



**QUESTIONS AND ANSWERS:  
ADDRESSING THE NEEDS OF  
CHILDREN WITH DISABILITIES AND  
IDEA'S DISCIPLINE PROVISIONS**

OSEP Q&A 22-02

**U.S. DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND  
REHABILITATIVE SERVICES**

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The U.S. Department of Education (Department) is committed to ensuring that all children have access to a high-quality education provided in a safe, supportive, and predictable<sup>1</sup> learning environment free from discrimination<sup>2</sup>; filled with healthy, trusting relationships; and one that ensures each child’s social, emotional, academic, and functional<sup>3</sup> growth and development. For eligible children with disabilities, this commitment requires full implementation of Part B of the Individuals with Disabilities Education Act (IDEA). 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 resulted in denying access to critical educational opportunities.<sup>4</sup> The Department recognizes and appreciates school administrators, teachers, and educational staff across the Nation who work to provide a safe, positive, and nondiscriminatory education environment for all students, teachers, and other school staff. Schools need not choose between keeping their school community—including students and school staff—safe and complying with the law. Furthermore, IDEA requirements do not interfere with a school’s ability to address extraordinary situations in which a child’s behavior, including behavior related to the child’s disability, is an immediate threat to their own or others’ safety, such as by contacting crisis

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<sup>1</sup> “Predictable,” as used in positive behavioral interventions and supports, generally refers to something that is obvious or has known expectations. Predictable learning environments may contribute to a sense of safety for children thereby limiting behavior that is not consistent with a school’s code of student conduct.

<sup>2</sup> This document only addresses requirements related to the rights of children with disabilities eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA). Children with disabilities also have rights under Section 504 of the Rehabilitation Act of 1973 (Section 504). The Department’s Section 504 regulations prohibits disability discrimination by recipients of Federal financial assistance, such as State educational agencies (SEAs) and local educational agencies (LEAs). 29 U.S.C. 794; 34 C.F.R. pt. 104. Section 504 is enforced by the Department’s Office for Civil Rights (OCR). OCR also enforces laws prohibiting discrimination by recipients of Federal financial assistance, on the basis of race, color, national origin, sex, and age. For OCR guidance on topics under these laws, please visit <http://www.ed.gov/ocr>. For more information about the protections of Section 504 for students with disabilities from disability discrimination in the context of school discipline, see [Supporting Students with Disabilities and Avoid the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973](#), and [Fact Sheet: Supporting Students with Disabilities and Avoid the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973](#). For more information about the prohibitions against discrimination on the basis of race, color, or national origin, see <http://www.ed.gov/ocr>.

<sup>3</sup> Although not defined in IDEA, the word “functional,” as used in the IDEA regulations, generally refers to activities and skills that are not considered academic or related to a child’s academic achievement as measured on Statewide achievement tests. Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Regulations, Analysis of Comments and Changes, 71 Fed. Reg. 46540, 46579 (Aug. 14, 2006). The Department believes it is reasonable to interpret “functional performance” to include areas such as behavioral and mental health factors that impact the involvement and progress by a child with a disability in the general education curriculum.

<sup>4</sup> See the Office of Special Education and Rehabilitative Services (OSERS), Dear Colleague Letter on Ensuring Equity and Providing Behavioral Supports to Students with Disabilities (Dec. 1. 2016) (“2016 DCL”), available at: <https://sites.ed.gov/idea/files/dcl-on-pbis-in-ieps-08-01-2016.pdf>; and See supra note 2, Supporting Students with Disabilities and Avoid the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973.]

intervention specialists or law enforcement. The Department offers this Questions and Answers (Q&A) document (along with [Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders](#)) to all education stakeholders, including families and educators, to support the implementation of IDEA’s discipline provisions in a way that upholds the law’s promise of equality of opportunity.

This document updates and supersedes the Office of Special Education and Rehabilitative Services’ (OSERS) guidance titled *Questions and Answers on Discipline Procedures*, issued in June 2009,<sup>5</sup> and includes additional questions and answers that address topics that have arisen as the field continues to carry out the discipline provisions of IDEA and its implementing regulations. Key topics include removing a child with a disability from their current educational placement and the responsibilities of individualized education program (IEP) teams to address the behavioral needs of children with disabilities through the evaluation, reevaluation, and IEP development process to ensure the provision of a free appropriate public education (FAPE).<sup>6</sup>

A glossary of key terms and acronyms used in this document can be found in Appendix I. [Parents](#) who would like to request additional support in understanding IDEA’s discipline provisions and the rights afforded to children with disabilities may wish to contact the parent training and information center (PTI) in their area for direct assistance and referrals to other organizations. The Department provides funding to PTIs to support parents in gaining skills to effectively participate in the education and development of their children. Parents can locate the PTI for their area at <https://www.parentcenterhub.org/find-your-center/>.<sup>7</sup>

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<sup>5</sup> In *D.S. v. Trumbull Board of Education*, 975 F.3d 152 (2d Cir. 2020), the U.S. Court of Appeals for the Second Circuit disagreed with the Department’s interpretation that a functional behavioral assessment (FBA) is considered an evaluation or reevaluation under IDEA that triggers a parent’s right to request an independent educational evaluation at public expense. Based on this, OSERS intends to review its previously stated positions on this matter including whether and when an LEA must seek parental consent before conducting an FBA for an eligible child with a disability. (See Questions E-4 and E-5 in OSERS’ 2009 Q&A document).

<sup>6</sup> FAPE means special education and related services that: (1) are provided at public expense, under public supervision, and without charge; (2) meet the standards of the SEA, including the requirements of IDEA; (3) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (4) are provided in conformity with an IEP that meets the requirements of 34 C.F.R. §§ 300.320 through 300.324. 34 C.F.R. § 300.17. Based on State law governing the education of all children, some States do not provide public education to children through age 21. IDEA does not require the provision of FAPE to children with disabilities aged 3, 4, 5, 18, 19, 20, or 21 to the extent those ages are outside the public education age limit under State law or practice, or the order of any court. See 34 C.F.R. § 300.102(a)(1).

<sup>7</sup> This document contains resources and examples that are provided for the user’s convenience. The inclusion of these materials is not intended to reflect their importance, nor is it intended to endorse any views expressed, or products or services offered. These materials may contain the views and recommendations of various subject-matter experts as well as hypertext links, contact addresses and websites to information created and maintained by other public and private organizations. The opinions expressed in any of these materials do not necessarily reflect

The Department has determined that this document provides significant guidance under the [Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices](#), 72 Fed. Reg. 3432 (Jan. 25, 2007). Except for any statutory or regulatory requirements described in this guidance, this significant guidance is nonbinding and does not create or impose new legal requirements.

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The questions and answers in this document are not intended to be a replacement for careful study of IDEA and its implementing regulations. IDEA, its implementing regulations, and other important documents related to IDEA and the regulations are found at:

<https://sites.ed.gov/idea/>

School Climate and Student Discipline Resources:

[www.ed.gov/discipline](http://www.ed.gov/discipline)

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## A. Obligations to Meet the Needs of Eligible Children with Disabilities under IDEA

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**Question A-1:** What are some of the obligations of LEAs<sup>8</sup> to provide FAPE to children with disabilities enrolled in public schools and children with disabilities placed in private schools by an LEA as a means of providing FAPE?

**Answer:** The cornerstone of IDEA is the entitlement of each eligible child with a disability to FAPE that emphasizes special education and related services designed to meet the child's unique needs and that prepares the child for further education, employment, and independent living. All children enrolled in public schools and children with disabilities who are publicly placed in private schools by an LEA are entitled to FAPE. Under IDEA, the vehicle for providing FAPE is through an appropriately developed IEP based on the individual needs of the child. An IEP must include a child's present levels of academic achievement and functional performance, and the impact of a child's disability on their involvement and progress in the general education curriculum. IEP goals must be aligned with grade-level content standards for all children with disabilities.<sup>9</sup> The child's IEP must be developed, reviewed, and revised in accordance with the requirements outlined in IDEA in 34 C.F.R. §§ 300.320 through 300.328.<sup>10</sup> IDEA also provides procedural safeguards, including extensive due process protections, to children with disabilities and their [parents](#).

**Question A-2:** Must school personnel support the behavioral needs of children with disabilities?

**Answer:** Yes. IDEA and its implementing regulations require IEP Teams to follow certain procedures to ensure that IEPs meet the individualized needs, including the behavioral needs, of children with disabilities. 20 U.S.C. § 1414(d) and

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<sup>8</sup> To increase readability, the Department has used the term "LEA" in place of "public agency." Public agency is defined in 34 C.F.R. § 300.33 to include the SEA, LEAs, educational services agencies (ESAs), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. The program requirements under Part B of IDEA apply to public agencies. See 34 C.F.R. §§ 300.120 and 300.600(b)(2).

<sup>9</sup> States are permitted to define alternate academic achievement standards for children with the most significant cognitive disabilities, provided those standards are aligned with the State's academic content standards, promote access to the general curriculum, and reflect professional judgment of the highest achievement standards possible, in accordance with 34 C.F.R. § 200.1(d). 34 C.F.R. § 300.160(c)(2)(i).

<sup>10</sup> For examples, see pages 5–8 of the Office of Special Education and Rehabilitative Services (OSERS), Dear Colleague Letter on Ensuring Equity and Providing Behavioral Supports to Students with Disabilities (Dec. 1, 2016) ("2016 DCL"), available at: <https://sites.ed.gov/idea/files/dcl-on-pbis-in-ieps-08-01-2016.pdf>.

34 C.F.R. §§ 300.320 through 300.324. The initial evaluation or reevaluation, for example, must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, and assess the child in all areas related to the suspected disability, including, if appropriate, social and emotional status. 34 C.F.R. §§ 300.304(b) and (c)(4); 34 C.F.R. §§ 300.304 through 300.311.

The IEP Team must consider information about a child's current functional (e.g., behavioral) performance provided by parents, classroom teachers, and other service providers when developing the child's IEP. 34 C.F.R. §§ 300.321 and 300.324. Once the IEP is developed, IEP Teams must: (1) review the child's IEP periodically, but not less than annually, to determine whether the child's annual goals are being achieved; and (2) revise the IEP, as appropriate, to address: any lack of expected progress towards the annual goals in the child's IEP and in the general education curriculum; the results of any reevaluation; information about the child provided to or by the parent; the child's anticipated needs; or other matters. 34 C.F.R. § 300.324(b)(1).

The LEA must ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. Further, each teacher and provider must be informed of their specific responsibilities for implementing the IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. 34 C.F.R. § 300.323(d). This includes any positive behavioral interventions and supports, and other strategies that the IEP Team determines are necessary to address the child's behavioral needs.

**Question A-3:** Are there specific requirements for supporting children with disabilities whose behavior impedes their learning or that of others?

**Answer:** Yes. IDEA specifically requires IEP Teams to consider the use of positive behavioral interventions and supports, and other strategies, for any child with a disability whose behavior impedes their learning or that of others. 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i). The IEP Team may elect to address the behavior through annual goals in the IEP. 34 C.F.R. § 300.320(a)(2)(i). The child's IEP may include modifications to the child's program, supports for the child's teachers or other school personnel, and any special education and related services and supplementary aids and services necessary to enable the child to advance appropriately toward attaining those behavioral goals. 34 C.F.R. § 300.320(a)(4).



**Question A-4:** What steps should a child's IEP Team take to support the behavioral needs of a child with a disability?

**Answer:** When a child with a disability demonstrates behavior that impedes the child's learning or that of others, appropriate behavioral supports may be necessary to ensure that the child receives FAPE. The IEP Team must consider and when determined necessary for ensuring FAPE, include or revise behavioral supports in the child's IEP. 34 C.F.R. §§ 300.320(a)(4) and 300.324(a)(2)(i). When developing, reviewing, and revising the IEP, IEP Teams should determine whether behavioral supports are needed to ensure FAPE to the child: (1) special education and related services; (2) supplementary aids and services; and (3) program modifications or supports for school personnel. 34 C.F.R. § 300.320(a)(4). Under IDEA, special education and related services and supplementary aids and services are to be based on peer-reviewed research to the extent practicable; thus, behavioral supports should be supported by evidence. 34 C.F.R. § 300.320(a)(4).<sup>11</sup>

**Question A-5:** What steps should school personnel take if they observe that a child with a disability is exhibiting behaviors that impede their learning or the learning of others, but the child's IEP does not include positive behavioral interventions and supports and other strategies to address those behaviors?

