



Forget the Band-Aid
approach.
Taking a Holistic Approach to
Serve The Child.

GJ&A

Individuals with Disabilities Education Act

- **The IDEA is law that ensures students with a disability are provided with Free Appropriate Public Education (FAPE) that is tailored to their individual needs.**
- **According to the U.S. Department of Education, there are more than 7.2 million students (15% of all public school students) with disabilities who are eligible for special education in the United States.**

2020-2021 school year.

Individuals with Disabilities Education Act

- **A goal of the IDEA is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.**
- **The focus is to provide children with disabilities the same opportunity for education as those students who do not have a disability.**

Special Education Defined by Law

"Special education" means specially designed instruction, provided at no cost to the parents, that is intended to meet the unique needs of a child with a disability, including: 1) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and 2) instruction in physical education. 34 CFR 300.39(a)(1).

The term includes: 1) speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under state standards; 2) travel training; and 3) vocational education. 34 CFR 300.39(a)(2).

Specially Designed Instruction

(3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. *34 CFR 300.39(b)(3).*

Specially Designed Instruction

Will the teacher need to change the content, methodology, or delivery of the instruction?

Specially Designed Instruction

Accommodations

- Providing a study guide.
- Oral administration of test.
- Video of class instruction.
- Providing sensory fidget.
- Visual aides
 - Braille
 - Math equations
 - Calendar/schedule

Specially Designed Instruction

- Student taught with repetition how to use a calendar for organization.
- Using a different curriculum.
- Teaching a child to recognize emotions and regulate responses.
- Pre-teaching curriculum.
- Teaching sensory regulation techniques.

Specially Designed Instruction

IS NOT

Differentiation

(Tailoring instruction to meet student's needs)

We All Learn Differently

- **Visual**
- **Kinesthetic**
- **Auditory**
- **Reading/Writing**
- **Musical**
- **Linguistic**
- **Naturalistic**
- **Intra-personal**
- **Interpersonal**
- **Logical-Mathematical**

Diverse Learning

Special Education is not the “funding default” to address:

- Class size/over-crowding
- Lack of early education
- Slow learners
- Unprepared teachers
- Insufficient systems and funding
- Societal disparities
 - Poverty
 - Environmental Factors
 - Insufficient Parenting
- Family desire for student to get accommodations on college entrance exams

General Education Interventions

- Response to Intervention
- Reading/Math Intervention
- Intervention periods
- Tutoring
- Counseling
- Behavior contracts
- Classroom management
- Discipline
- Social skills groups
- Coping Skills instruction
- Push-in support
- Teacher training/mentoring
 - Has your behaviorist met with general education teachers?
 - Do you provide professional development annually on when to refer a child for special education?
 - Do you have a Q&A process for teachers who need support?

Section 504 of the Rehabilitation Act

"No otherwise qualified person with a [disability] in the United States shall, solely by reason of a [disability], be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

Section 504 of the Rehabilitation Act

A person with a disability is an individual with a physical or mental impairment that substantially limits one or more major life activities. An individual is considered to be a person with a disability if he/she (1) has a disability, (2) has a history of a disability or (3) is perceived by others as having a disability.

How Section 504 Applies to Schools

- Ensure that each student with [a disability] is educated with [non-disabled] students to the maximum extent appropriate to the needs of the handicapped person;
- Establish nondiscriminatory evaluation and placement procedures to avoid the inappropriate education that may result from the misclassification or misplacement of students;

How Section 504 Applies to Schools

- Establish procedural safeguards to enable parents and guardians to participate meaningfully in decisions regarding the evaluation and placement of their children; and
- Afford [children with disabilities] an equal opportunity to participate in nonacademic and extracurricular services and activities.”

U.S. Dept. of Education: The Civil Rights of Students with Hidden Disabilities Under Section 504 of the Rehabilitation Act of 1973

Section 505 Eligibility does
not automatically mean the student
is entitled to a Section 504 Plan.

Diagnosis vs. Eligibility

Medical Diagnosis

- Medical Diagnosis are made by a medical professional.
- In making a medical diagnosis medical professional may used:
 - diagnostic criteria
 - Diagnostic and Statistical Manual of Mental Disorders (DSM)
 - clinical case definitions

The medical provider is NOT considering IDEA eligibility in making a diagnosis.

Section 505 Eligibility

To be protected under Section 504, a student must be determined to:

(1) have a physical or mental impairment that substantially limits one or more major life activities; or

(2) have a record of such an impairment; or

(3) be regarded as having such an impairment.

