

# Section 7

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# VII – Discipline

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## **GENERAL INFORMATION**

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*FBISD Board Policies: EHBAB (Legal), EHBAE (Legal); FB (Legal), FFI (Legal, Local), FO (Legal, Local); TEC §§ 37.001, 37.023, 37.005, 37.004, 37.008, 37.0832, 37.148, 37.0023, 37.0021; 20 USC § 1414(e), 1415(k); 34 CFR §§ 300.11, 300.530, 300.532, 300.533, 300.534, 300.535, 300.536, 300.101(a); 19 TAC 89.1053; 71 Fed. Reg. 46,715(2006)*

### STUDENT CODE OF CONDUCT

#### ***TEC § 37.001***

Fort Bend ISD approves the Student Code of Conduct each year. The Student Code of Conduct can be found on the District's website. The Student Code of Conduct should be referenced regarding days of removal (for example: three-day limit on suspension).

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## AUTHORITY OF SCHOOL PERSONNEL

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**20 USC § 1415(k)(1)(B)-(D), (G)-(H); TEC §§ 37.001(a)(7)-(8), 37.001(b-1), 37.023, 37.005, 37.008, 37.0832, 37.148; 34 CFR §§ 300.530(b)-(d), (g), (h), 300.535(a), 300.536(a)**

### ***Authority to Remove for Not More than Ten Consecutive School Days***

**20 USC § 1415(k)(1)(B); 34 CFR 300.530(b)(1), 300.536(a)**

School personnel may remove a child with a disability who violates the Student Code of Conduct from the child's current placement to an appropriate interim alternative educational setting (IAES), another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities).

School personnel may remove the child with a disability who violates the Student Code of Conduct from the child's current placement for additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under 34 CFR § 300.356.

### ***Authority to Remove for More than Ten Consecutive Cumulative School Days***

**20 USC § 1415(k)(1)(C)-(D), (H)-(G); 34 CFR 300.530(c)-(d), (h), (g); TEC §§ 37.004(c)-(d), 37.008**

School personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures that would be applied to children without disabilities if:

1. In the Manifestation Determination Review (MDR), it is determined that the behavior that violated the student code of conduct is determined not to be a manifestation of the child's disability.
2. the child with a disability is provided services during periods of removal, and
3. the parent of the child with a disability is notified of a change of placement.

### ***Suspensions***

The District shall provide to a student during the period of the student's suspension, regardless of whether the student is placed in in-school or out-of-school suspension, an alternative means of receiving all instruction provided in the classes the student misses as a result of the suspension. The District shall provide at least one option for receiving the instruction that does not require the use of the Internet.

### ***Disciplinary Alternative Education Program***

A student with a disability who receives special education services may not be placed in a disciplinary alternative education program (DAEP) solely for educational purposes. A teacher in a DAEP who has a special education assignment must hold an appropriate certificate or permit for that assignment.

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## Procedures when Considering a DAEP Referral

In order to support campuses in making appropriate referrals to the DAEP, and to ensure the ARD/504 meeting process conducted with fidelity, the special education department has developed the following procedures:

- When the Campus Behavior Coordinator (CBC) receives a referral to the DAEP, he/she will initiate an on-campus investigation regarding the infraction towards the Student Code of Conduct.
- The CBC or designated campus personnel will then notify the appropriate Director of Special Education for the student's instructional programming.
- The CBC or designated campus personnel will notify the parent/guardian of the upcoming Discipline Conference, which will be held within three days.
- The Director of Special Education will review relevant information regarding the student disciplinary event and special education file. The Director of Special Education will then contact the campus to provide guidance as it relates to the student's disability, and ARD/504 supports in place for the student, such as a Behavior Intervention Plan, needed staff support, and if IEPs were being implemented.
- Campus will consult with Student Affairs regarding the administrative disciplinary recommendation.
- A staffing should be held prior to the MDR ARD meeting to review the recommendation from the evaluator regarding the outcome of the manifestation determination. The staffing should include the LSSP or Diagnostician, Campus Administrator rendering the discipline, and other appropriate staff who will attend the ARD meeting.
  - The Program Manager of student's current placement should be invited to the staffing and may participate by phone. If the Program Manager is unable to attend the staffing and/or ARD meeting, the campus should proceed and consult as needed prior to the ARD meeting. It is not a requirement that the Program Manager attend an MDR staffing and/or MDR ARD meeting.
  - The CCC from the DAEP must be invited to the staffing and MDR ARD meeting held at the home campus. The CCC is required to attend the staffing and may attend the ARD.
- If appropriate, the campus will then conduct the MDR ARD/504 meeting, following provisions of timely notice to parent/legal guardian. *An MDR ARD/504 meeting must be held prior to a recommendation for a student to attend the DAEP. The LSSP must be present for the MDR process for students with AU, ED, OHI and the Diagnostician may conduct the MDR for all other students.*
- Pending the results, the campus will communicate the outcome of the ARD meeting to the Director of Special Education and Department of Student Affairs.

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School personnel must provide the parent of the child removed to a DAEP with written notice of the school's obligation to provide the child with an opportunity to complete coursework required for graduation that:

1. includes information regarding all methods available for completing the coursework; and
2. states that the available methods for completing the course work are available at no cost to the child.

The DAEP administrator must, as soon as practicable after an alternative education program determines the date of a student's release from the program:

1. Provide written notice of the date of release to the student's parent(s) and the administrator of the campus to which the student intends to transition.
2. Provide the campus administrator (a) an assessment of the student's academic growth while attending the alternative education program and (b) the results of any assessment instruments administered to the student.

