



## Tools for Addressing Inequities in Discipline of Students with Disabilities

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Provide information and resources to charter school leaders to *confidently* welcome students with disabilities who may present behavioral challenges into your schools and help them achieve success. To that end, we will discuss:

- ▶ Impact of exclusionary discipline on all students;
- ▶ strategies that benefit all students in preventing use of exclusionary discipline;
- ▶ resources and requirements for proactively addressing behavioral challenges for students with disabilities to prevent use of exclusionary discipline; and
- ▶ IDEA protections that apply to the use of exclusionary discipline for students with disabilities.

What we hope  
to accomplish  
today!

# A word or two about behavior

Behavior is a persuasive form of communication.

Disruptive or problematic behavior by a student might be caused by:

- Impact of a student's disability in the educational setting

- Frustration, anger, anxiety, depression as a result of not having educational needs met

Too often problematic behavior flips the focus on controlling or punishing the student.

- Addressing educational needs becomes secondary

- Labeling the student, rather than the behavior, as "bad" becomes primary

# The Long-Term Consequences of Exclusionary Discipline

Young students who are expelled or suspended are as much as 10 times more likely to:

- drop out of high school
- experience grade retention
- hold negative school attitudes
- face incarceration

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
U.S. DEPARTMENT OF EDUCATION  
POLICY STATEMENT ON EXPULSION AND SUSPENSION  
POLICIES IN EARLY CHILDHOOD SETTINGS

# What does research tell us about the impact of exclusionary discipline for students with disabilities?

- ▶ Suspension from school does not deter misbehavior.
- ▶ Suspension from school is associated with significant adverse consequences for the students suspended, including:
  - ▶ lower academic performance
  - ▶ disengagement
  - ▶ drop out

# Inequity in Discipline of Students with Disabilities

“Children with disabilities are at greater risk of disciplinary removals that significantly interrupt their learning, often unnecessarily. As a suspended child’s education is interrupted, he or she is more likely to fall behind, become disengaged from school, and to drop out.” Dear Colleague Letter, 68 IDELR 76 (OSERS/OSEP 2016).

What does  
research tell us  
about student  
achievement and  
classroom  
behavior?

“[S]chool-wide, small group, and individual behavioral supports that use proactive and preventative approaches, address the underlying cause of behavior, and reinforce positive behaviors are associated with increases in academic engagement, academic achievement, and fewer suspensions and dropouts.”

Dear Colleague Letter, 68 IDELR 76 (OSERS/OSEP 2016).

Students are more likely to achieve when they are:

- ▶ directly taught predictable and contextually relevant school and classroom routines and expectations
- ▶ acknowledged clearly and consistently for displaying positive academic and social behavior
- ▶ consistently prompted and corrected when behavior does not meet expectations
- ▶ treated by others with respect

Known Factors  
that Improve  
Academic  
Achievement  
for ALL  
Students



Students with disabilities may require additional behavioral supports and services.

Behavioral supports may be necessary to ensure that a Student's IEP is designed to enable her to access and make progress in the general education curriculum. This may include:

- ▶ instruction and reinforcement of school expectations
- ▶ violence prevention programs
- ▶ anger management groups
- ▶ counseling for mental health issues
- ▶ behavioral coaching
- ▶ social skills instruction



# Reframing IDEA Requirements as Resources

# Recommendations for School Leaders

Identify and access the special education personnel and resources available to you.

Nurture relationships with special education administrators, educators and related service providers through frequent and consistent communication.

Recognize the impact your knowledge and access to available resources can have on instructional staff and students.

How IDEA requirements proactively address challenging behavior to prevent the use of exclusionary discipline practices.



Do you have sufficient and reliable information about the cause of the behavior? Consider evaluation.



Do you have the right experts at the table to discuss behavior? Convene the IEP Team.



Do you have a plan to address behavior?  
Review and revise the IEP.

If so, is it being followed by all staff?  
If so, is the plan adequate and/or have needs changed?

# IDEA Resource: Evaluation Procedures to Inform Educational Programming.

## Special Education Evaluations

Comprehensive to include assessment in all areas related to the suspected disability

Variety of assessment and strategies to gather relevant information

Technically sound instruments selected and administered so as not to be discriminatory

Assessments tailored to assess specific areas of educational need

# IDEA Resource: Functional Behavior Assessment (FBA)



typically involves the identification of the target behavior and its antecedents and consequences;



the development of a hypothesis about the cause or function of the behavior;



the development of interventions to test the hypothesis; and



the collection of data concerning the effectiveness of the interventions.

# IDEA Resource: IEP Team

## Student's Interdisciplinary Team of Experts

Knowledgeable about Student's unique needs and way of learning

Diverse expertise with varying perspectives, including Parents

Student focused and invested

Collaborative model of decision making

Inclusive and expansive → who might be missing from the table?

# IDEA Resource: Development and Revision of IEP

- ▶ IEP Team must consider the use of “positive behavioral interventions and supports, and other strategies,” to address behavior that impedes the learning of the student themselves or the learning of others.
- ▶ Conducting a functional behavioral assessment typically precedes developing positive behavioral intervention strategies.



