD) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--
    - (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
    - (ii) If the conduct in question was the direct result of DISD's failure to implement the IEP.
  - (2) The conduct must be determined to be a manifestation of the child's disability if DISD, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.
- (f) **Determination that behavior was a manifestation.** If DISD, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--
  - (1) Either--
    - (i) Conduct a functional behavioral assessment, unless DISD had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
    - (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
  - (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and DISD agree to a change of placement as part of the modification of the behavioral intervention plan.
- (g) **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 child's disability, if the child--
  - (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
  - (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 an SEA or an LEA; 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 an SEA or an LEA.
- (h) **Notification.** Not later than the date on which the decision to take disciplinary action is made, DISD must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.

- (i) **Definitions.** For purposes of this section, the following definitions apply:
- (1) **Controlled substance** means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
  - (2) **Illegal drug** means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
  - (3) **Serious bodily injury** has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
  - (4) **Weapon** has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (Authority: 20 U.S.C. 1415(k)(1) and (7))

## **V. CONFINEMENT, RESTRAINT, TIME-OUT**

### **A. Use of Confinement, Restraint, Seclusion, and Time-Out**

#### **TEC §37.0021. Use of Confinement, Restraint, Seclusion, and Time-out**

- (a) It is the policy of this state to treat with dignity and respect all students, including students with disabilities who receive special education services under Subchapter A, Chapter 29. A student with a disability who receives special education services under Subchapter A, Chapter 29, 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.
- (b) In this section:
  - (1) "**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.
  - (2) "**Seclusion**" means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:
    - (A) is designed solely to seclude a person; and
    - (B) contains less than 50 square feet of space.
  - (3) "**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:
    - (A) that is not locked; and
    - (B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.
- (c) A DISD employee or volunteer or an independent contractor of a district may not place a student in seclusion. This subsection does not apply to the use of seclusion in a court-ordered placement, other than a placement in an educational program of DISD, or in a placement or facility to which the following law, rules, or regulations apply:
  - (1) the Children's Health Act of 2000, Pub. L. No. 106-310, any subsequent amendments to that Act, any regulations adopted under that Act, or any subsequent amendments to those regulations;
  - (2) 40 T.A.C. Sections 720.1001-720.1013; or
  - (3) 25 T.A.C. Section 412.308(e).
- (d) The commissioner by rule shall adopt procedures for the use of restraint and time-out by a DISD employee or volunteer or an independent contractor of a district in the case of a student with a disability receiving special education services under Subchapter A, Chapter 29. A procedure adopted under this subsection must:
  - (1) be consistent with:

- (A) professionally accepted practices and standards of student discipline and techniques for behavior management; and
- (B) relevant health and safety standards; and
- (2) identify any discipline management practice or behavior management technique that requires a district employee or volunteer or an independent contractor of a district to be trained before using that practice or technique.
- (e) In the case of a conflict between a rule adopted under Subsection (d) and a rule adopted under Subchapter A, Chapter 29, the rule adopted under Subsection (d) controls.
- (f) For purposes of this subsection, "weapon" includes any weapon described under Section 37.007(a)(1). This section does not prevent a student's locked, unattended **confinement in an emergency** situation while awaiting the arrival of law enforcement personnel if:
  - (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.
- (g) This section and any rules or procedures adopted under this section **do not apply** to:
  - (1) a peace officer while performing law enforcement duties;
  - (2) juvenile probation, detention, or corrections personnel; or
  - (3) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of DISD.

## **B. Procedures for Use of Restraint and Time-out**

### **TAC §89.1053. Procedures for Use of Restraint and Time-Out.**

- (a) Requirement to implement. In addition to the requirements of 34 Code of Federal Regulations (CFR), §300.346(a)(2)(i) and (c), school districts and charter schools must implement the provisions of this section regarding the use of restraint and time-out. In accordance with the provisions of Texas Education Code (TEC), §37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out), it is the policy of the state to treat with dignity and respect all students, including students with disabilities who receive special education services under TEC, Chapter 29, Subchapter A.
- (b) Definitions.
  - (1) Emergency means a situation in which a student's behavior poses a threat of:
    - (A) imminent, serious physical harm to the student or others; or
    - (B) imminent, serious property destruction.
  - (2) Restraint means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body.
  - (3) 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:
    - (A) that is not locked; and
    - (B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.
- (c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section 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.

