



# **POSITIVE, PROACTIVE APPROACHES TO SUPPORTING CHILDREN WITH DISABILITIES: A GUIDE FOR STAKEHOLDERS**

OSEP Policy Support 22-01 (TA guide)

**U.S. DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND  
REHABILITATIVE SERVICES**

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## Introduction

Every child should have access to a high-quality education provided in a safe, supportive, and predictable<sup>1</sup> learning environment free from discrimination, filled with healthy, trusting relationships, and one that ensures their social, emotional, and academic growth and development. Children with disabilities have historically faced systemic barriers to accessing their education and, in light of the COVID-19 pandemic, have faced greater challenges to their social, emotional, and academic development and success.<sup>2</sup> It is therefore crucially important for schools and early childhood programs to support the social, emotional, academic, and behavioral needs of children with disabilities; consider the harmful effects that inappropriate and ineffective discipline can have on child development and outcomes; and invest in alternative strategies and supports to address learning and behavioral needs. The Department recognizes and appreciates school administrators, teachers, and educational staff across the Nation who work to provide a safe, positive, and nondiscriminatory education environment for all students, teachers, and other school staff. Schools need not choose between keeping their school community—including students and school staff—safe and complying with the law.

The Individuals with Disabilities Education Act (IDEA) guarantees each eligible child with a disability a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet the child’s unique needs. Under IDEA, the vehicle for providing FAPE is through an appropriately developed individualized education program (IEP) based on the individual needs of the child. An IEP must include a child’s present levels of academic achievement and functional performance, and the impact of a child’s disability on their involvement and progress in the general education curriculum. IEP goals must be aligned with

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<sup>1</sup> “Predictable,” as used in positive behavioral interventions and supports, has the common definition of something that is obvious or has known expectations. Predictable learning environments may contribute to a sense of safety for children thereby limiting behavior that is not consistent with a school’s code of student conduct.

<sup>2</sup> Orsander, M., Mendoza, P., Burgess, M., & Arlini, S.M. (2020). [The hidden impact of COVID-19 on children and families with disabilities](#). London, Save the Children International.

grade-level content standards for all children with disabilities.<sup>3</sup> The IEP must also include a statement of the special education and related service and supplementary aids and services to be provided to the child.<sup>4</sup> When an IEP is appropriately developed and effectively implemented, children can experience social, emotional and academic success. IDEA also includes specific provisions to address situations in which the behavior of a child with a disability impedes the child’s learning or that of others. As part of the obligation to provide FAPE, in the case of a child whose behavior impedes the child’s learning or that of others, the IEP Team must consider — and include in the IEP — the use of positive behavioral interventions and supports, and other strategies, to address that behavior.<sup>5</sup> Even with these requirements, data<sup>6</sup> suggests that many children with disabilities may not be receiving appropriate behavioral interventions and supports and instead are being removed from the classroom through disciplinary removals. This resource offers alternative strategies that early childhood programs, schools, and local educational agencies (LEAs) can use in place of aversive practices<sup>7</sup> or exclusionary discipline.<sup>8</sup>

As State educational agencies (SEAs), LEAs, schools, early childhood programs, and educators (including administrators, teachers, specialized instructional support personnel, and others employed by schools and early childhood programs) work diligently to ensure children have the opportunity for safe, in person learning, disciplinary practices and policies should be examined and, when appropriate, changed where disparities<sup>9</sup> in their use persist. In this technical assistance document (a companion to the [Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions](#), which outlines the legal requirements related to behavior support and discipline for eligible students with disabilities under IDEA), the Office of

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<sup>3</sup> States are permitted to define alternate academic achievement standards for children with the most significant cognitive disabilities, provided those standards are aligned with the State's academic content standards, promote access to the general curriculum, and reflect professional judgment of the highest achievement standards possible, in accordance with 34 C.F.R. § 200.1(d). 34 C.F.R. § 300.160(c)(2)(i).

<sup>4</sup> 34 C.F.R. §§ 300.17 and 300.320-300.324.

<sup>5</sup> 34 C.F.R. §§ 300.324(a)(2)(i) and (b)(2); and 300.320(a)(4).

<sup>6</sup> See accompanying Dear Colleague Letter.

<sup>7</sup> Aversive practices include, but are not limited to, restraint, seclusion, unpleasant spray to the face, securing a student to a chair (unrelated to providing occupational therapy or other medical support), and taping a student’s mouth, as well as the use of electrical stimulation devices for the purpose of addressing self-injurious behavior or aggressive behavior.

<sup>8</sup> Exclusionary discipline, although not defined in IDEA and its implementing regulations, as used in this and the accompanying documents, refers to the removal, whether on a short-term or long-term basis, of a child with a disability from a class, school, or other educational program or activity for violating a school rule or school’s code of student conduct. Examples can include detentions, in-school suspensions, out-of-school suspensions, suspensions from riding the school bus, expulsions, disciplinary transfers to alternative schools, and referrals to law enforcement, including referrals that result in school-related arrest.

<sup>9</sup> In [Supporting Students with Disabilities and Avoid the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973](#), the Department’s Office for Civil Rights explains that statistical evidence suggesting disproportionate use of discipline for certain conduct, alone, does not prove discrimination under the federal laws that protect the educational rights of students with disabilities, but may raise a basis for examination of whether disability discrimination is occurring.

Special Education Programs (OSEP) provides information about resources, strategies, and evidence-based practices that (while not required by law) can help States, LEAs, schools, early childhood programs, educators, and families in their efforts to meet IDEA requirements and, in doing so, improve outcomes for children with disabilities.

