

Lindale ISD

SECTION 504

DISCIPLINE

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Discipline

What is Required

Students protected under Section 504 are generally entitled to the same procedural safeguards and substantive protections related to discipline as those granted to students protected under the IDEA. Under Section 504, the District may not punish or discipline students with disabilities for behavior that is caused by or is a manifestation of their disabilities. Additionally, the District may not subject students with disabilities to discriminatorily different treatment in discipline or discipline students with disabilities more harshly or frequently than their non-disabled peers for the same infractions.

Disciplinary Change in Placement

A placement is not a physical location. Rather, placement is the instructional arrangement/setting that has been decided by the Section 504 Committee based on the individual needs of the student. A change of placement happens if there is a substantial change in the student's educational program, arrangement, or setting.

A disciplinary change of placement occurs when a student with a disability is removed from the student's current educational placement because of a violation of the Student Code of Conduct if:

- Such removal is for more than ten (10) consecutive school days; or
- The student has been subjected to a series of removals that constitute a pattern:
 - Because the series of removals totals more than ten (10) school days in a school year;
 - Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
 - Because of additional factors, such as length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

Removals of a student for less than 10 days, when considered with prior removals of the student during the same school year, may create a pattern of removals. If the student's behavior is substantially similar to the behaviors that resulted in the series of previous removals, this would be considered a pattern. The Section 504 Committee must determine whether such a pattern exists on a case-by-case basis, considering the following additional factors:

- Length of each removal;
- Total amount of time the student is removed;
- Proximity of the removals to one another; and
- Similarities or differences in the types of infractions involved.

If the removal from the student's current placement is for ten (10) or less school days in the current school year, the removal does not constitute a disciplinary change of placement, and the District is not required to provide procedural safeguards. However, if the removal is for more than ten (10) consecutive school days or if the removal creates a pattern, the removal constitutes a disciplinary change of placement, requiring the Section 504 Committee to conduct an evaluation or manifestation determination review to consider whether the behavior is a manifestation of a disability.

Manifestation Determination Evaluation Review

Within ten (10) school days of any decision to make a disciplinary change of placement of a student with a disability due to a violation of the student code of conduct, the Section 504 Committee must conduct an evaluation review to consider whether the behavior is a manifestation of the student's disability. The Section 504 Committee conducting the review must consist of a group of individuals who can make placement decisions, are knowledgeable about the student, and can interpret the meaning of the evaluation data and placement options. See [SECTION 504 COMMITTEE].

The Campus Section 504 Chairperson must provide the parent with written notice of the Section 504 discipline meeting within a reasonable amount of time before the meeting, indicating the purpose, time, and location of the meeting, as well as a copy of the *Section 504 Parent Rights*. The Campus Section 504 Chairperson will document all efforts to provide notice to the parent regarding the Section 504 discipline meeting, including phone calls, emails, other written communications, and visits to the parent at the parent's home or place of employment. If the parent fails to respond or refuses to attend the Section 504 meeting, the Section 504 Committee may convene the meeting without the parent, so long as the Campus Section 504 Chairperson has properly documented the communication attempts and provides the parent notice of the meeting.

During the Section 504 discipline meeting, the Section 504 Committee must review all relevant information in the student's file, including the student's Section 504 plan, any teacher observations, and any relevant information provided by the parent. The Section 504 Committee will determine whether or not the student's conduct is a manifestation of the student's disability. The Section 504 Committee must find that the conduct is a manifestation of the student's disability if:

- The Section 504 Committee determines that the conduct was caused by, or had a direct and substantial relationship to, the student's disability, or

- The conduct in question was the direct result of the District's failure to implement the student's Section 504 plan.

If the Section 504 Committee determines that either of these conditions are met, the behavior must be determined to be a manifestation of the student's disability.