**Answer:** In this case, the LEA should reconvene the IEP Team, which includes the parent, to discuss next steps to ensure that the IEP addresses the behavior that impedes the child's learning or the learning of others. The IEP Team could decide additional data are needed to determine the child's educational needs including how to address the child's behaviors, and the LEA could seek parental consent to conduct additional assessments to produce the necessary data. If the IEP Team determines it has sufficient information, it could revise an existing IEP such as by providing the child additional services and supports to help address the child's behavior.<sup>12</sup> If changes are needed after a child's annual IEP

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<sup>11</sup> For more information on these requirements, see 2016 DCL, pp. 6–7.

<sup>12</sup> Additional services and supports, supplementary aids and services, and program modifications and supports for school personnel could include: counseling services for mental health needs (e.g., anxiety, depression, etc.); social skill instruction; explicit reinforcement of positive behavior (such as through a classroom token economy); explicit instruction in stress, anxiety, and depression management; consultation with a professional with expertise in behavioral interventions to create a positive behavioral support plan; increased access to counselors; access to targeted strategies based on peer-reviewed research to support social, emotional, behavioral, or mental health needs (e.g., anxiety scaling, mindfulness exercises); changing the student's class schedule; training staff on additional positive behavioral supports and universal design for learning; and, access to consultation with related

Team meeting for a school year, the parent and the LEA may agree not to convene the full IEP Team and instead develop a written document to amend the IEP. 34 C.F.R. § 300.323(a)(4). For additional information on revising or amending an IEP, see Questions C-8 through C-10 in [Questions and Answers on Individualized Education Programs \(IEPs\), Evaluations, and Reevaluations](#) (2011).

**Question A-6:** How could it impact a child with a disability if their IEP Team fails to consider and provide for needed behavioral supports?

**Answer:** As OSERS noted in its [2016 DCL](#),<sup>13</sup> the failure of the IEP Team to consider and provide for needed behavioral supports through the IEP process may result in a child not receiving a meaningful educational benefit or FAPE. In addition, an LEA's failure to make behavioral supports available throughout a continuum of alternative placements, including in a regular education setting, could result in an inappropriately restrictive placement and constitute a denial of placement in the least restrictive environment.

The failure of the IEP Team to consider and provide for needed behavioral supports could also lead to behavior that is inconsistent with the school's code of student conduct.<sup>14</sup> To the extent a child's behavior, including its impact and consequences (e.g., violations of a school's code of student conduct, classroom disruptions, disciplinary removals, and other exclusionary disciplinary measures), impede the child's learning or that of others, the IEP Team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 34 C.F.R. § 300.324(a)(2)(i). If the child's IEP already includes behavioral supports, upon repeated incidents of child misbehavior or classroom disruption, the IEP Team may need to meet to consider whether the child's behavioral supports are being consistently implemented as required by the IEP or whether they should be changed. It is critical that IDEA provisions designed to support the needs of children with disabilities and ensure FAPE are appropriately implemented so as to avoid an overreliance on, or misuse of, [exclusionary discipline](#) in response to a child's behavior.

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service providers and others with specialized expertise. See [Return to School Roadmap: Development and Implementation of Individualized Education Programs in the Least Restrictive Environment](#) (Sept. 30, 2021). Also, see pages 5–8 of OSERS 2016 DCL for examples of behavioral supports for children with disabilities.

<sup>13</sup> See 2016 DCL.

<sup>14</sup> As used in this document, "code of student conduct" includes the expectations for behavior when participating in programs, including early childhood programs, and schools.

## **B. An Overview of IDEA’s Discipline Procedures**

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**Question B-1:** Does IDEA define “discipline”?

**Answer:** No. IDEA does not define “discipline.” IDEA section 615(k) and the implementing regulations at 34 C.F.R. §§ 300.530 through 300.536 explain 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 \(IAES\)](#) for disciplinary purposes. For the purposes of this Q&A, “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.<sup>15,16</sup>

**Question B-2:** Do IDEA’s implementing regulations prescribe specific disciplinary actions that an LEA must take when a child with a disability violates a school’s code of student conduct?

**Answer:** No. IDEA does not prescribe specific disciplinary actions an LEA must take, but it *does* set some limits. For example, IDEA does not preclude an LEA from disciplining a child with a disability for violating a school’s code of student conduct like any other student, but it does preclude an LEA from doing so in situations where the disciplinary action would result in a change in placement and the behavior that gave rise to the violation of the school’s code of student conduct is determined to be a manifestation of the child’s disability, with the exception of disciplinary removals due to “[special circumstances](#)”.  
34 C.F.R. §§ 300.530(c) and 300.530(g). For more information, see Section C

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<sup>15</sup> The term “discipline” as used in this document does not include the use of corporal punishment. While IDEA does not prohibit the use of [corporal punishment](#) in schools and programs, the Department previously urged States to eliminate this practice from schools, and instead promote supportive, effective disciplinary measures. The Department’s letter on this topic noted that in-school corporal punishment is often not applied equally to all students and is disproportionately applied to students of color and students with disabilities. In addition, the letter noted the use of corporal punishment is ineffective as a strategy to address inappropriate behavior and is also associated with negative academic outcomes. See November 22, 2016 letter from former Secretary John King. <https://www2.ed.gov/policy/gen/guid/school-discipline/files/corporal-punishment-dcl-11-22-2016.pdf>

<sup>16</sup> IDEA does not prohibit a school or preschool program from imposing consequences for a child that do not result in an exclusionary disciplinary measure. Such practices are not addressed in IDEA and could include actions such as loss of privileges, after-school detention, or performing community service. Likewise, some schools utilize a restorative practices approach to build better relationships, and address harms, needs, and obligations, within the school community. See generally, Supporting Students with Disabilities and Avoid the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973, and Fact Sheet: Supporting Students with Disabilities and Avoid the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973, and <http://www.ed.gov/ocr>. for discussion of prohibitions against discrimination on the basis of disability and race, color, or national origin.

on “Change in Placement,” Section E on “Special Circumstances,” and Section F on “[Manifestation Determination Reviews](#).”

**Question B-3:** Does the Office of Special Education Programs (OSEP) consider restraint or [seclusion](#) to be appropriate strategies for disciplining a child for behavior related to their disability?

**Answer:** No. OSEP is not aware of any evidence-based support for the view that the use of restraint or seclusion is an effective strategy in modifying a child’s behaviors that are related to their disability. The Department’s longstanding position is that every effort should be made to prevent the need for the use of restraint or seclusion and that behavioral interventions must be consistent with the child’s rights to be treated with dignity and to be free from abuse. Further, the Department’s position is that restraint or seclusion should not be used except in situations where a child’s behavior poses imminent danger of serious physical harm to themselves or others.<sup>17</sup> The Department has developed and disseminated a resource document recommending that [physical restraint](#) or seclusion “never be used as punishment or discipline.”<sup>18</sup> IDEA does not expressly allow or prohibit the use of restraints or seclusion. IDEA does, however, require the consideration of the use of positive behavioral interventions and supports, and other strategies, to address the behavior of a child with a disability that impedes their learning or that of others. Therefore, IEP Teams should consider and incorporate into a child’s IEP other interventions and supports that are evidence-based.<sup>19</sup>

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<sup>17</sup> See May 15, 2012 letter from former Secretary Arne Duncan to educators, accompanying the Department’s [Restraint and Seclusion: Resource Document](#).

<sup>18</sup> Id. In addition, see OCR’s [2016 Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities](#). This DCL explains when restraint or seclusion may result in discrimination on the basis of disability.

<sup>19</sup> It also is worth noting that the U.S. Department of Justice has investigated for compliance with Title II of the Americans with Disabilities Act (ADA), LEAs that unnecessarily and repeatedly restrain or seclude children with disabilities. See e.g., <https://www.justice.gov/opa/press-release/file/1452621/download>. In addition, the U.S. Department of Education’s Office for Civil Rights conducts investigations to determine if an LEA’s restraint or seclusion of students with disabilities constituted disability discrimination in violation of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act. See, e.g., <https://www.ed.gov/news/press-releases/us-department-educations-office-civil-rights-reaches-agreement-resolve-restraint-and-seclusion-compliance-review-michigans-huron-valley-schools>

## C. Change in Placement

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**Question C-1:** When do disciplinary actions and programmatic changes constitute a [change of placement](#)?

**Answer:** A change of placement occurs if: (1) the removal is for more than 10 consecutive [school days](#); or (2) the child has been subjected to a series of removals that constitute a pattern (i) because the series of removals total more than 10 school days in a school year; (ii) because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and (iii) because of such additional factors such as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. 34 C.F.R. § 300.536(a).

The calculation of the 10 school days of suspension addressed in 34 C.F.R. § 300.530 could include exclusions that take place outside of IDEA's discipline provisions which occur because of a child's behavior. Actions that result in denials of access to, and significant changes in, a child's educational program could all be considered as part of the 10 days of suspension and also could constitute an improper change in placement. These actions could include when a school administrator unilaterally informs a parent that their child with a disability may only remain in school for shortened school days because of behavioral issues or when a child with a disability is not allowed by the teacher to attend an elective course because of behavioral concerns. These types of actions are generally considered disciplinary removals unless all three of the following factors are met: (1) the child is afforded the opportunity to continue to appropriately participate in the general curriculum; (2) the child continues to receive the services specified on the child's IEP; and (3) the child continues to participate with nondisabled children to the extent they would have in their current placement.<sup>20</sup> Further, the immediate removal of a child with a disability to a more restrictive setting for more than 10 days in response to disability-related behavior also could constitute an improper disciplinary removal or an

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<sup>20</sup> These factors are the same factors the Department applies to in-school suspensions, for purposes of 34 C.F.R. § 300.530. In the Analysis of Comments and Changes accompanying the Part B regulations, the Department explained: "It has been the Department's long term policy that an in-school suspension would not be considered a part of the days of suspension addressed in 34 C.F.R. § 300.530 as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child's IEP, and continue to participate with nondisabled children to the extent they would have in their current placement. This continues to be our policy." The explanation concludes by indicating that whether an in-school suspension would constitute a day of suspension would depend on the unique facts and circumstances of each case. [71 Fed. Reg. 46715 \(Aug. 14, 2006\)](#).

improper change of placement if not specifically authorized under, and implemented consistent with, IDEA requirements. For example, school personnel must consider whether prior notice and a copy of the procedural safeguards must be provided to the parent of a child with a disability consistent with the requirements under 34 C.F.R. §§ 300.503 and 300.504 or whether the removal would require that a timely manifestation determination review occur under 34 C.F.R. § 300.530(e). (See Section F for additional information on manifestation determination reviews). SEAs should examine these practices in conjunction with their duty to monitor LEAs' compliance with the discipline provisions and the IEP, placement, and the least restrictive environment requirements of IDEA. 34 C.F.R. §§ 300.149 and 300.600. In addition, LEAs should ensure that they have in effect policies, procedures, and programs that are consistent with the applicable State policies and procedures and any State-imposed requirements that are not required under IDEA, 20 U.S.C. § 1407(a); 34 C.F.R. § 300.201.

**Question C-2:** Who makes the determination as to whether a pattern of removals constitutes a [disciplinary change in placement](#)?

