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DISCIPLINE FOR STUDENTS UNDER IDEA

19 TAC §89.1050(g)

All disciplinary actions regarding students with disabilities shall be conducted in accordance with the most current federal and state laws. {34 CFR §300.121, §300.519 - 300.529 (relating to Discipline Procedures), TEC Chapter 37, Subchapter A (Alternative Settings for Behavior Management), TEC 37.004 {Placement of Students with Disabilities}, and §89.1053 (relating to use of Restraint and Time-out).

Contact the Special Education Director for consideration of appropriate action relating to students with disabilities.

I. PROCEDURAL SAFEGUARDS

All procedural safeguards, including required notice and consents, will be followed throughout the process of disciplinary action for students with disabilities.

II. REMOVALS TOTALING TEN (10) SCHOOL DAYS

The ARD/IEP Committee meeting will be held within 10 school days of the first disciplinary change in placement totaling more than 10 consecutive school days, such as expulsions, removal to alternative education programs, or suspensions or when the student is subjected to a series of removals that constitute a “pattern” because they cumulate to more than 10 school days in a school year. Under Texas statute, a suspension may not exceed 3 school days. TEC§37.005

A “pattern” must be determined by factors such as length of removal, the total amount of time the child is removed, and the proximity of the removals to one another. Therefore, a child who has a Behavior Intervention Plan (BIP), for subsequent removals; the ARD/IEP team members shall review the BIP and its implementation to determine if modification is needed. If one or more team members believe modifications are necessary an ARD/IEP committee will be convened. Otherwise, no ARD/IEP MEETING is required. For more information, see below:

A. Removals That Do Not Constitute a Change in Placement

An ARD/IEP Committee will be convened either before or not later than ten (10) business days after the student was **first** removed for more than 10 school days in a school year.

1. The ARD/IEP committee will:
 - a. consider special education and disciplinary records of the student with a disability prior to the final determination regarding the disciplinary action;
 - b. convene to **develop an assessment plan** if they had not conducted or planned a functional behavioral assessment (FBA), developed a Behavior Intervention Plan (BIP) to address the behavior, and implemented the BIP; or
 - c. review and/or modify the Behavior Intervention Plan (BIP) if the student **already had a BIP**. Administrative staff in each building will:

- (1. have a copy of the BIP for student's on their campus who have a BIP developed by the ARD/IEP Committee,
- (2. follow provisions of the current BIP until the ARD/IEP committee reviews and determines any necessary changes.

B. Subsequent Short Term Removals (after the student has already been removed for more than 10 school days in the school year)

An ARD/IEP Committee will:

1. Consider special education and disciplinary records of the student with a disability prior to the final determination regarding the disciplinary action;
2. Review the student's BIP and its implementation to determine if modifications are necessary;
3. If one or more members of the ARD/IEP committee believed that modifications were needed, an ARD/IEP meeting will be held to modify the BIP and its implementation.
4. For any days of removal of a student in excess of 10 school days in a school year, the ARD/IEP committee determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

C. Removals That Do Constitute a Change in Placement

1. Not later than the date on which the decision which resulted in the change of placement was made, CISD **must notify the student's parents** of the decision and provide the parents with notice of their procedural safeguards.
2. Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take action was made, CISD will convene a meeting of the student's ARD/IEP committee.
3. Consider special education and disciplinary records of the student with a disability prior to the final determination regarding the disciplinary action.
4. If a FBA and BIP were not already in place, develop an assessment plan to include a functional behavioral assessment (FBA) and as soon as practical after completing the FBA, develop a Behavior Intervention Plan (BIP) to address the behavior, or if a BIP was developed, review the plan and its implementation to address the behavior.
5. Conduct a manifestation determination review:
 - a. immediately if possible (and if the parents waive the 5 day notice), but not later than 10 school days after the first date of disciplinary action which proposes to change the student's placement for more than 10 school days, or when the student is subject to a series of removals that constitute a "pattern"
 - b. if drug/weapon offense has occurred,
 - c. if a hearing officer's approval is sought for interim placement of a dangerous student
6. The manifestation review will consider:
 - a. evaluation and diagnostic results or other relevant information supplied by the parents of the student,
 - b. observations of the student, and
 - c. the student's IEP and placement.
7. The ARD/IEP Committee will conduct a manifestation determination review and consider evaluation and diagnostic results and any relevant information supplied

by the parents of the student; observations of the student; and the student's IEP and placement. Determine:

