



Inclusive Education for K-12 Students with Mental Health Disabilities

*Navigating Legal Rights and Best Practices under
the ADA, IDEA, and Section 504*

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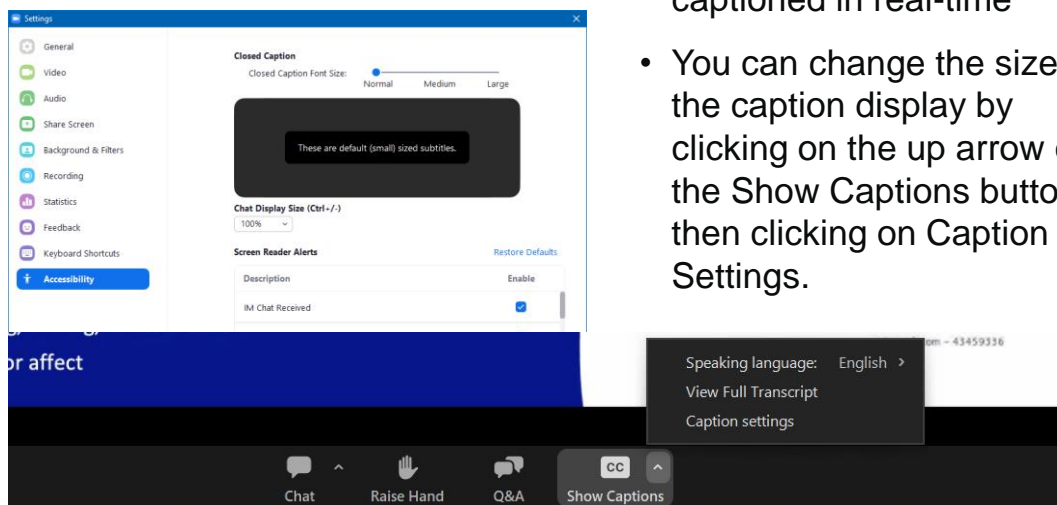
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TransCen, Inc.

- Improving the lives of people with disabilities through meaningful work and community inclusion

Mid-Atlantic ADA Center, a project of TransCen

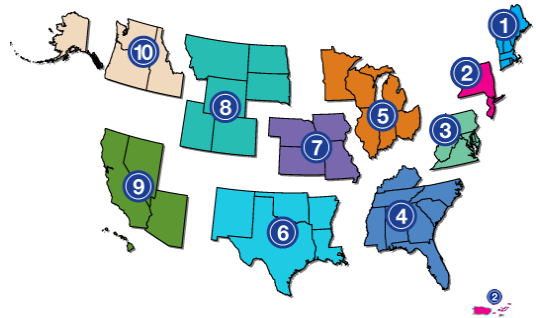
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ADA National Network

- Ten regional centers provide guidance, training, and materials on the ADA
 - **1-800-949-4232**
 - ADAta.org



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- The Mid-Atlantic ADA Center, operated by TransCen Inc., provides information, guidance, and training the Americans with Disabilities Act (ADA). The information and/or materials provided are intended solely as informal guidance and should not be construed as legal advice. The Mid-Atlantic ADA Center is funded by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) (grant #90DPAD0008). NIDILRR is a Center within the Administration for Community Living (ACL), Department of Health and Human Services (HHS). These contents do not necessarily represent the policy of NIDILRR, ACL, or HHS, and you should not assume endorsement by the federal government.

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Presented By



Bazelon Center for Mental Health Law

Mission: Protect and advance the civil rights of adults and children with mental health and developmental disabilities.

Rebecca Raftery, Equal Justice Works Fellow, Sponsored by Latham & Watkins LLP

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Agenda

1. Introduction & Objectives
2. What the World Looks Like & What It Could Look Like
3. Applicable Laws & the Right to Inclusion
4. Behavior Supports & School Discipline Protections
5. Best Practices: Positive Behavior Interventions & Related Services
6. Resources

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Objectives

- ▶ Understand the right to **inclusive education** for students with mental health and behavior-related disabilities under applicable disability rights laws
- ▶ Identify the **legal responsibilities of schools** in supporting students with mental health and behavior-related disabilities, including in school discipline matters
- ▶ Learn **best practices** for supporting the inclusion of students with mental health and behavior-related disabilities

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A Note on Terminology

- ▶ Mental health disability / behavior-related disability
- ▶ Disability categories under Individuals with Disabilities and Education Act (IDEA)

[exact terms may vary by state]

Autism

Deaf-blindness

Deafness

Emotional Disturbance (ED)