At a minimum, the Section 504 Committee will make the following considerations as part of the analysis:

- Does the student have a history of misconduct that violates school policies or procedures? Specifically, is this an isolated instance of misconduct or a recurring pattern?
- Is there reason to believe that the student's disability or disabling condition may have changed since the most recent evaluation?
- Is the student's conduct a known feature of the disability? And has the student exhibited behavior(s) tied to features of the disability in the past?
- Would similarly situated students without a disability react similarly?
- Is the student able to control the behavior? Was the behavior premeditated or impulsive?
- Does the student have an impaired ability to understand consequences due to the disability?

During this analysis, the Section 504 Committee will review all relevant information in the student's file, including but not limited to the student's Section 504 plan, assessments and evaluations, medical information, teacher observations, previous discipline reports, and relevant information provided by the parent. The Section 504 Committee should pay attention to any patterns relating to attendance, discipline, and grades, as well as other behavioral data, to determine if there was a developing pattern of conduct that should have been detected and addressed.

In reviewing the student's Section 504 plan, the Section 504 Committee will determine if it was legally and appropriately developed based on the student's unique needs. The Section 504 Committee will also discuss how the student's Section 504 plan has been implemented to determine whether the District failed to implement the Section 504 plan. This analysis will require a review of the student's educational progress and any accommodations and/or services provided to determine if the accommodations/services have been provided consistent with the student's Section 504 plan. If the Section 504 Committee determines that the Section 504 plan was not consistently implemented, the Section 504 Committee must decide whether the inconsistencies had a direct impact on the student's behavior in question.

Because this is a case-by-case analysis, the Section 504 Committee will also consider the circumstances surrounding the incident. This includes looking at whether there were any antecedents, the individuals involved in the incident, any history surrounding specifics with the incident, and the environment the student was in when the incident occurred.

When Behavior Is a Manifestation

If the Section 504 Committee determines that the conduct was a manifestation of the student's disability, the student cannot be removed from the current placement. The Section 504 Committee should consider whether the student's behavior inhibits the student's ability to learn, or that of others, and whether the student requires an evaluation for special education and related services under the IDEA. The Section 504 Committee must also consider requesting additional evaluations and additional interventions and supports. Finally, the Section 504 Committee shall consider implementing a Behavior Intervention Plan ("BIP") to identify target behaviors and provide strategies for addressing the behaviors. If the student has an existing BIP, the Section 504 Committee may need to modify it to address the student's conduct.

Should the behavior be deemed a manifestation of the student's disability, the Campus Section 504 Chairperson must ensure that the parent receives a copy of the *Section 504 Parent Rights*, outlining the parent's rights to challenge the decision by requesting a Section 504 hearing. See [SECTION 504 PARENTAL RIGHTS] and [SECTION 504 HEARINGS].

When Behavior Is Not a Manifestation

If the Section 504 Committee determines that the conduct was not a manifestation of the student's disability, the student may be disciplined according to the student code of conduct in the same manner and for the same duration as the student's non-disabled peers. However, students with disabilities may not be disciplined more harshly than peers without disabilities.

Unlike under the IDEA, the District does not need to continue providing Section 504 accommodations and services during the period of removal. However, the District must continue to provide educational services to a student with a disability if it does so for nondisabled students for similar offenses.

The Section 504 Committee shall meet within a reasonable time following the removal to review and update the Section 504 plan to prevent future incidents of misconduct. The Campus Section 504 Chairperson must ensure that the parent receives a copy of the *Section 504 Parent Rights*, outlining the parent's rights to challenge the decision by requesting a Section 504 hearing. See [SECTION 504 PARENTAL RIGHTS] and [SECTION 504 HEARINGS]. The Campus Administrator must also provide the parent a

copy of TEA's *Overview of Special Education for Parents* form upon a student's placement in and return to campus from a DAEP.

