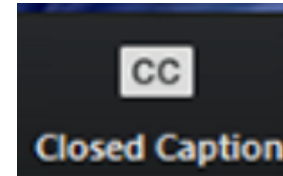


GUIDANCE TO HELP SCHOOLS SUPPORT CHILDREN WITH DISABILITIES AND AVOID DISPARITIES IN THE USE OF DISCIPLINE

NOVEMBER 3, 2022

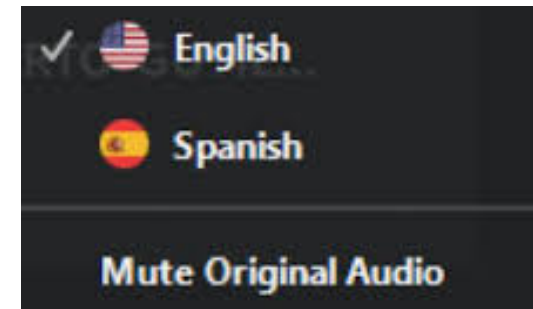
Using Closed Captioning

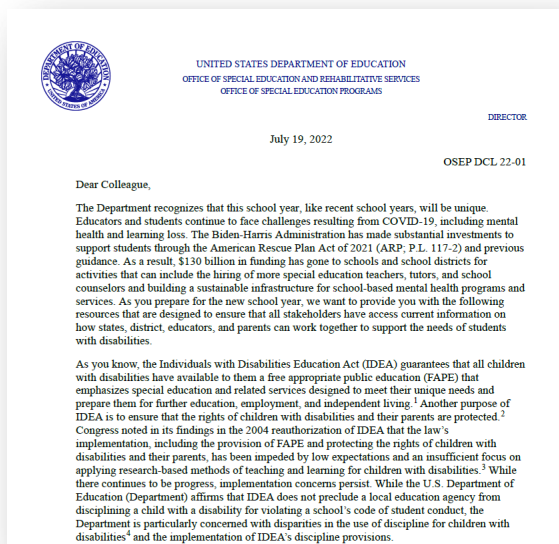
- ▶ To start using CC, click the caption button



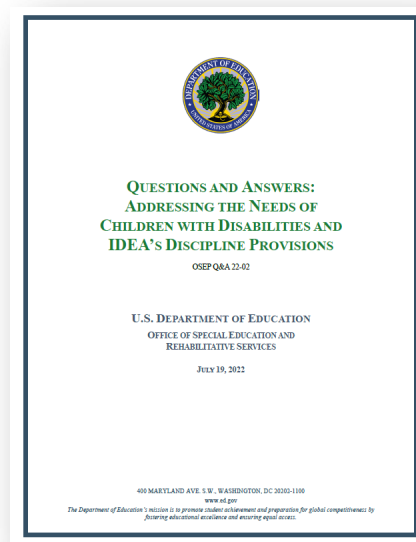
Uso de la interpretación de idiomas

- Hagan clic en el icono de interpretación
- Seleccionen "Spanish"
- Después de seleccionar "español", hagan clic "Mute Original Audio"

