

# General Supervision and IDEA Implementation Manual Part III



Federal Programs

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# General Supervision Requirements

**States must implement and maintain a general supervision system in order to:**

1. Improve educational results and functional outcomes for all children with disabilities; and
2. Ensure that the requirements of IDEA are met.



# Division for Special Education Services and Supports

## 2018-2019 Priorities

- Eligibility Determination Process
- IEP Development and Implementation
- Parent Procedural Safeguards

# Agenda

- Discipline
- Private Schools
- Young Children
- Parents
- Questions

# DISCIPLINE (GEORGIA RULE 160.4-7-.10)

# Discipline

- Local educational agency (LEA) personnel must follow specific procedures when they discipline children with disabilities. Removals of children by LEA officials refer to Out-of-School Suspensions (OSS), expulsions, or other disciplinary actions resulting in children not receiving a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA).

# Disciplinary Actions Resulting in Removals of 10 School Days or Less

- Children with disabilities are expected to follow the code of conduct. A child with a disability, who has an Individualized Education Program (IEP) in effect, can be removed to Out of School Suspension (OSS), another setting, or an appropriate interim alternative educational setting (IAES), just as any other child without a disability can, for up to a total 10 school days, for violations of the code of conduct or school rules.

# Disciplinary Actions Resulting in Removals of 10 School Days or Less

- The 10 days can be consecutive or cumulative within one school year. If a child is accumulating repeated offenses and nearing 10 days of removals that constitute a change of placement, an IEP Team should be proactive and convene to discuss the child's behavior and develop a plan to address the behavior. To ensure that removals do not result in a change of placement, the following must occur:
  - The child is afforded the opportunity to continue to appropriately participate in the general curriculum;
  - The child continues to receive the services specified in his or her IEP; and
  - The child continues to participate with nondisabled students to the extent he or she would have in his or her current placement. 71 Fed. Reg. 46715 (2006)
- The criteria above also applies to In-School Suspension (ISS).



# Disciplinary Actions Resulting in Removals of 10 School Days or Less

- The IEP Team is not required to hold a manifestation determination review meeting for removals that constitute a change of placement that total 10 days or less.
- However, “short-term disciplinary removals from the current placement [ ] may indicate a need to review and revise the child’s IEP to address his or her behavioral needs.” [OSEP Dear Colleague Letter on Supporting Behavior of Students with Disabilities, August 1, 2016](#)

# Do removals from the school bus count as days of out-of-school suspension?

- Yes, if special transportation is listed in the child's IEP and a child is suspended from the bus. Since IEP services have been interrupted, the bus suspension/removal will be counted as out-of-school suspension unless the LEA makes provisions for alternative transportation.

# 71 Federal Register 46715 (2006)

- If the bus transportation is not part of the child's IEP, a bus suspension is not a suspension under 34 C.F.R. § 300.530.
- However, public agencies should consider whether the behavior on the bus is similar to behavior in a classroom that is addressed in an IEP and whether the child's behavior on the bus should be addressed in the IEP or a behavioral intervention plan for the child.

# Hypothetical

- Special education child subjected to the following removals throughout the school year:
  - 3 days ISS
  - 1 day ISS
  - 3 days OSS
  - 1 day suspended from bus transportation.
- Child engages in additional behavior subject to discipline. Principal recommends that the child be placed in ISS for 4 days.
- Must the school hold an MDR before placing the child in ISS?

# Questions to ask

- Do the current and previous ISS placements constitute a removal? Did the school meet the three factors:
  - The child is afforded the opportunity to continue to appropriately participate in the general curriculum;
  - The child continues to receive the services specified in his or her IEP; and
  - The child continues to participate with nondisabled students to the extent he or she would have in his or her current placement.
- Is bus transportation part of the child's IEP?

# Disciplinary Actions Resulting in Removals Beyond 10 Days

- When frequent removals add up to more than 10 school days in a school year or when frequent removals result in a change in placement, the IEP Team must determine appropriate services that allow the child to continue to participate in the general education curriculum **and** progress toward meeting the goals outlined in the child's IEP, although in another setting. See 34 C.F.R. § 300.530(d)(5)

# Disciplinary Actions Resulting in Removals Beyond 10 Days

- A change of placement occurs when the removal is for more than 10 consecutive days or the child has been subjected to a series of short-term removals that constitute a pattern because:
  - (1) the series of removals totals more than 10 school days in a school year;
  - (2) the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
  - (3) additional factors such 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. 34 C.F.R. § 300.536(a).

# Hypothetical

- Special education student assigned 2 days OSS for insubordination, sent home for a half a day for aggressive behavior, and assigned 3 days OSS for assaulting district staff, all in the month of September, followed by 5 days OSS for assaulting district staff in February.
- Has a change of placement occurred due to a series of short-term removals that constitute a pattern?



# Questions to ask

- Do the series of removals totals more than 10 school days in a school year?
- During the series of removals did the child exhibit substantially similar behavior?
- Additional factors:
  - What was the length of each removal?
  - What was the total amount of time the child has been removed?
  - What was the proximity of the removals to one another?

# Disciplinary Actions Resulting in Removals Beyond 10 Days

- After a child has been removed for 10 school days in the same school year, and a subsequent removal is not for more than 10 consecutive days and is not a change in placement, then the LEA personnel and at least one of the child's teachers must determine the extent of services needed so the student can continue to participate in the general education curriculum **and** progress toward meeting the goals outlined in the child's IEP, although in another setting.  
See 34 C.F.R. § 300.530(d)(4)

# Disciplinary Actions Resulting in Removals Beyond 10 Days

- If school personnel want to suspend a child from school for more than 10 consecutive school days or to have a child's educational setting changed to an interim alternative educational setting for up to 45 school days for weapon or drug possession or for infliction of serious bodily injury on another person, school personnel must notify the parent immediately of this decision and provide the parent with their procedural safeguards notice. See 34 C.F.R. § 300.530(h).