When the Behavior Is Being Under the Influence of Alcohol and/or Drugs

The current illegal use of drugs is not included in the definition of a student with a disability under Section 504; therefore, current illegal drug users are excluded from Section 504 disciplinary protections. A student with alcoholism (which is defined as a student addicted to the use of alcohol) may meet the definition of a student with a disability under Section 504 and be eligible for protections and services. Nevertheless, that protection does not provide immunity for current use of alcohol in violation of the District's Student Code of Conduct. Therefore, students with disabilities are subject to State and District disciplinary procedures regarding being under the influence of alcohol and/or drugs to the same extent as their non-disabled peers, regardless of whether the behavior is a manifestation of the disability. Thus, the District may take disciplinary action pertaining to the use or being under the influence of illegal drugs or alcohol against any student with a disability who is currently engaging in the illegal use of drugs or in the use of alcohol to the same extent it would take disciplinary action against nondisabled students. And, the District is not required to conduct a manifestation determination review prior to taking such action.

Special Circumstances

In certain special circumstances, a student with a disability under Section 504 may be removed to an interim alternative educational placement ("IAES") for no more than 45 school days, regardless of whether the student's behavior is a manifestation of the student's disability.

Special circumstances allowing for this removal exist if the student:

- Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the District;
- Knowingly possesses 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 the District; and/or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the District.

If one or more of the above three special circumstances exist, Campus Administration may remove a student with a disability for up to 45 school days. However, if the removal is for more than 10 consecutive school days, Campus Administration must still make a Change of Placement analysis, and the Section 504 Committee must conduct a manifestation determination review ("MDR"). Regardless, even if the Section 504 Committee determines that the student's behavior is a manifestation of the student's

disability, Campus Administration may still remove the student to an IAES for up to 45 school days, as long as the term is consistent with that applied to a nondisabled student committing the same infraction.

“Dangerous weapon” is 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 pocketknife with a blade of less than 2 ½ inches in length.

“Controlled substance” is a drug or other substance identified by the Drug Enforcement Agency under Schedules I, II, III, IV, or V. In other words, a drug which has been declared by federal or state law to be illegal for sale or use but may be dispensed under a physician’s prescription.

“Illegal drug” means a controlled substance that is illegally possessed or not used under the supervision of a licensed healthcare professional or one that is illegally possessed or used under any authority under the Controlled Substance Act or under the other provision of federal law.

“Serious bodily injury” is bodily injury which involves 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.

Where the Student Poses a Threat or Serious Behavioral Concern

If the student poses a significant threat or serious behavioral concern where safety is an issue, the Campus Section 504 Chairperson or other Campus Administrator should contact the District Section 504 Coordinator regarding the incident immediately. The District Section 504 Coordinator will work in conjunction with the Campus Section 504 Chairperson and/or other Campus Administrator to conduct a threat assessment and schedule a Section 504 meeting where appropriate. The Campus Section 504 Chairperson may need to develop an interim plan for the student to return to Campus safely until the Section 504 meeting can be conducted.

Notification of Disciplinary Removal

On the day of a decision to make a disciplinary removal that constitutes a change of placement, the Campus Section 504 Chairperson must notify the parents of that decision and provide the parent with the *Section 504 Parent Rights*.

If a change of placement is supported by the Section 504 Committee in accordance with the discipline review process, the Campus Section 504 Chairperson shall also provide the parent with notice regarding its decision to change the student’s placement. This notice, at a minimum, will describe the proposed change of placement, explain why the

District is seeking the change of placement, and describe the information the District considered in making the decision to propose the change of placement.

Restraint and Seclusion

Section 504 prohibits the use of restraint or seclusion that constitutes disability discrimination. Restraint or seclusion may have a traumatic effect on a student and potentially cause academic or behavioral challenges, as well as increased school absences, which may result in a denial of FAPE. Moreover, repeated and extended periods of seclusion may effectively deny the student the instructional time and services necessary to provide FAPE.

Thus, instances of restraint and/or seclusion may trigger the Section 504 Committee's obligation to conduct a reevaluation where the District has reason to believe that the provision of FAPE has been adversely impacted by the use of restraint or seclusion. Indicators that a reevaluation may be appropriate include but are not limited to: situations that impede the student's learning or that of others, including new or more frequent emotional outbursts by the student or an increase in the frequency or intensity of behavior; sudden withdrawn, non-communicative behavior; a significant increase in absences; and a notable decline in academic performance. See [REEVALUATION].