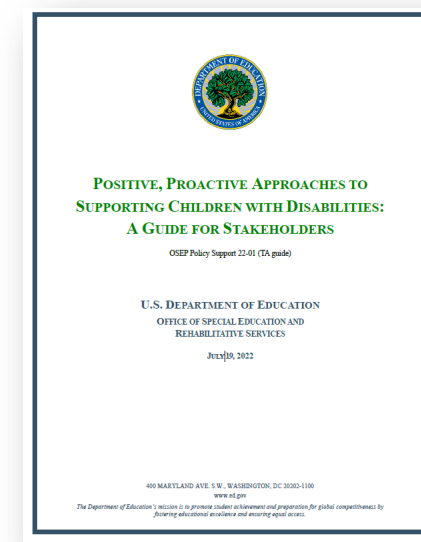




OSEP Dear Colleague Letter on Implementation of IDEA Discipline Provisions



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

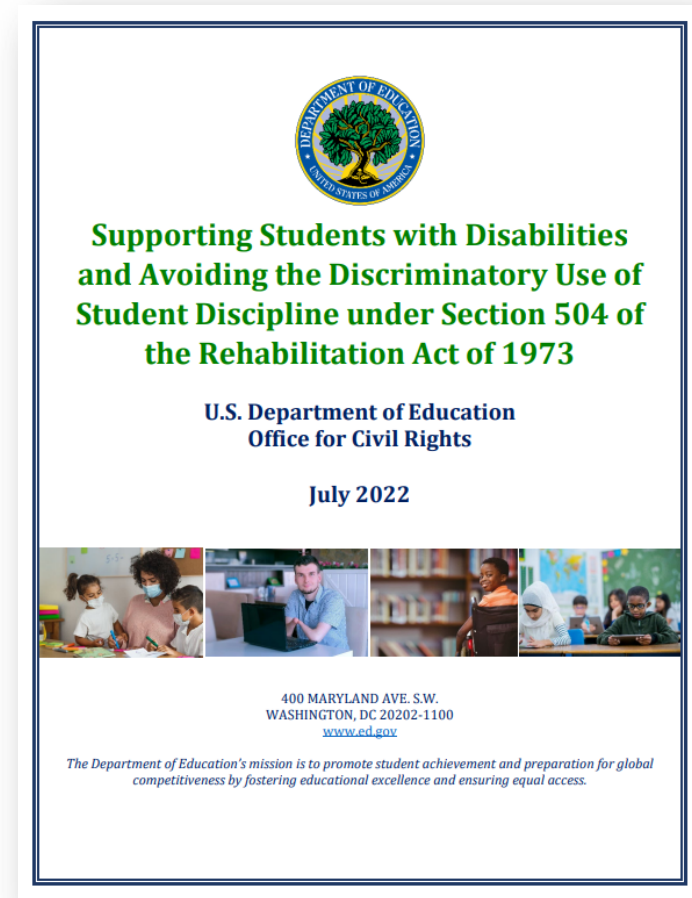


Positive, Proactive Approaches to Supporting the Needs of Children with Disabilities: A Guide for Stakeholders

Individuals with Disabilities Education Act (IDEA) Topic Areas

Office for 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)



Agenda

- ▶ Welcome
- ▶ Spreading the Word: How PTIs are Disseminating OSEP's Discipline/Behavior Guidance
- ▶ Explore highlights of OSEP's Discipline/Behavior Guidance
 - Exclusionary Discipline
 - Change in Placement
 - Informal Removals
 - Manifestation Determination Reviews and Process
 - Services Provided during Disciplinary Removals
 - IDEA Requirements to Address Behavior, Functional Behavioral Assessments/ Behavioral Intervention Plans
- ▶ Questions, Discussion, Idea Exchange

Trainings: Internal Staff 9/14; Identified School District (data re: issues) Parents & Faculty 10/18; 11/8 “Fast Facts: Discipline Guidance in Schools” **Messaging:** PEAL has been sharing all of the pieces provided by OSEP since the announcement: FB & newsletter. Intent is to repeat this information to make sure families/schools are getting the information, most shared directly from CPIR: 7/25;8/5;10/6;10/21



Center for Parent Information and Resources

October 6 at 8:02 AM · 🌐

New [#DisciplineGuidance](#) Focuses on [#Discrimination](#) Against Students With Disabilities-
Students with disabilities experience disproportionately high rates of [#Expulsion](#) & [#Suspension](#) according to [#OfficeForCivilRights](#).
<https://www.edweek.org/.../new-discipline.../2022/07>



EDWEEK.ORG

**New Discipline Guidance Focuses on Discrimination
Against Students With Disabilities**





New Guidance Helps Schools Support Students with Disabilities and Avoid Discriminatory Use of Discipline

Una nueva orientación ayuda a las escuelas apoyar a los estudiantes con discapacidades y evitar el uso discriminatorio de la disciplina

New guidance has been released from the federal Department of Education's Office for Civil Rights (OCR) and Office of Special Education and Rehabilitative Services (OSERS) that helps public schools fulfill their responsibilities to meet the needs of students with disabilities and avoid the discriminatory use of student discipline.

As stated by U.S. Secretary of Education Miguel Cardona, "Too often, students with disabilities face harsh and exclusionary disciplinary action at school. The guidance we're releasing today will help ensure that students with disabilities are treated fairly and have access to supports and services to meet their needs – including their disability-based behavior."

