

CHAPTER 10. BEHAVIOR

Section 1. Multi-Tiered System of Supports (MTSS)

OVERVIEW

A Multi-Tiered System of Supports (MTSS) is a comprehensive continuum of evidence-based systemic practices to support a rapid response to students' needs in academic and social-emotional-behavioral (SEB) skills, with regular observation to facilitate data-based instructional decision making (20 U.S.C. § 7801(33)). It is not a program or a referral process to special education. It is a multi-level, proactive, prevention system to maximize all student achievement and reduce problem behaviors throughout the school community.

MTSS framework has key components that are the foundation; however, the implementation may look different from school to school. LEAs have discretion creating specific data decision rules and procedures when designing their own MTSS program.

Core components of OKMTSS, the Oklahoma framework, include Sustainable Teaming, Evidence-Based Practices, Data-Driven Decision Making, and Continuous Improvement Cycle. Within these components, there are essential activities that should be included in each LEA's MTSS program, including:

- Sustainable Teaming
 - Participation in professional development
 - Develop teaming structures to review data for developing intervention plans and instruction
- Evidence-Based Practices
 - Universal Screening of All Students (within specific grade levels), and
 - High-Quality Evidence-Based Instruction and Interventions
- Data-Driven Decision-Making
 - Objective Decision Rules
 - Progress Monitoring
 - Regular Data Review
- Continuous Improvement Cycle
 - Evaluation of MTSS effectiveness
 - Implementation Fidelity/Integrity (throughout the MTSS framework)

An MTSS framework has a systematic implementation of increasingly more intensive levels of interventions, which are referred to as tiers. Tier 1 represents **universal supports**, curriculum, and instruction provided to all students. The exposure of the core instruction, be it academic or behavior, must be implemented with fidelity to all students with differentiation and/or reteaching to support their learning.

Universal screening, using a general outcome measure, should provide staff with information on where a student is performing in relation to an expected benchmark. A general outcome measure allows LEAs to track a student's performance over time and not a onetime measurement of mastery regarding a specific skill. A general outcome measure is, for example, a curriculum-based measurement (CBM), or a common formative assessment (CFA). There are other validated instruments that are norm-referenced such as rating scales for measuring behavior (e.g., internal and external behaviors) that may also be used as a universal screening. Measures used should be predictive of future difficulties in a skill or subject area. It is best practice to conduct the universal screening three times per year (beginning of year, middle of year, and end of year), in order to make timely decisions for individual students who may not be progressing as expected in the general curriculum. Students who do not meet proficiency level for their grade, as determined by LEA decision rules, are identified as "at-risk" and are in need of additional supports or more targeted instruction/intervention. Additionally, this data can be used at the grade, site, or district-wide level to identify where general curricular supports may not be meeting the needs of a majority of students. Students identified through universal screening general outcome measures as being "at-risk" may be given additional skill diagnostic assessments to identify specific skill deficits to be targeted by Tier 2 interventions. These students are then provided with targeted intervention and instructional supports, in addition to the universal supports within Tier 1 core instruction and class interventions. Tiers 2 and 3 interventions are layered upon existing supports to supplement student learning and are not intended to replace the core instruction at Tier 1.

Interventions selected for use as Tier 2 are considered **targeted supports** and must have evidence of effectiveness in improving the targeted skill deficit. Once a high quality, evidence-based intervention has been selected to match the student's specific skill deficit, an intervention plan is developed that includes a step-by-step intervention protocol, student outcome goal and current skill baseline, as well as a plan for collecting and reviewing progress monitoring data. Progress monitoring plans should include information on the frequency of data collection and review and how many data points will be needed to determine if intensification is warranted. This plan must be clearly communicated to the interventionist(s), the personnel who will be implementing the intervention. It is best practice to graph the student's baseline data and goal target to develop an aim line; progress monitoring data is then charted on this same graph so that educational personnel can easily and efficiently visually analyze student progress toward their goal and make educational decisions (continue intervention, intensify intervention, or end intervention). When it is determined that a student is not making adequate progress toward their goal, the team may intensify supports by adding a third layer (or Tier 3) intervention.

In a well-functioning school system, it is anticipated that approximately 5% of students should need Tier 3 **intensive supports**. These most-intensive supports are reserved for students who require intensive, strategic instruction over a prolonged period of time. Tier 3 involves more instructional time, narrower skill focus, and smaller group size, as well as an increase in explicit teaching of the targeted skills. Oftentimes, Tier 3 involves an increase in the number of opportunities the student has to respond to the intervention and receive feedback.

Treatment integrity/fidelity is a process of determining whether the interventions are accurately and consistently being provided as designed. Integrity/fidelity checks should be conducted across all tiers and should answer if the student has participated in the intended intervention dosage (frequency and duration), including accounting for student and/or staff absences; and if the interventionist provided the intervention in the appropriate and intended manner (included progress monitoring assessments), as described in the evidence-base and/or intervention protocol. Each

intervention session should be clearly documented to provide evidence of the student's attendance, as well as the student's engagement behavior during the implementation of the intervention. Intervention fidelity observations should be conducted by a secondary staff member to ensure intervention procedures are followed.

Intervention fidelity observations should be conducted within the first week of Tier 2 intervention implementation to ensure the interventionist (i.e., the person implementing the intervention) has adequate support in terms of intervention instructions, training, modeling, and to ensure that the student's participation is appropriate. Observations should occur weekly until accuracy is obtained by the interventionist for both implementation of the intervention and the administration of the progress monitoring assessment. Any concerns with intervention fidelity should be immediately addressed through additional staff training support, adjusting scheduling to ensure student participation, etc. However, an intervention fidelity observation must be carried out at least once if the student performance data indicates the need for an intervention change. The intervention should not be changed unless accuracy is obtained by the interventionist as prescribed by the team. Intervention exposure (intervention dosage) should be reviewed, minimally, every 4 weeks and before an intervention change should occur. It is important for interventionists to document any student absences during the scheduled intervention and any cancellations of scheduled intervention times.

For students referred for special education evaluation, the Review of Existing Data (RED) must document previous interventions provided to the student, as well as the integrity/fidelity of these interventions. This data will assist teams in determining if the student received the intervention(s) with a degree of fidelity sufficient to lead to growth or improvement.

A. MTSS Behavior

In the case of MTSS-Behavior, Tier 1 encompasses all of the universal supports provided to the entire student population with the intention of improving social-emotional-behavioral skills and preventing student behavior concerns. This includes explicit instruction in schoolwide behavior expectations, classroom management practices, schoolwide acknowledgement and reinforcement systems, social-emotional learning curricula, bullying prevention practices, and school climate practices. Schoolwide behavior expectations must be clearly defined and understood by all school staff and must be explicitly taught to all students. Additionally, staff should have a consistent understanding for how to reinforce expected behaviors and how to respond to inappropriate behaviors.