# IDEA Resource: Behavioral Intervention Plan (BIP)

Part of the IEP that describes the specific positive behavioral interventions, supports, and strategies that will be provided to address behavior. Typically, a BIP will identify the following:

Setting Events

Antecedent Strategies

Behavior Teaching Strategies

Reinforcement Strategies



Quality of FBA will impact effectiveness of BIP

- ▶ *Convene the IEP Team* to problem solve before behavior results in suspension/expulsion.
  - ▶ IEP may need to be revised to include behavioral supports.
  - ▶ If IEP includes behavioral supports, consider:
    - ▶ Fidelity of implementation
    - ▶ Adequacy of supports and services identified
    - ▶ Changing needs? Conduct reevaluation

Disruptive  
behavior as  
warning sign  
that educational  
programming  
may not be  
appropriately  
addressing  
needs

Do not get  
discouraged!!

Human beings are complicated, and behavior is fluid.

The IEP is not a compliance checklist or form; it is an educational program designed to meet a student's unique disability-related needs.

IDEA does not require perfection; it requires fidelity in implementing the IEP and responsiveness to lack of expected progress or changing needs.

IDEA does not promise a certain level of achievement; it promises access to and progress in the general education curriculum.

# Guiding principles for understanding IDEA disciplinary procedures and protections

Students should not be penalized or punished for conduct that is the result of their disability.

Behavioral challenges and changes of placement are more appropriately addressed through the IEP process than through the student code of conduct to prevent interruption of educational services.

Students not yet identified as IDEA-eligible may be protected.

# IDEA Disciplinary Protections for Students *not yet* Identified

A student not yet identified may assert IDEA's disciplinary protections if the school should have known the student had a disability before the behavior resulting in discipline occurred. School will be deemed to have knowledge if:

The parent of the child expressed concern *in writing to supervisory or administrative personnel* of the appropriate educational agency or to a teacher of the child that the child is in need of special education and related services;

The parent of the child requested an evaluation of the child; or

The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child *directly to the director of special education of the agency or to other supervisory personnel of the agency.*

# What is a disciplinary change of placement?

Removal for more than 10 consecutive school days; or

Series of removals that constitute a pattern. A pattern is defined as:

- More than 10 days in school year;

- Behavior that is substantially similar; and

- Includes additional factors, such as length of each removal, total amount of removal, and proximity of removals to one another.

34 C.F.R. § 300.536

- ▶ Out-of-school suspensions, expulsions, and removal to an IAES always count.
- ▶ In-school suspensions also count, *unless the answer to each of the following questions is yes.*
  - ▶ Will the student be able to appropriately participate in the general education curriculum?
  - ▶ Will the student be able to receive the services specified in the IEP?
  - ▶ Will the student be able to participate with children without disabilities to the extent identified by the IEP as the LRE?

What  
constitutes a  
removal?

- ▶ Partial day counts as a removal.
- ▶ Bus suspensions count as a removal when:
  - ▶ Transportation is listed on the IEP as a related service; and
  - ▶ School does not provide alternative transportation—even *if* the student otherwise makes it to school.
  - ▶ If transportation is not a related service, school should still consider the:
    - ▶ relationship between misconduct on bus and in classroom; and
    - ▶ need for behavioral services and supports

What  
constitutes a  
removal?



# What does NOT count as a removal?

- ▶ Time out
- ▶ After school detention
- ▶ Lunch detention



What is  
substantially  
similar  
behavior?

Student receives four 5-day suspensions for fighting, bullying, fighting, and sexual harassment.

Student receives four 5-day suspensions for fighting, truancy, possession of tobacco, and disrespect.

Keep track of  
the days!!!

If disciplinary removals do not constitute a change of placement, school district can unilaterally impose discipline in accordance with its policies, as long as it is not discriminatory.

If disciplinary removals do constitute a change of placement, a complex array of IDEA discipline procedures apply and must be followed.

# What is required when a disciplinary change of placement has been made?

- ▶ Notify parents on the date the decision to change placement was made and provide Procedural Safeguards Notice;
- ▶ Conduct a manifestation determination within 10 *school* days to determine:
  - ▶ Whether the conduct was caused by or directly and substantially related to the student's disability; or
  - ▶ Whether the conduct was the direct result of a failure to implement the student's IEP.
- ▶ Continue to provide educational services

34 C.F.R. § 300.530

# Manifestation Determination Review: Notice and Convening of MDT

Parents must be notified on the date that a decision was made to change placement as a result of disciplinary removals.



Convene a group of individuals including parent and relevant members of the student's IEP team—as *determined by the parent and the school.*

*Provide notice sufficient to ensure parent participation in the MDR AND*

*Allow parent to invite members they deem relevant if not already included.*

# Key Features of the MDR

The purpose of the manifestation determination is to determine if the student's conduct was a manifestation of the child's disability or a result of the failure to implement the student's IEP. To make this determination, the MDT must:

Review all relevant information.

Based on the review of information, answer two key questions:

Was the conduct caused by or did it have a direct and substantial relationships to the student's disability?

Was the conduct the direct result of the district's failure to implement the IEP?

