

**SPECIAL
POINTS OF
INTEREST:**

- Thorough consider a students need for a 1-1 aide to receive FAPE and accurately document the aides role and responsibility in the child's IEP
- LRE is not always the child's neighborhood school.
- OSEP issues Dear Colleague letter, FAQs and Guidance for special education discipline

**INSIDE THIS
ISSUE:**

- Use of 101 Aides P. 1, 5
- OSEP Guidance on Special Education Discipline P. 1-3
- What Do You Think? P. 4

Use of 1-1 Aides for Students

Determining whether or not a child with a disability needs a 1-1 aide can be a difficult decision for IEP Teams.

Parents may demand a 1-1 aide for their child or the classroom teacher may advocate that a 1-1 aide would help her with a difficult student. While it may have been easier in the past to simply say yes and avoid conflict, with the shortage of

staff, especially paraprofessionals, IEP Teams must thoroughly consider whether a student needs an aide in order to receive FAPE and consider whether or not that aide needs to be dedicated solely to one student. While there certainly will be students that do need the assistance of a 1-1 aide, others may benefit from no aide at all or still receive FAPE by sharing an aide or by

using other supports in the classroom. Current students with aides may benefit from developing fading plans to gain more independence

Whatever decision is made, IEP Teams must be sure to properly communicate that to families. Additionally, be precise and use accurate wording in the IEP to avoid confusion and conflict down the road.

[Read More about 1-1 Aides on page 5](#)

OSEP Guidance on Special Education Discipline

The U.S. Department of Education, Office of Special Education Programs issued a *Dear Colleague* letter and supporting documents last summer to address the agency's concerns with "disparities in the use of discipline for children with disabilities and the implementation of the IDEA's discipline provisions." Along with the letter, OSEP issued a Q & A and a Guide to addressing the needs of children with disabilities and discipline and providing positive and proactive approaches to support children with disabilities.

[Read more about OSEP's Guidance on Discipline on pages 2 and 3](#)

OSEP Guidance on Discipline

(Continued from page 1)

The *Dear Colleague* letter begins by emphasizing that data collected regarding student discipline demonstrates a disparity in the use of discipline for children with disabilities versus children who are not disabled. School age children with disabilities under the IDEA represent 13.2% of the total student enrollment but account for 20.5% of in school suspensions and 24.5% of out of school suspensions. Further data shows that children with disabilities made up 80.2% of students who were physically restrained and 77.3% of children subjected to seclusion. The numbers are even higher for black children with disabilities.

OSEP is asking to SEAs and LEAs to reexamine their policies, practices and procedures to reduce the disparity. OSEP advises that this can include identifying ways to better prepare educators to implement effective, preventative, and responsive practices rather than disciplinary exclusions. The Q & A and Guidance are issued to assist SEAs and LEAs in implementing these changes.

The **Question and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions** is a good summary of the legal requirements related to behavior supports and discipline under the IDEA in a Q & A format. It addresses all aspects of these provisions including providing an overview of discipline procedures; what is considered to be a change of placement under the IDEA; Interim Alternative Educational Settings; Special Circumstances (45 day placements) for discipline; Manifestation Determinations; requirements for conducting FBAs and developing Behavior Support Plans; Services that must be provided during different periods of exclusion; Thought to Be Eligible Students; and disputes.

If you have not reviewed discipline provisions in a while, this document is an excellent refresher. Remember though that PA law does at times provide different provisions for discipline, including but not limited to limiting short term discipline to 15 total days in a school year and additional protections for intellectually disabled students.

The **Positive, Proactive Approaches to Supporting Children With Disabilities: A Guide For Stakeholders** stresses the importance of providing programs to support the social, emotional academic and behavioral needs of children with disabilities, to consider the harmful effects the out of school discipline has on children and to use alternative strategies and supports to address learning and behavioral needs. This document provides resources, strategies and evidence-based practices (although OSEP does recognize that they are not required by law) to assist with this outcome. These include:

1. Proactively Addressing Disparities in, and Negative Outcomes from Exclusionary Discipline: While OSEP would *like* states and schools to adopt policies and practices that significantly limit when disciplinary exclusions are used, this recommendation is not required by law. OSERS view is that disciplinary exclusions should not be used for non-violent offenses such as tardiness and absenteeism or for subjective offenses like defiance and disrespect. While this may not be realistic, District's should keep in mind that the IDEA's disciplinary provisions may only be used to the same extent they would be used for a regular education student. For example, if a regular education student would get detention for disrespect, a special education student should not be suspended for the same actions.

