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THE 50-YEAR EVOLUTION OF DISCIPLINE UNDER THE IDEA

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In this presentation we will examine the history of the discipline of scholars with special needs and its evolution to today's practice. We will outline the current law and discuss future implications. Exclusionary practices are dying a slow death - what else is available? What works? What is required and legal?

I. THE EVOLUTION OF STUDENT DISCIPLINE UNDER CONSTITUTIONAL AND FEDERAL LAW.

A. Prior to 1975.

1. In 1970, "U.S. schools educated only about one in five children identified as having disabilities." Furthermore, "[m]any states had statutes explicitly permitting schools to deny enrollment to children based on their

NOTE: The purpose of this presentation, and the accompanying materials, is to inform you of interesting and important legal developments. While current as of the date of presentation, the information given today may be superseded by court decisions and legislative amendments. We cannot render legal advice without an awareness and analysis of the facts of a particular situation. If you have questions about the application of concepts discussed in the presentation or addressed in this outline, you should consult your legal counsel.

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disability” and court decisions were issued upholding exclusions based on disability. *History of IDEA: A Timeline of Special Education Law in the United States* (U.S. DOE, Apr. 29, 2025), <https://govfacts.org/federal/ed/history-of-idea-a-timeline-of-special-education-law-in-the-united-states/> (hereinafter, “U.S. DOE, *History of IDEA*”).

2. According to the U.S. Department of Education (“U.S. DOE”), the exclusion of children with disabilities prior to 1975 was “rooted in the societal devaluation of individuals with disabilities.” U.S. DOE, *History of IDEA*.

B. *Mills v. Bd. Ed. D.C.*, 348 F. Supp. 866 (D.D.C. 1972).

1. ***Facts.*** The District of Columbia Public Schools (“DCPS”) was not serving most of the “exceptional” children, including “hyperactive and other children with behavior problems,” within DCPS’ boundaries. For instance, many “exceptional” children were “suspended or expelled from regular schooling or specialized instruction or reassigned without any prior hearing and [were] given no periodic review thereafter.” A class action was brought on behalf of the “exceptional” children who were or could be excluded from a free public education or otherwise deprived access to a publicly supported education by DCPS. DCPS raised concerns about funding during the proceedings.
2. ***The Due Process and Equal Protection Clauses of the U.S. Constitution.*** “No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV.
3. ***Holding.*** Public schools are “required by the Constitution of the United States . . . to provide a publicly-supported education for these ‘exceptional’ children” and “[d]ue process of law requires a hearing prior to exclusion.” DCPS’ “failure to fulfill this clear duty to include and retain these children in the public school system, or otherwise provide them with publicly-supported education, and their failure to afford them due process hearing and periodical review, cannot be excused by the claim that there are insufficient funds.”

C. The Education for All Handicapped Children Act of 1975 (“EHA”).

1. ***Formal Findings.*** Of the “more than eight million” children with disabilities in the United States, “more than half” were not receiving

“appropriate educational services” and one million were “excluded entirely from the public school system.”

2. **Purposes.** The EHA provided States federal funds in exchange for an agreement to provide children with disabilities a free appropriate public education (“FAPE”) and have procedural safeguards that protected the rights of children with disabilities and their parents or guardians.

D. *Honig v. Doe*, 484 U.S. 305 (1988).

1. **Facts.** The EHA had a “stay-put” provision” which directed that a student with a disability must remain in their then current educational placement pending completion of any review proceedings, unless an agreement was reached otherwise. The State of California’s educational code, however, permitted “the indefinite suspension or expulsion” of students with disabilities for “misconduct arising out of their disabilities.” A California school district suspended two “emotionally disturbed students” and then extended their suspensions “indefinitely” pending expulsion hearings for “violent and disruptive conduct related to their disabilities.” The State Superintendent of Public Instruction asserted in the litigation that “local school districts retain unilateral authority under the EHA to suspend or otherwise remove disabled children for dangerous conduct.”
2. **Issue.** Despite the stay-put provision in the EHA, can public schools “unilaterally exclude” children with disabilities from “the classroom for dangerous or disruptive conduct growing out of their disabilities?”
3. **Holding.**
 - a. The Supreme Court found it was “clear” that “Congress very much meant to strip schools of the *unilateral* authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school.”
 - b. Based on U.S. DOE guidance and the purpose of the EHA, the Supreme Court held that, “where a student poses an immediate threat to the safety of others, officials may temporarily suspend him or her for up to 10 schooldays” but that “a suspension in excess of 10 days does constitute a prohibited ‘change in placement.’”