# MDR: Review of Relevant Information

- ▶ Current IEP, including goals and services
- ▶ Most recent FBA and BIP
- ▶ Data related to Student's Performance and implementation of IEP and BIP, including progress on IEP goals
- ▶ Information from Parents
- ▶ Suspension/specific misconduct at issue



# Key Considerations for Answering Question One: Direct and Substantial Relationship

Was the conduct caused by or did it have a direct and substantial relationships to the student's disability?

*Note: The question is NOT whether student knew right from wrong or engaged in choice-based behavior.*

Consider whether the behavior listed in the suspension report was similar or different from the behaviors and impact of disability described in the Student's IEP and BIP.

If the behavior and conduct at issue is ongoing and routine, such that it is contemplated or addressed in the IEP and/or BIP, this may reasonably indicate that the conduct at issue was a manifestation.

If the MDT determines that the conduct at issue was similar—but that this was an exception to the behavior described in the IEP—this should be clearly explained.



Is the conduct at issue directly connected to student's disability?

- ▶ Direct *means* causative, unbroken, operating by immediate connection or relation, and absent intervening force.
- ▶ If the relationship between the conduct and Student's disability requires multiple steps in logic to make the connection, the relationship is likely too remote to be a manifestation.

Key  
Considerations  
for Answering  
Question One:  
*Direct* and  
Substantial  
Relationship

# Key Considerations for Answering Question Two: Implementation of IEP and BIP

Review implementation of IEP and BIP, including provision of services, supports, and accommodations.

- ▶ Are all teachers informed of their responsibility to implement IEP and BIP?
- ▶ Is the IEP and BIP being implemented in all settings? How do you know?
- ▶ What are the student's IEP goals?
  - ▶ Do any of the goals relate to the student's behavior and conduct at issue?
  - ▶ Progress on IEP goals?
- ▶ What types of services does the student receive? Do any of the provided services relate to or impact student behavior and conduct at issue? Has the student been receiving all services and supports? Have there been any gaps?



Answer the  
two requisite  
questions  
based on  
student-  
specific data,  
not labels.

These questions must be answered based on a student-specific circumstances. Blanket decisions based on diagnoses, eligibility category, or IEP goals are not permissible. Beware of making snap-judgments like:

- ▶ The child has an FBA, so her behavior is a manifestation of her disability.
- ▶ The child has ODD, so his behavior is a manifestation of his disability.
- ▶ The child is in a self-contained classroom, so his behavior is a manifestation of his disability.
- ▶ The child's IEP does not have a behavior goal, so her behavior is not a manifestation of her disability.
- ▶ The child is on medication for her ADHD and missed her meds this morning, so her behavior is a manifestation of her disability.

May a school  
conduct the MDR  
before a  
disciplinary  
change of  
placement has  
occurred?

While nothing in IDEA prohibits a school from conducting a manifestation determination review prior to a disciplinary change of placement, the school should consider:

How will conducting the MDR *proactively* address the *educational needs* of the student and make it less likely that the behavior will reoccur?

Be careful not to use the outcome of an MDR conducted prior to a disciplinary change of placement to extend or add days to the suspension/expulsion at issue as this would be inconsistent with IDEA.

- ▶ During the first 10 days of removal? School is not required to provide any services unless it does so for similarly situated general education students.
- ▶ Day 11 for removals that are NOT changes of placement? School personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed 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 child's IEP.
- ▶ Day 11 for removals that are changes of placement? The IEP TEAM determines educational services necessary:
  - ▶ 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 child's IEP; and
  - ▶ 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.

## Provision of Services During Removals

# What happens when the conduct is determined to be a manifestation of the disability?

1

Immediately conduct a functional behavioral assessment, unless one has already been conducted.

2

Write a behavior intervention plan.

- If BIP already exists, the IEP team must review and modify as appropriate.

3

Return student to placement prior to removal, unless:

- Special circumstances exist—weapons, drugs, SBI; or
- Parents and AU agree to change placement as part of modification to BIP.

School personnel may unilaterally remove an eligible individual to an interim alternative educational setting (IAES) for up to forty-five school days if any one of the three listed special circumstances is present: drugs, weapons, or serious bodily injury, even if the conduct is a manifestation of the child's disability.

- ▶ MDR must still be conducted but student does not need to be returned to prior educational placement.
- ▶ IEP Team determines IAES.

## Special Circumstances: Weapons, Drugs, and Serious Bodily Injury

What happens  
when the  
conduct is NOT a  
manifestation of  
the disability?

School has the authority to apply disciplinary procedures to the student in the same manner as they would be applied to a student without a disability.

Student is still entitled to FAPE and school must provide the educational services that are sufficient to continue to participate in the general education curriculum and make progress on IEP goals. These services and setting are determined by the IEP team.



# CDE Resources for Behavioral Support



Behavior, Functional Behavioral Assessments (FBA),  
and Behavioral Intervention Plans (BIP):  
<http://www.cde.state.co.us/cdesped/behavior>



Multi-tiered Systems of Support (MTSS):  
<http://www.cde.state.co.us/mtss>



Positive Behavioral Interventions and Supports  
(PBIS): <http://www.cde.state.co.us/mtss/pbis>