



OFFICE OF RESEARCH AND EDUCATION ACCOUNTABILITY

INFORMAL REMOVAL OF STUDENTS WITH DISABILITIES IN TENNESSEE



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Introduction

In February 2024, the Comptroller’s Office of Research and Education Accountability (OREA) received a legislative request to research the use of “informal exclusionary discipline practices” specifically affecting students with disabilities covered by the Individuals with Disabilities Education Act (IDEA) in Tennessee public schools.^A

The term informal exclusionary discipline, and the ways it manifests in schools, is more commonly referred to as “informal removal.” As such, this report uses the term “informal removal” in place of, and synonymous with, “informal exclusionary discipline.”

The term “informal removal” came into use fairly recently. In 2016, the U.S. Department of Education (USDOE) published a guidance document that addressed the removal of students with disabilities from a classroom “either formally (e.g., suspension) or informally (e.g., asking the parent to keep the student at home for a day or more).”¹

In a 2022 report, the National Disability Rights Network described the practice of administratively removing “a child from school for a sufficient period of time to constitute a ‘change of placement’ without the necessary legal protections,” calling it “informal removal.”² Informal removal has likely occurred for many years, but because the term is somewhat new, the practice is sometimes confused with other discipline practices, such as restraint and isolation, related to students with disabilities.

The Tennessee Department of Education (TDOE) describes an informal removal as “any action taken by school personnel in response to a student’s behavior that excludes the student for all or part of the school day and that is not officially coded as a suspension or expulsion.” One example of an informal removal would be a school administrator contacting a parent of a student with a disability who has had a behavioral incident in a classroom, asking the parent to come pick the child up for the remainder of the school day or longer, and not documenting the student’s suspension and the reason for it. A pattern of informal removals can result in a significant loss of instructional time for students with disabilities and, for those assigned to inclusive general education classes, reduce the time spent being educated alongside their general education peers.

The use of informal removals violates federal and state laws and regulations in place to protect the education rights of students with disabilities.³ Informal removals are not permissible under IDEA, and they are not a permissible form of discipline in students’ Individualized Education Programs (IEPs). Conversely, *formal* removals are documented suspensions and expulsions of students, either students with disabilities or general education students, that are carried out according to federal and state laws.

This report:

- describes IDEA – the federal law that governs how states and school districts serve students with disabilities – and particularly how the law governs disciplinary and support decisions regarding students with disabilities;
- describes what OREA analysts learned from discussions with a variety of Tennessee educators, advocates, and consulting service providers^B about informal removals;
- provides insights that may assist legislators and other stakeholders in addressing informal removals; and
- provides two recommendations addressed to schools and districts.

^A See Appendix C for a copy of the request letter.

^B Districts and schools often contract with service providers who assist administrators by providing training, treatment, and assessments.

Research methods

OREA relied on two primary forms of information for this report: document review and interviews. Analysts consulted state and federal law and regulations as well as guidance found in documents from the USDOE, TDOE, various advocacy organizations, and other sources. OREA analysts conducted interviews with staff of TDOE, relevant advocacy groups, university administrators and faculty, and other parties.

To gather qualitative information about trends, personal experiences, and professional insights, OREA analysts also interviewed staff from school districts and schools across the state. These interviews included 12 district special education administrators from seven of Tennessee’s eight Centers of Regional Excellence (CORE) geographic regions of the state.^c District administrators were considered to have broad knowledge of, and experience with, practices at schools in their districts. District interviewees came from some of the most populated counties in the state and some of the least populated counties. The counties also varied in their level of economic affluence.

Interviews were also conducted with three teachers from across the state to learn about the factors that can contribute to informal removals. Interviewed teachers taught different grade levels and came from different schools and districts.

To learn more about the preparation of teachers to work with students with disabilities in general education classrooms, OREA interviewed professors and department chairs at three Tennessee universities with large teacher education programs.

OREA also surveyed roughly 1,900 public school principals in Tennessee (including public charter schools) to collect their perspectives.^d The survey asked questions about the frequency of informal removals, the number of students informally removed, and the causes of informal removals. Supports that help prevent informal removals and teacher preparation were also covered in the survey. Survey respondents came from schools in 77 of Tennessee’s 95 counties, including schools from each CORE region. A total of 282 individuals responded to the survey (of whom 196 completed the survey in full), a 15 percent response rate. Survey results should not be considered indicative of the sentiments and opinions of all principals in Tennessee.

Exhibit 1: Breakdown of those interviewed and surveyed by OREA

Category of interviewee and respondent	Total interviewees and respondents	Total contacted	Regions represented	Rurality
District special education administrator	12	47	East, Mid Cumberland, Northwest, South Central, Southeast, Southwest, and Upper Cumberland regions	City, suburban, town, and rural
Teacher	3	19	First, Mid Cumberland, and Southeast regions	Suburban and town
Advocate/expert/provider	5	6	N/A	N/A
Educator preparation provider (EPPs)	3	3	East, Middle, and West Grand Divisions	N/A
Principals or other school administrators (survey responses)	282 (196 full responses)	1,888	East, First, Mid Cumberland, Upper Cumberland, South Central, Northwest, Southeast, and Southwest regions	City, suburban, and rural

This report focuses on students with disabilities whose educational rights are protected under the IDEA. It does not include information about students who are protected under Section 504 of the Rehabilitation Act of 1973, which is a federal civil rights law that prohibits discrimination against individuals with disabilities in federally

^c OREA contacted all districts in the remaining region but was unable to conduct any district-level interviews in the region.

^d Principals could delegate the survey response for their school to other school officials. Twenty-one survey respondents were assistant principals, vice principals, or other school administrators.

funded institutions. The Code of Federal Regulations (CFR), Title 34 lists 13 specific disability categories that may entitle a student to receive special education and related services.⁴ (Tennessee has two additional disability categories and one optional category. See Appendix B.) To qualify for IDEA, a child’s disability must “adversely affect” the child’s education and must result in a need for special education or related services. Section 504 is broader and has no associated list of disabling conditions. To be protected, a Section 504 student must be determined to (a) have a physical or mental impairment that substantially limits one or more major life activities; (b) have a record of such impairment; or (c) be regarded as having an impairment.⁵

OREA analysts encountered substantial limitations when researching informal removals. Neither the state nor districts nor schools collect data on informal removals as these removals are done informally and so are not formally recorded, documented, or tracked. This lack of data is a significant limitation to what can be known about informal removals, especially regarding their frequency, the number of students informally removed, and the reason for each informal removal.

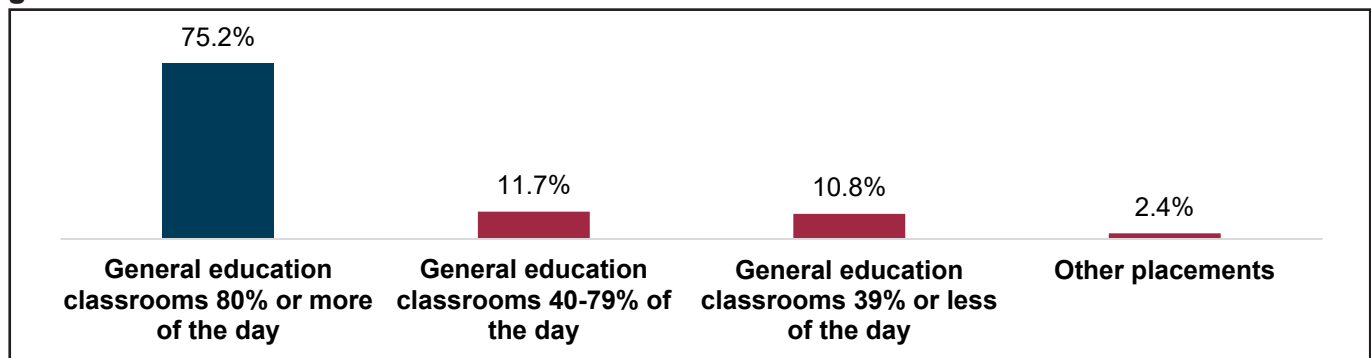
Another significant limitation is districts’ and schools’ concerns about possible legal issues. The informal removal of students with disabilities violates federal law under IDEA, and schools and districts could be subject to legal action from affected families by admitting to the practice. Accordingly, district and school representatives may have been reluctant to respond candidly and fully to OREA’s interview and survey questions.