Universal screening for social-emotional-behavioral skills should occur three times per year (beginning of year, middle of year, and end of year) and should inform decision-making for individual students, as well as system improvement decisions. Screening data can be analyzed by school, grade-level, student group, etc. to develop plans for improving social-emotional-behavioral outcomes for all students. Additionally, it can be analyzed longitudinally to determine Tier 1 effectiveness over time. For more information regarding behavior screening, please see the National Center on Intensive Intervention, or the Center on PBIS.

Students identified as "at-risk" for social-emotional-behavioral difficulties through universal screening should receive additional assessment to determine specific lagging skills to be targeted through layered interventions. As mentioned in the [Overview section](#) above, school teams will develop an intervention plan for students identified as in need of Tier 2 or 3 supports. The

intervention plan should include the skill(s) to be targeted, evidence-based intervention(s) and the associated step-by-step protocol, and a progress monitoring plan.

B. Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP)

A Functional Behavioral Assessment (FBA) is an assessment process used to collect data to assist professionals in determining a hypothesized function, or functions, of a specific behavior. Behavior teams and IEP teams then utilize this information to design a Behavior Intervention Plan (BIP) to reduce/eliminate those behaviors and increase the frequency of a functionally equivalent replacement behavior (i.e., a desired behavior that meets the student's need and produces the same outcome the student is currently gaining with the problem or inappropriate behavior). For example, if the function of the student's behavior is escape, the student would be taught and reinforced how to request a break to learn how to appropriately escape a task demand, which will ultimately replace the problem behavior of eloping. The FBA assists teams in identifying one to three behaviors to target through direct behavioral observations and data collection that highlights behaviors that occur with the greatest frequency, duration, or at the highest intensity, or behaviors that impede learning the most. Because data is collected from direct observation of the behavior, the professional conducting the assessment also develops a clear operational definition of the behavior.

Operational definitions are observable, unambiguous, measurable, and delineate the limits of the definition through examples and non-examples. For example, rather than identifying the behavior as "aggression," the assessor might operationally define a student's behavior as "using a hand to strike another person anywhere on their body with an open palm from a distance of at least 6 inches; examples include slapping an adult on the face; a non-example would be when "a student gave an adult a high-five on their palm," because it is not considered an aggressive action. During direct observations, information is also gathered about the antecedent which describes the events and/or environmental conditions leading up to the targeted behavior (e.g., time of day, peers/adults involved, what happened before the behavior occurred, etc.), as well as the consequences or outcomes of the behavior (e.g., how did the adult/peer respond to the targeted behavior, did they escape some task or environment, did they gain access to some item or activity). The data collected through the FBA process allows the team to create a hypothesized function(s) or purpose for the behavior (such as, escape, attention, etc.). The FBA also provides a baseline of data to determine the initial frequency, duration, or intensity of the target behavior, as well as identify days, times, activities, environments, or other conditions under which the behavior is most likely to occur.

Within the MTSS-Behavior framework, the FBA could be conducted to determine services to be provided within the Tier 2 level of behavior intervention. The school team may decide to implement an evidence-based intervention first to see if it is effective at reducing the student's targeted behavior(s) (e.g., Check-In/Check-Out intervention). However, the team should consider conducting an FBA immediately if the function of the targeted behavior is difficult to identify, or if the targeted behaviors are:

- severe or extreme,
- require greater individualization, or
- require a comprehensive plan of multiple targeted interventions.

Prior to conducting a Functional Behavioral Assessment (FBA), informed parental consent must be obtained (See [Chapter 4. "Evaluation and Eligibility"](#), [Section 5. "Parent Consent", including \(B\) "Failure to Respond or Provide Consent"](#)). For students receiving intervention services, but who are

not suspected of having a disability, the LEA should develop their own informed and active consent process that aligns with the Protection of Pupil Rights Amendment (PPRA). If the team does suspect a disability, then the school personnel would complete the Review of Existing Data (RED) and obtain the Parent Consent for an initial evaluation under IDEA using the formal special education referral process.

After conducting the FBA and developing a hypothesized function from assessment data, the team will develop a Behavior Intervention Plan (BIP) that aligns evidence-based interventions with the function of targeted behaviors. A high-quality BIP will include:

- An operational definition of the target behavior(s).
- The hypothesized function(s) of the behavior(s).
- Functionally equivalent replacement behavior(s).
- Antecedent interventions to decrease the likelihood of occurrence of the target behavior(s).
- Consequent interventions to increase the likelihood of future occurrence of the replacement behavior(s).
- Consequent interventions to respond to a continued occurrence of the target behavior(s).
- Goal for behavior improvement (reduction of targeted behavior and/or increase of replacement behavior).
- Plan for data collection and progress monitoring (what data is collected, how frequently, and when it will be reviewed).

The BIP should be explicitly written so that all team members and interventionists, including any new staff added during the school year, understand the plan. It is best practice for all interventionists to receive training on all interventions, strategies, and data collection procedures included in the BIP from an individual who has special skills or qualifications in behavior intervention (e.g., certified school psychologist, Board Certified Behavior Analyst-BCBA, behavior specialist, school counselor). All school personnel with responsibility for implementing any component of the BIP should have the necessary knowledge and skills to implement the BIP with fidelity, and implementation should be monitored by a single responsible party (i.e., whoever developed the plan and/or conducted initial training on the plan).

Progress monitoring of the effectiveness of the BIP must be conducted on a regular basis as described within the BIP. It is recommended to collect data weekly regarding the frequency and duration of the targeted behavior (e.g., how often is it occurring and how long is the targeted behavior lasting when it occurs). As the targeted behavior diminishes from the baseline data collected through the FBA and/or the replacement behavior increases from baseline, the progress monitoring frequency may be reduced (bi-weekly, monthly, etc.). However, data should continue to be collected through the school year in order to demonstrate maintenance of the replacement

behavior/skill taught. The data decision rule defined within the BIP will determine when the student has met the goal and no longer needs monitoring of the behavior skill.

Even with the MTSS behavioral supports in place, if the student continues to have chronic/frequent, highly disruptive, or physically aggressive/dangerous behaviors, then the school team should consider possibly referring the student for an initial evaluation under IDEA. The team should review the FBA and existing progress monitoring data to determine if the hypothesized function of the behavior had been correctly identified or if amendments are needed. If the existing FBA has correctly identified the function of the behavior, then a new FBA may not be necessary, but the team may still consider the effectiveness of interventions provided in the BIP and make adjustments/intensifications as needed. Once an initial evaluation is completed and the multidisciplinary team determines the student is eligible for special education and related services, then the IEP team should review and revise the BIP, as needed, to reflect the most effective interventions available. It is important to note that the Behavior Intervention Plan (BIP) becomes part of the IEP and should be reviewed annually or more frequently as changes to the BIP are needed and aligned to behavioral goals and accommodations/modifications outlined within the body of the IEP document.