## **I. Proactively Addressing Disparities in, and Negative Outcomes from, Exclusionary Discipline**

Given the negative outcomes associated with, and the disparities in the use of, exclusionary discipline,<sup>10</sup> SEAs, LEAs, schools, and early childhood programs should identify ways to significantly reduce their use.<sup>11</sup> States and other entities that operate educational programs, including early childhood education programs, should consider enacting policies that restrict, or prohibit, the use of disciplinary practices such as suspension and expulsion in particular situations or for particular groups of children.<sup>12</sup> Although there may be instances when a child's behavior, such as causing physical harm to self or others, warrants exclusionary disciplinary action, preventing the need before it occurs can be an effective first step in most situations. Proactive systematic approaches that focus on instruction and supports, and that are implemented with fidelity and cultural responsiveness, are likely to address disparities; reduce the use of exclusionary discipline; and result in positive developmental, academic, and behavioral outcomes for all children including those with disabilities.<sup>13</sup> Further, in the Office of Special Education and Rehabilitative Services' (OSERS') view, exclusionary discipline should not be used for non-violent offenses such as tardiness, absenteeism, or subjective offenses such as defiance or disrespect. A reduction in exclusionary discipline is associated with a positive school

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<sup>10</sup> Chu, E., & Ready, D.D. "Exclusion and Urban Public High Schools: Short- and Long-Term Consequences of School Suspensions." *American Journal of Education*, 124 (August 2018). Available at: <https://www.journals.uchicago.edu/doi/pdf/10.1086/698454>; Gerlinger, J, Viano, S, Gardella, J.H., Fisher, B.W., Curran, F. C., & Higgins, E. M. (2021). Exclusionary School Discipline and Delinquent Outcomes: A Meta-Analysis, *Journal of Youth and Adolescence* 50, 1493–1509.

<sup>11</sup> States can play an important role in helping LEAs and early childhood programs to build the capacity to implement a proactive approach. For a thorough discussion of State obligations in reducing discipline disparities, see accompanying [Questions and Answers: Addressing the Behavioral Needs of Children with Disabilities and IDEA's Discipline Provisions](#). States may also use IDEA section 611 funds, as described in Section III of this document.

<sup>12</sup> For example, Head Start requires programs to prohibit or severely limit the use of suspension due to a child's behavior and, where suspension is deemed necessary, the program must first engage with mental health professionals, parents, and other specialized professionals to determine whether other options might be appropriate. See 45 C.F.R. § 1302.17. See also Head Start Policy & Regulations at: <https://eclkc.ohs.acf.hhs.gov/policy/45-cfr-chap-xiii/1302-17-suspension-expulsion>.

<sup>13</sup> Scott, T.M., Gage, N.A., Hirn, R.G., Lingo, A. S., & Burt, J. (2019). An examination of the association between MTSS implementation fidelity measures and student outcomes, *Preventing School Failure: Alternative Education for Children and Youth*, 63:4, 308-316, DOI: 10.1080/1045988X.2019.1605971.

climate<sup>14</sup> which fosters safety and promotes a supportive environment with respectful, trusting, and caring relationships.<sup>15</sup>

Developing positive early learning environments and school climates while implementing evidence-based strategies and improving, and equitably applying, program and school discipline policies and practices, starts with an investment in building the necessary expertise within the educator workforce. A critical step in addressing disparities, significantly reducing the use of exclusionary discipline and aversive practices and improving outcomes for children with disabilities is providing educators with resources, strategies, and professional knowledge to foster a positive school climate. When schools and early childhood programs foster climates of inclusion, safety, and belonging, while implementing evidence-based practices, the use of exclusionary discipline and aversive practices (such as restraint or seclusion) can be reduced significantly.<sup>16</sup>

#### **A. Using an Evidence-Based Approach to Support and Respond to Student Needs**

A culturally and linguistically responsive multi-tiered system of supports (MTSS) is a comprehensive prevention framework designed to improve developmental, social, emotional, academic, and behavioral outcomes using a continuum of evidence-based strategies and supports.<sup>17</sup> Within an MTSS framework, educators implement:

- universal strategies and supports designed for all children,
- targeted strategies and supports for children with additional needs, and
- intensive strategies and supports to meet the specific needs of individual children.

With data-driven decision making and evidence-based approaches to meeting each child’s needs, MTSS provides a valuable framework to help schools address long-standing inequities in

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<sup>14</sup> Huang, F. L. & Cornell, D. (2018). The relationship of school climate with out-of-school suspensions. *Children and Youth Services Review*, 94, 378–389. <https://doi.org/10.1016/j.childyouth.2018.08.013>.

<sup>15</sup> School Climate Improvement. National Center on Safe Supportive Learning Environments (NCSSLE). (n.d.). Retrieved April 7, 2022, from <https://safesupportivelearning.ed.gov/school-climate-improvement>.

<sup>16</sup> Gregory, A., Cornell, D., & Fan, X. (2011). The relationship of school structure and support to suspension rates for Black and White high school students. *American Educational Research Journal*, 48, 904-934. <https://journals.sagepub.com/doi/10.3102/0002831211398531>; Heilbrun, A., Cornell, D., & Konold, T. (2018). Authoritative school climate and suspension rates in middle schools: Implications for reducing the racial disparity in school discipline, *Journal of School Violence*, 17(3), 324-338, <https://doi.org/10.1080/15388220.2017.1368395>  
 Mattison, E., & Aber, M.S. (2007). Closing the achievement gap: The association of racial climate with achievement and behavioral outcomes. *American Journal of Community Psychology*, 40, 1–12, <https://doi.org/10.1007/s10464-007-9128-x>.