Further research, perhaps carried out by TDOE, is potentially needed to build on the knowledge of informal removals gained through OREA’s research for this report.

An introduction to the federal and state laws and requirements that protect the educational rights of students with disabilities

In Tennessee public schools, about 14 percent of students are students with disabilities with rights protected under the federal IDEA, originally enacted by Congress in 1975.⁶ The IDEA guarantees each eligible child with a disability a *free appropriate public education* (commonly referred to as FAPE) that emphasizes special education and related services designed to meet each child’s unique needs. A key purpose of the IDEA is to ensure students with disabilities are provided with services that allow them to remain in an appropriate learning environment and benefit from instruction. The IDEA and Tennessee state rules⁷ require that students with disabilities be educated in the least restrictive environment (LRE), which means they should be learning in the same classroom as general education students to the maximum extent appropriate. As of the 2023-24 school year, about 75 percent of Tennessee students with disabilities spend 80 percent or more of the school day in general education classrooms.^E

Exhibit 2: Most students with disabilities spend 80 percent or more of the school day in general education classrooms



Notes: (1) Percentages based on totals from the 2023-24 school year. (2) Other placements include separate schools, residential facilities, homes or hospitals, correctional facilities, and private schools. Students attending private school in this exhibit are also receiving services through the district on an individualized service plan. (3) Exhibit includes students aged five in kindergarten through 21 years old who are in a federal disability category.

Source: Tennessee Department of Education.

^E In school year 2023-24, Tennessee public schools served over one million students. Of these, about 13.5 percent (or 135,598) were students with disabilities.

Tennessee law contains provisions that mirror the IDEA's intent:

It is the policy of this state to provide, and to require school districts to provide, as an integral part of free public education, special education services sufficient to meet the needs and maximize the capabilities of children with disabilities. The timely implementation of this policy to the end that all children with disabilities actually receive the special education services necessary to their proper development is declared to be an integral policy of this state.⁸

Tennessee State Board of Education rules also reflect the IDEA's objectives:

A child with a disability must be educated in the least restrictive environment. Special classes, separate schooling, or other removals of a child with a disability from the regular educational environment must occur only when, and to the extent that, the student's IEP team determines that the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. To the maximum extent appropriate, a child with a disability must be educated alongside the child's typically developing peers.⁹

Tennessee state law and regulations provide further procedural safeguards to meet the requirements of IDEA, including procedures concerning the disciplining of students with disabilities.¹⁰ The Tennessee State Board of Education has adopted rules that reflect the federal requirements under the Code of Federal Regulations at 34 CFR Part 300, Assistance to States for the Education of Children with Disabilities.¹¹

States and school districts receive funding through the IDEA to help them fulfill the law's requirements. For FY 2024 (SY 2023-24), Tennessee received \$297 million in federal IDEA funds. State funding was about \$1.3 million (excluding the recurring \$18 million investment for Special Education Preschool from state funds).^F

Student behavior and the use of discipline

When a student exhibits disruptive behavior during the school day, the response from educators can range from minimal (a verbal reprimand) to significant (suspension or expulsion) and are based on several factors. One of these factors for students with disabilities is whether the behavior was caused by or related to their disability (called a "manifestation of disability" in IDEA). If the behavior is not related to the disability, the student may be disciplined generally in the same way that any other student is disciplined.¹² If the behavior is caused by or related to the student's disability, however, school staff and parents must come together to create a plan (called a behavior intervention plan or BIP) or alter an existing BIP, to provide behavioral supports for the student to help keep them in the appropriate learning environment.¹³

A student's IEP team can formally agree to a modified/abbreviated day, based on a student's unique needs, and consider the BIP and other supports. A modified/abbreviated school day (a shortened school day) could allow the student to leave school early on one or more days. By contrast, when a student with a disability is informally removed by being sent home early from school, the student's shortened school day is not documented and the procedures meant to safeguard the student's educational rights and ensure the student's current placement and services are the best fit are not followed.

^FThe amount excluded from the state funding for special education for 2023-24 was \$18 million, which is a recurring state investment for Special Education Preschool set aside when the state education funding formula changed from the Basic Education Program (BEP) to the Tennessee Investment in Student Achievement (TISA) formula. This report focuses on K-12 students with disabilities. In the prior school year 2022-23, state support was \$1.1 million.

Every student who has a qualifying disability that adversely affects their educational performance and results in a need for specialized instruction is eligible to have an Individualized Education Program (IEP).

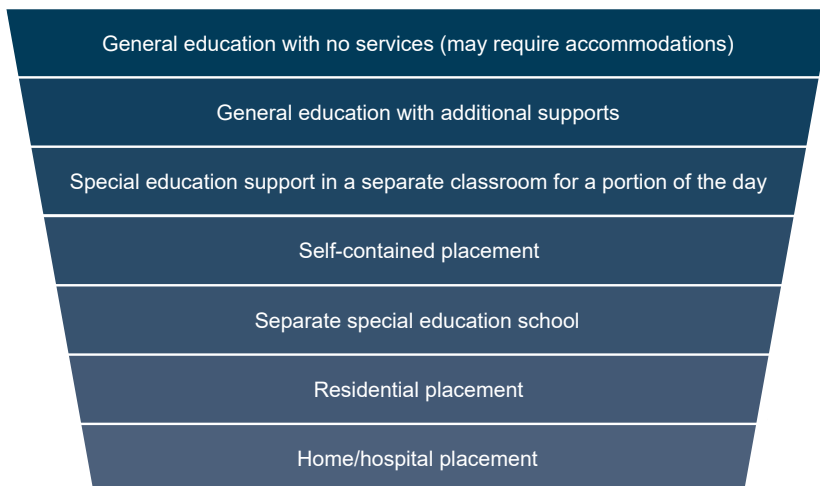
An IEP is a written document that describes a student’s disabilities and specific needs and how the school will accommodate those needs.¹⁴ The IEP must contain specific information,¹⁵ including (but not limited to):

- the student’s current levels of academic achievement and functional performance, including how the student’s disability affects involvement and progress in the general curriculum;
- a description of the annual goals for the student that the IEP team thinks can be reasonably accomplished in a year, how these will be measured, and when periodic progress reports will be provided;
- the special education and related services to be provided to the student, including supplementary aids and services and changes to the program or supports for school personnel; and
- an explanation of the extent, if any, to which the student will not participate with nondisabled children in the general education classroom and in extracurricular and nonacademic activities.

The IEP is developed by a team of individuals that includes the student’s parents, general and special education teachers, a school district representative, and others.^G The IEP team must meet at least annually but may meet more often to determine whether the goals set in the IEP are being achieved and whether any part of the program needs to be revised.¹⁶

The IEP team must first consider placing the student in the general education classroom before making any other placement decisions, and the team must consider the full range of modifications and supplementary aids and services that would allow for this.¹⁷ If the IEP team determines that a student cannot receive an appropriate education in the general education classroom, even with modifications and/or supplementary aids and services, they can consider other placements that still meet the student’s right to FAPE. School districts are required to have a “continuum of alternative placements” from less restrictive to more restrictive.¹⁸ Exhibit 3 shows the continuum of options in Tennessee, ranging from the least to the most restrictive settings for students with disabilities.

Exhibit 3: Continuum of alternative placements



Source: Tennessee Department of Education, Special Education Framework, updated Aug. 2018.

In the case of a student whose behavior impedes their own learning or that of other students, the IEP team must consider – and, when necessary to provide FAPE, include in the IEP – the use of positive behavioral interventions and supports and other strategies to address the student’s behavior.^{19, H} These supports and strategies may be part of a BIP that may be included in the student’s IEP.²⁰ (See more about BIPs on p. 9.) Positive behavioral interventions are established based on each individual student’s needs.

