

TO: Directors of School
FROM: Christy Ballard, General Counsel
DATE: October 10, 2022
SUBJECT: Teacher's Discipline Act

This memorandum is a reminder that the Teacher's Discipline Act, codified at Tenn. Code Ann. §§ 49-6-2801 through -2804, took effect on January 1, 2022. It summarizes the Teacher's Discipline Act, including provisions codified at Tenn. Code Ann. § 49-6-2804 that were not previously in other sections of the law, and provides guidance on how the act applies to students with disabilities.

Section by Section Overview

§ 49-6-2801 requires local boards of education and public charter school governing bodies to include a provision in the discipline policy or code of conduct that authorizes teachers and administrators to hold students accountable for any disorderly conduct in school, on school buses, or at school-sponsored events. § 49-6-2801 authorizes teachers to manage their classroom, discipline students, refer students to the principal's office, and hold students accountable for disorderly conduct. The provisions in § 49-6-2801 were previously part of the School Discipline Act and had been codified at Tenn. Code Ann. § 49-6-4102(a).

§ 49-6-2802(a) requires local boards of education and public charter school governing bodies to adopt a policy regarding a teacher's ability to relocate a student for the student's safety or the safety of others. The policy may allow teachers to use reasonable force when a student is unwilling to cooperate and must allow teachers to intervene in a physical altercation between students or between a student and a school employee. § 49-6-2802(c) requires local boards of education and public charter school governing bodies to adopt a policy requiring teachers who relocate a student to file a brief report with the principal detailing the situation that led to the relocation of the student. The provisions in § 49-6-2802 were previously part of the Student and Employee Safe Environment Act of 1996 and had been codified at Tenn. Code Ann. § 49-6-4008.

§ 49-6-2803 sets forth the process for teachers to make referrals for disciplinary action. To take disciplinary action against a student, a teacher must make a written referral to the principal or principal's designee. The principal or principal's designee must then take appropriate disciplinary action in accordance with the local education agency (LEA) or school's discipline policy and return the referral to the teacher with a notation of the disciplinary action taken. The provisions in § 49-6-2803 were previously part of the School Discipline Act and had been codified at Tenn. Code Ann. § 49-6-4106.

§ 49-6-2804 sets forth the process for teachers to remove a student who repeatedly or substantially interferes with the teacher's ability to communicate effectively with the class or with the ability of the student's classmates to learn. To remove a student from a classroom, a teacher must submit a written request to the principal or principal's designee. The written request must include documentation that the teacher has previously taken each of the following actions:

1. taken action to address the student's disruptive behavior;
2. provided consequences for the student's disruptive behavior;
3. conducted an oral conference with the student's parent or guardian regarding the student's disruptive behavior;

4. provided an opportunity for school counseling or other support services deemed appropriate to address the student's disruptive behavior;
5. conducted a conference with the student to develop and implement a plan to improve the student's behavior;
6. issued a written referral for disciplinary action under § 49-6-2803 to address the student's disruptive behavior.

Once the principal or designee has received the written request with appropriate documentation, the principal or designee must notify the student of the request and allow the student an opportunity to explain or deny the situation. If the teacher's and student's accounts of the situation differ, the principal or designee must weigh the evidence and make a determination about the request. If the principal or designee determines that teacher's account is substantiated, the principal or designee must take disciplinary action consistent with the LEA's or school's discipline policy. Appropriate disciplinary action may include:

1. assigning the student to another appropriate classroom for a specified period of time;
2. assigning the student to in-school suspension for a specified period of time;
3. remanding the student to an alternative school or to an alternative education program for a specified period of time;
4. suspending the student;
5. requiring the student's parents or guardians to participate in one or more conferences before the student is permitted to return to the classroom from which the student was removed; or
6. denying the teacher's request to remove the student from the classroom and instead offering appropriate supports for the teacher to address the student's disruptive behavior.

If the principal or designee denies the request to remove the student from the classroom and instead offers to provide support to the teacher, the teacher may file an appeal with the director of schools or the director's designee. The director or director's designee may either affirm the decision of the principal or principal's designee or reverse the decision and direct the principal or principal's designee to take alternative disciplinary action against the student.

If a teacher abuses or overuses the removal process in § 49-6-2804, the principal or principal's designee must address the abuse or overuse with the teacher and may require the teacher to complete additional professional development to improve the teacher's classroom management skills.

Applying the Teacher's Discipline Act to Students with Disabilities

When taking any of the actions described in the Teacher's Discipline Act, LEAs and schools must comply with all applicable special education laws, including the Individuals with Disabilities Education Act¹ and the Special Education Behavioral Supports Act², and civil rights laws, including Section 504 of the Rehabilitation Act³ and Title II of the Americans with Disabilities Act.⁴ In applying the Teacher's Discipline Act, LEAs and schools should remember that the following safeguards apply for students with disabilities:

¹ See 20 U.S.C. §§ 1401 *et seq.*; 34 C.F.R. §§ 300.1 to 300.539.

² See Tenn. Code Ann. § 49-10-1301 *et seq.*; SBE Rule 0520-01-09-.23.

³ See 29 U.S.C. § 794; 34 C.F.R. Part 104.

⁴ See 42 U.S.C. §§ 12131 to 12134; 28 C.F.R. Part 35.

- Child find: LEAs have an affirmative, ongoing obligation to identify, locate, and evaluate all children with disabilities residing within the jurisdiction who are in need of special education and related services. LEAs should consider whether students who are repeatedly having behavioral issues at school should be referred for an initial evaluation for special education and related services. For more information about child find, refer to 34 C.F.R. § 300.111.
- Functional Behavioral Assessments (FBAs) and Behavior Intervention Plans (BIPs): Beginning this school year, LEAs are required to conduct a functional behavioral assessment and develop a behavior intervention plan (1) when a student with a disability exhibits a pattern of behaviors that impede their learning or that of others, (2) when a student with a disability exhibits a pattern of behavior that places the student or others at risk of harm or injury, or (3) when a student with a disability's IEP team is considering a more restrictive placement as a result of the student's behavior. Before removing a student from his or her classroom, LEAs must address the student's behavior through an FBA or BIP. For more information on FBAs and BIPs, refer to State Board of Education Rule 0520-01-09-.24.
- Manifestation Determination Reviews: LEAs must conduct a manifestation determination review before changing the educational placement of a student with a disability. A change in educational placement occurs (1) when a student is removed from his or her current educational placement for more than ten consecutive school days, or (2) when a student is subjected to a series of removals based on the same or similar behavior and the removals total more than ten days. For more information on MDRs, refer to 34 C.F.R. §§ 300.530 and -.536.
- FERPA: FERPA grants a student's parents or guardians the right to inspect and review a student's educational records on request. The written request and supporting documentation that the teacher sends to the principal will be considered an educational record subject to parental inspection and review because they are directly related to the student and because it is used by the LEA. For more information on FERPA, refer to 34 C.F.R. §§ 99.1 *et seq.*
- Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act: Both Section 504 and Title II prohibit public schools from discriminating against students on the basis of a student's disability. LEAs and schools should monitor the number of students with disabilities who are being removed from the classroom under the Teacher's Discipline Act. If teachers are requesting, or principals are approving, the removal of a disproportionate number of students with disabilities, the LEA could be found in violation of Section 504 and Title II.

Contact Information

If you have further questions about the Teacher's Discipline Act, please contact Taylor Jenkins, assistant general counsel for special education, at Taylor.Jenkins@tn.gov.