- a. in relationship to the behavior subject to disciplinary action, whether or not the student's IEP and placement were appropriate and the special education services, supplementary aides and services, and behavior intervention strategies provided were consistent with the student's IEP,
 - b. whether or not, the student's disability impaired the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action, and
 - c. whether or not, the student's disability impaired the ability of the student to control the behavior subject to disciplinary action.
 - * If the behavior is found to be a manifestation of the student's disability, CISD will take immediate steps to remedy any deficiencies found in the IEP, placement, or implementation.
 - * If the behavior is not a manifestation of the student's disability, CISD relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner they would be applied to students without disabilities.
8. For any days of removal of a student in excess of 10 school days in a school year, the ARD/IEP committee determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

III. REMOVALS FOR DRUGS/WEAPONS

In the event a student with a disability has been removed to AEP for 45 calendar days or more for possessing a weapon at school or a school function or for using or possessing illegal drugs or selling or soliciting the sale of a controlled substance at school or a school function, CISD:

- A. Convened a meeting of the student's ARD/IEP committee and complied with 1-8 above;
- B. Exception: The student may be placed by school personnel at the AEP for not more than 45 calendar days (provided a student without a disability would be subject to such discipline for a similar amount of time) regardless of the results of the ARD/IEP committee meeting.

IV. PLACEMENT DURING APPEALS RELATING TO REMOVALS FOR DRUGS/WEAPONS

If the student's parent requests a due process hearing or an appeal to challenge the interim alternative education setting or the manifestation determination, the student must:

- A. Remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period whichever comes first. *(this applies if the assignment to the alternative educational setting is 45 days or less)*
or
- B. Remain in the placement before the misconduct in question if the AEP assignment is for more than 45 calendar days or if CISD proposes to change the student's placement after the end of the 45 calendar days.
(Exception: The student placed at the AEP can remain at the AEP if CISD obtains a ruling of a due process hearing officer or a judge of competent jurisdiction permitting CISD to place the student in the AEP pending the resolution of the due process hearing.)

TEC §37.006(a), §37.007(a) Students with disabilities are not placed in alternative education programs solely for educational reasons - a student must meet the criteria of the TEC. See remaining pages in this section.

More information on the Student's Status During Proceedings may be found in the Procedural Safeguards section.

V. USE OF CONFINEMENT, RESTRAINT, SECLUSION AND TIME OUT TEC §37.0021

CISD will NOT place students with disabilities in seclusion or confine in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique.

- A. The following definitions are based on TEC §37.0021: (see also below TAC definitions)
 - 1. "Restraint" means the use of physical force or a mechanical device to restrict the free movement of all or a portion of a student's body.
 - 2. "Seclusion" means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:
 - a. is designed solely to seclude a person; and
 - b. contains less than 50 square feet of space.
 - 3. "Time-out" means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:
 - a. that is not locked; and
 - b. from which the student is not physically prevented from leaving.
- B. An employee, volunteer, or an independent contractor of CISD may not place a student in "seclusion". This prohibition does not apply to the use of seclusion in a facility to which the following laws, rules, or regulations apply:
 - 1. The Children's Health Act of 2000, Pub. L. No. 106-310, any subsequent amendments to that Act, any regulations adopted under that Act, or any subsequent amendments to those regulations.
- C. "Weapon" includes any weapon described under TEC §37.007(a)(1).
- D. 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; and
 2. The confinement is necessary to prevent the student from causing bodily harm to the student or another person.
- E. CISD will follow local policy on the use of restraint and time-out for students with disabilities if restraint or time-out is to be used for any students with disabilities. Section 3 of Senate Bill 1196 provides that not later than August 1, 2002, the commissioner of education shall adopt rules required by TEC 37.0021, on the use of restraint and time-out. These rules are listed below in TAC §89.1053.

