

***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))

Universal 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” or “school district” is used in TEC §37.0021 (Use of Confinement, Restraint Seclusion, and Time-Out), Universal 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 the State and of Universal Academy open-enrollment charter school 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))

It is the policy of Universal 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

## UNIVERSAL ACADEMY

County School No.: 057808

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 Universal 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.

Under TEC §37.0021:

- 1) "Emergency" means a situation in which a student's behavior poses a threat of:
  - a) Imminent, serious physical harm to the student or others; or
  - b) Imminent, serious property destruction
- 2) "Restraint" means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student's body.
- 3) "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.
- 4) "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))

## UNIVERSAL ACADEMY

County School No.: 057808

### Use of Restraint

An employee, volunteer, or independent contractor of Universal Academy open-enrollment charter school may use restraint only in an emergency as defined above and in the following situations:

- 1) Restraint must be limited to the use of such reasonable force as is necessary to address the emergency.
- 2) Restraint shall be discontinued at the point at which the emergency no longer exists.
- 3) Restraint must be implemented in such a way to protect the health and safety of the student and others.
- 4) Restraint must not deprive the student of basic human necessity.

(19 TAC §89.1053)

Restraint does not include physical force or mechanical device which does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction (as described above) does not include:

- 1) Physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;
- 2) Limited physical contact with a student to promote safety (e.g. holding hand of student), prevent a potentially harmful action (e.g. running in the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort;
- 3) Limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the IEP as required by 34 CFR §300.324(a)(2)(i) and (c) to promote student learning and reduce and/or prevent the need for ongoing intervention; or
- 4) Seat belts and other safety equipment used to secure students during transportation.

(19 TAC §89.1053)

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Date Adopted by Governing Body/Board: June 30, 2016  
Date Revised: 6/20/2016

## UNIVERSAL ACADEMY

County School No.: 057808

### Use of Seclusion

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))

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))

### Use of Time Out

An employee, volunteer, or independent contractor of Universal Academy open-enrollment charter school may use time-out in accordance with subsection (b)(3) of this section with the following limitations.

- 1) Physical force or threat of physical force shall not be used to place a student in time-out.
- 2) Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be

## UNIVERSAL ACADEMY

County School No.: 057808

- included in the student's IEP and/or BIP if it is utilized on a recurrent basis to increase or decrease a targeted behavior.
- 3) Use of time-out shall not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

Data collection for use of time-out must be addressed in the IEP or BIP.

(19 TAC §89.1053)

### ***Documenting Restraint***

If Universal Academy open-enrollment charter school uses restraint, Universal Academy must document and report the use of restraint to the Texas Education Agency, including:

- 1) On the day restraint is used, the campus administrator or designee must be notified verbally or in writing about the use of restraint
- 2) Universal Academy must make a good faith effort to verbally notify the parent on the same day the restraint was used.
- 3) Written notification of the restraint must be mailed or otherwise provided to the parent within one school day of the use of restraint.
- 4) A copy of the written notification must be placed in the student's special education folder in a timely manner and made available to the ARD committee so the ARD committee can consider the impact of the student's behavior on the student's learning and/or creation or revision of a behavior intervention plan (BIP).
- 5) Written notice must include:
  - a. Name of student
  - b. Name of staff member(s) administering the restraint
  - c. Date of the restraint
  - d. Time the restraint began and ended
  - e. Location of the restraint
  - f. Nature of the restraint
  - g. Description of the activity in which the student was engaged in immediately preceding the use of restraint
  - h. The behavior that prompted the restraint
  - i. The efforts made to deescalate the situation and alternatives to restraint that were attempted; and
  - j. Information documenting parent contact and notification

(19 TAC §89.1053(k))

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Date Adopted by Governing Body/Board: June 30, 2016  
Date Revised: 6/20/2016

## **UNIVERSAL ACADEMY**

County School No.: **057808**

### ***Student Code of Conduct***

The governing body of Universal Academy 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 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))

A copy of Universal Academy's student code of conduct can be found [www.universalacademy.com](http://www.universalacademy.com).

Universal Academy 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 Section 37.008 if the student is younger than 10 years of age on the date of expulsion; and

## UNIVERSAL ACADEMY

County School No.: 057808

- 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))

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 to Remove Students with Disabilities***

Removal of a student with a disability will be determined on a case-by-case basis. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of the IDEA, is appropriate for a student with a disability who violates the student code of conduct. (34 CFR §300.530)

The placement of a student with a disability who receives special education services may only be by an ARD committee. Any disciplinary action that would result in a change of placement can only be enforced after the student's ARD committee conducts a manifestation determination review (MDR). Any removals must be in accordance with the IDEA and its regulations requiring:

- 1) functional behavior assessments
- 2) positive behavior interventions, strategies, and supports
- 3) behavior intervention plans; and
- 4) manifestation determination review

## **UNIVERSAL ACADEMY**

County School No.: **057808**

A student with a disability who receives special education services may not be removed or placed in an alternative setting solely for education purposes. (TEC § 37.004)

### *Removal for Fewer than 10 days*

School personnel may remove the student 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 students without disabilities.

School personnel may remove the student 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.