[Learn More](#)

[Aprende Más](#)

It's hard to learn when removed from the classroom

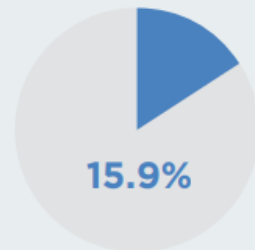


2017-18 OVERVIEW OF STUDENT DISCIPLINE K-GRADE 12

Students with disabilities include students served under the Individuals with Disabilities Education Act (IDEA) and students served only under Section 504 of the Rehabilitation Act of 1973 (Section 504).

50,922,024

**OVERALL STUDENT
ENROLLMENT**

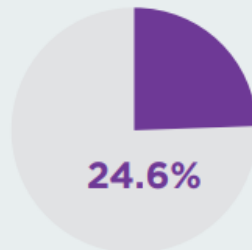


**Enrollment
of Students with
Disabilities**

N=8,108,190

8,108,190

**STUDENTS WITH DISABILITIES,
6,728,046 SERVED UNDER
IDEA AND 1,380,144 SERVED
UNDER SECTION 504**

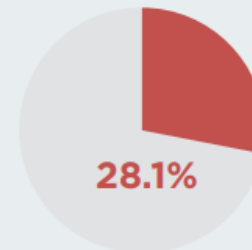


**In-School
Suspensions
of Students with
Disabilities**

N=645,987

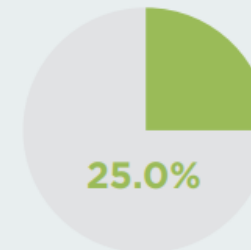
3,145,559

**MISSED DAYS OF SCHOOL BY
STUDENTS WITH DISABILITIES
DUE TO OUT-OF-SCHOOL
SUSPENSIONS**



**Out-of-School
Suspensions
of Students with
Disabilities**

N=704,523



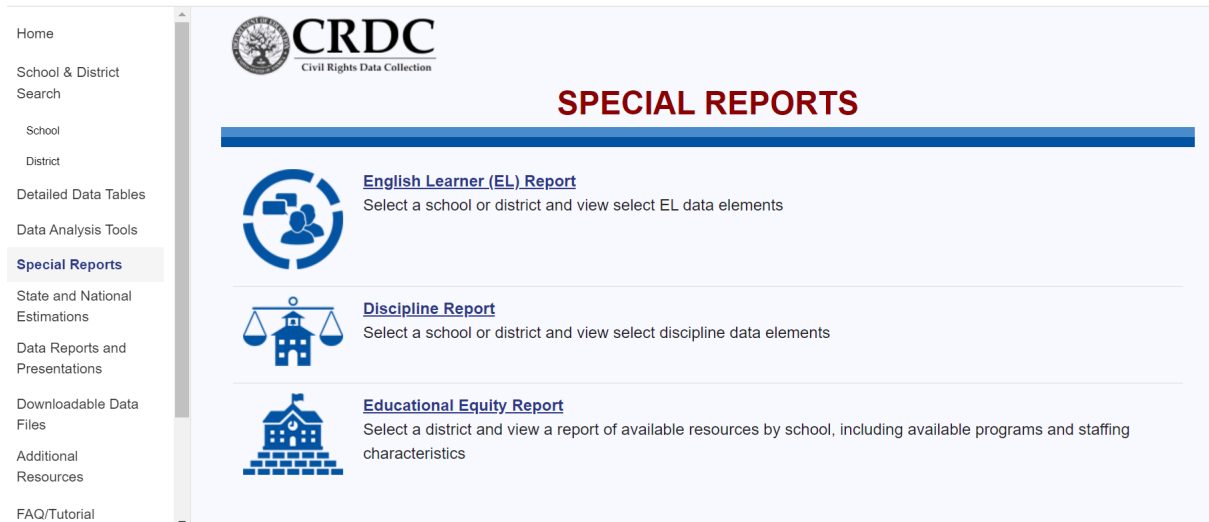
**Expulsions
of Students
with Disabilities**

N=25,414

[Suspensions and Expulsions of
Students with Disabilities in Public
Schools \(PDF\) \(ed.gov\)](#)

