

**“HE CAN’T HELP HIS BEHAVIOR, HE
HAS AUTISM!”:
WHAT A SCHOOL CAN DO WHEN A
BEHAVIOR IS RELATED TO THE
DISABILITY**

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Responses to a survey by the National
Institute of Health showed significant
levels of aggression by students
nationwide.



More than half of the assaults occurred in classrooms, however, many also occurred in the hallway/stairs. Perpetrators were commonly male. In 40% of the assaults, the perpetrator had an impairment due to a disability, injury, or illness. Working with special education students lead to the most physical assaults.



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Staff were most commonly injured on the arms, legs, and hands. The most common injuries included abrasions and contusions, slap marks, and cuts.



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Assaults on Texas educators, including those by students with disabilities, have also increased significantly in recent years. Data shows that in the 2023-2024 school year, Texas school districts reported over 2,600 assaults on school staff which was an 18% increase from the previous school year.



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One such assault even resulted in the death of a paraprofessional in February 2024 from Northside ISD after the paraprofessional was pushed by a student with disabilities that resulted in a serious head injury.



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A district's number one priority is to protect the safety all the students and staff. At the same time, districts are obligated to provide a Free Appropriate Public Education which includes children with significant behavioral challenges.



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How does a school balance these two important mandates?

The process begins with an evaluation that specifically addresses behavior.



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34 CFR §300.8(c)(1) requires that an autism evaluation must include specific recommendations for... positive behavioral interventions and strategies.



The Texas regulation, 19 TAC §89.1040(c)(1), mirrors the federal regulation with the following language:

“The team’s written report of evaluation must include specific recommendations for communication, social interaction, and positive behavioral interventions and strategies.”



FBA

Consequently, when we suspect Autism, the multidisciplinary team must address behavioral interventions and strategies. That is most effectively addressed through a Functional Behavioral Assessment.



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FBA

If behaviors are a challenge, an FBA should be part of an initial evaluation for Autism. The purpose of the FBA is to determine the probable function of the behavior based upon data collection.



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FBA

The multidisciplinary team needs to try to obtain parent information as part of the FBA. Additionally, data should be collected from the teachers and observations should occur at different times of the day and in structured and unstructured settings.



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BIP

The FBA will be the foundation for the BIP.



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BIP

- The BIP will address the prioritized behaviors and strategies for addressing the behaviors.
- Unless it provides otherwise, the BIP will supplement the student code of conduct.



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- The autism supplement also indicates a need for addressing behavior. 19 TAC §89.1055(e):

The ARD committee has considered the use of positive behavior support strategies and supports to address any behavioral needs of the student.”



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When can a student be removed from the general education classroom due to behavior?

School districts are mandated to educate students with disabilities in the least restrictive environment. The case of *Daniel R.R. v. State Board of Education*, 874 F.2d 1036 (5th Cir. 1989), the 5th Circuit established the standard for determining LRE. The factors to consider are the following:



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Factor One

Whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child. If it cannot and the school intends to provide special education or to remove the child from regular education, the next question is whether the school has mainstreamed the child to the maximum extent appropriate.

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<p>Factor Two</p>	<p>Whether the state has taken steps to accommodate the child with a disability in regular education.</p> <p>19</p>
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<p>Factor Three</p>	<p>Compare the educational benefits the child will receive in the regular classroom with those he will receive in a special education classroom.</p> <p>20</p>
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Factor Four

The effect the presence of the handicapped child has on the regular classroom environment and, thus, on the education that the other students are receiving.

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Continuation of Services

Additionally, IDEA requires the district to provide a continuum of services.

Specifically, 34 CFR 300.114(a)(2) provides the following:

“Each public agency must ensure that—

- (i) To the maximum extent appropriate, children with disabilities... are educated with children who are nondisabled; and
- (ii) Special classes, separate schooling, or other removal... occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”



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The Texas regulations follow the federal regulations:

TAC Section 89.1005(e)

"Instructional arrangements/settings shall be based on the individual needs and individualized education programs (IEPs) of eligible students receiving special education and related services and shall include the following."