Special Education Eligibility Categories

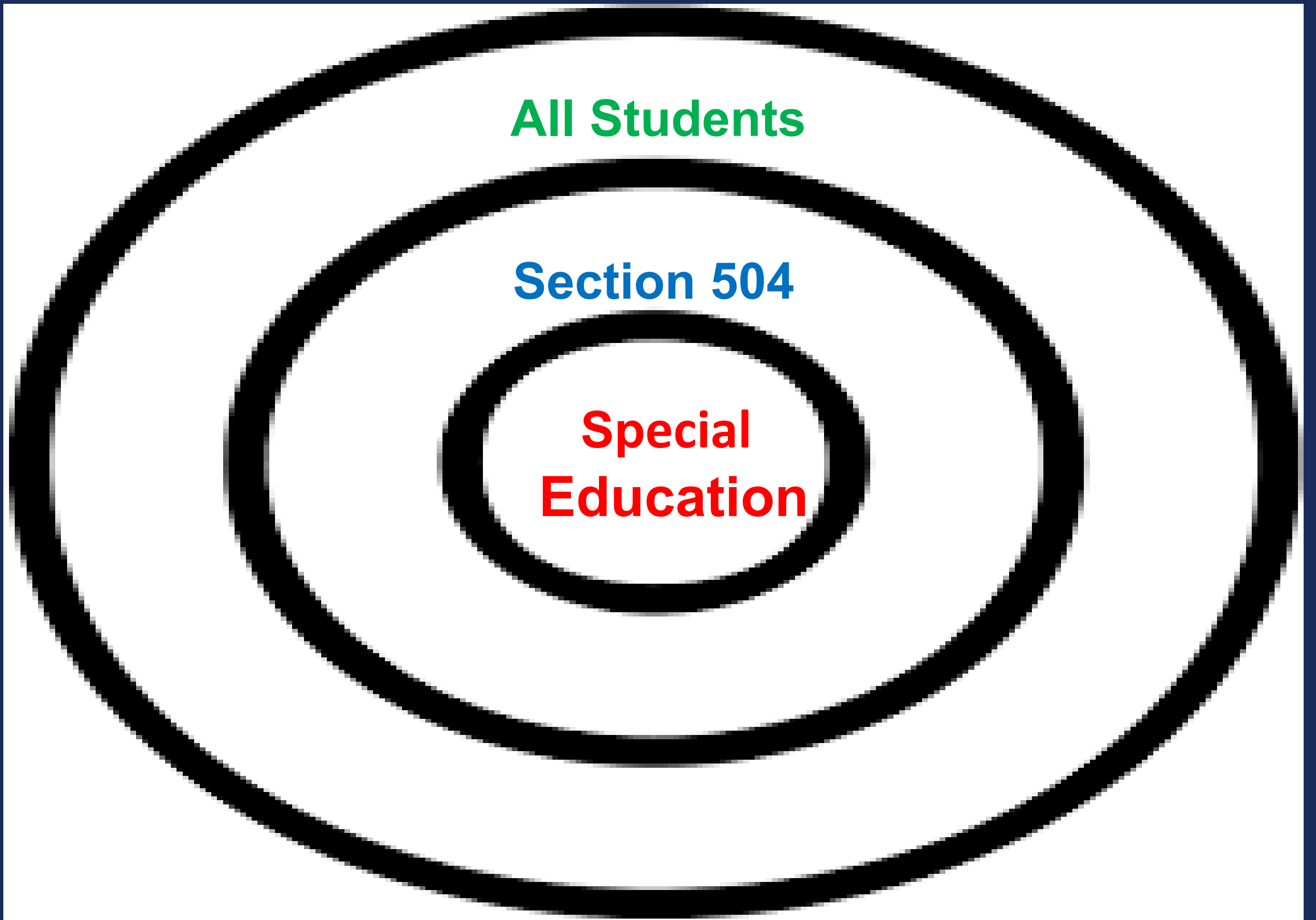
1. Autism
2. Deaf-blindness
3. Deafness
4. Emotional disturbance
5. Hearing impaired
6. Intellectual disability
7. Multiple disabilities
8. Orthopedic impairment
9. Other health impairment
10. Specific learning disability
11. Speech or language impairment
12. Traumatic brain injury
13. Visual impairment including blindness

Student Must Require Special Education and Related Services

Child with a disability means a child evaluated in accordance with Sec. 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

34 C.F.R. 300.8(a)(1)

ARE YOU OVER-IDENTIFYING?



But the student is behind the other
kids in the class so let's just...

- Mom
- Dad
- Foster-parent
- Grandparent
- CASA
- Advocate
- Attorney
- Etc....

Cried...Threatened...Got Angry...Refused...

Overidentification & Misidentification

Overidentification

- **Too many typically developing students are being identified as eligible for special education in a school district.**

Misidentification

- **A student is inappropriately placed in a particular disability category.**

NEGATIVE CONSEQUENCES

U.S. Commission on Civil Rights

- Lower the expectations on the part of the teachers and family members.
- Restrict access to the general education program.
- Restrict access to higher education and post-high school employment.

ADDITIONAL CONSEQUENCES

- Student will receive services that do not meet their needs.
- Student may be socially stigmatized.
- Student may display greater behavioral problems requiring disciplinary action.
- Student may withdraw or experience depression.
- Students are more likely to either not complete school or complete school with less skills than other students.

Impact on school district/educational agency

- Strain on already limited resources.
- Takes away existing resources from those students truly qualify.
- Unnecessarily taxing on staff
 - Attending IEPs
 - Preparing assessments
 - Implementing IEPs
 - Daily data collection
 - Addressing discipline
- Limits Disciplinary Options Available for student misconduct
 - Limited number of removals
 - Required manifestation determination IEP
 - Entitles student to “stay-put”
 - Right to a due process hearing prior to disciplinary removal.

Educating Trauma Survivors

Only If You Are Comfortable

Take a minute to identify your emotions when you think about the following events:

- ▶ Terrorist Attacks on September 11, 2001
- ▶ Space Shuttle Challenger Explosion in 1986
- ▶ Sandy Hook Elementary School Shooting 2012
- ▶ Assassination of John F. Kennedy (1963), Martin Luther King Jr., and Robert Kennedy (1968)
- ▶ George Floyd's murder in 2020
- ▶ The approximately 100 Thousand People in the US who dies from COVID-19 (2019-2022)

Common Trauma Symptoms in Students and Helpful Strategies for Educators

Trauma can have a detrimental impact on students' functioning in the school setting.¹ Educators need tools to identify and support students who may have experienced or are currently experiencing traumatic stress.

The front of this handout lists common trauma symptoms grouped into the following categories: physical, cognitive, social and emotional, language and communication, and learning.² It is important to note that children can respond to trauma in many different ways and may not exhibit all of these symptoms. You can use this list to guide your thinking in identifying students who may have experienced trauma and providing or referring students to appropriate supports.

The back of this handout outlines strategies for working with students who may exhibit emotional or behavioral symptoms of trauma. You can use preventative strategies in everyday classroom interactions, "in the moment" strategies when students are in crisis, and "after the moment" strategies³ after a student's behaviors and emotions have deescalated. These strategies generally target students' safety, positive relationships, and self-regulation, and are focused on teaching appropriate skills and avoiding punishment (which may re-traumatize students).