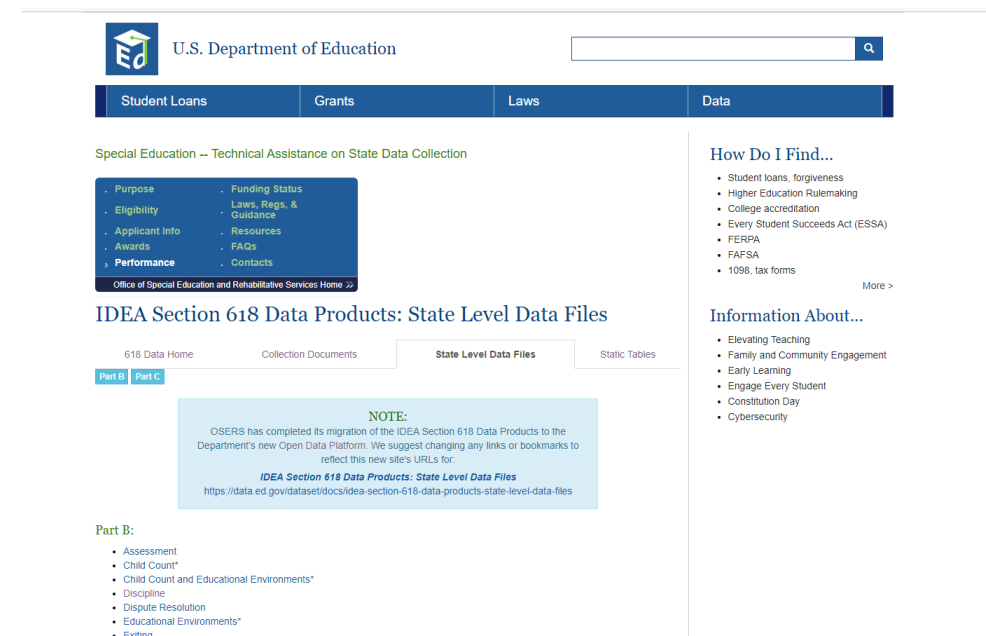
Discipline Data Collections

CIVIL RIGHTS Data Collection



Civil Rights Data Collection

- ▶ State, district, school levels
- ▶ Discipline, restraint, seclusion
- ▶ [Civil Rights Data Collection \(ed.gov\)](https://ed.gov/civildata)



IDEA Section 618 Data Collection

- ▶ State level
- ▶ Aligned to IDEA's discipline requirements
- ▶ [IDEA Section 618 Data Products \(ed.gov\)](https://ed.gov/idea618)



“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.”

Question & Answers: Addressing the Needs of Children with Disabilities
and IDEA's Discipline Provisions

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



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:



child is afforded the opportunity to continue to appropriately **participate in the general curriculum, and**



child continues to **receive** the **services** specified on the child's **IEP, and**



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"**



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)

Behavior is a form of communication



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?

Manifestation Determination Review

- ▶ 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)

When an MDR Must Be Conducted

- ▶ When must a manifestation determination review be conducted?
 - When school personnel propose to change the placement of a child with a disability due to a violation of the school's code of conduct. (F-2)
 - When a change in placement occurs (C-1):
 - Removal is more than 10 consecutive school days; or
 - Series of removals that constitutes a pattern
 - Total more than 10 school days in a year;
 - Child's behavior is substantially similar to previous incidents; and
 - Additional factors: length of removal, total time removed, proximity of removals to one another.
 - Could include exclusions that occur outside of IDEA's discipline requirements

IDEA does not prohibit IEP Teams from conducting an MDR during other situations to assist in making decisions about services and supports.

Actions IEP Team Must Take

- ▶ If the conduct in question **is determined to be a manifestation** of the child's disability, the LEA must (F-4):
 - **Conduct an FBA**, unless one had been already conducted, AND **implement a BIP**
 - If a **BIP exists**, **review and modify** as necessary
 - **Return child to placement** from which child was removed, unless LEA and parent agree to change of placement
 - LEA must take immediate steps to **remedy deficiencies in the IEP**, if the behavior was the direct result of the LEA's failure to implement the IEP
 - If removal is for **weapons, drugs, or serious bodily injury**, child may remain in IAES for not more than 45 school days

Actions School Officials May Take

- ▶ If the conduct in question is determined **not to be a manifestation** of the child's disability (F-5) :
 - For changes in placement that exceed 10 consecutive school 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 would be applied to children without disabilities.
 - Child must continue to **receive educational services** as provided in 34 C.F.R. §300.101(a)
 - Child must receive, as appropriate, an **FBA and behavioral intervention services and modifications**

If IEP Team Cannot Reach Consensus

- ▶ If the parent of a child with a disability, the LEA, and the relevant members of the child's IEP Team cannot reach consensus on whether the child's behavior was a manifestation of the disability:
 - The **LEA must make the determination** and provide the parent with **prior written notice** under 34 C.F.R. §300.503.
 - Parent has the right to exercise their **procedural safeguards**, including requesting mediation, an expedited due process hearing, and filing a State complaint.