During the reevaluation, the Section 504 Committee should (1) determine if additional or different interventions or supports are required, (2) ensure that any necessary changes are made promptly, and (3) remedy any negative effects that resulted from the Campus's prior use of restraint or seclusion. The Section 504 Committee shall also consider whether a referral for a special education evaluation is appropriate, as behavioral difficulties resulting in restraint are often an indicator that the student may require an IEP to address those challenges.

If a student has not yet been identified as a student with a disability, the repeated use of restraint or seclusion is likely a good indication that the District needs to evaluate the student for special education and related services to address the behaviors, even if the behaviors are not accompanied by academic challenges.

If a parent believes that their student was inappropriately restrained or secluded or that these techniques were used in a discriminatory fashion based on the student's disability, the parent shall report the concerns to the District Section 504 Coordinator. A parent who is unable to satisfactorily resolve concerns relating to the use of restraint or seclusion against their student with the District may file a request for a due process hearing or a complaint with OCR. See [SECTION 504 COMPLAINTS] and [OCR COMPLAINTS].

Knowledge of a Possible Section 504 Disability

If the District has knowledge that a student has a suspected disability but is not yet eligible for Section 504 and the District has recommended a disciplinary removal for more than 10 consecutive school days, the Student Support Team will meet to review the situation. The Student Support Team should discuss whether the behavior was likely a manifestation of the student's suspected disability, determine the status of the initial evaluation, and compose a plan to support the student in the current placement until the Section 504 evaluation is completed. A student engaged in an infraction involving weapons, drugs, or serious bodily injury at school, on school premises, or at a school function may still be removed to a disciplinary placement for up to 45 school days while the evaluation is conducted. If the student is found eligible for Section 504, a Manifestation Determination Review ("MDR") Section 504 meeting will take place as soon as the evaluation is completed to determine if the student's conduct is a manifestation of their disability.

Where a parent has revoked consent for the provision of Section 504 services, the student is no longer considered a student with a known disability. Campus Section 504 Personnel will explain this to the parent once the parent has communicated the desire to revoke consent and clarify that the student will no longer be eligible for protections as a student with a disability under Section 504 and will be subject to the same disciplinary procedures and timelines as general education students.

Evidence of Implementation

- Notice of Section 504 Meeting
- Section 504 Notices
- Documentation of Efforts to Ensure Parent Participation at Section 504 Meeting
- Manifestation Determination Form
- Section 504 Plan
- Behavior Documentation
- Teacher Observations
- Student Code of Conduct
- Documentation/Information Provided by Parent
- Documentation of Implementation of Section 504 Plan/BIP
- *Section 504 Parent Rights*
- *Texas Education Agency Overview of Special Education for Parents form*

Resources

[Title 34, Section 104 of the Code of Federal Regulations \(“Section 504 Regulations”\) - Electronic Code of Federal Regulations](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Disability Rights Enforcement Highlights - U.S. Department of Education \(Oct. 2012\)](#)

[Honig v. Doe, 484 U.S. 305 \(1988\) - U.S. Supreme Court](#)

[OSEP Memorandum 95-16 - U.S. Department of Education \(Apr. 26, 1995\)](#)

[School Climate and Discipline - U.S. Department of Education](#)

[Behavior and Section 504 - Texas Education Agency](#)

[Discipline and School Removals - Texas Education Agency](#)

[The Texas Legal Framework for the Child-Centered Special Education Process: Disciplinary Change of Placement - Region 18](#)

[The Texas Legal Framework for the Child-Centered Special Education Process: Manifestation Determination - Region 18](#)

[OSERS Questions and Answers on Discipline Procedures \(Revised June 2009\) - U.S. Department of Education](#)

[Overview of Special Education for Parents – Texas Education Agency](#)

CITATIONS

Board Policy FB and Board Policy FOF; 29 USC 705(20), 794; 34 CFR 104.35, 104.36, 300.530, 300.536