Mainstream

Homebound

Hospital class

Speech therapy

Resource room/services

Self-contained (mild, moderate, or severe) regular campus

Off-home campus

Nonpublic day school

Vocational adjustment class

Residential care and treatment facility

State-supported living center



Can a student be placed by themselves in a classroom by themselves due to behavior?

It is important to note that a student can only be removed from being in classes with other students if the student poses a risk of harm to the other students. Before a student is removed, the question is going to be what supplementary aids and services have been provided in the both general education classes and the special education classes that have students.



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What needs to be addressed in the IEP meeting to move the student to a more restrictive setting?

- When a student is removed to a classroom by themselves, the IEP committee, in addition to ensuring that supplementary aids and services have been provided, must allow develop a reintegration plan with specific criteria that sets forth what conditions need to occur to start transitioning the student back into classes with students.
- It is also important for the IEP committee to get a release to consult with the student's physician to determine if the behaviors may be due to medication.



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If the student's behaviors escalate during the afternoon, can the school consider a shortened day?

- IDEA mandates that students with disabilities days need to be the same length as non-disabled students. However, if the IEP committee determines it is necessary based on the student's unique disability-related needs, the day can be shortened.
- The decision must not be made due to administrative convenience, but due to the student's inability to tolerate a full school day.
- The IEP committee needs to draft a transition plan that will increase the student's day. Specific criteria needs to be included in the plan.



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Can a student be sent home because of behavior?

If the student's disability includes behavior, then normally no. If the student has a disability which includes behavioral concerns, the school needs to address the behaviors at school through various strategies, i.e., FBA, BIP, increased adult support. It is important to remember that the school has 10 FAPE free days. After that, an MDR needs to occur. Calling parents during school hours to take the student home for behaviors that are being addressed through the IEP is not meeting the district's obligation to provide a FAPE.



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Can the school tell the parents that the student cannot come back to school without seeing a physician?

No. A student is entitled to attend school. Attendance cannot be contingent on school-imposed conditions.



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Several staff members have been injured by the student, including the district's BCBA. The superintendent does not think the student should come back on campus. What should the school do?



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If the school believes that having the student on campus will pose a substantial risk of harm to himself or others, then the school needs to look at more restrictive environments on the continuum, i.e., day school or residential. An ARD meeting will need to be held to recommend placement at the day school or residential placement.



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What must the ARD committee address at the meeting?

- The ARD committee (IEP team) must determine placement. The team must document that the student requires residential placement to receive FAPE (Free Appropriate Public Education). The need for the placement must be educational and not primarily due to medical, social, or family-related. The district must show it tried less restrictive options first such as in-district programs or day placements.



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- The IEP must include why residential services are necessary for educational progress, documentation that the placement is appropriate and meets student needs. The committee needs to develop a reintegration plan as to what criteria would allow the student to re-enter the school setting.



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Does the residential placement need to be approved by TEA?

Yes. The District must submit a Nonpublic/Residential Application within 30 days of ARD decision. TEA will review the IEP, appropriateness of the placement and determine whether the district is eligible for funding.

TEA may approve state or federal funds after reviewing the APEX application. TEA offers a High Cost Fund for extraordinary special education cost. State funding applies only if placement is approved, facility is approved and placement meets IDEA and TAC requirements.



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What is the 25% set aside?

When a district places a student in a TEA-approved nonpublic or residential program, the district is required to set aside 25% of the state special education funds generated by that student and use those funds to support the cost of the placement.



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What if the student has not been accepted into a residential facility at the time of the ARD meeting, but his still extremely dangerous to staff and other students?



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Pending placement at a facility, the district can provide home-based services. There are no funds available for this placement but still provides the student with services until an appropriate placement can be found. The ARD committee needs to document the safety concern of the student attending the campus.



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QUESTION & ANSWER SESSION

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