Within five instructional days from the student's release from DAEP, the campus administrator shall coordinate the student's transition to a regular campus through an ARD or Section 504 committee meeting. The coordination shall include assistance and recommendations from the ARD or Section 504 committee which can include: school counselors; school district peace officers; school resource officers; licensed clinical social workers; classroom teachers who are or may be responsible for implementing the student's personalized transition plan; and any other appropriate school district personnel.

The ARD or Section 504 committee meeting should consider, and the personalized transition plan **must** include recommendations for the best educational placement for the student.

The ARD or Section 504 committee meeting should consider, and the personalized transition plan **may** include:

1. Recommendations for counseling, behavioral management, or academic assistance for the student with a concentration on the student's academic or career goals.
2. Recommendations for assistance for obtaining access to mental health services provided by the district or school, a local mental health authority, or another private or public entity.
3. The provision of information to the student's parent(s) about the process to request an updated full and individual evaluation, and
4. A regular review of the student's progress toward the student's IEP goals, academic or career goals.

An ARD or Section 504 committee meeting will convene to conduct a review of the student's placement.



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## ***Authority under Special Circumstances***

School personnel may remove the child to an IAES without regard to whether the behavior is determined to be a manifestation of the child’s disability if:

1. Special Circumstances exist; and
2. the removal is for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 school days.

The ARDC shall determine the IAES.

## ***Referral to Law Enforcement and Courts***

*20 USC § 1415(k)(6) 34 CFR § 300.535(a); TEC § 37.148*

Nothing prohibits the District from reporting a crime committed by a child with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities regarding the application of federal and state law to crimes committed by a child with a disability.

When reporting a crime committed by a child with a disability, the District must ensure that copies of the child’s special education and disciplinary records are transmitted for consideration by the appropriate authorities to whom the District reports the crime only to the extent permitted under the Family Educational Rights and Privacy Act.

The District may not adopt a policy requiring a school employee to: (1) refrain from reporting a crime witnessed at the school; or (2) report a crime witnessed at the school only to certain persons or peace officers. An employee of the District may report a crime witnessed at the school to any peace officer with authority to investigate the crime.

## ***Limitation on General Authority – Bullying, Harassment, and Making Hit Lists***

*TEC §§ 37.001(b), 37.001(b-1), 37.0832; Board Policy FFI (LEGAL& LOCAL)*

A student enrolled in a special education program under Subchapter A, Chapter 29 of the Texas Education Code cannot be disciplined for conduct related to “bullying, harassment and making hit lists” until an admission, review, and dismissal committee meeting has been held to review the conduct. *You cannot discipline a special education student who engages in bullying, harassment, or making hit lists until an ARD and MDR is held.* If you have questions about how to handle a situation like this, please contact the Special Education Program Manager assigned to your campus. The Special Education Program Manager will aid the campus in handling the situation while taking all necessary precautions both to ensure the safety of our students and to abide by all applicable laws.

*“Bullying”* means, subject to the requirement below, engaging in written or verbal expression, expression through electronic means, or physical conduct that occurs on school property, at a school-sponsored or school-related activity on or off school property, or in a vehicle being used for transportation of students to or from school or a school-sponsored or school-related activity



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that: (1) has the effect or will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property; (2) is sufficiently severe, persistent, and pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student; (3) materially and substantially disrupts the educational process or the orderly operation of a class or school; or (4) infringes on the rights of the victim at school.

The conduct described above is considered bullying if that conduct:

1. involves a single significant act or a pattern of acts.
2. exploits an imbalance of power between the student perpetrator and the student victim through written or verbal expression or physical conduct, and
3. interferes with a student's education or substantially disrupts the operation of a school.

*"Bullying"* also includes Cyberbullying, which is bullying done through the use of any electronic communication device, if it (1) interferes with a student's education opportunities or (2) substantially disrupts the orderly operation of a classroom, school or school-sponsored or school-related activity.

*"Harassment"* means threatening to cause harm or bodily injury to another student, engaging in sexually intimidating conduct, causing physical damage to the property of another student, subjecting another student to physical confinement or restraint, or maliciously taking any action that substantially harms another student's physical or emotional health or safety.

*"Hit list"* means a list of people targeted to be harmed using:

1. a firearm, as defined by Section 46.01(3), Penal Code
2. a knife, as defined by Section 46.01(7), Penal Code, or
3. any other object to be used with intent to cause bodily harm.

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## ***Students Not Yet Identified***

*20 USC § 1415(k)(5)(A); 34 CFR § 300.534*

A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated the Student Code of Conduct *may* assert any of the protections provided for in the IDEA if the District had knowledge that the student had a disability before the behavior that precipitated the disciplinary action occurred.

### ***District Knowledge***

The District shall be deemed to have knowledge that a student has a disability if, before the behavior that precipitated the disciplinary action occurred:

1. The parent of the student expressed concern in writing to supervisory or administrative personnel of the District, or to the teacher of the student, that the student was in need of special education and related services
2. The parent requested an evaluation of the student for special education or related services, or
3. The student's teacher, or other District personnel, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the special education director or other supervisory personnel of the District.

### ***Exception***

The District shall not be deemed to have knowledge that the student had a disability if:

1. The parent has not allowed an evaluation of the student
2. The parent has refused special education services, or
3. The student has been evaluated and it was determined that the student did not have a disability.

