



NATIONAL PLACE STATEMENT ON OCR AND OSERS DISCIPLINE GUIDANCE AND RECOMMENDATIONS FOR IMPLEMENTATION TOOLS

The National Center for Parent Leadership, Advocacy and Community Empowerment (National PLACE) is writing to indicate our appreciation for the school-based discipline guidance from the US Department of Education, Office for Special Education and Rehabilitation Services (OSERS) and Office for Civil Rights (OCR). This guidance provides much-needed clarification of the rights of children with disabilities in school regarding discipline, including children who are eligible for services under the Individuals with Disabilities Education Act (IDEA) and those who are eligible for services and protected from discrimination under Section 504 of the Rehabilitation Act.

The mission of National PLACE is to enhance the voice and impact of families and family-led organizations at decision-making tables, so that they can advocate to ensure that our nation's children and families receive the services and support they need to thrive. Our members include Parent Centers, Family to Family Health Information Centers, National Federation of Families (for Children's Mental Health) chapters, and Parent to Parent USA affiliates, among others. Our members are often the family-led, family-serving organizations who are contacted when children are suspended, expelled, "informally removed," subjected to threat/risk assessments, restrained and secluded, or referred to law enforcement. Thus, we have significant experience with the lack of knowledge regarding, or implementation of, the IDEA and Section 504 rules regarding these punitive measures. We also are well aware of how often disciplinary action is taken disproportionately against students with disabilities, students of color, low-income students, and others whose parents lack the financial resources to challenge those actions. And we see first-hand how punitive discipline is used instead of positive behavioral supports and interventions, and how the lack of a free, appropriate public education in the least restrictive environment contributes to challenging behavior and punitive discipline.

National PLACE strongly agrees with the Bazelon Center for Mental Health Law "that students and their parents and advocates need clear guidance about their rights, and that administrators and teachers need resources to better understand how schools can effectively support student behavior, and when students may be punished consistent with our civil rights laws." We are pleased to see that the OCR and OSERS guidance, including the best practices document, provide this clear guidance and much-needed resources.

General

National PLACE is pleased to see that the guidance from OCR and OSERS provided clarification on the following important issues:

- Nondiscrimination requirements under Section 504
- A student with a disability's right to a free appropriate public education (FAPE) in the least restrictive environment (LRE) and that clarification students with disabilities cannot be disciplined for behavior due to their disability regardless of nature or severity
- The applicability of Section 504's legal requirements to contractors including school resource officers/police
- Students' rights and access to FAPE in the LRE and how it applies if threat assessments/violence risk assessments are used by a school or district
- Definition of informal removals (IR), and what constitutes an IR/shortened school day
- Ending the use of seclusion and restraint (S/R) which are not evidence-based interventions.

Specific Provisions

We are particularly pleased about the guidance's definition of and cautioning against the skyrocketing practice of informal school removals, which not only deny students the education to which they are entitled, but also result in inaccurate data about the extent to which students with disabilities are suspended or expelled. The guidance identifies actions that can be determined to be an "informal removal" that violates the rights of students and parents.

We are also heartened by the guidance's discussion of the practice of threat/risk assessments and the clarification that districts must comply with federal laws that provide procedural safeguards to students and parents if they use these harmful approaches for which there is no real evidence of effectiveness.

The guidance regarding how schools may need to make reasonable accommodations for interactions between students with disabilities and school-based law enforcement is also welcome. Far too often, engaging school-based law enforcement is a first and not a last resort for students with disabilities, especially those of color.

We appreciate the information setting forth the purpose, and procedures for the use, of functional behavior assessment (FBA), including who is qualified to conduct one. The guidance acknowledges the use of FBAs to identify the function or purpose behind a child's behavior and help the school-based team develop behavior supports needed to ensure that the child receives FAPE in LRE free from discrimination.

We also appreciate the guidance's highlighting of the use of behavior intervention plans to identify positive interventions that will be implemented to support positive student behavior, and the staff responsible for implementing those interventions.

And importantly, we appreciate that the guidance notes that there is no evidence that the use of restraint and seclusion, disproportionately used on students with disabilities, especially those of color, is an effective strategy. In fact, it has long been recognized, at least among the parent and advocacy community, the restraint and seclusion are much more likely to contribute to increased challenging behavior as well as causing trauma to the children on which these harmful practices are used, school staff, and other students, in addition to resulting in significant denial of educational services.