**Answer:** The LEA makes the determination, on a case-by-case basis, of whether a pattern of removals constitutes a change in placement under the discipline provisions in IDEA. 34 C.F.R. § 300.536(b)(1). Under IDEA, school authorities may only remove a child with a disability who violates a school's code of student conduct from the child's current placement to an appropriate IAES, another setting, or suspension, for not more than 10 school days at a time. This removal may only occur to the extent that such disciplinary action is applied to children without disabilities for the same violation. 34 C.F.R. § 300.530(b). When school personnel determine that a change of placement would occur as a result of a proposed disciplinary action, prior notice and a copy of the procedural safeguards must be provided to the parent of a child with a disability consistent with the requirements under 34 C.F.R. §§ 300.503 and 300.504. If school personnel determine that a pattern of removals is not a change in placement, the child's parent may challenge this decision through IDEA's dispute resolution mechanisms, which include filing a State complaint under 34 C.F.R. § 300.153, filing a due process complaint to request an expedited due process hearing under 34 C.F.R. § 300.532(a), or requesting mediation under 34 C.F.R. § 300.506. See Section J for additional information on resolving disputes.

**Question C-3:** Can the imposition of [short-term disciplinary removals](#) (i.e., 10 consecutive school days or less) be a basis for reconvening the child's IEP Team?

**Answer:** Yes. Under 34 C.F.R. § 300.324(b), IEP reviews and revisions are appropriate to address, among other issues: any lack of expected progress toward meeting the annual goals; the results of any reevaluation; information about the child provided to, or by, the parent; the child's anticipated needs; or other matters such as the behavior that led to the short-term disciplinary removal including the impact on the child's learning or that of others.

Frequent use of short-term disciplinary removals or [informal removals](#) of children with disabilities may indicate that the child's IEP does not appropriately address their behavioral needs, which may result in a denial of FAPE.<sup>21</sup> School staff should be aware of, and gauge the need for and effectiveness of, behavioral interventions when implementing exclusionary disciplinary measures that continually or significantly interfere with a child's instruction and participation in school activities (e.g., a pattern of office referrals, repeatedly sending a child out of school on "administrative leave" or regularly requiring a child to leave the school early and miss instructional time).<sup>22</sup> Some of the factors that may be considered when considering the use of short-term removals include: (1) the circumstances that led to the child's removal; (2) whether the child was being provided services in accordance with the IEP; (3) whether the behavior can be addressed through minor changes to classroom or program practices (e.g., adjusting the time the child transitions to lunch in the cafeteria); and (4) whether the IEP Team should be reconvened to address possible changes to the IEP. In situations where the child's behavior and the resulting removals impede the child's learning or that of others, LEAs must review and revise the child's IEP to ensure that appropriate behavioral supports and services are in place to address the behavior that is resulting in such disciplinary removals. Further, the LEA must take the steps necessary to ensure that the child's IEP, including any positive behavioral interventions, supports, and other strategies, are consistently implemented. 34 C.F.R. §§ 300.323 and 300.324(a)(2).

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<sup>21</sup> 2016 DCL at pp. 11–12.

<sup>22</sup> Id. at p. 12.

**Question C-4:** If a removal is for 10 consecutive school days or less and occurs after a child has been removed previously for 10 school days in that same school year, and the LEA determines that the subsequent removal does *not* constitute a change of placement based on the factors described in Question C-1, must the agency provide written notice to the parent under IDEA?

**Answer:** No. Under IDEA an LEA is required to provide written notice only if it determines that a short-term removal constitutes a change of placement. Therefore, in the circumstance described in the question, the LEA is not required by IDEA to provide written notice to the parent.<sup>23</sup> However, notice of the removal to the child's parent may be required under State law or other procedures the State has adopted for the implementation of IDEA requirements.

**Question C-5:** When the parent of a child with a disability and school personnel agree about changing the child's placement after the child has violated a school's code of student conduct, is the change considered a removal under the discipline provisions?

**Answer:** No. If the parent of a child with a disability and the LEA agree to a specific change in the current educational placement of the child to implement the child's current IEP, then it is not considered a removal under the discipline provisions. However, where the parent and the LEA agree that a child with a disability requires additional services and supports from those in the current IEP, the IEP must be revised before the new placement is determined. For example, if school personnel and the parent agree that a different educational placement is required to better implement the child's current IEP in order to ensure the provision of FAPE, the new placement would not be considered a "change of placement" in the context of the discipline requirements. Such changes in placement remain subject to the placement requirements in 34 C.F.R. § 300.116 and the prior written notice requirements in 34 C.F.R. § 300.503.

**Question C-6:** Are informal removals, such as administratively shortened school days, considered a school day when calculating a disciplinary change in placement?

**Answer:** IDEA's implementing regulations define school day as any day, including a partial day, that children attend school for instructional purposes. Additionally,

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<sup>23</sup> Although notice under IDEA is not required in these circumstances, due process under the Fourteenth Amendment to the U.S. Constitution requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against them and, if they deny them, an explanation of the information that school officials have and an opportunity to present the student's version. *Goss v. Lopez*, 419 U.S. 565, 581 (1975).



school day has the same meaning for all children in school, including both those with and without disabilities. 34 C.F.R. § 300.11(c). In the discipline context, administratively shortened school days occur when a child's school day is reduced solely by school personnel, rather than the child's IEP Team or placement team, in response to the child's behavior. 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 in 34 C.F.R. §§ 300.530 through 300.536 would generally apply unless all three of the following factors are met: (1) the child is afforded the opportunity to continue to appropriately participate in the general curriculum; (2) the child continues to receive the services specified on the child's IEP; and (3) the child continues to participate with nondisabled children to the extent they would have in their current placement. 71 Fed. Reg. 46715 (Aug. 14, 2006).

In general, a school day for a child with a disability should not be longer or shorter than a school day for children without disabilities. However, if a child's IEP Team determines a child needs a longer or shorter school day in order to receive FAPE, then appropriate modifications should be incorporated into the IEP by the child's IEP Team to ensure that the child continues to receive FAPE. These modifications must be based on the unique needs of the child, such as when the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily and a shortened school day is warranted. This determination would be made by the child's IEP and placement teams that may include, when appropriate, the child's medical provider or other treatment specialists. In addition, a 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.

**Question C-7:** Is an [in-school suspension](#) considered a school day that must be counted when determining whether a removal constitutes a change of placement?

**Answer:** It depends. It has been the Department's longstanding interpretation that an in-school suspension generally would be considered part of the days of suspension unless the child: (1) is afforded the opportunity to continue to appropriately participate in the general curriculum; (2) continues to receive the services specified on the child's IEP; and (3) continues to participate with nondisabled children to the extent they would have in the child's current placement.

71 Fed. Reg. 46715 (Aug. 14, 2006). It is important to recognize that even if all three of these factors are met, an in-school suspension still removes the child from the educational placement determined to be appropriate by the child's placement team, and additional actions may need to be taken by the child's IEP Team. For example, the repeated use of in-school suspension may indicate that a child's IEP, or the implementation of the IEP, does not appropriately address their behavioral needs. Therefore, the child's IEP Team should consider whether additional positive behavioral interventions and supports or other strategies would assist the child in the current placement.

**Question C-8:** When a child's IEP requires transportation as a related service, are bus suspensions subject to IDEA's discipline protections for determining a change of placement?

**Answer:** It depends. If transportation is a related service required for the provision of FAPE (i.e., to assist the child with a disability to benefit from special education) and therefore required to be included in the child's IEP, a bus suspension must be treated as a suspension under 34 C.F.R. § 300.530, and all of the IDEA's discipline procedures and protections for eligible children with disabilities would apply.<sup>24</sup> In addition, transportation must be provided to a child with a disability placed in an IAES if transportation is required for the child to access the services provided in the IAES.

An LEA is not required to provide alternative transportation to a child with a disability who has been suspended from transportation for 10 school days or less unless the LEA provides alternative transportation to children without disabilities who have been similarly suspended from bus service.

34 C.F.R. § 300.530(d)(3). If bus transportation is not required for FAPE and is not a part of the child's IEP, a bus suspension is not considered a disciplinary removal under 34 C.F.R. § 300.530. In those cases, transportation is not part of the provision of FAPE, and the child and the child's parent have the same obligations to get the child to and from school as a nondisabled child who has been suspended from bus services. 71 Fed. Reg. 46715 (Aug. 14, 2006). For additional information see Questions and Answers on Serving Children with Disabilities Eligible for Transportation.

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<sup>24</sup> Under [34 C.F.R. § 300.34](#), related services mean transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education.

## **D. Interim Alternative Educational Setting (IAES)**

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**Question D-1:** What is an [IAES](#)?

**Answer:** IDEA does not define an IAES. However, OSEP's [data documentation file for discipline](#) data collected under IDEA Section 618 defines an IAES as:

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 a [functional behavioral assessment \(FBA\)](#), and behavioral intervention services and modifications to address the behavior violation so that it does not recur.

**Question D-2:** Under what circumstances may a child be placed in an IAES?

**Answer:** There are several circumstances under which a child may be placed in an IAES:

- When a removal is a change of placement as defined in 34 C.F.R. § 300.536, services are provided in an IAES following the tenth day of the removal. This situation may occur after a child with a disability has been removed from their current placement for 10 school days in the same school year. During any subsequent days of removal, the public agency must provide services and may do so in an IAES. 34 C.F.R. § 300.530(b).
- An IAES also may be considered when a change in placement that would exceed 10 consecutive school days is proposed and the behavior that gave rise to the violation of the school's code of student conduct is determined *not* to be a manifestation of the child's disability under 34 C.F.R. § 300.530(d). In this situation, 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. 34 C.F.R. § 300.530(c). However, the child would continue to receive educational services in an IAES during the portion of the removal that exceeded 10 school days.
- Under 34 C.F.R. § 300.530(g), school personnel may consider removing a child with a disability from their current placement and placing them in an IAES for not more than 45 school days without regard to whether the

behavior is determined to be a manifestation of the child's disability if the child: (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.

During an expedited due process hearing, if a hearing officer determines that maintaining the child's current placement would be substantially likely to result in injury to the child or to others, then the hearing officer may change the placement to an appropriate IAES for not more than 45 school days. 34 C.F.R. § 300.532(b)(2). This procedure may be repeated if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others. 34 C.F.R. § 300.532(b)(3). See Section J of this document for additional information on expedited due process hearings and Question K-2 on resolving disagreements.

**Question D-3:** Which alternative settings can be considered as an IAES?

**Answer:** While IDEA does not specify the alternative setting in which educational services must be provided in an IAES, the determination of an IAES must be selected 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. This determination will depend on the circumstances of each individual child's case. 20 U.S.C. 1415(k)(1)(D)(i). 71 Fed. Reg. 46722 (Aug. 14, 2006). For example, an IAES could be a different setting in the child's current school, a setting in a different school in the LEA, or in some other setting. Factors that could be considered when determining placement in an IAES include the specific programs and services available in the alternative setting, such as additional counseling services, behavioral and academic supports and other services, or programs that could address the behavior that led to the need for the child's placement in an IAES.

**Question D-4:** Who determines the appropriate IAES for a child with a disability when the disciplinary removal is a change of placement?

**Answer:** If the removal is a change in placement under 34 C.F.R. § 300.536, the child's IEP Team, which includes the parent, determines the IAES for the provision of special education and related services. 34 C.F.R. § 300.531.

**Question D-5:** Are there situations where a child's home could be an appropriate IAES for a specific child with a disability?

**Answer:** It depends. Generally, the appropriateness of an IAES will depend on individual circumstances. For removals under 34 C.F.R. § 300.530(c), (d)(5), and (g), the child's IEP Team, which includes the parent, determines the appropriate IAES. 34 C.F.R. § 300.531. Section 615(k)(1)(D) of IDEA and 34 C.F.R. § 300.530(d) state that an appropriate IAES must be selected "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 child's IEP." Therefore, the IEP Team likely will need to consider other options beyond "home instruction" when determining the appropriate IAES. As noted in the [Analysis of Comments and Changes](#)<sup>25</sup>:

Whether a child's home would be an appropriate interim alternative educational setting under § 300.530 would depend on the particular circumstances of an individual case such as the length of the removal, the extent to which the child previously has been removed from his or her regular placement, and the child's individual needs and educational goals. In general, though, because removals under §§ 300.530(g) and 300.532 will be for periods of time up to 45 days, care must be taken to ensure that if home instruction is provided for a child removed under § 300.530, the services that are provided will satisfy the requirements for services for a removal under § 300.530(d) and section 615(k)(1)(D) of the Act. 71 Fed. Reg. 46722 (Aug. 14, 2006).