- (d) Training on use of restraint. Training for school employees, volunteers, or independent contractors shall be provided according to the following requirements.
- (1) Not later than April 1, 2003, a core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.
  - (2) After April 1, 2003, personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.
  - (3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.
  - (4) All trained personnel shall receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.
- (e) Documentation and notification on use of restraint. In a case in which restraint is used, school employees, volunteers, or independent contractors shall implement the following documentation requirements.
- (1) On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.
  - (2) On the day restraint is utilized, a good faith effort shall be made to verbally notify the parent(s) regarding the use of restraint.
  - (3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.
  - (4) Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the ARD committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavioral intervention plan (BIP).
  - (5) Written notification to the parent(s) and documentation to the student's special education eligibility folder shall include the following:
    - (A) name of the student;
    - (B) name of the staff member(s) administering the restraint;
    - (C) date of the restraint and the time the restraint began and ended;
    - (D) location of the restraint;
    - (E) nature of the restraint;
    - (F) a description of the activity in which the student was engaged immediately preceding the use of restraint;
    - (G) the behavior that prompted the restraint;
    - (H) the efforts made to de-escalate the situation and alternatives to restraint that were attempted; and
    - (I) information documenting parent contact and notification.
- (f) Clarification regarding restraint. The provisions adopted under this section do not apply to the use of physical force or a mechanical device which does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced in subsection (b)(2) of this section 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 individualized education program (IEP) as required by 34 CFR §300.346(a)(2)(i) and (c) 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.
- (g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(3) of this section 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 BIP if it is utilized on a recurrent basis to increase or decrease a 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.
- (h) Training on use of time-out. Training for school employees, volunteers, or independent contractors shall be provided according to the following requirements.
  - (1) Not later than April 1, 2003, general or special education personnel who implement time-out based on requirements established in a student's IEP and/or BIP must be trained in the use of time-out.
  - (2) After April 1, 2003, newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or BIP must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.
  - (3) Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, and must address the impact of time-out on 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.
  - (4) All trained personnel shall receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.
- (i) Documentation on use of time-out. Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP or BIP. The admission, review, and dismissal (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.
- (j) Student safety. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.
- (k) Data reporting. Beginning with the 2003-2004 school year, with the exception of actions covered by subsection (f) of this section, data regarding the use of restraint must be electronically reported to the Texas Education Agency in accordance with reporting standards specified by the Agency.
- (l) The provisions adopted under this section do not apply to:
  - (1) a peace officer while performing law enforcement duties;
  - (2) juvenile probation, detention, or corrections personnel; or
  - (3) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of DISD.

### **C. Time-out Guidelines**

*The staff of DISD will be trained and all rules above will be followed. The guidelines below are for the use of time-out. Time-out is outlined below as either Non-exclusionary, which is the least restrictive, or Exclusionary time-out which results from more serious behaviors. Exclusionary time-out should be used when Non-exclusionary attempts are not successful.*

1. Non-exclusionary time-out:

- *Planned Ignoring: This is the simplest form of Non-exclusionary time-out. Planned ignoring involves the systematic removal of social reinforcement (attention) by the teacher for a specific amount of time. When the student misbehaves, the teacher breaks eye contact, turns away, and stops all social interaction with the student. Planned ignoring assumes that the teacher's social attention is reinforcing. If it is not, then this will not work to decrease the behavior. If planned ignoring is the appropriate response, the teacher should prepare initially for an increase in the behavior before the behavior will decrease.*
- *Head down on desk: This has been used by teachers for a long time. The student is simply told to put his head down on his desk for a short period of time. (timer may be used)*
- *Observation time-out: The student is removed from his/her desk for misbehaving and is usually placed in a desk away from the main classroom activities for a short period of time. The student is allowed/required to observe the classroom discussion/activities, but is not allowed to actively participate in them. (use of timer recommended – 5 minutes and may reset once)*
- *Non-observation time-out (instructional isolation): This is basically the same as observation time-out, except the student is not allowed to observe the classroom activities. Usually, the student is placed in a particular part of the classroom that does not provide for viewing other students. (use of timer recommended – 10 minutes and may reset once)*