Interventions can range from general supports, to which most students respond, to more targeted supports for students who need more one-on-one, intensive assistance. Examples may include providing students with

^G The IEP team includes the student’s parents, teachers (both general and special education), a school district representative, and an interpreter of evaluation results (such as a school psychologist), among others. 34 CFR 300.321(a).

^H TDOE has several resources for districts to use in developing appropriate behavioral interventions and supports, including Response to Instruction and Intervention (RTI²), Response to Instruction and Intervention for Behavior (RTI²-B), and the Tiered Supports Center, part of the Tennessee Technical Assistance Network (TN-TAN). See <https://tn-tan.tnedu.gov/support-services/mtss>.

explicit instruction related to behavior expectations; routine feedback on behavior and increased positive adult attention daily; functional communication training such as requests for breaks; individual self-management/self-regulation instruction; social skills instruction; or re-enforcement systems to promote student engagement.

The IDEA requires that districts and schools follow specific disciplinary procedural safeguards for students with disabilities.²¹

Tennessee state law requires that all public school districts and charter school governing bodies develop student codes of conduct that apply to all students. Codes of conduct classify disciplinary violations by levels, ranging from Level I (e.g., tardiness) to Level IV (e.g., threatening the safety of the school).²²

If a student with an IEP violates a school's code of conduct,^l the IDEA permits school officials to suspend the student for up to 10 days during the school year.²³ These 10 days are commonly referred to by school and district officials as "FAPE-free days" because schools are not required to provide special education services to students during those days.^j When a student is removed for more than 10 consecutive days or has been removed for a series of removals during a school year totaling more than 10 days that constitute a pattern, a change of placement occurs, which can trigger the need to conduct a manifestation determination review (MDR).^k

TDOE has instructed districts that informal removals should not be treated differently from suspensions or expulsions, meaning that an informal removal should be documented as either a suspension or expulsion. When one of the 10 FAPE-free days is used to suspend a student, school personnel should formally record it as a suspension and count it as one of the 10 days.²⁴

Although IDEA allows short-term removals during these 10 days, USDOE asserts that repeated use of such removals may indicate a need to review and revise a student's IEP to address his or her behavioral needs.²⁵

Determining the relationship between a student's misbehavior and his or her disability

Once the cumulative 10-day limit on FAPE-free days is reached during a school year, removing a student with an IEP for any additional days constitutes a *change of placement*.²⁶ A student's change of placement requires the district to notify the parents the same day and explain the procedural safeguards under IDEA.²⁷ The district, the parents, and relevant members of the IEP team must then conduct a *manifestation determination review* (MDR) to determine whether:

1. the student's conduct was caused by or is directly related to their disability, or
2. whether the conduct resulted from the district's failure to implement the IEP.^l

If the IEP team determines that either of the two conditions are met, then the student's conduct is considered a manifestation of the disability, and the school is prohibited from suspending or expelling the student for the remainder of the school year except under special circumstances. These special circumstances include certain zero tolerance violations, i.e., possessing a weapon at school, possessing or using illegal drugs on school premises, or inflicting serious bodily injury on another person on school premises.²⁸

^lTennessee state law requires that each school district develop a discipline policy or code of conduct explaining the type of behavior expected from each student, the consequences of failure to obey the standards, and the importance of the standards to the maintenance of a safe learning environment. The law requires that district codes of conduct address, among other things, language used by students, respect for school employees, possession of weapons on school property, and student conduct on school property, in classes, and on school buses. *TCA 49-6-4002*.

^jHowever, if the district provides educational services to nondisabled students removed for the same amount of time, the district must also provide educational services to students with disabilities. 34 CFR 300.530(b)(2) and (d)(3).

^k34 CFR 300.536.

^lA manifestation determination review must be conducted within 10 days of the decision to remove the student for disciplinary reasons. 34 CFR 300.530(e). IEP teams also may choose to conduct a manifestation determination review after other instances where a child's behavior is inconsistent with the school's code of student conduct.

If the IEP team determines that the conduct was not a manifestation of the student’s disability, the student may be suspended or expelled as any other student – but the student must continue to receive the services needed to allow them to participate in the general education curriculum, although in a different setting, and make progress toward meeting the goals in their IEP.²⁹

Determining what causes a student’s challenging behavior and finding strategies to change or improve the behavior

If a student’s conduct is determined to be a manifestation of his or her disability, further safeguards are required to support the student, the parents, and the school in continuing the student’s education. The IEP team must:³⁰

- conduct a *functional behavior assessment* (FBA), or review an existing FBA if one was previously developed prior to the behavioral incident and modify it as necessary;^M and/or
- create a *behavior intervention plan* (BIP), or review an existing BIP and modify it as necessary to address the behavior.³¹

Analyzing the causes of a student’s challenging behavior

The IEP team – including a school psychologist or school personnel trained to conduct FBAs – uses the FBA process to analyze the causes of a student’s challenging behavior, such as hitting, disrupting class, or refusing to do schoolwork, and find ways to change or modify the behavior.³² Parents must be fully informed about the FBA process and must agree in writing before an FBA may be conducted.³³

To develop an FBA, the IEP team collects data from various sources, which may include student records (such as grades, attendance, and discipline), interviews (with the student, parents, and teaching staff), and classroom observations. Once the team understands what is causing the behavior and why the student continues to engage in the behavior, the FBA can be used to determine research-based strategies to help the student either replace the challenging behavior with more appropriate behavior or reduce the challenging behavior.³⁴

“The BIP [behavior intervention plan] should be perceived as a playbook that outlines the actions of the adults to create a single coherent and consistent plan for the student....A student’s behavior will not change simply because a BIP was created. It is the thoughtful and consistent implementation of the plan that supports the student in learning and achieving his/her goals. As with academic interventions, if the intervention is not working or the progress the student is making is very slow, change the intervention. Additionally, as the student grows and develops, the strategies and behavior interventions need to grow and develop as well.”

Source: Tennessee Department of Education.

Finding research-based strategies to replace a student’s challenging behavior with more appropriate behavior

The IEP team develops a BIP using the results of an FBA.³⁵ Understanding the root causes of a student’s behaviors through an FBA – including what events precede and follow a student’s behavior and what motivates the student to engage in the behavior – should lead the IEP team toward developing positive behavioral interventions and supports to help the student replace problem behaviors with more appropriate ones.³⁶ For example, if a student makes rude comments in class to make her peers laugh, the BIP may include strategies to reward appropriate comments and teach the student appropriate ways to gain attention from others.³⁷ Strategies in the BIP should be reconsidered if ineffective or if the student’s progress is very slow following implementation of the strategies.³⁸

^M An FBA must also be conducted, as appropriate, (1) to inform the development or revision of a BIP (behavior intervention plan) for behavior not determined to be a manifestation of a student’s disability; and (2) when a student with a disability is removed to an interim alternative education setting for up to 45 days for weapons, drugs, or serious bodily injury, whether or not the student’s behavior is found to be a manifestation of the disability. SBE Rule 0520-01-09-.24(4).

What is an informal removal of a student with a disability?

Informal removal of students with disabilities refers to informal practices that restrict or remove a student with a disability's access to FAPE, a primary right under federal law for students with disabilities, and other relevant educational services.

Informal removals can include, but are not limited to:

- Informal suspensions – an action taken by school administrators that excludes a student with a disability from educational services for part of a school day or longer without being recorded as a suspension.
 - » Example: A student with a disability exhibits disruptive behavior, after which a school administrator requests that the student's parent take their child home early from school. A shortened school day is not part of the student's IEP and the student's early departure from school is not documented as a suspension.
- Indirect formal suspensions – documented suspensions from other services which, in effect, remove a student with a disability from educational services.
 - » Example: A student with a disability verbally threatens a student in class. A school administrator suspends the student from riding the bus, generally with the knowledge the student has no other means of transportation to school, effectively removing the student from school.