OSERS also recognizes that, 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. Virtual home instruction or hybrid instruction could be additional options for an IEP Team to consider when determining the appropriate IAES for a child with a disability as long as the services allow the child to continue to participate in the general education curriculum and progress toward meeting the goals set out in the child's IEP.

However, SEAs and LEAs should be cautious about excluding a child with a disability from their regular educational program to provide virtual instruction

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<sup>25</sup> See IDEA's final regulation package, titled "Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes," that can be found at 71 Fed. Reg. 46540-46845 and is available at: [https://sites.ed.gov/idea/files/20060814-Part\\_B\\_regulations.pdf](https://sites.ed.gov/idea/files/20060814-Part_B_regulations.pdf).

for the sole purpose of responding to a child's behavior. Removing a child from the regular education program without ensuring behavioral supports have been made available throughout a continuum of placements, including in a regular education setting, could result in an inappropriately restrictive placement and denial of FAPE. See Question J-5 for additional information regarding virtual instruction.

**Question D-6:** To what extent do the services set out in the child's IEP need to be provided in the IAES when there is a removal?

**Answer:** It depends on the needs of the child. In general, the child's IEP Team will make an individualized decision for each child with a disability regarding the appropriate services to be provided in the IAES. The regulation in 34 C.F.R. § 300.530(d)(1) states that a child with a disability who is removed from their current placement for disciplinary reasons under 34 C.F.R. § 300.530(c) or (g) must continue to receive educational services as provided in 34 C.F.R. § 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 child's IEP goals. For removals that constitute a change of placement under 34 C.F.R. § 300.536, the child's IEP Team determines the appropriate services under 34 C.F.R. § 300.530(d)(1). 34 C.F.R. §§ 300.530(d)(5) and 300.531. If a child whose placement has been changed under 34 C.F.R. § 300.530(c) or (g) is not progressing toward meeting the IEP goals, then it would be appropriate for the IEP Team to review and revise the determination of services and/or the IAES.

## E. Special Circumstances

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**Question E-1:** Is a manifestation determination review required when the child has committed a violation of a school's code of student conduct involving a removal due to weapons, drugs, or serious bodily injury?

**Answer:** Yes. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team must conduct the manifestation determination review. 34 C.F.R. § 300.530(e); see also Section F, below. However, regardless of whether the violation was a manifestation of their disability, when the removal is for weapons, drugs, or serious bodily injury,<sup>26</sup> under 34 C.F.R. § 300.530(g), the child may remain in an IAES, as determined by the child's IEP Team, for not more than 45 school days.<sup>27</sup>

**Question E-2:** Is a child with a disability who has been removed by school personnel due to conduct included within the definition of "special circumstances" in 34 C.F.R. § 300.530(g) entitled to receive educational services?

**Answer:** Yes. In accordance with 34 C.F.R. § 300.530(d), a child with a disability who has been removed from their current placement pursuant to 34 C.F.R. § 300.530(g) must continue to receive educational 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 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. These services may be provided in an IAES. 34 C.F.R. § 300.530(d)(2).

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<sup>26</sup> It is important to note that the definition of "serious bodily injury" (see APPENDIX I: Glossary of Key Terms and Acronyms, as Used in this Guidance ) requires a certain degree of severity, and in OSERS' view, the most common violations of a school's code of student conduct likely do not involve bodily injury or may not rise to the required level of severity.

<sup>27</sup> In some circumstances, there may be legal consequences for a child with a disability who violates a code of student conduct, such as by bringing a firearm to school. School personnel should continue to communicate with the child's parent and, if necessary, law enforcement or corrections officials, to ensure the child's right to FAPE is protected.

**Question E-3:** Are school personnel required to report crimes committed by a child with a disability at school or at a school function?

**Answer:** Under most State laws, school personnel must report certain crimes that occur on school grounds to the appropriate authorities.<sup>28</sup> School personnel should consult the applicable State law at the time of the incident. Nothing in IDEA and its implementing regulations prohibit the school or LEA from reporting crimes committed by a child with a disability to appropriate authorities or prevent 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. 34 C.F.R. § 300.535(a). If the school or LEA reports a crime committed by a child with a disability, it must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the appropriate authorities to whom the school or LEA reports the crime. 34 C.F.R. § 300.535(b)(1). However, the school or LEA may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. 34 C.F.R. § 300.535(b)(2).

**Question E-4:** Does IDEA require or prohibit a risk or threat assessment when a child with a disability commits a violation of the school's code of student conduct?

**Answer:** No. Neither the statute nor the IDEA regulations address the completion of a risk or threat assessment of a child with a disability.

**Question E-5:** When school personnel are conducting risk or threat assessments of a child with a disability, how must the LEA ensure FAPE is provided to the child?

**Answer:** Under IDEA, the procedural safeguards and right to FAPE for a child with a disability must be protected throughout any threat or risk assessment process, including the provision of services during any removals beyond 10 cumulative school days in a school year. 34 C.F.R. §§ 300.101 and 300.530(d). States and LEAs should ensure that school personnel involved in screening for, and conducting, threat or risk assessments of children with disabilities are aware that the child has a disability and are sufficiently knowledgeable about the LEA's obligation to ensure FAPE to the child, including IDEA's discipline provisions. Where appropriate, the LEA can ensure that the school personnel conducting

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<sup>28</sup> For more information, see [School Discipline Policies — Education Commission of the States \(ecs.org\)](https://ecs.org) (May 2021).



the threat or risk assessment have access to, and are coordinating with, the child's IEP Team.

Coordination with the child's IEP Team prior to reaching the threat or risk assessment determination can allow for providing additional or different behavioral supports to mitigate or eliminate the perceived threat or risk. In addition, the IEP Team can provide valuable information about: (1) the nature of the child's disabilities and the needs of the child; (2) whether positive behavioral intervention and supports to address the specific behavior(s) have been implemented with fidelity, and, if so, the effectiveness of those supports; (3) specific additional supports and services that could be provided to mitigate or eliminate the risk of harm, without requiring exclusion from school; and (4) any proposed changes to the child's IEP or review of placement that are in process. When appropriate, the LEA could seek an expedited due process hearing to seek a removal of the child to an IAES for up to 45 days if returning the child with a disability to the previous placement is substantially likely to result in injury to the child or to others. 34 C.F.R. § 300.532(a). Regardless of the risk or threat assessment process utilized, the LEA is responsible for ensuring that IDEA's discipline protections are followed and that FAPE is made available as appropriate.

## **F. Manifestation Determination Review**

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**Question F-1:** What is a manifestation determination review?

**Answer:** 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 (see Question F-2) 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. 34 C.F.R. § 300.530(e)(1); 71 Fed. Reg. 46748 (Aug. 14, 2006).

**Question F-2:** When must a manifestation determination review be conducted?

**Answer:** A manifestation determination review must be conducted when school personnel propose to change the placement of a child with a disability because of a violation of the school's code of student conduct. The manifestation determination review also must take place when the LEA is deemed to have knowledge that the child is a child with 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 (see Question H-7 for additional information). The manifestation determination review must occur within 10 school days of the decision to change the placement of the child because of a violation of the school's code of student conduct. 34 C.F.R. § 300.530(e)(1).

Additionally, while IDEA requires a manifestation determination to be conducted when there is a change of placement (see Question F-7), IDEA does not prohibit IEP Teams from conducting a manifestation determination review during other situations when a child's behavior is inconsistent with the school's code of student conduct. Information from such reviews can assist the IEP Team's decision-making, including whether to conduct an FBA; whether to create, implement, or change a [behavioral intervention plan \(BIP\)](#); or in considering the need for, and implementation of, positive behavioral interventions and supports and other strategies to support any child with a disability whose behavior impedes their learning or that of others.

**Question F-3:** When must a child's behavior be determined to be a manifestation of the child's disability?

**Answer:** The behavior must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that the child's behavior was caused by, or had a direct and substantial relationship to, the child's disability, or the behavior in question was the direct result of the LEA's failure to implement the IEP.  
34 C.F.R. § 300.530(e)(1)(i)-(ii). This could include situations where the child did not consistently receive all services required by their IEP.

**Question F-4:** What actions must an IEP Team take if the conduct in question is determined to be a manifestation of the child's disability?

**Answer:** If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must either: (1) conduct an FBA, unless the LEA had conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a BIP for the child; or (2) if a BIP already had been developed, review the BIP and modify it as necessary to address the behavior.  
34 C.F.R. § 300.530(f)(1). See Section G for additional information about FBAs and BIPs.

The IEP Team also must return the child to the placement from which the child was removed unless the parent and the LEA agree to a change of placement. In addition, when the removal is for weapons, drugs, or serious bodily injury under 34 C.F.R. § 300.530(g), the child may remain in an IAES, as determined by the child's IEP Team, for the duration of the removal (not more than 45 school days), regardless of whether the violation was a manifestation of their disability.  
34 C.F.R. § 300.530(f)(2).

If the behavior in question was the direct result of the LEA's failure to implement the IEP, the LEA must take immediate steps to remedy those deficiencies. 34 C.F.R. § 300.530(e)(3). Such steps could include meeting with each teacher and other service provider of the child to review their specific responsibilities related to implementing the child's IEP, verifying that the specific accommodations, modifications, and supports required for the child, or on behalf of the child, are in place, and determining any compensatory services necessary to address the LEA's failure to implement the child's IEP.

**Question F-5:** What actions may school officials take if the conduct in question is determined *not* to be a manifestation of the child's disability?

**Answer:** For disciplinary changes in placement that would exceed 10 consecutive school days when the conduct that gave rise to the violation of the school code is determined *not* to be a manifestation of the child's disability, 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. 34 C.F.R. § 300.530(c). However, a child with a disability who is removed from the child's current placement when the conduct in question is determined *not* to be a manifestation of the child's disability must continue to receive educational services as provided in 34 C.F.R. § 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 child's IEP. Further, the child must 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. 34 C.F.R. § 300.530(d)(1). While in some instances the conduct in question may not have a direct and substantial relationship to the child's disability, the child may benefit from an FBA and additional behavioral supports to address the underlying behavior.

**Question F-6:** What occurs if the IEP Team cannot reach consensus on whether a child's behavior was or was not a manifestation of the child's disability?

**Answer:** 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 or not the child's behavior was a manifestation of the disability, the LEA must make the determination and provide the parent with prior written notice pursuant to 34 C.F.R. § 300.503. The parent of the child with a disability has the right to exercise their procedural safeguards, including by requesting mediation and/or an expedited due process hearing to resolve any disagreement about the manifestation determination. 34 C.F.R. §§ 300.506 and 300.532(a). A parent also has the right to file a State complaint alleging a violation of IDEA related to the disputed manifestation determination. 34 C.F.R. § 300.153.

**Question F-7:** Is the IEP Team required to hold a manifestation determination review each time that a child is removed for more than 10 consecutive school days, and each time that the LEA determines that a series of removals constitutes a change of placement?

**Answer:** Yes. The regulations require that “within 10 school days of *any* decision to change the placement of a child with a disability because of a violation of a code of student conduct,” the LEA, the parent, and relevant members of the child’s IEP Team must conduct a manifestation determination review. 34 C.F.R. § 300.530(e) (emphasis added). Under 34 C.F.R. § 300.536, a change of placement occurs if: (1) the removal is for more than 10 consecutive school days; or (2) if the LEA determines, on a case-by-case basis, that a pattern of removals constitutes a change of placement because (i) the series of removals total more than 10 school days in a school year, (ii) the child’s behavior is substantially similar to the behavior that resulted in the previous removals, and (iii) because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. See Question C-1 for information regarding change in placement.

