Early Childhood Inclusion Guidance

New Documents to Encourage Collaboration Between State Agencies, Local Agencies and Head Start

- *Dear Colleague Letter on Individuals with Disabilities Education Act (IDEA) Services in Head Start*
  1. IDEA Requirements
  2. Collaboration
  3. Resources

- *Guidance on Creating an Effective Memorandum of Understanding to Support High Quality Inclusive Early Childhood Systems*
Guidance to Help Schools Support Students with Disabilities and Avoid Disparities in the Use of Discipline

October 13, 2022
Agenda

▶ Welcome

▶ Explore highlights of OSEP’s Discipline/Behavior Guidance

▶ Provide feedback in the chat
  • How can OSEP support your efforts to implement IDEA’s discipline and behavior related requirements?
OSEP Dear Colleague

Questions and Answers Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions

Positive, Proactive Approaches to Supporting the Needs of Children with Disabilities: A Guide for Stakeholders

Individuals with Disabilities Education Act (IDEA) Topic Areas
Office of Civil Rights

- U.S. Department of Education/Office for Civil Rights
  - *Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973 (Section 504).* (July 19, 2022)
    - *Accompanying Fact Sheet.* (July 19, 2022)
Why, What & How

OSEP Guidance to Help Schools Support Students with Disabilities and Avoid Disparities In the Use of Discipline
It’s hard to learn when removed from the classroom
Preschool Students Served Under IDEA in 2017-18 School Year

- **Enrollment**: 22.7%
- **Expulsions**: 56.9%

School-age students with disabilities served under IDEA in 2017-18 School Year

- Enrollment: 13.2%
- In-School-Suspensions: 20.5%
- Out-of School-Suspensions: 24.5%

Students with disabilities served under IDEA in 2017-18 school year

<table>
<thead>
<tr>
<th></th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enrollment</td>
<td>13.2%</td>
</tr>
<tr>
<td>Physical Restraint</td>
<td>80.2%</td>
</tr>
<tr>
<td>Seclusion</td>
<td>77.3%</td>
</tr>
</tbody>
</table>

Black Children with Disabilities in 2019-2020 School Year

- Enrollment: 17.2%
- Long-Term Suspension/Expulsion: 43.5%

SCHOOL DAYS MISSED DUE TO OUT-OF-SCHOOL SUSPENSIONS IN 2017-18

11,205,797

The total number of school days that all students missed due to out-of-school suspensions.


*This data refers to students with and without disabilities.
“The Department is concerned that misapplying or, in some cases, not applying, the provisions found in IDEA, including the discipline provisions, has contributed to inappropriate exclusion, particularly for children of color with disabilities, and has resulted in denying access to critical educational opportunities.”

12 Key Areas Addressed in Q&A

A. State & Local Public Agency Obligations to Meet the Needs of Children with Disabilities Under IDEA
B. Overview of IDEA’s Discipline Requirements
C. Change in Placement
D. Interim Alternative Educational Settings
E. Special Circumstances
F. Manifestation Determination Review
G. Functional Behavioral Assessments and Behavior Intervention Plans
H. Provision of Services During Periods of Removals
I. Protections for Children Not Yet Determined Eligible for IDEA Services
J. Application of IDEA Discipline Protections in Certain Specific Circumstances
K. Resolving Disagreements
L. State Oversight & Data Reporting Responsibilities

* Glossary of Key Terms
Describing Discipline

IDEA does not define “discipline.” For the purposes of the Q&A document, “discipline is intended to mean:

- the consequences a school imposes on a child who violates a school’s code of student conduct or rules as determined by school personnel and does not include use of corporal punishment. (B-1)
Describing Discipline

- Restraint or seclusion is **not** an appropriate discipline strategy and should only be used in situations where the child’s behavior poses imminent danger of serious physical harm to themselves or others.
  - Every effort should be made to prevent the need for the use of restraint and seclusion. (B-3)

Restraint and Seclusion: Resource Document. (PDF)
Overview of IDEA Discipline Requirements

- IDEA explains the rights of children with disabilities and the authority of school personnel when a child is suspended, expelled or temporarily placed in an interim alternative educational setting for disciplinary purposes under 34 C.F.R. §§300.530 through 300.536. (B-1)

- IDEA does not prescribe specific disciplinary actions an LEA must take but it does set some limits. (B-2)
Application of IDEA Discipline Protections

- Children who are receiving FAPE under IDEA
- Publicly funded preschool programs
- Public charter schools
- SEA, LEA virtual schools / virtual setting
- Correctional facilities
- Publicly placed private school students for providing FAPE
- Parent consented to some but not all special education services
- Child not yet determined IDEA eligible, but LEA is deemed to have knowledge that the child is a child with a disability (Sections I, J)
Behavior is a form of communication
Addressing Behavior

- IEP Teams must **recognize and support the behavioral needs** of children with disabilities through the evaluation, reevaluation, IEP development/implementation process. (A-2)

- To ensure FAPE to the child, IEP Teams must consider the **use of positive behavioral interventions and supports**, and other strategies if a child’s behavior impedes their learning or that of others.