Whatever the form, informal removals exclude students with disabilities from the instruction and services to which they are entitled under IDEA.

Shortened school days, if used, must be formally documented in a student's IEP

Some students with disabilities attend school for a portion of the full school day, which is referred to as a shortened school day. For example, a student may have difficulty staying focused for more than four hours in a classroom environment, or a young student new to school may have more success adjusting to the classroom environment if the hours attended each week are reduced. Some students may also have physical therapy or other types of therapy in the morning or afternoon and must miss class to attend.

Shortened school days are permissible under IDEA, though they should be temporary; returning to full school days should be the goal. According to TDOE, the reasons for including shortened school days in a student's IEP should be documented and the student's parents provided with written notification before the student begins attending school for less than the full school day. Shortened school days should not be based on administrative convenience, availability of resources, or blanket policies.

Source: Tennessee Department of Education, *Shortened School Days and Informal Removals for Students with Disabilities*, Nov. 2023.

Who is involved in informally removing a student with disabilities?

The four key actors in an informal removal are the student with a disability, the teacher, a school administrator, and the parent or guardian of the informally removed student, as shown in Exhibit 4.

Exhibit 4: Each of the four key actors in an informal removal are required for it to occur

Student with disabilities exhibits disruptive behavior.

Teacher sends student to school administrators for assistance or discipline because of the disruptive behavior.

School administrator contacts the parent(s) or guardian(s) to request or suggest the student be removed from class and does not record the removal.

Parent or guardian removes the student from school, possibly not understanding the implications.

Why are informal removals a problem?

Informal removals are a problem for multiple reasons. They:

- violate the law under IDEA,
- result in learning loss for affected students,
- create an incentive for students to misbehave to get out of school, and
- can strain the ability of parents, especially single and low-income parents, to hold employment to financially support their families.

Violation of IDEA

Informal removal of students with disabilities violates federal law under IDEA because the formal procedures that protect students' rights and their access to educational services are bypassed. Students who are informally removed are denied access to FAPE, which violates IDEA and subjects schools and districts to potential legal action.^N Procedures related to the disciplining of students with disabilities, such as manifestation determination reviews, functional behavior assessments, and behavior intervention plans, may also be circumvented through informal removals.

Learning loss

Informal removals result in some amount of learning loss for affected students, but the extent is unknown because there is no record of how much school such students miss. Since the procedures that protect students' rights to services are not followed with informal removals, the degree of learning loss may be greater than with formal removals.

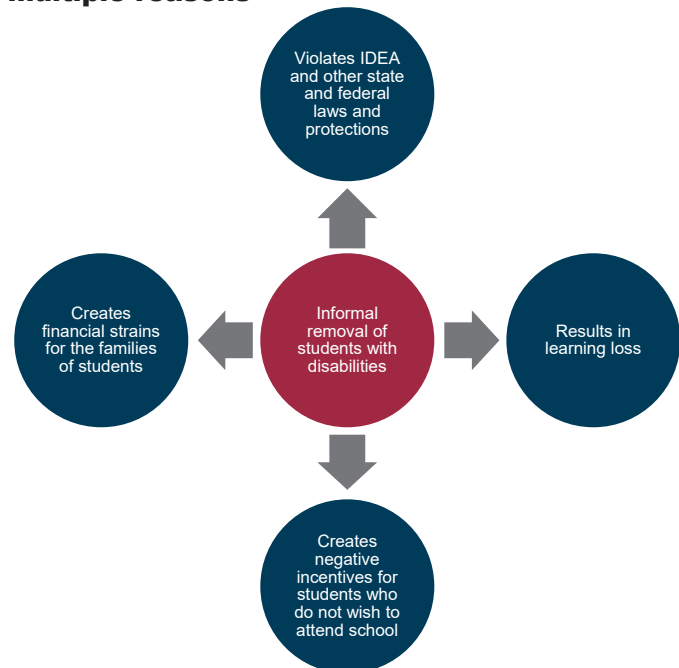
Negative incentives

According to some interviewees, informal removals can create a negative incentive for students to misbehave to get out of school. Students may repeatedly misbehave, knowing that by doing so they can avoid certain classes, teachers, or other students.

Financial strain on families

Repeated informal removals can strain the finances of families, especially low-income families and single parents. Repeatedly leaving work to remove their child from school or missing work to care for a child who has been informally removed can reduce a parent's work hours and make it difficult to maintain employment.

Exhibit 5: Informal removals are a problem for multiple reasons



Source: OREA analysis of interviews with district administrators, teachers, and advocates.

^N Attendance codes for schools include Excused Absence; Present for Attendance; Excused Absence, but Present for Transportation; Unexcused Absence; and Unexcused Absence, but Present for Transportation. Disciplinary codes for schools include Suspension, in-school; Suspension, out-of-school, without services; Change of placement (long-term); and Expulsion without services. Because informal removals should not occur, there is no attendance or disciplinary code for such an action.

Conclusions

The number of informal removals that occur each year in Tennessee schools is unknown.

Neither the state nor districts nor schools collect data on informal removals; these removals are done informally and are not formally recorded, documented, or tracked. There is no disciplinary code for schools to use to record an informal removal as there is for suspensions and other forms of formal discipline. A school administrator who informally removes a student will either not document the removal or record it as something else (e.g., a sick day).

Multiple interviewees and survey respondents indicated that informal removals occur in Tennessee but could not provide a precise number or point to reliable data on the practice. The lack of data is a significant limitation to what can be known about informal removals, especially regarding their frequency, the number of students informally removed, and the reason for each informal removal.

Another significant limitation is districts' and schools' concerns about possible litigation. The informal removal of students with disabilities violates federal law under IDEA, and schools and districts could be subject to legal action from affected families by admitting to the use of informal removals. Accordingly, district and school representatives may have been reluctant to respond candidly and fully to OREA's interview and survey questions.

Although there is a lack of data on informal removals, interviewees and survey respondents were in general agreement that most students with disabilities are not informally removed. There was also general agreement that a small subset of students with severe behavioral issues are more likely to be informally removed than other students with disabilities. Survey responses from principals also supported this conclusion, although the limited response rate of the survey may mean that this support does not represent what principals more broadly think about the frequency of informal removal.^o

Despite the lack of data on informal removals, OREA's research generated several insights into the practice.

The following insights are based on document analysis, interviews, and survey responses. As noted previously, there is a lack of data on informal removals, which are not recorded, documented, or tracked. Nevertheless, these insights present potentially useful information about how informal removals occur, why they occur, who is most likely to be informally removed, and the role of teachers in informal removals.

How informal removals occur

Multiple interviewees noted that informal removals are either not documented or are recorded as something else (e.g., a sick day or an excused absence). A school administrator who informally removes students may, for example, not record that a student was signed out from school, in which case records would show the student attended for the full school day. Or a school administrator that informally removes students may wait until a student has been present for at least 50 percent of the school day before informally removing the student. Students who are present for at least 50 percent of the school day are counted as present for the full school day. (Fifty percent of the school day for grades 1-12 is three hours and 15 minutes based on the minimum length of the school day for those grades, which is 6.5 hours.)

School administrators who informally remove students may cite different reasons when requesting or suggesting a parent remove their child from school, according to multiple interviewees. The request may be presented as a way to avoid the formal suspension of the student or as an alternative to the student being detained by a school resource officer or the police. In other cases, the school administrator may state the school is understaffed that day and cannot adequately support the student in school. Regardless of the

^o Only 14.9 percent of principals began the survey, and 10.4 percent completed the survey.

reason cited, informal removals are not acceptable or legal under IDEA. The appropriate steps that should be followed when removing a student with disabilities from school are shown in Appendix A.

Why informal removals occur

One reason informal removals occur, according to some interviewees, is that the practice preserves the 10 days during which a student can be formally suspended without providing special education services for use later in the school year. As noted earlier, a school may formally suspend a student with disabilities for up to 10 days each school year without providing special education services. Since they are not documented, informal removals do not count toward the 10 days. In effect, an informal removal increases the number of days a student with disabilities is removed from school without providing special education services and complying with IDEA procedures that protect the rights of such students.