## **G. IDEA's Requirements for FBAs and BIPs<sup>29</sup>**

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**Question G-1:** When must an IEP Team conduct an FBA and develop and implement a BIP?

**Answer:** The IEP Team must conduct an FBA and implement a BIP when the LEA, parent, and relevant members of the IEP Team determine that 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 had already conducted an FBA and had developed a BIP before the behavior that resulted in the change of placement occurred, the IEP Team must review the BIP for the child, and modify it, as necessary, to address the behavior. 34 C.F.R. § 300.530(e) and (f).

**Question G-2:** Are there other circumstances in which it may be appropriate to conduct an FBA?

**Answer:** Yes. In the context of discipline, if the IEP Team determines that the child's conduct is *not* a manifestation of the child's disability, or if the child's placement is changed to an IAES based on "special circumstances," IDEA requires the LEA to provide the child, *as appropriate*, an FBA and behavioral intervention services and modifications that are designed to address the behavior so that it does not recur. 34 C.F.R. § 300.530(d)(1)(ii) (emphasis added). For additional information, see Question F-5.

**Question G-3:** Who is qualified to conduct an FBA?

**Answer:** IDEA requires States to establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of IDEA are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. 34 C.F.R. § 300.156(a). Each LEA must ensure that all personnel necessary to carry out the purposes of IDEA are appropriately and adequately prepared, including personnel who conduct FBAs. 34 C.F.R. § 300.207. Further, each LEA must ensure that assessments and other evaluation materials used to assess a child are, among other requirements, administered by trained and knowledgeable personnel. 34 C.F.R. § 300.304(c)(1)(iv).

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<sup>29</sup> For more information about the use of FBAs and BIPs to address a child's behavior that impedes their ability to access learning and create and maintain positive social relationships, see [Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders](#) (July 2022).

Schools are expected to have properly trained professionals available to conduct FBAs and to formulate and provide positive behavioral interventions and supports. It is the LEA's responsibility, working with the SEA as necessary, to provide professional development, in-service training, and technical assistance, as needed, for school staff members to be able to conduct an FBA and provide positive behavioral interventions and supports. For more information about who can provide behavioral supports to a child when the services are included in the child's IEP, see Question C-4 in [Return to School Roadmap: Development and Implementation of Individualized Education Programs in the Least Restrictive Environment](#) (Sept. 30, 2021).

The Department has invested in several technical assistance centers that provide resources related to behavior that can be accessed by SEAs, LEAs, schools, early childhood programs, and educators. Online professional development and training modules are among the many resources created by these technical assistance centers. For more information, see [Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders](#) (July 2022).

## **H. Provision of Services During Periods of Removal**

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**Question H-1:** When is an LEA required to provide services to a child with a disability during removals for disciplinary reasons that total no more than 10 school days in a school year?

**Answer:** An 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). Although not required, LEAs are encouraged to provide services during such short-term removals to assist children with disabilities to continue to make progress toward their IEP goals and to prevent them from falling behind. Information about whether the LEA provides services in this circumstance must be included in the explanation of procedural safeguards it provides to parents under 34 C.F.R. § 300.504.

**Question H-2:** When must the LEA provide services to a child with a disability who has been removed from the child's current educational placement for disciplinary reasons that total more than 10 school days in a school year, and how are determinations made about the services that will be provided?

**Answer:** Once a child's cumulative days of removal in a school year exceed 10 school days, beginning with the 11th cumulative day and during any subsequent days of removal, the LEA must provide services in accordance with 34 C.F.R. § 300.530(d) as described below:

- If the current removal is for 10 consecutive school days or less and is *not* a change of placement under 34 C.F.R. § 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in 34 C.F.R. § 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 child's IEP. 34 C.F.R. § 300.530(d)(4). Services may not always be required during brief periods of removal. School staff determine how best to address the child's needs in these circumstances. 71 Fed. Reg. 46718.
- If the current removal, regardless of length, *is* a change of placement under 34 C.F.R. § 300.536, 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.

34 C.F.R. § 300.530(d)(1) and (5).

- Likewise, in circumstances where a child's disciplinary removal *is* a change of placement and either for behavior that is determined *not* to be a manifestation of their disability or for behavior involving special circumstances under 34 C.F.R. § 300.530(g), the child must continue to receive educational services. The child's IEP Team determines what services will be provided to the child; if they will be provided in an IAES; and, if so, what that IAES will be. 34 C.F.R. §§ 300.530(d)(1) and (5) and 300.531.

## I. Protections for Children Not Yet Determined Eligible for Services under IDEA

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**Question I-1:** When are children who have not yet been determined eligible for special education and related services under IDEA entitled to the discipline protections?

**Answer:** A child who has not yet been identified as eligible for special education and related services under the IDEA and has violated a code of student conduct — and their parent — may assert any of IDEA's discipline protections in circumstances 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 (see Question I-2 for further information).  
34 C.F.R. § 300.534(a).

**Question I-2:** When would an LEA be deemed to have knowledge that a child is a child with a disability?

**Answer:** Under 34 C.F.R. § 300.534(b), an LEA would be deemed to have knowledge that the child is a child with a disability if, before the behavior that brought about the disciplinary action occurred: (1) the parent expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or to the child's teacher, that the child is in need of special education and related services; (2) the parent requested an evaluation of the child's eligibility for special education and related services under IDEA; or (3) the child's teacher or other LEA personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the LEA's director of special education or to other supervisory personnel of the LEA.

**Question I-3:** Under what circumstances would an LEA *not* be deemed to have knowledge that a child is a child with a disability despite the existence of one or more factors identified in 34 C.F.R. § 300.534(b)?

**Answer:** There are specific exceptions to when an LEA must be deemed to have knowledge as described above. An LEA would *not* be deemed to have knowledge if the parent did not allow the LEA to conduct an evaluation of the child pursuant to 34 C.F.R. §§ 300.300 through 300.311 or refused special education and related services under IDEA. Also, an LEA would *not* be deemed to have knowledge if the child has been evaluated in accordance with 34 C.F.R. §§ 300.300 through 300.311 and determined not to be a child with a disability under IDEA. 34 C.F.R. § 300.534(c)(2).

**Question I-4:** What disciplinary protections are available to a child who has been referred for an evaluation under IDEA and is removed for a violation of the school's code of student conduct prior to a determination of eligibility?

**Answer:** If a child engages in behavior that violates the school's code of student conduct prior to a determination of their eligibility for special education and related services and the LEA is deemed to have knowledge that the child is a child with a disability, the child is entitled to all of IDEA's protections afforded to a child with a disability, unless a specific exception applies. In general, once the child is properly referred for an evaluation under IDEA, the LEA would be deemed to have knowledge that the child is a child with a disability for purposes of IDEA's disciplinary provisions. However, under 34 C.F.R. § 300.534(c) and as noted above, the LEA is considered *not* to have knowledge that a child is a child with a disability if the parent has not allowed the LEA to conduct an evaluation of the child under IDEA, if the parent has refused special education and related services, or if the child has been evaluated and determined *not* to be a child with a disability under IDEA. In these instances, the child and the parent may not assert any of the disciplinary protections available under the IDEA and the LEA may utilize the same measures applicable to children without disabilities who engage in comparable behavior. However, as set out in I-6 below, certain additional conditions may apply.

**Question I-5:** Is a child's participation in a multi-tiered system of supports (MTSS) to address academics, such as a [response to intervention \(RTI\)](#) process, sufficient to provide the LEA with knowledge that allows the child and parent to assert IDEA's discipline protections?

**Answer:** Generally, no. Participation in an RTI process, in and of itself, does not appear to meet the standard in 34 C.F.R. § 300.534 for when a child and parent may assert IDEA's discipline protections. However, where the RTI process is the result of one of the factors or actions specified in 34 C.F.R. § 300.534(b), and no specific exceptions, as set out in 34 C.F.R. § 300.534(c), apply, the IDEA's discipline protections may be asserted. For example, if the child's participation in the RTI process is based on the parent expressing concern in writing to the child's teacher that the child is in need of special education and related services, and the parent has not prevented the evaluation from occurring, then the LEA would likely be deemed to have knowledge as of the time of receipt of the parent's written communication.

**Question I-6:** What disciplinary measures may an LEA take if it is deemed *not* to have knowledge that the child is a child with a disability (i.e., there is no basis of knowledge)?

**Answer:** If, prior to taking disciplinary measures against the child, an LEA does not have knowledge that the child is a child with a disability, the child may be subjected to the same disciplinary measures that are applied to children without disabilities who engage in comparable behaviors. However, if the parent of a child or an LEA makes a request for an evaluation of the child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the child may remain in the educational placement determined by school authorities, which could include suspension or expulsion without educational services. 34 C.F.R. § 300.534(d). If the child is determined to be IDEA-eligible, the agency must provide special education and related services in accordance with IDEA, including the discipline requirements in 34 C.F.R. §§ 300.530 through 300.536.

**Question I-7:** Once an LEA is deemed to have knowledge that a child is a child with a disability, can the manifestation determination review be postponed until the initial evaluation is completed or the initial IEP Team meeting is held?

**Answer:** No. If a child engages in behavior that violates a code of student conduct prior to a determination of their eligibility for special education and related services and 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, the child and parent may assert the disciplinary protections under IDEA, including the manifestation determination review provisions under 34 C.F.R. § 300.530(e). This is so even if the child has not yet been found eligible for special education and related services. Thus, when an LEA is deemed to have knowledge that a child is a child with a disability, within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must conduct a manifestation determination review. IDEA does not include an exception that would give the LEA additional time to complete an evaluation of the child's eligibility under IDEA prior to conducting the manifestation determination review.

**Question I-8:** How should the manifestation determination review be conducted prior to a determination of eligibility when the LEA may have little to no information about the child's disability and the purpose of the review is to determine whether the behavior is the result of the child's disability?

**Answer:** Under 34 C.F.R. § 300.530(e)(1)(i), when conducting the manifestation determination review, the LEA, the parent, and relevant members of the IEP Team (as determined by the parent and the LEA) must review all relevant information in the child's file, including any teacher observations and any relevant information provided by the parent, to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's suspected disability. Because the LEA has not yet developed an IEP for the child, 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. 34 C.F.R. § 300.530(e)(1)(ii). However, an improper or unreasonable delay in determining eligibility and developing and implementing the IEP could be considered a failure to implement the IEP for purposes of the manifestation determination review.

There is nothing in IDEA that would prevent the LEA from conducting the manifestation determination review in connection with its evaluation and eligibility determination, so long as the manifestation determination review is conducted within 10 school days of the decision to change the child's placement due to a violation of the school's code of student conduct. Where the LEA cannot conduct or finish the evaluation before the timeline for conducting a manifestation determination review, it would still need to convene a group of knowledgeable persons, as determined by the parent and the LEA, to conduct the manifestation determination review even though the LEA has yet to make its eligibility determination. 34 C.F.R. § 300.534(a). In such cases, the group would likely consider the information that served as the LEA's basis of knowledge that the child may be a child with a disability under IDEA, such as concerns expressed by a parent, a teacher, or other LEA personnel, including any pattern of behavior demonstrated by the child, the child's suspected disability, and the relationship of the child's behavior to the suspected disability. Based upon its review and consideration of the available information, the group would determine whether the conduct in question was caused by, or had a direct and substantial relationship to, the child's suspected disability. 34 C.F.R. § 300.530(e).

**Question I-9:** When must the LEA conduct an initial evaluation in an expedited manner for a child who has not yet been determined to be a child with a disability and is subjected to a disciplinary removal, and what is the timeline for such an evaluation?