  - If an IEP Team does not consider behavioral supports for a child with a disability, it **may result in a denial of FAPE** and/or the **overreliance on and misuse of exclusionary discipline** in response to a child’s behavior.
Addressing Behavior

- If a child’s IEP does not include positive behavioral interventions and supports, and other strategies, the IEP Team should convene and consider revising the IEP or conducting assessments, if additional data is needed. (A-3, A-4, A-5)

- IEP Teams should revise a child’s IEP if existing behavioral supports are not effective in addressing a child’s behavior needs. (A-6)
Description of an FBA:

• An FBA is used to understand the function and purpose of a child’s specific, interfering behavior and factors that contribute to the behavior’s occurrence and non-occurrence for the purpose of developing effective positive behavioral interventions, supports, and other strategies to mitigate or eliminate the interfering behavior. (Glossary)
• Must be conducted after a manifestation determination review concludes the child’s behavior that resulted in the disciplinary change of placement was a manifestation of the child’s disability. (G-1)

• May be conducted in other circumstances as well.
Behavioral intervention plans (BIP) take an individualized, proactive, and preventative approach to addressing the interfering behavior.

BIPs must be implemented when the child’s conduct that resulted in a change of placement was a manifestation of the child’s disability because the conduct was caused by, or had a direct and substantial relationship to, their disability, or the conduct was a direct result of the LEA’s failure to implement the IEP.

If the LEA already conducted an FBA and developed a BIP before the change of placement occurred, the IEP Team must review the BIP and modify it as necessary to address the behavior. (G-1)
A manifestation determination review is a review conducted by the LEA, the parent, and relevant members of the IEP Team (as determined by the parent and the LEA) of all relevant information in the child’s file to determine if the conduct that gave rise to the violation of the school’s code of student conduct was:

- caused by, or had a direct and substantial relationship to, the child’s disability, or
- if the behavior in question was the direct result of the LEA’s failure to implement the IEP. (F-1)
Manifestation Determination Review

What is an MDR?

When Must MDR be Conducted?

When must a child’s behavior be determined to be a manifestation of their disability?

What actions must the IEP Team take if they determine the behavior IS a manifestation?

What actions must the IEP Team take if they determine the behavior is NOT a manifestation?
Exclusionary discipline is overused
Examples of School/Early Childhood Program Discipline

- In-School or Out-of-School Suspension
- Expulsion
- Removal to Interim Alternative Educational Setting
- “Shortened day” or Informal Removal
Generally, a removal is considered a disciplinary removal unless:

1. Child is afforded the opportunity to continue to appropriately participate in the general curriculum, and

2. Child continues to receive the services specified on the child’s IEP, and

3. Child continues to participate with nondisabled children to the extent they would have in their current placement.
Change in Placement

- If the removal is for more than 10 consecutive school days, or
- The child has been subjected to a series of removals that constitute a pattern
  - Series of removals total more than 10 school days in a school year
  - Child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals
  - Additional factors, such as: length of each removal, total amount of time the child has been removed, proximity of the removals to one another
- Could include exclusions that take place outside of IDEA’s discipline provisions which occur because of a child’s behavior: “informal removals”
Change in Placement

“SEAs should examine these practices in conjunction with their duty to monitor LEAs’ compliance with discipline provisions and the IEP, placement, and the least restrictive environment requirements of IDEA.” (C-1)
Interim Alternative Educational Setting

Provides a definition of IAES, identical to data reported under Section 618

An **appropriate setting** determined by the child’s IEP Team or a hearing officer in which the child is placed **for no more than 45 school days**.

This setting enables the child to continue to **receive educational services** so as to enable them to participate in the general education curriculum (although in another setting) and to progress toward meeting the goals set out in the IEP.

As appropriate, the setting includes an FBA, and behavioral intervention services and modifications to **address the behavior violation** so that it does not recur.
Virtual Instruction as an IAES

• Home instruction could be delivered through a virtual, in-person or hybrid approach.

• Must continue to allow the child to participate in the general education curriculum and progress toward IEP goals

▶ HOWEVER...