VI. PROCEDURES FOR USE OF RESTRAINT AND TIME-OUT TAC §89.1053

- A. Requirement to implement:
In addition to the requirements of 34 Code of Federal Regulations (CFR) §300.346(a)(2)(i) and (c), CISD must implement the provisions of this section regarding the use of restraint and time-out. In accordance with the provisions of Texas Education Code (TEC) §37.0021 (Use of Confinement Restraint, Seclusion, and Time-Out) it is the policy of the state to treat all students with dignity and respect.
- B. Definitions:
1. Emergency means a situation in which a student's behavior poses a threat of:
 - a. imminent, serious physical harm to the student or others; or
 - b. imminent, serious property destruction
 2. Restraint means the use of physical force or a mechanical device to restrict the free movement of all or a portion of the student's body.
 3. Time-out means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:
 - a. that is not locked; and
 - b. from which the student is not physically prevented from leaving.
- C. Use of restraint:
A school employee, volunteer or independent contractor may use restraint only in an emergency as defined in subsection B. of this section and with the following limitations:
1. Restraint will be limited to the use of such reasonable force as is necessary to address the emergency.
 2. Restraint will be discontinued at the point at which the emergency no longer exists.
 3. Restraint will be implemented in such a way as to protect the health and safety of the student and others.
 4. Restraint will not deprive the student of basic human necessities.
- D. Training on use of restraint:
Training for school employees, volunteers, or independent contractors will be provided according to the following requirements:

1. Not later than April 1, 2003, 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.
 2. After April 1, 2003, 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.
 4. All trained personnel will receive instruction in professionally accepted practices and standards regarding behavior management and the use of restraint.
- E. Documentation and notification on use of restraint:
In a case in which restraint is used, school employees, volunteers, or independent contractors will implement the following documentation requirements:
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. On the day restraint is utilized, a good faith effort will be made to verbally notify the parent(s) regarding the use of restraint.
 3. 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.
 4. Written documentation 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 behavioral intervention plan (BIP).
 5. Written notification to the parent(s) and documentation to the student's special education eligibility folder will include the following:
 - (a) name of the student;
 - (b) name of the staff member(s) 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; and
 - (i) information documenting parent contact and notification.
- F. Clarification regarding restraint:
For the purposes of subsections C. – E. of this section, 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;

4. or seat belts and other safety equipment used to secure students during transportation.

G. Use of time-out:

A school employee, volunteer, or independent contractor may use time-out in accordance with subsection B.3. of this section with the following limitations:

1. Physical force or threat of physical force will not be used to place a student in time-out.
2. Time-out may 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.
3. Use of time-out will 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.

H. Training on use of time-out:

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

1. Not later than April 1, 2003, general or special education personnel who implement time-out based on requirements established in a student's IEP and/or BIP must be trained in the use of time-out.
2. After April 1, 2003, newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or BIP must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.
3. Training on the use of time-out will be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, and must address the impact of 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.
4. All trained personnel will receive instruction in current professionally accented practices and standards regarding behavior management and the use of time-out.

I. Documentation on use of time-out:

Necessary documentation or data collection regarding the use of time-out, if any, will be addressed in the IEP or BIP. The admission, review, and dismissal (ARD) committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

J. Student safety:

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.

K. Data collection requirement:

Beginning with the 2003-2004 school year, with the exception of actions covered by subsection F. of this section, cumulative data regarding the use of restraint must be reported through the Public Education Information Management System (PEIMS).

VII. TIME-OUT

The staff of CISD will be trained and may follow the guidelines below in use of time-out. Time-out is outlined below as either non-exclusionary, which is the least restrictive, or Exclusionary time-out which results from more serious behaviors. All rules above (G. – J.) will be implemented. Exclusionary time-out should be used when non-exclusionary attempts are not successful.