<sup>17</sup> Essential components of MTSS. Center on Multi-Tiered System of Supports. (n.d.). Retrieved April 7, 2022, from <https://mtss4success.org/essential-components>.

achievement.<sup>18</sup> Additionally, MTSS focuses on meeting the needs of all children by using universal screening, progress monitoring, and data-based decision making at all tiers of a flexible structure that allows schools and early childhood programs to customize and organize practices, supports, and services based on the needs of each child.

## 1. Universal Academic & Behavioral Supports

Universal instructional and behavioral supports are the strategies provided to all children within a school or early childhood program. Universal design for learning (UDL) and positive behavioral interventions and supports (PBIS) are evidence-based strategies that may be implemented at the universal level, which means they are strategies that benefit all children and can be implemented at all tiers in MTSS.

### *Implementing Universal Design for Learning*

When considering the need for interventions, it is important to determine if a child's behaviors that are inconsistent with school expectations are a consequence of developmentally inappropriate expectations, academic difficulty, or other factors. In some cases, a child's behavior can be impacted by their environment, academic experience, developmental level, or social emotional needs. For example, if a child is struggling academically, developmentally, or with social emotional health, and is not provided with appropriate supports or interventions, disruptive behavior may occur as a signal that the child's needs are not being met.<sup>19</sup> Thus, it is important to consider whole-school and program-wide approaches that also proactively address the way children receive and engage with their environment, peers, and instructional material.<sup>20</sup>

UDL<sup>21</sup> is a framework to improve and optimize teaching and learning based on scientific insights into how humans learn.<sup>22</sup> UDL challenges educators to consider how to intentionally design

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<sup>18</sup> Jackson, D. (2021, July). Leveraging MTSS to Ensure Equitable Outcomes. Center on Multi-Tiered System of Supports. Retrieved October 2021, from [https://mtss4success.org/sites/default/files/2021-07/MTSS\\_Equity\\_Brief.pdf](https://mtss4success.org/sites/default/files/2021-07/MTSS_Equity_Brief.pdf).

<sup>19</sup> As discussed later, these issues can also be indications that an individual student has a disability and should be evaluated to determine if special education or related aids and services are necessary to meet the student's needs on an individualized basis in order to provide FAPE.

<sup>20</sup> States can access more information about accessible instructional materials through the federally funded National Center on Accessible Educational Materials. <https://aem.cast.org/about/national-center-accessible-educational-materials-learning>.

<sup>21</sup> The Higher Education Opportunity Act (2008) defines UDL as: "a scientifically valid framework for guiding educational practice that — (A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and (B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient." 20 U.S.C. § 1003(24).

<sup>22</sup> About universal design for learning. CAST. (2022, February 8). Retrieved April 7, 2022, from <https://www.cast.org/impact/universal-design-for-learning-udl>.

instruction and assessment to promote multiple means of engagement, representation, and action/expression.<sup>23</sup> In doing so, UDL is rooted in a strengths-based approach to learning for all children, and research has demonstrated that UDL can increase developmental outcomes and academic achievement, including for children with disabilities.<sup>24</sup>

### ***Implementing Positive Behavioral Interventions and Supports***

To fully access and participate in the learning environment, all children should know the school- and program-wide behavioral expectations required to be successful, have opportunities to practice meeting those expectations, and receive support for and reinforcement of those behaviors by skilled adults trained in evidence-based practices.

PBIS is an MTSS framework focused on improving behavior by integrating data, systems, and evidence-based practices within three tiers of support: universal, targeted, and individual. These tiers are fluid, and the amount of support and interventions should be differentiated over time and across settings based on the child's needs. Using this tiered system, all children would benefit from universal supports and services, while smaller groups that need more targeted and intensive supports and services would receive them. According to the [Center on Positive Behavioral Interventions and Supports](#) and the [National Center for Pyramid Model Innovations](#), implementation of PBIS results in:

- Improved outcomes, such as increased academic achievement and social and emotional competence for children with disabilities, and reduced bullying behaviors;
- Significant reductions in inappropriate behavior;<sup>25</sup>
- Reduced use of exclusionary discipline, including reduced discipline referrals and suspensions; and
- Reduced use of restraint and seclusion.<sup>26</sup>

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<sup>23</sup> Teaching Excellence in Adult Literacy Center. (2019, April 8). TEAL Center Fact Sheet no. 2: Fact sheet: Universal design for learning. Retrieved December 2021, from <https://lincs.ed.gov/state-resources/federal-initiatives/teal/guide/udl>.

<sup>24</sup> Basham, J., Blackorby, J., & Marino, M. (2020). Opportunity in crisis: The role of universal design for learning in educational redesign. *Learning Disabilities: A Contemporary Journal*, 18(1), 71–91. Retrieved October 2021, from: <https://files.eric.ed.gov/fulltext/EJ1264277.pdf>.

<sup>25</sup> Hemmeter, M. L., Snyder, P. A., Fox, L., & Algina, J. (2016). Evaluating the implementation of the pyramid model for promoting social emotional competence in early childhood classrooms. *Topics in Early Childhood Special Education*, 36, 133–146. Retrieved April 2021, from: <https://journals.sagepub.com/doi/full/10.1177/0271121416653386>.

<sup>26</sup> Center on PBIS. (2022). Supporting and Responding to Student's Social, Emotional, and Behavioral Needs: Evidence-Based Practices for Educators (Version 2). Retrieved April 9, 2022, from <https://www.pbis.org/pbis/getting-started>.