Hearing Impairment

Intellectual Disability

Multiple Disabilities

Orthopedic Impairment

Other Health Impairment

Specific Learning Disability

Speech/Language Impairment

Traumatic Brain Injury

Visual Impairment

Developmental Delay

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What the World Looks Like Now

- ▶ Students with mental health/behavior-related disabilities more frequently sent to special classes, separate schools or to “alternative” schools, or referred to criminal legal system
- ▶ Students with ED are more likely than any other subgroup of students with disabilities to face disciplinary removal from school
- ▶ Students with ED are overrepresented in separate special education placements
 - 3% of all students with disabilities are placed in separate schools
 - 12% of students with ED are placed in separate schools

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What the World Looks Like Now, cont'd

- ▶ Students with disabilities are overrepresented in exclusionary discipline
 - According to the most recent data from U.S. ED's Office for Civil Rights:
 - Students with disabilities make up **17% of the student population**, but account for:
 - **34% of students with one suspension**
 - **36% of students with more than one suspension**
 - **21% of students who were expelled**
- ▶ Black students with disabilities are even more disproportionately affected

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What the World Looks Like Now, cont'd

- ▶ Students with disabilities are also overrepresented in referrals to law enforcement and school-based arrests
 - According to the most recent data from U.S. ED's Office for Civil Rights:
 - Students with disabilities make up **17% of the student population**, but account for:
 - **27% of referrals to law enforcement**
 - **28% of school-related arrests**

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What Can the World Look Like?

- ▶ Nearly all students with mental health & behavior-related disabilities **can be educated** in the regular education setting, with the right supports and services
- ▶ Some strategies for supporting inclusion:
 - Working with families to identify student's strengths & needs
 - Thoughtful behavior assessments & intervention plans
 - Partnering with providers to develop creative mental health services

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Applicable Laws Supporting Inclusion

- ▶ Americans with Disabilities Act (**ADA**) Title II
- ▶ Section 504 of the Rehabilitation Act of 1973 (**Section 504**)
 - ▶ Disability anti-discrimination laws
- ▶ Individuals with Disabilities Education Act (**IDEA**)
 - ▶ Free appropriate public education (“FAPE”)

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To Which Schools Do These Laws Apply?

- ▶ **Title II of the ADA** – State and local government entities
 - All K-12 public schools, including public charter schools
- ▶ **Section 504** – Entities that receive federal funding
 - All K-12 public schools, including public charter schools
 - Private or independent schools that receive federal funding
- ▶ **IDEA** (FAPE & LRE requirements)
 - All K-12 public schools, including public charter schools

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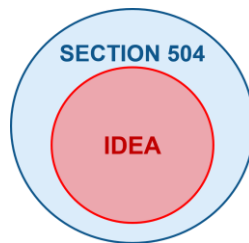
Who Qualifies?

Who qualifies for special education under the IDEA?

- ▶ Children (ages 3-22) who have a disability that adversely affects their education, and who require special education to make appropriate

Who qualifies for accommodations under Section 504/ ADA?

- ▶ Children who have a disability that substantially limits one or more major life activities, and who require reasonable modifications.



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Right to Inclusion

▶ Americans with Disabilities Act (ADA)

- Right to the “**most integrated setting appropriate**” (*Olmstead*)
- Reasonable modifications to avoid disability discrimination

▶ IDEA

- Right to be educated in the “**Least Restrictive Environment**” (“**LRE**”)
- Right to a **Free Appropriate Public Education** (“**FAPE**”)
 - Specialized Instruction, Related Services, IEP

▶ Section 504

- Right to be educated in the LRE
- Reasonable modifications to avoid disability discrimination
- “504 Plan”

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The *Olmstead* Integration Mandate

- ▶ *Olmstead v. L.C.* (1999)
 - Held that the ADA prohibits needless segregation of people with disabilities
 - Individuals with disabilities are entitled to live in the “most integrated setting appropriate” to their needs
- ▶ What is the “most integrated setting appropriate”?
 - A setting that “enables individuals with disabilities to interact with non-disabled persons to the **fullest extent** possible.”

