



# **IDEA**

## **Part B**

### **Discipline Data**

### **Collection Questions**

### **and Answers**

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# IDEA Part B Discipline Data Collection Questions and Answers Revised March 2017

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*The purpose of this document is to assist states with the collection of data on children with disabilities served under the Individuals with Disabilities Education Act (IDEA) who were subject to disciplinary removal. States should use this document to supplement the instructions provided in the EDFacts file specifications for the EDFacts files that are used to report IDEA disciplinary removal data (FS005, FS006, FS007, FS088, FS143, and FS144).*

*The EDFacts file specifications are located on the U.S. Department of Education (the Department) website at [www.ed.gov/edfacts](http://www.ed.gov/edfacts). The Office of Special Education Programs (OSEP) provides instructions for the IDEA EDFacts disciplinary removal files to communicate data collection requirements under IDEA to state special education program offices. All states that receive IDEA Part B funds must submit all data elements outlined in the EDFacts file specifications.*

**1. The instructions for the EDFacts file specifications for reporting discipline data for children with disabilities (FS005, FS006, FS007, FS088, FS143, and FS144) include definitions for several data elements. It is difficult to determine whether data submitted in these files are compliance related or results related. What is the state’s obligation for submitting the files?**

States use six EDFacts files to report IDEA discipline data for children with disabilities:

- FS005 — Children with Disabilities (IDEA) Removal to Interim Alternative Educational Setting
- FS006 — Children with Disabilities (IDEA) Suspensions/Expulsions
- FS007 — Children with Disabilities (IDEA) Reasons for Unilateral Removal
- FS088 — Children with Disabilities (IDEA) Disciplinary Removals
- FS143 — Children with Disabilities (IDEA) Total Disciplinary Removals
- FS144 — Educational Services During Expulsion

The annual due date for these files is the first Wednesday in November. These files should contain accurate data and be submitted in a timely manner to meet reporting requirements. The timeliness, accuracy, and completeness of these discipline data are taken into consideration as a part of OSEP’s annual review and determination process.

Section 618 of IDEA requires states to provide data regarding discipline of children with disabilities (Sections 618(a)(1)(A)(v) and (a)(1)(D) and (E)). Section 618 also requires states to submit any other data requested by the Secretary. The Department uses the “other data” to examine the program, state, or child outcomes in priority areas. Failure to provide the requested data constitutes a failure to comply substantially with program requirements (34 CFR §76.720(c)(2) (January 25, 2007)).

States use discipline data reported in the IDEA EDFacts disciplinary removal files in the measurement of Annual Performance Report (APR) Indicator 4. OSEP uses the discipline data to understand the status of state implementation of the discipline requirements in IDEA, Part B; report to Congress on the implementation of IDEA; monitor state performance; examine issues related to disproportionality; and in policy development decisions. The Department uses all data submitted for IDEA purposes in planning research and technical assistance priorities.

- 2. The definition for out-of-school suspensions states: “This includes. . .removals in which the child continues to receive services according to his or her IEP [individualized education program]” (see the Definition section in the IDEA ED*Facts* file specifications for FS006, FS088, and FS143). Does this mean that by reporting a student as being suspended out of school for greater than 10 days, a failure to provide a free appropriate public education (FAPE) is implied even if the student continues to receive services according to his or her IEP?**

No. The point of the instructions is to clarify that states should report all out-of-school suspensions. The IDEA ED*Facts* file specifications for file FS006 distinguish between children with out-of-school suspensions totaling 10 days or less and children with out-of-school suspensions totaling more than 10 days.

- 3. What is the definition of educational services?**

For the discipline data collection and students with disabilities, educational services are defined as special education and related services that the student receives, as provided in Section 621(a)(1), that allow him or her to progress toward meeting the goals set out in the child’s IEP. Adapted from Section 615(K)(1)(D)(i).

- 4. What is a manifestation determination?**

A manifestation determination is a review by the parent, the local education agency (LEA), and relevant members of the IEP team of all relevant information in the student’s file, including the child’s IEP and any teacher or parent observations, to determine whether the act that constituted a violation of the code of student conduct was a manifestation of the child’s disability. See Section 615(k)(1)(E).

- (E) Manifestation determination.—  
 (i) In general.—Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant

members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents to determine—

- (I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or  
 (II) if the conduct in question was the direct result of the local educational agency’s failure to implement the IEP.

(ii) Manifestation.—If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child’s disability.

- 5. What happens if the student’s violation of a code of student conduct is a manifestation of the student’s disability?**

If the violation of a code of student conduct is due to a student’s disability, the child’s IEP team must conduct a functional behavioral assessment or review an existing behavioral intervention plan (BIP) and, unless special circumstances exist as described in Section 615(k)(1)(G), return the child to the placement from which the child was removed, unless the parent and LEA agree otherwise. See Section 615(k)(1)(F).

(F) Determination that behavior was a manifestation.—If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child’s disability, the IEP Team shall—

- (i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such

child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G); (ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and (iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

**6. If a student received an IEP in the middle of the school year and was suspended twice, once at the beginning of the year and once at the end, does the first suspension (prior to having an IEP) count?**

No. When reporting IDEA discipline data, the state should include only the suspension that took place during the time that a child had an IEP.