OSEP Guidance on Discipline

(continued from Page 2)

Nevertheless, OSERS goes on to say that the critical step for schools is to use the following positive, inclusive and evidence based practices that they stress will reduce the need for exclusionary discipline, restraint and seclusion significantly:

Evidence-Based Approach to Support and Respond to Student Needs. While the strategies suggested by OSEP are nothing new or innovative, the Guide is worth reviewing to ensure that your District is implementing some if not all of these practices. No one can disagree that implementing preventative strategies is helpful to try to avoid discipline. Some of the strategies suggested include:

- Comprehensive MTSS programs designed to improve social, emotional, academic and behavioral outcomes that include:
 - Universal strategies and supports designed for all children
 - Targeted strategies and supports for children with additional needs; and
 - Intensive strategies and supports to meet specific needs of individual children
- Universal Design for Learning (UDL): is a framework designed to encourage educators to intentionally design instruction and assessment to promote multiple means of engagement, representation and action/expression. It is a strengths based approach to learning that is designed to increase developmental outcomes and academic achievement for all children.
- Positive Behavioral Intervention and Supports (PBIS): is also a tiered MTSS framework providing universal, targeted and individual levels of behavioral support for students.
- Conducting timely Functional Behavioral Assessments to identify the reasons behind or factors contributing to the child's behavior. The FBA should be designed to provide useful information to the IEP Team to develop effective interventions that will prevent the behavior from occurring, thereby reducing discipline.

- The information and data collected in the FBA should be used to develop an individualized, proactive and preventative Behavior Intervention Plan (BIP). The BIP describes how antecedents that trigger the behavior will be addressed and how new skills and replacement behaviors will be taught and reinforced. Always review and revise the BIPs periodically to ensure its effectiveness.

Investing in School and Educator Capacity. The Guide further emphasizes the importance of states and school districts investing time and resources to ensure that educators are equipped with skills and supports to appropriately respond to student behavior.

The Guide suggests that educators should have access to ongoing professional development, coaching and consultation in these areas to improve knowledge and skill. According to OSEP, IDEA Part B money can be used to provide professional development and training to address discipline disparities, improve school climate and provide behavioral support.

Included within the Guide is a list of multiple federally funded resource center that can be used by schools to provide information and resources related to behavior.

In the end, neither the Letter, Q & A or Guide provide any new information or strategies. However, it does highlight the Department of Education, OSEP, OSERS and OCR's focus on ensuring equality and consistent practices in addressing discipline to prevent and avoid students with disabilities or other minorities from being removed from school in a disparate fashion. These documents do stress the importance of students being in school to access their education, especially in light of COVID when students missed a significant block of in person instruction.

School administrators should review the three documents to understand this focus and ensure that your District has the supports and service in place to address student behavior in a fair and positive manner.

WHAT DO YOU THINK?

Taylor is a special education student who qualifies for special education under the IDEA as a student with an intellectual disability, autism and speech and language impairment. The District recommends placement for Taylor in its autistic support program that provides an ABA model, discrete trial training and intensive autistic support services. The problem is—this program is located in a school building that is not Taylor’s neighborhood school.

Parents want Taylor to attend his neighborhood school and want his program to focus on academics. They feel the staff at his neighborhood school can implement the same programming he would get in the autistic support classroom. Is the neighborhood school Taylor’s LRE?

In a recent PA Hearing Officer decision, the evidence supported that the student needed a coordinated autistic support program that included teachers, therapists and behavior specialists working closely together in planning, instruction, services and consultation to deliver a comprehensive program to meet the student’s needs. The Hearing Officer found that the student needed this cohesive autistic support program in order to yield meaningful education benefit and significant learning.

He found that while the District arguably could have individuals provide instruction and services in the neighborhood school, it would not be a coordinated and comprehensive program to meet the student’s needs. The District was not required to replicate an autistic support program in every elementary building in the District so all students with autism could be educated in their neighborhood school.

