

**81 IDELR 110**

122 LRP 24167

**Dear Colleague Letter**  
**Office of Special Education and**  
**Rehabilitative Services**  
**Office of Special Education Programs**  
OSEP DCL 22-01  
**July 19, 2022**

**Related Index Numbers**

**150. DISCIPLINE**

**150.005 Disciplinary Policies Generally**

**50.020 Restraint/Seclusion**

**50.005 Aversives**

**Judge / Administrative Officer**

**Valerie C. Williams, Director**

**Ruling**

Using data from the Education Department's Civil Rights Data Collection, OSEP determined that districts nationwide needed to improve their implementation of the IDEA to resolve discipline disparities. OSEP urged districts to examine their existing policies, practices, and procedures to determine the causes of discipline disparities and identify ways to inform educators on using practices besides exclusionary or aversive discipline.

**Meaning**

OSEP implored districts to examine their policies, practices, and procedures to address discipline disparities, resulting in students with disabilities being subjected to higher rates of aversive practices, suspensions, and expulsions. OSEP urged districts to advise educators and administrators to use strategies besides exclusionary discipline to provide FAPE. OSEP cited other guidance documents, including *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 122 LRP 24161 (OSERS 07/19/22), and *Positive, Proactive Approaches to Supporting the Needs of Children with Disabilities: A Guide for Stakeholders*, 122 LRP 24165 (OSERS 07/19/22), as

resources for revising policies.

**Case Summary**

While reminding districts that they can always discipline a student with a disability for violating the code of student conduct, OSEP announced its concerns regarding the disparities in the use of discipline for students with disabilities, especially black students with disabilities. OSEP relied on data collected from the Education Department's Civil Rights Data Collection to point out some glaring issues. For example, students with disabilities represented only 13.2 percent of total student enrollment but 80.2 percent of the students were subjected to physical restraint and 77.3 percent of students subjected to seclusion. Black students with disabilities represented 17.2 percent of the population of students with disabilities served under the IDEA. However, they accounted for 43.5 percent of students with disabilities who were suspended or expelled for more than 10 school days. OSEP pointed out that those disparities in exclusionary discipline place students at risk for negative outcomes, like lower achievement and increased likelihood of not graduating. Positive, proactive strategies, however, reduce rates of discipline and improve school climate and student outcomes, OSEP noted. To improve the overall implementation of IDEA, OSEP urged districts to perform a thorough examination of their existing policies, practices, and procedures to determine the root causes of the discipline disparities. OSEP also strongly encouraged districts to identify ways they can better prepare educators to use effective, preventative, and responsive practices instead of exclusionary discipline. Over time, these new strategies would result in lower instances of exclusionary discipline, restraint, and seclusion being used, explained OSEP. To assist districts with the review of their policies and determining what strategies to implement, OSEP provided resources, including *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 122 LRP 24161 (OSERS 07/19/22), and *Positive, Proactive Approaches to*

*Supporting the Needs of Children with Disabilities: A Guide for Stakeholders*, 122 LRP 24165 (OSERS 07/19/22).

## Full Text

Dear Colleague,

The Department recognizes that this school year, like recent school years, will be unique. Educators and students continue to face challenges resulting from COVID-19, including mental health and learning loss. The Biden-Harris Administration has made substantial investments to support students through the American Rescue Plan Act of 2021 (ARP; P.L. 117-2) and previous guidance. As a result, \$130 billion in funding has gone to schools and school districts for activities that can include the hiring of more special education teachers, tutors, and school counselors and building a sustainable infrastructure for school-based mental health programs and services. As you prepare for the new school year, we want to provide you with the following resources that are designed to ensure that all stakeholders have access current information on how states, district, educators, and parents can work together to support the needs of students with disabilities.

As you know, the Individuals with Disabilities Education Act (IDEA) guarantees that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.<sup>1</sup> Another purpose of IDEA is to ensure that the rights of children with disabilities and their parents are protected.<sup>2</sup> Congress noted in its findings in the 2004 reauthorization of IDEA that the law's implementation, including the provision of FAPE and protecting the rights of children with disabilities and their parents, has been impeded by low expectations and an insufficient focus on applying research-based methods of teaching and learning for children with disabilities.<sup>3</sup> While there continues to be progress, implementation concerns persist. While the U.S.

