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

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

These newly released resources are the most comprehensive guidance on the civil rights of students with disabilities concerning student discipline and build on the Department's continued efforts to support students and schools through pandemic recovery.

"All students deserve to have their rights protected, and schools deserve greater clarity on how they can avoid the discriminatory use of discipline, " said U.S. Secretary of Education Miguel Cardona. "Too often, students with disabilities face harsh and exclusionary disciplinary action at school. The guidance we're releasing today will help ensure that students with disabilities are treated fairly and have access to supports and services to meet their needs – including their disability-based behavior. We also expect that districts utilize the federal American Rescue Plan dollars to build capacity, provide professional learning opportunities for educators and school leaders, and hire additional staff. These resources will also help schools live up to their legal obligations, support an equitable recovery for all our students, and make sure that students with disabilities get the behavioral supports and special education services they need to thrive. "

The new resources reflect the concern, particularly in light of the prevalence of student mental health issues associated with the pandemic, that some students with disabilities are not receiving the supports and services necessary to address their educational needs, including their disability-based behavior.

The guidance makes clear that schools do not need to choose between complying with Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Individuals with Disabilities Education Act and keeping their school community – including students and staff – safe.

The new resources include:

- Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973 (https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance.pdf) and an accompanying Fact Sheet (https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance.pdf).

- Questions and Answers Addressing the Needs of Children with Disabilities and the Individuals with Disabilities Education Act's (IDEA's) Discipline Provisions (https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance.pdf). Positive, Proactive Approaches to Supporting the Needs of Children with Disabilities: A Guide for Stakeholders (https://sites.ed.gov/idea/files/guide-positive-proactive-approaches-to-supporting-children-with-disabilities.pdf). And,
- A letter (https://sites.ed.gov/idea/files/guide-positive-proactive-approaches-to-supporting-children-with-disabilities.pdf) from Secretary Cardona to our nation's educators, school leaders, parents, and students about the importance of supporting the needs of students with disabilities.

In developing today's guidance and resources, the Department drew from experience with enforcing and administering federal laws relating to students with disabilities, including Section 504 and the IDEA. The Department also considered information shared by members of the public in response to the June 2021 Request for Information Regarding the Nondiscriminatory Administration of School Discipline.

Section 504 prohibits recipients of federal financial assistance from discriminating based on disability, and the IDEA guarantees that children with disabilities have available to them a free appropriate public education (FAPE). FAPE emphasizes special education and related services designed to the needs of children with disabilities and prepare them for further education and employment services and independent living.

Supporting Students and Avoiding the Discriminatory Use of Discipline under Section 504
Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973 (https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance.pdf) explains that Section 504 requires schools to provide behavioral supports and services to students with disabilities who need them in order to receive a FAPE.

"Today's crucial guidance outlines how schools can effectively support and respond to behavior that is based on a student's disability and could lead to student discipline, in addition to explaining schools' civil rights responsibilities related to disability when administering student discipline" said Assistant Secretary for Civil Rights Catherine E. Lhamon. "We will continue to vigorously enforce federal civil rights laws to ensure that all students have equal access to educational opportunities. "

The new guidance makes clear that providing the individualized services and supports required by Section 504 can help prevent or reduce disability-based behaviors that might otherwise lead to student discipline. Additionally, the guidance:

- Outlines how Section 504's requirements to provide a FAPE apply to long-term disciplinary sanctions, such as out-of-school suspensions and expulsions.
- Explains Section 504's general nondiscrimination requirements, in the context of discipline, which applies to school staff and to the conduct of everyone with whom the school has a contractual or other arrangement, such as security staff and school police.
- Makes clear that Section 504 requires schools to provide reasonable modifications to policies, practices, and procedures when necessary to avoid discrimination.

Section 504 does not prohibit a school from responding to emergency circumstances, such as contacting law enforcement or crisis intervention specialists, or from taking appropriate, nondiscriminatory steps to maintain safety and support students in learning how to be accountable for the impact of their actions on others.

Supporting the Needs of Children with Disabilities and IDEA's Discipline Provisions
Questions and Answers Addressing the Needs of Children with Disabilities and the Individuals with Disabilities Education Act's (IDEA's) Discipline Provisions (https://sites.ed.gov/idea/files/qa-addressing-the-needs-of-children-with-disabilities-and-idea-discipline-provisions.pdf) and Positive, Proactive Approaches to Supporting the Needs of Children with Disabilities: A Guide for Stakeholders (https://sites.ed.gov/idea/files/guide-positive-

proactive-approaches-to-supporting-children-with-disabilities.pdf) expand upon the 2016 Dear Colleague Letter (https://sites.ed.gov/idea/files/dcl-on-pbis-in-ieps-08-01-2016.pdf) that included data demonstrating that many children with disabilities, particularly Black children with disabilities, were subjected to high rates of disciplinary removals (such as suspensions and expulsions).

Today's resources underscore that children can experience academic success with an appropriately developed and effectively implemented individualized education program (IEP). IDEA includes specific provisions to address situations in which the behavior of a child with a disability impedes the child's learning, the learning of others, or violates a school's code of student conduct. Importantly, as part of the obligation to provide FAPE, in the case of a child whose behavior impedes the child's learning or that of others, the IEP Team must consider – and include in the IEP – the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

"These resources are intended to assist state educational agencies (SEAs) with supporting local educational agencies (LEAs) and schools in addressing the needs of children with disabilities and equitably and appropriately implementing IDEA, " said Deputy Assistant Secretary for the Office of Special Education and Rehabilitative Services Katy Neas. "These documents can assist students and families in understanding their rights under IDEA and provide SEAs, LEAs, and educators resources to fulfill their obligations to appropriately meet the needs of children with disabilities. Together, we can reduce the use of exclusionary discipline for children with disabilities and ensure every child has access to an educational environment that is nondiscriminatory, supportive, positive, and safe for all. "

Questions and Answers Addressing the Needs of Children with Disabilities and the Individuals with Disabilities Education Act's (IDEA's) Discipline Provisions (https://sites.ed.gov/idea/files/qa-addressing-the-needs-of-children-with-disabilities-and-idea-discipline-provisions.pdf) discusses how certain school actions, such as informal removals and the use of threat assessments, may result in the denial of FAPE to children with disabilities.

Positive, Proactive Approaches to Supporting the Needs of Children with Disabilities: A Guide for Stakeholders (https://sites.ed.gov/idea/files/guide-positive-proactive-approaches-to-supporting-children-with-disabilities.pdf) offers evidence-based strategies that early childhood programs, schools, and local educational agencies (LEAs) can use in place of exclusionary discipline or other harmful practices such as restraint or seclusion.

More information about the Department's efforts to assist schools in fostering nondiscriminatory and safe learning environments is available here (https://www2.ed.gov/policy/gen/guid/school-discipline/index.html).

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