# Disciplinary Actions Resulting in Removals Beyond 10 Days

- School personnel may consider unique circumstances when determining whether a change in placement is appropriate for a child with a disability.
- These circumstances are best determined at the local level by school personnel who know the child and the facts and factors related to the behavioral violation. School personnel may consider various forms of information such as the child's disciplinary history, ability to understand the consequences, and expression of remorse, as well as the supports that were provided to the child prior to the behavioral violation. See 71 Federal Register 46714

# How are cumulative days of suspension in a school year addressed?

- The Discipline Rule addresses cumulative or non-consecutive days by referring to school days in the same school year. LEAs may suspend a child with disabilities for up to 10 (cumulative) school days total in a school year without providing special education and related services, unless the LEA would provide services to a child without disabilities who has been similarly removed.

# Does in-school suspension (ISS) constitute a removal from school?

- If a child is afforded the opportunity to continue to appropriately participate in the general curriculum, continues to receive the services specified in his or her IEP **and** continues to participate with nondisabled students to the extent he or she would have in his or her current placement while in ISS, it is not counted as a removal.

# Manifestation Determination

- Within 10 school days from the beginning of a removal that either exceeds 10 school days in a row or that constitutes a pattern of removals (a change in placement), the child's IEP Team must meet to determine whether the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability or whether the conduct was a result of the LEA's failure to implement the child's IEP, including any behavioral intervention plan that may be in place. These steps are referred to as a "manifestation determination."
- In making this determination, the LEA, the parent, and relevant members of the IEP Team (as determined by the parent and the LEA), will review all relevant information in the child's file, including:
  - the child's IEP,
  - the child's behavioral intervention plan,
  - any relevant teacher observations, and
  - any other information provided by the parents.

# Manifestation Determination

If the IEP Team finds that the child's behavior **was caused by or had a direct and substantial relationship to the child's disability, or that the behavior was a direct result of the LEA's failure to implement the IEP, then the behavior is a manifestation of the child's disability.**

- In this case, if the child does not have a behavior intervention plan, the IEP Team must conduct a functional behavioral assessment and implement a behavior intervention plan to address the behavioral violation.
- If the child already has a behavior intervention plan, the IEP Team must review and modify it as necessary to address the behavior. The child will be returned to the placement from which he or she was removed unless the parent and LEA agree to a change of placement as part of the modification of the behavior intervention plan.



# Manifestation Determination

If the IEP Team finds that the child's behavior was **not a manifestation of the child's disability, the same disciplinary actions can be imposed on the child with a disability as those imposed on any child.**

- The IEP Team must determine how the child will continue to receive educational services that allow him or her to continue to participate in the general education curriculum and progress toward meeting the goals in the IEP, although in a different location (this includes expulsion and alternative settings).
- In addition, the IEP Team, if appropriate, will conduct a functional behavior assessment and develop a behavior intervention plan to address the behavior violation so that it does not recur.

# What is a free appropriate public education (FAPE) for a child who has been removed for more than 10 school days in a school year for disciplinary reasons?

- FAPE applies in those circumstances and consists of:
  - services that enable the child to continue to participate in the general education curriculum and
  - services that enable the child to progress toward meeting the goals set out in his or her IEP.

# 71 Fed. Reg. 46716 (August 14, 2006)

- “[W]hile children with disabilities removed for more than 10 school days in a school year for disciplinary reasons **must continue to receive FAPE**, we believe the Act **modifies** the concept of FAPE in these circumstances to encompass those services **necessary** to enable the child to continue to participate in the general curriculum, and to progress toward meeting the goals set out in the child’s IEP.
- An LEA is **not required** to provide children suspended for more than 10 school days in a school year for disciplinary reasons, **exactly the same services in exactly the same setting** as they were receiving prior to the imposition of discipline. . .

# 71 Fed. Reg. 46716 (August 14, 2006)

- . . . Section 300.530(d) clarifies that decisions regarding the extent to which services would need to be provided and the amount of services that would be necessary to enable a child with a disability to appropriately participate in the general curriculum and progress toward achieving the goals on the child's IEP **may be different if the child is removed from his or her current placement for a short period of time.**
- For example, a child who is removed for a short period of time and who is performing at grade level may not need the same kind and amount of services to meet this standard as a child who is removed from his or her current placement for 45 days under § 300.530(g) or § 300.532 and not performing at grade level.”

# Who makes the manifestation determination?

- The determination is made by
  - the parent;
  - relevant members of the IEP Team, as determined by the LEA and the parent; and
  - the LEA.

# If the Manifestation Determination decides that the child's behavior was not a manifestation of the disability, and the tribunal decides that the child is to be served in an alternative educational setting, must the school district provide transportation?

- First, the tribunal does not determine the special education services, the IEP determines the special education services of the child so that he or she may continue to progress toward meeting the IEP goals and to have access to the general education curriculum.
- Whether or not transportation must be required will depend on whether specialized transportation was required in the IEP. If it was in the IEP, then it must be provided for the alternative school. In other circumstances, the Team must consider whether not having transportation results in removing the student from services. If so, the IEP Team should consider an alternative.