• SEAs and LEAs should be cautious about excluding a child with a disability from their regular education program to provide virtual instruction for the sole purpose of responding to a child’s behavior.

• Removing a child from their regular education program without ensuring behavioral supports have been made available throughout a continuum of placements, could result in an inappropriately restrictive placement and denial of FAPE.
Removals for Special Circumstances

- Reiterates IDEA’s requirements involving a removal due to weapons, drugs, or serious bodily injury. (E-1)

- Addresses the concept of risk or threat assessments
  - States and LEAs should ensure that school personnel involved in screening for, and conducting risk or threat assessments of children with disabilities are aware that the child has a disability and are sufficiently knowledgeable about the LEA’s FAPE obligation, including IDEA’s discipline provisions. Where appropriate, coordinate with child’s IEP Team. (E-5)
Informal Removals Matter
Informal Removal: Definition

Action taken by school personnel in response to a child’s behavior that excludes the child for part or all of the school day, or even an indefinite period of time.

These exclusions are considered informal because the school removes the child with a disability from class or school without invoking IDEA’s disciplinary procedures.

Informal removals are subject to IDEA’s requirements to the same extent as disciplinary removals by school personnel using the school’s disciplinary procedures.

Informal removals include administratively shortened school days when a child’s school day is reduced by school personnel, outside of the IEP Team and placement process, in response to the child’s behavior. (C-1, C-6, glossary)
Informal Removal and Change in Placement

- In general, the use of informal removals to address a child’s behavior, if implemented repeatedly throughout the school year, could constitute a disciplinary removal from the current placement.
  
  - Therefore, the discipline procedures would generally apply unless all three of the following factors are met:
    - the child is afforded the opportunity to continue to appropriately participate in the general curriculum;
    - the child continues to receive the services specified on the child’s IEP; and
    - the child continues to participate with nondisabled children to the extent they would have in their current placement. (C-6)

- The practice of shortening a child's school day as a disciplinary measure could be considered a denial of FAPE if the child's IEP Team does not also consider other options such as additional or different services and supports that could enable a child to remain in school for the full school day. (C-6)
Discipline disparities are longstanding & persisting
State Oversight & Reporting Responsibilities

▶ Important role of SEA and LEA oversight

▶ General supervisory responsibilities
  
  • SEAs should play particular attention to LEA and Statewide discipline data and discipline policies, procedures, and practices when exercising their general supervisory responsibilities. (L-1)

  • Applies to all publicly placed children with disabilities, including those placed in a program operated by another public agency (e.g. Head Start) (L-3)
State Oversight & Reporting Responsibilities

General Supervision

Significant Discrepancies in Long-Term Suspensions, Expulsions

Significant Disproportionality
Significant discrepancies in long-term suspensions and expulsions, disaggregated by race and ethnicity

- State chosen methodology must be reasonable (L-6)
- Factors OSEP may consider in determining reasonableness include whether none, or a very low percentage of, the State’s LEAs are being examined for significant discrepancy, and whether statistically sound alternative methodologies exist or are being used by similarly-situated states. (L-6)
- Included in FFY 2021 Part B SPP/APR General Instructions for Indicators 4A and 4B
We can and must do better
Four Key Areas

- Using an Evidence-Based Approach to Support and Respond to Student Needs
- Investing in School and Educator Capacity
- Federal Funding Available to Address Disparities in, and to Reduce the Use of, Exclusionary Discipline
- Federal Resources to Support State and Local Efforts to Address Disparities in, and Reduce the Use of, Exclusionary Discipline
Policy-to-Practice

6 Strategies to Address Discipline Practices

- Addressing Discipline Disparities
- Creating a Positive Predicable Environment
- Implementing Evidence-Based Approaches to Respond to Student Needs
- Personnel Preparation to Address Social, Emotional, Behavioral Needs
- Professional Development to Address Social, Emotional, Behavioral Needs
- Reducing Exclusionary Practices

www.osepideasthatwork.org
### 8 Resource Guides on Positive, Proactive Approaches to Discipline & Behavior