Department of Education (Department) affirms that IDEA does not preclude a local education agency from disciplining a child with a disability for violating a school's code of student conduct, the Department is particularly concerned with disparities in the use of discipline for children with disabilities<sup>4</sup> and the implementation of IDEA's discipline provisions.

The Department is issuing this Dear Colleague Letter (DCL) and two accompanying guidance documents to support State educational agencies' (SEAs') and local educational agencies' (LEAs') efforts to fulfill their obligations to appropriately meet the needs of children with disabilities:

1. Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions; and
2. Positive, Proactive Approaches to Supporting the Needs of Children with Disabilities: A Guide for Stakeholders.

There is an urgent need for SEAs and LEAs to improve the implementation of IDEA so that all eligible children with disabilities are served appropriately and equitably. For years, data have demonstrated clear disparities in the use of discipline for children with disabilities. The Department's Dear Colleague Letter on Ensuring Equity and Providing Behavioral Supports to Students with Disabilities (August 1, 2016) highlighted data demonstrating that many children with disabilities, particularly Black children with disabilities, were subjected to disproportionately high rates of disciplinary removals. That letter also emphasized the need to enhance school efforts to effectively support and respond to the needs of children with disabilities and the importance of creating safe and supportive learning environments. Despite the evidence that using positive, proactive strategies can reduce rates of discipline and improve school climate and student outcomes, there remain notable disparities (as described below) in the use of school discipline for children with disabilities compared with their nondisabled peers and for children of color with

disabilities compared with all other students. The use of exclusionary disciplinary practices places large numbers of children with disabilities at risk for short- and long-term negative outcomes, including lower achievement and increased likelihood of not graduating.<sup>5</sup> Since the Department issued the 2016 letter, disparities in the use of exclusionary discipline, including both short-term and long-term removals, have continued.

Data collected under the Department's Civil Rights Data Collection (CRDC)<sup>6</sup> and IDEA Section 618<sup>7</sup> illustrate the pervasive nature of disparities in the use of aversive practices such as restraint and seclusion, and in student disciplinary practices such as suspensions and expulsions, in K-12 schools and early childhood settings for children with disabilities,<sup>8</sup> particularly Black children with disabilities. For example, according to the most recent CRDC for the 2017-2018 school year:

- Preschool students served under IDEA accounted for 22.7 percent of total preschool enrollment but 56.9 percent of preschool students who were expelled.<sup>9</sup>

- School-age students with disabilities served under IDEA represented 13.2 percent of total student enrollment but received 20.5 percent of one or more in-school suspensions and 24.5 percent of one or more out-of-school suspensions.<sup>10</sup>

- Students with disabilities served under IDEA made up 80.2 percent of the students subjected to physical restraint and 77.3 percent of students subjected to seclusion, despite making up only 13.2 percent of students enrolled in public schools.<sup>11</sup>

According to IDEA Section 618 data, during the 2019-20 school year, Black children with disabilities made up 17.2 percent of children with disabilities aged 3-21 served under IDEA<sup>12</sup> yet accounted for 43.5 percent of all children with disabilities aged 3-21 served under IDEA who were suspended out of school or expelled for more than 10 school days.<sup>13</sup>

We urge SEAs and LEAs to redouble efforts to fulfill their obligations under IDEA. SEAs and LEAs

can undertake further examination of existing policies, practices, and procedures to unpack the causes of discipline disparities. They can also identify ways to better prepare and develop educators--including administrators, teachers, and service providers--to implement effective, preventative, and responsive practices in place of exclusionary discipline and utilize strategies to ensure students with disabilities receive FAPE.<sup>14</sup> These efforts will, in turn, help reduce the number of children with disabilities subjected to exclusionary discipline, including the frequency and duration of such practices.

The Department's Office of Special Education Programs (OSEP) is committed to working with States and LEAs to protect the rights of, and improve outcomes for, children with disabilities. The Department recognizes and appreciates school administrators, teachers, and educational staff across the Nation who work to provide a safe, positive, and nondiscriminatory educational 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. I hope that this letter and the accompanying resources prompt meaningful action to improve IDEA implementation and how schools and early childhood programs support and respond to the educational needs of children with disabilities, including addressing behavior that prevents access to appropriate instruction, and to ensure children with disabilities are not subject to avoidable and unnecessary discipline. These materials are designed to assist our nation's educators, parents, and others in our school communities in taking the steps necessary to effectively support children with disabilities particularly in light of the significant challenges they have faced over the last two years due to the COVID-19 pandemic.