2. Exclusionary time-out: *The student is removed from the classroom and placed in a separate environment for cooling down and instructional activities to resume. Clearly, this is more restrictive and other types of time-out should be attempted first.*

- *Isolated instruction: This is extended time-out from the classroom. The student is required to complete class work in an isolated area in the classroom, another classroom, or the office.*
- *In-school Suspension: This program is designed to supervise and assist students who have problems related to their general education setting. Reference the campus Student Code of Conduct for complete guidelines.*

## **VI. DUE PROCESS REQUIREMENTS**

### **A. Procedural Safeguards**

*All procedural safeguards, including required notice and consents, will be followed throughout the process of disciplinary action for students with disabilities.*

### **B. Conference, Hearing, Review**

#### **TEC §37.009. Conference, Hearing, Review**

- (a) Not later than the third class day after the day on which a student is removed from class by the teacher under Section 37.002(b) or (d) or by the school principal or other appropriate administrator under Section 37.001(a)(2) or 37.006, the principal or other appropriate administrator shall schedule a conference among the principal or other appropriate administrator, a parent or guardian of the student, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular classroom pending the conference. Following the conference, and whether or

not each requested person is in attendance after valid attempts to require the person's attendance, the principal shall order the placement of the student for a period consistent with the student code of conduct. If DISD policy allows a student to appeal to the board of trustees or the board's designee a decision of the principal or other appropriate administrator, other than an expulsion under Section 37.007, the decision of the board or the board's designee is final and may not be appealed. If the period of the placement is inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5), the order must give notice of the inconsistency. The period of the placement may not exceed one year unless, after a review, the district determines that:

- (1) the student is a threat to the safety of other students or to district employees; or
  - (2) extended placement is in the best interest of the student.
- (b) If a student's placement in a disciplinary alternative education program is to extend beyond 60 days or the end of the next grading period, whichever is earlier, a student's parent or guardian is entitled to notice of and an opportunity to participate in a proceeding before the board of trustees of DISD or the board's designee, as provided by policy of the board of trustees of the district. Any decision of the board or the board's designee under this subsection is final and may not be appealed.
- (c) Before it may place a student in a disciplinary alternative education program for a period that extends beyond the end of the school year, the board or the board's designee must determine that:
- (1) the student's presence in the regular classroom program or at the student's regular campus presents a danger of physical harm to the student or to another individual; or
  - (2) the student has engaged in serious or persistent misbehavior that violates the district's student code of conduct.
- (d) The board or the board's designee shall set a term for a student's placement in a disciplinary alternative education program. If the period of the placement is inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5), the order must give notice of the inconsistency. The period of the placement may not exceed one year unless, after a review, the district determines that:
- (1) the student is a threat to the safety of other students or to district employees; or
  - (2) extended placement is in the best interest of the student.
- (e) A student placed in a disciplinary alternative education program shall be provided a review of the student's status, including a review of the student's academic status, by the board's designee at intervals not to exceed 120 days. In the case of a high school student, the board's designee, with the student's parent or guardian, shall review the student's progress towards meeting high school graduation requirements and shall establish a specific graduation plan for the student. The district is not required under this subsection to provide a course in the district's disciplinary alternative education program except as required by Section 37.008(1). At the review, the student or the student's parent or guardian must be given the opportunity to present arguments for the student's return to the regular classroom or campus. The student may not be returned to the classroom of the teacher who removed the student without that teacher's consent. The teacher may not be coerced to consent.
- (f) Before a student may be expelled under Section 37.007, the board or the board's designee must provide the student a hearing at which the student is afforded appropriate due process as required by the federal constitution and which the student's parent or guardian is invited, in writing, to attend. At the hearing, the student is entitled to be represented by the student's parent or guardian or another adult who can provide guidance to the student and who is not an employee of DISD. If DISD makes a good-faith effort to inform the student and the student's parent or guardian of the time and place of the hearing, the district may hold the hearing regardless of whether the student, the student's parent or guardian, or another adult representing the student attends. If the decision to expel a student is made by the board's designee, the decision may be appealed to the board. The decision of the board may be appealed by trial de novo to a district court of the county in which DISD's central administrative office is located.

