

BRAZOS INDEPENDENT SCHOOL DISTRICT SPECIAL EDUCATION OPERATING PROCEDURES WHEN BEHAVIOR IS A MANIFESTATION

Brazos ISD Board Policy along with these *Special Education Operating Procedures* constitute the Policies and Procedures of Brazos ISD, designed to be consistent with the State policies and procedures developed pursuant to the IDEA. Brazos ISD *Special Education Operating Procedures* are not to be for the purpose of creating a requirement that is not otherwise imposed by the Individuals with Disabilities Education Improvement Act (“IDEA”), together with its implementing federal regulations, state statutes and rules, as they shall from time to time be amended, and shall not be construed to create a higher standard than that established by IDEA. These *Special Education Operating Procedures* will be posted on Brazos ISD’s website. These *Special Education Operating Procedures* should be interpreted consistent with the IDEA. Brazos ISD’s *Special Education Operating Procedures* are reviewed and updated, as needed, on at least an annual basis. Brazos ISD will make timely changes to policies and procedures in response to IDEA amendments, regulatory or rule changes, changes to state policy, or new legal interpretation as are necessary to bring Brazos ISD into compliance with the requirements of IDEA. Brazos ISD maintains systems to ensure that all students with disabilities residing in the District, including students with disabilities attending non-public schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and provided a free appropriate public education. Brazos ISD maintains systems to ensure that students with disabilities and their parents are afforded the procedural safeguards required under the IDEA (and its implementing federal regulations, state statutes and rules) including with respect to the confidentiality of records and personally identifiable information.

WHEN BEHAVIOR IS A MANIFESTATION OF THE DISABILITY

When behavior is a manifestation of the student’s disability and no **SPECIAL CIRCUMSTANCES** exist, the student shall be afforded protections consistent with [The Legal Framework for the Child-Centered Process](#), Board Policy, the Student Code of Conduct and these Operating Procedures.

What must the ARD Committee do if the behavior is a manifestation of the student’s disability and no special circumstances exist?

If the ARD Committee determines that the conduct was a manifestation of the student’s disability, the ARD committee must return the student to the placement from which the student was removed, unless the parent and Brazos ISD agree to a change of placement as part of the modification of the student’s behavioral intervention plan.¹

¹ 34 C.F.R. § 300.530(f)(2).

PRACTICE GUIDE—

- **If the behavior is a manifestation of the disability, the ARD committee may want to examine the continuum of alternative placements and consider a change of placement rather than a disciplinary change of placement. For example, this could include a move to a more restrictive placement such as specially designed self-contained behavior program, or other therapeutic setting, designed to address the unique social emotional needs of the student identified by the ARD committee when conducting the manifestation determination. Such a change would be non-disciplinary in nature.**
- **If the parents are advocating for an IAES/DAEP change of placement and the District also believes that it would be an appropriate intervention from a free appropriate public education standpoint, the parent and District may agree to such a change of placement as part of the modification of the student’s behavioral intervention plan (BIP). The rationale supporting such an agreement should be evident within the modified BIP. Punitive action that could be considered discriminatory should be avoided.**

What if the ARD Committee determines that the student’s conduct was the direct result of that district’s failure to implement the student’s IEP?

Brazos ISD shall “take immediate steps to remedy those deficiencies.”²

What if, even though the student’s conduct has been determined to be a manifestation of disability, the district believes the student is dangerous?

If Brazos ISD believes that maintaining the current placement of the student is “substantially likely to result in injury” to the student or others, it may request a special education due process hearing to appeal the results of the manifestation determination based on dangerousness.³ That decision shall be made by the Campus Administration and/or Director of Special Education.

The hearing that is held is an expedited hearing.⁴ Stay-put is the interim alternative educational setting.⁵

² 34 C.F.R. § 300.530(e)(3).

³ 34 C.F.R. § 300.532(a).

⁴ 34 C.F.R. § 300.532(c).

⁵ 34 C.F.R. § 300.533.

The hearing officer may... “[o]rder a change of placement of the student 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 is substantially likely to result in injury to the child or to others.”⁶

When must the District consider a student’s functional behavior assessment and behavior intervention plan?

In addition to completing a **MANIFESTATION DETERMINATION** consistent with the District’s operating procedures, within 10 school days after any decision to make a **DISCIPLINARY CHANGE OF PLACEMENT** of a student with a disability because of a violation of the student code of conduct, the Student’s ARD Committee shall:

- review any previously conducted functional behavioral assessment of the student and any behavior improvement plan or behavioral intervention plan developed for the student based on that assessment;
- as necessary, develop a behavior improvement plan or behavioral intervention plan for the student if the student does not have a plan; or if the student has a behavior improvement plan or behavioral intervention plan, revise the student's plan; and
- provide Prior Written Notice in accordance with Brazos ISD’s Special Education Operating Procedures

⁶ 34 C.F.R. § 300.532(b)(2)(ii).