Physical

- Increased somatic complaints (e.g., headaches and stomachaches)
- Over- or under-reacting to stimuli (e.g., getting startled easily [or not at all] by bells, physical contact, doors slamming, sirens)
- Increased activity level (e.g., fidgeting, getting out of seat)
- Withdrawal from other people and activities

Cognitive

- Recreating the traumatic event (e.g., repeatedly talking about or "playing out" the event) or avoiding topics that serve as reminders
- Difficulties with executive function (e.g., impulse control, attention)
- Worry and fear about safety of self and others
- Dissociation (e.g., disconnected from surroundings, "spacing out")

Social and Emotional

- Rapid changes in heightened emotions (e.g., extremely sad to angry)
- Change in ability to interpret or respond appropriately to social cues
- Difficulties with emotion regulation and impulse control (e.g., angry outbursts, aggression, increased distress)
- Emotional numbness, isolation, and detachment

Language and Communication

- Language development delays and challenges
- Difficulties with expressive (e.g., expressing thoughts and feelings) and receptive language (e.g., understanding nonverbal cues)
- Difficulties with nonverbal communication (e.g., eye contact)
- Use of hurtful language (e.g., to keep others at a distance)

Learning

- Absenteeism and changes in academic performance/engagement
- Difficulties with authority, redirection, or criticism
- Difficulties listening and concentrating during instruction
- Difficulties with memory (e.g., may require more repetitions)
- Difficulties generalizing learned material in different contexts

¹ Honsinger & Brown, 2019.

² Symptoms adapted from Statman-Weil, 2013 and National Child Traumatic Stress Network Schools Committee, 2008.

³ Strategies adapted from Honsinger & Brown, 2019.

Train Your Staff to Recognize Signs of Trauma in Students

- Trauma survivors can be overwhelmed, worried, angry, confused or any of the other emotions you just felt.
- Look for non-verbal messages
- Pretending to be sick – trips to the nurse's office
- Not coming to school
- Daydreaming
- Not eating lunch
- Changes in adult and peer interactions
- Stop participating in class or other school activities
- Easily frustrated or emotional

Stanford University School of Medicine Children's Health

Posttraumatic Stress Disorder (PTSD) in Children

PTSD is a mental health problem that can affect people of all ages. PTSD in children may be caused by a traumatic event that:

- ▶ Happened to the child,
- ▶ Happened to someone close to the child,
- ▶ Something the child saw.

<https://www.stanfordchildrens.org/en/topic/default?id=post-traumatic-stress-disorder-in-children-90-P02579>

PREVENTATIVE STRATEGIES



Safe and Predictable Environment

- ❖ Create a welcoming classroom environment (e.g., greet students by name, do show and tells)
- ❖ Post class expectations at the front of the classroom
- ❖ Display a daily schedule and explain any deviations
- ❖ Prepare students for transitions (e.g., give a signal)
- ❖ Communicate clear safety procedures



Relationship Building

- ❖ Talk to students about their hobbies and interests
- ❖ Use a respectful tone during interactions
- ❖ Involve students in developing behavior/safety plans
- ❖ Try the 2x10 strategy with challenging students (talk with the student for at least 2 minutes each day for 10 days in a row)



Self-Regulation

- ❖ Incorporate activities that build coping strategies (e.g. identifying and validating emotions, deep breathing)
- ❖ Create calming spaces or break times with constructive activities that are *not* used as a punishment/time-out
- ❖ Model and practice appropriate social skills
- ❖ Teach students how to name and scale their emotions (e.g. rate anger on a scale of 1-5)

"IN THE MOMENT" STRATEGIES



Safe and Predictable Environment

1. Be aware of the student's body language, tone of voice, and emotional state
2. Direct other students to follow outlined safety procedures
3. Provide student with the opportunity to go to a safe space (e.g., meditation room, counseling office)
4. Alert appropriate support staff, when necessary



Relationship Building

1. Project calmness while approaching student using verbal and nonverbal techniques (e.g., using a respectful tone, sitting beside the student instead of standing over them)
2. Show you are listening and giving your full attention
3. Express that you care for the student and that they are safe



Self-Regulation

1. Relax before responding (deep breath, count to 10)
2. Encourage student to use relaxation and coping skills, and "comfort" objects
3. Validate student emotions (e.g., "You seem frustrated right now. Is that correct?")
4. Assist the student in identifying reasonable and safe response options (e.g., go to the counselor's office)

❌ When a student is in crisis, DO NOT: ❌

- ❖ Argue or get into a power struggle
- ❖ Raise your voice
- ❖ Handle the situation in public or in front of student's peers
- ❖ Use punitive punishment

"AFTER THE MOMENT" STRATEGIES

- ❖ Provide students with a safe place to talk about what happened
- ❖ Engage in a discussion with the student that includes:
 - Praise for any relaxation or coping skills the student used
 - Appropriate responses and strategies to use if the situation arises again
 - Potential consequences or negative outcomes if negative behavior continues
 - Specific steps for successfully resuming the classroom routine
- ❖ Refer students to other resources and supports or notify appropriate school support staff, when necessary

References

- Honsinger, C., & Brown, M. H. (2019). Preparing trauma-sensitive teachers: Strategies for teacher educators. *Teacher Educators' Journal*, 12, 129-152.
- National Child Traumatic Stress Network Schools Committee. (2008, October). *Child trauma toolkit for educators*. Los, Angeles, CA & Durham, NC: National Center for Child Traumatic Stress.
- Statman-Weil, K. (2013). *Creating trauma-sensitive classrooms*. *Young Children*, 70(2), 72-79.

Training Staff

1. Provide trauma sensitivity training.
2. Teach staff to ask appropriate questions.
3. Train staff to identify and reduce potential triggers or re-traumatizing practices.
4. Avoid the use of threats such as “if you don’t do XYZ I am going to...” call law enforcement, call your dad to discipline you, give you an out of school suspension, etc.

*It is okay to remind a student about the discipline policy but not to use it as a threat against the child.

Trauma-Sensitive Education

- Have you considered a wellness room for students?
- Do you offer general education supports for trauma survivors?
 - Positive behavior interventions for all students?
 - Coping skills training/Stress management?
 - Yoga or stretching
 - Deep breathing
 - Meditation/visualization
 - Sensory Input/Practice Muscle Relaxation (“PMR”)
 - Counseling
 - Student support group
 - Stress management electives

Trauma-Sensitive Education

- Are your discipline policies sensitive to students experiencing trauma?
 - Have you invested in social-emotional learning for all students?
 - Is your school environment supportive & inclusive?
 - Are you offering equitable academic support?
 - Are you using your community resources?
-
- Have you contacted your legislature and state department of education for funding?

Parents with Disabilities

Parents with disabilities have rights under the ADA, but those rights do not avoid the LEA's obligations to provide the child a FAPE.

Dallas Independent School District

**Texas State Educational Agency (March 2013) 113 LRP
15406**

The parent alleged that the District denied the parent meaningful participation in the development of the student's educational program by failing to explain the FIE and procedural safeguards adequately and by failing to explain to the parent which staff and teachers would be responsible for implementing the IEP and BIP.