Informal removals may also be used to avoid documenting suspensions after the 10 days have been used. Frequent formal removals of a student after the 10 days can result in legal liability for the school if IDEA is not followed.

Special education staff shortages are the biggest contributing factor to informal removals, according to survey respondents. Inadequate facilities and physical space for students with disabilities and a lack of training for general education teachers were also frequently cited by survey respondents as contributing factors.^p

The inappropriate placement of some students with disabilities in general education classrooms is potentially another contributing factor, according to some interviewees and survey respondents, who were critical of certain IDEA provisions, especially the requirement that students with disabilities be educated in the least restrictive environment. These interviewees and respondents stated some students are inappropriately placed in general education classrooms for most of the school day by IEP teams. When such students are placed in general education classrooms, informal removals may result.

IEP teams determine the least restrictive environment for a student with disabilities. Some students are placed in a general education classroom with supplementary aids and services. Other students, however, are not placed in a general education classroom and may instead spend most of the school day in a special education classroom, only joining with general education students at lunch and during recess. As of the 2023-24 school year, about 75 percent of Tennessee students with disabilities spend 80 percent or more of the school day in general education classrooms.

Tennessee State Board of Education rules, which reflect the IDEA's objectives, state:³⁹

A child with a disability must be educated in the least restrictive environment. Special classes, separate schooling, or other removals of a child with a disability from the regular educational environment must occur only when, and to the extent that, the student's IEP team determines the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. To the maximum extent appropriate, a child with a disability must be educated alongside the child's typically developing peers.

The training TDOE provides to districts and schools on student placements under IDEA cites legal guidance from a 2017 U.S. Sixth Circuit Court of Appeals decision in a case from Tennessee. According to the decision, students with disabilities may be separated from the general education classroom if:

1. the student would not benefit from regular education,
2. any benefits from participation in regular classes would be far outweighed by the benefits of special education, or
3. the student would be a disruptive force in the regular class.⁴⁰

^p According to TDOE's 2023-24 teacher vacancy data collection, K-12 special education teachers were the teaching content area with the second highest rate of teacher vacancies (3.6 percent of all K-12 special education teaching positions were unfilled).

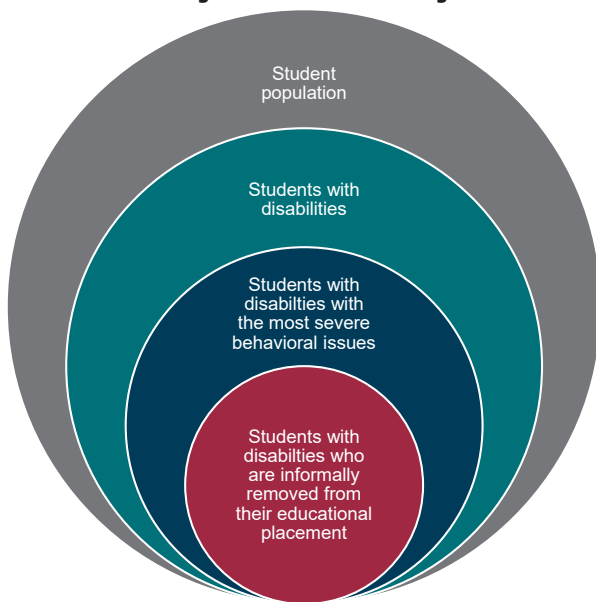
The decision cites specific examples of how the Tennessee student in the case disrupted the regular classes in which the student was placed, such as inappropriate actions towards students and staff, pulling hair, spitting on people, and yelling expletives. Some students with disabilities who repeatedly engage in violent or disruptive episodes may meet this standard.

Who is most likely to be informally removed

A small subset of students with severe behavioral issues are more likely to be informally removed than other students with disabilities, according to multiple interviewees and survey respondents. The behaviors most likely to be associated with informal removal are violent acts or threats (against peers or teachers), destruction of property, insubordination, and elopement (i.e., running away from the classroom or school), according to interviewees. More minor behaviors are less likely to result in an informal removal.^Q

Similarly, survey respondents indicated violence and physical aggression (including actions which cause harm or danger to staff, teachers, themselves, or other students) were the behaviors most likely to result in informal removals. Other behaviors associated with the practice were verbal abuse and threats (including disrespectful behavior, insults, profane outbursts, etc.) as well as general disruption and misbehavior.

Exhibit 6: The subset of students with severe behavioral issues related to their disability are more likely to be informally removed



Notes: (1) Exhibit for illustrative purposes only. Circles are not proportional to the actual number of students in these categories.

(2) Insight based on interviews and survey results.

Source: OREA analysis of interviews with district administrators, teachers, and advocates.

some school administrators and others interviewed, and the preparation of general education teachers in the requirements and protections of IDEA and best practices for instructing and disciplining students with disabilities is also sometimes inadequate.

Almost half of survey respondents indicated general education teachers in their school, in their experience, either do not understand or only somewhat understand the requirements and processes of IDEA (including IEPs, BIPs, FBAs, etc.). Roughly a third of respondents indicated that, overall, general education teachers in their school, in their experience, either do not understand or only somewhat understand the rights of students under IDEA (including FAPE, least restrictive environment, parental participation, etc.).

^Q Some interviewees indicated that the behaviors which cause informal removals are not universal. For example, a student being disruptive might cause some teachers to contact school administration for assistance while other teachers might not. Thus, informal removals will vary from classroom to classroom and school to school.

OREA interviewed representatives from three university educator preparation providers (EPPs) to learn more about the preparation of general education teachers. Two of these three EPPs have worked to revise their elementary education degree programs in recent years to include additional instruction and experiences to better prepare new general education teachers in how to appropriately instruct and discipline students with disabilities.

OREA also asked about related teacher professional development and training provided by districts and schools. The quality and quantity of professional development and training covering the instruction and discipline of students with disabilities received mixed reviews from interviewees.

The Tennessee Department of Education has a goal of reducing and eliminating the use of informal removals in districts and schools through information and professional learning opportunities and technical assistance.

In November 2023, TDOE published *Shortened School Days and Informal Removals for Students with Disabilities*, a brief that provides information and guidance to districts and schools in order to reduce and eliminate the use of informal removals in Tennessee. TDOE created the brief following conversations with an advocacy group that had learned about instances of informal removals from families of students with disabilities in Tennessee public schools.^R

The brief states that all removals should be documented, that the reason for all removals should also be documented, that all removals should be officially recorded as a suspension or expulsion, and that school districts must maintain accurate attendance records for all students, including students with disabilities. Districts should also consider whether removing a student with a disability from school triggers the disciplinary protections of IDEA.

The brief distinguishes between the use of shortened school days, which are allowable as a temporary provision in a student's IEP if determined to be necessary, and informal removals, which are in violation of IDEA.

Following the brief's publication, TDOE shared it with special education directors and others across the state through routinely scheduled monthly calls between TDOE and special education directors. TDOE also shared the brief through the department's weekly newsletter for all Directors of Schools, as well as through a monthly newsletter for special education educators. In addition, TDOE's Assistant General Counsel of Special Education has provided training on this topic at the Tennessee Data and Attendance Supervisors Conference and the East Tennessee Special Education Directors Conference. The Assistant General Counsel also reported speaking regularly to special education directors about discipline for students with disabilities and informal removals.

School districts are able to request professional learning opportunities and technical assistance from TDOE's technical assistance network or directly from TDOE staff members at any time.

Other statewide efforts are designed to provide technical assistance and ongoing training to school districts, administrators, educators, and families to improve outcomes for students with disabilities.

- The Tennessee Technical Assistance Network (TN-TAN) provides school districts, administrators, educators, students, and families with access to training, resources, and supports designed to improve outcomes for students with disabilities. The network provides supports in the areas of intensive behavior, preschool, autism, assistive technology, and Response to Instruction and Intervention for Academics and Behavior. Through an online form, those asking for assistance might select, for example, resources and materials, professional development or training, or write their own request. TN-TAN offers a suite of prerecorded webinars or modules as well as in-person events.⁴¹

^RTDOE regularly meets with a variety of advocacy groups across the state via monthly listening sessions. Advocacy groups meet with TDOE's programming team, general counsel, federal programming – any part of TDOE that supports IDEA. Participants send in questions that come from the field or interactions with schools and families.

