




June 2024

TO: BOCES District Superintendents
School District Superintendents
Superintendents of Special Act School Districts
Superintendents of State-Operated Schools
Superintendents of State-Supported Schools
Public School Administrators
Charter School Leaders
Special Education Directors
Chairpersons of Committees on Special Education
Chairpersons of Committees on Preschool Special Education
Administrators of Nonpublic Schools with Approved Special Education Programs
Organizations, Parents, and Individuals Interested in Special Education

FROM: Christopher Suriano 

SUBJECT: Guidance to Assist Local Educational Agencies (LEAs) in Supporting Students with Disabilities and Avoiding Discriminatory Use of Discipline

This memorandum is to inform you that United States Department of Education's (USDE) Office of Special Education Programs (OSEP), in collaboration with their technical assistance partners, have unveiled a webpage titled [Positive Supports for Behavior and Discipline | OSEP Ideas That Work](#) on the [OSEP Ideas That Work](#) website to support schools in reducing exclusionary discipline and supporting the implementation of evidence-based practices that focus on prevention, intervention and behavioral strategies.

Included with the OSEP resources is guidance the USDE's Office for Civil Rights (OCR) and Office of Special Education and Rehabilitative Services (OSERS) issued to help public elementary and secondary schools fulfill their responsibilities to meet the needs of students with disabilities and avoid the discriminatory use of student discipline¹. A [letter](#) from U.S. Secretary of Education Miguel Cardona to educators, school leaders, and parents, highlights key resources and information from the USDE that may be useful in supporting the needs of students with disabilities in particular, including tools for schools to assist students in addressing any disability-based behaviors that could otherwise interfere with their or other students' learning, or that could lead to student discipline or impact safety.

OSERS also issued a [Dear Colleague Letter](#) from OSEP Director Valerie C. Williams to address disparities in the use of discipline for children with disabilities and the implementation of the Individuals with Disabilities Education Act (IDEA) discipline provisions, and two accompanying

¹ [Press Release: New Guidance Helps Schools Support Students with Disabilities and Avoid Discriminatory Use of Discipline](#)

guidance documents, to support state educational agencies' (SEA) and local educational agencies' (LEA) efforts to fulfill their obligations to appropriately meet the needs of children with disabilities:

- [Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions](#) – Outlines the legal requirements related to behavior support and discipline for eligible students with disabilities under the IDEA; and
- [Positive, Proactive Approaches to Supporting the Needs of Children with Disabilities: A Guide for Stakeholders](#) – Provides information about resources, strategies, and evidence-based practices that can help states, LEAs, schools, early childhood programs, educators, and families in their efforts to meet the IDEA requirements and, in doing so, improve outcomes for children with disabilities.

In addition, to fully support schools in providing every student with equal educational opportunity, OCR released guidance, to help public elementary and secondary schools fulfill their responsibilities to meet the needs of students with disabilities and avoid the discriminatory use of student 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](#) and an accompanying [Fact Sheet](#).

OSERS has urged SEAs and LEAs to redouble efforts to fulfill their obligations under the IDEA, undertake further examination of existing policies, practices, and procedures to unpack the causes of discipline disparities, and identify ways to better prepare educators to implement effective, preventative, and responsive practices in place of exclusionary discipline and utilize strategies to ensure students with disabilities receive a free appropriate public education.

Promoting safe, positive, healthy learning environments where students can receive the instruction and other supports they need to learn and achieve at high levels is one of the primary responsibilities of each school and is a priority of the New York State Education Department (NYSED). Consistent with the Board of Regents' diversity, equity and inclusion policy, to ensure student health and safety, at their July 2023 meeting, the Board of Regents approved for [permanent adoption the amendment of sections 19.5 of the Rules of the Board of Regents and Sections 100.2, 200.1, 200.7, 200.15, and 200.22 of the Regulations of the Commissioner of Education](#).

NYSED's Office of Special Education has developed technical assistance resources to be used in conjunction with the guidance issued by the USDE to assist LEAs in implementing the IDEA discipline provisions and proactively addressing behavior through the use of positive behavioral supports and interventions. These resources are the policy brief titled, *Manifestation Determination Review*, the accompanying *Manifestation Determination Sample Form* and the *Manifestation Determination Flowchart*, available on NYSED's Office of Special Education [Behavioral Interventions and Supports and Discipline Procedures for Students with Disabilities webpage](#). LEAs are strongly encouraged to review their policies, procedures and practices relating to manifestation determination reviews to ensure that they are in compliance with the New York State requirements outlined in the policy brief and the guidance provided in OSER's [Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions](#) – Section F. Manifestation Determination Reviews.

Thank you for your attention to this important matter. Questions regarding this memorandum may be directed to the Office of Special Education at (518)473-2878 or speced@nysed.gov.