We note that there is great value in having comprehensive guidance regarding discipline under IDEA, and comprehensive guidance under Section 504, in one place, for easier access by parents and the family-led, family-serving organizations that support them, as well as for states, districts, and schools, including public charter schools. We also welcome the reiteration of the fact that parents who disagree with a decision related to their child's FAPE, including imposition of discipline, have the right to challenge the decision using Section 504 and/or IDEA's procedural safeguards, as well as the acknowledgement that decisions regarding a student's services, including services intended to prevent or address challenging behavior, must be made by either the 504 team (under Section 504) or the IEP team (under IDEA). The reminders that a student's challenging behavior may mean that it is necessary to reconvene the 504 or IEP team to consider the student's needs, services, and/or placement.

The language regarding the types of disciplinary actions that may be tantamount to a change in placement, including not only removal from school or the bus for ten consecutive school days but also a pattern of disciplinary removals totaling more than ten school days, and the reminder that there are requirements before there can be a change in placement, is critical for families, students, advocates, and schools, as is the guidance that schools must conduct an additional evaluation of a student with a disabilities, a manifestation determination, before implementing a disciplinary removal that will result in a significant change in placement.

Finally, the reminder of Section 504's non-discrimination provisions (for example, the requirement that, under Section 504, schools must make reasonable modifications to their criteria, policies, practices or procedures when necessary to avoid discrimination on the basis of disability, which could include not applying a particular policy for a student with a disability for disability-based behavior or adapting a school policy to support a student's behavioral needs; the requirement that, to provide equal opportunity, schools sometimes must treat students with disabilities differently than students without disabilities, such as by providing FAPE and making reasonable modifications, but also that schools may not unnecessarily treat a student with a disability differently based on disability, for example, by treating a student with a disability more severely than a student without a disability for the same behavior unless there is a legitimate, nondiscriminatory reason to do so; and the requirement to consider discriminatory effects of policies or practices that are neutral on their face if they deny a student with a disability meaningful access to the school's aid, benefits, or services, or of excluding them based on disability, even if the discrimination is unintentional), is of the utmost importance.

The guidance’s reminder that using de-escalation strategies to calm a “crisis” situation may be a reasonable modification of school policies required by Section 504 and the ADA, and that schools should consider whether persons with specialized training or who have a trusting relationship with the student should be involved in de-escalating crises, rather than the police, will be particularly helpful to avoid the increasing criminalization of our children.

The companion document setting forth effective, proactive strategies that encourage the development of positive pro-social skills and behaviors, provides families and professionals with excellent information on alternative strategies that can be used in the place of ineffective, punitive, and harmful disciplinary practices. The availability of technical assistance in the use of evidence-based practices to schools, families and communities so that they can work together to keep all students safe and ensure that schools stop using discriminatory and traumatizing practices is welcome.

Tools for Implementation

National PLACE members find the four-page summary document from OCR to be particularly helpful and useful, and recommend that a similar document be developed for the OSERS guidance. A “crosswalk” between the two documents would be an excellent resource.

Other recommendations for implementation tools include:

- Short videos about the overall OCR and OSEP guidance taken together, the OCR and OSEP guidance individually, and the “best practices” document – Both families *and* professionals are accustomed to the “fast food drive thru” model of gathering information, so breaking down these complex and complicated topics into “bite-sized” segments would be very helpful. This format would also make it easier to educate youth and young adults with disabilities themselves about their rights under IDEA and Section 504 in this area, as well as the types of effective practices they should expect in their schools. Such short videos could be produced as Question and Answer videos and could be accessed all together and individually as needed. For one example, go to <https://spanadvocacy.org/video-webinar-archive/faq-special-education/>, where viewers can watch an individual video about each step of the special education process, and <https://spanadvocacy.org/video-webinar-archive/special-ed-you-have-qs-we-have-as/>, where viewers can watch the three-part series (Does My Child Qualify for Special Education, Know your Rights, and Understanding the IEP).
- “Stories” (real-life examples) about implementation of the effective practices in real-life – The guidance is excellent, but practitioners/families and professionals often need to “see it in action” before they can really process how to use the guidance and “what it would look like if it was good.” Such real-life examples should feature families and students, and the family-led, family-serving organizations such as Parent Centers that support them, and professionals (at the state/SEA, district/LEA, and school-level) talking about how and why they implemented an effective practice and the results.
- Translation of the guidance into Spanish, which we understand is forthcoming.

Conclusion

In conclusion, National PLACE and our members across the country welcome and value the Department's discipline guidance and information on effective practices, and stands ready to work with you to ensure that the guidance and best practices are implemented for all children with disabilities and their families. Please contact National PLACE Executive Director Diana Autin at dautin@parentsatthetable.org to discuss our comments and recommendations in greater detail.