The Judge Found:

“The parent appears to have limited ability to process and understand information, and the parent’s difficulties in problem-solving, parenting, and communication were noted by ***.

Additionally, the parent's demeanor and testimony during the hearing demonstrated her limited understanding. Although the hearing convened on November 9, 2012, the parent had obvious difficulties in understanding the proceedings and, in fact, stated that she has a "learning problem" and a "disability." She also stated that she has difficulties in comprehension.”

The Judge Found:

However, the parent sought the assistance of an educational advocate and was accompanied to [IEP team] meetings by the advocate and relatives who pursued explanations regarding the student's services. Prior to seeking the assistance of an advocate, she invited providers from *** to participate in the student's Section 504 meeting, and ultimately, student's [IEP] meetings. To the extent the parent had difficulty in participating in the development of the student's program personally, she augmented her ability by seeking the assistance of advocates and others. The District included the parent's family members, service providers, and the advocate in its discussions with the parent regarding the student's evaluation and IEP.

The hearing officer found:

“Based on a preponderance of the evidence, I find that the District did not deny the parent a meaningful opportunity to participate in the development of the student's educational program once it convened the student's ARD Committee meeting (although the delay in evaluating the student did). The parent does not prevail on this issue.”

Mental Health

Accommodating a Parent with Explosive Disorder

Aggressive Parent

- Student's attorney brought in a psychotherapist social worker to testify as an expert.
- The expert testified that the parent disclosed that she had some anxiety, an anxiety disorder, and lupus.
- The student's expert testified that after reviewing correspondence between the parent and the school, she did not find the parent to be hostile or exhibit conduct out of the normal range of responses for a parent advocating on behalf of their child. She initially described the parent as "having a big personality."

Aggressive Parent

- The expert reported that she recalled reading the following statements in emails to the school made by the parent:
 - This is the stupidest idea I have heard in a long time.
 - Who typed this draft document? Whoever typed page 16 of 35 is this document needs to raise their hand because they are a blatant liar, and that's not okay.
 - How am I supposed to work with you and be an equal member of the committee when you're being dishonest?
 - Whoever wrote this goal needs to ride the short bus because you are just as stupid as your students.

Aggressive Parent

- Whoever wrote this goal needs to ride the short bus because you are just as stupid as your students.
- I don't care what the nurse says or what policies you have, I want it in his present levels, and that trumps any stupid yellow nurse notes.
- She described the school staff as:
 - Liars
 - Unethical
 - Despicable

Aggressive Parent

On cross-exam the student's expert testified that the parent's conduct could be perceived as hostile or related to her underlying anxiety which, as a side effect can be irritability or edginess.

The judge did not find that the parent was discriminated against based on an unreported disability.

What We Have Learned

You Can Control Excessive Parent Communication

- Avoid any correspondence or conduct that could reasonably be considered an attempt to deter a parent from advocating for the child.
- Explain with great specificity the limits and processes for parent contact
 - Who does the parent contact
 - When will emails and telephone calls be returned
 - What constitutes a time-sensitive situation and who should the parent contact
 - Be specific when citing the conduct that caused the school to limit parent contact

What We Have Learned

- **Schools must document parents' actions when conduct becomes aggressive, abusive, defiant, or threatening.**
- **But: do not assume that the hearing officer or judge will truly consider the parent's conduct when evaluating whether the school offered a FAPE.**

What We Have Learned

- **Do not allow yelling, overtalking, inappropriate comments/attacks, or aggressive behavior from ANYONE.**
- **Be consistent.**
- **Stay calm.**
- **Take breaks as needed.**
- **Know when to recess.**
- **Follow up when necessary with a letter to the parent regarding inappropriate conduct.**
- **Know when it is time to seek legal assistance – TRO.**

Hannah's IEP Meeting

- 3rd Grade Student
- Eligible for Special Education as a student with Autism.
- Receives pre-teach instruction in the special education setting.
- Participates in general education for most classes
Exhibits some verbal delays and mild behaviors.
- Is a twin to a typically developing sister.
- Hannah's mother has a Ph.D. and brings an attorney to every IEP, including the initial IEP meeting.

Hannah's mother requested that the IEP team develop a goal and provide specially designed instruction to teach Hannah how to use ALL types of feminine hygiene products.

Hannah's mother tells the IEP team members that she realizes that Hannah likely will not start her menstrual cycle until the 6th grade based on family history but feels that she will need to practice on how to insert a tampon and use maxi pads so she wants the school to start teaching her in 3rd grade.

Hannah's mother argues that having a menstrual cycle is part of health education and that the state education code covers health, so it is the school District's obligation to teach Hannah how to use feminine hygiene products.

There are Things We Do Not Teach

A New Generation of Parents

With a Different Expectation for Education

Generation Y

Millennials

Generation Z

The Supreme Court has explicitly characterized “the liberty of parents and guardians to direct the upbringing and education of children under their control” as a “right...guaranteed by the Constitution.”

Pierce v. Soc'y of the Sisters, 268 U.S.
510, 534–35 (1925).

Supreme Court precedent recognizes that parental liberty entitles parents to teach their child a foreign language.

Meyer v. Nebraska, 262 U.S. 390, 403, 43 S. Ct. 625, 67 L. Ed. 1042 (1923)

What the Supreme Court meant by the parents' right to direct education was a liberty interest, not a right to dictate.

For now, the state educational standards are set by each individual state.

What we teach kids is established by state statutes or by the State Department of Education – for now.

“Parents Bill of Rights” is a trend getting momentum.

Joshua & Free-Range Parenting

Joshua

- 3rd-grade student
- Special education eligible for speech due to a stutter
- Behaviors challenges in school
- Talking back
- Use of profanity
- General defiance
- Inappropriate comments

Joshua

- One rainy day, Joshua's class stays in the classroom for lunch.

Joshua

- Joshua is at a table with his classmates and begins to teach his classmates how to put a condom on a banana.
- As he made this demonstration, Joshua explained to the co-ed group of children what a condom was and why his male classmates need to always “be ready to strap up.”

Joshua

The principal calls a meeting with the parents to address Joshua's behaviors and determine if further IDEA evaluations are necessary or if there is a need to contact child protective services.