It is incumbent on the LEA to provide ongoing professional development to staff regarding how to appropriately address student behavior to the extent that it continues to build capacity across the LEA to deal with behavior. If the behavior of a specific student does not improve through the LEA's targeted processes, the LEA is not absolved from finding appropriate interventions and remediation of the behavior. At the point that the LEA has exceeded its capacity to successfully address the behavior, the LEA is expected to reach out to behavior professionals outside of the LEA to assist in improving the student behavior outcomes.

If a student is already identified as a student with a disability, then the IEP team must consider the special factors for the IEP development, which includes strategies, positive behavior interventions and supports, as appropriate, if the student's behavior impedes their learning or that of others. It is recommended to conduct an FBA and develop a BIP to effectively address the student's problem behaviors. Refer to [Section 4. "Shortened Day"](#) when it is a requirement for an FBA and BIP, as well as [Section 7. "Procedures for a Manifestation Determination"](#) within this chapter.

Section 2. Behavioral Threat Assessments and Crisis Plans

A. Behavioral Threat Assessment

Behavioral Threat Assessment is a team investigative approach that should be enacted when threats of violence have occurred, and as part of a comprehensive approach to school safety and risk mitigation.

Behavioral Threat Assessment can be applied under the following circumstances:

- Threat, aggression, or violence is specific to identified target with motive and plan.
- Threat, aggression, or violence is causing considerable fear or disruption to activity.
- Weapon at school or an attempt to bring a weapon.

- There is continued intent to carry out a threat.
- Staff, parent, or student intuition suggests a need to investigate threatening circumstances.
- Administrator is unable to determine if a situation poses a risk to school personnel or the community.

The objectives of a Behavioral Threat Assessment are to assess threats of potentially harmful or lethal behavior and determine the level of concern/action required. This threat assessment process also allows staff to organize resources and strategies to best manage people who have made threats of violence and helps promote a sense of psychological safety within the school community.

For students with disabilities who are at-risk for one or more of the circumstances listed above, the IEP team and the school threat assessment team should convene together to complete a Behavioral Threat Assessment. It is important to note that a threat assessment and mitigation plan do not replace a Functional Behavior Assessment (FBA) or Behavior Intervention Plan (BIP). The Behavioral Threat Assessment should be conducted to assess credibility of the threat and identify any protective factors, and this information should be incorporated into a new or updated FBA. Following assessment, a risk mitigation plan should be developed and a BIP created or amended to address interventions for these behavioral concerns. The IEP team should also determine what additional supports should be provided to the student or added to the student's IEP (e.g., adding counseling as a related service, or adding direct instruction with specific goals to teach the student how to regulate emotions and work on learning appropriate social skills, etc.).

70 O.S. § 24-100.3(4) as used in this section, "threatening behavior" means any pattern of behavior or isolated action, whether or not it is directed at another person, which indicates potential for future harm to students, school personnel or school property.

Also, 70 O.S. § 24-100.4(A) discusses the following:

- An officer or employee of a school district or member of a board of education shall notify law enforcement of any verbal threat or act of threatening behavior which reasonably may have the potential to endanger students, school personnel or school property.
- Officers or employees of a school district or members of a board of education shall be immune from employment discipline and any civil liability for communicating information pursuant to subsection B of this section in good faith if they reasonably believe a person is making verbal threats or is exhibiting threatening behavior.
- Nothing in this section shall be construed to impose a specific liability on any school district.

Refer to the [OK CARES Behavioral Threat Assessment Toolkit](#) for more information on the process.

For additional training in this area, contact the Office of School Safety and Security at the Oklahoma State Department of Education at 405-291-0888.

B. Crisis Plans

For students whose behavior may put them or others at imminent physical risk, a crisis plan should be developed as a component of their BIP. A crisis plan is an added component that will clearly outline steps that staff will take as an immediate response to student crisis behaviors that put the student or others at immediate risk of harm. The crisis plan should be developed by the IEP team, including individuals knowledgeable about the child and at least one person who is trained in behavior crisis prevention and intervention. Crisis plans should be individualized and reviewed at least annually by the IEP team, and more often as needed. School personnel responses to student behaviors within the crisis cycle should be planned in advance, and consistently applied. The plan should include the following:

- An explicit definition of what the student's crises behavior(s) look like that are written in observable terms broken down to the point multiple people have the same understanding of each phase of the student's escalation cycle (e.g., What are the student's specific behaviors or warning behavior signs that usually precede a behavioral crisis? What specific pattern of behavior has been identified indicating the student needs an immediate intervention prior to the escalation?)
- Create a leveling of behavior interventions or actions within the escalation cycle (e.g., presenting choices, redirection, providing a break if staff have been trained on the use of the break procedure, using nonverbal cues, planned ignoring, etc.).
- Procedures regarding how school personnel will work with the student during the crisis (e.g., what to say to the student or more importantly what not to say to the student during the peak of the student's escalation?).
- Procedures to promote safety for the student in crisis, including other students and staff (e.g., clearing the room of other students, removing classroom objects that could become dangerous, etc.).
- Procedures should include who will be responsible for what action, including a back-up plan for when certain members of the school staff are not available or not in the building (e.g., Who will contact an administrator, or another identified staff member for assistance? Who will take the other children to supervise? Etc.).
- The crisis plan should include trained school employees to observe and monitor the student during the crisis to ensure that the student is not harmed in any way and that the crisis procedures are implemented as designed. The documentation of this observation will assist with the analysis of the student's behavior for future modification to the crisis plan by finding patterns of when the behavior occurs and under what conditions.
- If the student ultimately, as a last resort, must be secluded or physically restrained due to an imminent danger of the student harming themselves or others, what procedures will occur to ensure the student's safety and the safety of the staff involved (e.g., What is

operationally defined as “dangerous behavior” of the student or imminent harm in need of a seclusion or physical restraint? What are the criteria or release procedures? What specific behaviors would the student display to determine the student needed to be released? What specific data will the observer document regarding the crisis event that will assist the team in reviewing to find patterns of behavior or to improve upon the results of the crisis plan? etc.).

- Procedures should also include specific student behavior to know how to identify that the crisis has ended and specific responses from staff members to reestablish a positive, supportive relationship with the student.
- Procedures must include information regarding notifying the parent that the crisis plan was activated, including if seclusion and/or physical restraint was used, and the results after the crisis had ended.

