

**“YOU CAN’T SEND ME TO THE DAEP,
I HAVE A BIP”:
DISCIPLINE AND THE SPECIAL NEEDS STUDENT**

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CAMPUS BEHAVIOR COORDINATOR (CBC)

A district is required to appoint one CBC per campus to be responsible for maintaining student discipline and implementing discipline management techniques.

The district must *post each CBC’s e-mail address and phone number* on the district’s website.

REQUIRED NOTICE TO PARENTS

The CBC is required to provide prompt notice to the parent/guardian that their child has been placed in ISS, OSS, DAEP, JJAEP, or is taken into custody by law enforcement. This notice must be provided by *telephone* or in *writing*. If the CBC is unable to make contact with the parent/ guardian by 5pm of the first business day after the day the disciplinary action was taken, the CBC *must mail written notice* to the parent or guardian.

The district is required to provide *notice* to the parent of a student who has been removed to DAEP of the opportunity to complete coursework required for graduation and any available methods to obtain such coursework.

DOCUMENTING DISCIPLINE REFERRALS

Charlie unloads a string of obscenities at the cafeteria worker when he mistakenly received a piece of pizza with pepperoni rather than a slice with just cheese. How should this be documented on the discipline referral?

- Discipline referrals should be written in a manner that is *factually accurate*. No personal opinions should be interjected. The referral should accurately depict what occurred, particularly if foul language is used. Also, the names of other students involved should not be used as this may violate FERPA protections.

TEACHER REMOVALS

A teacher may send a student to the CBC to maintain effective classroom discipline.

A teacher *may* remove a student:

1. After documenting repeated interference with the teacher's ability to communicate with the class; or
2. If the student engages in behavior so unruly, disruptive, or abusive that it seriously interferes with instruction.

DUE PROCESS RIGHTS-DAEP REMOVALS

- A conference with the CBC, student, parent or guardian, and teacher (if applicable), must be scheduled not later than the third-class day after removal.
- "Valid attempts" must be used to require a person's attendance.
- At the conference, the student is entitled to *written or oral notice* of the reasons for removal, an *explanation* of the basis for removal, and the *opportunity to respond* to the reasons.
- The CBC must consider the following **mitigating factors**: self-defense, intent, disciplinary history, a disability that "substantially impairs" the student's capacity to appreciate the wrongfulness of the conduct, and the student's status as homeless or in the conservatorship of DFPS.
- Mitigating factors must be considered if mandatory or discretionary.

DUE PROCESS RIGHTS-EXPULSION

- Prior to expulsion, a student is entitled to notice and a hearing.
- The written notice should contain a statement of the specific charges and grounds that, if proven, would justify expulsion. Generally, the student should be given the names of the witnesses against him or her and an oral or written report on the facts to which each witness will testify.
- The CBC can accept hearsay evidence from school administrators who investigate disciplinary infractions.
- The student may have representation at the hearing. The school must make a “good faith” effort to inform the student and the parent of the time/place of hearing.
- Mitigating factors must be considered.
- Appeals can be taken to the board, and then to state district court.

MANDATORY DAEP OFFENSES-OFF CAMPUS

A student must be placed in a DAEP if, while off campus and not in attendance at a school sponsored or school related activity, the student receives deferred prosecution for the felony offense of aggravated robbery or offenses listed in title 5 of the Penal Code, i.e., violent offenses against the person; a court or jury finds that the student has engaged in delinquent conduct including the felony offense of aggravated robbery or conduct defined in title 5; or the superintendent or designee has a reasonable belief that the student engaged in felony aggravated robbery or conduct defined as a title 5 felony offense

DISCRETIONARY DAEP OFFENSES-OFF CAMPUS

A student *may* be placed in a DAEP if the superintendent or designee has a “*reasonable belief*” that the student, while off campus and not in attendance at a school sponsored or school related activity, has engaged in conduct other than aggravated robbery, or those offenses listed in title 5 of the Penal Code, i.e., violent offenses against the person; *and the continued presence of the student in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.*

SERIOUS MISBEHAVIOR IN DAEP

A student placed in a DAEP who engages in “documented” serious misbehavior while on the DAEP campus despite “documented” behavioral interventions may be expelled.

“Serious misbehavior” means deliberate violent behavior that poses a direct threat to others, extortion (gaining of money or property through force or threat), coercion, public lewdness, indecent exposure, criminal mischief, personal hazing, criminal harassment of a student or employee.

SPECIAL EDUCATION-DISCIPLINE DOCUMENTATION

The number of special education due process hearing requests has significantly increased in the past few years. In litigation, requests for production from advocates and attorneys are routinely made. Under the applicable rules, all documentation that references the student must be provided.

REQUEST FOR PRODUCTION-SAMPLE LANGUAGE

“Any and all student records, including, but not limited to progress reports, data collection sheets, IEP’s, related service therapy session notes, attendance reports, withdrawal records, correspondence regarding the student, standardized testing results, test protocols, staff memos, interoffice memos, emails, evaluations, PEIMS data reports, notes from multi-disciplinary team meetings, notes concerning observations of the student, video, audiotapes, prior written notices.”

