

BRAZOS INDEPENDENT SCHOOL DISTRICT SPECIAL EDUCATION OPERATING PROCEDURES SPECIAL CIRCUMSTANCES

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.

SPECIAL CIRCUMSTANCES

When the ARD committee determines that special circumstances exist, “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 student’s disability, consistent with [The Legal Framework for the Child-Centered Process](#), Board Policy, the Student Code of Conduct and these Operating Procedures.¹ However, the ARD committee must determine, and the District must provide, services in accordance with the District’s **SERVICES DURING PERIODS OF REMOVAL** operating procedure.

What are the “special circumstances”?

The Campus Administrator shall determine special circumstances exist if:

- The student carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function;
- The student 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; or

¹ 34 C.F.R. § 300.530(g).

PRACTICE GUIDE— Regardless of how weapons, drugs, or bodily injury are described in a school district’s Student Code of Conduct, when determining whether special circumstances exist, the federal definitions must be strictly applied. Referral to and action by law enforcement pursuant to 34 C.F.R. § 300.535 may also be appropriate.

How is weapon defined?

When specifying that the possession of weapon as one of the Special Circumstances for disciplining students with disabilities, Congress chose to adopt the definition of dangerous weapon in Title 18 of the United States Code (Federal Law) for Federal Crimes and Criminal Procedure which Brazos ISD shall apply.

- “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.”³
- “The term ‘dangerous weapon’ means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.”⁴

What constitutes an illegal drug or controlled substance?

When specifying that the possession of an illegal drug or controlled substance as one of the Special Circumstances for disciplining students with disabilities, Congress chose to adopt the definition of controlled substance in Title 21 of the United States Code (Federal Law) governing Food and Drugs which Brazos ISD shall apply.

- “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.”⁵
- “Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V ... of the Controlled Substances Act (21 U.S.C. § 812(c)).”⁶

² 34 C.F.R. § 300.530(g).

³ 34 C.F.R. § 300.530(i)(4).

⁴ 18 U.S.C. § 930(g)(2).

⁵ 34 C.F.R. § 300.530(i)(2).

⁶ 34 C.F.R. § 300.530(i)(1). See 21 U.S.C. § 812(c) for schedules of controlled substances, available at: <http://www.justice.gov/dea/pubs/csa/812.htm>.

PRACTICE GUIDE—

- **Students under the influence of an illegal drug or controlled substance must also be found to be in possession of that drug or controlled substance for special circumstance to exist. Being under the influence of an illegal drug, alone, does not satisfy this requirement.**
- **Referral to and action by law enforcement pursuant to 34 C.F.R. § 300.535 may also be appropriate.**
- **Alcohol is not considered an illegal drug or controlled substance. Therefore, when a student with disabilities violates the Student Code of Conduct due to use or possession of alcohol, it is not a special circumstance.**

How is serious bodily injury defined?

When specifying conduct causing serious bodily injury as one of the Special Circumstances for disciplining students with disabilities, Congress chose to adopt the definition of serious bodily injury in Title 18 of the United States Code (Federal Law) for Federal Crimes and Criminal Procedure which Brazos ISD shall apply.

- “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.”⁷
- “The term ‘serious bodily injury’ means bodily injury which involves—
(A) a substantial risk of death;
(B) extreme physical pain;
(C) protracted and obvious disfigurement; or
(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.”⁸

⁷ 34 C.F.R. § 300.530(i)(3).

⁸ 18 U.S.C. § 1365(h)(3).

PRACTICE GUIDE—

- **When determining whether special circumstances exist as a result of a student having inflicted serious bodily injury upon another person, school personnel may wish to compare and contrast the definition of “serious bodily injury” to the lesser Title 18 standard of “bodily injury” which is not a Special Circumstance and which means a cut, abrasion, bruise, burn, or disfigurement; physical pain; illness; impairment of the function of a bodily member, organ, or mental faculty; or any other injury to the body, no matter how temporary. Examining the student’s behavior against both definitions, will help ensure a more reliable conclusion. Moreover, referral to and action by law enforcement pursuant to 34 C.F.R. § 300.535 may also be appropriate.**

Do the 45 school days for special circumstances carry over from one school year to the next?

Yes.⁹

What is the role of the ARD Committee when Special Circumstances exist?

The role of the ARD is the same as when the behavior is not a manifestation of the student’s disability. The Director of Special Education shall ensure that the ARD committee perform the following specific functions when special circumstances exist, and the behavior is not a manifestation of the student’s disability:

- Ensure that the student receives “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.”¹⁰
- Determine services as outlined in **SERVICES DURING PERIODS OF REMOVAL**.¹¹
- Determine the “interim alternative educational setting” for the provision of the services.¹² The setting may be the DAEP if the ARD committee determines that the services can be provided in that setting.¹³

⁹ See, U.S. Department of Education discussion of 34 C.F.R. § 300.530(g), 71 Fed. Reg. 46722 (August 14, 2006).

¹⁰ 34 C.F.R. § 300.530(d)(1)(ii).

¹¹ 34 C.F.R. § 300.530(d)(5).

¹² 34 C.F.R. § 300.531.

¹³ *OSERS Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, Q/A D-3 (Revised July 2022).

- 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.¹⁴
- 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

How does a disciplinary change of placement for these special circumstances differ when the behavior is not a manifestation?

When behavior is not a manifestation of the disability, Brazos ISD is not limited to a 45-school day removal.

¹⁴ Tex. Ed. Code § 37.004(b-1)(1)(B)