During the meeting, Joshua's parents VERY proudly explained that they are "FREE RANGE PARENTING."

- Free Range Parenting
- Gentle Parenting
- Empowerment Parenting
- Permissive Parenting
- Experiential Parenting
- Hands Off Parenting

INSUFFICIENT PARENTING IS NOT A DISABILITY

But it is a disadvantage.

There are Things We Now Need to Teach

- The meaning of the word “No”
- Perseverance
- Coping Skills
- Respect
- Social Skills and Etiquette
- Boundaries
- Manners
- Empathy
- Teamwork
- Responsibility
- Discipline

Stay Student Focused.

Do Not give in to inappropriate requests.

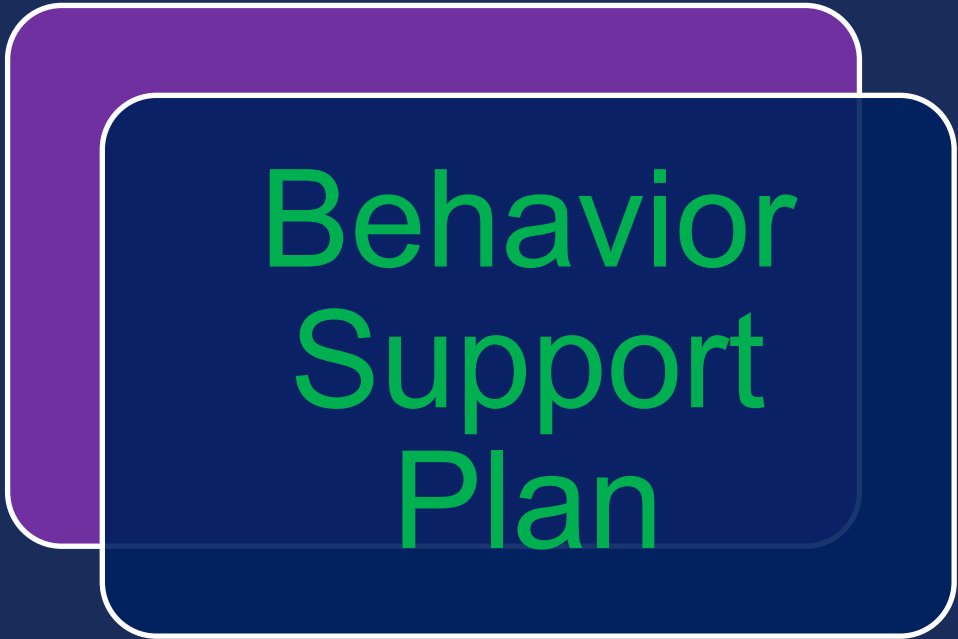
Encourage open discussions about disability-related educational needs versus home or medical needs and wants.

Helping Parents

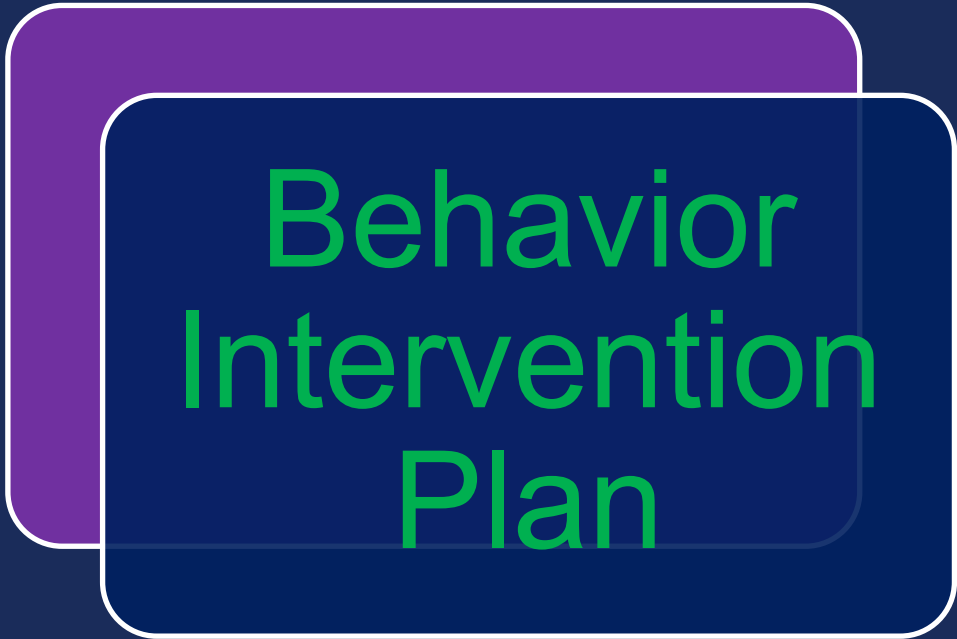
- Parenting Classes
- Parent Support Groups
- Legal Seminar for Parents on Special Education Law
- Child Development Videos/Classes
- Stress Management for Parents
- Community Resources such as respite
- School behaviorists can teach a mini-course on Behavior Training for parents
- Teach parents de-escalation techniques

Student Behavior

Addressing Special Education & Section 504 Behavior

A graphic consisting of two overlapping rounded rectangles. The front rectangle is dark blue with a white border, and the back rectangle is purple with a white border. The text "Behavior Support Plan" is centered in the front rectangle in a light green font.

Behavior
Support
Plan

A graphic consisting of two overlapping rounded rectangles. The front rectangle is dark blue with a white border, and the back rectangle is purple with a white border. The text "Behavior Intervention Plan" is centered in the front rectangle in a light green font.

Behavior
Intervention
Plan

A graphic consisting of two overlapping rounded rectangles. The front rectangle is dark blue with a white border, and the back rectangle is purple with a white border. The text "Crisis Plan" is centered in the front rectangle in a light green font.