## 2. Targeted Supports

Consistent with IDEA, if the behavior of a child with a disability impedes their learning or the learning of others, the use of positive behavioral interventions and supports and other strategies must be considered to address that behavior.<sup>27</sup> For some children whose behavioral needs are not met with school- and program-wide strategies, the IEP team should determine what more targeted, individualized interventions and supports are necessary. Targeted supports are typically provided in smaller groups to allow for more explicit instruction and additional opportunities to practice positive behaviors and receive constructive feedback. Social skills instruction, supports on developing social relationships, self-management strategies, check and connect (a mentoring intervention designed to spot early signs of disengagement, improve school performance, and reduce school dropout), and restorative practices, are examples of interventions that may be provided as targeted supports.<sup>28</sup>

Restorative practices focus on developing caring connections, listening to and valuing others' opinions, promoting accountability, repairing harm, and supporting reintegration back into the educational environment. Implementing restorative practices as a targeted support could include using restorative group conferencing, restorative circles, and conversations among students to facilitate healing.<sup>29</sup> Research suggests that combining restorative practices with schoolwide positive behavioral supports reduces disciplinary referrals and disparities in the use of discipline.<sup>30</sup>

## 3. Individualized or Intensive Supports

Some children may benefit from intensive supports that are designed to meet the specific needs of an individual child. These supports can be more intensive than school-wide or targeted and small-group approaches. Such supports may include conducting a functional behavioral assessment (FBA) and implementing a corresponding behavioral intervention plan (BIP) or providing wraparound services<sup>31</sup> or individual counseling.

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<sup>27</sup> 34 C.F.R. § 300.324(a)(2)(i).

<sup>28</sup> Tier 2. Center on PBIS. (2021). Retrieved October 7, 2021, from <https://www.pbis.org/pbis/tier-2>.

<sup>29</sup> Wachtel, T. (2016). References. Defining restorative. International Institute for Restorative Practices. Retrieved October 10, 2021, from [https://www.iirp.edu/images/pdf/Defining-Restorative\\_Nov-2016.pdf](https://www.iirp.edu/images/pdf/Defining-Restorative_Nov-2016.pdf).

<sup>30</sup> Vincent, C. G., English, J., Girvan, E. J., Sprague, J. R., & McCabe, T. M. (2016). School-wide positive and restorative discipline (SWPRD): Integrating school-wide positive behavior interventions and supports and restorative discipline. *Inequality in School Discipline*, 115–134. [https://doi.org/10.1057/978-1-137-51257-4\\_7](https://doi.org/10.1057/978-1-137-51257-4_7).

<sup>31</sup> In this context, “wraparound services” refers to the school- and community-based medical and mental health services provided in tandem as supports for a child with serious behavioral needs and their family based on the child’s and family’s unique needs.

### ***Functional Behavioral Assessment Process***

The FBA is a process for identifying the reasons behind, or factors contributing to, a child’s behavior.<sup>32,33</sup> This process is rooted in the understanding that behavior is a form of communication and can provide a deeper understanding of what a child is trying to convey through their behavior. By investigating the conditions and other factors that contribute to the occurrence of the behavior, the response that the behavior elicits, and the reasoning for the continuation of the behavior, the FBA process provides useful information to inform the development of appropriate, effective interventions that address the root cause of the behavior, rather than using a punitive approach as an attempt to stop or reduce the behavior.

Although IDEA does not provide specific requirements for what should be included in the FBA process, it is generally understood that an effective FBA process<sup>34</sup> is individualized and, at a minimum, should:

- Clearly define the interfering behavior.
- Collect indirect and direct data on the occurrence and nonoccurrence of the behavior.
- Analyze data to determine trends and develop a hypothesis of the function of the behavior.
- Lead to the development or revision of a BIP (which is monitored, evaluated, and adjusted as needed).

The first step in the FBA process is to clearly define the behavior of concern (interfering behavior) to ensure that it is measurable and observable, and that data are collected on the specific behavior. Data collection provides information on the frequency, duration, conditions, location, and individuals present when the interfering behavior does and does not occur; the events or conditions that typically occur before and after the interfering behavior; and other

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<sup>32</sup> As noted in [Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions, Appendix I](#), a functional behavioral assessment (FBA) is used to understand the function and purpose of a child’s specific, interfering behavior and factors that contribute to the behavior’s occurrence and non-occurrence for the purpose of developing effective positive behavioral interventions, supports, and other strategies to mitigate or eliminate the interfering behavior.

<sup>33</sup> In *D.S. v. Trumbull Board of Education*, 975 F.3d 152 (2d Cir. 2020), the U.S. Court of Appeals for the Second Circuit disagreed with the Department’s interpretation that a functional behavioral assessment (FBA) is considered an evaluation or reevaluation under IDEA that triggers a parent’s right to request an independent educational evaluation at public expense. Based on this, OSERS intends to review its previously stated positions on this matter, including whether an LEA must seek parental consent before conducting an FBA for an eligible child with a disability. (See Questions E-4 and E-5 of OSERS’ 2009 Q&A document.)