It's hard to learn when removed from the classroom



Services During Removals

When removals **total 10 school days or less**, in a school year (H-1):

- ▶ LEA is required to provide services during periods of removal to a child with a disability who has been removed from their current placement for 10 school days or less in that school year, **only if it provides services to a child without disabilities who is similarly removed.** 34 C.F.R. §300.530(d)(3)
 - LEAs are **encouraged** to provide services during short-term removals, though not required

Services During Removals

When removals total **more than 10 school days** in a school year:

- ▶ **Beginning on the 11th cumulative day** and during any subsequent days of removal, the LEA must provide services, as determined by the school staff. (H-2)
 - Services may **not always be required during brief periods** of removal. School staff determine how to best address the child's needs in these circumstances.
 - If **removal**, regardless of length, **is a change of placement**, the child's **IEP Team determines** appropriate services 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.
 - The child must receive, as appropriate, an **FBA** and **behavioral intervention services and modifications** that are designed to address the behavior so that it does not recur.

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)



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

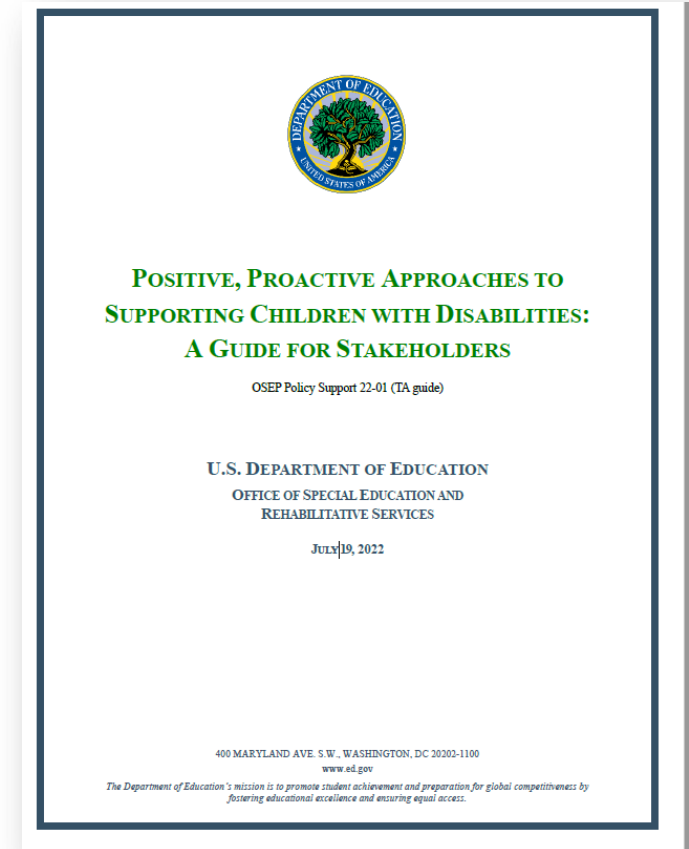


We can and must do better



Four Key Areas

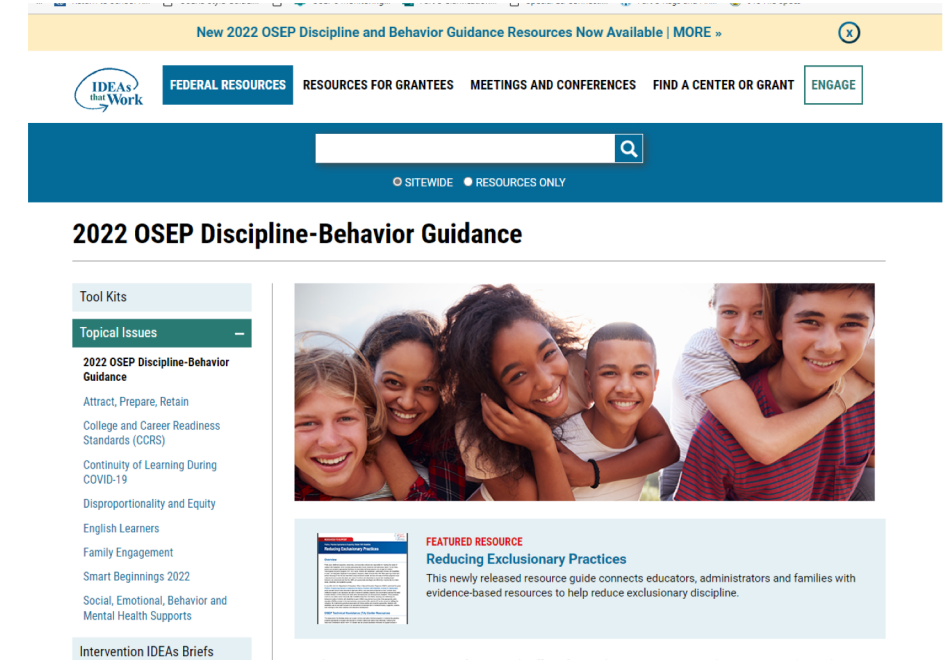
- ▶ Using an Evidence-Based Approach to Support and Respond to Student Needs
- ▶ Investing in School and Educator Capacity
- ▶ Federal Funding Available to Address Disparities in, and to Reduce the Use of, Exclusionary Discipline
- ▶ Federal Resources to Support State and Local Efforts to Address Disparities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

RESOURCES TO SUPPORT

Positive, Proactive Approaches to Supporting Children With Disabilities

Reducing Exclusionary Practices

Overview