- The Tennessee Tiered Supports Center (TSC) provides no-cost technical assistance and professional learning opportunities for all districts across the state in the areas of academic and behavior interventions. The State of Tennessee has a contract with TSC for \$12.7 million for FYs 2022-2026 from IDEA Part B Discretionary funds.
- Sponsored by TDOE through the TN-TAN network, Vanderbilt Kennedy Center’s TRIAD provides no-cost technical assistance and resources to support school districts in the use of evidence-based strategies to increase access to general education and improve outcomes for students with disabilities with a focus on students with complex behavioral needs. According to TRIAD, most requests for technical assistance they receive are related to individual students presenting with severe and complex behavior, including aggression, self-injury, and elopement (i.e., running away from the classroom or school). TRIAD provides student-specific training, consultation, and ongoing coaching on individualized behavior assessment and intervention implementation, as well as the skill acquisition required to maintain communication, academic, and social growth opportunities for these students. The State of Tennessee has a contract with Vanderbilt-TRIAD for \$7.3 million concerning behavior supports for FYs 2022-2026 using IDEA Part B Discretionary funds.

Recommendations

Districts and schools should examine their policies, procedures, and practices for disciplining students with disabilities in light of this report.

Questions for districts and schools to consider include:

1. Is the professional development and training for general education teachers in how to teach and discipline students with disabilities adequate?
2. Do certain schools need additional special education teachers or staff to support students with disabilities?
3. Are IEP teams placing students with disabilities in the most appropriate least restrictive learning environment?
4. How effective are the behavioral interventions and de-escalation techniques included in students’ IEPs?

Districts and schools should consider whether problems and limitations in these and other areas of their operations are contributing to informal removals or increasing the likelihood they will occur.

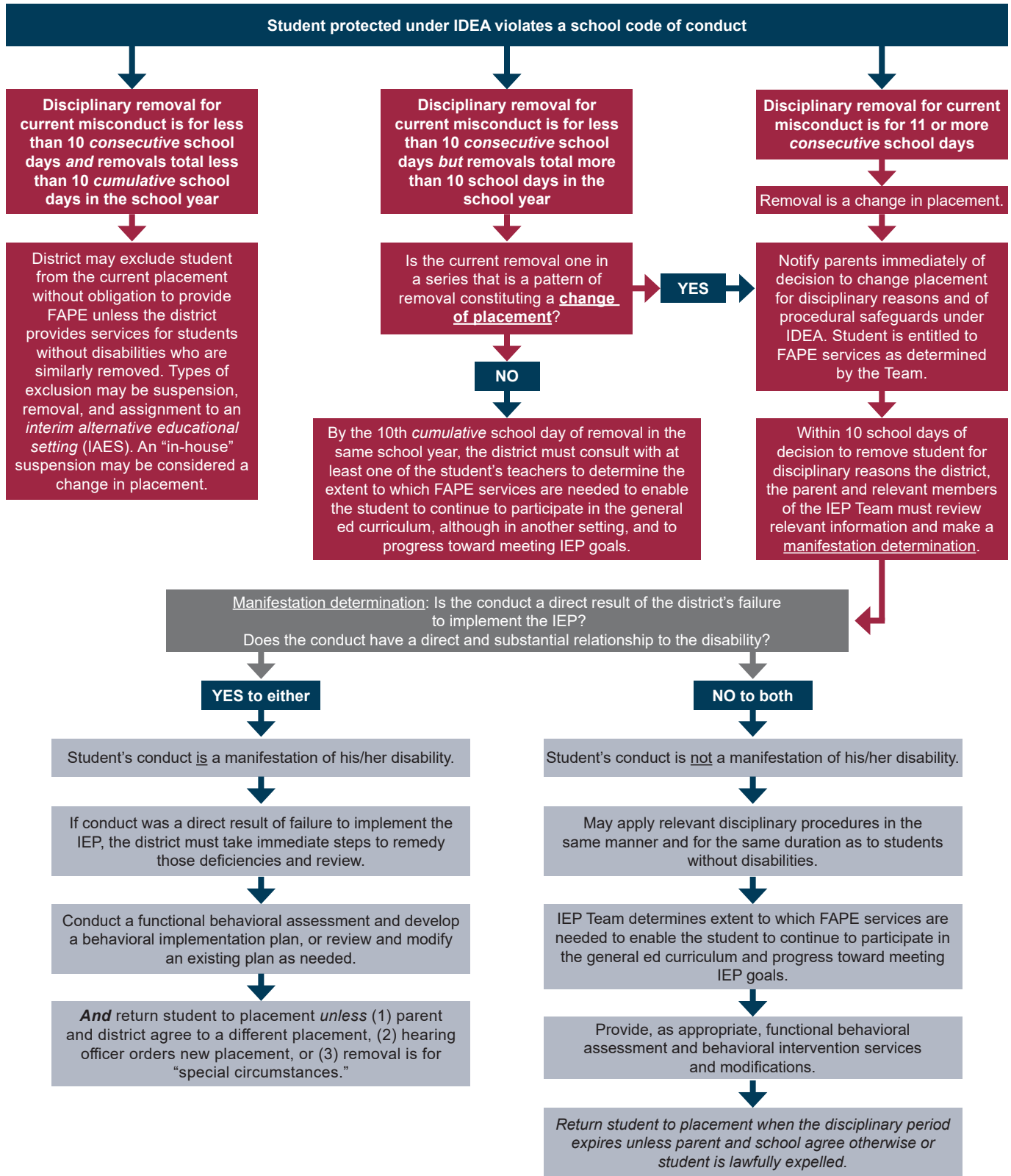
Districts and schools should properly document all removals of students with disabilities and all disciplinary actions for such students.

TDOE’s *Shortened School Days and Informal Removals for Students with Disabilities* brief, released in November 2023, states school districts must document all removals and the reason for all removals (this brief can be found in Appendix D). Any removals that are currently done on an informal basis should instead be officially recorded as a suspension or expulsion, and districts should consider whether a removal triggers IDEA’s disciplinary protections.⁵ In addition to documenting all informal removals, districts and schools must consider whether the repeated use of removals prompts a manifestation determination review (MDR), according to the TDOE brief.

The disciplinary practices used for a student with a disability should be addressed in the student’s IEP. If a student’s BIP or IEP is not effectively helping a student in the classroom, the student’s IEP team should meet to revise the plan. If a change of placement is the appropriate course of action, the change should be made formally rather than resorting to informal removals of the student. The TDOE brief also differentiates between shortened school days, which can be a temporary part of a student’s IEP if determined to be necessary, and informal removals, which are in violation of IDEA.

⁵ According to TDOE, a removal has not occurred if the “student is afforded the opportunity to continue to be involved in and make progress in the general education curriculum, receive the instruction and services specified in their IEPs, and participate with non-disabled peers to the extent that they would have in their current educational placement.” However, TDOE also indicated that not every exclusionary disciplinary measure is considered to be a removal.

Appendix A: Legal procedures for school administrators to follow when disciplining a student with disabilities under IDEA



Source: 34 CFR § 300.530 and 536; Massachusetts Department of Education, December 2007.

Appendix B: Disability categories under the Code of Federal Regulations and the Tennessee State Board of Education Rules

These brief definitions for each disability category are excerpted from State Board of Education Rule 0520-01-09-.03 and from the Code of Federal Regulations 300.8. Both sources contain more detailed definitions and eligibility criteria for each category.

Autism – a developmental disability that significantly affects verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child’s educational performance.

Deaf-Blindness – concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs by addressing any one of the impairments.

Deafness – a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child’s educational performance.