<sup>34</sup> For more information on the FBA process, see “Using FBA for Diagnostic Assessment in Behavior” from the National Center on Intensive Intervention, available at: [https://intensiveintervention.org/sites/default/files/Handout%203a%20-%20Functional%20Behavior%20Assessment\\_FBA\\_Process.%20pdf.pdf](https://intensiveintervention.org/sites/default/files/Handout%203a%20-%20Functional%20Behavior%20Assessment_FBA_Process.%20pdf.pdf).

relevant information. Based on the analysis of those data, a hypothesis is developed indicating the settings or events that may trigger the occurrence of the interfering behavior (antecedent), a description of the interfering behavior (behavior), and the responses that perpetuate the interfering behavior (consequence). Each of these components should be carefully considered to ensure that appropriate and effective interventions are identified and implemented. Therefore, individual(s) conducting the FBA should be well-versed and trained in observation and data collection and analysis.<sup>35</sup>

The IEP Team may rely on the information collected and analyzed through the FBA<sup>36</sup> process to understand factors that contribute to the occurrence and non-occurrence of the child's behavior and to inform the development of an effective BIP and identify additional supports and services to be included in the IEP.<sup>37</sup> Guided by the data and information collected through the FBA that identified the function of the behavior, a BIP takes an individualized, proactive, and preventative approach to addressing the interfering behavior. In general, a BIP describes how antecedents that trigger the interfering behavior will be addressed and how new skills and replacement behaviors will be taught and reinforced.<sup>38</sup>

Lastly, once developed, the BIP should be reviewed periodically to determine its effectiveness and whether it needs to be adjusted. Identifying criteria for success can be helpful in guiding the IEP Team in monitoring the interventions.

## II. Investing in School and Educator Capacity

Shifting schools and early childhood programs away from exclusionary and disproportionate disciplinary practices toward a more positive school and program climate requires building educator capacity. Educators play an integral role in supporting children and fostering a positive school climate and are critical partners in meaningfully addressing disparities in the uses of exclusionary discipline. Therefore, it is important for SEAs, LEAs, schools, and early childhood programs to invest time and resources in ensuring that educators are equipped with the skills and supports including evidence-based training and professional development necessary to implement these strategies in culturally and linguistically responsive and affirming ways.

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<sup>35</sup> The OSEP-funded IRIS Center offers a module on Functional Behavioral Assessment available at: <https://iris.peabody.vanderbilt.edu/module/fba/challenge/#content>.

<sup>36</sup> 34 C.F.R. § 300.530 specifies when an FBA is required. For more information, see accompanying [\*Questions and Answers: Addressing the Behavioral Needs of Children with Disabilities and IDEA's Discipline Provisions\*](#).

<sup>37</sup> Sugai, G., Lewis-Palmer, T. & Hagan-Burke, S. (2000). Overview of the Functional Behavioral Assessment Process, *Exceptionality*, 8(3), 149–160, [https://doi.org/10.1207/S15327035EX0803\\_2](https://doi.org/10.1207/S15327035EX0803_2).

<sup>38</sup> National Center on Intensive Intervention. (2013). *Supra* note 43.

## A. Culturally and Linguistically Responsive Practices

Implementing proactive school- and program-wide interventions may reduce rates of exclusionary discipline, yet discipline disparities may often persist in the absence of specific attention to address them.<sup>39</sup> To meet the needs of all children, proactive, evidence-based program- and school-wide approaches should be implemented in a culturally and linguistically responsive way that affirms the multi-faceted identity of each child.<sup>40</sup>

The MTSS framework may be used to address issues leading to disparate outcomes for children with disabilities, particularly children who are of color, English language learners, or from low-income families. The MTSS framework's use of data-based decision making provides an opportunity to objectively examine disparities and ensure equity in implementation of discipline policies across groups of children. In general, when schools and early childhood programs implement practices that include setting high expectations for all children, recognizing and affirming children's multi-faceted backgrounds and cultures to strengthen their learning, and providing access to effective instruction and resources for learning, children are given an equitable opportunity to learn and achieve more positive outcomes.<sup>41</sup> Emerging evidence suggests that effective practices include strengthening relationships with children; embedding culturally and linguistically supportive practices within early childhood programs, schools, and classrooms; and developing and implementing policies that support equity.<sup>42</sup>

When educators connect with and understand children and take children's perspectives into consideration, they build empathy and respond to children's behavior in more affirming ways. As educators build more welcoming environments that center children's experiences, the climate of the classroom, early childhood program, or school can begin to change, and the disproportionate use of discipline can decrease. Early childhood programs, schools, LEAs, and SEAs can consider ongoing and effective professional development in these areas to ensure educators are equipped with the skills to create a culturally responsive learning environment for all children.

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<sup>39</sup> Gregory, A., Skiba, R.J., & Mediratta, K. (2017). Eliminating disparities in school discipline: A framework for intervention. *Review of research in Education*, 41, 253–278, <https://doi.org/10.3102%2F0091732X17690499>.

<sup>40</sup> McIntosh, K., Sugai, G., Smolkowski, K., Horner, R. H., & Girvan, E. J. (2018, February 1). A 5-point intervention approach for enhancing equity in school discipline. Practice Guides. Retrieved October 10, 2021, from <https://www.pbis.org/resource/a-5-point-intervention-approach-for-enhancing-equity-in-school-discipline>.

<sup>41</sup> Klingner, J. K., Artiles, A. J., Kozleski, E., Harry, B., Zion, S., Tate, W., & Riley, D. (2005). Addressing the disproportionate representation of culturally and linguistically diverse students in special education through culturally responsive educational systems. *Education Policy Analysis Archives*, 13(38), 1–40.

<sup>42</sup> Levenson, M., Pinkelman, S., Rose, J, McIntosh, K, & Smith, K. (2021, March). Center on PBIS: Resource: PBIS cultural responsiveness field guide: Resources for trainers and coaches. Retrieved October 7, 2021, from <https://www.pbis.org/resource/pbis-cultural-responsiveness-field-guide-resources-for-trainers-and-coaches>.

