



Part B Discipline Data Collection (Table 5)

Questions and Answers

Revised March 2009

The purpose of this document is to assist states with the collection of data about children with disabilities served under IDEA subject to disciplinary removal. States should use this document to supplement the General Instructions provided in Table 5.

Table 5 is located on the Data Accountability Center website at www.IDEAdata.org in the Data Collection Forms, Part B Forms section. The Office of Special Education Programs (OSEP) provides instructions for Table 5 to communicate data collection requirements under the IDEA to state special education program offices. All states that receive IDEA Part B funds must submit all data elements outlined in the instructions, regardless of data submission method. The data submission method may be via the DANS system or the ED Facts file specifications. For states submitting data via ED Facts, the information in this document is relevant to file specifications N005, N006, N007, N088, N143, and N144.

1. The instructions for the Discipline Data Collection, Table 5, include definitions for several data elements. It is difficult to determine whether Table 5 is a compliance-related report or data status (performance) report. What is the state's obligation for filing the report?

For the purpose of the Annual Performance Report (APR), the submission of valid and reliable data (including discipline data) is a compliance-related report. The discipline indicator includes both a compliance and performance element. Discipline data from Table 5 are used for APR Indicator 4. Indicator 4A is a performance indicator, but includes timely correction of noncompliance. Timely correction of non-compliance is a compliance indicator. Indicator 4B is a compliance indicator, but states are not required to report to OSEP on 4B until the APR due February 1, 2011.

States are obligated to submit the data elements described in Table 5 to meet *IDEA* data reporting requirements (Section 618 of *IDEA*). If a state submits discipline data via *ED Facts*, those same data elements must all be submitted via file specifications 005, 006, 007, 088, 143, and 144.

OSEP uses the discipline data to understand the status of state implementation of the discipline requirements in *IDEA*, Part B, to report to Congress on the implementation of *IDEA*, to monitor state performance and to examine issues related to disproportionality and in policy development decisions. All data submitted for *IDEA* purposes are used in planning research and technical assistance priorities.

Section 618 of the *IDEA* requires states to provide data regarding discipline of children with disabilities (Sections 618(a)(1)(A)(v) and (a)(1)(D) and (E)). Section 618 also requires states to

submit any other data requested by the Secretary. The “other data” are used by the Department to examine program, state or child outcomes in priority areas. Failure to provide the requested data constitutes a failure to comply substantially with program requirements (34 CFR §76.720(c)(2) (January 25, 2007)).

2. The definition for out-of-school suspension states “This includes. . .removals in which the child continues to receive services according to his or her IEP” (page 2 of 7 of the General Instructions in Table 5). Does this mean that by reporting a student as suspended out-of-school for greater than 10 days, a failure to provide FAPE is implied even if the student continues to receive services according to his or her IEP?

No. The point of the instructions is to clarify that all out-of-school suspensions should be reported in Column 3. Column 3 distinguishes between children with out-of-school suspensions totaling 10 days or less (3A) and those with out-of-school suspensions totaling more than 10 days (3B).

3. What is the definition of an Interim Alternative Educational Setting (IAES) and what is the number of days a student may be in that setting?

The definition is on page 2 of the instructions in Table 5 and is included in the answer to Question #4 below.

4. Why doesn’t the definition of IAES exactly match the definition in IDEA 2004?

The definition of IAES in the General Instructions in Table 5 has been modified to reflect statutory language in Sections 615(k)(1)(D) and 615(k)(1)(G):

Interim Alternative Educational Setting – An appropriate setting determined by the child’s IEP Team in which the child is placed for no more than 45 school days. This setting enables the child to continue to receive educational services and participate in the general education curriculum (although in another setting) and to progress toward meeting the goals set out in the IEP. As appropriate, the setting includes a functional behavioral assessment and behavioral intervention services and modifications to address the behavior violation so that it does not recur.

5. What does a “permanent change in. . .placement” (page 7 of the General Instructions) mean?

The term is used on page 7 of the General Instructions to describe those situations where, following a student’s violation of a code of student conduct, the IEP Team decides to change the student’s placement, and such placement is intended to be permanent, i.e., extend beyond the period of any disciplinary action.

6. Must a student continue to receive services when placed in an IAES?

If a student is placed in an IAES due to special circumstances, as described in Section 615(k)(1)(G), or is removed from his or her current placement pursuant to 34 CFR §300.530(c),

the student must continue to receive services in order to participate in the general education curriculum and to progress toward meeting the goals of the child's IEP as discussed in Section 615(k)(1)(D). The child must also receive, as appropriate, a behavioral assessment, behavioral intervention services and modifications to address the child's behavior, so the behavior does not recur. However, a district must provide services to a child with a disability who has been removed from his or her placement for 10 school days or less in that school year, *only if* it provides educational services to a child without disabilities who is similarly removed.