See 28 C.F.R. part 35 app. B

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Right to Special Education under the IDEA

- ▶ The right to receive a **free appropriate public education (FAPE)** in the **least restrictive environment**
- ▶ Includes:
 - Identification & Evaluation
 - Eligibility
 - Individualized Education Program (IEP)
 - Development of Goals & Progress Monitoring
 - Specialized Instruction
 - Related Services
 - Accommodations & Modifications

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Least Restrictive Environment (LRE)

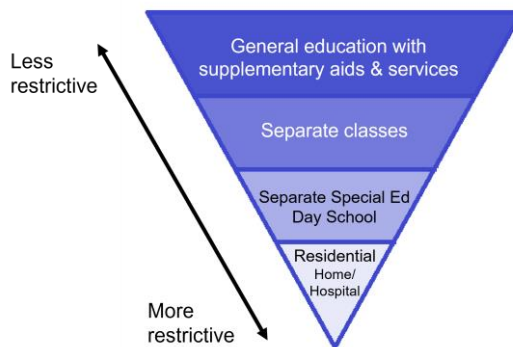
- ▶ All children with disabilities have a right to receive special education services in the “**least restrictive environment.**”
 - ▶ The LEAST restrictive environment is a full-time regular education classroom.
 - ▶ The MOST restrictive environment is 1:1 instruction – typically at a hospital or in a child’s home.
- ▶ Placement in the LRE should give the student the most contact with other children her age – those with and without disabilities – while meeting her educational needs.

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LRE, cont’d

- ▶ Children with disabilities should be educated with their non-disabled peers to the **maximum extent appropriate**
- ▶ Removal of children with disabilities from the general education environment should occur **only** if the **nature or severity** of the disability is such that education in regular classes, with the use of **supplementary aids and services**, cannot be achieved satisfactorily.



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What Does Special Ed Law Say About Behavior Supports & School Discipline?

Section 504

U.S. ED's 2022 guidance (www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance.pdf) regarding Section 504:

- ▶ Clarifies that Section 504 independently requires schools to provide behavioral supports and services to students with disabilities who need them to provide a FAPE.
- ▶ Outlines how Section 504's requirement to provide a FAPE applies to long-term disciplinary sanctions, such as out-of-school suspensions and expulsions.
- ▶ Explains Section 504's general nondiscrimination requirements, in the context of discipline, which applies to school staff and to the conduct of contractors, such as security staff and school police.
- ▶ Makes clear that Section 504 requires schools to provide reasonable modifications to policies, practices, and procedures when necessary to avoid discrimination.

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What Does Special Ed Law Say About Behavior Supports & School Discipline?

IDEA

- ▶ IEP teams **must consider the use of positive behavioral interventions** to address the behavior of any student whose behavior impedes their learning or that of others.
- ▶ IDEA also provides special school discipline protections for students with disabilities. These include:
 - ▶ Manifestation Determination Review requirement
 - ▶ "10-day rule"
 - ▶ "45-day rule"

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10-Day Rule

- ▶ When a child with an IEP violates a school rule, the school can remove the child from his or her IEP placement for **up to 10 school days** without any special disciplinary steps.
 - ▶ *Don't forget that IEP teams must proactively discuss positive interventions when they know a child has behavior problems.*
- ▶ If the school wants to remove a child for more than 10 school days, it must hold a **manifestation determination review (MDR)** meeting
 - ▶ The MDR is to decide whether the rule violation was caused by the child's disability or by the school's failure to implement her IEP.

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Manifestation Determination Review (MDR)

- ▶ The MDR must be held within 10 school days of the removal.
- ▶ The manifestation determination is made by the IEP team (includes parents!).
- ▶ The team must consider all relevant information, including whether the child can understand and control her behavior, and whether the IEP is appropriate.
- ▶ The behavior is a manifestation if it is:
 - ▶ Caused by, or substantially related to, the child's disability, OR
 - ▶ A direct result of the school's failure to implement the IEP.

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When Behavior is a Manifestation

- ▶ If the IEP team decides that the behavior **is** a manifestation of the child's disability, the child must be **returned immediately to her IEP placement** and cannot be disciplined further for that incident.
 - Must **conduct a functional behavior assessment** and write a **behavior intervention plan**, or review/change current plan, to make sure the behavior doesn't happen again.
- ▶ If the team determines the IEP is inappropriate or not being implemented, the school must take immediate steps to fix the problem.

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When Behavior Is Not a Manifestation

- ▶ If the IEP team decides that the behavior **is not** a manifestation of disability, the child can be disciplined as a child without a disability would be disciplined.
- ▶ However, the child must continue to receive the specialized instruction and related services as provided in her IEP, though in a different setting.

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Special Circumstances: 45-Day Removal

- ▶ A child can be removed from their special education placement for up to 45 days, **even if the behavior was a manifestation of her disability**, only in the following circumstances:
 - 1) the child has a **weapon** at school or a school function
 - 2) the child has **illegal drugs** at school or a school function
 - 3) the child **seriously injures** another person at school or a school function

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45-Day Removals, cont'd

- ▶ The school must send the child to an alternate setting for the 45-day period and must continue to provide specialized instruction and related services per the child's IEP.
- ▶ The IEP team, which must include parents, decides what the alternative setting will be.
- ▶ The school must still hold a manifestation meeting within 10 school days of removing the child from the IEP placement, but the child stays in the alternative setting for up to 45 school days regardless of the manifestation determination.