E. The Individuals with Disabilities Education Act (“IDEA”) Reauthorizations.

1. IDEA reauthorizations codified and clarified rules regarding the discipline of students with disabilities. The provisions attempted to “balance school safety with student rights.” U.S. DOE, *History of IDEA*.
2. A couple of the rules include:
 - a. Manifestation Determination Review. The manifestation determination review requirement was codified through the IDEA reauthorizations. U.S. DOE, *History of IDEA*.
 - b. Suspensions and Expulsions. In the IDEA reauthorizations, it was codified that a student with a disability was entitled to a FAPE when they were suspended or expelled. U.S. DOE, *History of IDEA*.

E. Recent Federal Guidance.

1. While the IDEA does not preclude schools from disciplining students with disabilities, the U.S. DOE opined that it was “particularly concerned with disparities in the use of discipline for children with disabilities and the implementation of IDEA’s discipline provisions.” The data “demonstrated clear disparities in the use of discipline for children with disabilities” for years with children with disabilities being “subjected to disproportionately high rates of disciplinary removals.” *Dear Colleague Letter*, 81 IDELR 110 (OSEP 2022).
2. “[U]sing positive, proactive strategies can reduce rates of discipline and improve school climate and student outcomes.” *Dear Colleague Letter*, 81 IDELR 110 (OSEP 2022). “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.” *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provision*, 81 IDELR 138 (OSERS 2022), at Question A-6 (hereinafter, “OSERS, *Discipline Q&A*”). If a student is disciplined instead of receiving “needed behavioral supports through the IEP process,” it “may result in [the] child not receiving a meaningful educational benefit or FAPE.” OSERS, *Discipline Q&A*, at A-6.

3. “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.” *Dear Colleague Letter*, 81 IDELR 110 (OSEP 2022).

II. THE EVOLUTION OF MINNESOTA LAW RELATED TO THE DISCIPLINE OF STUDENTS WITH DISABILITIES.

A. Minnesota Pupil Fair Dismissal Act (“PFDA”).

1. Pursuant to the PFDA, “[n]o public school shall deny due process or equal protection of the law to any public school pupil involved in a dismissal proceeding which may result in suspension, exclusion, or expulsion.” Minn. Stat. § 121A.42.

2. *Definitions.*

- a. Dismissal. A dismissal is “the denial of the current educational program to any pupil, including exclusion, expulsion, and suspension. It does not include removal from class.” Minn. Stat. § 121A.41, subd. 2.
- b. Suspension. A suspension is “an action by the school administration, under rules promulgated by the school board, prohibiting a pupil from attending school.” Minn. Stat. § 121A.41, subd. 10. “This definition does not apply to dismissal from school for one school day or less, except as provided in federal law for a student with a disability.” *Id.*
- c. Expulsion. An expulsion is “a school board action to prohibit an enrolled pupil from further attendance for up to 12 months from the date the pupil is expelled.” Minn. Stat. § 121A.41, subd. 5.
- d. Exclusion. An exclusion is “an action taken by the school board to prevent enrollment or reenrollment of a pupil for a period that shall not extend beyond the school year.” Minn. Stat. § 121A.41, subd. 4.
- e. Pupil Withdrawal Agreement. A pupil withdrawal agreement is “a verbal or written agreement between a school administrator or district administrator and a pupil’s parent to withdraw a student from the school district to avoid expulsion or exclusion dismissal proceedings. The duration of the withdrawal agreement cannot be

for more than a 12-month period.” Minn. Stat. § 121A.41, subd. 13.

- f. Nonexclusionary Disciplinary Policies and Practices. These are “policies and practices that are alternatives to dismissing a pupil from school.” Minn. Stat. § 121A.41, subd. 12.

2. Over the years, amendments have been made to the PFDA that have placed limits on schools’ ability to utilize exclusionary discipline. The following are some examples:

- a. Suspensions.