If the District does not have knowledge (as described above), before taking disciplinary measures, that a student has a disability, the student may be subjected to the same disciplinary measures applied to students without disabilities who engaged in comparable behaviors.

### ***Expedited Evaluation***

If a request for an evaluation is made during the time period in which the student is subject to disciplinary measures, the evaluation must be conducted in an expedited manner. If the student is determined to be a student with a disability, the District shall provide special education and related services, except that, pending the results of the evaluation, the student shall remain in the educational placement determined by the District,

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If the District does have "Knowledge" and the student has violated the Student Code of Conduct and the disciplinary action includes a recommended removal to a Discipline Alternative Education Program (DAEP), the following steps should occur:

- Schedule a staffing with the appropriate Campus Based Evaluator, Campus Administrator, and appropriate Special Education Program Manager to review the situation.
- If the student engaged in an infraction involving weapons, drugs, or serious bodily injury while at school, on school premises, or at a school function, the student may continue to be removed to the DAEP for up to 45 school days, and the initial Full Individual Evaluation will be conducted in an expedited manner. A MDR should be conducted as soon as the Full Individual Evaluation is completed.
- If the student engaged in other behaviors that would not require the mandatory removal, a discussion regarding the initial evaluation process should occur.
- The team should discuss any evaluation that is available, conduct a process similar to a MDR (review whether the conduct was caused by, or had a direct and substantial relationship to, the child's *suspected* disability), discuss the current status of the initial Full Individual Evaluation, and develop a plan to support the student in the current placement until the initial evaluation can be completed.
- The Program Manager for Evaluation and Related Services should be contacted to expedite the evaluation.
- The staffing discussion should be documented in writing and placed in the student's referral folder or other appropriate RTI folder (In the past this process was completed in the Success Ed software program. However, it is no longer necessary to enter the student into Success Ed since the student is not eligible for special education services at the time).
- If the student is currently served with 504 services, a MDR should be conducted by the 504 committee.

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## CHANGE OF PLACEMENT

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**20 USC § 1415(k)(1)(A); 34 CFR §§ 300.11, 300.530(e), (h), 300.536, 71 Fed. Reg. 46,715(2006)**

The local campus administrator is responsible for maintaining records on student discipline. In order to follow state and federal disciplinary requirements outlined in this section, the local campus must monitor the total number of removals for students with disabilities.

### ***Case-by-Case Determinations***

School personnel must consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates the Student Code of Conduct.

### ***What Constitutes a Change of Placement?***

A change of placement occurs if:

1. the removal is for more than 10 consecutive school days, or
2. the child has been subjected to a series of removals that constitute a pattern.

### ***The “10-Day Rule”***

Expulsions out of school, suspensions, in-school suspensions, and removals to alternative education programs should be considered when computing the total number of days that a student has been removed from his or her placement for disciplinary reasons.

1. *In-school suspension.* In-school suspension is not included so long as the child is afforded the opportunity to continue to:
  - a. appropriately progress in the general curriculum
  - b. receive the services specified on his or her IEP, and
  - c. participate with non-disabled children to the extent the child would have in his current placement.
2. *Suspension of less than 1 full school day.* Portions of a school day that a child has been suspended are included when determining whether the child has been removed for more than 10 cumulative school days or whether there was a change in placement.
3. *Bus suspensions.* Whether a bus suspension counts as a day of suspension depends on whether the bus transportation is part of the child’s IEP.
  - a. If part of the child’s IEP, a bus suspension should count as a day of suspension unless the school provides the bus service in some other way.
  - b. If not part of the child’s IEP, a bus suspension does not count as a day of suspension.
    - i. In these situations, the child’s parents have the same obligations to get the child to and from school as any non-disabled child who has been suspended from the bus.

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- ii. Keep in mind, if the child’s behavior on the bus is similar to behavior addressed in the child’s IEP, the ARD committee should consider whether the bus behavior needs to be addressed in the IEP or a BIP.
- iii. If transportation is not a related service in a student's IEP but the student requires transportation to receive FAPE, the ARD committee should consider revising the IEP and, if there has been a change of placement, conduct an MDR.

## ***Additional Short-Term Removals***

School personnel may remove the child with a disability who violates the Student Code of Conduct from the child’s current placement for additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under 34 CFR § 300.356. It is recommended that this authority be used sparingly and cautiously. (See ***Authority of School Personnel*** herein)

## ***Pattern***

A series of removals constitutes a pattern when:

1. the series of removals total more than 10 school days in a school year
2. the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals, and
3. taking into account additional factors such as:
  - a. the length of each removal
  - b. the total amount of time the child has been removed, and
  - c. the proximity of the removals to one another.

The school determines, on a case-by-case basis, whether a pattern of removals constitutes a change of placement.

## ***Change of Placement Determination***

The school’s determination is subject to review through due process and judicial proceedings.

## ***Notice***

On the date on which the school decides to make a removal that constitutes a change of placement, the school must:

1. notify the parent of that decision, and
2. provide the parent the Notice of Procedural Safeguards.

## ***Additional Requirements***

A manifestation determination must be made within 10 school days of any decision to make a change of placement of a child with a disability because of a violation of the Student Code of Conduct.

The school must comply with the rules set forth in the “Services During Periods of Removal” section herein.