Developmental Delay** – refers to children aged three years, zero months through nine years, eleven months, who are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical (gross motor and/or fine motor); cognitive; communication; social or emotional; or adaptive development that adversely affects a child’s educational performance. Developmental Delay is defined in Title 34, Part 300 of the Code of Federal Regulations. It is optional as a disability category for local school districts in Tennessee.

Emotional Disturbance – a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

- inability to learn which cannot be explained by intellectual, sensory, or health factors;
- inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- inappropriate types of behavior or feelings under normal circumstances;
- a general pervasive mood of unhappiness or depression; or
- a tendency to develop physical symptoms or fears associated with personal or school problems.

Functional Delay* – a continuing significant disability in intellectual functioning and achievement that adversely affects the student’s ability to progress in the general education program, but the student’s adaptive behavior in the home or community is not significantly impaired and is at or near a level appropriate to the student’s chronological age, including significantly impaired intellectual functioning that is two or more standard deviations below the mean; and deficient academic achievement at or below the fourth percentile in two or more total or composite scores on a norm referenced test in: basic reading skills, reading fluency skills, reading comprehension, mathematics calculation, mathematics problem solving, or written expression. Functional delay is not a federally recognized disability.

Hearing Impairment – an impairment in hearing, whether permanent or fluctuating, that adversely affects a child’s education performance but does not include deafness.

Intellectually Gifted* – a child’s intellectual abilities, creativity, and potential for achievement are so outstanding that the child’s needs exceed differentiated general education programming, adversely affect educational performance, and require specifically designed instruction or support services.

Intellectual Disability – significantly impaired intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child’s educational performance.

Multiple Disabilities – concomitant impairments (including, but not limited to, intellectual disability, deafness, intellectual disability, orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated by addressing only one of the impairments. Does not include Deaf-Blindness.

Orthopedic Impairment – a severe orthopedic impairment that adversely affects a child’s educational performance. The term includes impairments caused by congenital anomaly (including club foot, absence of some member), impairments caused by disease (including poliomyelitis, bone tuberculosis), and impairments from other causes (including cerebral palsy, amputations, and fractures or burns that cause contractures).

Other Health Impairment – having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems, including asthma, Attention Deficit Hyperactivity Disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette’s Syndrome that adversely affects a child’s educational performance.

Specific Learning Disability – a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, and that adversely affect a child’s educational performance.

Speech or Language Impairment – a communication disorder, such as stuttering, impaired articulation, a language impairment, or voice impairment that adversely affects a child’s educational performance.

Traumatic Brain Injury – an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child’s educational performance.

Visual Impairment – includes either partial sight or blindness; means impairment in vision that, even with correction, adversely affects a child’s educational performance.

Notes: *Functional Delay and Intellectually Gifted categories are specific to Tennessee. **The Developmental Delay category is optional for LEAs.
Sources: Tennessee State Board of Education Rule 0520-01-09-.03, Special Education Programs and Services, Recognized Disability Categories.

Appendix C: Letter requesting that OREA study informal removal

Mark White

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83rd Legislative District

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COMMITTEES:

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Education Administration
Full Committee

Calendar & Rules

Education Instruction Committee

February 8, 2024

The Honorable Jason E. Mumpower
Comptroller of the Treasury
State Capitol
Nashville, TN 37243-9034

Dear Comptroller Mumpower,

It has come to my attention that Tennessee students with disabilities across the state are being subjected to “informal exclusionary discipline practices”, which negatively impacts their education. These are practices that almost exclusively affect Tennessee students with disabilities, limiting their access to educational opportunities, the least restrictive environment for learning and the rights and protections afforded to them through the Individuals with Disabilities Education Act (IDEA). I would appreciate it if the Office of Research and Educational Accountability could research the issue and report back your findings by December 31, 2024.

“Informal Exclusionary Discipline Practices” can be characterized by the following practices:

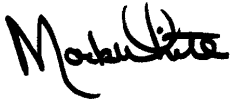
- **Informal removal:** directives to parents/guardians to visit a child’s school and take them home for the day, often as a result of behaviors manifesting from their disability, without recording the removal as a formal suspension/removal
- **Inappropriate homebound placement:** the placement of a student receiving special education services in the hospital/homebound setting (as defined by IDEA) as a result of behaviors manifesting from their disability, or without following proper protocol as defined by IDEA (including for inappropriately lengthy periods of time)
- **Excessive use of threat assessments:** the use of a threat assessment to remove a student who receives special education services for behaviors that are manifestations of their disability, particularly for lengthy periods of time and/or without progress toward the completion of the threat assessment and/or return to school or alternative placement
- **Alternative placement (or threats of alternative placement):** the placement of students receiving special education services in alternative, non-general education settings (such as an alternative school) in inappropriately and/or frequent instances, without proper intervention and data collection (as defined by IDEA) or under coercive circumstances
- **Inappropriate use of in-school suspension (ISS):** frequent use of in-school suspension, or other formal or informal in-school removal from the assigned education setting, as punishment for

behaviors that manifest from a disability from a student who receives special education services, particularly without proper documentation, intervention or instruction.

- **Inappropriate suspension from transportation:** the use of long-term prohibitions from using school-supplied transportation arising from behaviors that manifest from a disability, without providing alternative means to access the school or without due process protections afforded to students with disabilities through IDEA
- **Excessive use of shortened school day:** excessive or long-term use of shortened school day as an IEP intervention for behavior that manifests as a disability, often without adequate intervention and documentation, or no plan or timeline for a return to full school day schedule

I sincerely thank you for your work and your consideration of this request; I look forward to seeing the work of you and your team on this important issue.

Sincerely,

A handwritten signature in black ink that reads "Mark White". The signature is written in a cursive, slightly slanted style.

Mark White
Tennessee State Representative
District 83

Appendix D: Tennessee Department of Education brief, November 2023



Shortened School Days and Informal Removals for Students with Disabilities

Introduction

Students with disabilities have faced unprecedented challenges over the past three school years that have resulted in an increased number of behavioral concerns. To ensure that students with disabilities are receiving a free appropriate public education (FAPE) and that students and parents are being afforded the procedural safeguards set forth in the Individuals with Disabilities Education Act (IDEA), the Tennessee Department of Education (the department) reminds Local Education Agencies (LEAs) of the following:

- LEAs must make determinations about shortened school days for students with disabilities on an individualized basis and using the appropriate procedures identified under the IDEA and state special education law.
- LEAs must ensure that district and school policies, procedures, and practices do not discriminate against students with disabilities and do not exclude students with disabilities from educational services, including access to the general education curriculum and to education and related services in the student's Individualized Education Program (IEP).
- LEAs must maintain accurate attendance records for all students, including students with disabilities, by documenting all removals and the reason for all removals, whether formal or informal and considering whether those removals trigger the disciplinary protections of the IDEA.

What is a Shortened School Day?

A "school day" is any day, including a partial day, when students attend school for instructional purposes. The minimum length of the school day is 6.5 hours for students in first grade through twelfth grade and 4 hours for students in kindergarten. (State Board of Education Rule 0520-01-02-.31). Therefore, a "shortened" school day is any day in which a student attends school for less than the minimum length of the school day for any reason whatsoever.

When are Shortened School Days Allowed?

A student's Individualized Education Program (IEP) team may decide that a student needs a shortened school day to receive FAPE based on the student's individual needs. Before deciding to shorten a student's school day, the student's IEP team should consider if there are other ways to meet the student's needs, such as by adding support or services or altering the student's schedule.

If the student's IEP team determines that the student requires a shortened school day to receive FAPE, the IEP team should document the reasons in a prior written notice. The prior written notice should document the IEP team's consideration of other services, supports, and placements and why the team rejected those options in favor of the shortened school day.

The IEP team should also consider adding a goal to the student’s IEP related to returning the student to a full school day. For example, the IEP team may develop a plan to provide increasing or decreasing levels of support or services, a timeline for collecting academic and behavioral data to measure the student’s progress toward his or her IEP goals, and a date for convening a follow-up IEP team meeting to discuss the student’s progress. The IEP team should regularly review all relevant data to ensure that the student continues to make progress toward IEP goals and to consider whether the student can return to a full school day.