A. Non-exclusionary time-out:

1. **Planned Ignoring:** This is the simplest form of non-exclusionary time-out. Planned ignoring involves the systematic removal of social reinforcement (attention) by the teacher for a specific amount of time. When the student misbehaves, the teacher breaks eye contact, turns away, and stops all social interaction with the student. Planned ignoring assumes that the teacher's social attention is reinforcing. If it is not, then this will not work to decrease the behavior. If planned ignoring is the appropriate response, the teacher should prepare initially for an increase in the behavior before the behavior will decrease.
2. **Head down on desk:** This has been used by teachers for a long time. The student is simply told to put his head down on his desk for a short period of time. (timer may be used)
3. **Observation time-out:** The student is removed from his/her desk for misbehaving and is usually placed in a desk away from the main classroom activities for a short period of time. The student is allowed/required to observe the classroom discussion/activities, but is not allowed to actively participate in them. (use of timer recommended – 5 minutes and may reset once)
4. **Non-observation time-out (instructional isolation):** This is basically the same as observation time-out, except the student is not allowed to observe the classroom activities. Usually, the student is placed in a particular part of the classroom that does not provide for viewing other students. (use of timer recommended – 10 minutes and may reset once)

B. Exclusionary time-out:

The student is removed from the classroom and placed in a separate environment for cooling down and instructional activities to resume. Clearly, this is more restrictive and other types of time-out should be attempted first.

1. **Isolated instruction:** This is extended time-out from the classroom. The student is required to complete class work in an isolated area in the classroom, another classroom, or the office.
2. **In-school Suspension:** This program is designed to supervise and assist students who have problems related to their general education setting. Reference the campus Student Code of Conduct for complete guidelines.

Subtitle G. Safe Schools
Chapter 37. Discipline; Law and Order
Subchapter A. Alternative Settings for Behavior Management

The following information has been taken from the above referenced Texas Education Code. Refer to CISD local district's Policy and Procedures for additional information on Discipline. You may also download all sections of Chapter 37 by logging on to www.capitol.state.tx.us/statutes.

TEC §37.004 Placement of Students with Disabilities

- A. In CISD, the placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal committee.
- B. Any disciplinary action regarding a student with a disability who receives special education services that would constitute a change in placement under federal law may be taken only after the student's ARD committee conducts a manifestation determination review. Any disciplinary action shall be determined after requiring the provision of functional behavioral assessments and positive behavioral interventions, strategies, and supports; and behavioral intervention plans.
- C. A student with a disability who receives special education services may not be placed in alternative education programs solely for educational purposes.
- D. A teacher in an alternative education program who has a special education assignment must hold an appropriate certificate or permit for that assignment.

TAC §89.1050 Discretionary Placements in Juvenile Justice Alternative Education Programs (JJAEP)

- A. In a county with a juvenile justice alternative education program (JJAEP), CISD shall invite the administrator of the JJAEP or the administrator's designee to an admission, review, and dismissal (ARD) committee meeting convened to discuss a student's expulsion under the provisions listed in Texas Education Code (TEC), §37.004(e), relating to offenses for which a school district may expel a student. The reasonable notice of the ARD committee meeting must be provided consistent with 34 CFR, §300.345 and §300.503 and §89.1015 of this title (relating to Time Line for All Notices), and a copy of the student's current IEP must be provided to the JJAEP administrator or designee with the notice. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's placement in the JJAEP and implementation of the student's current IEP in the JJAEP.
- B. In accordance with TEC, §37.004(f), when the JJAEP administrator or designee provides written notice of specific concerns to the school district from which a student was expelled under one of the provisions listed in TEC, §37.004(e), relating to offenses for which a school district may expel a student, an ARD committee meeting must be convened to reconsider placement of the student in the JJAEP. The reasonable notice of the ARD committee meeting must be provided consistent with

34 CFR, §300.345 and §300.503, and §89.1015 of this title (relating to Time Line for all Notices). If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's continued placement in the JJAEP.

TEC §37.006 Removal for Certain Conduct

- A. Except as provided by Section 37.007(a)(3) or (b), a student shall be removed from class and placed in an alternative education program as provided by Section 37.008 if the student commits the following on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:
1. Engages in conduct punishable as a felony;
 2. Engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(1), Penal Code, or terroristic threat under Section 22.07, Penal Code;
 3. Sells, gives, or delivers to another person or possesses or uses or is under the influence of:
 - (a) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.; or
 - (b) a dangerous drug, as defined by Chapter 483, Health and Safety Code;
 4. Sells, gives, or delivers to another person an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code, commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage;
 5. Engages in conduct that contains the elements of an offense relating to abusable glue or aerosol paint under Sections 485.031 through 485.035, Health and Safety Code, or relating to volatile chemicals under Chapter 484, Health and Safety Code; or
 6. Engages in conduct that contains the elements of the offense of public lewdness under Section 21.07, Penal Code, or indecent exposure under Section 21.08, Penal Code.
- B. Except as provided by Section 37.007(d), a student shall be removed from class and placed in an alternative education program under Section 37.008 if the student engages in conduct that contains the elements of the offense of retaliation under Section 36.06, Penal Code, against any school employee.
- C. In addition to Subsection A, a student shall be removed from class and placed in an alternative education program under Section 37.008 based on conduct occurring off campus and while the student not in attendance at a school-sponsored or school-related activity if:
1. The student receives deferred prosecution under Section 53.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code;
 2. A court or jury finds that the student has engaged in delinquent conduct under Section 54.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code; or