**7. Our state definition of suspension is different from the one provided by OSEP in the data collection. For example, if the student continues to receive services, our state does not consider this to be a suspension. The state also does not count in-school removals from the classroom or being sent home for a partial day as suspensions. Which definition should we follow for purposes of collecting the required discipline data?**

When reporting IDEA data, states must use federal definitions for data elements. While OSEP recognizes that there is considerable variability across states with regard to practices and terminology, it is imperative that states adhere to the established reporting instructions and definitions that the *EDFacts* file specifications provide in order to ensure the interpretability of the data and ability to aggregate the data

across states. Therefore, states must adhere to the established guidelines in the *EDFacts* file specifications for data reporting in all of the IDEA data collections, even when those guidelines are in conflict with the terminology and data reporting practices in place within the states.

**8. What is the definition of in-school suspension and why is OSEP collecting these data?**

The Definitions section of the *EDFacts* file specifications for files FS006, FS088, and FS143 defines in-school suspensions as the following:

**“In-school suspensions** - Instances in which a school temporarily removes a child from his or her regular classroom(s) for disciplinary purposes but the child remains under the direct supervision of school personnel. Direct supervision means school personnel are physically in the same location as students under their supervision.”

OSEP is concerned that, through the overuse of in-school suspensions, schools may remove many students from their placements that were determined based on their IEPs. In-school suspensions represent an interruption in the delivery of a student’s special education services. Collecting data on in-school suspensions will allow OSEP to determine the extent to which schools remove students from their placements and will assist in making states and school districts accountable for their in-school suspension policies.

**9. Why does the definition of in-school suspension require a count of all in-school suspensions, even if the student with a disability continues to access the general education curriculum during the in-school suspension?**

An in-school suspension represents a removal from the student’s IEP-determined placement, regardless of whether a student has access to the general education curriculum during the in-school suspension. OSEP is interested in collecting data on the extent to which schools remove students from their IEP placements for disciplinary reasons.

**10. Why doesn't the definition of in-school suspension specify that there is a cessation of services during disciplinary removal?**

An in-school suspension includes a removal from a student's IEP-determined placement, regardless of whether the student receives his or her IEP services during the in-school suspension.

**11. Why doesn't OSEP focus on whether a suspended child has access to the general education curriculum rather than focusing on whether the suspension is in-school or out-of-school?**

Both in-school and out-of-school suspensions represent removals from the student's IEP-determined placement, that is, the educational environment(s) that the IEP team determined was the appropriate placement for the student prior to the disciplinary removal, regardless of whether a student has access to the general education curriculum during the disciplinary removal. OSEP is interested in collecting data on the extent to which schools remove students from their IEP-determined placements for disciplinary reasons.

**12. Should states include in-school suspensions administered as part of a BIP in the discipline data?**

Yes. States should report all in-school suspensions to OSEP, including those administered as part of a BIP.

**13. What does a "permanent change in . . . placement" (in the Guidance section of ED*Facts* file specification documents for files FS005, FS006, and FS007) mean?**

The term is used in the Guidance section of the ED*Facts* file specifications to describe those situations where, following a student's violation of a code of student conduct, the IEP team decides to change the student's placement, and such placement is intended to be permanent (i.e., extend beyond the period of any disciplinary action for the duration of the IEP).

**14. How are temporary removal and permanent change in placement defined?**

A temporary removal occurs when a school removes a student for a limited period of time from his or her

placement, in which the school is to deliver special education and related services according to the active IEP, due to a disciplinary offense. Permanent change in placement is not defined in the IDEA statute. However, in the context of the instructions for this data collection, it means that the IEP team determines that the school should remove the student from the current placement and permanently place him or her in a less restrictive environment. States do not report permanent changes in placement as disciplinary removals for this data collection.

**15. Does serious bodily injury include serious bodily injury to the offender or to the victim only?**

Serious bodily injury includes only injuries to another person. Pursuant to Section 615(k)(1)(g), a school may remove a student to an Interim Alternative Educational Setting (IAES) for not more than 45 days if "a child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency," without regard to whether the IEP team determines the student's behavior is a manifestation of the child's disability.

**16. If a school removes a student in a state juvenile correction facility from class because of discipline issues and returns the student to his or her quarters for a "cooling off/time out" period of time, then returns him or her to class later in the day or the next day, should the school report the student as receiving an in-school or out-of-school suspension?**

The student would qualify as having an in-school suspension only if the student remains under the supervision of school personnel. Sending the student to his or her living quarters to cool off is more closely aligned with the definition of out-of-school suspension, and the disciplinary action would be better classified as an out-of-school suspension.

**17. Should the children reported as expelled in ED*Facts* file C144 also be reported in any of the other IDEA ED*Facts* discipline files?**

Yes. Expulsions that schools report in FS144 would overlap with some of the removals the school reports in other files. Section 2.4–Guidance in each of the file specifications for the

IDEA ED*Facts* discipline data files contains a table that details which other files report the same types of removals. In the file specification for FS144, the table in Section 2.4--Guidance states that the types of removals reported in FS144 are also reported in FS006 and FS143.