7. What is a manifestation determination?

A manifestation determination is a review by the parent, the local educational agency, and relevant members of the IEP Team, of all relevant information in the student's file, including the child's IEP and any teacher or parent observations, to determine whether the act that constituted a violation of the code of student conduct was a manifestation of the child's disability. See Section 615(k)(1)(E).

- (E) Manifestation determination.--
 - (i) In general.--Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--
 - (I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
 - (II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.
 - (ii) Manifestation.--If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

8. What happens if the student’s violation of a code of student conduct was a manifestation of the student’s disability?

If the violation of a code of student conduct is due to a student’s disability, the child’s IEP Team must conduct a functional behavioral analysis or review an existing behavioral intervention plan, and, unless special circumstances exist as described in Section 615(k)(1)(G), return the child to the placement from which the child was removed, unless the parent and LEA agree otherwise. See Section 615(k)(1)(F).

- (F) Determination that behavior was a manifestation.--If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall--
 - (i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);
 - (ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and
 - (iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

9. Under what circumstances may a child be removed to an IAES for more than 10 days?

A child may be removed for more than 10 days, but not more than 45 school days, if he or she carries a weapon, possesses illegal drugs, or inflicts serious bodily injury upon another person. See Section 615(k)(1)(G).

- (G) Special circumstances.--School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child--

- (i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;
- (ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or
- (iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

Additionally, a hearing officer may place a child in an IAES for not more than 45 days at a time, if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or others. See Section 615(k)(3)(B)(ii)(II). Finally, under Section 615(k)(1)(C), school personnel may choose to place a child whose behavior that gave rise to a violation of a code of student conduct is determined to not be a manifestation of the child's disability in an IAES for the same duration as discipline would be applied to students without disabilities for the same violation, so long as the child continues to receive services consistent with Section 615(k)(1)(D) and 34 CFR §300.530(d).

10. IDEA 2004 requires states to submit data only on suspensions of 1 day or more. Why is OSEP collecting data on suspensions of a half school day or longer?

The permission to use half days in the calculation of suspension time is to the states' advantage in minimizing the time reported. However, a state may count half days as whole days, at the state's option.

Note that states should not report a student on the form if the student was only suspended once for a half day; a student should be reported only if his or her suspensions add up to at least 1 day during the school year.

11. What is the definition for educational services as referenced in Section E of the discipline table?

In the context of this data collection, the term "educational services" refers to those services that will enable the student to participate in the general education curriculum and to make progress toward meeting the goals in his or her IEP [34 CFR §300.530(d)].

12. If a student received an IEP in the middle of the school year and was suspended twice, once at the beginning of the year, and once at the end, does the first suspension (prior to having an IEP) count?

No. Although a state must report disciplinary removals for all children with disabilities for the entire school year, the state should report only disciplinary removals that took place during the time that a child had an IEP.

13. What is the definition of in-school suspension and why is OSEP collecting these data?

An in-school suspension is defined on page 2 of the General Instructions:

In-school suspension - Instances in which a child is temporarily removed from his/her regular classroom(s) for disciplinary purposes but remains under the direct supervision of school personnel. Direct supervision means school personnel are physically in the same location as students under their supervision.

OSEP is concerned that, through the overuse of in-school suspensions, many students may be removed from their placements that were determined based on their IEPs. In-school suspensions represent an interruption in the delivery of a student's special education services. Collecting data on in-school suspensions will allow OSEP to determine the extent to which students are removed from the placements and will assist in making states and school districts accountable for their in-school suspension policies.

14. Why does the definition of in-school suspension require a count of all in-school suspensions, even if the student with a disability continues to access the regular curriculum while in the in-school suspension?

An in-school suspension represents a removal from the student's IEP-determined placement, regardless of whether a student has access to the regular curriculum during the in-school suspension. OSEP is interested in collecting data on the extent to which students are removed from their IEP placements for disciplinary reasons.

15. Why doesn't the definition of in-school suspension specify that there is a cessation of services during disciplinary removal?

An in-school suspension includes a removal from a student's IEP-determined placement, regardless of whether the student receives his or her IEP services during the in-school suspension.

16. Why doesn't OSEP focus on whether a suspended child receives the regular curriculum, rather than focusing on whether the suspension is in-school or out-of-school?

Both in- and out-of-school suspensions represent removals from a student's placement that was determined prior to the child's discipline, regardless of whether a student has access to the regular curriculum during the in-school suspension. OSEP is interested in collecting data on the

extent to which students are removed from their IEP-determined placements for disciplinary reasons.

17. Should in-school suspensions administered as part of a Behavioral Intervention Plan (BIP) be included in the discipline data?

Yes, all in-school suspensions, including those administered as part of a BIP, should be reported to OSEP.

18. Does serious bodily injury include serious bodily injury to the offender, to him- or herself, or to the victim only?

Serious bodily injury includes only injuries to another person. Pursuant to Section 615(k)(1)(g), a student may be removed to an IAES for not more than 45 days without regard to whether the student's behavior is determined to be a manifestation of the child's disability if "a child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency."