Note: If physical restraint is used in a crisis, the student does **not** need to be completely de-escalated for the team member(s) to release the student from a physical restraint hold and still ensure safety. It should also be noted that a crisis plan is more effective when developed using positive strategies throughout the escalation cycle and including after the incident.

All individuals working with the student must be trained on all aspects of the individualized crisis plan. Also, it is strongly recommended that all school personnel working with students prone to such severe escalations should be trained in prevention, crisis de-escalation techniques, and other alternatives to the use of physical restraint. Because some students escalate to the point of imminent danger to themselves or others, all school personnel working with students who have these types of severe behaviors should attend physical restraint training, which should be recurrent with periodic updates and result in some form of certification or credential (Refer to [Section 3. “Seclusion/Restraint, and Corporal Punishment”](#) in this chapter for more information about seclusion and restraint training).

The LEA may identify a group of school personnel to be trained as a crisis team who will implement the individualized crisis plan. The team should include additional personnel in case of absences or availability of the various team members at the time of the incident.

Additionally, when developing a crisis plan, the IEP team should consider any school or district policies and procedures for responding to a student who is experiencing a crisis. In some cases, a child’s crisis behaviors may be viewed as violation of the school’s discipline policy. In these instances, the IEP team should plan on discussing whether the child’s crisis may trigger a school disciplinary action and whether the behavior is a direct result of the student’s disability. Disciplinary actions do not need to be written within the crisis plan.

The development of a crisis plan may be an important addition for any student who experiences mental health or behavior challenges at school. If a student is not served on an IEP or Section 504 plan, a crisis plan can still be developed. However, such repeated behaviors should trigger the Child Find process to evaluate if there is a disabling condition involved. The crisis plan may involve emergency safety interventions such as physical restraint or seclusion. However, there are very specific guidelines on the use of seclusion and/or restraint under OAC § 210:15-13-9(b) and (c).

Refer to [Section 3. “Seclusion/Restraint, and Corporal Punishment”](#), [A. “Minimizing the Use of Seclusion”](#), and [B. “Minimizing the Use of Physical Restraint”](#) below for more information.

Section 3. Seclusion/Restraint, and Corporal Punishment

A. Minimizing the Use of Seclusion

In cases where a student has a history of dangerous behavior harming themselves or others for which seclusion was considered or used as a last resort, a school should implement a Behavior Intervention Plan (BIP) that includes all of the high-quality components indicated above plus:

- De-escalation techniques (e.g., nonthreatening body language and communication that includes simple one word or short phrases), and
- Evidence-based behavior interventions to prevent behavioral escalations that have previously resulted in the use of seclusion with the student.

Seclusion should **never** be used for the purposes of discipline, punishment, forcing compliance, or as a convenience for staff (OAC § 210:15-13-9(b)). Seclusion may only be used under the following emergency circumstances and only if these elements exist (OAC § 210:15-13-9(b)(1)):

- A student’s actions pose an imminent danger of serious physical harm to the student or others; and not merely a threat to property;
- Evidence-based behavior intervention strategies and less restrictive measures appropriate to the behavior exhibited by the student are currently being implemented, but have not effectively de-escalated the threat of danger or harm;
- School personnel are present who have completed appropriate training that addresses conflict de-escalation, the crisis cycle, and associated interventions, appropriate use of seclusion rooms, and possible effects of seclusion; and
- The seclusion lasts only as long as necessary to resolve the threat of danger or harm.

If a student is placed in seclusion during an emergency situation that meets the above criteria for emergency circumstances, the following precautions must be exercised throughout the time the student is in seclusion (OAC § 210:15-13-9(c)(2)):

1. The student **must** be continuously monitored visually and aurally by an appropriately trained school employee;
2. The student **must** be allowed to go to the restroom upon request;
3. The student **must** be permitted water to drink upon request;
4. Immediate action **must** be taken if the student displays any signs of medical distress; and

5. At least one witness, who is not involved in the seclusion incident, should be available to observe and take notes regarding what occurred prior to the seclusion, what happened during and after the seclusion incident (e.g., time seclusion began/ended, de-escalation techniques, etc.).

It is suggested that the school personnel review the notes taken during the incident to conduct an analysis of what worked or did not work to modify the crisis plan, if necessary, for future incidents. The Teacher of Record (TOR) of the IEP is responsible for entering the information into the online special education program to formally document the seclusion incident to send to the parent.

Seclusion training should be recurrent with periodic updates and result in some form of certification or credential. School personnel may only utilize seclusion procedures if they have completed training in:

- Conflict de-escalation;
- The crisis cycle and interventions at each stage;
- Possible effects of seclusion;
- Appropriate use of seclusion rooms (including escorting and placing a student in a seclusion room);
- CPR and First Aid, must hold current certification in both; and
- Monitoring the wellbeing of the student.

A building administrator should be informed immediately of any incident of seclusion. If unavailable, the building administrator must be informed as soon as possible following each incident and prior to any extended breaks from school. Each incident of seclusion must be documented on the required OSDE Report of Seclusion document. A copy of the documentation must be placed in the student file and provided to the parents. Parents should be informed immediately but must be informed within 24 hours of each seclusion incident, and prior to any extended breaks from school. An IEP meeting may be needed to review the student's BIP and placement for any changes to services or placement.

i. Definitions

The terms “**imminent danger of serious physical harm**” and “**dangerous behavior**” refer to an immediate and impending threat of a person causing serious physical injury to self or others.

“**Seclusion**” means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Seclusion does not include short-term separation in a monitored and non-locked timeout setting. Timeout is a behavior management technique that is part of an approved program for the purpose of calming, which involves the separation of the student from others in a non-locked setting and is monitored by a district employee.

“Seclusion room” refers to a room or other confined area in which a student is involuntarily placed in isolation from other persons and which the student is physically prevented from leaving. A room or area where a student is placed in seclusion must meet the following criteria (OAC § 210:15-13-9(b)(3)):

- The student must be continuously monitored visually and aurally by an appropriately trained school employee. The room must have means by which the trained employee can view the student at all times and hear the student speak throughout the duration of the seclusion.
- There must be adequate space for the student to sit or lie down;
- The room must be equipped with adequate heating, cooling, ventilation, and lighting systems comparable to those in the rest of the building where the seclusion room or area is located;
- The room or area used for seclusion must be free of any objects that pose a potential risk of harm to a student with disabilities, or a student in distress; and
- If equipped with a door that locks, the lock must automatically disengage in case of an emergency, such as a fire or severe weather.