**18. OSEP marked my state as not accurate for ED*Facts* file FS088 in the OSEP State Data Quality Report (in OMB Max). I do not understand the following edit check:  $1A + 2 + 3A + 3B + 4A + 4B \geq 5B + 5C + 5D$ . How can the left side of the equation be greater than or equal to the right side of the equation?**

The reason that the sum on the left can be greater than or equal to the sum on the right is because the school may report the same child in more than one column if that child committed more than one offense. When the data system summarizes and reviews the six state-level IDEA ED*Facts* discipline data files using the legacy Table 5 format, the columns are only mutually exclusive for a given child for the same offense. A school may suspend a child (out of school) on some occasion for fighting but unilaterally remove the child on another occasion for a drug offense. In that case, the system will count the child in both FS006 and FS007. However, the system will reflect that child only once in the cumulative totals that are reported in file FS088.

**19. What is the definition of an Interim Alternative Educational Setting (IAES) and what is the number of days a student may be in that setting?**

Interim Alternative Educational Setting is defined as an appropriate setting, that the child's IEP team determines, in which the child is placed for no more than 45 school days. This setting enables the child to continue to receive educational services and participate in the general education curriculum (although in another setting) and to progress toward meeting the goals set out in the IEP. As appropriate, the setting includes conducting a functional behavioral assessment and providing behavioral intervention services and modifications to address the behavior violation so that it does not reoccur.

**20. Must a child continue to receive services when placed in an IAES?**

If a district places a child in an IAES due to special circumstances, as described in Section 615(k)(1)(G), or removes a child from his or her current placement pursuant to 34 CFR §300.530(c), the child must continue to receive services to participate in the general education curriculum and to progress toward meeting the goals of the child's IEP, as discussed in Section 615(k)(1)(D).

The child also must receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications to address the child's behavior so that the behavior does not reoccur. However, a district must provide services to a child with a disability whom it has removed from his or her placement for 10 school days or less in that school year *only if* the district provides educational services to a child without disabilities whom it has similarly removed.

**21. Under what circumstances may a child be removed to an IAES for more than 10 days?**

A school may remove a child for more than 10 days, but not more than 45 school days, if he or she carries a weapon, possesses illegal drugs, or inflicts serious bodily injury upon another person. See Section 615(k)(1)(G).

- (G) 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, in cases where a child—
- (i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;
  - (ii) 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 a State or local educational agency; or

(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

Additionally, a hearing officer may place a child in an IAES for not more than 45 days at a time if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or others. See Section 615(k)(3)(B)(ii)(II). Finally, under Section 615(k)(1)(C), if an IEP team determines that the behavior that led to a violation of a code of student conduct is not a manifestation of the child’s disability, school personnel may choose to place a child in an IAES for the same duration as that of a disciplinary action applied to students without disabilities for the same violation, so long as the child continues to receive services consistent with Section 615(k)(1)(D) and 34 CFR §300.530(d).

**22. If a student is subject to both an out-of-school suspension and an IAES removal for the same offense, does the school report this as two removals or a single removal since the removal is based on the same incident or event?**

If a student is subject to both an out-of-school suspension and an IAES removal for the same offense, the school should report that student, depending on the length of the suspension, in *EDFacts* file FS006 and again in *EDFacts* file FS005. In this case, the same offense results in two separate removals. As *EDFacts* file FS088 is a report of total disciplinary removals, the school should report the removals separately even though they resulted from the same disciplinary offense.

**23. If a district is providing special education services to a private school student who has a services plan in a private school that is located within the district and the school removes the student to an IAES or suspends or expels the student, should the district include such a student on the discipline data report?**

No. The Part B IDEA regulations at 34 CFR §§300.132(c) and 300.133(c) clarify the types of data that an LEA and state education agency (SEA) must report related to private school

students on services plans (i.e., parentally placed private school children with disabilities). These regulations do not require the LEA or SEA to provide discipline data on a parentally placed private school child with disabilities who has a services plan if the school removes that child to an IAES or suspends or expels him or her.

**24. If the resource office removes a student from class for misbehavior and the school turns the student over to the police, should the school report this incident in the special education discipline report? If so, where does it fit? Resource officers are usually paid 50 percent by the school district and 50 percent by the local police department, so they may be considered a district employee. Is this a unilateral removal by school personnel? Is the local detention center classified as an IAES?**

A student who is incarcerated and/or removed from school grounds by police officers is not considered to be either suspended or expelled. A suspension is defined as specific action taken on the part of school personnel to remove a student from his or her current placement to an appropriate setting in response to a disciplinary offense (see 34 CFR 300.530). Although in the scenario, a student may be removed from school grounds under the authority of the personnel paid partially by the school or police officers, that student would be incarcerated under the authority of the courts, not by the school personnel. The school would not report removal of the student from the school as a suspension or expulsion unless the school personnel determined that it was appropriate to also formally suspend the student once he or she returned to school.