**Answer:** It depends on the circumstances. While an LEA may choose or find it necessary to expedite evaluations, under IDEA, expedited evaluations are only required in situations where the LEA is *not* deemed to have knowledge that the child may have a disability and a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under 34 C.F.R. § 300.530. In the Analysis of Comments and Changes, the Department noted that:

What may be required to conduct an evaluation will vary widely depending on the nature and extent of a child's suspected disability and the amount of additional information that would be necessary to make an eligibility determination. However, 34 C.F.R. § 300.534(d)(2)(i), consistent with section 615(k)(5)(D)(ii) of the Act, specifies that the evaluation in these instances be "expedited," which means that an evaluation should be conducted in a shorter period of time than a typical evaluation conducted pursuant to section 614 of the Act, which must be conducted within 60 days of receiving parental consent for the evaluation. 71 Fed. Reg. 46728 (Aug. 14, 2006).

**Question I-10:** What steps can SEAs and LEAs take to ensure that parents are informed that concerns about their child's need for special education and related services must be expressed in writing in order for the discipline protections to apply?

**Answer:** In its child find policies and procedures, an SEA may choose to include ways to provide information to the public regarding IDEA's requirements and protections for disciplinary purposes when a parent has expressed in writing to school personnel concerns regarding the child's need for special education and related services. Examples of ways to provide such information include making the information available on the State's website, the LEA's website, parent handbooks, or in the SEA's and/or LEA's procedural safeguards notice.

The requirement that a parent express their concern in writing is taken directly from IDEA's statute and implementing regulations. 20 U.S.C. 1415(k)(5)(B)(i); 34 C.F.R. § 300.534(b)(1). However, there is nothing in IDEA or its implementing regulations that would prevent a parent from requesting

assistance to communicate their concerns in writing.<sup>30</sup> Some States have included a provision in their State rules implementing IDEA that parents must be afforded assistance to submit a written request for an initial evaluation, if needed. The Department funds PTIs and Community Parent Resource Centers (CPRCs) to assist parents of children with disabilities. There are over 100 PTIs and CPRCs in the United States and Territories that provide training, resources, and support on a wide variety of topics. Parents can locate the appropriate PTI or CPRC for their area at <https://www.parentcenterhub.org/find-your-center>.

**Question I-11:** If a teacher (or other school personnel) has specific concerns related to a child's pattern of behavior, must such concerns be submitted in writing to school or LEA officials in order for the LEA to be deemed to have knowledge that the child is a child with a disability?

**Answer:** No. Under 34 C.F.R. § 300.534(b)(3), teachers or other LEA personnel are not required to submit a written statement expressing specific concerns about a pattern of behavior demonstrated by the child in order for the LEA to be deemed to have knowledge that the child is a child with a disability. Although a written statement is not necessary, the teacher of the child or other LEA personnel must express their specific concerns directly to the special education director or other supervisory personnel of the agency in order for the LEA to be deemed to have knowledge that the child is a child with a disability. In addition, the State's or LEA's child find policies and procedures may provide guidelines regarding how teachers and other LEA personnel should communicate their specific concerns regarding a child's pattern of behavior. If the State's or LEA's child find or referral procedures do not specify how such communication should occur, the State or LEA is encouraged to change its guidelines to provide a method for communicating direct expressions of specific concerns regarding a child's pattern of behavior. See 71 Fed. Reg. 46727 (Aug. 14, 2006).

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<sup>30</sup> If a parent with a disability needs such assistance as a reasonable modification or to ensure effective communication, it may be required under Federal civil rights laws such as Section 504 of the Rehabilitation Act. See also, [Frequently Asked Questions on Effective Communication](#), Question 7.

## J. Application of IDEA Discipline Protections in Certain Specific Circumstances

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**Question J-1:** Do the discipline provisions in IDEA apply to children with disabilities aged three through five who receive FAPE in preschool settings?

**Answer:** Generally, yes. Despite their young age, preschool children with disabilities are too often removed from their current educational placement for disciplinary reasons.<sup>31</sup> Preschool children with disabilities aged three through five who receive services necessary for FAPE under IDEA are entitled to the same disciplinary protections that apply to all other IDEA-eligible children with disabilities, including a manifestation determination review when a proposed disciplinary removal constitutes a change of placement. See Section F above.

IDEA’s disciplinary protections are available to children with disabilities who attend public preschool programs operated by the LEA, those who attend preschool programs operated by public agencies other than LEAs (such as Head Start or community-based childcare), and those who are placed in a private preschool program by the LEA in order to ensure the provision of FAPE. When a child with a disability is placed in a program that is not operated by the LEA, it is critical that program staff are informed of relevant IDEA requirements, including the discipline protections afforded to preschool children with disabilities when their behavior does not meet school or program expectations. See also the joint statement issued by the U.S. Department of Health and Human Services/U.S. Department of Education, [Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings](#).<sup>32</sup>

Some States and early childhood programs have adopted more stringent rules regarding the disciplinary removal of preschool-aged children from their programs and, in some cases, prohibit such removals altogether.<sup>33</sup> Such practices recognize the significance of lost instruction and support to young learners’ development. For example, Head Start’s Program Performance

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<sup>31</sup> During the 2017-2018 school year, 22.7 percent of the nation’s 1.5 million preschoolers were children with disabilities were served under IDEA. During that year, preschoolers with disabilities served under IDEA were expelled 2.5 times greater than their share of the total preschool population. [Office for Civil Rights’ Discipline Practices in Preschool](#), 2017-2018 Civil Rights Data Collection (Jul. 2021).

<sup>32</sup> U.S. Department of Health and Human Services/U.S. Department of Education [Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings](#) (undated).

<sup>33</sup> [Start with Equity from the Early Years to the Early Grades](#), Children’s Equity Project Bipartisan Policy Center, (July 14, 2020).



Standards explicitly state that programs “must prohibit or severely limit the use of suspension due to a child’s behavior” and that “[a] program cannot expel or unenroll a child from Head Start because of a child’s behavior.”<sup>34</sup> Further, Head Start’s program standards of conduct expressly prohibit using corporal punishment, isolating a child for disciplinary purposes, and binding or tying a child to restrict movement or taping a child’s mouth.<sup>35</sup>

**Question J-2:** When a parent consents to the initial provision of some, but not all, of the proposed special education and related services, do the discipline provisions in IDEA apply if the child violates the school’s code of student conduct?

**Answer:** Yes. In this circumstance the child has been evaluated and determined to be a child with a disability under IDEA. When a parent consents to the initial provision of some, but not all, of the proposed special education and related services listed in a child’s IEP, the child is still considered a child with a disability and is entitled to all the protections of IDEA.

**Question J-3:** Do the discipline provisions in IDEA apply if the child violates the code of student conduct after a parent revokes consent for special education and related services?

**Answer:** No. Under 34 C.F.R. §§ 300.9 and 300.300, parents are permitted to unilaterally withdraw their children from receipt of special education and related services by revoking their consent for the provision of special education and related services to their children. When a parent revokes consent for special education and related services under 34 C.F.R. § 300.300(b), the parent has refused services as described in 34 C.F.R. § 300.534(c)(1)(ii); therefore, the LEA is *not* deemed to have knowledge that the child is a child with a disability, and the child will be subject to the same disciplinary procedures and timelines applicable to general education students and not entitled to IDEA’s discipline protections.<sup>36</sup> It is expected that parents will take into account the possible consequences under the discipline procedures before revoking consent for the provision of special

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<sup>34</sup> 45 C.F.R. § 1302.17. For more information, see [U.S. Department of Health and Human Services, Head Start Early Childhood Learning and Knowledge Center, Head Start Policy and Regulations](#).

<sup>35</sup> 45 C.F.R. § 1302.90(c)(1)(ii)(A)-(C).

<sup>36</sup> To learn about students’ rights under Section 504, please see 34 C.F.R. §§ 104.31 through 104.39; Supporting Students with Disabilities and Avoid the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973, and Fact Sheet: Supporting Students with Disabilities and Avoid the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973; [Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools](#); and [Protecting Students With Disabilities \(ed.gov\)](#).

education and related services. 73 Fed. Reg. 73012-13 (Dec. 1, 2008). If a parent revokes consent for their child, the parent maintains the right to subsequently request an initial evaluation to determine if the child is a child with a disability who needs special education and related services, including when their child has a discipline issue. 73 Fed. Reg. 73014 (Dec. 1, 2008). If the parent requests an initial evaluation after the child has violated the school's code of student conduct and the LEA agrees an evaluation is needed, the child may be disciplined in the same manner as a child without a disability, pending completion of the evaluation. 34 C.F.R. § 300.534(d)(2).

**Question J-4:** Do IDEA's discipline provisions apply to children with disabilities who attend public charter schools?

**Answer:** Yes. Children with disabilities who attend public charter schools, and their parents, retain all IDEA rights and protections. 34 C.F.R. § 300.209(a). These IDEA rights and protections include the discipline procedures in 34 C.F.R. §§ 300.530 through 300.536. For more information, see OSERS' [Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under the Individuals with Disabilities Education Act](#) (Dec. 28, 2016).

**Question J-5:** Do the discipline provisions in IDEA apply when children with disabilities receive instruction in a virtual setting?

**Answer:** Yes. If a State or LEA operates virtual schools or offers virtual instruction, children with disabilities whose needs can be met through virtual learning must have an IEP implemented in a way that provides all the services and supports necessary for the child to receive FAPE through such service delivery.<sup>37</sup> See Question G-2, [Return to School Roadmap: Development and Implementation of Individualized Education Programs in the Least Restrictive Environment](#) (Sept. 30, 2021). Children receiving FAPE in a virtual setting are entitled to the same discipline procedures afforded to all children with disabilities.

IEP Teams and placement teams must ensure that the instructional methodology for delivery (e.g., in-person, virtual, hybrid), timing, frequency, service setting, and location of services appropriately support the child with a disability in achieving the functional and academic goals set out in the child's IEP, including those that address the child's social, emotional, and behavioral needs. See

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<sup>37</sup> For more information about online instruction for children with disabilities, see [OSERS' Dear Colleague Letter on Virtual Schools](#) (Aug. 5, 2016).

Section G, [Return to School Roadmap: Development and Implementation of Individualized Education Programs in the Least Restrictive Environment](#) (Sept. 30, 2021).

**Question J-6:** Do IDEA's discipline provisions apply to children with disabilities in State and local correctional facilities?

**Answer:** Yes. A child with a disability in a correctional facility who violates a facility's code of student conduct (e.g., a rule for the educational program or setting) is entitled to the protections in IDEA's discipline procedures that must be afforded to all children with disabilities. These protections apply regardless of whether a child who violates a code of student conduct is subject to discipline in the facility or removed to restricted settings, such as confinement to the child's cell or "lockdown" units. In any event, a removal from the current educational placement that results in a denial of educational services for more than 10 consecutive school days, or a series of removals that constitute a pattern that total more than 10 school days in a school year, is a change in placement, which, in turn, requires a manifestation determination review under IDEA. Any exclusion from the classroom is particularly harmful for children with disabilities in correctional facilities. In general, even in the presence of disciplinary concerns, correctional facilities run by public entities have an obligation to ensure that special education and related services are provided to eligible children with disabilities. See OSERS' [Dear Colleague Letter on the Individuals with Disabilities Education Act for Students with Disabilities in Correctional Facilities](#) (Dec. 5, 2014).

While IDEA's discipline protections apply, it is important to note there may be additional factors to consider, particularly when a child with a disability has been convicted as an adult under State law and is incarcerated in an adult prison. Under such circumstances, the IEP Team may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

34 C.F.R. § 300.324(d)(2). In addition, IDEA makes no specific provision for funding educational services for individuals with disabilities incarcerated in a Federal prison.<sup>38</sup>

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<sup>38</sup> [OSEP Letter to Yudien](#) (Aug. 19, 2003) and [OSEP Letter to Mahaley](#) (Mar. 2, 2011).

**Question J-7:** Do IDEA's discipline provisions apply to children with disabilities placed by an LEA<sup>39</sup> in a private school or facility as a means of providing FAPE?

**Answer:** Yes. A child with a disability placed by an LEA in a private school or facility as a means of providing FAPE has all the rights of a child with a disability who is served by an LEA. 34 C.F.R. § 300.146(c). The responsibility for ensuring that these children and their parents receive the same rights they would have if educated directly by the LEA rests with the State and the LEA that places the child in, or refers the child to, the private school or facility. These rights include the discipline procedures in 34 C.F.R. §§ 300.530 through 300.536.