B. Minimizing the Use of Physical Restraint

In cases where a student has a history of dangerous behavior harming themselves or others for which physical restraint was considered or used as a last resort, the school should have a Behavior Intervention Plan that includes all of the high-quality components indicated in [Section 1\(B\)](#) and [Section 2\(B\)](#) within this chapter, plus:

- De-escalation techniques (e.g., nonthreatening body language and simple one word or short phrases), and
- Evidence-based behavior interventions to prevent behavioral escalations that have previously resulted in the consideration or use of physical restraint with the student.

Physical restraint should never be used for the purposes of discipline, punishment, forcing compliance, or as a convenience for staff or to prevent property damage. The use of chemical and/or mechanical restraint is prohibited in Oklahoma public schools (OAC § 210:15-13-9(c)).

Physical restraint must only be used under the following emergency circumstances (OAC § 210:15-13-9(c)(1)):

- The student’s actions pose an imminent danger of serious physical harm to the student or other individuals; and not merely a threat to property;

- Evidenced-based behavior interventions and less restrictive measures appropriate to the behavior exhibited by the student are currently being implemented, but have not effectively de-escalated the threat of danger or harm;
- The physical restraint is applied by school personnel who have completed appropriate training that addresses conflict de-escalation, the crisis cycle and associated interventions, CPR and First Aid (including certifications), possible effects of physical restraint, and monitoring the wellbeing of a student while being restrained; and
- The physical restraint lasts only as long as necessary to resolve the threat of danger or harm.

If a student is placed in a physical restraint during an emergency situation that meets the above criteria for emergency circumstances, the following precautions must be exercised throughout the time the student is restrained (OAC § 210:15-13-9(c)(2)):

1. Under no circumstances may a student be restrained using a prone (facedown) restraint, or that prevents the student from breathing or speaking, or any maneuver that places pressure or weight on the chest, sternum, lungs, diaphragm, neck, throat, or back;
2. The degree of restriction of the student's freedom of movement may not exceed what is necessary to protect the student or other individuals from the threat of serious physical harm; and
3. The restraint of the student is continuously witnessed by at least one school employee who is not involved in the physical restraint.

It is important to note that school personnel should make efforts to remove safety hazards, other students, and non-essential personnel from the environment, while the student is being restrained. In this way, the personnel mitigate or reduce the threat of danger or harm and can release a student from restraint more quickly. At least one witness, who is not involved in the restraint incident, should be available to observe and take notes regarding what occurred prior to the restraint, what happened during and after the restraint incident (e.g., time the restraint began/ended, de-escalation techniques, etc.). It is suggested that the school personnel review the notes taken during the incident to conduct an analysis of what worked or did not work to modify the crisis plan, if necessary, for future incidents. The special education teacher of record is responsible for entering the information into the online special education program to formally document the restraint incident to send to the parent.

Physical restraint training should be recurrent with periodic updates and result in some form of certification or credential. School personnel may only utilize physical restraint if they have completed training in:

- Conflict de-escalation;
- The crisis cycle and interventions at each stage;
- Possible effects of physical restraint;

- CPR and First Aid, must hold current certification in both; and
- Monitoring the wellbeing of the student.

A building administrator should be informed immediately of any incident of a physical restraint. If unavailable, the building administrator must be informed as soon as possible following each incident, and prior to any extended breaks from school. Each incident of physical restraint must be documented on the required OSDE Report of Physical Restraint document. A copy of the documentation must be placed in the student file and provided to the parents. Parents should be informed immediately but must be informed within 24 hours after each physical restraint incident, and prior to any extended breaks from school. An IEP meeting may be needed to review the student's BIP and placement for any changes to services or placement.

i. Definitions

“Chemical restraint” means a drug or medication used on a student to control behavior or restrict freedom of movement, when such substance is not administered as prescribed to the student, such as (OAC § 210:15-13-9(a)(2)):

- Prescribed by a licensed physician, or other qualified health professional acting under the scope of their professional authority under state law, for standard treatment of the student’s medical condition; and
- Administered as prescribed by the licensed physician or other qualified health professional acting under the scope of their professional’s authority under state law.

The terms **“Imminent danger of serious physical harm”** and **“dangerous behavior”** refers to an impending threat of a person causing serious physical injury to self or others.

“Mechanical restraint” means the use of any device or equipment to restrict a student’s freedom of movement. The term does **not** include motor vehicle safety restraints or devices by a student, or appropriately trained school personnel, which are used as prescribed by a medical or related services professional for specific approved purposes for which such devices were designed, such as (OAC § 210:15-13-9(a)(5)):

- Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;
- Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
- Restraint for medical immobilization; or

- Orthopedically prescribed devices that permit a student to participate in activities without harm.

Items used in a therapeutic manner for a particular student in one context could be used as a mechanical restraint in a different context; the proper inquiry, therefore, to determine whether an item is a mechanical restraint is not based solely on what the item is, but also how the item is used.

“Physical restraint” means a personal restriction that immobilizes or reduces the ability of a student to move their torso, arms, legs, or head freely. The term “physical restraint” does **not** include an appropriately applied temporary physical escort. The term, **“physical escort”** means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of directing a student to move to a safe location if they are in distress or acting out. (OAC § 210:15-13-9(a)(6),(7)):

For more information regarding Seclusion and Restraint, please see [OAC § 210:15-13-9](#). Guidelines for minimizing seclusion and restraint of students, and the U.S. Department of Education [“Restraint and Seclusion: Resource Document.”](#)

The [Civil Rights Data Collection \(CRDC\)](#) is a biennial (every other school year) survey of public schools required by the U.S. Department of Education, Office for Civil Rights (OCR), which includes data regarding the number of students with and without disabilities who were subjected to seclusion or restraint. LEAs need to maintain documentation of all seclusion and restraints to report to OCR.

C. Corporal Punishment

The Oklahoma State Department of Education (OSDE) has determined that any student with a disability who is entitled to special education services under the IDEA is to be considered covered by 70 O.S. § 13-116. Oklahoma Administrative Code (OAC § 210-15-13-9(d)) states, *“Corporal punishment of students with disabilities not authorized. For all students, the State Department of Education strongly encourages Oklahoma schools to implement disciplinary policies and practices that use evidence based, developmentally appropriate methods informed by an awareness that many students have endured Adverse Childhood Experiences (ACEs) and related trauma. As applied to students with disabilities entitled to special education services under the Individuals with Disabilities Education Act (IDEA), the use of corporal punishment by employees or agents of an Oklahoma public school is prohibited beginning in the 2020-2021 school year.”* Further, OSDE strongly encourages LEAs to prohibit any use of corporal punishment, including students with disabilities who have a 504 Accommodation Plan. Refer to [70 O.S. § 13-116](#) for additional information regarding corporal punishment. See [Section 1. “Multi-Tiered System of Supports”, A. “MTSS-Behavior”](#) in this chapter for more information on effective evidence-based practices.