Crisis Plan

Special Education Crisis Plan

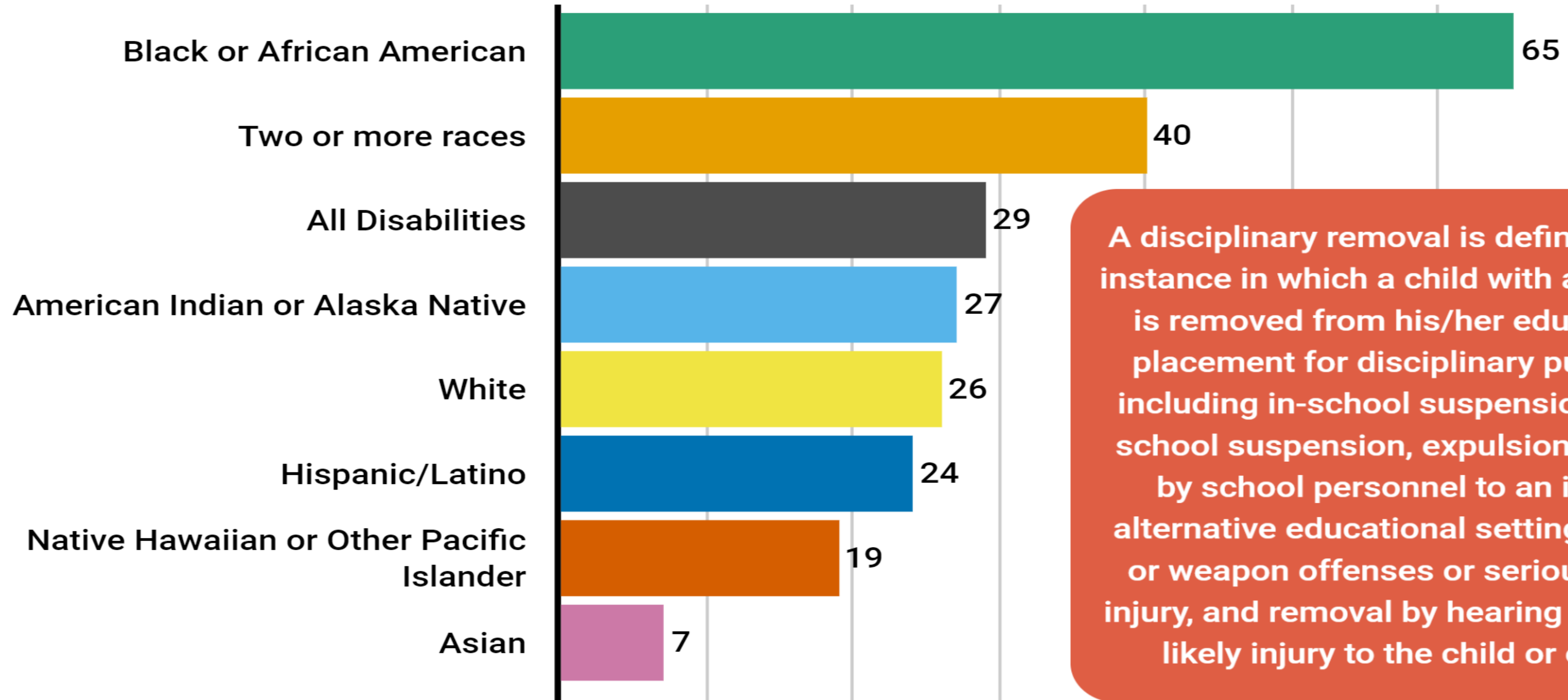
Each school district must establish a plan for addressing mental health emergencies, behaviors and crisis for special education students in crisis.

Teaching Discipline & Addressing Behaviors

Who told you that we cannot
discipline students with disabilities?

Our Goal is to Get it Right

Total Disciplinary Removals Per 100 Children or Students with Disabilities, Ages 3 to 21, By Race/Ethnicity, Served Under IDEA, Part B, in the US, Outlying Areas, and Freely Associated States: SY 2017-18



A disciplinary removal is defined as any instance in which a child with a disability is removed from his/her educational placement for disciplinary purposes, including in-school suspension, out-of-school suspension, expulsion, removal by school personnel to an interim alternative educational setting for drug or weapon offenses or serious bodily injury, and removal by hearing officer for likely injury to the child or others.

Source: U.S. Department of Education, EDFacts Data Warehouse (EDW): "IDEA Part B Discipline Collection," 2017-18. Data extracted from: <https://go.usa.gov/xG9u3>. Children and students reported in these categories may be subject to multiple disciplinary removals.

U.S. Department of Education, EDFacts Data Warehouse (EDW): "IDEA Part B Child Count and Educational Environments Collection," 2017-18. <http://go.usa.gov/xdb6v>. Data for Maine, Minnesota, Montana, Vermont, Wyoming, and Wisconsin were excluded, and data for the Virgin Islands and Vermont were not available.

Total Disciplinary Removals Per 100 Children or Students with Disabilities, Ages 3 through 21, By Race/Ethnicity, Served Under IDEA, Part B, in the US, Outlying Areas, and Freely Associated States: SY 2018-19

