

## **BRAZOS INDEPENDENT SCHOOL DISTRICT SPECIAL EDUCATION OPERATING PROCEDURES**

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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.

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### ***Can a student who has not been determined to be eligible for special education and related services under the IDEA claim these disciplinary protections?***

Yes, a student “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...”<sup>1</sup>

### ***What circumstances must be present for the student to be entitled to these disciplinary protections?***

Brazos ISD shall apply the protections to the student if Brazos ISD had knowledge that the student was a child with a disability before the behavior that precipitated the disciplinary action occurred.<sup>2</sup>

### ***What circumstances trigger “knowledge”?***

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<sup>1</sup> 34 C.F.R. § 300.534(a); *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, Q/A I-1 (Revised July 2022).

<sup>2</sup> 34 C.F.R. § 300.534.

The Special Education Director shall determine whether one of the following bases of knowledge existed before the behavior that precipitated the disciplinary incident occurred:

- The parent of the student expressed concern in writing to the Campus Principal or a teacher of the student, that the student needs special education and related services;
- The parent of the student requested a special education evaluation of the student; or
- The teacher of the student, or other personnel of Brazos ISD, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the Director of Special Education or to other supervisory personnel of Brazos ISD.<sup>3</sup>

If the Director of Special Education determines there is a basis of knowledge, Brazos ISD shall be deemed to have knowledge that the student is a child with a disability unless the Director of Special Education determines that one of the exceptions apply.

Generally, a student's participation in an RTI process, or a multi-tiered system of supports, in and of itself, is not sufficient to trigger the bases of knowledge requirement that allows a student and parent to assert IDEA discipline protections.<sup>4</sup>

#### **PRACTICE GUIDE—**

**In the event a parent of a student raises concerns about a possible disability and asserts or attempts to assert the protections of the law for students with disabilities, the staff member charged with deciding whether there is a basis of knowledge may consider the following as supporting a basis of knowledge:**

- **Specific concerns communicated by teachers, counselors, nurses in records maintained by these personnel;**
- **Specific concerns reflected in written communications internally or with the parent;**
- **The student having been identified as a student with a disability under Section 504 Plan and on a Section 504 plan.**

#### ***What are the exceptions?***

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<sup>3</sup> 34 C.F.R. § 300.534(b); *OSERS, Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, Q/A I-2 (Revised July 2022).

<sup>4</sup> *OSERS, Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, Q/A I-5 (Revised July 2022).

Even if there is a basis for knowledge, Brazos ISD shall **not** be considered to have knowledge if one of the following exceptions applies:

- Although the District provided the parent the opportunity consent for an evaluation, as described in the District's Operating Procedures, the parent of the student has not consented to an evaluation of the student;
- The parent of the student has refused to consent to the student's receipt of special education services; or
- The student has been evaluated in accordance with Brazos ISD's Special Education Operating Procedures and determined to not be a child with a disability.<sup>5</sup>

This determination shall be made on a case-by-case basis by the Educational Diagnostician.

***What if the student was receiving special education services, but the parent later revokes consent for services?***

When a parent revokes consent for special education and related services under Brazos ISD's Special Education Operating Procedures, the parent has refused services; therefore, Brazos ISD is not deemed to have knowledge that the student is a child with a disability and the student will be subject to the same disciplinary procedures and timelines applicable to general education students and not entitled to discipline protections under these procedures.<sup>6</sup>

***If a student is referred for a special education evaluation after a disciplinary incident, and there is no basis of knowledge, are there any protections for the student?***

Even if there is no basis of knowledge, if a request is made for an evaluation of the student during the time period in which the student is subjected to disciplinary measures, the Special Education Director shall ensure the student is evaluated consistent with Brazos ISD's Special Education Operating Procedures, and further ensure that such evaluation is conducted in an expedite manner.<sup>7</sup> Although the evaluation must be completed consistent with the District's Special Education Operating Procedures, if there is no basis of knowledge, the child may be subjected to

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<sup>5</sup> 34 C.F.R. § 300.534(c).

<sup>6</sup> OSERS, *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, Q/A I-3 (Revised July 2022).

<sup>7</sup> 34 C.F.R. § 300.534(d)(2)(i); see also, *OSEP Letter to Combs* (August 15, 2008), <http://www2.ed.gov/policy/speced/guid/idea/letters/2008-3/combs081508rtieval3q2008.pdf>.

the same disciplinary measures that are applied to children without disabilities who engage in comparable behaviors.<sup>8</sup>

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<sup>8</sup> OSERS, *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, Q/A I-6 (Revised July 2022).