Removal/Change of Placement of Students with Disabilities

Under IDEA, school officials can remove any child with a disability from his/her regular school placement for up to 10 consecutive days at a time, even over the parents’ objections. However, school officials cannot use this authority to repeatedly remove a child from his/her current placement if that series of removal constitutes a change in placement.

A change in placement occurs:

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

Removal for 10-plus Days

If a child with a disability is removed for more than 10 cumulative school days in a school year, FAPE must be provided. Also, within 10 school days of any decision to change the placement of a child, the school district must convene an Individualized Education Program (IEP) team [same as the Admission, Review and Dismissal (ARD) committee] meeting to determine whether the child’s behavior is related to the disability (manifestation determination).

The reauthorized law clarifies that behavior is a manifestation of a disability only when it is caused by, or has a direct and substantial relationship to, the disability or when the conduct in question was the direct result of the district’s failure to implement the IEP.

The IEP team also must develop a behavioral assessment plan or review and modify the plan it one has already been developed and implemented.

If the IEP team concludes that a child’s behavior is not due to his/her disability, the child can be disciplined in the same way and for as long as nondisabled children, except that a FAPE must continue to be provided to the child with a disability. If the removal is not a change in placement, the IEP team must only meet if one or more members of the IEP team think modifications are necessary.
Removal for Serious Offenses

School authorities can remove a child with a disability from his/her regular school placement for up to 45 school days at a time, without regard to a manifestation determination, if the child has:

- Brought a weapon to school or to a school function
- Knowingly possessed or used illegal drugs
- Sold or solicited the sale of controlled substances while at school or a school function
- Inflicted serious bodily injury upon another person while at school, on school premises or at a school function

Serious bodily injury is defined in U.S. Code, Title 18, Section 1365(h)(3) as a cut, abrasion, bruise, burn, or disfigurement; physical pain; illness; impairment of the function of a bodily member, organ, or mental faculty; or any other injury to the body, no matter how temporary, that 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.

Removal to a Disciplinary Alternative Setting

If school officials believe that maintaining current placement of a child with a disability is substantially likely to result in injury to the student or others in the child’s regular placement, they can ask an impartial hearing officer to order that the child be removed to an interim disciplinary alternative educational placement for up to 45 days.

If, at the end of the disciplinary alternative educational placement, school officials believe that it would be dangerous to return the child to the regular placement because the child would be substantially likely to injure him/herself in that placement, they can ask an impartial hearing officer to order that the child remain in the disciplinary alternative educational placement for an additional 45 days.

If necessary, the school officials also can request subsequent extensions of these interim disciplinary alternative educational settings for up to 45 days at a time if they continue to believe that the child would be substantially likely to injure him/herself or others if returned to the regular placement.

Restraint of Students With Disabilities

Rules on Restraint

Texas Education Agency rules (19 TAC, Sec. 89.1053) limit the use of physical force or a mechanical device that would significantly restrict the free movement of all or a portion of a student’s body.
The use of restraint must:

- Be limited to such force as is reasonable to address an emergency
- Be discontinued when an emergency no longer exists
- Be implemented to protect the health and safety of the student and others, and
- Not deprive the student of basic human necessities

Exceptions

Actions that are not considered restraint include 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
- Redirect attention
- Provide guidance to a location
- Provide comfort

Training

Anyone who restrains a student must receive training within 30 school days, if not previously trained in restraint. The training must include prevention and de-escalation techniques, restraint alternatives, accepted practices and standards regarding behavior management.

Notification and Documentation

- A principal or designee must receive notice of the restraint that day.
- A good faith effort must be made that day to notify the student’s parent(s).
- Written notice to the parent must be placed in the mail or given to the parent within one business day
- The student’s eligibility folder must contain documentation of the use of restraint.

The documentation of the restraint and the parent notice must include the who, what, when, where and how of the restraint, a description of the conduct requiring the restraint, and the alternatives and de-escalation attempted.

Time-outs and Seclusion

TEA rules also include limitations on the use of time-out and seclusion. Time-out occur when a student is separated from other students for a limited period in a setting in which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.