

BRAZOS INDEPENDENT SCHOOL DISTRICT SPECIAL EDUCATION OPERATING PROCEDURES

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.

MANIFESTATION DETERMINATION REVIEW

Manifestation Determination Reviews shall be conducted prior to any **DISCIPLINARY CHANGE OF PLACEMENT** consistent with [The Legal Framework for the Child-Centered Process](#) and these Operating Procedures.

Who must participate in the Manifestation Determination Review?

Brazos ISD shall conduct the Manifestation Determination Review (MDR) in the context of an ARD committee meeting that has been established in accordance with Brazos ISD’s Special Education Operating Procedures. The Educational Diagnostician shall ensure that the members include a Brazos ISD representative, the parent, and relevant members of the ARD committee (as determined by the parent and the Educational Diagnostician).”¹

What are the timelines for conducting the MDR?

The Educational Diagnostician shall ensure that the MDR takes place within 10 school days of any decision to make a **DISCIPLINARY CHANGE OF PLACEMENT**.²

¹ 34 C.F.R. § 300.530(e)(1).

² 34 C.F.R. § 300.530(e)(1).

When scheduling the ARD committee meeting, the Educational Diagnostician shall ensure that the parent is given notice of the meeting. The Educational Diagnostician shall include in the notice “[t]he purpose, time, and location of the meeting and who will be in attendance.”³

PRACTICE GUIDE—

- **In order to ensure that the parent feels prepared for the MDR/ARD committee meeting, in addition to checking a box on the ARD notice indicating the ARD committee will conduct a MDR, the District may inform the parent of the potential outcomes. This could be accomplished by sending the Notice of Procedural Safeguards with the notice of (invitation to) the ARD meeting.**
- **In most cases, it makes sense to hold the Chapter 37 Discipline Hearing before the MDR. This avoids the MDR/ARD committee going through the procedure of conducting a manifestation determination review (as well as other requirements), before it is found that the student did or did not engage in the conduct that was alleged, or that the behavior does not warrant a change of placement. Holding the Chapter 37 Discipline Hearing first also allows the parents to make their arguments regarding the underlying conduct (e.g., “she didn’t do it”) in the proper forum — outside of the MDR/ARD committee process. Information from the Chapter 37 Discipline Hearing can then be used by the MDR/ARD committee when conducting the MDR. The MDR/ARD committee will want as much information as possible about the conduct and how/when/where the conduct occurred. This enables the ARD committee to consider the context in which the behavior occurred, which is important to the MDR analysis.**
- **It may be helpful for school personnel to clarify for parents upfront the distinctions between the Chapter 37 Disciplinary Hearing and the MDR/ARD Committee meeting.**
- **In the event the parent or guardian refuses to respond to the district’s effort to ensure their participation, or refuses to participate, the District may consider proceeding to MDR/ARD without the parent in order to be compliant with timelines, if the district has complied with its Special Education Operating Procedures.**

What must the ARD Committee consider when conducting an MDR?

³ 34 C.F.R. § 300.322(a)(1)(A)(i).

The Educational Diagnostician shall ensure that the ARD committee reviews all relevant information in the student's file, including the IEP, any teacher observations, and any relevant information provided by the parents before making the manifestation determination.⁴ Additionally, if the ARD committee is considering a change of placement based upon a series of removals that constitute a pattern, each of the behaviors underlying the removals that constitute a pattern should be considered.

PRACTICE GUIDE— The law does not require each ARD committee member to read before the meeting every piece of information in the student's file. However, before reaching a manifestation determination the team is expected to review the information relevant to the decision. For students with emotional disturbance, it may be helpful to consider the characteristics of the eligibility for emotional disturbance. Relevant data may also include counseling, progress reports, and evaluations. It may be prudent to review and consider disciplinary referral history. Evaluation personnel can facilitate this process by summarizing pertinent information in the file, and inviting input by the parents, those who work with the student on a daily basis and those familiar with the misconduct under review. The evaluator's analysis may guide the committee but should not substitute for the committee's active consideration, views and conclusions.

What are the manifestation determination questions the ARD Committee must answer?

The Educational Diagnostician shall ensure that the ARD committee answers the following two manifestation determination questions:

- Was the conduct in question the direct result of Brazos ISD's failure to implement the student's IEP?⁵
- Was the conduct in question caused by, or did it have a direct and substantial relationship to, the student's disability?⁶

When determining whether the conduct in question was caused by or had a direct and substantial relationship to the student's disability, the Educational Diagnostician shall facilitate the ARD committee's analysis of the student's behavior as demonstrated across settings and across time.⁷ The Educational Diagnostician shall also assist the ARD committee, as needed, in understanding that this requires more than an attenuated association, such as low self-esteem,

⁴ 34 C.F.R. § 300.530(e)(1).

⁵ 34 C.F.R. § 300.530(e)(1)(ii).

⁶ 34 C.F.R. § 300.530(e)(1)(i).

⁷ U.S. Dept. of Education, 71 Fed. Reg. 46720 (August 14, 2006).

to the student's disability. Instead, the disciplinary infraction must be caused by or be the direct result of the student's disability, and not a mere correlation or attenuation.⁸

If the ARD committee answers yes to either question, the conduct shall be determined to be a manifestation of the student's disability.⁹

PRACTICE GUIDE—

- **When making a manifestation determination, the ARD committee may consider the student's prior behavior as reflected in other records and evaluations to understand whether the behavior(s) under review has/have occurred on other occasions or across a variety of circumstances. Behaviors occurring across settings and across time may indicate a relationship to disability. The diagnostic profile can aid in understanding whether that relationship is direct and substantial. If behaviors appear to be isolated, then this may be an indication that there is no direct relationship to the disability.**
- **The diagnostic profile may reveal examples of how the student previously demonstrated the disability. For example, discussions in evaluation reports and examples from the Diagnostic and Statistical Manual (DSM) or other authoritative resources that describe specific behaviors and distinguishing characteristics may provide insight that informs the discussion.**
- **The context of the behavior in question is critical to the ARD committee's analysis and decision-making. Such context can be derived from the investigation notes of the administrator who investigated the incident, or any other documentation that may give greater insight into the context in which the behavior arose.**

What occurs if the parent disagrees with the decision concerning the manifestation determination?

The ARD committee is not required to offer the parent a ten-day recess “when the student's presence on the campus presents a danger of physical harm to the student or others, or when the student has committed an expellable offense or an offense that may lead to a placement in a disciplinary alternative education program.”¹⁰

⁸ Note 237–245 of the Conf. Rpt., p. 225; see also, U.S. Dept. of Education, 71 Fed. Reg. 46720 (August 14, 2006).

⁹ 34 C.F.R. § 300.530(e)(2).

¹⁰ 19 T.A.C. § 89.1050(g)(1)

When consensus cannot be reached, the Brazos ISD through its Administrative member of the ARD committee, must make the determination and provide the parent with prior written notice consistent with Brazos ISD's Special Education Operating Procedures. The parent of the student with a disability has the right to request mediation and/or a due process hearing to resolve the disagreement. The due process hearing will be expedited. The parent can also file a State complaint.¹¹ If the parent exercises any of these options, the student will remain in the disciplinary placement during the pendency of these procedures.¹²

¹¹ *OSERS, Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, Q/A F-6 (Revised July 2022).

¹² 34 C.F.R. § 300.533 for due process hearings requested under 34 C.F.R. § 300.532.