**Question J-8:** Do IDEA's discipline procedures apply to children with disabilities who are placed by their parents in private schools, who are not enrolled in the LEA, and for whom FAPE is not at issue?

**Answer:** No. IDEA's discipline procedures do not apply to these children.<sup>40</sup>

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<sup>39</sup> It is important to note that a noneducational agency, such as a State or local social services or health services agency, may place a child with a disability in a private school or treatment facility. OSERS has stated that under IDEA, when a child with a disability is placed or referred by a State social service, social welfare, or similar State agency, whether for education or treatment reasons, at a private school or facility, whether within the State or outside of the State, the SEA in the State in which the child resides is responsible for ensuring that FAPE is made available to the child during the course of the child's placement at the private school or facility. In general, and absent applicable law to the contrary, OSERS would consider a child to be a resident of the State in which the child's parent or legal guardian resides or in which the child is a ward of the State. 34 C.F.R. § 300.149. See also [OSEP Memorandum 05-08 Educational Expenses for Children in Private Residential Facilities](#) (Mar. 17, 2005).

<sup>40</sup> Under IDEA, "parentally-placed private school children with disabilities" means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in 34 C.F.R. § 300.13 or secondary school in 34 C.F.R. § 300.36, other than children with disabilities covered under 34 C.F.R. §§ 300.145 through 300.147. 34 C.F.R. § 300.130. See also OSERS' [Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools](#) (Feb. 2022).

## **K. Resolving Disagreements**

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**Question K-1:** May a parent appeal, through a due process hearing, any discipline-related decision regarding their child's placement or a determination that their child's behavior was not a manifestation of the child's disability?

**Answer:** Yes. A parent of a child with a disability who disagrees with an LEA's decision regarding the child's placement under 34 C.F.R. §§ 300.530 and 300.531 or a determination of whether their child's conduct was or was not a manifestation of the child's disability under 34 C.F.R. § 300.530(e) may appeal the decision by requesting a hearing, which is done by filing a due process complaint. 34 C.F.R. § 300.532(a). the parent requests a hearing, the SEA or LEA must then arrange for an expedited due process hearing, which must occur within 20 school days of the date that the due process complaint requesting the hearing is filed, and the hearing officer must make a determination within 10 school days after the hearing. 34 C.F.R. § 300.532(c)(2). Although this hearing must be conducted on an expedited basis, it must be conducted consistent with the same requirements that apply to impartial due process hearings in 34 C.F.R. §§ 300.507, 300.508(a)-(c), and §§ 300.510 through 300.514, except as provided in 34 C.F.R. § 300.532(c)(2)-(4). 34 C.F.R. § 300.532(c)(1). For more information about expedited due process hearings under IDEA, see Section E of [OSERS' Questions and Answers on Part B Dispute Resolution Procedures](#) (Jul. 23, 2013).

**Question K-2:** Under what circumstances may an LEA seek to challenge the requirement to maintain the current placement of a child with a disability who has violated the school's code of student conduct?

**Answer:** An LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others may challenge the requirement by requesting a hearing. 34 C.F.R. § 300.532(a). At the hearing, the LEA must prove this assertion to the hearing officer. A hearing officer will exercise their judgment after considering and weighing the evidence presented when determining whether maintaining the child's current placement is substantially likely to result in injury to the child or others. If the hearing officer agrees with the LEA, then the hearing officer may remove the child to an appropriate IAES for not more than 45 school days. 34 C.F.R. § 300.532(b)(2). These procedures may be repeated if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others. 34 C.F.R. § 300.532(b)(3). For more information about expedited due

process hearings under IDEA, see Section E of [OSERS' Questions and Answers on Part B Dispute Resolution Procedures](#) (Jul. 23, 2013).

**Question K-3:** May a parent use IDEA's State complaint procedures to resolve alleged violations regarding an LEA's disciplinary action, including disciplinary changes of placement and manifestation determinations?

**Answer:** Yes. The State complaint procedures in 34 C.F.R. §§ 300.151 through 300.153 are available to any individual or organization, including one from another State, who alleges that an LEA has violated any requirement of IDEA or the Part B regulations. While impartial due process hearing officers have the authority to hear appeals from parents of discipline-related decisions regarding placement under 34 C.F.R. §§ 300.530 and 300.531 and the manifestation determination review under 34 C.F.R. § 300.530, this does not limit an SEA's authority to resolve the same issues under the State complaint procedures. The expedited time frame for resolving due process complaints does not apply to the resolution of State complaints. For more information about State complaint procedures under IDEA, see Section B of OSERS' [Questions and Answers on Part B Dispute Resolution Procedures](#) (Jul. 23, 2013).

**Question K-4:** Are the mediation procedures in 34 C.F.R. § 300.506 available to resolve disagreements regarding discipline matters?

**Answer:** Yes. The mediation process offers an opportunity for parents and LEAs to resolve disputes about any matter under IDEA's regulations, including matters arising prior to the filing of a due process complaint. 34 C.F.R. § 300.506(a). This includes matters regarding the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to a child with a disability. However, it is important to remember that mediation must be voluntary on the part of both parties and may not be used to deny or delay a parent's right to a due process hearing on a due process complaint, including an expedited due process hearing. For more information about mediation under IDEA, see Section A of OSERS' [Questions and Answers on Part B Dispute Resolution Procedures](#) (Jul. 23, 2013).

**Question K-5:** Must parents exhaust their administrative remedies under IDEA before filing a civil lawsuit in Federal or State court?

**Answer:** It depends. There are several circumstances where a parent is not required to exhaust their administrative remedies under IDEA before seeking relief from a Federal or State court. One of those is when the failure to take immediate action

will adversely affect a child's mental or physical health.<sup>41</sup> Before the IDEA administrative process may be circumvented under this exception, there must be a sufficient preliminary showing that the child will suffer serious and irreversible mental or physical damage. In some instances, this might include situations where a child is being subjected to harsh disciplinary actions, is frequently removed from necessary specialized instruction and related services, or is improperly restrained or secluded. This analysis is a fact-based inquiry that will depend on the individual circumstances of each case.

**Question K-6:** Do hearing officers have the authority under IDEA to order remedies, such as compensatory education services or an independent educational evaluation, when ruling on issues in an expedited due process complaint related to a parent's appeal of a disciplinary placement decision or the manifestation determination?

**Answer:** Yes. Hearing officers conducting due process hearings on expedited due process complaints filed under 34 C.F.R. § 300.532(a) have the authority and responsibility to order relief that is appropriate to remedy the alleged violations based on the facts and circumstances of each individual complaint. This is so even though 34 C.F.R. § 300.532(b)(2) authorizes certain specific actions related to placement that a hearing officer also may take in resolving an expedited due process complaint. A hearing on an expedited due process complaint is treated as an impartial due process hearing, which is subject to the hearing decision requirements in 34 C.F.R. § 300.513. For example, in a matter alleging a violation of the discipline provisions (e.g., an improper manifestation determination), a hearing officer may find that the child did not receive FAPE if a disciplinary removal was improper and adversely impacted the child. See 34 C.F.R. § 300.513(a)(2)(iii). In addition to a conclusion that the child must return to the placement from which they were removed, the hearing officer could further conclude that, during the removal, the child was denied required instruction and services and that the denial had an adverse impact. In such circumstances, a hearing officer could order the LEA to provide compensatory services to remedy the impact of the loss of instruction and services on the child's receipt of FAPE.

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<sup>41</sup> See, e.g., *Komninos by Komninos v. Upper Saddle River Bd. of Educ.*, 13 F.3d 775, 778-79 (3d Cir. 1994) ("At least one Court of Appeals has recognized another exception—when exhaustion would work 'severe or irreparable harm' upon a litigant. This last exception finds support in the legislative history of the [IDEA] which states that exhaustion would not be necessary when 'an emergency situation exists (e.g., the failure to take immediate action will adversely affect a child's mental or physical health).' H.R.Rep. No. 296, 99th Cong., 1st Sess. 7 (1985).") (internal citations omitted).

Moreover, there may be instances where a parent's expedited due process complaint includes issues that must be handled in an expedited manner under 34 C.F.R. § 300.532 and also includes issues that are outside the scope of the discipline provisions. As appropriate, the hearing officer may choose to bifurcate the issues and rule on the discipline-related matters in the expedited due process complaint within the required shorter timeline. See 34 C.F.R. § 300.532(c)(2).<sup>42</sup> Any issues raised in the complaint that are unrelated to discipline could then be resolved in the same manner and timelines as a due process complaint filed under 34 C.F.R. § 300.507.

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<sup>42</sup> See also [OSEP Letter to Snyder](#) (Dec. 13, 2015).



## **L. State Oversight and Data Reporting Responsibilities**

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**Question L-1:** What obligations do SEAs have to address disparities in discipline?

**Answer:** The SEA, under its general supervisory responsibilities in 34 C.F.R. §§ 300.149 and 300.600, must ensure that LEAs in the State meet the program requirements under IDEA with a particular emphasis on those requirements that are most closely related to improving educational results and functional outcomes for children with disabilities. The inappropriate use of suspension, expulsion, and other exclusionary removals significantly limits the ability of children with disabilities to receive educational benefit consistent with their IEPs. Therefore, SEAs should pay particular attention to LEA and Statewide discipline data and discipline policies, procedures, and practices when exercising their general supervisory responsibilities.

**Question L-2:** Must SEAs ensure that the discipline protections apply to children with disabilities placed by an LEA in a private school or facility?

**Answer:** Yes. SEAs must ensure that the same IDEA disciplinary provisions and protections that apply to a child with a disability attending a public school of an LEA also apply and are available to children with disabilities placed by an LEA in a private school or facility as a means of providing FAPE. See 34 C.F.R. §§ 300.146(c) and 300.325(c). One practice is to ensure that placement agreements or contracts between LEAs and private schools, or the requirements applicable to such schools, specifically address IDEA's discipline provisions. SEAs also must include these schools and children in their monitoring activities to ensure that children attending these schools are not ignored and left vulnerable to noncompliant and potentially harmful disciplinary practices. 34 C.F.R. §§ 300.146-300.147.<sup>43,44</sup>

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<sup>43</sup> See, e.g., California Department of Education, *California Department of Education Completes Investigation into Guiding Hands School* (Jan. 15, 2019) <https://www.cde.ca.gov/nr/ne/yr19/yr19rel11.asp> (describing the SEA's revocation of a private school's certification, but only after the death of a student and numerous violations of improper and dangerous use of restraints).

<sup>44</sup> See Disability Rights California, *Protect Children's Safety and Dignity: Recommendations on Restraint and Seclusion in Schools* (2019) [https://www.disabilityrightsca.org/system/files/file-attachments/Restraint\\_and\\_Seclusion\\_Report.pdf](https://www.disabilityrightsca.org/system/files/file-attachments/Restraint_and_Seclusion_Report.pdf).

**Question L-3:** Must SEAs and LEAs ensure children with disabilities placed in a public agency that is not an LEA are also afforded IDEA's discipline protections?

**Answer:** Yes. SEAs and LEAs must ensure that all publicly-placed children with disabilities have available the same discipline protections that are available to children with disabilities attending their local public school. For example, for preschool children with disabilities placed in and attending a program operated by another public agency (e.g., Head Start), the SEA and LEA must ensure that the interagency agreements include IDEA's discipline protections. Likewise, in States where a public charter school is neither an LEA nor part of an LEA, SEAs must ensure the same discipline protections that are available in other public schools. 34 C.F.R. § 300.209(d).<sup>45</sup> Such programs and placements also would fall within the scope of the SEA's general supervision responsibilities, which may include monitoring activities.

**Question L-4:** Are States required to collect and analyze data related to significant discrepancies in long-term suspensions and expulsions of children with disabilities?