# What decisions about discipline can a parent appeal?

- A parent may appeal the manifestation determination and the selection of an interim alternative educational setting regarding the issues of weapons, illegal drugs or controlled substances, or serious bodily injury.

# Can the LEA appeal any decisions related to discipline?

- Yes, the LEA may appeal if it believes that maintaining the current placement of the child is substantially likely to result in injury to the student or others.



# What occurs if the parent or the LEA wants to appeal?

- The parent or the LEA request a due process hearing, and an expedited due process hearing will occur within 20 school days of the date the hearing is requested.
- A determination must be made by the administrative law judge within 10 school days after the hearing.

# May the hearing officer's decision on an expedited due process hearing be appealed?

- Yes. The parent or the LEA may appeal the administrative law judge's opinion consistent with Rule 160-4-7-.12 Dispute Resolution.

# What happens to the child's placement when an appeal under the Discipline Rule is made?

- When the parent disagrees and appeals, the child will remain in the interim alternative educational setting (IAES) pending the hearing decision or until the expiration of the 45 school day time period if the infraction involved illegal drugs, controlled substances, weapons, or serious bodily injury, unless the parent and the district agree otherwise.
- **The child does not “stay put” in his or her special education placement that was in place prior to the IAES.**

# Is the manifestation determination conducted before or after the tribunal?

- LEAs conduct a tribunal to determine guilt or innocence when a student is accused of a serious or repeated violation of the code of conduct.
- The manifestation determination may be conducted before or after the tribunal based on the LEA's policies/procedures.

# Special Offenses

- Certain serious behavior problems can lead to a child being moved to an interim alternative educational setting (IAES) for up to 45 school days, even if the conduct is determined to be a manifestation of the child's disability. Removing the child for these offenses does not require parent consent or agreement, nor does it require a tribunal hearing.
- These offenses involve:
  - **Weapons**—If a child carries or possesses a weapon as defined in 18 U.S.C. § 930(g)(2) – (a device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury, except that the term does not include a pocket knife with a blade of less than 2 ½ inches in length).
  - **Drugs**—If the child knowingly possesses or uses illegal drugs or sells or solicits the sale of controlled substances (illegal drugs are a controlled substance not legally possessed or used under the supervision of a licensed health care professional, or legally possessed or used under any other authority under the Controlled Substances Act (21 U.S.C. § 1812) or under any other provision of federal law. A controlled substance is a drug or other substance identified under Schedule I, II, III, IV, or V in the Controlled Substances Act.
  - **Serious bodily injury**—If a child has inflicted serious bodily injury upon another person (injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty (18 U.S.C. § 1365(3)(h)).
- This authority can be exercised if a child commits any of the offenses described above at school, on school premises, or at a school function under the jurisdiction of the State or LEA. 34 C.F.R. § 300.530(g),(i)

# At what point in the disciplinary process is a child required to have a Behavioral Intervention Plan (BIP)?

- Within 10 days of any decision to change the placement of a child with a disability because of a violation of the student code of conduct, the relevant members of the IEP Team must make the determination as to whether the conduct was a manifestation of the child's disability.
- If it is determined to be a manifestation of the child's disability, a Functional Behavioral Assessment (FBA) and a Behavioral Intervention Plan (BIP) must be developed, reviewed, and/or modified.

# Does a Behavioral Intervention Plan (BIP) have to be based on a Functional Behavior Assessment (FBA)? Is an FBA required before a BIP can be done?

- If the IEP Team has adequate information to develop a Behavior Intervention Plan, a Functional Behavior Assessment may not be required. Although not required, best practice is to conduct an FBA prior to the development of a BIP.
- In the case of a required FBA and BIP due to discipline procedures and the determination that the behavior in question was a manifestation of the student's disability, both a FBA and a BIP must be developed.
- If already completed, the FBA and BIP must be reviewed and revised as necessary.

# What protections are in place for a child who has not been determined to be eligible for special education and related services and who has violated the code of student conduct?

- A child may assert protections under the Discipline Rule if the LEA is deemed to have knowledge that the child was a child with a disability before the behavior occurred.



# How is it determined that the LEA had knowledge that the child was a child with a disability?

- A LEA is deemed to have knowledge that a child was a child with a disability if any of the following occurred prior to the behavior that precipitated the disciplinary action:
  - The parent expressed concern that the child was in need of special education and related services. (This concern must have been expressed in writing to supervisory or administrative personnel in the LEA, or to a teacher of the child.)
  - The parent requested an evaluation of the child (consistent with Rule 160-4-7.04 Evaluation & Reevaluations).
  - The teacher of the child, or other LEA personnel, expressed specific concerns about a pattern of behavior of the child. (These concerns must have been expressed directly to the local special education director or other LEA supervisory personnel.)

## If a student becomes involved in a disciplinary action and has been previously evaluated and determined ineligible for services, what is the LEA's responsibility? In addition, if a parent requests an additional evaluation, what is the LEA's responsibility?

- The district is not deemed to have knowledge that a child is a child with a disability if the parent has refused services or the child has been evaluated and found ineligible for services.
- However, if a child was found ineligible for services, but subsequently the parent expressed concern that the child was in need of special education services; or the parent requested an evaluation for special education services; or LEA personnel expressed specific concerns about a pattern of behavior to the special education director or other LEA supervisory personnel, before the disciplinary action, the LEA is deemed to have knowledge that the child is a child with a disability and entitled to protections under Discipline Procedures.