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## ***Change of Placement Analysis***

When a principal or other appropriate administrator recommends disciplinary removal from the student’s current IEP placement, conduct the following Change of Placement Analysis:

1. To determine whether the child has been removed for more than 10 cumulative school days or has been subjected to a change of placement, count the days of disciplinary removal from the student’s current educational placement using the following guidelines, as applicable:
  - a. Include portions of a school day that a child had been suspended
  - b. Do not include an in-school suspension as long as the child is afforded the opportunity to:
    - i. Appropriately progress in the general curriculum
    - ii. Continue to receive the services specified on his or her IEP, and
    - iii. Continue to participate with nondisabled children to the extent they would have in their current placement.
  - c. Include days of bus suspension if the bus transportation is part of the child’s IEP unless the District provides alternate means of transportation, and
  - d. Do not include days of bus suspension if the bus transportation is not part of the child’s IEP.
    - i. If transportation is not a related service in a student's IEP but the student requires transportation to receive FAPE, the ARD committee should consider revising the IEP and, if there has been a change of placement, conduct an MDR.
2. Determine whether the disciplinary removal(s) constitute a change of placement. This should be done on a case-by-case basis. A disciplinary change of placement occurs if:
  - a. The removal is for more than 10 consecutive school days, or
  - b. The child has been subjected to a series of removals that constitute a pattern. A pattern occurs when:
    - i. The series of removals total more than 10 school days in a school year
    - ii. The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals, and
    - iii. The school considers the following additional factors:
      - The length of each removal
      - The total amount of time the child has been removed, and
      - The proximity of the removals to one another.
3. If the removal constitutes a change of placement:
  - a. Make a manifestation determination within 10 school days of the decision,
  - b. Provide services in accordance with the “***Educational Services During Periods of Removal***” section herein; and
  - c. Provide the parent with proper notice, including notice of procedural safeguards, on the day the decision is made to make a disciplinary removal that constitutes a change in placement (refer to ***Manifestation Determination Review section herein for process***).

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For additional information regarding Placement in Disciplinary Settings, see Section 5 of the Special Education Handbook.



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## MANIFESTATION DETERMINATION REVIEW

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*20 USC § 1415(k)(1)(E); 34 CFR § 300.530; TEC § 37.004(b)*

### ***When to Conduct***

A manifestation determination must be made within 10 school days of any decision to make a change of placement of a child with a disability because of a violation of the Student Code of Conduct.

For conduct related to bullying, harassment, and making hit lists, the 10-day window does not apply. The school may not discipline a special education student for conduct related to bullying, harassment, and making hit lists before an MDR ARD is held to review the conduct.

Prior to any disciplinary change of placement as defined above, the campus must implement the following in order, along with any other requirements required by law, District policy or District procedures for all students.

1. The Campus Behavior Coordinator (CBC) will conduct an investigation into the alleged violation of the Student Code of Conduct.
2. The CBC or other appropriate administrator shall schedule a conference among the campus behavior coordinator or other appropriate administrator, a parent or guardian of the student, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal.
3. The CBC or other appropriate administrator will notify the parent or guardian of the student as well as the student of the administrator's findings and the administrator's recommended/proposed disciplinary removal, if any. The administrator also will confirm that the recommendation for disciplinary removal is subject to review by the District's Department of Student Affairs and final determination of the student's ARD or Section 504 committee.
4. On the same day that the CBC or other appropriate administrator proposes to remove a student, resulting in a disciplinary change of placement, the CBC or other appropriate administrator will notify the Director of Special Education (if the student is eligible for special education) or the 504 Coordinator for the District (the "504 Coordinator") (if the student is otherwise qualified under Section 504) of the administrator's decision and forward a copy of all relevant information to same.
5. The CBC must forward to the Director of Special Education or 504 Coordinator, as appropriate, and the Department of Student Affairs the documentation regarding the offense and the CBC's findings and proposed disciplinary removal.

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6. The Director of Special Education or the 504 Coordinator will review all information received from the campus related to the disciplinary event, the student’s special education and/or 504 file, and contact the campus regarding the proposed removal.
7. The Department of Student Affairs will review all information received from the campus, consult with the Department of Special Education or 504 Coordinator, as needed, and issue a final decision regarding the proposed disciplinary removal. If the Department of Student Affairs decides to approve the proposed removal, that constitutes a disciplinary change of placement, the Department of Student Affairs must issue written notice of that decision to the parent or legal guardian. On the same day that the decision is made to make a removal that constitutes a change of placement, the Department of Student Affairs must also provide the parent or legal guardian with a copy of the Notice of Procedural Safeguards (if the student is eligible for special education) or Notice of Rights (if the student is otherwise qualified under Section 504). An ARD or 504 committee meeting, as appropriate, will be scheduled in order to conduct a manifestation determination review for a final determination if the proposed removal will be implemented.
8. A meeting of the student’s ARD or Section 504 committee must be scheduled within 10 school days of any final decision to propose a disciplinary change of placement as approved by the Department of Student Affairs. Notice of the meeting must include that the purpose of the meeting will be to conduct a manifestation determination review in addition to discussion of any other issues that are identified by the campus, Director of Special Education or 504 Coordinator. Notice must be provided to the parent or legal guardian of the student at least 5 school days prior to the meeting unless the parent waives their right to receive 5 school days’ prior written notice of the meeting.

