



# Important Reminders on Disciplining Students with Disabilities

New guidance from the Department of Education's Office for Civil Rights (OCR) and Office of Special Education and Rehabilitative Services (OSERS)

On July 19, 2022, the U.S. Department of Education (Department) issued key policy letters regarding disciplining students with disabilities, pursuant to the Individuals with Disabilities Education Act (IDEA) and Section 504.

This summary focuses on the IDEA mandates when disciplining a child with a disability for violating a school's code of student conduct and is based on the questions and answer document issued on July 19, 2022, entitled [\*Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions \(Q&A\)\*](#). In issuing this updated guidance, the Department was particularly concerned with the disparities in the use of discipline for children with disabilities and the implementation of IDEA's discipline provisions. This Q&A updates and supersedes the document entitled *Questions and Answers on Discipline Procedures* issued by the Department in June 2009.

The Q&A sets forth sections A through L. Summaries of certain questions in these sections are set forth below and are identified with the question numbers in parentheses. **This summary is only intended to summarize certain aspects of the Q&A. Please refer to the Q&A document for a complete discussion.**

## SECTION A: OBLIGATIONS TO MEET THE NEEDS OF ELIGIBLE CHILDREN WITH DISABILITIES UNDER IDEA

- School personnel must support the behavioral needs of children with disabilities. (A-2)
- When a student's behavior impedes learning, IEP teams must consider the use of positive behavioral interventions and supports, and other strategies. (A-3; A-5)
  - Behavioral supports should be supported by peer-reviewed research. (A-4)
  - IDEA provisions designed to support the needs of children with disabilities must be appropriately implemented so as to avoid an overreliance on, or misuse of exclusionary discipline. (A-6)

- The failure of an IEP team to consider and provide needed behavioral supports may result in a child not receiving meaningful educational benefit or a free appropriate public education (FAPE). (A-6)

## **SECTION B: AN OVERVIEW OF IDEA’S DISCIPLINE PROCEDURES**

- The IDEA does not define “discipline” nor does it prescribe specific disciplinary actions a local education agency (LEA) must take, but it does set some limits. (B-1; B-2)
  - Limits include disciplinary actions which would result in a change in placement for behavior that is determined to be a manifestation of the child’s disability, although exceptions due to special circumstances (weapons, drugs, serious bodily injury) may apply. (B-1; B-2)
- Restraint and seclusion are not appropriate strategies for disciplining a child for behavior related to their disability. (B-3)
  - Restraint and seclusion should not be used except in situations where a child’s behavior poses imminent danger of serious physical harm to self or others. (B-3)
  - Physical restraint or seclusion should “never be used as punishment or discipline.” (B-3)

## **SECTION C: CHANGE IN PLACEMENT**

- A change in placement occurs 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:
    - The series of removals total more than 10 school days in a school year;
    - The child’s behavior is substantially similar to behavior in previous incidents that resulted in the series of removals; and
    - Additional factors such as length of each removal, the total amount of time the child was removed, and the proximity of removals to one another. (C-1)
- The calculation of 10 school days of suspension could include exclusions that take place outside of IDEA’s discipline provisions. (C-1)

