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Deep Dive Into Discipline

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I. SERVING STUDENTS WITH SPECIAL EDUCATION NEEDS.

A. Individuals with Disabilities Education Act ("IDEA"): Develop and Revise Individualized Education Programs ("IEPs") and Behavior Intervention Plans ("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 Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provision,* 81 IDELR 138 (OSERS 2022), at Question A-2 (hereinafter, "OSERS, *Discipline Q&A*").

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

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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 free appropriate public education ("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.

a. Staff. All staff providing services to a child with a disability must be aware of the relevant provisions of the student's IEP, including any separate BIP or other behavior component in the IEP.

b. Substitutes. Regular education staff should also be instructed to include a copy of the student's IEP and BIP, or the relevant components thereof, in the materials provided to any substitute teacher to ensure that the substitute teacher knows what to expect in regard to the student and follows the IEP and BIP.

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.

C. Alternatives to Discipline. Minnesota has laws that require alternatives to discipline in some situations.

1. In Minnesota, a school district may not suspend any student in "kindergarten through grade 3." Minn. Stat. § 121A.425, subd. 1(a)(2).

2. In Minnesota, a student in "kindergarten through grade 3" may only be subject to expulsion or exclusion where "there is an ongoing serious safety threat to the child or others" and after the school district has:

   a. "collaborat[ed] with the pupil's family or guardian, child mental health consultant or provider, education specialist, or other community-based support;

   b. create[ed] a plan, written with the parent or guardian, that details the action and support needed for the pupil to fully participate in the current educational program, including a preschool or prekindergarten program; or

   c. provid[ed] a referral for needed support services, including parenting education, home visits, other supportive education interventions, or, where appropriate, an evaluation to determine if the pupil is eligible for special education services or section 504 services."

   Minn. Stat. § 121A.425, subd. 1(c); *see also id.*, subd. 2.

3. In Minnesota, "[n]o 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.

D. Seeking Relief from an Administrative Law Judge or the Courts.

1. Expedited Due Process Hearing Request Seeking an Appropriate Interim Alternative Educational Setting ("IAES").

a. Request: A school district may request an expedited due process hearing if it "believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others." 34 C.F.R. § 300.532(a).

b. Outcome: The administrative law judge may "[o]rder a change of placement of the child with a disability to an appropriate [IAES] for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others." 34 C.F.R. § 300.532(b)(2)(ii).

2. Expedited Due Process Hearing Request Seeking to Keep the Student in the Appropriate IAES.

a. Request. The school district can file another expedited due process hearing request seeking to keep the student in an appropriate IAES if it "believes that returning the child to the original placement is substantially likely to result in injury to the child or to others." 34 C.F.R. § 300.532(b)(3).

b. Outcome. The administrative law judge can once again order the child with a disability to "an appropriate [IAES] for not more than 45 school days" if the hearing officer determines that "returning the child to the original placement is substantially likely to result in injury to the child or to others." 34 C.F.R. § 300.532(b)(3); *see also id.* at (b)(2)(ii).

c. Repeating the Process: This process can be "repeated." 34 C.F.R. § 300.532(b)(3).

3. Injunction.

When a student is a danger to self or others, school districts "have the right to seek injunctive relief from a court when they believe they have the need to do so." 64 Fed. Reg. 12,621 (Mar. 12, 1999).

E. *Pasco Cnty. (FL) Schs.*, 124 LRP 7251 (Dep't Justice 2024).

1. Concerns.

   a. Suspensions, Law Enforcement, and Security Guards. "[T]he District's lack of any policies or training on when to call law enforcement and how to address disability-related behaviors led to unfettered discretion for school staff to call [school security guards ("SSG")] and [school resource officers ("SROs")]. Further, the District did not require that law enforcement interactions be documented, and therefore, the District had no reliable data or process through which it could quantify law enforcement engagements and monitor whether the use of law enforcement in response to behavior concerns involving students with disabilities was proper. The Department found that SSGs and SROs often responded to behavioral incidents involving students with disabilities, even when they did not involve an imminent health or safety threat and even when non-law enforcement staff had not tried de-escalation." The school district engaged in disability discrimination under Title II of the Americans with Disabilities Act ("ADA") by "routinely rel[ying] on suspensions and referrals to law enforcement to respond to students' disability-related behaviors that could have been addressed through proper behavioral interventions and supports."

   b. Threat Assessments. "District staff subjected students with disabilities to threat assessments without accounting for their disabilities," resulting in significant consequences for some students for manifestations of their disabilities.

   c. BIPs and FBAs. Students with disabilities' BIPs were not individualized nor implemented with fidelity. The school district further "did not collect the data necessary to track student progress under their plans." The school district also did not conduct "meaningful reviews of crisis events for students with disabilities, such as repeated suspensions or referrals to law enforcement for arrests . . . ."

2. Resolution.

   a. Code of Conduct. The code of conduct must clarify that school administrators have discretion to not use exclusionary discipline, and the school district must provide a process for determining

"whether reasonable modifications to disciplinary policies and/or procedures are necessary to avoid discrimination on the basis of a student's disability."

b. Law Enforcement. Unless there is an emergency that threatens health or safety, school personnel must consider whether a student with a disability's behavioral needs are being met prior to referring the student to law enforcement. Furthermore, the school district is required to develop a "clearly defined process for consulting law enforcement to address student conduct that poses a threat to safety." The school district must keep data on referrals to law enforcement.

c. Security Guards. Elementary school security guards will only address student behavioral issues if the situation involves "serious threats to safety."

d. Threat Assessment. Threat assessment teams will include at least one member of the student's IEP or Section 504 team and consider whether the conduct was a manifestation of the student's disability.

e. FBAs and BIPs. School district personnel must meet to determine whether any students with disabilities would benefit from the conducting or updating of an FBA, or the development or adjustment of a BIP, including students who were subjected to exclusionary discipline, who were involved with law enforcement, or who were subject to threat assessments. Furthermore, school district personnel will "collect and document information relevant to BIPs for progress reports and fidelity checks."

f. Data Review. School administrators at each school will regularly review discipline, threat assessment, and law enforcement referral data, as well as take appropriate remedial action.