- (g) The board or the board's designee shall deliver to the student and the student's parent or guardian a copy of the order placing the student in a disciplinary alternative education program under Section 37.001, 37.002, or 37.006 or expelling the student under Section 37.007.
- (h) If the period of an expulsion is inconsistent with the guidelines included in the student code of conduct under Section 37.001 (a)(5), the order must give notice of the inconsistency. The period of an expulsion may not exceed one year unless, after a review, the district determines that:
  - (1) the student is a threat to the safety of other students or to district employees; or
  - (2) extended placement is in the best interest of the student. After DISD notifies the parents or guardians of a student that the student has been expelled, the parent or guardian shall provide adequate supervision of the student during the period of expulsion.
- (i) If a student withdraws from the district before an order for placement in a disciplinary alternative education program or expulsion is entered under this section, the principal or board, as appropriate, may complete the proceedings and enter an order. If the student subsequently enrolls in the district during the same or subsequent school year, the district may enforce the order at that time except for any period of the placement or expulsion that has been served by the student on enrollment in another district that honored the order. If the principal or board fails to enter an order after the student withdraws, the next district in which the student enrolls may complete the proceedings and enter an order.
- (j) If, during the term of a placement or expulsion ordered under this section, a student engages in additional conduct for which placement in a disciplinary alternative education program or expulsion is required or permitted, additional proceedings may be conducted under this section regarding that conduct and the principal or board, as appropriate, may enter an additional order as a result of those proceedings. Added by Acts 1995, 74<sup>th</sup> Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75<sup>th</sup> Leg., ch. 1015, Sec. 7, eff. June 19, 1997; Acts 2003, 78<sup>th</sup> Leg., ch. 1055, Sec. 13, eff. June 20, 2003.

### **C. Stay Put**

- (a) *Previously during appeals, a child with a disability remained in the original placement, “stay-put”. The new IDEA eliminates the “stay-put” requirement in the case of discipline. The “stay-put” rule still applies to the non-disciplinary dispute. Now during the time that an appeal is pending, the child will remain in the interim alternative educational setting (IAES) until the appeal is resolved or until the expiration of the suspension, whichever occurs first.(see D. and E. below)*
- (b) *As described below in §300.532, the hearing officer is required to make a decision within 30 school days from the date the hearing is requested. Therefore, if the student is assigned to an IAES for 45 school days, the hearing officer’s decision will come first.*
- (c) *The IEP Team will pick the appropriate IAES. The timeframe for expiration of the IAES is determined by school personnel applying the “relevant disciplinary procedures applicable to children without disabilities” referred to in the Student Code of Conduct.*

### **D. Appeal**

#### **§300.532 Appeal.**

- (a) **General.** The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may request a hearing.
- (b) **Authority of hearing officer.**
  - (1) A hearing officer under §300.511 hears, and makes a determination regarding, an appeal requested under paragraph (a) of this section.
  - (2) In making the determination under paragraph (b)(1) of this section, the hearing officer may—

- (i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability; or
  - (ii) Order a change of placement of the child 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 of the child is substantially likely to result in injury to the child or to others.
- (3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if DISD believes the child would be dangerous if returned to the original placement.
- (c) **Expedited hearing.**
- (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or DISD involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.510 through 300.514, except as provided in paragraph (c)(2) through (5) of this section.
  - (2) The SEA or DISD must arrange for an expedited hearing, which must occur within 20 school days of the date the hearing is requested and must result in a determination within 10 school days after the hearing.
  - (3) Except as provided in §300.510(a)(3)--
    - (i) A resolution session meeting must occur within seven days of the date the hearing is requested, and
    - (ii) The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the hearing request.
  - (4) For an expedited hearing, a State may provide that the time periods identified in §300.512(a)(3) and (b) are not less than two business days.
  - (5) A State may establish different procedural rules for expedited hearings under this section than it has established for due process hearings under §§300.511 through 300.513.
  - (6) The decisions on expedited due process hearings are appealable consistent with §300.514. (Authority: 20 U.S.C. 1415(k)(3) and (4)(B), 1415(f)(1)(A))