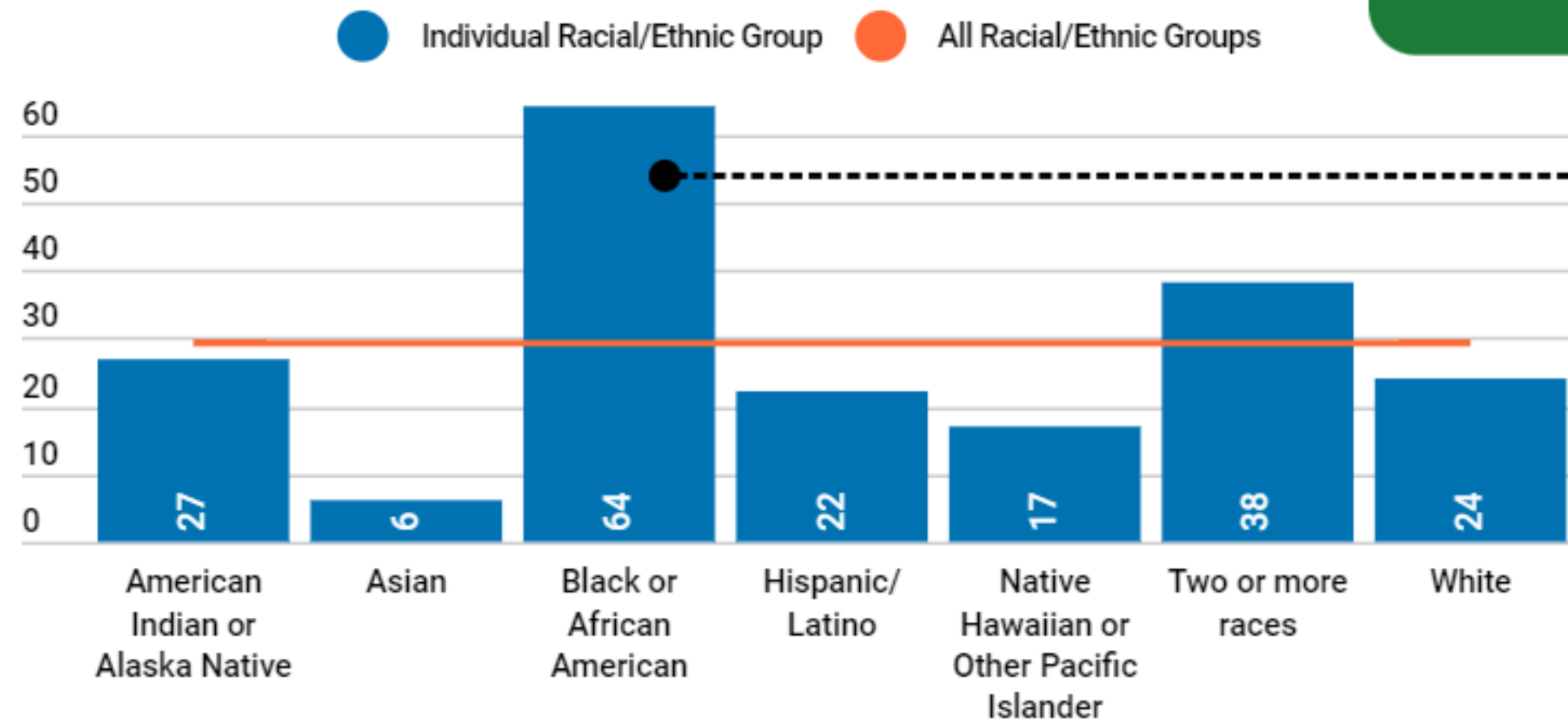
29

Number of disciplinary removals per 100 students with disabilities in the US, Outlying Areas, and Freely Associated States

2,138,492

Total Disciplinary Removals in the US, Outlying Areas, and Freely Associated States

A disciplinary removal is defined as any instance in which a child with a disability is removed from his/her educational placement for disciplinary purposes, including in-school suspension, out-of-school suspension, expulsion, removal by school personnel to an interim alternative educational setting for drug or weapon offenses or serious bodily injury, and removal by hearing officer for likely injury to the child or others. Children and students reported in these categories may be subject to multiple disciplinary removals.



Number of disciplinary removals per 100 Black or African American students with disabilities by State, Outlying Area, and Freely Associated State

<

US, Outlying Areas, an... ▾

>



64

Source: U.S. Department of Education, EDFacts Data Warehouse (EDW): "IDEA Part B Discipline Collection," 2018-19. <https://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/part-b-data/discipline/bdiscipline2018-19.csv>. Children and students reported in these categories may be subject to multiple disciplinary removals.

U.S. Department of Education, EDFacts Data Warehouse (EDW): "IDEA Part B Child Count and Educational Environments Collection," 2018-19.

<https://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/part-b-data/child-count-and-educational-environments/bchildcountandedenvironments2018-19.csv>.

Data for Wisconsin was excluded and data for the Iowa was not available.

Unique Circumstances:

Addressing Code
of Conduct Violations

34 CFR § 300.530 Authority of school personnel.
(a) *Case-by-case determination.*

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

Manifestation Determination Review

Manifestation Determination Review

For Section 504 and IDEA Special Education

When the district proposes the removal of a student that would exceed ten school days due to violation of the code of conduct, the district, parent, and relevant members of the IEP team/504 committee shall meet to conduct MDR within ten school days of the district's decision.

Relevant members of IEP team/504 committee shall be determined by parent and district.

Behavior and Discipline Under Section 504

In the same manner as we consider behavior and discipline under IDEA special education during an IEP meeting and through the evaluation, we **MUST** consider behavior and discipline during the Section 504 meeting.

The District's offer of FAPE under Section 504 should include a decision regarding discipline processes if the District has a reason to suspect that the student's disability causes directly or indirectly the student to exhibit inappropriate conduct or actions that violate the student code of conduct.

The Student Code of Conduct
Applies to All Students

34 C.F.R. Section 300.536

Change of placement because of disciplinary removals.

- (a) For purposes of removals of a child with a disability from the child's current educational placement under 300.530 through 300.535, a change of placement occurs if -
 - (1) The removal is for more than 10 consecutive school days; or
 - (2) The child has been subjected to a series of removals that constitute a pattern -
 - (i) Because the series of removals total more than 10 school days in a school year;
 - (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
- (b)
 - (1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
 - (2) This determination is subject to review through due process and judicial proceedings.

MDR Questions

■ *34 C.F.R. 300.530(e)*

Group shall determine:

- Was the conduct in question caused by, or did it have a direct and substantial relationship to, the child's disability?
- Was the conduct in question the direct result of the district's failure to implement the IEP?

34 C.F.R. 300.530(e)

Consideration of Information at MDR Meeting

Group shall review all relevant information in student's file, including:

- IEP
- Evaluations
- Prior discipline
- Attendance
- IEP Goals/supports/BIP
- Disciplinary records from the incident
- Any teacher observations
- Any relevant information provided by parents
- Accommodations

Who Decides if the Conduct is a Manifestation?

Is it Willful Conduct

or

A Manifestation of the Disability?

Students Not Yet Identified

A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in the IDEA if a district had knowledge that the student had a disability before the behavior that precipitated that disciplinary action occurred. 20 U.S.C. 1415(k)(5)(A); 34 C.F.R. 300.534(a)

Students Not Yet Identified

A district shall be deemed to have knowledge that a student has a disability if, before the behavior that precipitated the disciplinary action occurred:

The parent of the student expressed concern in writing to supervisory or administrative personnel of the district, or to the teacher of the student, that the student was in need of special education and related services;

The parent requested an evaluation of the student for special education and related services; or

The student's teacher, or other district personnel, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the special education director or other district supervisory personnel.