- i. A student in a preschool or prekindergarten program or kindergarten through grade 3 cannot be suspended. Minn. Stat. § 121A.425, subd. 1(a). This prohibition “does not apply to a dismissal from school for less than one school day, except as provided under chapter 125A and federal law for a student receiving special education services.” *Id.* For instance, a “dismissal for one school day or less is a day or a partial day of suspension if the child with a disability does not receive regular or special education instruction during that dismissal period.” Minn. Stat. § 121A.43(b).

- b. Expulsion and Exclusion.

- i. A student in a preschool or prekindergarten program or kindergarten through grade 3 can only be expelled or excluded if “there is an ongoing serious safety threat to the child or others” and only after outlined nonexclusionary discipline resources have been exhausted. Minn. Stat. § 121A.425, subd. 1(c).
- ii. “When a child with a disability who has an individualized education program is excluded or expelled under [the PFDA] for misbehavior that is not a manifestation of the child's disability, the district shall continue to provide special education and related services during the exclusion or expulsion.” Minn. Stat. § 121A.43(c).

- c. Nonexclusionary Disciplinary Policies and Practices. “No school shall dismiss any pupil without attempting to use nonexclusionary disciplinary policies and practices before dismissal proceedings or

pupil withdrawal agreements, except where it appears that the pupil will create an immediate and substantial danger to self or to surrounding persons or property.” Minn. Stat. § 121A.45, subd. 1.

B. Minnesota Special Education and Special Programs Statute.

1. ***FAPE and Dismissals.*** Every school district must provide a FAPE to resident children with disabilities who are “suspended or expelled from school for more than ten school days in that school year.” Minn. Stat. § 125A.03(a).
2. ***Due Process Hearings.*** “A parent or a district is entitled to an impartial due process hearing conducted by the state when a dispute arises over the identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education to a child with a disability.” Minn. Stat. § 125A.091, subd.12.
3. ***Expedited Due Process Hearing.*** “Consistent with federal law, a parent or a school district may file a written request for an expedited due process hearing.” Minn. Stat. § 125A.091, subd. 19.

III. DISCIPLINING STUDENTS WITH DISABILITIES.

A. Key Provisions in the IDEA related to Exclusionary Discipline.

1. ***Change in Placement.*** A disciplinary removal is a change of placement if:
 - a. “The removal is for more than 10 consecutive school days,” or
 - b. The student “has been subjected to a series of removals that constitute a pattern” because:
 - i. the “series of removals total more than 10 school days in a school year;”
 - ii. the student’s “behavior is substantially similar to the [student’s] behavior in previous incidents that resulted in the series of removals;” and

- iii. “of such additional factors as the length of each removal, the total amount of time the [student] has been removed, and the proximity of the removals to one another.”

34 C.F.R. § 300.536(a).

- c. A public school’s determination upon whether a series of removals constitutes a change in placement “is subject to review through due process and judicial proceedings.” 34 C.F.R. § 300.536(b).
- d. The U.S. DOE articulated that “[p]ortions of a school day that a child had been suspended may be considered as a removal in regard to determining whether there is a pattern of removals.” 71 Fed. Reg. 46,715 (2006).

2. ***Manifestation Determination Meeting.*** A manifestation determination meeting must be held within ten school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct. *See* 34 C.F.R. § 300.530(e)(1). At the meeting, the parents and the school representatives, including relevant members of the individualized education program (“IEP”) team, must:

- a. “[R]eview all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents;” and
- b. Determine whether the behavior was a manifestation of the student’s disability. A behavior is a manifestation of the student’s disability if the team determines that either:
 - i. The “conduct in question was caused by, or had a direct and substantial relationship to, the [student’s] disability;” or
 - ii. the “conduct in question was the direct result of the [school’s] failure to implement the IEP.”

34 § C.F.R. 300. 530(e)(1)-(2).

3. ***Functional Behavioral Assessment (“FBA”) and Behavior Intervention Plans (“BIPs”).***

- a. If the student’s behavior is found to be a manifestation of the student’s disability, the school must either: (a) conduct an FBA,

unless it has conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a BIP; or, (b) if a BIP already has been developed, review the BIP, and modify it, as necessary, to address the behavior. 34 C.F.R. § 300.530(f)(1).