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Special Circumstances: Other Long-Term Removals

- ▶ Schools may also request a due process hearing seeking a 45-day change in placement, where the school believes that **maintaining the child's current placement is "substantially likely to result in injury to the child or others"**

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What **can** inclusion look like for students with mental health and behavior-related disabilities?

BEST PRACTICES

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Best Practices: What Behavior Strategies Can IEP Team Proactively Implement?

- ▶ Conducting a functional behavior assessment (FBA) to understand function of behaviors
- ▶ Including a behavior intervention plan (BIP) in the IEP
- ▶ Including behavioral goals in the IEP
- ▶ Providing the student accommodations in the classroom
- ▶ Providing related services in and/or out of the classroom

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Functional Behavior Assessments (FBAs)

- ▶ **What:** a process for gathering data to determine when, where, and why a student exhibits a behavior.
- ▶ **Why:** to teach and reinforce acceptable alternatives while decreasing or eliminating problem behaviors.
- ▶ **How:** should include evaluations, interviews, rating scales, and observations (including “ABC”s).
- ▶ **Outcome:** a summary of the behavior(s), when the behavior(s) occur, and outcomes that reinforce the behavior(s), as well as data to support the summary – provides the basis for behavior intervention plan

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FBA's, cont'd

- ▶ IDEA does not define requirements for an FBA, but at a minimum, an FBA generally should:
 - ▶ Clearly define target behaviors
 - ▶ Collect both **direct** and **indirect data** on the occurrence and nonoccurrence of the behavior
 - ▶ Analyze data to determine trends & develop hypothesis as to the function of each behavior
 - ▶ Lead to development (or revision) of a Behavior Intervention Plan

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Behavior Intervention Plan (BIP)

A BIP should:

- ▶ Be individualized and specific to the child
- ▶ Include interventions based on data collection
- ▶ Be monitored, evaluated, and revised as needed – ongoing data collection

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Social/Emotional & Behavior Goals

- ▶ IEP goals related to improving social/emotional skills and/or reducing unwanted behaviors
- ▶ Goals should be **specific** and **measurable**
 - Identify the exact behavior or emotional skill to be addressed
- ▶ What the child can reasonably accomplish in a one-year period?
- ▶ Should identify an acceptable replacement behavior for what the child will learn, instead of focusing only on what the child will not do.

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Accommodations

- ▶ Should be individualized and creative – whatever works!
 - Positive reinforcement/praise
 - Sensory stimulation
 - Breaks
 - Frequent prompts, reminders
 - Checklists
 - Rephrasing directions, material to be taught
 - Frequent checks for understanding
- ▶ Not just listed in the IEP – accommodations should be consistently implemented by all adults that come into contact w/ the student at school!

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What Are Mental Health Related Services?

Direct interventions:

- ▶ Skills training
- ▶ Mentoring
- ▶ Counseling (individual & group)
- ▶ Crisis intervention
- ▶ Youth mobile crisis response teams

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Mental Health Related Services Can Also Include:

- ▶ Teacher coaching and training
 - On how to collect behavior data, put together service plan, provide positive behavior supports in classroom)
- ▶ Parent coaching and training
 - On how to support behavior at home consistent with school
- ▶ Mobilizing community resources
 - For counseling, mentoring, recreation, work experiences, etc.
- ▶ Coordinating with non-school providers
 - Doctors, MH providers, counselors, etc.

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Resources

- ▶ [Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders](#) (July 2022, U.S. Dep't of Educ. Office of Special Education & Rehabilitative Servs.)
- ▶ [Questions & Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions](#) (July 2022, U.S. Dep't of Educ. Office of Special Education & Rehabilitative Servs.)
- ▶ [Dear Colleague Letter on the Inclusion of Behavioral Supports in Individualized Education Programs](#) (August 2016, U.S. Dep't of Educ. Office of Special Education Programs)

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Resources cont'd.

- ▶ [Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973](#) (July 2022, U.S. Dep't of Educ. Office for Civil Rights)
- ▶ [Replacing School Police with Services that Work](#) (August 2021, Bazelon Center for Mental Health Law)
- ▶ Fact Sheet: [Effective Mental Health Services Integrated with Schools: What Works](#) (2017, Bazelon Center for Mental Health Law)

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Thank you!

Questions?

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