<sup>1</sup>20 U.S.C. § 1400(d)(1)(A).

<sup>2</sup>20 U.S.C. § 1400(d)(1)(B).

<sup>3</sup>20 U.S.C. § 1400(c)(4).

<sup>4</sup>In *Supporting Students with Disabilities and Avoid the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973*, the Department's Office for Civil Rights explains that statistical evidence suggesting disproportionate use of discipline for certain conduct, alone, does not prove discrimination under the federal laws that protect the educational rights of students with disabilities, but may raise a basis for examination of whether disability discrimination is occurring.

<sup>5</sup>Chu, E.M., & Ready, D.D. "Exclusion and Urban Public High Schools: Short- and Long-Term Consequences of School Suspensions." *American Journal of Education*, 124 (August 2018). Available at:

<https://www.journals.uchicago.edu/doi/pdf/10.1086/698454> Gerlinger, J, Viano, S, Gardella, J.H., Fisher, B.W., Curran, F. C., Higgins, E. M. (2021). Exclusionary School Discipline and Delinquent Outcomes: A Meta-Analysis, *Journal of Youth and Adolescence* 50:1493-1509.

<sup>6</sup>U.S. Department of Education, Office for Civil Rights. *Civil Rights Data Collection*. Available at: <https://ocrdata.ed.gov/>.

<sup>7</sup>U.S. Department of Education, ED Facts Data Warehouse (EDW): "IDEA Part B Discipline Collection," 2019-20. Available at: <https://data.ed.gov/dataset/idea-section-618-state-part-b-discipline>

<sup>8</sup>IDEA Section 618 collects data on "children with disabilities" as defined in 34 C.F.R. § 300.8, while CRDC collects data on students with disabilities. Thus, the CRDC data include children identified as having a disability under IDEA and students with disabilities under Section 504.

<sup>9</sup>U.S. Department of Education, Office for Civil Rights. "An Overview of Exclusionary Discipline Practices in Public Schools for the 2017-2018 school year: Civil Rights Data Collection." June 2021. Available at:

<https://www2.ed.gov/about/offices/list/ocr/docs/crdc-exclusionary-school-discipline.pdf>.

<sup>10</sup>*Id.*

<sup>11</sup>U.S. Department of Education, Office for Civil

Rights. "2017-18 Civil Rights Data Collection: The Use of Restraint and Seclusion on Children with Disabilities in K-12 Schools." October 2020. Available at:

<https://www2.ed.gov/about/offices/list/ocr/docs/restraint-and-seclusion.pdf>.

As noted in the source material, the counts for students who were subjected to physical restraint, students who were subjected to mechanical restraint, and students who were subjected to seclusion are not mutually exclusive. For example, if a student was physically restrained and secluded, the student would be counted once in each category. Thus, the total of 101,990 may not represent the actual number of individual students affected.

<sup>12</sup>U.S. Department of Education, ED Facts Data Warehouse (EDW): "IDEA Part B Child Count and Educational Environments Collection," 2019-20. Available at:

<https://data.ed.gov/dataset/idea-section-618-state-part-b-child-count-and-educational-environments>

<sup>13</sup>U.S. Department of Education, ED Facts Data Warehouse (EDW): "IDEA Part B Discipline Collection," 2019-20. Available at: <https://data.ed.gov/dataset/idea-section-618-state-part-b-discipline/resources>

<sup>14</sup>Research suggests that discipline disparities can be exacerbated by, or can be the result of, educators' subjective evaluations of students' actions rather than being the product of objective differences in student behavior. See, for example, <http://www.apa.org/ed/resources/racial-disparities.pdf>.

#### Statutes Cited

20 USC 1400(d)(1)(A)

20 USC 1400(d)(1)(B)

20 USC 1400(c)(4)

#### Cases Cited

122 LRP 24163 -- Cited

122 LRP 24165 -- Cited

122 LRP 24161 -- Cited