- b. When a student is subjected to a disciplinary change in placement that would exceed 10 consecutive school days for behavior found not to be a manifestation of their disability or placed in an interim alternative educational setting (“IAES”) for a period of up to 45 school days in response to the student committing a violation of the school’s code of student conduct related to weapons, drugs, or serious bodily injury, the student 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)(ii).

B. IDEA and Authorized and Prohibited Exclusionary Discipline.

1. ***Not a Manifestation.*** If the conduct is not a manifestation of the student’s disability, “school personnel may apply the relevant disciplinary procedures to [students] with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities,” with some exceptions. *See* 34 C.F.R. § 300.530(c).
2. ***Manifestation.*** If conduct is determined to be a manifestation of a student’s disability, the IDEA “does set some limits” on the “specific disciplinary actions” the school district can take. OSERS, *Discipline Q&A*, at Question B-2.
 - a. If the conduct is a manifestation of the student’s disability, school personnel “may remove a [student] with a disability who violates a code of student conduct from his or her current placement to an appropriate [IAES], another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement).” 34 C.F.R. § 300.530(b)(1).
 - b. If the conduct is a manifestation of the student’s disability, the school district *may not* take disciplinary action that changes the placement of the student with the exception of unilateral IAES

placements for not more than 45 school days related to weapons, drugs, or serious bodily injury. OSERS, *Discipline Q&A*, at B-2, E-1. For all changes of placements other than a unilateral IAES placement related to weapons, drugs, or serious bodily injury, the school district must return the student to his or her last agreed upon placement, unless the school and parent agree to a change of placement. 34 C.F.R. § 300.530(f)(2).

3. **IEPs.** Schools should ensure that any discipline taken is in accordance with the student's IEP.
4. **Note.** Schools are wise to limit their use of suspensions with special education students and, when necessary, suspend for shorter periods of time rather than suspending for five or ten days at a time. Rarely will a student be suspended for significantly more than ten days in a school year without triggering a change in placement.

C. **Unilateral 45 (School) Day Placements.**

1. **Manifestation Determination Review.** A manifestation determination must be held within 10 school days of the decision to unilaterally place a student in an IAES for a period of up to 45 school days in response to the student committing a violation of the school's code of student conduct related to weapons, drugs, or serious bodily injury. *See* OSERS, *Discipline Q&A*, at E-1. Regardless of whether the behavior was a manifestation of the student's disability, however, a school may unilaterally place the student in an appropriate IAES for up to 45 school days in response to the student committing a violation of the school's code of student conduct related to weapons, drugs, or serious bodily injury. *Id.*
2. **Weapons, Drugs, or Serious Bodily Injury.** A school district may unilaterally place a student with a disability in an IAES for up to 45 school days if the student does any of the following:
 - a. Carries or possesses a weapon at school, on school premises, or to or at a school function;
 - b. Sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function;
 - c. Knowingly possess or uses illegal drugs while at school, on school premises, or at a school function; or

- d. Inflicts “serious bodily injury” upon another person while at school, on school premises, or at a school function.

20 U.S.C. § 1415(k)(1)(G), (k)(7); 34 C.F.R. § 300.530(g), (i).

3. **Selection.** The IEP team “determines the [IAES] for services” 34 C.F.R. § 300.531. The selected IAES must enable the student to “continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the [student’s] IEP.” OSERS, *Discipline Q&A*, at Question D-3. The “determination will depend on the circumstances of each individual [student’s] case.” *Id.* “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 [student’s] placement in an IAES.” *Id.*
4. **Options.** The IAES “could be a different setting in the [student’s] current school, a setting in a different school in the [school district], or in some other setting.” OSERS, *Discipline Q&A*, at Question D-3. Home instruction, including 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.” OSERS, *Discipline Q&A*, at Question D-5. However, an IEP team “should be cautious about excluding a child with a disability from their regular educational program to provide virtual instruction for the sole purpose of responding to a child’s behavior” because “[r]emoving 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.” *Id.* As such, “the IEP Team likely will need to consider other options beyond ‘home instruction’ when determining the appropriate IAES.” *Id.*
5. **Services.** While in the IAES, the student must “[c]ontinue to receive educational services [in order to receive a FAPE] 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 [student’s] IEP.” 34 C.F.R. § 300.530(d)(1)(i). However, school districts do not need to “replicate every aspect of the services that a child would

receive if in his or her normal classroom” while the student is in the IAES. 71 Fed. Reg. 46,716 (Aug. 14, 2006).