- Actions that result in denials of access to, and significant changes in, a child’s educational program could all be part of the 10 days of suspension and could constitute an improper change of placement. (C-1)
- Immediate removal of a child with a disability to a more restrictive setting for more than 10 days in response to disability-related behavior could constitute an improper disciplinary removal or improper change of placement. (C-1)
- The determination as to whether a pattern of removals constitutes a disciplinary change in placement is determined by the LEA. (C-2)
  - If a change in placement would occur due to the pattern of removals, prior written notice and a copy of the procedural safeguards must be provided to the parent.
  - If the LEA determines that a pattern of removals do not result in a change in placement, the parent may challenge this decision through the IDEA’s dispute resolution mechanisms. (C-2)
- Short-term disciplinary removals of 10 consecutive school days or less can be a basis for reconvening the child’s IEP team. (C-3)
- Frequent use of short-term disciplinary removals or informal removals may indicate that a child’s IEP does not appropriately address their behavioral needs, which may result in a denial of FAPE. Factors that may be considered when considering the use of short-term removals include:
  - The circumstances that led to the child’s removal;
  - Whether the child’s IEP was being implemented;
  - Whether the child’s behavior can be addressed through minor changes to classroom or program practices; and
  - Whether the IEP team should be reconvened to address possible changes to the IEP. (C-3)
- Although not defined by the IDEA, “informal removals” are actions taken by school personnel in response to a child’s behavior which results in the child being excluded for part or all of a school day, or for an indefinite period of time. Administratively shortened school days in response to a child’s behavior that occur outside of the IEP team and placement process is one example of an informal removal. A child’s Informal removals are subject to IDEA’s disciplinary requirements. (Appendix I: Glossary)
- A school day for a child with a disability should generally not be longer or shorter than a school day for children without disabilities, unless determined appropriate by the child’s IEP team. (C-6)

- Informal removals used to address a child’s behavior implemented repeatedly throughout the school year, such as administratively shortened school days, could constitute a disciplinary removal from the child’s current placement. (C-6)
- The repeated use of in-school suspension may indicate that a child’s IEP, or its implementation, does not appropriately address behavioral needs. The IEP team should consider whether additional positive behavioral interventions and supports or other strategies would assist the child in the current placement. (C-6; C-7)
- An in-school suspension is generally considered part of the days of suspension unless the child:
  - Is afforded the opportunity to continue to appropriately participate in the general curriculum;
  - Continues to receive the services on the child’s IEP; and
  - Continues to participate with nondisabled children to the extent they would have in their current placement. (C-7)
- If transportation is a related service on a child’s IEP, a bus suspension must be treated as a suspension and all of the IDEA’s disciplinary procedures and protections apply. (C-8)
- Transportation must be provided to a child placed in an IAES if transportation is required for access to the IAES services. (C-8)

## **SECTION D: INTERIM ALTERNATIVE EDUCATIONAL SETTING (IAES)**

- While the IDEA does not specify what constitutes an IAES, the determination of an IAES must:
  - Enable a child to continue to participate in the general education curriculum, although in another setting; and
  - Progress toward meeting the goals set out in the child’s IEP. (D-1)
- The appropriateness of a child’s home as an IAES will depend on individual circumstances. (D-5)
  - For a child who has been removed from their current educational placement for disciplinary reasons, home instruction could be delivered through a virtual, in-person, or hybrid approach. (D-5)
  - LEAs should be cautious about excluding a child with a disability from their regular educational program to provide virtual instruction for the sole purpose of responding to the child’s behavior. (D-5)

- Removal to a home program without ensuring behavioral supports are available could result in an inappropriately restrictive placement and denial of FAPE. (D-5)

## **SECTION E: SPECIAL CIRCUMSTANCES**

- A manifestation determination review (MDR) is required within 10 school days of any decision to remove a child due to a disciplinary violation involving weapons, drugs, or serious bodily injury. (E-1)
  - Regardless of the MDR findings, a child may remain in an IAES for not more than 45 school days. (E-1)
- While in an IAES, a child must continue to receive educational services to enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP. The child must also receive, as appropriate, an FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. (E-2)
- The IDEA does not prohibit school personnel from reporting crimes committed by a child with a disability to appropriate authorities, nor does it prevent law enforcement and judicial authorities from exercising their responsibilities with regard to crimes committed by a child with a disability.
  - Special education and disciplinary records may be provided to law enforcement only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA). (E-3)
- The IDEA does not prohibit school personnel from conducting risk or threat assessments of a child with a disability. (E-4; E-5)
  - A child's right to procedural safeguards and FAPE must be protected throughout any threat or risk assessment process. (E-5)
  - School personnel involved in screening and conducting threat or risk assessments should be aware that the child has a disability and be sufficiently knowledgeable about the LEA's obligation to ensure FAPE is provided to the child. (E-5)
  - Coordination by school personnel conducting threat or risk assessments with the child's IEP team prior to reaching an assessment determination can allow for providing additional or different behavioral supports to mitigate or eliminate the perceived threat or risk. (E-5)