- If a parent requests an evaluation of a child during the time in which a child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.
- Until the evaluation is completed, the child remains in the educational placement determined by LEA authorities, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, the LEA must provide special education and related services.

# Can law enforcement officials be informed of suspected criminal activity of a child with a disability?

- Yes. The LEA may report criminal acts committed by a child with a disability. Nothing in the Discipline Rule prohibits the LEA from reporting criminal activity allegedly committed by a child with a disability.

# Discipline Flowcharts

- Flowchart 1: Student with a Disability: Violates Code of Conduct (not including infractions involving weapons, drugs, or inflicting serious bodily injury)
- Flowchart 2: Student with a Disability: Violates Code of Conduct – Special Circumstances
- Flowchart 3: Protections for Children Not Yet Eligible for Special Education

# PRIVATE SCHOOLS (Georgia Rule 160-4-7-.13)

# Children with Disabilities Placed in Private Schools by the LEA

- When the Individualized Education Program (IEP) Team decides that the most appropriate placement for a child is in a private school, the **local educational agency (LEA) that places the child in the private school continues to be responsible** for making sure that the child receives the special education and related services included in the child's IEP and that those services are provided at ***no cost to the parent.***

# Children with Disabilities Placed in Private Schools by the LEA

- The LEA should make sure that the education provided at the private school meets the standards that apply to other children with disabilities and that the child and parent continue to have all the same rights that other children with disabilities and their parents have.
- LEAs should monitor compliance with the IDEA for these children through procedures such as written reports, on-site visits, and parent surveys.
- **Ultimately, the LEA remains responsible for ensuring a free appropriate public education (FAPE) is provided when a child is placed in a private school by the LEA.**



# Children with Disabilities Placed in Private Schools by the Parent

- Parents have the right to enroll their child in a private school of their choice; however, they are not guaranteed the same rights as when eligible children are enrolled in public school or when placed in private school by the LEA.
- Children who are home-schooled within the boundaries of the traditional LEA are considered parentally-placed private school children for the purposes of special education.

# Traditional Local Educational Agencies

- Traditional local educational agencies include public boards of education or other public authorities legally constituted within Georgia for either administrative control or direction of, or to perform a service function for public elementary or secondary schools in a city, county, township, school district, or other political subdivision of the State, excluding state charter schools and Georgia Department of Juvenile Justice (DJJ).

# Child Find

- The traditional LEA is required to carry out child find activities to locate, identify, and evaluate children attending the private schools **within the jurisdiction of the traditional LEA.**
- The traditional LEA must consult with representatives of the private school to complete child find activities. These child find activities must be similar to activities undertaken for the children in the traditional LEA and must be completed in a time period comparable to that for other children enrolled in the traditional LEA.
- Child find activities include any parentally-placed children who attend a private school within the jurisdiction of the traditional LEA, even if the child resides in a different LEA or in a state other than Georgia. See 34 C.F.R. § 300.131(a).

# Consultation Process

Traditional LEAs are required to consult with the representatives of private schools, parents of private school children, and parents of home-schooled children regarding the design and development of special education and related services for parentally-placed private school and home-schooled children.

This [consultation process](#) must be timely and meaningful. More than one timely and meaningful consultation may be needed to fully meet the requirement.

The traditional LEA must obtain written [Private/Home School Participation and Private School Affirmation](#) signed by the representatives of the participating private schools as documentation of the consultation process and must be prepared to submit this documentation to the GaDOE upon request. See 34 C.F.R. § 300.135.

# Consultation Process

Consultation requirements must include a description of the following:

- how parentally-placed private school children suspected of having a disability can participate equitably in the Child Find process;
- how the parents, teachers, and private school officials will be informed of the Child Find process;
- how the determination of the proportionate share of federal funds available to serve the children with disabilities was calculated;
- how the process will operate throughout the school year;
- how, where, and by whom the special education and related services will be provided;
- how funds will be apportioned if funds are insufficient;
- how and when those decisions will be made; and
- how the traditional LEA will provide to the private school officials a written explanation of the reason why it chose not to provide services directly or through a contract.

# Determination of Equitable Services

- No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in the LEA. See 34 C.F.R. § 300.137(a)
- The traditional LEA has an obligation to provide parentally-placed private school children an opportunity for equitable participation to receive services funded with Federal IDEA Part B dollars that the traditional LEA has determined, after consultation, to make available to its population of parentally-placed private school children with disabilities.
- These children with disabilities may receive a different amount of services than children in public schools.
- Some children will not receive any services.
- The traditional LEA will make the final decisions regarding services to be provided prior to the start of the school year.

# Services Plan

- A Services Plan will be developed and implemented for each private school child with disabilities who will receive special education and related services from the traditional LEA.
- The Services Plan must:
  - contain a statement of the special education and related services, and supplementary aids and services, to be provided to the child;
  - be in effect at the beginning of each school year; and
  - be developed, reviewed, and revised periodically, but not less than annually, in accordance with IEP requirements in IDEA and Georgia Rules.
- The traditional LEA will initiate and conduct the meetings to develop, review, and revise a services plan and ensure that a representative of the private school attends each meeting.

# Services to Children in Private Schools

- Services provided to private school children must be provided by personnel who meet the same standards as personnel providing the services in the traditional LEA including special education certification.
- If equitable services are provided by private school teachers to parentally-placed private school children with disabilities, private school teachers do not have to meet the special education teacher qualifications in 34 C.F.R. § 300.156(c). See 34 C.F.R. § 300.138(a)(1)
- Services may be provided at the private school, or children may be transported to the public school or community setting to receive services.
- If necessary, for the child to benefit from or participate in services, transportation must be provided by the traditional LEA, but the traditional LEA is not required to transport the child from home to the private school. Transportation costs will be included in calculating whether the traditional LEA has met the requirements of proportionate funding.



