



**STATEMENT ON U.S. DEPARTMENT OF EDUCATION'S  
GUIDANCE TO SCHOOLS TO HELP SUPPORT STUDENTS WITH  
DISABILITIES AND AVOID DISCRIMINATORY DISCIPLINE**

**FOR IMMEDIATE RELEASE:** July 20, 2022

**CONTACT:** Jalyn Radziminski, [Jalynr@bazelon.org](mailto:Jalynr@bazelon.org)

**Washington, D.C.** - The Bazelon Center for Mental Health Law commends the Department of Education's July 19<sup>th</sup> release of [comprehensive guidance](#) regarding the rights of students with disabilities, including those whose behaviors may violate school conduct rules and result in disciplinary action.

The Bazelon Center has long advocated for the rights of students with disabilities to receive a free and appropriate public education, and to receive equal educational opportunities in the most integrated setting appropriate. We know that these rights are at risk when students with disabilities do not receive the services and supports they need to engage in learning, and when they are separated from classroom instruction through suspensions, informal removals, shortened school day placements, the use of seclusion or restraint, and inappropriate placement in inferior separate schools or classrooms. We appreciate that students and their parents and advocates need clear guidance about their rights, and that administrators and teachers need resources to better understand how schools can effectively support student behavior, and when students may be punished consistent with our civil rights laws.

The Department's long-awaited guidance provides clear information on how school discipline must be administered consistent with federal law, including the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act (ADA), and

provides clear information and direction to schools and families. It is both comprehensive and precise. Among other things, we especially appreciate:

- Acknowledging the use of functional behavioral assessments (FBAs) to identify the function or purpose behind a child’s behavior and help the child’s school-based team develop behavior supports needed to ensure that the child receives a free and appropriate public education free from discrimination.
- Highlighting the use of behavior intervention plans to identify interventions to be implemented to support student behavior, and staff who will be responsible for implementing those interventions.
- Guidance that the use of “threat assessments” or “risk assessments” — generally, assessments of the risk of violent behavior — may violate federal law if they are not coordinated with the school-based team responsible for planning a student’s educational program and needed services and accommodations. We also oppose these assessments because they stigmatize and punish students with disabilities, especially Black and Brown students.
- Guidance that using de-escalation strategies to calm a “crisis” situation may be a reasonable modification of school policies required by Section 504 and the ADA, and that schools should consider whether persons with specialized training or who have a trusting relationship with the student should be involved in de-escalating crises, rather than the police.
- Clarification that while “manifestation determinations,” evaluations to determine whether a student’s conduct that violates school rules is caused by the student’s disability, **must** take place when the school suspends the student for 10 aggregate school days during the school year, they **may** take place at any time the student’s behavior violates school rules. Schools **do not** have to wait 10 days to determine that a student’s concerning behavior is caused by a disability, and to provide different or additional supports to the student.

We also appreciate the resources provided by the Department to educators, which outline positive approaches to supporting student behavior that have long been shown to be effective, including multi-tiered systems of supports

(MTSS), universal design for learning (UDL), and positive behavioral interventions and supports (PBIS). Across the country, teachers and administrators are employing these approaches to successfully support student behavior and improve school climate. We call on the federal government to make additional investments in resources to help schools implement these and other effective approaches, and on state and local governments to avail themselves of these resources.

The Bazelon Center is encouraged by these new guidance and resource materials. We look forward to the release of additional guidance, including on how schools must address intersectional discrimination, such as that experienced by Black and Brown students with disabilities, who face higher rates of punishment than do other students.

**About the Judge David L. Bazelon Center for Mental Health Law:**

The Judge David L. Bazelon Center for Mental Health Law protects and advances the civil rights people with mental and developmental disabilities – especially Black, Indigenous, People of Color (BIPOC) and other historically marginalized populations. We envision a society where our constituents with mental disabilities live with autonomy, dignity, and opportunity in welcoming communities supported by law, policy, and practices that help them reach their full potential. For more information, visit: [bazelon.org](http://bazelon.org)