D. Reporting the Use of Seclusion, Restraint, and Corporal Punishment

LEAs’ policies or procedures restricting the use of seclusion and restraint should apply to all children and youth, not just students with disabilities. The Office of Civil Rights collects data regarding the use of seclusion and restraint on all students; and therefore, LEAs are required to document incidents for both students with disabilities and students without disabilities. Additionally, under OAC § 210:15-13-9(f), at the end of each school year, and no later than June 30th, each school district or charter school shall report to the State Department of Education (OSDE) Office of Special Education Services (SES) information regarding all incidents of seclusion, restraint, or corporal punishment of a student with disabilities within the district during the school year that just closed. The end-of-year

summary report that OSDE-SES will make public shall include the total number of each type of incident, as well as the number and type of incidents associated with each student to whom seclusion, physical restraint, or corporal punishment was applied. This information will be used to identify districts in need of additional support, training, and guidance in the areas of conflict de-escalation, crisis intervention, Functional Behavior Assessments, the possible effects of seclusion and restraint, and effective behavior intervention planning. Thus, it is essential that LEAs devise processes to monitor seclusion and restraint data to identify students who may need additional supports or interventions, potentially in the form of a Behavior Intervention Plan (BIP).

Section 4. Shortened Day

Students with disabilities must attend school for the same number of hours and minutes as non-disabled students, unless a student's IEP team determines otherwise based on a student's unique, disability related needs. Shortening a student's day raises issues regarding the provision of a FAPE under IDEA; and therefore, careful consideration is required by the IEP team.

A. Appropriate Use of Shortened Day

The only time it is appropriate to shorten the school day for a student with a disability is when the student's IEP team determines a shortened day is required to address the student's unique disability-related needs. For example, if because of the student's medical needs, the student does not have the physical stamina to complete a full school day, a shortened day may be appropriate. Before deciding to shorten the student's day, the IEP team must consider if there are other ways to meet the student's needs (e.g. short rest breaks, trips to the nurse).

When a student's school day is shortened, the student's IEP must include:

1. An explanation of why the student's disability-related needs require a shortened day; **and**
2. A plan for the student's return to school for a full day, including a plan to meet more frequently to review student data and determine whether the student is able to return to school full-time and a clear explanation of the school-provided supports to make this goal achievable.

The student should return to a full school day as soon as she or he is able, and under most circumstances, a shortened school day should be in place for only a limited amount of time. The IEP team must meet as often as necessary to review the plan and to determine when the student is able to return to school full-time. Examples of brief, specific-purpose shortened days that may not result in less than FAPE in an LRE (this is not an exhaustive list):

- Student with a recent brain trauma, currently in recovery, needs a transitional reduced day due to cognitive fatigue associated with recovery; or
- Physician of a student transitioning to new seizure medications requests gradually increasing the length of day; or
- Recently adopted student from another country is experiencing transition difficulties. Parents and therapist request a gradual transition to school.

B. Inappropriate Uses of Shortened Day

The following are examples of **inappropriate** uses of shortening the school day for a student with a disability:

Managing Student Behavior or as a Means of Discipline

An LEA may not reduce a student's instructional time as a form of punishment or in lieu of a suspension. Attendance may also not be conditioned upon the student's taking medication or receiving treatment, therapies, or other outside services. The IEP team must develop an IEP that addresses the student's behavioral needs. In the case of a student whose behavior impedes the student's learning or that of others there must be a FBA in place, as well as the IEP must include a BIP that provides positive behavioral interventions, supports and strategies reasonably calculated to enable the student to participate in the full school day. School removals and other exclusionary practices are not positive behavioral supports. On August 1, 2016, the U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) issued guidance in the form of a Dear Colleague Letter (DCL) that emphasizes the requirement that schools provide positive behavioral supports to students with disabilities who need them. It also clarifies that the repeated use of disciplinary actions may suggest that many children with disabilities may not be receiving appropriate behavioral interventions and supports. When schools fail to consider and provide for needed behavioral supports through the IEP, it is likely to result in a child not receiving the free appropriate public education to which they are entitled under federal law.

Accommodating Transportation Schedules

An LEA may not reduce a student's instructional time by starting the student's school day later or releasing the student earlier than nondisabled peers in order to accommodate a transportation schedule. For example, it is not permissible for a school to release students with disabilities earlier than their nondisabled peers in order to schedule an earlier bus route. Any LEA that has permitted such actions up to now should take immediate steps to correct the resulting denial of equal opportunity.

Administrative Convenience

A student's school day may not be shortened for administrative convenience including staffing shortages.

Accommodating Regularly Scheduled Outside Therapies

IEP teams may not shorten a student's school day based solely on a parent's request to accommodate regularly scheduled non-school medical or therapeutic appointments. Parents and schools should communicate regarding absences. When absences are frequent, the IEP team should meet to determine how to ensure the continued provision of FAPE for the child to continue to progress and meet the annual goals in the IEP. Schools must refer to their local attendance and excusal policies to determine whether absences are excused.

Solely Upon Parent Request

If a parent requests a change in the length of the student's school day, the LEA should consider the request. Any changes to the regular school schedule **must** be made by the student's IEP team, which includes the parent. The LEA would review any medical documents the parent brings to the IEP meeting or discuss the parent's concerns to see if there are other avenues to address this issue without shortening the student's instructional day. The only time it is appropriate to shorten the school day for a student with a disability is when the student's IEP team determines a shortened day is

required to address the student's unique disability-related needs. This decision must be reflected in the student's IEP, including documenting the reasons for the shortened day and providing a plan for returning to a full day.

Any decision to shorten a student's school day must be made on an individual, case-by-case basis by the student's IEP team.

C. General Information Involving Shortened Day by IEP Team

IEP teams should exercise caution when placing a student on a shortened day as it may limit a student's ability to make adequate progress, to access the general education curriculum, to meet graduation requirements, and to receive a FAPE. Therefore, the IEP team should take into consideration all other options prior to making a determination to shorten the student's instructional day or week. For example, a student with physical aggression toward others, the LEA should conduct an FBA and develop a BIP to address the physical aggression. If a BIP already has been developed for the student, make certain a fidelity observation has occurred to see if the interventions are being implemented as designed. If the intervention is being implemented with fidelity, then review the BIP to determine if the behavior was defined explicitly, if the hypothesized function of the behavior had been correctly identified, or if the intervention needs to be changed to better align with the specific problematic behavior, and modify it, as necessary, to address the targeted behavior(s) (Refer to [Section 1, B. "Functional Behavioral Assessment \(FBA\) and Behavior Intervention Plan \(BIP\)"](#) of this chapter for more information). The IEP team may consider additional time in a special education setting to provide specially designed instruction in the area of social skills using a specific curriculum to teach the student the desired social behaviors.