# Services to Children in Private Schools

- The traditional LEA may provide materials, equipment, and property purchased to implement the services to children with disabilities in the private school. These must be used only for those purposes and must be returned when no longer needed.
- It is also permissible to use funds for indirect services such as consultation and private school staff training. No funds may be used for repairs, minor remodeling, or construction of private school facilities.
- The LEA may not use the IDEA Part B flow-through or federal preschool funds to finance the existing level of instruction in a private school, the needs of the private school, or the general needs of the children in the private school.

# Expenditures Proportionate Share

- For children ages 3-21, the LEA must expend an amount that is the same proportion of the LEA's total Part B of the IDEA flow-through funding as the number of private school children with disabilities, ages 3-21, attending private and home schools in its jurisdiction is to the total number of children with disabilities in its jurisdiction.
- For children ages 3-5, the LEA must expend an amount that is the same proportion of the LEA's preschool funding as the number of private school children and home-schooled children with disabilities, ages 3-5, attending private and home schools in its jurisdiction is to the total number of children with disabilities, ages 3-5, in its jurisdiction.
- Once an LEA expends all of the proportionate share funds for a fiscal year, there is no requirement for the LEA to provide additional funds or continue services.

# Placement of Children by Parent when FAPE is at Issue

- When the LEA makes a FAPE available to a child but the child's parent decides to place the child in a private school or facility. The LEA is not required to pay for the cost of the education for this child at the private school.
- When the LEA and the parent disagree regarding the availability of an appropriate program for the child in the LEA, due process hearing procedures may be initiated by the parent.

# When FAPE is at Issue

- When FAPE is at issue between the parent and the LEA, and the parent determines that he or she is going to place the student in a private school at public expense, the parent must notify the LEA in writing at least 10 business days prior to the removal of the child or at an IEP Team meeting prior to the removal.
- If the parent does not provide the notice, then the cost of reimbursement for private school services may be reduced or denied by an Administrative Law Judge.
- The cost of reimbursement will not be reduced or denied for the parent's failure to give the above described notices if the LEA prevented the parent from providing the notice, the parent had not received the information regarding the notice requirement, the parent is not literate or cannot write in English, or the notice requirement would result in serious emotional or physical harm to the child. See 34 C.F.R. § 300.148(e)

# Does the LEA where the private school is located have an obligation to make an offer of FAPE?

- The LEA where a child attends private school is responsible for ensuring Child Find and equitable participation.
- If a parentally-placed private school child also resides within the jurisdiction of that LEA, then the LEA is responsible for making FAPE available to the child.
- If the child resides within the jurisdiction of a different LEA, the LEA where the private school is located is not responsible for offering FAPE to that child.

# Can a parent request evaluations from the LEA where the private school is located as well as the LEA where the child resides?

- Yes. A parent could request that different LEAs evaluate their parentally placed private school child if the child is attending a private school that is not in the jurisdiction of the LEA in which the child resides.
- The LEA where the child resides has the responsibility to provide FAPE to the child, while the LEA where the private school is located has the responsibility to ensure equitable participation (also called proportionate share services or equitable services).
- Parents are not encouraged to ask two different LEAs to evaluate their child for different purposes at the same time. The USDOE, Office of Special Education Programs (OSEP) states that “subjecting a child to repeated testing by separate LEAs in close proximity of time may not be the most effective or desirable way to ensure that the evaluations are meaningful measures of whether a child has a disability, or of obtaining an appropriate assessment of the child’s educational needs.”
- See Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, Question and Answer B-4, U.S. Dep’t of Educ., Office of Special Education and Rehabilitative Services (OSERS), April 2011.

# Resources

- Flowcharts
  - K-12 Private School in LEA of residence
  - K-12 Private School not in LEA of residence
  - Preschool Private School in LEA of residence
  - Preschool Private School not in LEA of residence
  - Preschool that is not a Private School and is in LEA of residence
  - Preschool that is not a Private School and is not in LEA of residence

# Young Children





# Areas that generate the most questions and complaints:

- Transition/Referrals
- Evaluations
- LRE
- Discipline

# Part C vs Part B Responsibilities

- Part C

1. LEA Notification
2. Develop Transition Plan
3. Coordinate Transition Conference
4. Provide necessary documentation to LEA to assist in the Part B referral process

- Part B

1. Attend Part C Transition Conference
2. Conduct Part B eligibility evaluation
3. Develop and implement IEP prior to child's 3<sup>rd</sup> birthday

# Parent Requests and Transition Referrals

- No specific requirements are outlined in IDEA defining a referral
- **Sec. 300.300 Parental consent**

(a) Parental consent for initial evaluation.

The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8 must, after providing notice consistent with §§300.503 and 300.504, obtain informed consent, consistent with §300.9, from the parent of the child before conducting the evaluation.