## **E. Placement During Appeals**

### **§300.533 Placement during appeals.**

When an appeal under §300.532 has been requested by either the parent or DISD, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in §300.530I or (g), whichever occurs first, unless the parent and the SEA or DISD agree otherwise. (Authority: 20 U.S.C. 1415(k)(4)(A))

## **F. Resolution Meeting Prior to Due Process**

### **§300.510 Resolution process.**

#### **(a) Resolution meeting.**

- (1) Within 15 days of receiving notice of the parents' due process complaint, and prior to the initiation of a due process hearing under §300.511, DISD must convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that--
  - (i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and
  - (ii) May not include an attorney of DISD unless the parent is accompanied by an attorney.
- (2) The purpose of the meeting is for the parents of the child to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that DISD has the opportunity to resolve the dispute that is the basis for the due process complaint.
- (3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if--
  - (i) The parents and DISD agree in writing to waive the meeting; or
  - (ii) The parents and DISD agree to use the mediation process described in §300.506.
- (4) The parents and DISD determine the relevant members of the IEP Team to attend the meeting.

- (b) **Resolution period.**
  - (1) If DISD has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint, the due process hearing must occur.
  - (2) The timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.
  - (3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.
- (c) **Written settlement agreement.** If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is--
  - (1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and
  - (2) Enforceable in any State court of competent jurisdiction or in a district court of the United States.
- (d) **Agreement review period.** If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.  
(Authority: 20 U.S.C. 1415(f)(1)(B))

*This process allows an opportunity for the school to resolve the parent's complaint. This can take up to 30 days and the timelines for a due process hearing begin to run only after those first 30 days. Also, there is an "expedited hearing" in the case of a disciplinary appeal. When the final regulations are completed, this may be resolved.*

## **G. Notice of Disciplinary Actions (Student Moves to another District)**

### **TEC §37.021. Notice of Disciplinary Action**

Text of section as added by Acts 2003, 78<sup>th</sup> Leg., ch. 631, Sec. 1

- (a) In this section:
  - (1) "Disciplinary action" means a suspension, expulsion, placement in an alternative education program, or other limitation in enrollment eligibility of a student by a district or school.
  - (2) "District or school" includes an independent school district, a home-rule school district, a campus or campus program charter holder, or an open-enrollment charter school.
- (b) If a district or school takes disciplinary action against a student and the student subsequently enrolls in another district or school before the expiration of the period of disciplinary action, the governing body of the district or school taking the disciplinary action shall provide to the district or school in which the student enrolls, at the same time other records of the student are provided, a copy of the order of disciplinary action.
- (c) Subject to Section 37.007(e), the district or school in which the student enrolls may continue the disciplinary action under the terms of the order or may allow the student to attend regular classes without completing the period of disciplinary action.  
Added by Acts 2003, 78<sup>th</sup> Leg., ch. 631, Sec. 1, eff. June 20, 2003.  
For text of section as added by Acts 2003, 78<sup>th</sup> Leg., ch. 1055, Sec. 22, see Sec. 37.021, post.

## **H. Protection for Students not Yet Eligible for Special Education**

### **§300.534 Protections for children not yet eligible for special education and related services.**

- (a) **General.** A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if DISD had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
- (b) **Basis of knowledge.** DISD must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—
  - (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

- (2) The parent of the child requested an evaluation of the child pursuant to §§300.300 through 300.311; or
- (3) The teacher of the child, or other personnel of DISD, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency in accordance with the agency's established child find or special education referral system.
- (c) **Exception.** A public agency would not be deemed to have knowledge under paragraph (b) of this section if—
  - (1) The parent of the child—
    - (i) Has not allowed an evaluation of the child pursuant to §§300.300 through 300.311; or
    - (ii) Has refused services under this part; or
  - (2) The child has been evaluated and determined to not be a child with a disability under this part.
- (d) **Conditions that apply if no basis of knowledge.**
  - (1) If DISD does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.
  - (2) (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under §300.530, the evaluation must be conducted in an expedited manner.
    - (ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
    - (iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§300.530 through 300.536 and section 612(a)(1)(A) of the Act. (Authority: 20 U.S.C. 1415(k)(5))

## **I. Noncustodial Parent**

### **TEC §37.0091. Notice to Noncustodial Parent.**

- (a) A noncustodial parent may request in writing that DISD or school, for the remainder of the school year in which the request is received, provide that parent with a copy of any written notification relating to student misconduct under Section 37.006 or 37.007 that is generally provided by DISD or school to a student's parent or guardian.
  - (b) DISD or school may not unreasonably deny a request authorized by Subsection (a).
  - (c) Notwithstanding any other provision of this section, DISD or school shall comply with any applicable court order of which DISD or school has knowledge.
- Added by Acts 2003, 78th Leg., ch. 1055, Sec. 14, eff. June 20, 2003.