When are Shortened School Days Not Allowed?

LEAs, schools, and IEP teams must not decide that a student needs a shortened school day based on administrative convenience, availability of resources, or blanket policies.

LEAs must ensure that transportation policies and procedures do not improperly shorten the school day for students with disabilities, regardless of whether transportation is listed as a related service in a student’s IEP. If LEAs must arrange separate schedules for students with disabilities to ensure timely or safe transportation services, the LEA must adjust other portions of the student’s schedule to ensure that the students are not deprived of educational services on the basis of their disability. For example, LEAs may arrange for students with disabilities to arrive to school earlier every day to account for the early dismissal or to be dismissed earlier than their non-disabled peers one week and later than their non-disabled peers the next week.

LEAs must also ensure that disciplinary policies and procedures do not discriminate against students with disabilities. LEAs and schools should not use shortened school days as the primary means of managing student behavior, as a form of punishment, or in place of suspension or expulsion. Similarly, LEAs and schools should not require a student to meet any conditions, such as demonstrating improved behavior or obtaining a medical or psychological evaluation, prior to returning to a full school day.

What is an Informal Removal?

An “informal removal” is any action taken by school personnel in response to a student’s behavior that excludes the student from educational services for all or part of the school day and that is not officially coded as a suspension or expulsion. There is no minimum amount of time necessary to constitute an informal removal. For example, the United States Department of Education Office of Special Education and Rehabilitative Services has stated that an informal removal can occur when a student’s behavior causes school personnel to request that the student arrive to school late or leave school early, to exclude the student from instruction or services through the repeated use of time out or office referrals, or to impose extended restrictions of privileges. See U.S. Dep’t of Educ., [Dear Colleague Letter](#) (Aug. 1, 2016).

On the other hand, not every exclusionary disciplinary measure must be considered a “removal.” A removal has not occurred if the student is afforded the opportunity to continue to be involved in and

make progress in the general education curriculum, receive the instruction and services specified on their IEPs, and participate with non-disabled peers to the extent that they would have in their current educational placement.

What Considerations Should LEAs Have About Informal Removals?

Informal removals should not be treated differently than official suspensions or expulsions. LEAs must document all informal removals and must consider whether the repeated use of informal removals triggers the need to conduct a manifestation determination review (MDR). As a reminder, LEAs must conduct a manifestation determination review within 10 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. A change of placement occurs when the student is removed from his or her current educational placement for more than 10 consecutive school days or when a student is 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 child's behavior is substantially similar to the behavior that resulted in the previous 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.

Partial day removals can trigger the need to conduct an MDR. The Department recommends considering partial day removals on a class-by-class or service-by-service basis. For example, if a school repeatedly requires a student to leave school early due to the student's behavior, and the student misses more than 10 consecutive math classes in general education or special education setting or a total of more than 10 counseling sessions in a school year due to the early dismissal, then the Department recommends the LEA conduct an MDR.

Conclusion

LEAs should ensure that discipline is not being used as a means of disconnecting a student with a disability from FAPE. While LEAs can impose discipline on students with disabilities in accordance with their code of conduct, LEAs should ensure that students have an appropriately ambitious IEP, that all supports and accommodations are being implemented, that positive behavioral supports and interventions have been attempted, and that all procedural safeguards, including the right to a manifestation determination review, have been observed.

Contact Information

If you have additional questions about shortened school days or informal removals, you can contact:

Dr. April Ebbinger

Director of Psychological and Behavioral Supports

april.ebbinger@tn.gov

Endnotes

- ¹ U.S. Department of Education, Office of Special Education and Rehabilitative Services, Dear Colleague letter, Aug. 1, 2016, p. 3, <https://sites.ed.gov/idea/files/dcl-on-pbis-in-ieps-08-01-2016.pdf>.
- ² National Disability Rights Network, *Out from the Shadows: Informal Removal of Children with Disabilities from Public Schools*, Jan. 2022.
- ³ U.S. Department of Education, Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions, July 19, 2022, pp. 13 and 52, <https://sites.ed.gov/idea/files/qa-addressing-the-needs-of-children-with-disabilities-and-idea-discipline-provisions.pdf>.
- ⁴ 34 CFR 300.8.
- ⁵ United States Department of Education, Office for Civil Rights, Fact Sheet: Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline Under Section 504 of the Rehabilitation Act of 1973, July 19, 2022, p. 1, <https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-factsheet.pdf>. National Center for Learning Disabilities, IEPs vs. 504 Plans, <https://www.nclld.org/ieps-vs-504-plans/>. Tennessee Department of Education, Section 504 Guide & Model Policies and Procedures, May 2013, p. 8.
- ⁶ The Individuals with Disabilities Education Act was originally known as the Education of Handicapped Children Act. It was renamed in 1990. Code of Federal Regulations, Part 300: Assistance to States for the Education of Children with Disabilities supports the IDEA. Tennessee State Board of Education regulations adopt by reference 34 CFR Part 300 in its entirety. SBE Rules 0520-01-09-.01.
- ⁷ The Individuals with Disabilities Education Act, P.L. 91-230, as amended through P.L. 114-95, Enacted December 10, 2015, Sec. 612(a)(5). SBE Rule 0520-01-09-12(5).
- ⁸ TCA 49-10-101(a)(1) and (2).
- ⁹ Tennessee State Board of Education Rules, 0520-01-09-.12(5).
- ¹⁰ TCA 49-10-601(a)(7). Rules of the State Board of Education, Chapter 0520-01-09, Special Education Programs and Services.
- ¹¹ Rules of the State Board of Education, Chapter 0520-01-09, Special Education Programs and Services.
- ¹² 34 CFR 300.530(c).
- ¹³ 34 CFR 300.530(f).
- ¹⁴ The IDEA includes 13 categories of disabilities. Tennessee includes two additional categories as well as one optional category for LEAs. See Appendix B for a listing of the disability categories. 34 CFR 300.324(a).
- ¹⁵ 34 CFR 300.320.
- ¹⁶ 34 CFR 300.324(b).
- ¹⁷ 34 CFR 300.114(2).
- ¹⁸ 34 CFR 300.115.
- ¹⁹ 300.324(a)(2). U.S. Department of Education, Office of Special Education and Rehabilitative Services, Dear Colleague letter, Aug. 1, 2016, p. 1, <https://sites.ed.gov/idea/files/dcl-on-pbis-in-ieps-08-01-2016.pdf>; and *Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders*, OSEP Policy Support 22-01, July 19, 2022, p. 2, <https://sites.ed.gov/idea/files/guide-positive-proactive-approaches-to-supporting-children-with-disabilities.pdf>.
- ²⁰ 34 CFR 300.530(f)(1)(i)-(ii).
- ²¹ 34 CFR 300.530-537.
- ²² TCA 49-6-4002.
- ²³ 34 CFR 300.530(b).
- ²⁴ Tennessee Department of Education, *Shortened School Days and Informal Removals for Students with Disabilities*, Nov. 2023, p. 3, https://www.tn.gov/content/dam/tn/education/special-education/Shortened_School_Days_and_Informal_Removals_for_Students_with_Disabilities.pdf.
- ²⁵ According to USDOE, in-school suspension is not considered a part of the 10 FAPE-free days if students are “afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child’s IEP, and continue to participate with nondisabled children to the extent they would have in their current placement.” *Federal Register*, Vol. 71, No. 156, August 14, 2006, Rules and Regulations, p. 46,715, <https://www.govinfo.gov/content/pkg/FR-2006-08-14/pdf/06-6656.pdf>. USDOE, Dear Colleague letter, Aug. 1. 2016, pp. 2 and 11.
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- ²⁸ 34 CFR 300.530(g).
- ²⁹ 34 CFR 300.530(c)-(d). Tennessee Department of Education, Special Education Framework, Aug. 2018, p. 102.
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- ³¹ SBE Rule 0520-01-09-.24(6)-(8).
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