# Referral Process Information

- Helpful:
  - Birth Certificate
  - Recent passed hearing and vision screening
  - Recent shot record
  - Proof of residence
    - ❖ **School districts and BCW staff should work collaboratively to gather these documents prior to referral whenever possible to ensure a smooth transition. Referrals can be accepted if one of more of these items has not been obtained prior to the transition meeting.**
- **Required:**
  - BCW provider data
  - Current/recent evaluation information (BCW and Private Providers)

**Providing a parent with a consent to evaluate form should not be contingent upon receipt of any documents.**

# Additional Referral Process Clarification

- Hearing and Vision Screenings

- **IDEA: Sec. 300.304 Evaluation procedures**

The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

**Hearing and Vision Screenings are part of the evaluation, not a precursor.**

**Providing a parent with a consent to evaluate form should not be contingent upon a passed hearing and vision screening.**

# Evaluations



**Child Find -  
Identify, locate,  
and evaluate a  
student suspected  
of needing special  
education**

**Parental Consent –  
Obtain parental  
consent before  
the evaluation  
/Give procedural  
safeguards**

**Interventions – If  
appropriate,  
conduct during  
the evaluation**

**Evaluation –  
Conduct a full  
evaluation**

**Evaluation Report  
– Complete the  
evaluation report  
within 60 days**

**IEP- Develop IEP  
within 30 days and  
implement as  
soon as possible**

**Parental Invite –  
Notify parent of  
the meeting early  
enough to  
participate**

**Parent Consent –  
If eligible, obtain  
consent for special  
education and  
related services**

**Eligibility  
Meeting/Report –  
Within 10 days,  
conduct an  
eligibility meeting  
to determine  
eligibility**





Last year, I thought I asked for an evaluation but received a screening. Was that procedure-right? The district said they screen young children first because they don't have enough psychologists.



- If the parent gives consent for an evaluation, the district may not offer a screening at this point-unless mutually agreed upon. Personnel availability is not an excuse to deny parent rights.

# Eligibility Areas

- Significantly Developmentally Delayed (SDD)  
([34 C.F.R. § 300.8\(b\)](#))
- Most common area of eligibility for young children
- Pre-school aged students may be eligible in any disability category

# Least Restrictive Environment

- Office of Special Education Programs
  - Dear Colleague letter January 9, 2017
  - Emphasizes the section 612(a)(5) requirement “maximum extent appropriate”...LRE provision does not distinguish between school- aged and preschool- aged children and therefore, applies equally to all preschool children with disabilities.
    - Variety of placement options are identified in section 618 (a) with no distinction related to the student’s age
    - LEAs are responsible for providing a continuum of placement options to preschool students

# Placement

- LEAs responsible for providing FAPE to a preschool child with a disability must ensure that FAPE is provided in the LRE, REGARDLESS of whether the LEA operates public preschool programs for children without disabilities.
- Possible settings that promote an inclusive LRE include: regular pre- kindergarten class, public or private preschool program, community-based child care facility or placement in another federal program like Head Start.
- If an LEA determines that private preschool is necessary for a child to receive FAPE, it must be made available at no cost to the parent.

# Service Delivery

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Regular Early Childhood Education Setting

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Special Education Early Childhood Setting

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Home

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Service Provider Location

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Separate School

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Residential Setting

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# Discipline in Early Childhood



# The National Picture

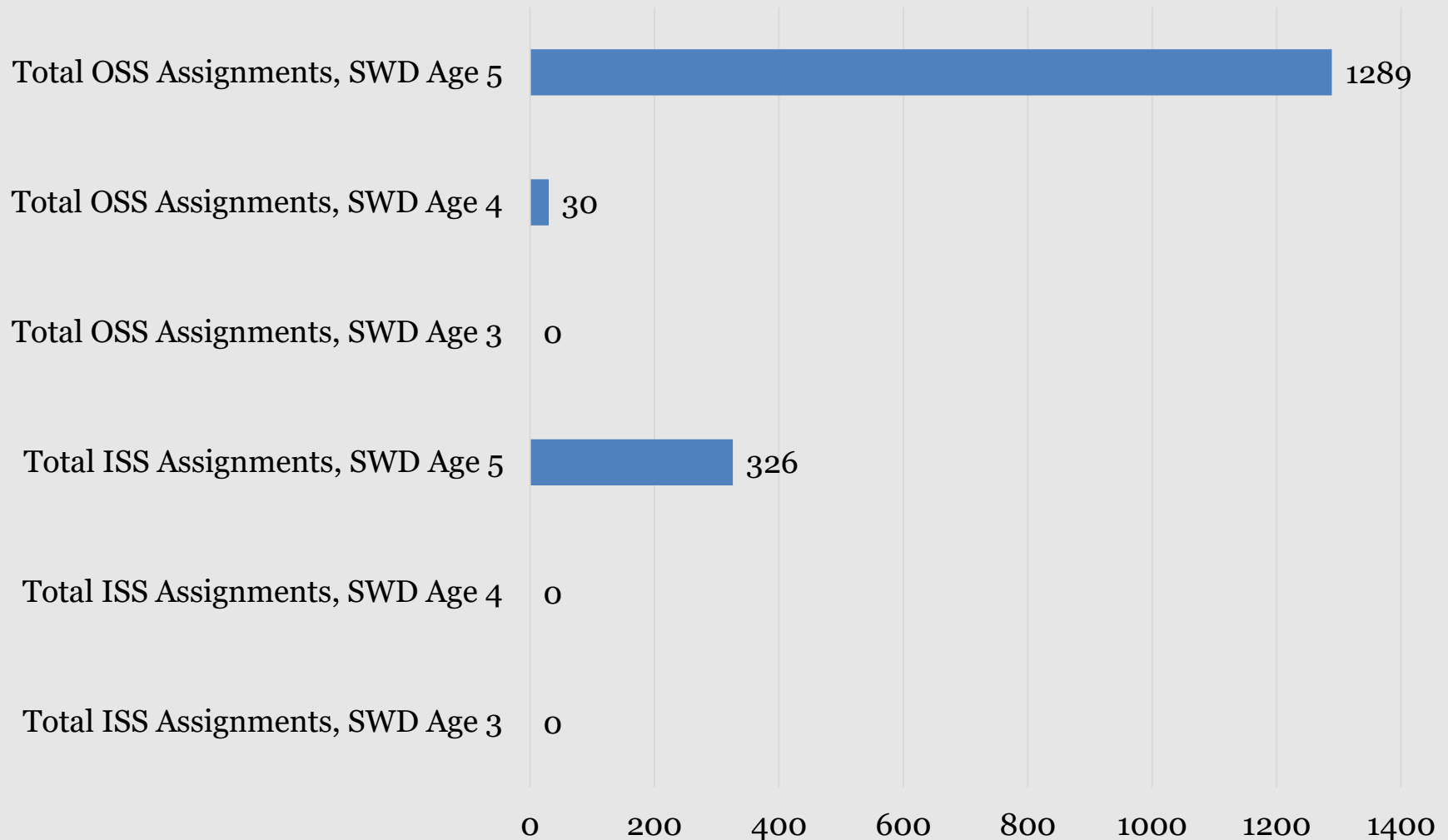
- Increased suspension and expulsion
  - 6700 Pre-K children were suspended at least once in 2013-2014.
  - Preschool children are 3 times more likely to be expelled than K-12 students combined.
  - A disproportionate number of Black children are suspended and expelled each year.
  - Students with disabilities are more likely to be suspended and expelled than their nondisabled peers.
- Research has provided evidence that expulsion and suspension practices are associated with negative short- and long-term outcomes:
  - Students who are expelled or suspended experience greater academic failure and grade retention;
  - Hold more negative attitudes about school;
  - Have higher rates of dropout; and
  - Face increased rates of incarceration.

