

OPERATING GUIDELINE

WHEN BEHAVIOR IS NOT A MANIFESTATION

Boerne ISD

130901

Legal Framework: [When Behavior is Not a Manifestation](#)

Category: Discipline

"[T]he changes in the law will make it easier for review team members to conclude that the behavior in question is not a manifestation of a child's disability, enabling school personnel to apply disciplinary sanctions in more cases involving children with disabilities." 71 Fed. Reg. 46749 (August 14, 2006).

"What recourse does a parent have if he or she disagrees with the determination that his or her child's behavior was not a manifestation of the child's disability? Answer: The regulations, in 34 CFR § 300.532(a), provide that the parent of a child with a disability who disagrees with the manifestation determination under 34 CFR § 300.530(e) may appeal the decision by requesting a hearing. A parent also has the right to file a State complaint alleging a denial of a free appropriate public education [FAPE] and to request voluntary mediation under 34 CFR § 300.506." [OSERS Questions and Answers on Discipline Procedures, Q/A F-2 \(Revised June 2009\)](#).

"Is there a conflict between 34 CFR §300.530(c), allowing school personnel, under certain circumstances, to apply the relevant disciplinary procedures to a child with a disability in the same manner and for the same duration as would be applied to children without disabilities, and the provision, in 34 CFR §300.532(b)(2), that the hearing officer may order a change in placement for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others? Answer: No, there is no conflict between the two provisions. In addition to the specific authority set out in 34 CFR §300.532, a hearing officer also has the authority to uphold a disciplinary change of placement made by school personnel under 34 CFR §300.530(c). Where the parent brings a due process hearing to challenge a disciplinary change of placement made by school personnel under 34 CFR §300.530(c) and the hearing officer concludes that the disciplinary requirements of Part B have been met, the hearing officer would properly uphold the disciplinary change of placement. If the hearing officer concludes that the child's behavior was a manifestation of the child's disability, but also determines that returning the child to the prior placement is substantially likely to result in injury to the child or to others, then the hearing officer, under 34 CFR §300.532(b)(2), may change the placement to an appropriate [interim alternative educational setting] IAES for not more than 45 school days." [OSERS Questions and Answers on Discipline Procedures, Q/A F-6 \(Revised June 2009\)](#).

Through the implementation of the Boerne ISD policies and procedures as outlined in the [Legal Framework](#) for the Child-Centered Special Education Process, the Boerne ISD ensures that when applying the relevant disciplinary procedures to a child with a disability as a result of a determination that the child's behavior is not a manifestation of the child's disability, the admission, review, and dismissal (ARD) committee will determine the services to be provided to the child during the period of removal as required by the Individuals with Disabilities Education Act (IDEA) and its accompanying federal regulations, state statutes and regulations.

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PERSONS RESPONSIBLE: IEP Committee

If the committee determines that the conduct is 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 services during periods of removal must be provided. A functional behavior assessment will need to be completed. Once the FBA is completed the committee must meet to determine whether a behavior improvement plan is warranted

Boerne ISD monitors rates of suspension and expulsion for students with disabilities through the monitoring of monthly reports and ISS/OSS data by assistant principals at each campus. Data is reviewed to look for patterns of behavior to further determine if any program changes or revisions to a student's FBA, BIP, and/or accommodations may be warranted.

Campus, district, and regional training is offered in the areas of conducting manifestation determination reviews (MDRs), positive behavior supports, and options/alternatives to suspension. A district-wide initiative is also in place at every campus to support the social-emotional learning of all students with and without disabilities.