6. ***Appeal.*** If the parent disagrees with the unilateral placement in the IAES, the parent can appeal the decision by requesting an expedited due process hearing. 34 C.F.R. § 300.532(a). When an appeal is made, the student must remain in the IAES pending the decision of the administrative law judge or until the expiration of the 45 school days, whichever occurs first, unless the parent and school district agree otherwise. 34 C.F.R. § 300.533.

D. Other Responses to a Student with a Disability’s Conduct.

1. ***Informal Removals.*** The Office for Civil Rights (“OCR”) has issued guidance on what the OCR referred to as “informal exclusions” that occur when “the school removes the student from class or school without invoking the school’s disciplinary procedures.” *Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline Under Section 504 of the Rehabilitation Act of 1973*, 81 IDELR 111 (OCR 2022). “Informal exclusions are subject to the same Section 504 requirements as formal disciplinary removals.” *Id.*
 - a. Note: While the 2022 OCR guidance specifically addressed informal removal in terms of Section 504, the guidance also noted that IDEA-eligible students “also have rights under Section 504” and that the OCR’s jurisdiction extends to alleged violations of IDEA-eligible students’ Section 504 rights.
2. ***Parent-Pick Ups, Missed Classes, Administratively Shortened School Days, and In-School Suspensions.***
 - a. If a school district requires a parent to pick up a student with a disability early or a student is not allowed to attend a class because of “behavioral concerns,” or when school personnel administratively shorten a student with a disability’s school day in response to the student’s behavior outside the IDEA or Section 504 process or subject the student to an in-school suspension, it is counted as suspension for purposes of IDEA unless the student: (1) “is afforded the opportunity to continue to appropriately participate in the general curriculum;” (2) “continues to receive the services specified on [the student’s] IEP; and (3) “continues to participate with nondisabled children to the extent they would have in their current placement.” OSERS, *Discipline Q&A*, at C-1, C-6, C-7.

- i. Note: Even if a parent voluntarily picks up a student, the parent can later argue that the student was suspended because the parent felt that the school did not really give the parent a choice.
- b. Frequent use of calling the parent to pick up a student with a disability, not allowing a student to attend a class, administratively shorting the student's school day outside the IDEA process, or using in-school suspensions based on "behavioral concerns" may be used as evidence that the District is not properly implementing the student's IEP, that the IEP does not properly address the student's needs, or that the District is denying the Student a FAPE. See OSERS, *Discipline Q&A*, at C-7.

3. ***Bus Suspensions.***

- a. "If bus transportation is not required for FAPE and is not a part of the [student's] IEP, a bus suspension is not considered a disciplinary removal" pursuant to the IDEA. OSERS, *Discipline Q&A*, at C-8. "In those cases, transportation is not part of the provision of FAPE, and the [student] and the [student's] parent have the same obligations to get the [student] to and from school as a nondisabled [student] who has been suspended from bus services." *Id.*
- b. If a student is suspended from their transportation and transportation is part of the student's IEP, the transportation suspension must be counted as suspension for purposes of IDEA. OSERS, *Discipline Q&A*, at C-8.

4. ***IDEA and Transfers.***

- a. Change in Placement? Whether a transfer constitutes a change in placement pursuant to the IDEA is a "fact-specific issue." *Hale ex rel. Hale v. Poplar Bluffs R-I Sch. Dist.*, 280 F.3d 831, 833-34 (8th Cir. 2002).
- b. Administrative Transfer. An administrative transfer for "fiscal or other reasons unrelated to the [] child [with a disability]" is generally not a change in placement if the two locations are materially and substantially similar. *Hale*, 280 F.3d at 835. The Office for Special Education Programs ("OSEP") advised that,

“[i]n making such a determination, the effect of the change in location on the following factors must be examined:

- i. whether the educational program set out in the child's IEP has been revised;
- ii. whether the child will be able to be educated with nondisabled children to the same extent;
- iii. whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and
- iv. whether the new placement option is the same option on the continuum of alternative placements.”

Letter to Tymeson, 78 IDELR 260 (OSEP 2021).