Accordingly, the hearing officer ordered the student’s educational placement to be at the school building where the District’s autism support program is located.



1-1 Aides In IEPs

IEP Teams should document decisions regarding the need for an aide and role of that aide and other individuals providing support to the student.

To do	Details
Thoroughly discuss need for an aide with the IEP Team	<ul style="list-style-type: none"> • Like all services and related services, inclusion of an aide should be based on need • The Team should ask whether the student needs this service in order to receive a free, appropriate public education • Discuss whether the student needs a dedicated aide, a shared aide, or whether other supportive personnel can be used
Clearly state the reason(s) the student needs an aide	<ul style="list-style-type: none"> • The Present Education Levels or SDI should clearly state why the student needs an aide • Discuss and document whether the aide is for behaviors, transitions, communication, mobility throughout the building, academic assistance, etc. • The reasoning for the aide can be used to support decisions about the amount of time, whether someone else can support the student, or plan to fade • This also sets parameters for the aide so they know their role
Specify the amount of the time the aide will be with the student	<ul style="list-style-type: none"> • Don't just write "all day" in the SDI if the aide is not with the student for that period of time • Specify when the aide will be working with the student: for example: 1-1 during math class; or 1-1 during transitions in the hallway • If the aide is not needed during different classes or different times in the day (ie lunch or during a co-taught class) document that in the IEP • This helps to set clear expectations about the aide's role
Clarify whether other support personnel can support the child if the aide is absent or quits	<ul style="list-style-type: none"> • This is essential with staff shortages—can someone else cover the aide's responsibilities if they quit, have to get reassigned or are out on leave • Can another adult support the child—like a co-taught teacher or other staff?
Annually review whether the student continue to need an aide or whether the aide can be faded	<ul style="list-style-type: none"> • As with every service a student receives, do not just assume that the need continues from year to year. • Documenting the need, the reason and when the aide is with the student can help to determine if a 1-1 aide continues to be necessary • Additionally, as students get older, teams may want to consider fading the aide to allow the student to become more independent as they transition toward graduation



Andrews & Price, LLP

1500 Ardmore Boulevard
Suite 506
Pittsburgh, PA 15221

Phone: 412-243-9700
Fax: 412-243-9660
E-mail: tandrews@andrewsandprice.com

If you have a special education issue you would like to see addressed in subsequent issues of this newsletter, please write to or e-mail Trish Andrews at the above address.

Andrews & Price, LLP is the pre-eminent law firm in Western Pennsylvania in the practice of Public Sector Law. Our attorneys have more than 60 years of combined experience servicing School Districts. We provide a full range of legal services to our clients, including serving as Solicitor for various school districts, serving as special counsel for special education due process hearings, presenting seminars relating to the Reauthorization of IDEA and representing our clients in all types of litigation, including defense of numerous civil rights suits in federal and state Court.



Tri-State Area School Study Council
Department of Administrative and Policy Studies
School of Education
University of Pittsburgh

230 S. Bouquet Street
4302 Wesley W. Posvar Hall
Pittsburgh, PA 15260
Phone: (412) 648-7175
Fax: (412) 648-7185

TRI-STATE AREA SCHOOL STUDY COUNCIL

Tri-State Area School Study Council of the Administrative and Policy Studies Department of the School of Education of the University of Pittsburgh seeks ways to increase organizational capacity in schools through problem solving, technical service, and staff development so all students will be better prepared to make contributions to both our democratic society and the world community.

Tri-State was founded in 1948 by Dr. Maurice Thomas. Since its inception, Tri-State has provided a wealth of comprehensive technical assistance, strategic planning, and employment searches to school districts in the Western Pennsylvania region. Tri-State's vast knowledge and experience base draws upon a membership of 100+ school districts and a team of leaders and consultants with rich backgrounds in education, including former school superintendents and professors of education.

Dr. Diane Kirk, Director
PH: (412) 648-1716

Consult Your Solicitor!

The legal issues discussed herein are for the purpose of providing general knowledge and guidance in the area of special education. This newsletter should not be construed as legal advice and does not replace the need for legal counsel with respect to particular problems which arise in each district. As each child is unique, each legal problem is unique. Accordingly, when districts are faced with a particular legal problem, they should consult their solicitor or with special education counsel to work through the issues on a case by case basis.