## B. Educator Preparation and Ongoing Professional Development

To effectively implement evidence-based practices such as UDL or PBIS within an MTSS framework, educators should have specific knowledge and skills in effectively supporting and responding to children. Often, education preparation programs provide limited instruction and training on how to effectively support and respond to behaviors, and specifically to behaviors of children with disabilities.<sup>43</sup> Consequently, many teachers often list challenges related to managing and supporting student behavior, as well as high stress and emotional and physical exhaustion, as reasons for leaving the profession.<sup>44</sup> Some of these challenges can be mitigated by aligning teacher preparation programs and pre-service experiences to the skills teachers will need in the classroom.

Educators should have access to ongoing job-embedded professional development,<sup>45</sup> coaching, and consultation with specialized instructional support personnel<sup>46</sup> who have expertise in responding to and supporting the full range of student needs. LEA, school, and early childhood program leadership should prioritize job-embedded professional development opportunities for educators to both strengthen their foundational knowledge and skills and provide support to teachers, specialized instructional support personnel, and other staff who may need additional skills or assistance.

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- <sup>43</sup> Freeman, J., Simonsen, B., Briere, D. E., & MacSuga-Gage, A. S. (2014). Pre-service teacher training in classroom management: A review of state accreditation policy and teacher preparation programs. *Teacher Educational and Special Education, 37*, 106–120. Retrieved from: <http://doi.org/10.1177/0888406413507002>; Wei, R. C., Darling-Hammond, L., & Adamson, F. (2010). Professional development in the United States: Trends and challenges. Dallas, TX: National Staff Development Council; Begeny, J. C., & Martens, B. K. (2006). Assessing pre-service teachers' training in empirically validated behavioral instruction practices. *School Psychology Quarterly, 21*, 262–285. <http://doi.org/10.1521/scpq.2006.21.3.262>; Chesley, G. M., & Jordan, J. (2012). What's missing from educator prep. *Educational Leadership, 69*, 41–45.
- <sup>44</sup> Brownell, M. T., Smith, S. W., McNellis, J. R., & Miller, M. D. (1997). Attrition in special education: Why teachers leave the classroom and where they go. *Exceptionality, 7*(3), 143–155. [https://doi.org/10.1207/s15327035ex0703\\_1](https://doi.org/10.1207/s15327035ex0703_1); Ingersoll, R. M., & Smith, T. M. (2003). The wrong solution to the teacher shortage. *Educational Leadership, 60*, 30–33; Ingersoll, R., Merrill, E., Stuckey, D., & Collins, G. (2018). *Seven Trends: The Transformation of the Teaching Force*, updated October 2018. Research Report (#RR 2018–2). Consortium for Policy Research in Education, University of Pennsylvania. Retrieved from [https://repository.upenn.edu/cpre\\_researchreports/108](https://repository.upenn.edu/cpre_researchreports/108); Smith, T. M., & Ingersoll, R. (2004). What are the effects of induction and mentoring on beginning teacher turnover. *American Education Research Journal, 41*, 681–714; Stevenson, N. A., VanLone, J., & Barber, B. R. (2020). A commentary on the misalignment of teacher education and the need for classroom behavior management skills. *Education & Treatment of Children, 43*(4), 393–404.
- <sup>45</sup> Job-embedded professional development refers to teacher learning that is grounded in day-to-day teaching practice and is designed to enhance teachers' content-specific instructional practices with the intent of improving student learning see <https://learningforward.org/wp-content/uploads/2017/08/job-embedded-professional-development.pdf>.
- <sup>46</sup> ESSA defines specialized instructional personnel as (i) school counselors, school social workers, and school psychologists; and (ii) other qualified personnel involved in providing assessment, diagnosis, counseling, educational, therapeutic, and other necessary services (including related services as that term is defined in section 602 of IDEA (20 U.S.C. 1401)) as part of a comprehensive program to meet student needs.

To effectively support students and respond to behavior, school and program personnel should have knowledge, skills, and experience in topics such as:

- Understanding the unique needs of each child with a disability and the rights afforded to children with disabilities under IDEA;
- Being aware of potential signs of stress;
- Being prepared to be the first contact and resource for children in need of support;
- Implementing universal screening and understanding screening data to make informed decisions about child needs and appropriate instructional and behavioral strategies;
- Implementing evidence-based prevention and intervention practices (such as positive behavioral interventions and supports, safe physical escort, conflict prevention, understanding antecedents, de-escalation, and conflict management) across all school or program settings to effectively support and respond to child behavior (e.g., classrooms, administrative office, hallways, playgrounds, cafeteria, school bus);
- Conducting FBAs;
- Effectively designing, implementing, and evaluating IEPs and BIPs, in collaboration with families and with support from specialized support personnel; and
- Re-integrating children into the school or program after extended periods of virtual learning or other absences from school.