19. If a private school student who has a services plan is being provided special education services by the district in which the private school is located and the student is removed to an IAES or suspended or expelled, should such a student be included on the discipline data report?

No. The Part B *IDEA* regulations, at 34 CFR §§300.132(c) and 300.133(c), clarify the types of data that an LEA and SEA must report related to students on services plans (i.e., parentally placed private school children with disabilities). These regulations do not require the SEA or LEA to provide discipline data on a parentally placed private school child with disabilities who has a services plan if that child is removed to an IAES or suspended or expelled.

20. If a student is subject to both an out-of-school suspension and an IAES removal for the same offense, is this reported as two removals in Column 5A or is it reported as a single removal since it is based on the same incident or event?

If a student is subject to both an out-of-school suspension and an IAES removal for the same offense, that student should be reported in Column 3A or 3B (depending on the length of the suspension) and again in either Column 1A or 2. In this case, the same offense results in two separate removals. As Column 5 is a report of total disciplinary removals, the removals should be reported separately, although they resulted from the same disciplinary offense.

21. If a student in a state juvenile correction facility is removed from class because of discipline issues and returned to his/her quarters for a "cooling off / time out" period of time, then returned to class later in the day or the next day, should the student be reported as in- or out-of-school suspension?

The student would qualify as in-school suspension only if the student remains under the supervision of school personnel. If the student is sent to his/her living quarters to cool off, that

example is more closely aligned with the definition of out-of-school suspension and the disciplinary action would be better classified as an out-of-school suspension.

22. How are “temporary removal” and “permanent change in placement” defined?

A *temporary removal* occurs when a student is removed from his/her placement in which special education and related services are to be delivered according to the active IEP due to a disciplinary offense for a limited period of time. *Permanent change in placement* is not defined in the *IDEA* statute. However, in the context of the instructions for this data collection, it means that the IEP Team determines that the student should be removed from the current placement and is permanently placed in a less restrictive environment. Permanent changes in placement are not reported as disciplinary removals for this data collection.

23. Our state definition of suspension is different from the one provided by OSEP in the data collection. For example, if the student continues to receive services, our state does not consider this to be a suspension. The state also does not count in-school removals from the classroom or being sent home for a partial day as suspensions. Which definition should be followed for purposes of collecting the required discipline data?

When reporting *IDEA* data, states must use federal definitions for data elements. While OSEP recognizes that there is considerable variability across states in regard to practices and terminology, it is imperative that states adhere to the established reporting instructions and definitions that are provided in the data reporting guidelines, in order to ensure the interpretability of the data and the ability to aggregate the data across states. Therefore, states must adhere to the established guidelines for data reporting in all of the *IDEA* data collections, even when those guidelines are in conflict with the terminology and data reporting practices in place within the states.

In addition to validity issues noted above, states must report data consistent with definitions specified in the *IDEA* collections to achieve the accuracy rating in Indicator 20 of the Annual Performance Report (APR).

24. Should the children reported as expelled in Section E also be reported in columns 1, 2, or 3 in Sections A-D? In other words, if a child is expelled until the end of a school year for a weapon offense (say there are 30 school days left in the school year), and is provided services in an IAES, is that child counted in column 1C as well as in E?

The answer is yes, Section E would overlap with some of the removals reported in the earlier sections.

25. How are percentages being calculated for Section E? Are they being calculated as the percentage receiving educational services? Or as the percentage not receiving educational services?

Section E calculates the percentage of children expelled with services vs. percentage of children expelled without services.

26. I do not understand the following edit check: $1A + 2 + 3A + 3B + 4A + 4B \geq 5B + 5C + 5D$. How can the left side of the equation be greater than or equal to the right side of the equation?

The reason that the sum on the left can be greater than or equal to the sum on the right is because the same child may be reported in more than one column if that child committed more than one offense. The columns are only mutually exclusive for a given child for the same offense. So, a child may have been suspended (out of school) on some occasion for fighting, but unilaterally removed on another occasion for a drug offense. In that case, the child will be counted in both columns 3 and 1B. But, that child will only be reflected once in the cumulative totals that are reported in columns 5B through 5D.

27. If a student was removed from class by the Resource Officer for misbehavior and turned over to the police, should this incident be reported in the special education discipline report? If so, where does it fit? Resource officers are usually paid 50% from the school district and 50% by the local police dept, so they may be considered a district employee. Is this a unilateral removal by school personnel? Is the local detention center classified as an IAES?

As for whether a student who is incarcerated and/or removed from school grounds by police officers is considered suspended or expelled, it does not count as either. A suspension is defined as specific action taken on the part of school personnel to remove a student from his/her current placement to an appropriate setting in response to a disciplinary offense (see 34 CFR 300.530). Although in the scenario a student may be removed from school grounds under the authority of the personnel paid partially by the school or police officers, that student would be incarcerated under the authority of the courts, not by the school personnel. So, the removal of the student from the school would not be reported as a suspension or expulsion unless the school personnel determined that it was appropriate to also formally suspend the student once he/she returned to school.