Public early childhood programs, elementary, and secondary schools are responsible for meeting the needs of children with disabilities, which includes addressing their social, emotional, and behavioral needs. Far too often, positive and proactive approaches that focus on preventing interfering behavior are not part of a child's individualized education program (IEP). As a result, children with disabilities—particularly children with disabilities of color—are frequently subjected to exclusionary discipline, which removes them from their learning environment without focusing on how to best meet their unique behavioral needs. Schools and early childhood programs must understand how to protect the rights and needs of children with disabilities to ensure their disability-based behaviors are understood and that their IEPs are appropriately developed and effectively implemented to enable social, emotional, and academic success.

In July 2022, the U.S. Department of Education, Office of Special Education Programs (OSEP), published the guide *Positive, Proactive Approaches to Addressing the Needs of Children with Disabilities: A Guide for Stakeholders*, which provides actions state educational agencies (SEAs), local educational agencies (LEAs), schools, early childhood programs, and educators can take to implement positive, proactive, and preventative practices that seek to better address a child's behavioral needs while decreasing the use of exclusionary discipline. These practices reinforce core pillars of the Individuals with Disabilities Education Act (IDEA), including how addressing the behavioral needs of children with disabilities is part of IDEA's requirement to provide a free appropriate public education (FAPE) provided in the least restrictive environment (LRE), and the IEP as the vehicle for fulfilling this obligation. By implementing practices associated with these positive and proactive approaches, students with disabilities can be assured of access to an educational environment that is nondiscriminatory, supportive, positive, and nurturing for both their academic and behavioral development.

OSEP Technical Assistance (TA) Center Resources

The resources in the following tables can support schools and early childhood programs in implementing positive, proactive approaches to support and respond to children's behavioral needs more effectively. Following the resources is information about OSEP TA Centers that can provide additional information to support schools in implementing the practices described below.