# Georgia House Bill 740

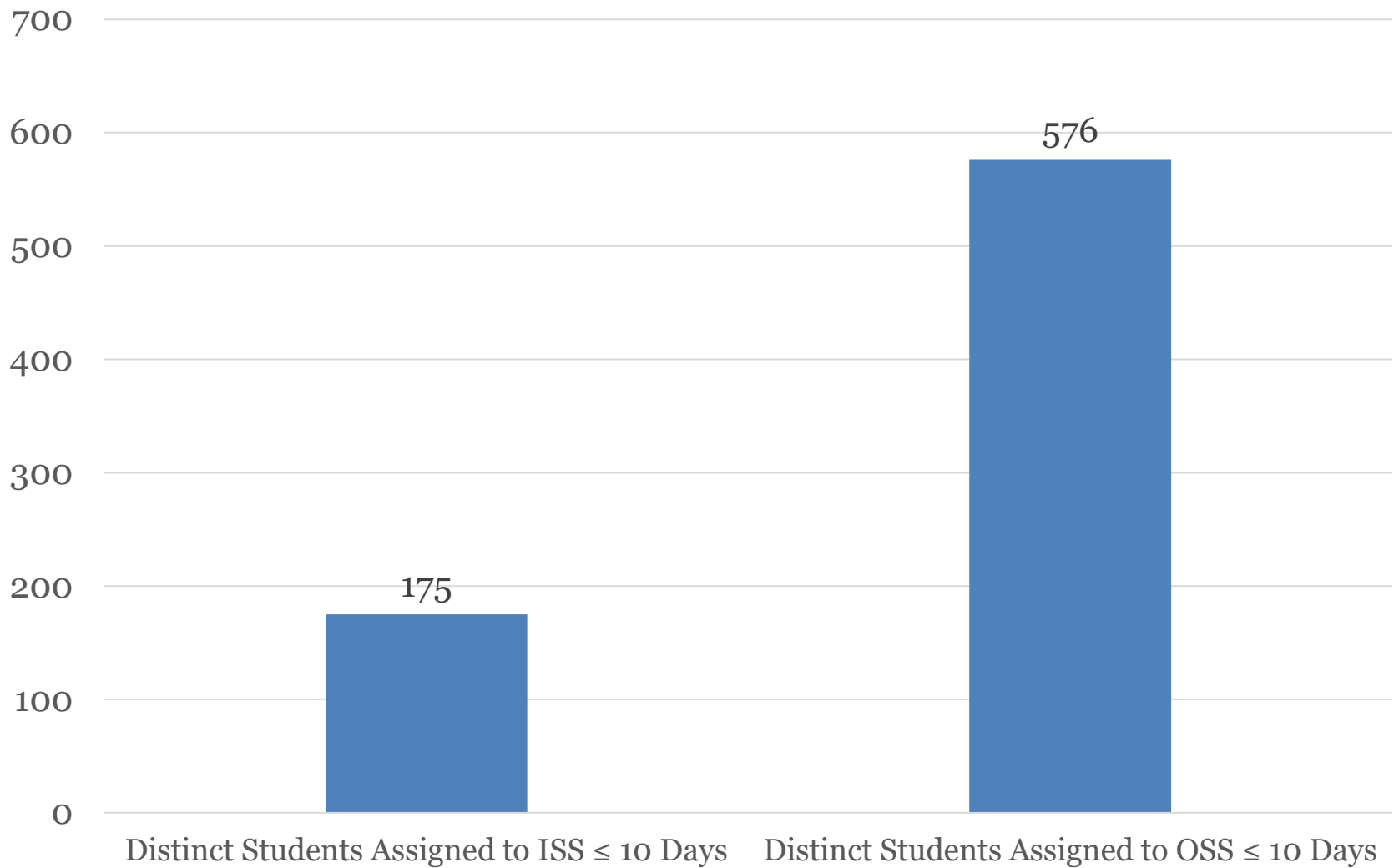
- No student in public preschool through third grade shall be expelled or suspended from school for more than five consecutive or cumulative days during a school year without first receiving a multi-tiered system of supports, such as response to intervention, unless such student possessed a weapon, illegal drugs, or other dangerous instrument or such student's behavior endangers the physical safety of other students or school personnel