## **VII. LAW ENFORCEMENT**

### **§300.535 Referral to and action by law enforcement and judicial authorities.**

- (a) **Rule of construction.** Nothing in this part prohibits an agency from reporting a crime committed by a child 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 child with a disability.
- (b) **Transmittal of records.**
  - (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

- (2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. (Authority: 20 U.S.C. 1415(k)(6))**

**TEC §37.015. Reports to Local Law Enforcement; Liability**

- (a) The principal of a public or private primary or secondary school, or a person designated by the principal under Subsection (d), shall notify any school district police department and the police department of the municipality in which the school is located or, if the school is not in a municipality, the sheriff of the county in which the school is located if the principal has reasonable grounds to believe that any of the following activities occur in school, on school property, or at a school-sponsored or school-related activity on or off school property, whether or not the activity is investigated by school security officers:
- (1) conduct that may constitute an offense listed under Section 508.149, Government Code;
  - (2) deadly conduct under Section 22.05, Penal Code;
  - (3) a terroristic threat under Section 22.07, Penal Code;
  - (4) the use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana under Chapter 481, Health and Safety Code;
  - (5) the possession of any of the weapons or devices listed under Sections 46.01(1)-(14) or Section 46.01(16), Penal Code;
  - (6) conduct that may constitute a criminal offense under Section 71.02, Penal Code; or
  - (7) conduct that may constitute a criminal offense for which a student may be expelled under Section 37.007(a), (d), or (e).
- (b) A person who makes a notification under this section shall include the name and address of each student the person believes may have participated in the activity.
- (c) A notification is not required under Subsection (a) if the person reasonably believes that the activity does not constitute a criminal offense.
- (d) The principal of a public or private primary or secondary school may designate a school employee who is under the supervision of the principal to make the reports required by this section.
- (e) The person who makes the notification required under Subsection (a) shall also notify each instructional or support employee of the school who has regular contact with a student whose conduct is the subject of the notice.
- (f) A person is not liable in civil damages for reporting in good faith as required by this section.

**TEC §37.016. Report of Drug Offenses; Liability**

A teacher, school administrator, or school employee is not liable in civil damages for reporting to a school administrator or governmental authority, in the exercise of professional judgment within the scope of the teacher's, administrator's, or employee's duties, a student whom the teacher suspects of using, passing, or selling, on school property:

- (1) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code;
  - (2) a dangerous drug, as defined by Chapter 483, Health and Safety Code;
  - (3) an abusable glue or aerosol paint, as defined by Chapter 485, Health and Safety Code, or a volatile chemical, as listed in Chapter 484, Health and Safety Code, if the substance is used or sold for the purpose of inhaling its fumes or vapors; or
  - (4) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code.
- Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

## **VIII. DISCIPLINARY RECORDS**

### **§300.229 Disciplinary information.**

- (a) The State may require that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.
- (b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.
- (c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child. (Authority: 20 U.S.C. 1413(i))

### **§300.535 Referral to and action by law enforcement and judicial authorities.**

#### **(b) Transmittal of records.**

- (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.
- (2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. (Authority: 20 U.S.C. 1415(k)(6))

## **IX. STUDENT DISCIPLINE CHART**

*Please refer to the most current Student Discipline Chart© developed by The Texas School Administrators' Legal Digest - phone 940-382-7212. **If you have any questions please contact the Special Education Director.***

### **DISCLAIMER**

*DISD will follow local district Board Policy regarding required laws for discipline of students with disabilities. These Operating Guidelines do not include all of the numerous regulations regarding student discipline, however, they do include the specific requirements pertaining to special education students with disabilities.*