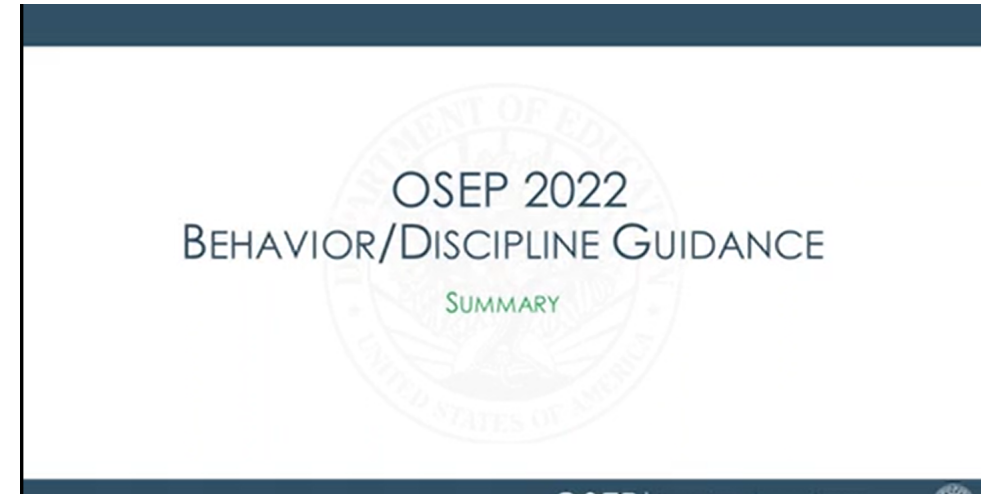
SUSPENSION AND EXPULSION

Resource	Description	Audience	Reference Citation
Manifestation Determination in School Discipline	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 infraction 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.	<ul style="list-style-type: none"> • Educators • School administrators • Local and district agencies 	Center for Parent Information and Resources (CPIR) (2022). <i>Manifestation determination in school discipline</i> . https://www.parentcenterhub.org/manifestation
Manifest Determination Flow Chart	This infographic illustrates the manifest determination process and options. It shows the various steps that can lead to a required manifest determination meeting.	<ul style="list-style-type: none"> • Educators • School administrators 	Reese, M. (2021). <i>Manifest Determination Flow Chart</i> . Center for Appropriate Dispute Resolution in Education. https://www.cadeworks.org/sites/default/files/resources/ID-16%20Manifestation%20Determination%20Meeting%20Flowchart%20July%202021%20-%20checked%204.2022.pdf
Pyramid Model Program Leadership Team Guidance for Preventing the Use of Suspension and Expulsion and Promoting Equitable, Inclusive, and Culturally Responsive Practice	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	<ul style="list-style-type: none"> • Local and district agencies • School administrators 	Smith, B. J., Dell, P., & Fox, L. (2018). <i>Pyramid Model Program Leadership Team guidance for preventing the use of suspension and expulsion and promoting equitable, inclusive, and culturally responsive practice</i> . National Center for Pyramid Model Innovations. https://challengingbehavior.cbcs.usf.edu/docs/LeadershipTeam_Guidance_Programs.pdf
Pyramid Model State Leadership Team Guidance for Preventing the Use of Suspension and Expulsion and Promoting Equitable, Inclusive, and Culturally Responsive Practice	This document provides state leadership teams with guidance on how to prevent suspension and expulsion by integrating with existing efforts, including the Pyramid Model, Multi-Tiered System of Supports (MTSS), and Quality Rating Improvement System (QRIS), inclusion, and State Systemic Improvement Plan (SSIP) efforts.	<ul style="list-style-type: none"> • State and regional agencies 	Smith, B. J., Dell, P., & Fox, L. (2018). <i>Pyramid Model State Leadership Team guidance for preventing the use of suspension and expulsion and promoting equitable, inclusive, and culturally responsive practice</i> . National Center for Pyramid Model Innovations. https://challengingbehavior.cbcs.usf.edu/docs/LeadershipTeam_Guidance_State.pdf
What Works in Reducing Suspension and Disproportionality: The Pyramid Model	In this webinar, panelists discuss their implementation of the Pyramid Model with a focus on addressing equity and eliminating the use of exclusionary discipline practices.	<ul style="list-style-type: none"> • Educators 	Allen, R., Lima, R., & Lofties, A. (2019). <i>What works in reducing suspensions and disproportionality: The Pyramid Model</i> [Webinar]. National Center for Pyramid Model Innovations. https://challengingbehavior.cbcs.usf.edu/Training/Webinar/archive/2019/11-18/2019-11-18_Keeping-Children-in-School.html



Video Presentation Resources

- ▶ [OSEP 2022 Behavior, Discipline Guidance Video](#) (July 2022)
- National TA Call (October 2022)
 - [Recording](#)
 - [PowerPoint Presentation \(PDF\)](#)



OSEP Technical Assistance Centers



[Office of Special Education Programs Technical Assistance Network \(osepideasthatwork.org\)](http://osepideasthatwork.org)



Thank You



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Lisa Pagano: Lisa.Pagano@ed.gov

OFFICE OF SPECIAL EDUCATION PROGRAMS

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

U.S. DEPARTMENT OF EDUCATION