## ***Membership and Preparation***

The Admission, Review, and Dismissal Committee (ARDC) must make the manifestation determination to determine if a proposed removal, which constitutes a disciplinary change of placement, will be enforced. In preparation for a MDR, it is important to schedule a staffing with the LSSP/Diagnostician who will be at the MDR ARD to review the evaluation and to assist with the MDR.

In the event the campus requires support from the Special Education Central Office team regarding the MDR staffing/ARD, the Program Manager for the program/services the student receives should be contacted.

If the student is AU, OHI with ADHD, or ED, there must be a LSSP present at the MDR ARD.

Please note a Campus-based Evaluation Staff (CBE) (Diag. or LSSP) MUST be at the MDR ARD or the meeting cannot be held.

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## **Protocol prior to MDR for Student who engages in a Threat or a Serious Behavioral Incident in which safety is a concern**

1. **Contact the Director, Evaluation and Specialized Programming and the Assistant Director of Evaluation and Support Services regarding the incident**
2. **LSSP or Counselor Conducts or participates in along with CSTAT a Threat Assessment following district Threat Assessment protocol**
3. **Schedule ARD/MDR, if appropriate**
4. **Depending on outcome of Threat Assessment**
  - **Develop Safety Plan, Contract with student, etc.**
  - **Conducting Staff prior to MDR. The following staff must be included in the staffing:**
    - **All students' general education teachers**
    - **Campus Admin**
    - **LSSP/Diagnostician**
    - **ARD Facilitator/CCC who will conduct the ARD**
    - **Special Ed Teacher (case manager)**
    - **Social Worker and any outside agencies as appropriate**
  - **During the staffing, discuss interim placement or plans for student's return to school until MDR. All teachers should be involved in the staffing to ensure interim plans are reviewed and staff are well informed of the status of the student.**

### **Information to Review at the MDR/ARD Meeting**

The school, parent, and relevant members of the ARDC (as determined by the parent and the school) must review **all relevant information** in the child's file including, but not limited to:

1. The student's individualized education program (IEP)
2. The student's discipline history, including the discipline referral for the particular act that is the basis for the MDR
3. The student's most recent evaluations
4. Any teacher observations, and
5. Any relevant information provided by the parents.

### **Determination**

The information described above is reviewed to make the manifestation determination. Conduct is a manifestation of a child's disability if the school, parent, and relevant members of the ARDC determine that:

1. The conduct was caused by, or had a direct and substantial relationship to, the student's disability; or
2. The conduct in question was the direct result of the school's failure to implement the IEP.

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## ***When Behavior is a Manifestation***

If in the MDR the ARDC determines that the conduct was the direct result of the failure of the school to implement the IEP, the school must take immediate steps to remedy those deficiencies.

If in the MDR the ARDC determines that the conduct was a manifestation of the child’s disability, the ARDC must:

1. Implement Option A or Option B below:
  - a. *Option A:*
    - i. Conduct a functional behavioral assessment (FBA), provided that the school had not conducted such assessment prior; and
    - ii. Implement a behavior intervention plan (BIP) for the child; or
      1. \*Subsection 37.004, Placement of Students with Disabilities, was amended in the 87<sup>th</sup> legislative session as part of HB785 to add the following:
        - a. Seek consent from the parent to conduct the FBA (whether one has never been done or is more than one year old) and review any previously conducted FBAs and BIPs developed based on that assessment, and
    - iii. *Option B:* In the situation where a BIP has been developed, review the BIP and modify it as necessary, to address the behavior; **and**
  2. Return the child to the placement from which the child was removed, unless:
    - a. the parent and the school agree to a change of placement as part of the modification of the BIP; or
    - b. the removal was made pursuant to the “Special Circumstances” provision.

## ***When Behavior is not a Manifestation***

For a disciplinary change in placement that would exceed 10 consecutive school days, if the ARDC determines in a MDR that the conduct was not a manifestation of the child's disability school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities except that the student is still entitled to a free and appropriate public education and therefore SERVICES DURING PERIODS OF REMOVAL must be provided.

# VII – Discipline

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## ***Special Circumstances – 45 Day Rule***

Special Circumstances exist when the child:

1. Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of the state educational agency (SEA) or the local educational agency (LEA).

“weapon” has the meaning given to the term “dangerous weapon” under 18 USC 930(G)(2). 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 pocketknife with a blade of less than 2 1/2 inches in length.

2. 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 under the jurisdiction of the SEA or the LEA, or

“Controlled substance” means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

“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.

3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the SEA or the LEA.

The term "serious bodily injury" means 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.

If Special Circumstances exist, school personnel may remove a student to an appropriate Interim Alternative Educational Setting (IAES), without regard to whether the behavior is determined to be a manifestation of the child’s disability, for the same amount of time that a child without a disability would be subject to discipline, but for no more than 45 school days.

The school must determine and provide services in accordance with the rules set forth in the “**Services During Periods of Removal**” section herein.

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## EDUCATIONAL SERVICES DURING PERIODS OF REMOVAL

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34 CFR §§ 300.101(a), 300.530(d); 20 USC §§ 1414(e), 1415(k)

### ***Removals for Less than 10 Cumulative Days***

FBISD is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed. FBISD may choose to provide the IEP services to a student with disabilities during any short-term removal in order to prevent counting those days of removal toward the 10 cumulative days. In the case of a student whose behavior impedes his or her learning or that of others, convene an ARD meeting, if appropriate, to consider completing an FBA or BIP including positive behavior interventions, strategies, and supports to address that behavior. In the event that the student already has an FBA and a BIP, the ARD committee should still consider changes to the BIP, if warranted, or additional supports to be put in place to assist the student.