## FY18: Children with Disabilities ages 3-5, # of Incidents that led to an ISS or OSS assignment



# FY18: Children with Disabilities Ages 3-5: # of students with ISS, OSS assignment





# Parents

# Definition of Parent

- "Parent" means a biological parent, an adoptive parent, a person acting as a parent, a legal guardian, a surrogate parent, or a foster parent.
- "Person acting in the place of a parent" means a person such as a grandparent, a stepparent or other relative with whom the child lives, or a person other than a parent who is legally responsible for the welfare of a child.
- "Surrogate Parent" means an individual appointed by the LEA to make educational decisions regarding a FAPE of a child with a disability.
- "Guardian" means a person authorized to act as the child's parent and/or to make educational decisions, but it does not mean the State if the child is a ward of the State.

# Surrogate Parents

A surrogate parent is needed when:

- no parent (as defined by the IDEA) can be identified;
- the LEA, after reasonable efforts, cannot locate a parent;
- the child is a ward of the State; or
- the child is an unaccompanied, homeless youth as defined by the McKinney-Vento Homeless Assistance Act.

# Surrogate Parents & LEAs Responsibilities

LEAs must have the following:

- A method for determining when a surrogate is needed
  - A method for assigning qualified surrogates
  - List of eligible persons to serve as surrogate parents
- 
- Annual training for surrogate parents is strongly suggested.

# Do all foster children need surrogates?

- No, the definition of parent in the IDEA and Georgia Special Education Rules allows foster parents to act as a parent for special education purposes.

# Must a surrogate be used when a parent refuses to attend an IEP Team meeting?

- No, a surrogate must be appointed only when his or her parents cannot be identified or located, if the child is a ward of the state, or for unaccompanied homeless youth.
  - 34 C.F.R. § 300.519(a)(1) – (a)(4)



# Parent Participation

Very Important

# Parent Participation Reminders

- Early notification
- Mutually agreeable time and location
- If parents are not in attendance, use other methods to ensure participation
- Make and document reasonable efforts to ensure parent involvement

“At the end of the day, the most overwhelming key to a child's success is the positive involvement of parents.”  
- Jane D. Hull

# When parents are divorced, are both parties entitled to attend the IEP Team meeting?

- As an initial matter, the IDEA requires that an LEA ensure at least one parent is present or afforded the opportunity to participate in IEP Team meetings. See 34 C.F.R. § 300.322(a). However, when parents are divorced, the parental rights under IDEA apply to both parents unless a court order or state law specifies otherwise. See Letter to Biondi, 29 IDELR 972 (OSEP 1997); Letter to Serwecki, 44 IDELR 8 (OSEP 2005). This also applies to separated parents. See Letter to Best, 30 IDELR 145 (OSEP 1998).

# May an LEA conduct an IEP Team meeting without a parent in attendance?

- If, after multiple attempts to contact the parent using multiple formats, the LEA is unable to convince the parent to attend, the LEA may conduct the IEP Team meeting without the parent. The LEA should keep detailed records of any letters, telephone calls, and/or visits to the parent. If attempts to ensure parental participation do not result in parent attendance, a copy of the IEP must be sent to the parent in a timely manner.

# Procedural Safeguards/Parent Rights Document

- Given at least once per school year
- Also, must be given:
  - Upon initial referral or parent request for evaluation
  - Upon receipt of the first state complaint and first due process hearing request in a school year
  - Upon notification by the LEA to the parent of a disciplinary removal that constitutes a change of placement
  - Prior to accessing a child's or a parent's public benefits or insurance for the first time
  - Upon parent request

# Parental Consent

- Informed written consent is required for the following:
  - To conduct an initial evaluation
  - To conduct a reevaluation
  - For the initial provision of special education and related services
  - Before disclosure of personally identifiable information that is subject to confidentiality

# Parental Consent Reminders

- Consent for initial evaluation does NOT provide consent for initial provision of special education and related services
- Parent may revoke consent
  - Must be in writing
  - For ALL special education and related services, not for individual services
  - LEA must provide prior written notice

# Transfer of Rights

- On or before a student's 17th birthday, the LEA is to inform the parent and the student that at age 18 the student attains the age of majority in Georgia and will become his or her own educational decision maker.
- LEA should send notices to both parent and student at 18, but the student will provide informed written consent when needed.
- LEA should inform parent and student of other options and resources.
- Under IDEA, parent retains the rights to all notices of meetings, changes in program or placement, and notices of evaluations.



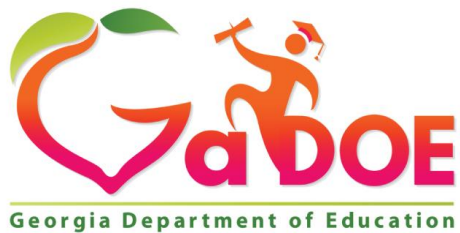
# Questions



[www.gadoe.org](http://www.gadoe.org)

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 [youtube.com/georgiadeptofed](https://youtube.com/georgiadeptofed)



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