

Applicability of Texas Education Code Relating to Discipline Management Practices or Behavior Management Techniques

An open-enrollment charter school is subject to a prohibition, restriction, or requirement, as applicable, imposed by Title 2 (Public Education) of the Texas Education Code, or a rule adopted under Title 2 (Public Education) of the Texas Education Code, relating to discipline management practices or behavior management techniques under TEC §37.0021 (Use of Confinement, Restraint Seclusion, and Time-Out). (TEC §12.104(b)(2)(J))

The Jean Massieu Academy Open-Enrollment Charter School adopts the requirements of TEC §37.0021 (Use of Confinement, Restraint Seclusion, and Time-Out) pursuant to TEC §12.104(b)(2)(J). Where “school” is used in TEC §37.0021 (Use of Confinement, Restraint Seclusion, and Time-Out), the Jean Massieu Academy Open-Enrollment Charter School hereby substitutes “open-enrollment charter school” to conform to these requirements.

Use of Confinement, Restraint, Seclusion, and Time-Out

It is the policy of this State to treat with dignity and respect all students, including students with disabilities who receive special education services under Subchapter A (Special Education Program), Chapter 29, Texas Education Code. A student with a disability who receives special education services under Subchapter A (Special Education Program), Chapter 29, Texas Education Code, may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique. (TEC §37.0021(a))

In TEC §37.0021:

- (1) "Restraint" means the use of physical force or a mechanical device to significantly 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 exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

(TEC §37.0021(b))

An open-enrollment charter school employee or volunteer or an independent contractor of an open-enrollment charter school may not place a student in seclusion. TEC §37.0021(c) does not apply to the use of seclusion in a court-ordered placement, other than a placement in an educational program of an open-enrollment charter school, or in a placement or facility to which the following law, 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;
- (2) 40 T.A.C. Sections 720.1001-720.1013; or
- (3) 25 T.A.C. Section 412.308(e).

(TEC §37.0021(c))

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Nothing in this policy prevents 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.

(TEC §37.0021(f))

It is the policy of Jean Massieu Academy Open-Enrollment Charter School to comply with the procedures adopted in 19 TAC §89.1053 for the use of restraint and time-out by an open-enrollment charter school employee or volunteer or an independent contractor of an open-enrollment charter school in the case of a student with a disability receiving special education services under Subchapter A (Special Education Program), Chapter 29, Texas Education Code.

It is the policy of the Jean Massieu Academy Open-Enrollment Charter School to ensure that children with disabilities (including a child not yet eligible if the school had knowledge prior to the disciplinary conduct that the child was a child with a disability under the IDEA and meets the standards for receiving protection under the IDEA) are disciplined for a violation of the student code of conduct in accordance with the IDEA, including with respect to any disciplinary removal from the current educational placement to an appropriate interim alternative educational setting, another setting, suspension, or expulsion.

Student Code of Conduct

The governing body of an open-enrollment charter school shall adopt a code of conduct for its school or for each campus. In addition to establishing standards for behavior, the code of conduct shall outline generally the types of prohibited behaviors and their possible consequences. The code of conduct shall also outline the school's due process procedures with respect

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to expulsion. Notwithstanding any other provision of law, a final decision of the governing body of an open-enrollment charter school with respect to actions taken under the code of conduct may not be appealed. (TEC §12.131(a))

An open-enrollment charter school may not elect to expel a student for a reason that is not authorized by TEC §37.007 (Expulsion for Serious Offenses) or specified in the school's code of conduct as conduct that may result in expulsion. (TEC §12.131(b))

In accordance with 20 U.S.C. §7151, a local educational agency, including an 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 local educational agency, as defined by 20 U. S.C. Section 7801, may modify the length of the expulsion in the case of an individual student;
- (2) the local educational agency shall provide educational services to an expelled student in a disciplinary alternative education program as provided by TEC §37.008 (Disciplinary Alternative Education Programs) if the student is younger than 10 years of age on the date of expulsion; and
- (3) the local educational agency may provide educational services to an expelled student who is 10 years of age or older in a disciplinary alternative education program as provided in TEC §37.008 (Disciplinary Alternative Education Programs).

(TEC §37.007(e))

Subject to TEC §37.007(e), notwithstanding any other provision of TEC §37.007, a student who is younger than 10 years of age may not be expelled for engaging in conduct described by TEC §37.007. (TEC §37.007(h))

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Notwithstanding any other provision, TEC §37.002 (Removal by Teacher) and its provisions, wherever referenced, are not applicable to an open-enrollment charter school unless the governing body of the school so determines. (TEC §12.131(c))

Authority of School Personnel

Removal for Fewer than 10 days

School personnel may remove the child with a disability who violates the code of conduct from his or her current placement to an appropriate interim alternative educational setting (IAES), another setting, or suspension, for not more than 10 consecutive school days to the extent those alternatives are applied to children without disabilities.

School personnel may remove the child with a disability who violates the code of conduct from his or her current placement for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement.

Removal for More than 10 days

School personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures that would be applied to children without disabilities, if:

- In the manifestation determination review, the behavior that gave rise to the violation of the code of conduct is determined not to be a manifestation of the child's disability;
- Services during periods of removal are provided to the child; and
- Notification of a change of placement is given to the child's parents.

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School personnel must provide the parents of the child removed to a disciplinary alternative education program with written notice of the school's obligation to provide the child with an opportunity to complete coursework required for graduation that:

- Includes information regarding all methods available for completing the coursework; and
- States that the methods available for completing the coursework are available at no cost to the child.

(34 CFR 300.530; 20 USC 1415(k)(1))

School personnel may remove the child to an interim alternative educational setting without regard to whether the behavior is determined to be a manifestation of the child's disability in accordance with 34 CFR 300.530(g) and 20 USC 1415(k)(1)(G)

Limitation on General Authority

A child with a disability may not be disciplined for bullying, harassment, or making hit lists until an admission, review, and dismissal committee meeting has been held to review the conduct.

Notice of Disciplinary Action

A charter holder shall notify the school in which the student resides within three business days of any action expelling or withdrawing a student from the charter school.

(TEC §12.131(b))

For purposes of TEC §37.022:

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- (1) "Disciplinary action" means a suspension, expulsion, placement in an alternative education program, or other limitation in enrollment eligibility of a student by a school or school. (TEC §37.022(a)(1))
- (2) "School or school" includes an independent school, a home-rule school, a campus or campus program charter holder, or an open-enrollment charter school. (TEC §37.022(a)(2))

If a school or school takes disciplinary action against a student and the student subsequently enrolls in another school or school before the expiration of the period of disciplinary action, the governing body of the school or school taking the disciplinary action shall provide to the school or school in which the student enrolls, at the same time other records of the student are provided, a copy of the order of disciplinary action. (TEC §37.022(b))

Subject to TEC §37.007(e), the school or school in which the student enrolls may continue the disciplinary action under the terms of the order or may allow the student to attend regular classes without completing the period of disciplinary action. (TEC §37.022(c))

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