**Answer:** Yes. IDEA requires States to collect data on the number of children with disabilities who are subjected to long-term suspensions or expulsions. 20 U.S.C. § 1418(a)(1)(A)(v)(III). Further, States must disaggregate the data by race and ethnicity and examine the data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities: (1) among LEAs in the State; or (2) compared to the rates for nondisabled children within those LEAs. 20 U.S.C. § 1412(a)(22)(A). If the SEA finds that significant discrepancies are occurring, the SEA must review and, if appropriate, revise (and/or require the affected LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards. 20 U.S.C. § 1412(a)(22)(B). The SEA must ensure, as a part of its general supervisory responsibilities, that these policies, procedures, and practices comply with IDEA requirements.

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<sup>45</sup> IDEA regulations identify three types of charter schools for determining which public agency is responsible for ensuring that children with disabilities receive FAPE and how IDEA funds are provided to the charter school. The three types of charter schools are: (1) charter schools that are public schools of the LEA; (2) public charter schools that are LEAs; and (3) public charter schools that are not an LEA or a school that is part of an LEA. 34 C.F.R. § 300.209.

**Question L-5:** Are States required to collect and analyze data to determine if significant disproportionality based on race and ethnicity is occurring in discipline of children with disabilities?

**Answer:** Yes. IDEA's significant disproportionality regulations in 34 C.F.R. §§ 300.646-300.647<sup>46</sup> require SEAs to determine whether significant disproportionality based on race and ethnicity is occurring both in the State and the LEAs of the State with respect to the incidence, duration, and type of disciplinary removals from placement, including suspensions and expulsions. If the SEA determines that significant disproportionality is occurring, it must provide for the annual review and, if appropriate, revision of the policies, practices, and procedures used in disciplinary removals to ensure that the policies, practices, and procedures comply with the requirements of IDEA. 34 C.F.R. § 300.646(c)(1). States also must require LEAs with significant disproportionality to publicly report on any revisions of their policies, practices, and procedures. 34 C.F.R. § 300.646(c)(2). Such LEAs also must reserve 15 percent of their IDEA (sections 611 and 619) funds to provide comprehensive coordinated early intervening services to address factors contributing to the significant disproportionality in discipline. 34 C.F.R. § 300.646(c) and (d).

**Question L-6:** Must a State's chosen methodology for determining significant discrepancies in the rate of long-term suspensions and expulsions of children with disabilities under 34 C.F.R. § 300.170 be reasonable?

**Answer:** Yes. As noted above, the State must ensure that disaggregated data is examined to determine if significant discrepancies in the rates of long-term suspensions and expulsions of children with disabilities are occurring either: (1) among LEAs in the State; or (2) compared to the rates for nondisabled children within those LEAs. 20 U.S.C. § 1412(a)(22). If this examination is not occurring in any meaningful way at the LEA level, OSEP may determine that a State's chosen methodology is not reasonably designed to meet this requirement. Factors that OSEP may consider in determining reasonableness of the State's methodology include whether none, or a very low percentage of, the State's LEAs are being examined for significant discrepancy under the State's chosen methodology, and whether statistically sound alternative methodologies exist or are being used by similarly-situated States.

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<sup>46</sup> The IDEA regulation on Significant Disproportionality is available at [34 C.F.R. § 300.646](#), and Determining Significant Disproportionality is found at [34 C.F.R. § 300.647](#).

**Question L-7:** May States enact additional laws or policies that provide additional protections to children with disabilities, or require additional reporting on disciplinary practices beyond what is required under IDEA?

**Answer:** Yes. States may, and often do, provide additional protections and services to children with disabilities that exceed IDEA's requirements. The Education Commission of the States has conducted a [50-State Comparison of School Discipline Policies](#). The Commission's website identifies States that have strategically chosen to limit the use of suspension and expulsion for young children, use nonpunitive approaches instead of exclusionary measures, or require additional data reporting.

## APPENDIX I: Glossary of Key Terms and Acronyms, as Used in This Guidance<sup>47</sup>

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**Analysis of Comments and Changes** refers to the Department’s extensive discussion and analysis of comments received from the public on its notice of proposed rulemaking under the reauthorized IDEA (2004) and accompanies the final Part B regulations implementing IDEA 2004 that were issued in the Federal Register (Fed. Reg.) on August 14, 2006. IDEA’s final regulation package, titled “Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes,” can be found at 71 Fed. Reg. 46540–46845 and is available at: [https://sites.ed.gov/idea/files/20060814-Part\\_B\\_regulations.pdf](https://sites.ed.gov/idea/files/20060814-Part_B_regulations.pdf). The supplemental regulation package, also referenced within this document, was issued on December 1, 2008, and can be found at 73 Fed. Reg. 73006–73029 (available at: [https://sites.ed.gov/idea/files/20081201-Part\\_B\\_supplemental.pdf](https://sites.ed.gov/idea/files/20081201-Part_B_supplemental.pdf)).

**Behavioral intervention plan (BIP)**, although not defined in IDEA and its implementing regulations, is generally understood to mean a component of a child’s educational program designed to address behaviors that interfere with the child’s learning or that of others and behaviors that are inconsistent with school expectations. A BIP generally describes the behavior that inhibits the child from accessing learning and the positive behavioral interventions and other strategies that are to be implemented to reinforce positive behaviors and prevent behavior that interferes with the child’s learning and that of others. In the discipline context, such plans are especially important to prevent the child’s behavior that resulted in disciplinary action from recurring. 34 C.F.R. § 300.530(d). For a child with a disability whose behavior impedes their learning or that of others, and for whom the IEP Team has determined that a BIP is appropriate, or for a child with a disability whose violation of the code of student conduct is a manifestation of the child’s disability, the IEP Team must include a BIP in the child’s IEP (or, if a BIP already has been developed, review and modify it as necessary) to address the behavioral needs of the child.

**Disciplinary Change in Placement or Change of Placement**, under IDEA, (for purposes of removal of a child with a disability from the child’s current educational placement for disciplinary reasons) means a child with a disability who has been removed from their current educational placement for disciplinary reasons for more than 10 consecutive school days; or that the child has been subjected to a series of removals that constitute a pattern: (1) because the series of removals total more than 10 school days in a school year; (2) because the child’s

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<sup>47</sup> Except where terms in this Glossary are directly from a statute, including IDEA, or its implementing regulations, the terms and acronyms below are offered to assist the reader only for purposes of clarity in this guidance, are not intended to apply more broadly, and are not binding in any way.

behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and (3) because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. 34 C.F.R. § 300.536(a). This determination is made by the LEA and triggers IDEA's discipline protections, including a manifestation determination review, and is subject to review through due process and judicial proceedings. 34 C.F.R. § 300.536(b).

**Controlled substance**, under IDEA, means a drug or other substance identified under schedules I, II, III, IV, or V in the Controlled Substances Act ([21 U.S.C. § 812\(c\)](#)). 34 C.F.R. § 300.530(i)(1).

**Corporal punishment** involves paddling, spanking, or other forms of physical punishment imposed on a student. In a majority of States, this practice is prohibited by State law.

**Exclusionary discipline**, although not defined in IDEA and its implementing regulations, as used in this and the accompanying documents, refers to the removal, whether on a short-term or long-term basis, of a child with a disability from a class, school, or other educational program or activity for violating a school rule or code of conduct. Examples can include detentions, in-school suspensions, out-of-school suspensions, suspensions from riding the school bus, expulsions, disciplinary transfers to alternative schools, and referrals to law enforcement, including referrals that result in school-related arrest.

**Functional behavioral assessment (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.

**Illegal drug**, under IDEA, means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of Federal law. 34 C.F.R. § 300.530(i)(2).

**Informal removal**, although not defined in IDEA and its implementing regulations, means 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.

**In-school suspension**, although not defined in IDEA and its implementing regulations, means an instance in which a child is temporarily removed from their regularly assigned classroom(s) for disciplinary purposes but remains under the direct supervision of school personnel. Direct supervision means school personnel are physically in the same location as students under their supervision. An in-school suspension would be considered a part of the days of suspension addressed in 34 C.F.R. § 300.530 unless the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child's IEP, and continue to participate with nondisabled children to the extent they would have in their current placement. See 71 Fed. Reg. 46715 (Aug. 14, 2006).

**Interim alternative educational setting (IAES)**, although not defined in IDEA and its implementing regulations, as currently defined for purposes of discipline data collected under IDEA section 618, means 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 progress toward meeting the goals set out in the IEP. As appropriate, the setting includes provision of an FBA, and behavioral intervention services and modifications to address the behavior violation so that it does not recur.

**Long-term disciplinary removal**, although not defined in IDEA and its implementing regulations, as currently defined for purposes of discipline data collected under IDEA sections 616 and 618, mean suspensions and expulsions of children with disabilities for more than ten school days in a school year.

**Manifestation determination review**, under IDEA, means the decision as to whether the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the LEA's failure to implement the child's IEP, including a BIP if required by the IEP. The LEA, parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP and any BIP, any teacher observations, and any relevant information provided by the parent. This review must be conducted within 10 school days of any decision to change the placement of a child with a disability because of a violation of the code of student conduct. 34 C.F.R. § 300.530(e).

**Multi-tiered systems of supports**, although not defined in IDEA and its implementing regulations, means a comprehensive continuum of evidence-based, systemic practices to support children's needs with regular observation to facilitate data-based instructional decision-making.

**Parent**, under IDEA, means: (1) a biological or adoptive parent of a child; (2) a foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; (3) a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is

a ward of the State); (4) an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or (5) a surrogate parent who has been appointed in accordance with 34 C.F.R. § 300.519 or Section 639(a)(5) of IDEA. 34 C.F.R. § 300.30.

**Physical restraint**, although not defined in IDEA and its implementing regulations, means a personal restriction that immobilizes or reduces the ability of a student to move their torso, arms, legs, or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching, or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.

**Response to intervention (RTI)** although not defined in IDEA or its implementing regulations, is understood to mean a schoolwide approach that addresses the needs of all students, including struggling learners and students with disabilities, and integrates assessment and intervention within a multi-level instructional and behavioral system to maximize student achievement and reduce problem behaviors. IDEA includes a provision mandating that States allow, as part of their criteria for determining whether a child has a specific learning disability, the use of a process based on the child's response to scientific, research-based intervention. See 34 C.F.R. § 300.307(a)(2). RTI is an example of an MTSS (defined above). See also, [OSEP Memo 11-07](#).

**School day**, under IDEA, means any day, including a partial day, that children are in attendance at school for instructional purposes. *School day* has the same meaning for all children in school, including children with and without disabilities. 34 C.F.R. § 300.11(c).

**Seclusion**, although not defined in IDEA and its implementing regulations, is the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. The term does not include a timeout, which is a behavior management technique that is part of an approved program involving monitored separation of the student in a non-locked setting and is implemented for the purpose of calming.

**Serious bodily injury**, under IDEA, has the meaning given the term *serious bodily injury* under [18 U.S.C. 1365\(h\)\(3\)](#). 34 C.F.R. § 300.530(i)(3). Under the current definition in 18 U.S.C. 1365(h)(3), *serious bodily injury* means bodily injury that involves — (1) a substantial risk of death; (2) extreme physical pain; (3) protracted and obvious disfigurement; or (4) protracted loss or impairment of the function of a bodily member, organ, or mental faculty. This definition cannot be altered by States or local school boards. See 71 Fed Reg. 46722.

**Short-term disciplinary removal**, although not defined in IDEA and its implementing regulations, means the removal of a child from their educational placement for 10 consecutive school days or less. 34 C.F.R. § 300.530(b).



**Special circumstances**, under IDEA, means a violation of a code of student conduct because the child — (1) carries a weapon to school or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the SEA or 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 the SEA or 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 the SEA or LEA. 34 C.F.R. § 300.530(g).

**Weapon**, under IDEA, has the meaning given the term *dangerous weapon* under [18 U.S.C. 930\(g\)\(2\)](#). 34 C.F.R. § 300.530(i)(4). Under the current definition in 18 U.S.C. 930(g)(2), dangerous weapon means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocketknife with a blade of less than two and one half inches in length.