20 U.S.C. 1415(k)(5)(B); 34 C.F.R. 300.534(b)

Exception

A district shall not be deemed to have knowledge that the student had a disability if:

- The parent has not allowed an evaluation of the student;
- The parent has refused services; or
- The student has been evaluated and it was determined that the student did not have a disability.

Exception

If a district does not have knowledge (as described above), before taking disciplinary measures, that a student has a disability, the student may be subjected to the same disciplinary measures applied to students without disabilities who engaged in comparable behaviors.

However, if a request is made for an evaluation during the time period in which the student is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

20 U.S.C. 1415(k)(5)(D); 34 C.F.R. 300.534(d)

Special Circumstances (The BIG 3)

Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability if the child—

- (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a SEA or an LEA;
- (2) Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
- (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

34 CFR § 300.530(i) Definitions

1. Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
2. Illegal drug means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
3. Serious bodily injury has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code. (4) Weapon has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

Serious Bodily Injury Defined by Federal Law

Serious bodily injury as bodily injury which involves:

- a substantial risk of death;
- extreme physical pain;
- protracted and obvious disfigurement; or
- protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

71 Fed. Reg. 46,722 (2006).

Federal Law states that neither the state education agency nor the school district may not modify this definition.

Returning Students

34 C.F.R. Section 300.532 Appeal.

(a) General.

The parent of a child with a disability who disagrees with any decision regarding placement under §§ 300.530 and 300.531, or the manifestation determination under § 300.530(e), **or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others**, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§ 300.507 and 300.508(a) and (b).

34 C.F.R. Section 300.533

Placement during appeals.

When an appeal under § 300.532 has been made by either the parent or the LEA, **the child must remain in the interim alternative educational setting** pending the decision of the hearing officer or until the expiration of the time period specified in § 300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

Re-Entry Procedures

Procedures should include action taken when a student returns to school:

For example:

- Re-entry interview/meeting with the crisis team
- Hold an ARD committee meeting
- Seek authorization to release and exchange information from the psychiatric providers

Paradigm Shift in Thinking

Section 504 & the IDEA requires a school district to meet the needs of students with disabilities as adequately as their typically developing peers.

This includes the need for student to benefit from and learn through discipline.

Are your Section 504 and IDEA students receiving benefits from the disciplinary procedures?

If not, your Section 504 plan and IEP should identify effective discipline tools.

How We Learned Discipline

Alternative Disciplinary Options

- Restorative Discipline
- Reflective Discipline
- Restitution
 - Financial
 - Repairs
 - Community/Campus Service
- Parent Collaboration
- Saturday School
- Instructional Discipline
- Withdraw Privileges: extra-curricular activities

Use of Law Enforcement

34 C.F.R. Section 300.535

Referral to and action by law enforcement and judicial authorities.

(a) *Rule of construction.* Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

Law Enforcement

School districts cannot use law enforcement in lieu of implementing behavior plans.



School districts cannot use law enforcement as disciplinary alternative.



Unnecessary involvement of law enforcement may violate a student's right to FAPE and constitute a violation of Section 504.



Unnecessary involvement of law enforcement may traumatize the special education student.

Reporting Crimes

Federal law does not prohibit a district from reporting a crime committed by a student with a disability to appropriate authorities. If a district reports a crime, the district shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the district reported the crime. A district may transmit records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

34 C.F.R. 300.535

FERPA

Family Education Rights and Privacy Act (“FERPA”) is a federal privacy law that requires school districts to protect the privacy and confidentiality of personally identifiable information (“PII”) from an education record without the prior written consent of the student’s parents or the eligible student.

20 U.S.C. § 1232(g)

Educational Records

Records that are directly related to a student and are saved or stored by the district or a person acting for the district, including records that contain information relating to a student's special education program and services, health/medical records, and educational evaluations.

Disclosure

“Disclosure” means to permit access to; or the release, transfer, or other communication of; personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

Parents

FERPA does not distinguish between a custodial and non-custodial parent, and therefore both are entitled to access their child's PII unless a court order or state law specifically terminates their FERPA rights.

Letter to Anonymous (2020) 120 LRP 30656

The Right Vest in the Parents

The privacy protections under FERPA continue to protect the records of a student who is deceased.

Letter to Parker, 109 LRP 25215

Although the term "school official" is not defined in the statute or regulations, OCR generally interprets the term to include parties such as:

- Teachers
- Professors
- Administrators
- School Staff
- Contractors
- Disciplinary boards
- Counselors
- School Board Members
- Attorneys
- Adult School Volunteers
- Student-Work Volunteers

Student Work-Volunteers

The Family Policy Compliance Office found that a school district may not violate FERPA when it allows a student-aide to enter grade information for several high school students because the school may outsource instructional functions involving FERPA-protected information to student volunteers.

Letter to Heiligenthal (2012) 112 LRP 58499

Violates FERPA?

Teacher/Service Provider is providing virtual instruction/service in the presence of their own child or leaves IEP documents on the dining room table for their child to find.

Their child tells other children that the student is in special education.

Violates FERPA?

A school employee is at church services, and during the call for prayer request, the employee stands up and asks the church to pray for the student in her class who is in a wheelchair because the student's mother is in the hospital and the child keeps getting suspended from school and is acting out because of his PTSD.

Common Exceptions

- Health and Safety Emergency
- To comply with a judicial order or subpoena
- The victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense concerning the results of the disciplinary hearing
- Title IX notice of Outcome
- The US Comptroller General, US Attorney General, US Secretary of Education, State and Local Education Agencies

Emergency

FERPA allows a district to deem a situation an emergency if “there is an articulable and significant threat to the health and safety of a student or other individuals.” *34 CFR § 99.36(c)*.

Consider a student who made a credible threat against another student's life. The safety of the other student is threatened such that the family may need to take legal action or other steps to protect their child.

Staff Conduct

Clear Expectations

- **Use of the District's software**
- **Use of social media**
- **Use of personal mobile phones**
- **Discussing students**
- **Non-educational staff or other teachers**
 - Spouse
 - Child of the educator

Question & Answer



Geneva Jones

National Speaker and Special Education Law Expert

Licensed in:

California

New York

Texas

Geneva Jones & Associates
2245 Texas Drive, Suite 300
Sugar Land, TX 77479

WWW.Geneva-Jones.Com