### ***Removals Exceeding 10 Cumulative Days that are Not a Change of Placement***

If a student with a disability has been removed from the child's current placement for 10 school days in the same school year, and the current removal is *not* more than 10 consecutive school days and is *not* a change of placement:

1. School personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed for a free appropriate public education (FAPE):
  - a. to enable the child to continue to participate in the general education curriculum, although in another setting; and
  - b. to enable the child to progress toward meeting the goals set out in the child's IEP; and
2. Services may be provided in an interim alternative educational setting (IAES).

### ***Removals that are a Change of Placement***

1. The District must conduct an MDR pursuant to the rules previously discussed.
2. When behavior is not a manifestation of the child's disability, or when the child with a disability is removed from his or her current placement pursuant to the Special Circumstances - 45-day rule, irrespective of whether the behavior is determined to be a manifestation of the child's disability, the ARDC must:
  - a. determine the educational services for a FAPE, which may be provided in an interim alternative educational setting (IAES):
    - i. to enable the child to continue to participate in the general education curriculum, although in another setting; and
    - ii. to enable the child to progress toward meeting the goals set out in the child's IEP
  - b. Seek consent from the parent to conduct an FBA, if one has never been done or is more than one year old, and review any previously conducted FBAs and any BIPs developed based on that assessment; and

## VII – Discipline

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- c. As necessary, develop a BIP if the student does not have one or revise the plan if the student does have one.
- d. Determine the IAES for disciplinary placements that would result in a change of placement, the IAES shall be determined by the ARDC. The school shall ensure that parents are members of any group making educational placement decisions.



# VII – Discipline

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## APPEALS

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**34 CFR §§ 300.532, 300.533; 20 USC § 1415(k)(3)-(4)**

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination may request an expedited due process hearing. Also, a school that believes that maintaining the current placement of the child is likely to result in injury to the child or to others, may request a due process hearing.

### ***Authority of Hearing Officer***

In making the determination regarding a requested appeal, the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may:

- return the child to the placement from which the child was removed if the hearing officer determines that the removal was a violation of 34 CFR §300.530 or that the child’s behavior was a manifestation of the child’s disability; or
- order a change in placement of a child with a disability to an appropriate IAES for not more than 45 school days if the hearing officer determines that maintaining the current placement is likely to result in injury to the child or others.

### ***Multiple 45-Day Placements***

The school may seek multiple expedited hearings to continue a child’s IAES placement if the district continues to believe that returning the child to the original placement is likely to result in injury to the child or others.

### ***Placement During Appeals***

**34 CFR §§ 300.532, 300.533; 20 USC § 1415(k)(4)**

When an appeal has been requested by either the parent (regarding disciplinary placement or the manifestation determination), or the school (regarding the belief that maintaining the current placement is likely to result in injury to the child or to others):

- The child shall remain in the IAES pending the decision of the hearing officer or until the expiration of the student’s assignment to the alternative setting, whichever occurs first, unless the parent and the State or school agree otherwise; and
- The State or school shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

### ***Resolution Meeting***

**34 CFR §300.532(c)(3)**

A resolution meeting must occur within 7 days of receiving notice of the expedited due process complaint, unless the parents and the district agree in writing to waive a resolution meeting or agree to use the mediation process.

# VII – Discipline

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## CONFINEMENT, RESTRAINT & TIMEOUT

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***TEC §§ 37.0021; 19 TAC § 89.1053***

### ***Student Safety***

It is the policy of this state to treat with dignity and respect all children, including children with disabilities who receive special education services. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.

### ***Applicability***

These procedures regarding confinement, seclusion, restraint, and timeout apply to:

1. All school employees, volunteers, and independent contractors; and
2. Peace officers, only if the peace officer:
  - a. Is employed or commissioned by a school district; or
  - b. Provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between FBISD and a local law enforcement agency.
    - i. However, the data reporting requirements apply to the use of restraint by any police officer performing law enforcement duties on school property or during a school-sponsored or school-related activity.

These procedures do not apply to:

1. A peace officer, while performing law enforcement duties, except as provided above  
“*Law enforcement duties*” means activities of a peace officer relating to the investigation and enforcement of state criminal laws and other activities authorized by the Code of Criminal Procedure.
2. Juvenile probation, detention, or corrections personnel, or
3. An educational services provider with whom the child is placed by a judicial authority unless the services are provided in an educational program of the District.

### ***Seclusion***

A District employee, volunteer, or independent contractor of the District may not place a student in seclusion. “Seclusion” means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:

1. Is designed solely to seclude a person; and
2. Contains less than 50 square feet of space.

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## ***Confinement***

It is the policy of this state and Fort Bend ISD to treat with dignity and respect all students, including students with disabilities who receive special education services. A student with a disability, who receives special education services must not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique.

This section does not prevent a student's locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement personnel if:

1. The student possesses a weapon as described under TEC 37.007(a)(1); or
2. The confinement is necessary to prevent the student from causing bodily harm to the student or another person.

## ***Physical Restraint***

"Restraint" means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body.