- c. Disciplinary Transfer. “[A]n expulsion from school or some other change in location made on account of the [] child [with a disability] or his behavior has usually been deemed a change in educational placement that violates the stay-put provision if made unilaterally.” *Hale*, 280 F.3d at 835.

IV. SERVING STUDENTS WITH SPECIAL EDUCATION NEEDS PURSUANT TO THE IDEA.

A. Develop and Revise Individualized Education Programs (“IEPs”) and BIPs to Address Students with Disabilities’ Behavior Needs.

1. Development of IEPs.

- a. Consideration of Behavior. In developing the student’s IEP, the IEP team must consider the “functional needs” of the student, which includes a student’s behavioral needs. 34 C.F.R. § 300.324(a)(iv); *see also* OSERS, *Discipline Q&A*, at Question A-2.
- b. Consideration of Positive Behavioral Interventions and Supports. “In the case of a child whose behavior impedes 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).

- c. Addressing Behavior Needs. If it is necessary for a student to receive a FAPE, the IEP Team must provide the student behavioral supports. OSERS, *Discipline Q&A*, at A-4. The IEP may address a student's behavioral needs in the IEP through special education and related services, annual goals, supplementary aids and services, modifications to the student's program, or supports for educators. OSERS, *Discipline Q&A*, at A-3, A-4 (citing 34 C.F.R. § 300.320(a)(2)(i), (4)). Behavioral supports should be "supported by evidence" to the extent practicable. OSERS, *Discipline Q&A*, at A-4 (citing 34 C.F.R. § 300.320(a)(4)).

2. Development of BIP pursuant to the IDEA.

- a. Definition. While not defined, a BIP 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." OSERS, *Discipline Q&A*, at App'x I.
- b. Description. "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," as well as to "prevent the child's behavior that resulted in disciplinary action from recurring." OSERS, *Discipline Q&A*, at App'x I.
- c. Required. "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." OSERS, *Discipline Q&A*, at App'x I.

3. Review and Revision of IEPs and BIPs.

- a. Review. The IEP Team must review each student's IEP "periodically, but not less than annually, to determine whether the annual goals for the child are being achieved." 34 C.F.R. § 300.324(b)(1)(i). The IEP Team should review the IEP if a student with a disability's behavior is impeding their learning or

the learning of others. *See OSERS, Discipline Q&A*, at A-5. In conducting the review, “[i]n the case of a child whose behavior impedes 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(b)(2); *see also* 34 C.F.R. § 300.324(a)(2)(i). The IEP Team could determine it needs more information and propose to conduct additional assessments. *OSERS, Discipline Q&A*, at A-5.

- b. Revise. The IDEA requires the IEP team, “as appropriate,” to revise the IEP to address “[a]ny lack of expected progress toward the annual goals . . . and in the general education curriculum, if appropriate,” the “results of any reevaluation,” information about the student provided to, or by, the parents regarding eligibility and the student’s educational needs, the student’s “anticipated needs,” and “[o]ther matters.” 34 C.F.R. § 300.324(b)(ii).
4. Implementation of IEPs and BIPs. All staff and substitute teachers who are responsible for implementing the IEP and BIP must be provided all portions of the IEP and BIP that they need to know to ensure the IEP and BIP are fully implemented. *See Johnston County Pub. Schs. (NC)*, 120 LRP 11396 (OCR Oct. 17, 2019) (finding that some substitute teachers may not have been aware of one of the provisions in a student’s Section 504 plan and expressing “concerns” those substitute teachers “may have denied the Student a FAPE by failing to implement the aforementioned provision of the Student’s Section 504 Plan”); *see also* Minn. R. 1205.0400, subp. 2 (“Access to private data shall be available [to]: . . . individuals within the entity whose work assignments reasonably require access.”).

B. Threat Assessments.

1. “Neither the statute nor the IDEA regulations address the completion of a risk or threat assessment of a child with a disability.” *OSERS, Discipline Q&A*, at E-4.
2. “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.” *Id.*
3. School districts “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 [school district's] obligation to ensure FAPE to the child, including IDEA's discipline provisions. Where appropriate, the [school district] can ensure that the school personnel conducting the threat or risk assessment have access to, and are coordinating with, the child's IEP Team." *Id.* at E-5.