### **III. Federal Funding Available to Address Disparities in, and to Reduce the Use of, Exclusionary Discipline**

In addition to implementing coordinated policies, multiple funding streams can, and should, be used to address discipline disparities, improve school climate, and provide behavioral supports. IDEA requires LEAs to meet the functional, including behavioral, needs of eligible children with disabilities as part of their obligation to provide FAPE. Thus, IDEA Part B funds can be used to provide support and direct services related to addressing the behavior of children with disabilities, including technical assistance and professional development and training in this area.<sup>47</sup>

At the SEA level, States may reserve a portion of their IDEA Part B funds to carry out certain authorized State-level activities to support children with disabilities and educators. For example, SEAs may use the IDEA section 611 funds they reserve for State-level activities, other than administration, for support and direct services, including technical assistance, personnel preparation, and professional development and training; to assist LEAs in providing positive

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<sup>47</sup> Federal funds can be used for these purposes, provided, among other factors, the costs are necessary and reasonable for the performance of the Federal award and allocable to the Federal grant. 2 C.F.R. § 200.403.

behavioral interventions and supports and mental health services for children with disabilities; and to support capacity building activities and improve the delivery of services by LEAs to improve results for children with disabilities.<sup>48</sup>

Another area in which IDEA funds may be used to provide behavioral supports is with coordinated early intervening services (CEIS).<sup>49</sup> CEIS are services provided to students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education and related services, but who need additional academic and behavioral supports to succeed in a general education environment.<sup>50</sup> IDEA allows LEAs to use up to 15 percent of funds they receive under Part B of IDEA for CEIS.<sup>51</sup> This reservation is known as voluntary CEIS. This can include professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, and to provide educational and behavioral evaluations, services, and supports.<sup>52</sup>

An LEA that has been identified as having significant disproportionality based on race or ethnicity with respect to the identification, placement, or discipline of children with disabilities under IDEA section 618(d)(1) must reserve the maximum amount of funds under IDEA section 613(f) (i.e., an amount equal to 15 percent of the LEA's IDEA Part B section 611 and 619 subgrants) for comprehensive CEIS activities under IDEA section 618(d)(2)(B). When LEAs with significant disproportionality use funds reserved for comprehensive CEIS to identify and address the factors contributing to the significant disproportionality, numerous factors should be considered.<sup>53</sup> These factors can include the inappropriate use of disciplinary removal and other policies, practices, and procedures that contribute to the significant disproportionality.<sup>54</sup> Additionally, an LEA may use comprehensive CEIS funds for training and professional development and behavioral evaluations and supports, such as FBAs, BIPs, and PBIS, where doing so addresses the factors identified by the LEA as contributing to the significant disproportionality identified by the State. Comprehensive CEIS funds may also be used for

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<sup>48</sup> 34 C.F.R. § 300.704(b)(4)(i), (iii), and (viii). See also *OSEP Letter to Batson* (Dec. 11, 2008), available at: <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2008-4/batson121108stateactivities4q2008.pdf>.

<sup>49</sup> 34 C.F.R. § 300.226.

<sup>50</sup> Id. See also OSEP Memo 08-09 (July 28, 2008), available at <https://www2.ed.gov/policy/speced/guid/idea/ceis-guidance.pdf>.

<sup>51</sup> Section 613(f) of IDEA (20 U.S.C. §1413(f)); 34 C.F.R. § 300.226.

<sup>52</sup> In the case of an LEA's required use of IDEA Part B funds for comprehensive CEIS due to being identified with significant disproportionality, the LEA may also use the funds to address the needs of children already identified as eligible for special education and related services. 34 C.F.R. § 300.646(d)(2)(ii). For more information, see OSEP's Significant Disproportionality (Equity in IDEA) Essential Questions and Answers (Mar. 2017), available at: <https://sites.ed.gov/idea/files/significant-disproportionality-qa-03-08-17.pdf>.

<sup>53</sup> For more information see OSEP's Significant Disproportionality (Equity in IDEA) Essential Questions and Answers (Mar. 2017), available at: <https://sites.ed.gov/idea/files/significant-disproportionality-qa-03-08-17-2.pdf>.

<sup>54</sup> 34 C.F.R. § 300.646(d)(1)(ii).

preschool-aged children and children with disabilities, in certain LEAs identified with significant disproportionality to address discipline disparities and the behavioral needs of children.<sup>55</sup> Further, CEIS funds may be consolidated with certain other Federal funds in a schoolwide program under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA), provided that the applicable requirements for both funding streams are met.<sup>56</sup>

Finally, ESEA allows for some funds to be used to support MTSS, particularly Title II funds for professional development. Additionally, the Department has clarified that funds provided to States and LEAs through the Elementary and Secondary School Emergency Relief (ESSER) Fund and the Governor’s Emergency Education Relief (GEER) Fund are available to assist SEAs’ and LEAs’ efforts to address social, emotional, behavioral, and mental health needs, including PBIS.<sup>57</sup>

#### **IV. Federal Resources to Support State and Local Efforts to Address Disparities in, and Reduce the Use of, Exclusionary Discipline**

In September 2021, the Department released [\*Supporting Child and Student Social, Emotional, Behavioral and Mental Health\*](#) to provide information and resources to enhance the promotion of mental health and the social and emotional well-being among children and students. That resource highlights seven key challenges to providing school- or program-based mental health support across early childhood, K–12 schools, and higher education settings, and presents seven corresponding recommendations. It includes examples of how the recommendations are being put into action by early childhood programs, schools, communities, and States across the country.

In addition, the Department funds several technical assistance centers that provide resources related to behavior that can be accessed by SEAs, LEAs, schools, early childhood programs, and educators.

- **National Technical Assistance Center on Positive Behavioral Interventions and Supports:** Funded since 1998, the purpose of the Center on PBIS is to improve the capacity of SEAs, LEAs, and schools to establish and sustain the PBIS framework to (a) scale up tier 2 and 3 systems to improve outcomes for students with or at risk for

<sup>55</sup> 34 C.F.R. § 300.646(d)(1) and (2). See also OSEP Memo 08-09 (July 28, 2008), available at <https://www2.ed.gov/policy/speced/guid/idea/ceis-guidance.pdf>.