"Emergency" means a situation in which a student's behavior poses a threat of:

1. Imminent, serious physical harm to the student or others; or
2. Imminent, serious property destruction.

A school employee, volunteer or independent contractor may use restraint only in an "emergency" and with the following limitations:

1. Restraint must be limited to the use of such reasonable force as is necessary to address the emergency
2. Restraint must be discontinued at the point at which the emergency no longer exists
3. Restraint must be implemented in such a way as to protect the health and safety of the student and others, and
4. Restraint must not deprive the student of basic human necessities.
5. FBISD does not support restraints that involve aversive techniques. Restraints that are floor based, prone positioning, and/or supine restraints are prohibited and will not be practiced.

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## **Training**

Training for school employees, volunteers, or independent contractors must be provided according to the following requirements:

1. A core team of personnel on each campus must be trained in the use of restraint; and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint (See Texas Behavior Support Initiative later in this section for more information)
2. Personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint
3. Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint
  - FBISD staff that attend CPI are trained in the following restraints:
    - Team Control Position
    - Children’s Position
    - Transport Position (Forward and Backward)
4. All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.
  - Fort Bend ISD requires each special education teacher who serves in a Specialized Program to maintain CPI certification.

## **Basis for Use of Physical Restraint**

The philosophy of CPI is to provide the best “Care, Welfare, Safety and Security” for students even in violent moments. The program has been designed to provide the same “Care, Welfare, Safety and Security” for staff. Staff members are to use CPI control positions only as a last resort when a student presents a danger to self or others. When physical restraints are used, staff members will ensure the “Care, Safety, Welfare and Security” of students by not engaging in any type of restraint that:

- Takes children to the floor
- Depresses the abdomen
- Blocks a child’s airway
- Involves holding the lower extremities
- Involves any hold that places a child facedown with an adult sitting on top or laying across the child.

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## Documentation

The following documentation requirements must be met in a case in which restraint is used by school employees, volunteers, or independent contractors:

1. On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.
2. Written documentation of regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the ARD committee when it considers the impact of the student's behavior on the student's learning and or the creation or revision of a BIP.
  - a. All restraints should be documented in writing within the Success Ed system. (See the Success Ed portion of these administrative procedures in Section 5 for more information on how to document restraints). Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.
3. On the day restraint is utilized, a good faith effort must be made to verbally notify the parent(s) regarding the use of restraint.
  - a. Student must be immediately referred to school nurse following restraint.
4. Written notification to the parent(s) and documentation in SuccessEd must include the following:
  - a. Name of the student
  - b. Name of the staff member(s) [district employee, volunteer, or contract employee) administering the restraint
  - c. Date of the restraint and the time the restraint began and ended
  - d. Location of the restraint
  - e. Nature of the restraint
  - f. A description of the activity in which the student was engaged immediately preceding the use of restraint
  - g. The behavior that prompted the restraint
  - h. The efforts made to de-escalate the situation and alternatives to restraint that were attempted
  - i. If the student has a BIP, whether the plan may need to be revised as a result of the behavior that led to the restraint
  - j. If the student does not have a BIP, information on the procedure for the student's parent to request an ARD to discuss the consideration of conducting a FBA and developing a BIP for the student, and Information documenting parent contact and notification.

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## **Report Injuries**

- Staff should report all injuries, regardless of severity, within 24 hours of the time the injury occurs, or you become aware that an injury has occurred.
- Complete the Safety Incident Follow-up Report and give to the campus principal. (See Appendix for the Safety Incident Follow-up Report form)
- If medical care is required, make an appointment to see a designated physician. Provide medical progress reports and work restriction information to your campus principal immediately.

Cumulative data regarding the use of restraint by school employees, volunteers, independent contractors, and by peace officers must be electronically reported through the PEIMS.

Restraints by law enforcement personnel will not be entered into Success Ed. Law enforcement documentation of restraints should be sent in pdf format to the District’s Director for Evaluation and Specialized Programming.

The District shall report electronically to TEA, in accordance with standards provided by Commissioner Rule, information relating to the use of restraint by a peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity. The report must be consistent with the requirements adopted by Commissioner rule for reporting the use of restraint involving students with disabilities.

## **What is Not Physical Restraint**

Physical restraint does not include the use of:

1. Physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning
2. Limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, or provide comfort
3. Limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors, or
4. Seat belts and other safety equipment used to secure students during transportation.

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## ***Physical Prompting***

At times, physical prompting may be required in order to decrease inappropriate behaviors and increase appropriate behaviors. Physical Prompting consists of hand over hand prompts, as well as physically guiding a student in order to ensure compliance. Physical Prompting is not considered a restraint when used properly.

When Physically Prompting, you should ALWAYS utilize safe practices / procedures:

1. Inform all adults present of the prompting procedure you will utilize
2. Do not attempt to physically pick up a large student as this may cause injury to yourself or the student
3. Have a witness with you if you physically guide a student
4. Use the least amount of physical prompting necessary to ensure compliance, and
5. Have a plan to fade the prompt to a lesser intrusive prompt prior to implementing physical prompting.

When physically prompting, you should NEVER:

1. Restrict the use of limbs
2. Use only physical prompting to ensure compliance, or
3. Pick up a student by the wrist, forearm, upper arm or elbow.

When is physical prompting considered restraint?

Physical prompting is not the same as restraint and should not rise to the level of restraint. "Restraint" means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body. Therefore, physical prompting may be a restraint if the individual cannot move his/her body (cannot stand up/slide out/etc.).

If you have questions regarding physical prompts, please contact the appropriate Program Manager.