If the LEA and parent, through an IEP team process, determine to shorten the student's instructional day/week, the LEA must document on the IEP:

- The reason/concern for the shortened school day/week;
- The total length of the student's shortened instructional day/week;
- The type of services to be provided during the shortened instructional day/week;
- The reintegration plan to increase the student's instructional week to the same length as nondisabled peers; and
- The date of the next IEP team meeting to review the progress towards the reintegration plan.

The reintegration plan must include an explicitly defined criteria that is measurable, observable, developmentally appropriate, and includes a reasonable, attainable goal for increasing the student's instructional day/week.

Note: The Oklahoma State Department of Education requires the IEP team to document that an FBA has been conducted and a BIP is currently in place in order to finalize the IEP when shortening the student's day/week due to a behavior concern. If the parent refuses to sign consent for an FBA to be conducted, the IEP team may use existing information/data to complete the FBA; or if the parent

does not respond or cannot be persuaded to attend a meeting to discuss the existing data refer to [Chapter 4. "Evaluation and Eligibility", Section 5. "Parent Consent", B. "Failure to Respond or Provide Consent."](#)

D. Procedural Questions

Must an IEP team meeting be held before the school district shortens the length of a student's school day?

- Yes. Shortening a student's school day is a decision that must be made through the IEP team process and clearly documented in IEP amendments and records.

How should a shortened school day be documented in the student's IEP?

- The IEP team must document the reason/concern for the shortened school day/week. The IEP must include a clear description of the special education services, related services, and supplementary aids and services to be provided including the amount, frequency, location, and duration of services during the shortened school day/week. The IEP team would explain the total length of the shortened school day and identify specific parameters as to when the student would increase their day, including returning to a full school day schedule that is the same as their peers.

After an IEP team has implemented a shortened school day for a student, what obligation does the LEA have to monitor the shortened day program?

- LEAs, through the IEP team process, should continuously monitor and review the student's progress and plan frequent IEP team meetings to determine whether a shortened school day continues to be necessary to meet the student's unique, disability-related needs and to ensure shortened-day programming is still effective in improving student progress toward IEP goals. The student should return to a full day as soon as he or she is able, and under most circumstances, a shortened day should be in place for only a limited amount of time.

What can a parent do if they disagree with an IEP team's decision to implement a shortened school day?

- If a parent disagrees with the decision to implement a shortened school day, the OSDE recommends that the parent request an additional IEP meeting to discuss their concerns. In some cases, parents may wish to reach out to Special Education Directors or other district special education contacts to resolve any disagreement. Parents may also contact the OSDE to facilitate the resolution of any disagreements. In addition, parents may elect to participate in formal dispute resolution procedures, such as mediation, state complaints, or due process hearing. Mediation is a voluntary process conducted by a trained, neutral mediator who helps facilitate discussion and assists parties in reaching a resolution. The parent may also file a special education complaint with the OSDE. The complaint must be in writing, signed, and submitted within one year of the decision to shorten the school day. Additionally, the parent may file a request for a due process hearing challenging the IEP team's decision. The request must be filed within two years of the decision to shorten the school day. For more information on dispute resolution

options under the IDEA please visit (See [Chapter 11. “Dispute Resolution”](#) for more information).

Section 5. General Discipline Guidelines

Students with disabilities who are subject to disciplinary actions by a local education agency (LEA) are entitled to all of the disciplinary due process rights afforded students without disabilities, in accordance with Oklahoma law concerning out-of-school suspension (70 O.S. § 24-101.3), as well as Oklahoma’s School Bullying Prevention Act (70 O.S. §§ 24-100.2 through 24-100.5). In addition to these rights, the Individuals with Disabilities Education Act (IDEA) provides special education rights and additional procedural safeguards to a student with a disability, including students suspected of having a disability, for whom the LEA is proposing disciplinary removal from their current educational placement. These procedures come into play when the LEA is unable to work out an appropriate placement for the student with the parent. The purpose of these procedures is to balance the LEA’s need to provide a safe environment conducive to learning for all students with procedural protections to students with disabilities preceding a change of placement for disciplinary reasons.

LEAs are encouraged to address student misconduct through appropriate school-wide discipline policies, instructional service(s), and/or related services. If a student with a disability exhibits behaviors that interfere with their learning or the learning of others, an IEP team must consider the use of strategies, including positive behavioral supports and interventions, Functional Behavioral Assessments (FBA) and Behavior Intervention Plans (BIP), to address the behavior. If the IEP team determines that such services are needed, they must be included in the IEP and be implemented as prescribed.

Conducting FBAs and developing BIPs are best practices when students with disabilities are displaying problem behaviors. IDEA regulations require an FBA to be conducted and a BIP to be developed for a student with disabilities when the LEA, the parent, and any other relevant members of the IEP team make the determination that a behavior incident was a manifestation of the child’s disability (34 C.F.R. § 300.530(f)). The Oklahoma State Department of Education also requires an FBA and BIP be in place prior to shortening the student’s instructional day/week. See [“Procedures for a Manifestation Determination”](#) in Section 7 of this chapter.

A. Informal Removals

When students with disabilities are removed from school as a result of a behavior incident(s) without a formal suspension and without the rights extended to them under IDEA, an “informal removal” has occurred according to the National Disability Rights Network (NDRN). The following are examples of informal removals due to a behavior incident:

- Repeatedly sending a student home during the instructional day based on an administrative decision.
- Long-term use of a shortened day without an IEP team decision nor a reintegration plan.
- Mandatory virtual or remote instruction for an individual student without an IEP team decision.

- Mandatory homebound instruction for an individual student without an IEP team decision regarding a change in placement.
- Preventing a student from attending school unless the parent accompanies them.
- Requiring a student to stay home on a given day(s) because the LEA does not have a teacher and/or paraprofessional to support the student's unique behavioral needs.
- Removing a student from the classroom to the principal's office for an extended period of time and not counting it as an in-school suspension.

LEAs must **not** engage in informal removals but must handle all behavior incidents for students with disabilities that comply with IDEA and Section 504 utilizing the formal removal procedures discussed below. LEAs who engage in informal removals deprive students and parents of procedural safeguards provided under IDEA.