<table>
<thead>
<tr>
<th>Category</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Addressing Discipline Disparities</td>
<td>Creating a Positive Predictable Environment</td>
</tr>
<tr>
<td>Implementing Evidence-Based Approaches to Respond to Student Needs: Data-Based Decision Making</td>
<td>Implementing Evidence-Based Approaches to Respond to Student Needs: Multi-Tiered Systems of Support (MTSS)</td>
</tr>
<tr>
<td>Implementing Evidence-Based Approaches to Respond to Student Needs: Positive Behavior Intervention and Supports (PBIS)</td>
<td>Professional Development to Support Social, Emotional, and Behavioral Needs</td>
</tr>
<tr>
<td>Implementing Evidence-Based Approaches to Respond to Student Needs: Multi-Tiered Systems of Support (MTSS)</td>
<td>Personnel Preparation to Address Social, Emotional, and Behavioral Needs</td>
</tr>
<tr>
<td>Implementing Evidence-Based Approaches to Respond to Student Needs: Multi-Tiered Systems of Support (MTSS)</td>
<td>Reducing Exclusionary Practices</td>
</tr>
</tbody>
</table>

Office of Special Education Programs
Office of Special Education and Rehabilitative Services
SUSPENSION AND EXPULSION

<table>
<thead>
<tr>
<th>Resource</th>
<th>Description</th>
<th>Audience</th>
<th>Reference Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manifestation Determination in School Discipline</td>
<td>This page provides information about the IDEA-mandated discipline procedure of “manifestation determination review,” which determines whether a child’s behavior that led to a disciplinary inaction is linked to his or her disability. The page includes who is involved, the scope of the review, and discussion of the different determinations and their implications for the child.</td>
<td>Educators • School administrators • Local and district agencies</td>
<td>Center for Parent Information and Resources (CPIR) (2002). Manifestation determination in school discipline. <a href="https://www.parentcenterhub.org/manifestation">https://www.parentcenterhub.org/manifestation</a></td>
</tr>
<tr>
<td>Manifestation Determination Flow Chart</td>
<td>The infographic illustrates the manifested determination process and options. It shows the various steps that can lead to a required manifest determination meeting.</td>
<td>Educators • School administrators</td>
<td>Rowe, M. (2021). Manifestation Determination Flow Chart: Center for Appropriate Dispute Resolution in Education. <a href="https://www.cedarworks.org/lls/default/files/resources/V3-10%20%20Flow%20chart%202020-03-20%20%20Version%202020-03-22.pdf">https://www.cedarworks.org/lls/default/files/resources/V3-10%20%20Flow%20chart%202020-03-20%20%20Version%202020-03-22.pdf</a></td>
</tr>
<tr>
<td>Pyramidal Model Program Leadership Team Guidance for Preventing the Use of Suspension and Expulsion and Promoting Equitable, Inclusive, and Culturally Responsive Practice</td>
<td>This document provides program leadership teams with guidance to support their efforts to eliminate suspension and expulsion and promote equitable, inclusive, and culturally responsive practice in all early childhood settings, including public and private schools and childcare centers.</td>
<td>Local and district agencies • School administrations</td>
<td>Smith, B. J., Dell, P., &amp; Fox, L. (2018). Pyramidal Model Program Leadership Team guidance for preventing the use of suspension and expulsion and promoting equitable, inclusive, and culturally responsive practice. National Center for Pyramid Model Innovations. <a href="https://challengingbehavior.ucsf.edu/leadership/Pyramid_Guidance_Programs.pdf">https://challengingbehavior.ucsf.edu/leadership/Pyramid_Guidance_Programs.pdf</a></td>
</tr>
<tr>
<td>Pyramidal Model State Leadership Team Guidance for Preventing the Use of Suspension and Expulsion and Promoting Equitable, Inclusive, and Culturally Responsive Practice</td>
<td>This document provides state leadership teams with guidance on how to prevent suspension and expulsion by integrating with existing efforts, including the Pyramidal Model: Multi-Tiered System of Supports (MTSS), and Quality Rating Improvement System (QRIS), inclusion, and State Systemic Improvement Plan (SSIP) efforts.</td>
<td>State and regional agencies</td>
<td>Smith, B. J., Dell, P., &amp; Fox, L. (2018). Pyramidal Model State Leadership Team guidance for preventing the use of suspension and expulsion and promoting equitable, inclusive, and culturally responsive practice. National Center for Pyramid Model Innovations. <a href="https://challengingbehavior.ucsf.edu/leadership/Pyramid_Guidance_State.pdf">https://challengingbehavior.ucsf.edu/leadership/Pyramid_Guidance_State.pdf</a></td>
</tr>
</tbody>
</table>
OSEP Technical Assistance Centers

OSEP Technical Assistance Centers

Office of Special Education Programs Technical Assistance Network (osepideasthatwork.org)
Thank You
Kimberly Hymes: Kimberly.Hymes@ed.gov
Keesha Blythe: Keesha.Blythe@ed.gov

Office of Special Education Programs
Office of Special Education and Rehabilitative Services
U.S. Department of Education