II. DISCIPLINING STUDENTS WITH DISABILITIES.

A. The IDEA.

1. Change in Placement. A removal for a violation of the code of conduct 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. Note. The U.S. Department of Education 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).

d. Note. As shown above, an expulsion or a suspension of a special education student for more than ten consecutive days constitutes a change in placement. The ten-day rule is rooted in the case of *Honig v. Doe*, 484 U.S. 305 (1988). In that case, the United States Supreme Court held that an expulsion or a suspension of a special education student for a period in excess of ten school days constituted a unilateral change in the student's special education placement by a school district. *Id.* at 326 n.8.

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 other relevant members of the individualized education program ("IEP") team—as determined by the parents and school district—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 district's] failure to implement the IEP."

34 § C.F.R. 300. 530(e)(1)-(2).

3. Functional Behavioral Assessment ("FBA") and BIP.

a. If the student's behavior is found to be a manifestation of the student's disability, the school district must either: (a) conduct an FBA, unless it has conducted an FBA before the behavior, and implement a BIP; or, (b) if a BIP already has been developed, review the already developed 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 disciplinary changes in placement that would exceed 10 consecutive school days for behavior found not to be a manifestation of his or her disability or placed in an IAES for a period of up to 45 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).

4. IDEA and Discipline Pursuant to the Student Code of Conduct.

a. 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.

i. 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 interim alternative

educational setting, 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).

ii. 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 immediately return the student to his or her last agreed upon placement unless the school district and parent agree to a new placement. 34 C.F.R. § 300.530(f)(2).

b. Not 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." *See* 34 C.F.R. § 300.530(c).

c. IEPs. Schools should ensure that any discipline taken is in accordance with the student's IEP.

d. 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.

5. Unilateral 45 (School) Day Placements.

a. 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 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 district 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.*

b. 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:

i. Carries or possesses a weapon at school, on school premises, or to or at a school function;

ii. Sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function;

iii. Knowingly possess or uses illegal drugs while at school, on school premises, or at a school function; or

iv. Inflicts "serious bodily injury" upon another person while at school, on school premises, or at a school function.

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

c. Selection. The IEP team "determines the [IAES] for services . . . ." 34 C.F.R. § 300.531. The placement selected 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." U.S. Dep't of Educ., *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provision,* at Question D-3 (July 19, 2022) (hereinafter, "OSEP, *2022 Q&A*"). 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.*

d. 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." OSEP, 2022 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." OSEP, 2022 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.*

e. 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).

f. 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.

B. Section 504 of the Rehabilitation Act of 1973 ("Section 504").

1. Section 504 Change in Placement. "Under Section 504, a suspension for more than 10 consecutive days, or a total of 10 cumulative days in a

school year under circumstances constituting a pattern of exclusion, constitutes a significant change in placement. The determination of whether a series of suspensions creates such a pattern of exclusion is made on a case-by-case basis." *Newton Cnty. (GA) Sch. Dist.*, 116 LRP 1171 (OCR 2015).

2. Section 504 "Manifestation Determination."

   a. Prior to initiating disciplinary action that constitutes a "significant change of placement," the school district must conduct a reevaluation that complies with Section 504's procedural safeguards with the "first step" of the reevaluation being "to determine whether the misconduct leading to the disciplinary action was caused by the [student's] disability." *Letter to Williams*, 21 IDELR 73 (OSEP 1994).

   b. The "manifestation determination" must be made by a group of persons that "include individuals personally familiar with the child and knowledgeable about special education and which may be the same group that made the initial placement decision." *Id.*

3. Section 504 and Discipline.

   a. If the conduct is not a manifestation of the student's disability, the student "may be disciplined in the same manner as similarly situated children without disabilities are disciplined." *Id.*

   b. If the conduct is a manifestation of the student's disability, the school district *may not* take disciplinary action that constitutes a significant change of placement. Instead, the school district "must determine whether the student's current educational placement is appropriate and, if not, make appropriate changes to the placement." *Newton Cnty. (GA) Sch. Dist.*, 116 LRP 1171 (OCR 2015); *see also OSEP Memorandum 95-16*, 22 IDELR 531 (OSEP 1995); *Letter to Williams*, 21 IDELR 73 (OSEP 1994).

C. "Informal Removals" of Students with Disabilities.

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 (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 Section 504 or 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.

III. POTENTIAL CONSEQUENCES OF DISCIPLINING STUDENTS WITH DISABILITIES.

A. Denial of FAPE. 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.

B. Discrimination Claims. A pattern of discipline can be evidence that a school discriminated against the student on the basis of his or her disability. Likewise, disciplining a student for behavior that is caused by his or her disability may be evidence of disability discrimination.

C. Poor Student Outcomes. In 2022, OSEP shared that the U.S. Department of Education was "particularly concerned" with the "notable disparities . . . in the use of school discipline for children with disabilities compared with their nondisabled peers." *Dear Colleague Letter*, 81 IDELR 110 (OSEP 2022). OSEP continued that 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." *Id.*