B. Formal Removals

i. Disciplinary Actions Resulting in Removal for 10 or Fewer School Days

Students with disabilities are expected to follow the LEA's student code of conduct. A student with a disability who has an IEP in effect can be removed from school through an out-of-school suspension or removed to another setting or to an appropriate Interim Alternative Educational Setting (IAES), just as any other student without a disability. These removals can extend for up to a total of 10 school days for violations of the student code of conduct or school rules. The 10 school days can be consecutive or cumulative and can occur over the course of one school year. It is not required for the IEP team to meet when this occurs. Likewise, it is not required for a manifestation determination to be completed, an FBA to be conducted, including the BIP to be developed, or for any special education services to be provided if the removal is for 10 or fewer school days over the school year. However, as a best practice, the LEA may choose to convene the IEP team to discuss the need for a FBA or to develop, review and make changes to the student's current BIP. Additionally, in accordance with Oklahoma State law, an out-of-school suspension of any student for more than five consecutive school days requires the LEA to provide every student with an education plan designed for the eventual reintegration of the student into school.

ii. Disciplinary Actions Resulting in Removal for More than 10 School Days

When disciplinary actions result in removal for more than 10 school days in a school year **and** clearly indicate a pattern of removal that constitutes a change in placement, the LEA must conduct a manifestation determination, and the IEP team must determine appropriate services that allow the student to continue to participate in the general education curriculum and progress toward meeting the goals outlined in the student's IEP, although in another setting.

If LEA officials determine that it is appropriate to suspend a student out of school for more than 10 consecutive school days, or to have a student's educational setting changed to an IAES for up to 45 school days due to the existence of a special circumstance, such as weapon or illegal drug possession or infliction of serious bodily injury on another person, LEA officials must notify the parent

or adult student immediately of this decision. The LEA must provide procedural safeguards notice that includes a full explanation of the special education rights afforded to the parent and/or adult student when a decision is made to take a disciplinary action that constitutes a change of placement.

LEA personnel must consider unique circumstances when determining whether a change in placement is appropriate for a student with a disability. These unique circumstances are best determined at the local level by LEA personnel who know the student and the specific facts of the incident, and factors related to the behavioral violation. LEA personnel should consider various forms of information such as the student's disciplinary history, antecedents to the offending behavior, as well as the supports that were provided to the student prior to the behavioral violation. Refer to [Section 7. "Procedures for a Manifestation Determination"](#) of this chapter for more information.

iii. Actions Involving a Disciplinary Removal that Results in a Change of Placement

Within 10 school days from the date of the decision to impose an out-of-school suspension or another type of disciplinary removal that either exceeds **10 consecutive school days or 10 cumulative days of suspensions in the same school year that constitute a pattern of removal** (a change in placement), or placement in an IAES, a meeting must be held to determine whether the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability or whether the conduct was a result of the LEA's failure to implement the student's IEP including the current BIP, if applicable. These steps are referred to as a "manifestation determination." Please see the [IDEA Discipline Flow Chart Example](#) for a visual representation of the aforementioned steps.

LEA Actions Resulting in a Change of Placement:

34 C.F.R. § 300.536 Change of placement because of disciplinary removals.

- a. *"For purposes of removals of a child with a disability from the child's current educational placement under [34 C.F.R. §§ 300.530 through 300.535](#), a change of placement occurs if -*
 1. *The removal is for more than 10 consecutive school days; or*
 2. *The child has been subjected to a series of removals that constitute a pattern -*
 - (i) *Because the series of removals total more than 10 school [days](#) in a school year;*
 - (ii) *Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and*
 - (iii) *Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.*
- b.
 1. *The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.*
 2. *This determination is subject to review through due process and judicial proceedings. "*

iv. LEA Actions When There is a Change of Placement

Whenever disciplinary action results in a change in placement, the LEA must:

1. Notify the parent or adult student of the disciplinary action to be taken on the date of the decision and provide a copy of the *Parents Rights in Special Education: Notice of Procedural Safeguards*; and
2. Conduct a manifestation determination no later than 10 school days after the date on which the decision to take the disciplinary action is made.

C. Interim Alternative Educational Settings

LEA personnel may remove a student to an IAES for no more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability if one or more of the following special circumstances exist (34 C.F.R. § 300.530(g)). The student:

- Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an LEA;
- Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of an LEA; or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an LEA, defined as bodily injury that involves:
 - A substantial risk of death;
 - Extreme physical pain;
 - Protracted and obvious disfigurement; or
 - Protracted loss or impairment of the function of the bodily member, organ, or mental faculty.

Dangerous Weapon 18 U.S.C. § 930(g)(2):

The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does **not** include a pocketknife with a blade of less than 2½ inches in length.

The LEA may take disciplinary action for a student who brought a pocketknife less than 2 ½ inches in length to school; however, a pocketknife of this length does not fall under the "special circumstances" criteria under IDEA for the LEA to remove the student to an IAES for not more than 45 school days regardless of a manifestation of the student's disability.

Controlled substance 21 U.S.C. § 812(c):

The term "controlled substance" means a drug or other substances identified under the Controlled Substance Act (known as schedules I, II, III, IV, and V). Examples of such controlled substances are narcotics, stimulants, depressants, hallucinogens, and marijuana. The definition does **not** include a

substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Act or under any other provision or federal law.

Students who need to take controlled substances at school must maintain their medication in the school office and locked in a safe area, to be administered by a trained school employee at the prescribed time.

Serious Bodily Injury [18 U.S.C. § 1365\(h\)\(3\)](#):

The term “serious bodily injury” means a bodily injury 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 faculty.

Although the student may be placed in an IAES, as determined by the IEP team, for up to 45 school days even if the conduct is a manifestation of the student’s disability, the IEP team must still convene a meeting to review the student’s IEP to determine what additional behavioral supports (e.g., add counseling as a related service, or add a social skills goal, etc.), if any, are needed, and conduct a manifestation determination.

D. Hearing Officer Actions Resulting in a Change of Placement

If necessary, in appropriate circumstances, through an expedited due process hearing, the LEA may ask a hearing officer to place a student with a disability in an appropriate IAES.

In requesting a hearing officer to place a student in an IAES, the LEA must:

1. Demonstrate by substantial evidence that maintaining the current placement is substantially likely to result in injury to the student or others; and
2. Indicate whether the request is for an initial period of not more than 45 school days or an additional period of not more than 45 school days.

E. Court Actions Resulting in a Change of Placement

LEA administrators may seek a court order to remove a student with a disability from school or the current placement at any time. FAPE [educational services] must not cease during the period of time an injunction is in place. Although not directly addressed in the IDEA, the U.S. Department of Education has stated that a school district need not exhaust the administrative due process hearing system before seeking such court relief.

Section 6. FAPE Considerations

Services may not cease, and the LEA must consistently provide FAPE to the student with a disability:

- After the student is removed for 10 school days in the same school year and subsequent days of removal; and
- When there is a disciplinary change of placement.