3. The superintendent or the superintendent's designee has a reasonable belief that the student has engaged in a conduct defined as a felony offense in Title 5, Penal Code.
- D. In addition to Subsection A, a student may be removed from class and placed in an alternative education program under Section 37.008 based on conduct occurring off campus and while the student not in attendance at a school-sponsored or school-related activity if:
 1. The superintendent or the superintendent's designee has a reasonable belief that the student has engaged in conduct defined as a felony offense other than those defined in Title 5, Penal Code; and
 2. 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.
 - E. In determining whether there is a reasonable belief that a student has engaged in conduct defined as a felony offense by the Penal Code, the superintendent or the superintendent's designee may consider all available information, including the information furnished under Article 15.27, Code of Criminal Procedure.
 - F. Subject to Section 37.007(e), a student who is younger than 10 years of age shall be removed from class and placed in an alternative education program under Section 37.008 if the student engages in conduct described by Section 37.007. An elementary school student may not be placed in an alternative education program with any other student who is not an elementary school student.
 - G. The terms of a placement under this section must prohibit the student from attending or participating in a school-sponsored or school-related activity.
 - H. On receipt of notice under Article 15.27(g), Code of Criminal Procedure, the superintendent or the superintendent's designee shall review the student's placement in the alternative education program. The student may not be returned to the regular classroom pending the review. The superintendent or the superintendent's designee shall schedule a review of the student's placement with the student's parent or guardian not later than the third class day after the superintendent or superintendent's designee receives notice from the office or official designated by the court. After reviewing the notice and receiving information from the student's parent or guardian, the superintendent or the superintendent's designee may continue the student's placement in the alternative education program if there is reason to believe that the presence of the student in the regular classroom threatens the safety of other students or teachers.
 - I. The student or the student's parent or guardian may appeal the superintendent's decision under Subsection H to the board of trustees. The student may not be returned to the regular classroom pending the appeal. The board shall, at the next scheduled meeting, review the notice provided under Article 15.27(g), Code of Criminal Procedure, and receive information from the student, the student's parent or guardian, and the superintendent or superintendent's designee and confirm or reverse the decision under Subsection H. The board shall make a record of the proceedings. If the board confirms the decision of the superintendent or superintendent's designee,

the board shall inform the student and the student's parent or guardian of the right to appeal to the commissioner under Subsection J.

- J. Notwithstanding Section 7.057(e), the decision of the board of trustees under Subsection I may be appealed to the commissioner as provided by Sections 7.057(b), (c), (d), and (f). The student may not be returned to the regular classroom pending the appeal.
- K. Subsections H, I, and J do not apply to placements made in accordance with Subsection A.
- L. Notwithstanding any other provision of this code, a student who is younger than six years of age may not be removed from class and placed in an alternative education program.

