



BIRDVILLE INDEPENDENT SCHOOL DISTRICT SPECIAL EDUCATION OPERATING PROCEDURES PROTECTION FOR CHILDREN NOT YET ELIGIBLE

Birdville ISD Board Policy along with these *Special Education Operating Procedures* constitute the Policies and Procedures of Birdville ISD, designed to be consistent with the State policies and procedures developed pursuant to the IDEA. Birdville ISD *Special Education Operating Procedures* are not to be for the purpose of creating a requirement that is not otherwise imposed by the Individuals with Disabilities Education Improvement Act (“IDEA”), together with its implementing federal regulations, state statutes and rules, as they shall from time to time be amended, and shall not be construed to create a higher standard than that established by IDEA. These *Special Education Operating Procedures* will be posted on Birdville ISD’s website. These *Special Education Operating Procedures* should be interpreted consistent with the IDEA. Birdville ISD’s *Special Education Operating Procedures* are reviewed and updated, as needed, on at least an annual basis. Birdville ISD will make timely changes to policies and procedures in response to IDEA amendments, regulatory or rule changes, changes to state policy, or new legal interpretation as are necessary to bring Birdville ISD into compliance with the requirements of IDEA. Birdville ISD maintains systems to ensure that all students with disabilities residing in the District, including students with disabilities attending non-public schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and provided a free appropriate public education. Birdville ISD maintains systems to ensure that students with disabilities and their parents are afforded the procedural safeguards required under the IDEA (and its implementing federal regulations, state statutes and rules) including with respect to the confidentiality of records and personally identifiable information.

Can a student who has not been determined to be eligible for special education and related services under the IDEA claim these disciplinary protections?

Yes, a student “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 a code of student conduct, may assert any of the protections provided for in this part...”¹

What circumstances must be present for the student to be entitled to these disciplinary protections?

Birdville ISD shall apply the protections to the student if Birdville ISD had knowledge that the student was a child with a disability before the behavior that precipitated the disciplinary action occurred.²

What circumstances trigger “knowledge”?

¹ 34 C.F.R. § 300.534(a).; *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, Q/A I-1 (Revised July 2022).

² 34 C.F.R. § 300.534.

The Campus Principal shall determine whether one of the following bases of knowledge existed before the behavior that precipitated the disciplinary incident occurred:

- The parent of the student expressed concern in writing to the Campus Principal or Counselor or a teacher of the student, that the student needs special education and related services;
- The parent of the student requested a special education evaluation of the student; or
- The teacher of the student, or other personnel of Birdville ISD, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the Campus Principal or Counselor or to other supervisory personnel of Birdville ISD.³

If the Campus Principal determines there is a basis of knowledge, Birdville ISD shall be deemed to have knowledge that the student is a child with a disability unless the Campus Principal determines that one of the exceptions apply.

Generally, a student's participation in an RTI process, or a multi-tiered system of supports, in and of itself, is not sufficient to trigger the bases of knowledge requirement that allows a student and parent to assert IDEA discipline protections.⁴

What are the exceptions?

Even if there is a basis for knowledge, Birdville ISD shall **not** be considered to have knowledge if one of the following exceptions applies:

- Although the District provided the parent the opportunity consent for an evaluation, as described in the District's Operating Procedures, the parent of the student has not consented to an evaluation of the student;
- The parent of the student has refused to consent to the student's receipt of special education services; or
- The student has been evaluated in accordance with Birdville ISD's Special Education Operating Procedures and determined to not be a child with a disability.⁵

³ 34 C.F.R. § 300.534(b); *OSERS, Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, Q/A I-2 (Revised July 2022).

⁴ *OSERS, Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, Q/A I-5 (Revised July 2022).

⁵ 34 C.F.R. § 300.534(c).

This determination shall be made on a case-by-case basis by the campus Principal.

What if the student was receiving special education services, but the parent later revokes consent for services?

When a parent revokes consent for special education and related services under Birdville ISD's Special Education Operating Procedures, the parent has refused services; therefore, Birdville ISD is not deemed to have knowledge that the student is a child with a disability and the student will be subject to the same disciplinary procedures and timelines applicable to general education students and not entitled to discipline protections under these procedures.⁶

If a student is referred for a special education evaluation after a disciplinary incident, and there is no basis of knowledge, are there any protections for the student?

Even if there is no basis of knowledge, if a request is made for an evaluation of the student during the time period in which the student is subjected to disciplinary measures, the campus Principal shall ensure the student is evaluated consistent with Birdville ISD's Special Education Operating Procedures, and further ensure that such evaluation is conducted in an expedited manner.⁷ Although the evaluation must be completed consistent with the District's Special Education Operating Procedures, if there is no basis of knowledge, the child may be subjected to the same disciplinary measures that are applied to children without disabilities who engage in comparable behaviors.⁸

⁶ OSERS, *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, Q/A I-3 (Revised July 2022).

⁷ 34 C.F.R. § 300.534(d)(2)(i); see also, *OSEP Letter to Combs* (August 15, 2008), <http://www2.ed.gov/policy/speced/guid/idea/letters/2008-3/combs081508rtieval3q2008.pdf>.

⁸ OSERS, *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, Q/A I-6 (Revised July 2022).