(34 CFR §300.530)

### *Removal for More than 10 days*

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

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

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

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Date Adopted by Governing Body/Board: June 30, 2016  
Date Revised: 6/20/2016



## UNIVERSAL ACADEMY

County School No.: 057808

- 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 student;

(34 CFR §300.530; 20 USC §1415(k)(1))

### Change in placement for removal

When a student with a disability is removed from the current education placement, it is considered a change in placement if:

- 1) The removal is more than 10 consecutive school days; or
- 2) The child has been subjected to a series of removals that constitute a pattern:
  - Because the series of removals total more than 10 school days in a school year;
  - Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
  - Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

Universal Academy open-enrollment charter school will determine on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(34 CFR §300.536)

### Manifestation Determination Review (MDR)

If a student with a disability is removed and the removal results in a change of placement, within 10 school days of any decision to change the placement of a student with a disability because of a violation of the student code of conduct, Universal Academy open-enrollment charter school must hold an

## UNIVERSAL ACADEMY

County School No.: 057808

ARD committee meeting to review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine—

- 1) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
- 2) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

The conduct must be determined to be a manifestation of the student's disability if the ARD Committee determines that either condition (1) or (2) is met.

If the ARD Committee determines that the behavior was a manifestation of the student's disability, the ARD Committee must:

- 1) Conduct a functional behavioral assessment, unless the ARD Committee had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implemented a behavioral intervention plan for the student; or
- 2) If a behavioral intervention plan was already developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

The student must then be returned to the last agreed upon placement, unless the ARD Committee agrees on a change of placement as part of a modification to the IEP or behavior intervention plan. (34 CFR §300.350(f))

If the ARD Committee determines that condition (2) is met and the IEP was not implemented, Universal Academy must take immediate steps to remedy those deficiencies. (34 CFR §300.530(e))

### Services during Removal

If a student is removed from the student's current placement for more than 10 days, but it is not a manifestation of the student's disability or a special

## UNIVERSAL ACADEMY

County School No.: 057808

circumstance, or if the removal constitutes a change of placement Universal Academy must:

- 1) provide educational services, as provided in § 300.101(a), so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and
- 2) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

Services can be provided at an interim alternative educational setting.

Universal Academy is only required to provide services during periods of removal to a student with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

After a student with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under § 300.536, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

(34 CFR §300.530(d))

### Special Circumstances

Universal Academy open-enrollment charter school may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student—

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Date Adopted by Governing Body/Board: June 30, 2016  
Date Revised: 6/20/2016

## UNIVERSAL ACADEMY

County School No.: 057808

- (1) 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 SEA or an LEA;
- (2) 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 SEA or an LEA; or
- (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA

(34 CFR §300.530)

### ***Removal of students not determined to have a disability***

A student who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated the student code of conduct, may assert any of the protections provided for in this part if the Universal Academy open-enrollment charter school had knowledge the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

Universal Academy will be considered to have knowledge if before the behavior that precipitated the disciplinary action occurred—

- 1) The parent of the student expressed concern in writing to supervisory or administrative personnel of the Universal Academy open-enrollment charter school, or a teacher of the child, that the child is in need of special education and related services;
- 2) The parent of the student requested an evaluation of the student pursuant to §§ 300.300 through 300.311; or
- 3) The teacher of the student, or other personnel of Universal Academy, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of Universal Academy or to other supervisory personnel of the open-enrollment charter school.

## **UNIVERSAL ACADEMY**

County School No.: **057808**

Universal Academy will not be deemed to have knowledge if—

- 1) The parent of the student did not allow an evaluation of the student pursuant to §§ 300.300 through 300.311; or refused services; or
- 2) The student was evaluated in accordance with §§ 300.300 through 300.311 and determined not to be a student with a disability.

If it is determined that Universal Academy did not have knowledge, the student may be subjected to disciplinary measures as applied to students without disabilities. If a request for evaluation is made during the time period that the student is subjected to a disciplinary measure, then the evaluation must be expedited. While the evaluation is being completed, the student remains in the educational placement determined by the school administration.

(34 CFR §300.534)

### ***Placement during an Appeal***

The parent of a student with a disability who disagrees with an ARD committee's decision to change placement or removal as defined under §§ 300.530 and 300.531, or disagrees with the manifestation determination under § 300.530(e), or Universal Academy open-enrollment charter schools believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing pursuant to §§ 300.507 and 300.508(a) and (b). (34 CFR §300.532)

During an appeal, a student must remain in the interim alternative education placement pending the decision or until the end of the 45 days for a special circumstance, unless the parent and Universal Academy agree otherwise. (34 CFR §300.533)

### ***Limitation on General Authority***

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Date Adopted by Governing Body/Board: June 30, 2016  
Date Revised: 6/20/2016

## **UNIVERSAL ACADEMY**

County School No.: 057808

A student 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 or district 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:

- 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) "District 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 district or school takes disciplinary action against a student and the student subsequently enrolls in another district or school before the expiration of the period of disciplinary action, the governing body of the district or school taking the disciplinary action shall provide to the district 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 district 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))

### ***Referral to Law Enforcement***

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Date Adopted by Governing Body/Board: June 30, 2016  
Date Revised: 6/20/2016

## **UNIVERSAL ACADEMY**

County School No.: **057808**

Nothing in this section prohibits Universal Academy from reporting a crime committed by a student with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

If Universal Academy open-enrollment charter school reports a crime committed by a student with a disability, Universal Academy must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to who Universal Academy reports the crime.

Universal Academy may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. (34 CFR §300.535)