## SECTION F: MANIFESTATION DETERMINATION REVIEW

- A MDR must be conducted when school personnel propose to change a child’s placement because of a violation of the school’s code of student conduct. (F-2)
- A MDR is conducted by the LEA, the parent, and relevant members of the IEP team (as determined by the parent and the LEA) and requires:
  - A review of all relevant information in the child’s file to determine if:
    - The conduct in question 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)
- A MDR must also occur when the LEA is deemed to have knowledge that the child has a disability, even if the child has not yet been found eligible for special education and related services at the time the discipline is proposed. (F-2)
- A MDR must occur within 10 school days of the decision to change the placement of the child for disciplinary reasons. (F-2)
- A MDR may occur during other situations when a child’s behavior is inconsistent with the school’s code of student conduct. Information from such a review can assist the IEP team’s decision-making. (F-2)
- If a MDR determines the conduct in question was a manifestation of a child’s disability, the IEP team must return the child to the placement from which the child was removed unless the parent and LEA agree to a change in placement. (F-4)
- If the removal was to an IAES due to weapons, drugs, or serious bodily injury, the child may remain in the IAES, as determined by the IEP team, for the duration of the removal, regardless of whether the violation was a manifestation of their disability. (F-4)
- If the MDR determines the conduct in question was not a manifestation of a child’s disability, school personnel may apply the relevant disciplinary procedures in the same manner and for the same duration as the procedures apply to children without disabilities. (F-5)
  - The child must continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and progress toward meeting the goals on the child’s IEP. (F-5)
  - The child must receive, as appropriate, an FBA and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur. (F-5)

## **SECTION G: IDEA'S REQUIREMENT FOR FBAS AND BIPS**

- The IEP team is required to conduct an FBA and implement a BIP when the LEA, parent and relevant IEP team members determine that a child's conduct that resulted in a change in placement was a manifestation of the child's disability. (G-1)
- It may also be appropriate to conduct an FBA if the IEP team determines the child's conduct was not a manifestation of the child's disability, as the IDEA requires that the LEA provide the child, *as appropriate*, an FBA and behavioral intervention services and modifications that are designed to address the behavior, so it does not recur. (G-2)

## **SECTION H: PROVISION OF SERVICES DURING PERIODS OF REMOVAL**

- Educational services must be provided to a child with a disability who has been removed from their current placement for 10 school days or less only if the LEA provides services to a child without disabilities who is similarly removed. (H-1)
- Although not required, LEAs are encouraged to provide educational services during short-term removals so children with disabilities can continue to make progress on IEP goals and to help prevent them from falling behind. (H-1)
- If a child's cumulative days of removal in a school year exceed 10 school days, and a disciplinary change in placement has not occurred, the LEA must provide services to the child beginning with the 11<sup>th</sup> cumulative day and during any subsequent days of removal. (H-2)

## **SECTION I: PROTECTION OF CHILDREN NOT YET DETERMINED ELIGIBLE FOR SERVICES UNDER IDEA**

- Children not yet determined eligible for special education and related services who have violated a code of student conduct may assert all of IDEA's discipline protections where the LEA is deemed to have knowledge that the child is a "child with a disability" before the behavior that precipitated the disciplinary action occurred. (I-1)
- The LEA is deemed to have knowledge if:
  - The parent expressed written concern to supervisory or administrative personnel, or to the child's teacher that the child is in need of special education and related services; or
  - The parent requested an evaluation under the IDEA; or