<sup>56</sup> 34 C.F.R. § 300.206. See also the Department’s Office of Elementary and Secondary Education Sept. 13, 2013, letter to State Directors on maximizing flexibility in the administration of Federal grants, available at: <https://www2.ed.gov/programs/teacherqual/flexibility-swp091313.pdf>.

<sup>57</sup> U.S. Department of Education, *Frequently Asked Questions: Elementary and Secondary School Emergency Relief Programs Governor’s Emergency Education Relief Programs*, Washington, DC, May 2021. Available at: [https://oese.ed.gov/files/2021/05/ESSER.GEER\\_FAQs\\_5.26.21\\_745AM\\_FINALb0cd6833f6f46e03ba2d97d30af953260028045f9ef3b18ea602db4b32b1d99.pdf](https://oese.ed.gov/files/2021/05/ESSER.GEER_FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30af953260028045f9ef3b18ea602db4b32b1d99.pdf). See also U.S. Department of Education. (2021). *Supporting Child and Student Social, Emotional, Behavioral, and Mental Health Needs*. Retrieved October 8, 2021, from <https://www2.ed.gov/documents/students/supporting-child-student-social-emotional-behavioral-mental-health.pdf>.

disabilities, (b) enhance school climate and school safety, and (c) improve conditions for learning to promote the well-being of all students. The Center on PBIS (a) provides the technical assistance to encourage large-scale implementation of MTSS to address social, emotional, behavioral, and mental health needs; (b) provides the organizational models, demonstrations, dissemination, and evaluation tools needed to comprehensively and effectively implement MTSS across an array of contexts; and (c) extends the lessons learned from PBIS implementation to the broader agenda of educational reform. The Center also provides support to the School Climate Transformation District and State grants. The website ([www.pbis.org/](http://www.pbis.org/)) includes resources, tools, and trainings to enhance district and State efforts to build capacity and systemically integrate social, emotional, behavioral, and mental health strategies and supports in schools.

- **National Center for Pyramid Model Innovations (NCPMI):** The NCPMI works to improve and support the capacity of State systems and local programs to implement an early childhood MTSS to improve the social, emotional, and behavioral outcomes of young children with, and at risk for, developmental disabilities or delays. The goals of the Center are to assist States and programs in their implementation of sustainable systems for the implementation of the Pyramid Model for Supporting Social Emotional Competence in Infants and Young Children within early intervention and early education programs with a focus on improving the social, emotional, and behavioral outcomes of young children birth to five, reducing the use of inappropriate disciplinary practices, promoting family engagement, using data for decision-making, integrating early childhood and infant mental health consultation, and fostering inclusion. (<https://challengingbehavior.cbcs.usf.edu/>)
- **National Center on Intensive Interventions (NCII):** NCII works to build the capacity of SEAs, LEAs, universities, practitioners, and other stakeholders to support implementation of intensive intervention in literacy, mathematics, and behavior for students with severe and persistent learning and/or behavioral needs. NCII’s approach to intensive intervention is data-based individualization. The website includes tools to support the implementation of evidence-based practices for intensive behavior. (<https://intensiveintervention.org/>)
- **IRIS Center:** The IRIS Center is a national center dedicated to improving education outcomes for all children, especially those with disabilities birth through age twenty-one, through the use of effective evidence-based practices and interventions. The Center has training modules available for pre- and in-service development for educators on supporting and responding to school behavior, including cultural considerations and behavior. (<https://iris.peabody.vanderbilt.edu/>)
- **Comprehensive Center Network (CCNetwork):** The CCNetwork is comprised of 19 Regional Comprehensive Centers and 1 National Center that provide capacity-building technical assistance to States, districts and schools in their design and implementation of

evidence-based policies, practices, programs, and interventions that improve instruction and educational outcomes for all students. SEAs may request capacity-building support from their Comprehensive Centers. The CCNetwork produces and disseminates research-based tools and resources to build the capacity of educational leadership in social, emotional, behavioral, and mental health approaches to better support the well-being of students, school staff, and families. (<https://compcenternetwork.org/>)

- **Center to Improve Social and Emotional Learning and School Safety (CISELSS):** The purpose of the CISELSS is to provide technical assistance to support States and districts in the implementation of social and emotional learning evidence-based programs and practices. The CISELSS works to build the knowledge and capacity of (1) SEAs to support their LEAs and (2) LEAs to support their schools. (<https://selcenter.wested.org/>)
- **National Center on Safe Supportive Learning Environments (NCSSLE):** Funded by the Department’s Office of Safe and Supportive Schools, NCSSLE offers information and technical assistance to States, districts, schools, institutions of higher education, and communities focused on improving school climate and conditions for learning. NCSSLE operates under the premise that, with the right resources and support, educational stakeholders can collaborate to sustain safe, engaging, and healthy school environments that support student academic success. The website includes information about the Center’s training and technical assistance resources, products and tools, and latest research findings. (<https://safesupportivelearning.ed.gov/>)
- **What Works Clearinghouse (WWC):** Funded by the Department’s Institute of Education Sciences, the WWC has been a central and trusted source of scientific evidence on education programs, products, practices, and policies. The WWC reviews relevant research, determines which studies meet rigorous standards, and summarizes the findings. The WWC focuses on high-quality research to answer the question “what works in education?” (<https://ies.ed.gov/ncee/wwc/FWW/Results?filters=,Behavior>)

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