REQUEST FOR PRODUCTION-SAMPLE LANGUAGE

“Any and all audio and videotape recordings of the ARDC meetings or any other meetings or conferences pertaining to the student.”

DOCUMENTING ADMINISTRATIVE OFFERS

School personnel have determined that Buddy needs counseling once every six weeks for 30 minutes to deal with ongoing behavior issues. The parent has threatened to file a due process hearing if the district does not provide 30 minutes per week. The district appeased the parent and agreed to provide the extra counseling. Must this be documented in the minutes?

- The minutes must reflect that the counseling proposed by the district is appropriate and that the additional counseling was administratively agreed to in an effort to accommodate the parent’s concerns.

Should school personnel hold a behavior ARD when the parent has been properly notified of the meeting, but fails to appear?

- A meeting may be conducted without the parents in attendance if the district is unable to convince the parents that they should attend. The district must have a record of its attempts to arrange a mutually agreed on time and place to hold the ARD. Forward the ARD documentation to the parent with an explanation of the attempts to include the parents in the meeting. Additionally, the correspondence may indicate to the parents their right to call another ARD meeting at a mutually convenient time.

Can the ARD meeting be held without the full 5 day written notice if the parent agrees?

- Before the ARD meeting occurs, have the parent sign that he/she has waived the 5-day notice.

After reading the minutes at the end of the MDR ARD meeting, the parent insists that the minutes include some additional statements demonstrating the “innocence” of the student. What should the district do in this situation?

- It is important to keep in mind that the IEP, including any ARD deliberations, is a school record. The minutes are merely a summary. While minor changes are not problematic, extensive changes to a summary is another matter. If the parent is insistent that specific language be included in the minutes, district personnel can inform the parent that he or she can write out any disagreements or additional comments. The document is then attached to the completed IEP package.

The parent refuses to sign the ARD document at the end of the meeting. Should this fact be noted?

- Designate on the signature page that the parent refused to sign and initial it as well as noting the parent’s refusal in the minutes of the ARD report. The parent’s refusal to sign is generally viewed as a disagreement, putting into place the ten-day recess provisions. However, the ten-day recess provisions do not apply to DAEP placements, expulsions, or when the child’s presence on the campus presents a danger of physical harm to the student or others.

MANIFESTATION DETERMINATION REVIEW

Written Notice

- Under IDEA, a five-school day notice of the MDR must be provided, unless the parent waived the 5-day notice.

MANIFESTATION DETERMINATION REVIEW-SPED

The ARD Committee Responsibility

- The ARD committee is responsible for determining whether the IEP was followed and whether the misbehavior was directly or substantially caused by the disability. The ARD committee does not determine guilt or innocence or the sanction.

MANIFESTATION DETERMINATION REVIEW

Record Review

- With a student receiving special education services, the ARD committee needs to consider all relevant information, including evaluation data and disciplinary history.

WHEN THE BEHAVIOR IS A MANIFESTATION OF THE DISABILITY

- ✓ The committee must conduct an FBA and implement a BIP if the district had not conducted such an assessment before the behavior;
- ✓ If a BIP has been developed, review the BIP and modify it, as necessary, to address the behavior; and
- ✓ Return the child to the placement from which he/she was removed, unless the parent and district agree to change the placement as part of the modification of the BIP

BEHAVIOR INTERVENTION PLANS

The BIP contains the strategies that should be used to teach replacement behaviors. The BIP describes the problem behavior, the reasons the behavior occurs and the intervention strategies that will address the behavior.

Normally, the BIP serves as a supplement to the student code of conduct. When the SCOC and the BIP conflict, the BIP overrides the student code of conduct.

BEHAVIOR INTERVENTION PLANS (con't)

The systematic use of reinforcement is the most powerful tool in strengthening or teaching new behavior. The BIP should identify what is potentially reinforcing to the student. The reinforcers must be individualized and age appropriate.

The possible use of restraint should not be excluded since it can only be used in emergency circumstances, including situations where the student poses an imminent threat of serious harm to himself or others or an imminent threat of serious property destruction. Schools are entitled to use restraints in these limited circumstances, regardless of whether it is included in the BIP.

BEHAVIORS THAT ALLOW FOR REMOVAL REGARDLESS OF THE MDR DETERMINATION

A district may remove a student to the DAEP for not more than 45 school days without regard to whether the behavior was a manifestation if the child:

1. Carries or possesses a weapon on school premises or to or at a school function;
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; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function. ("Serious bodily injury" includes causing extreme physical pain)

The parent brings an outside evaluation to the MDR ARD meeting. What should the school's documentation reflect?

- The district must consider, but is not required to accept, the findings or recommendations.
- The ARD deliberations must reflect any outside evaluation report considered by the committee.

CONSIDERATION OF OUTSIDE EVALUATIONS

If the information presented directly contradicts the approach or program utilized by the district, the ARD document should reflect the district's disagreement with the approach and the reasons should be summarized in the deliberations.

Be sure to have the appropriate personnel present to review the outside evaluation.