# VII – Discipline

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## ***Cool Down/ Reflection Time/ Time-Out***

"Cool Down / Reflection time" "Time-Out" is a behavior management technique where a student is provided with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:

1. That is not locked; and
2. From which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

A school employee, volunteer, or independent contractor may use Cool Down/ Reflection Time/Time-Out with the following limitations:

1. Physical force or threat of physical force must not be used to place a student in Cool Down/ Reflection Time/Time-Out
2. Cool Down/Reflection Time/ Time-Out must only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's individualized education program (IEP) and/or BIP if it is utilized on a recurrent basis to increase or decrease a targeted behavior, and
3. Use of Cool Down/Reflection Time/Time-Out, including isolating the student by the use of physical barriers, must not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

## **Training on Use of Cool Down/ Reflection Time/Time-Out**

Training for school employees, volunteers, or independent contractors must be provided according to the following requirements:

1. General or special education personnel who implement Cool Down/ Reflection Time/ Time-Out based on requirements established in a student's IEP and/or BIP must be trained in the use of Cool Down/ Reflection Time/ Time-Out
2. Newly identified personnel called upon to implement Cool Down/ Reflection Time/ Time-Out based on requirements established in a student's IEP and/or BIP must receive training in the use of Cool Down/ Reflection Time/ Time-Out within 30 school days of being assigned the responsibility for implementing Cool Down/ Reflection Time
3. Training on the use of Cool Down/ Reflection Time/ Time-Out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, and must address the impact of Cool Down/ Reflection Time/Time-Out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP, and
4. All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of Cool Down/ Reflection Time.

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## **Documentation of Use of Cool Down/ Reflection Time/Time-Out**

If the student has a BIP, FBISD must document each use of time-out prompted by a behavior of the student specified in the plan, including a description of the behavior that prompted the time-out. The ARDC must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

## ***Texas Administrative Code § 89.1053 and the Texas Behavior Support Initiative***

The Texas Legislature mandates training for educators involved in the use of restraint and time-out with Special Education students.

### **Who has to be trained?**

19 Texas Administrative Code § 89.1053. Procedures for Use of Restraint and Time-Out states:  
*(d)(1) ...a core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.*

*(d)(2) ...personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.*

### **What is the training?**

The training required includes six (6) TBSI modules. The modules cover school-wide, classroom and individual behavior management strategies, as well as strategies for working with aggressive students, including the laws governing the use of restraint and time-out. Staff members are required to complete the 6 TBSI modules only once. (A refresher is not required.)

The other training component of TBSI (sometimes referred to as “Module 7”) is training in an approved restraint program. Fort Bend ISD only offers Crisis Prevention Institute’s (CPI) Nonviolent Crisis Intervention Program as an approved restraint program. The initial training for the CPI program is a blended model, with portions being done both online and face-face. The online modules will be done on a single day, with the face-to-face instruction, which includes learning and demonstrating competency in the use of physical restraints, done on a subsequent second day. The initial CPI training course is taken once, with a half-day refresher course taken each year after. If at any time an employee’s CPI training expires, he/she will be required to take the initial course again. Although the initial CPI class is intended to only be taken once, with a refresher course each additional year by the anniversary date of the initial, if district special education or campus administrators deem it appropriate, an employee may be required to take the initial course over, as part of their training

Each campus is required to identify team members and to provide to the Program Manager of Safety, Restraint, and Behavior Intervention a copy of the campus’ TBSI team members. If you have any questions or concerns regarding the Texas Behavior Support Initiative requirements, please contact the Program Manager of Safety, Restraint, and Behavior Intervention.

# VII – Discipline

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## PROHIBITED AVERSIVE TECHNIQUES

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### *TEC §§ 37.0023, Board Policy FO (Legal, Local)*

A District employee, volunteer or an independent contractor of a school district may not apply an aversive technique, or by authorization, order, or consent, cause an aversive technique to be applied to a student.

"*Aversive Technique*" means a technique or intervention that is intended to reduce the likelihood of a behavior reoccurring by intentionally inflicting on a student significant physical or emotional discomfort or pain. The term includes a technique or intervention that:

1. Is designed to or likely to cause physical pain, the District prohibits the use of corporal punishment
2. Is designed to or likely to cause physical pain through the use of electric shock or any procedure that involves the use of pressure points or joint locks
3. Involves the directed release of a noxious, toxic, or otherwise unpleasant spray, mist, or substance near the student's face
4. Denies adequate sleep, air, food, water, shelter, bedding, physical comfort, or access to a restroom facility
5. Ridicules or demeans the student in a manner that adversely affects or endangers the learning or mental health of the student or constitutes verbal abuse
6. Employs a device, material, or object that simultaneously immobilizes all four extremities, including any procedure that results in such immobilization known as prone or supine floor restraint
7. Impairs the student's breathing, including any procedure that involves: (a) applying pressure to the student's torso or neck; or (b) obstructing the student's airway, including placing an object in, on, or over the student's mouth or nose or placing a bag, cover, or mask over the student's face
8. Restricts the student's circulation
9. Secures the student to a stationary object while the student is in a sitting or standing position
10. Inhibits, reduces, or hinders the student's ability to communicate
11. Involves the use of a chemical restraint
12. Constitutes a use of timeout that precludes the student from being able to be involved in and progress appropriately in the required curriculum and toward the annual goals included in the student's IEP, including isolating the student by the use of physical barriers, or
13. Deprives the student of the use of one or more of the student's senses, unless the technique is executed in a manner that: (a) does not cause the student discomfort or pain, or (b) complies with the student's IEP or BIP.