TEC - CHAPTER 37 § 37.007. Expulsion for Serious Offenses

- A. A student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property:
 - 1. Uses, exhibits, or possesses:
 - (a) a firearm as defined by Section 46.01(3), Penal Code;
 - (b) an illegal knife as defined by Section 46.01(6), Penal Code, or by local policy;
 - (c) a club as defined by Section 46.01(1), Penal Code; or
 - (d) a weapon listed as a prohibited weapon under Section 46.05, Penal Code;
 - 2. Engages in conduct that contains the elements of the offense of:
 - (a) aggravated assault under Section 22.02, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;
 - (b) arson under Section 28.02, Penal Code;
 - (c) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;
 - (d) indecency with a child under Section 21.11, Penal Code; or
 - (e) aggravated kidnapping under Section 20.04, Penal Code; or
 - 3. Engages in conduct specified by Section 37.006(a)(3) or (4), if the conduct is punishable as a felony.
- B. A student may be expelled if the student, while on school property or while attending a school-sponsored or school-related activity on or off of school property:
 - 1. Sells, gives, or delivers to another person or possesses, uses, or is under the influence of any amount of:
 - (a) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;
 - (b) a dangerous drug, as defined by Chapter 483, Health and Safety Code; or
 - (c) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;
 - 2. Engages in conduct that contains the elements of an offense relating to abusable glue or aerosol paint under Sections 485.031 through 485.035, Health and Safety Code, or relating to volatile chemicals under Chapter 484, Health and Safety Code; or

3. Engages in conduct that contains the elements of an offense under Section 22.01(a)(I), Penal Code, against a school district employee or a volunteer as defined by Section 22.053.
- C. A student may be expelled if the student, while placed in an alternative education program for disciplinary reasons, continues to engage in serious or persistent misbehavior that violates the district's student code of conduct.
 - D. A student shall be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection A, and may be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection B.3, against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property.
 - E. In accordance with federal law, a local educational agency, including a school district, home-rule school district, or open-enrollment charter school, shall expel a student who brings a firearm, as defined by 18 U.S.C. Section 921, to school. The student must be expelled from the student's regular campus for a period of at least one year, except that:
 1. The superintendent or other chief administrative officer of the school district or of the other local educational agency, as defined by 20 U.S.C. Section 2891, may modify the length of the expulsion in the case of an individual student;
 2. The district or other local educational agency shall provide educational services to an expelled student in an alternative education program as provided by Section 37.008 if the student is younger than 10 years of age on the date of expulsion; and
 3. The district or other local educational agency may provide educational services to an expelled student who is older than 10 years of age in an alternative education program as provided in Section 37.008.
 - F. A student who engages in conduct that contains the elements of the offense of criminal mischief under be referred to the authorized officer of the juvenile court regardless of whether the student is expelled.
 - G. A school district shall inform each teacher of the conduct of a student who has engaged in any violation listed in this section. A teacher shall keep the information received in this subsection confidential. The State Board for Educator Certification may revoke or suspend the certification of a teacher who intentionally violates this subsection.
 - H. Subject to Subsection E, notwithstanding any other provision of this section, a student who is younger than 10 years of age may not be expelled for engaging in conduct described by this section.

34 CFR §300.527 Protections for children not yet eligible for special education and related services

- A. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated *any* rule or code of conduct of CISD, including *any* behavior described in Sections §300.520 or 300.521, may assert any of the protections provided for in this part if CISD had knowledge (as determined in accordance with paragraph (B) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
- B. Basis of knowledge:
CISD will be deemed to have knowledge that a child is a child with a disability if:
1. The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of CISD that the child is in need of special education and related services;
 2. The behavior or performance of the child demonstrates the need for these services, in accordance with Section §300.7;
 3. The parent of the child has requested an evaluation of the child pursuant to Sections §300.530-300.536; or
 4. The teacher of the child, or other personnel of CISD, has expressed concern about the behavior or performance of the child to the director of special education of CISD or to other personnel in accordance with CISD's established child find or special education referral system.
- C. Exception: A public agency would not be deemed to have knowledge under paragraph B of this section if, as a result of receiving the information specified in that paragraph, CISD ~ either--
1. Conducted an evaluation under Sections §300.530- 300536, and determined that the child was not a child with a disability under this part; or
 2. Determined that an evaluation was not necessary; and
 3. Provided notice to the child's parents of its determination under paragraph C1 of this section, consistent with Section §300.503.
- D. Conditions that apply if no basis of knowledge.
1. If CISD does not have knowledge that a child is a child with a disability (in accordance with paragraphs B and C of this section) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph D2 of this section.
 2. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under §300.520 or §300.521, the evaluation must be conducted in an expedited manner.
 3. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services,
 4. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by CISD and information provided by the parents, CISD shall provide special education and related services in accordance with the provisions of this part, including the requirements of §300.520- 300.529 and section 612(a)(1)(A) of the Act.