- The child’s teacher or other LEA personnel expressed specific concerns (verbally or in writing) about the pattern of behavior demonstrated by the child directly to the LEA’s director of special education or other supervisory personnel of the LEA. (I-2)
- A child’s participation in a multi-tiered system of supports (MTSS) to address academics, such as a RTI process, is generally not sufficient to provide the LEA with knowledge that allows the child and parent to assert IDEA’s discipline protections. (I-5)
  - However, if, for example, a child is participating in the RTI process based on parent concerns expressed in writing to the child’s teacher that the child is in need of special education and related services and the parent has not prevent the evaluation from occurring, then the LEA would likely be deemed to have knowledge at the time of receipt of the parent’s written communication. (I-5)
- If an LEA has knowledge that a child is a child with a disability prior to a child engaging in behavior that violates a code of student conduct, and prior to a determination of eligibility for special education, a MDR must be held within 10 school days of any decision to change the placement of the child for disciplinary reasons. (I-7)
  - The MDR cannot be postponed until the initial evaluation is completed or the initial IEP team meeting is held. (I-7)
- The MDR must be conducted by the LEA, the parent, and relevant members of the IEP team (as determined by the parent and the LEA). (I-8)
  - All relevant information in the child’s file must be reviewed, including any teacher observations and any relevant information provided by the parent. (I-8)
  - A determination must be made whether the conduct in question was caused by or had a direct and substantial relationship to the child’s suspected disability. (I-8)
  - Because an IEP has not yet been developed, the LEA would be unable to determine whether the child’s conduct was the direct result of the LEA’s failure to implement the child’s IEP. (I-8)
  - The MDR could be conducted in connection with the evaluation and eligibility determination, so long as the MDR is conducted within 10 school days of the decision to change the child’s placement for disciplinary reasons. (I-8)
- If the LEA did not have knowledge at the time a child was subjected to a disciplinary removal, and a request for an evaluation is made during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an “expedited” fashion. (I-9)

- The evaluation should be conducted in a shorter period of time than a typical evaluation conducted within 60 days of receiving parental consent for evaluation. (I-9)

## **SECTION J: APPLICATION OF IDEA DISCIPLINE PROTECTIONS IN CERTAIN SPECIFIC CIRCUMSTANCES**

- The IDEA disciplinary provisions generally apply to preschool children with disabilities aged three through five, as well as charter school students, students receiving instruction in a virtual setting, students placed by the LEA in private schools, and students in State and local correctional facilities. (J-1; J-4; J-5; J-6; J-7)
- When a parent consents to the initial provision of some, but not all, of the proposed special education and related services, the IDEA discipline provisions apply, as the child is considered a child with a disability and is entitled to all IDEA protections. (j-2)
- The IDEA disciplinary provisions do not apply if a child violates the code of student conduct after a parent revoked consent for special education and related services. (J-3)
  - The LEA is not deemed to have knowledge that the child is a child with a disability, and the child is subject to the same disciplinary procedures and timelines applicable to general education students and is not entitled to IDEA discipline protections. (J-3)
    - NOTE: Student rights under Section 504 should be considered. See [Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973](#) (OCR 7/19/22).

## **SECTION K: RESOLVING DISAGREEMENTS**

- A parent may request an expedited due process hearing on any discipline-related decision regarding their child's placement or determination that their child's behavior was not a manifestation of the child's disability. (K-1)
- An LEA may request a due process hearing if it believes that maintaining the current placement of a child is substantially likely to result in injury to the child or others. (K-2)
- A parent may use the complaint procedures to resolve issues regarding disciplinary charges in placement and MDR findings. (K-3)

- An LEA and parent may mutually agree to participate in mediation to resolve discipline disputes. (K-4)

## **SECTION L: STATE OVERSIGHT AND DATA REPORTING RESPONSIBILITIES**

- Under its general supervisory responsibilities, the state education agency (SEA) must ensure that LEAs meet IDEA program requirements. This includes discipline data and discipline policies, procedures, and practices. (L-1; L-4; L-5)