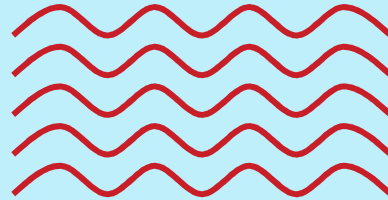


Air Mail

Par Avion



Dear Preschool Colleagues

OSEP Letters, Policy Statements, and
Guidance Documents
Specific to Preschool

Tri-State Regional Special Law Conference




November 2, 2017

Brenda Van Gorder

Learning Objectives



Participants will

-  understand sources of guidance and policy from U.S. Department of Education and other federal departments.
-  understand key early childhood/preschool OSEP letters and policy statements.
-  identify and develop strategies to consider when reviewing and revising local policies and procedures.

Words From Washington DC

- ✉ OSEP Letters – Informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented/questions asked by a specific person, agency, or organization.
- ✉ OSERS Memorandum – Informal guidance and is not legally binding. Offers clarification, instruction and resources for states regarding regulations, OSEP letters, trends/questions from the field.
- ✉ Policy Statements - provides purpose of the policy, and is the Department's position on a specific topic. Released by a single department, or jointly with other departments. (DOE, HHS, DOJ)

Early Childhood Topics Explored Today

- ✉ Response to Intervention (RtI)
- ✉ Least Restrictive Environment (LRE)
- ✉ Categorical Eligibility & Services
- ✉ Procedural Issues
- ✉ Family Engagement
- ✉ Suspension & Expulsion



A Way to Capture Your Thoughts & Ideas

Strategies & Resources
Things We Need To Think About

TOPIC	We Should...
Response To Intervention (RtI)	
Least Restrictive Environment (LRE)	
Categorical Services & Eligibility	

Response to Intervention



June 2, 2010 – Dear Dr. Brekken

✉ Does IDEA introduce a new requirement or encourage LEAs to use an Rtl approach in determining whether a 3-, 4-, or 5-year old child enrolled in Head Start is eligible for special education and related services under Part B of the IDEA?

✉ OSEPs short answer...





Letter to Brekken

- ✉ The IDEA does not require or encourage and LEA to use an Rtl approach prior to a referral for evaluation or as part of determining whether a 3-, 4-, or 5-year old is eligible for special education and related services.
- ✉ IDEA requires States to adopt criteria for determining whether a child has a *specific learning disability*

Letter to Brekken




The category of specific learning disability is generally not applicable to preschool children with disabilities. The IDEA and the Part B regulations do not address the use of an RtI model for children suspected of having other disabilities.



The IDEA child find requirements permit referrals from any source, including a Head Start program that “suspects a child may be eligible for special education and related services”

Letter to Brekken

 Can an LEA decline a child find referral from a Head Start program until the program monitors the child's development progress using Rtl procedures?

 OSEPs short answer....



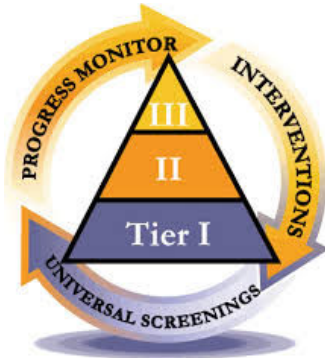
Letter to Brekken

- ✉ Once an LEA receives a referral from a Head Start program, the LEA must initiate the evaluation to determine whether the child has a disability...unless –
- ✉ The LEA does not suspect the child has a disability – then the LEA must provide written notice **to the parents** (not Head Start) explaining why the public agency refuses to evaluate, and the basis for the decision
 - ✉ The answer may be no for now... not no forever
- ✉ The LEA may not reject the referral on the basis that the Head Start did not implement RtI



Jan 21, 2011 – Memo to State Directors

- ✉ Rtl cannot be used to delay-deny an evaluation for eligibility under the IDEA.
- ✉ Multi-tiered instructional framework, often referred to as Rtl – schoolwide approach that addresses the needs of *all students, including struggling learners and students with disabilities*, to “maximize student achievement and reduce problem behaviors”
- ✉ DOE does not subscribe to a particular Rtl framework, the core characteristics that underpin all Rtl models are:



Core Characteristics of RtI

- ✉ Students receive high quality research-based instruction in their general education setting;
- ✉ Continuous monitoring of student performance;
- ✉ All students are screened for academic and behavioral problems; and
- ✉ Multiple levels (tiers) of instruction that are progressively more intense, based on the student's response to instruction



Memo to State Directors



“OSEP supports State and local implementation of RtI strategies to ensure that children who are struggling academically and behaviorally are identified early and provided needed interventions in a timely and effective manner”



LEAs have implemented successful RtI strategies, ensuring that those who don't respond are referred, and those *“who simply need intense short-term interventions are provided those interventions”*



Apr 29, 2016 – Memo to State Directors & 619 Coordinators



LEAs may be using Rtl strategies to delay or deny a timely initial evaluation for preschool children suspected of having a disability.



IDEA permits referrals from any source, including private and public preschools, and community-based child care programs, that suspect a child may be eligible for special education and related services.



“Please examine the procedures and practices in your State to ensure the use of RTI is not delaying or denying a timely evaluation.”

Least Restrictive Environment





Feb 29, 2012 – Dear Colleague



Purpose: “to reiterate that the least restrictive environment requirements of the IDEA apply to the placement of children with disabilities.”



“these requirements state the IDEA’s strong preference for educating students with disabilities in regular classes with appropriate aids and supports.”



Dear Colleague



“The statutory provision of LRE does not distinguish between school-aged and preschool-aged children, and therefore, applies equally to all preschool children with disabilities.”



The LRE requirements state a strong preference for educating children with disabilities in regular classes alongside their peers without disabilities.



The term “regular class” includes a preschool setting with typically developing peers.



Dear Colleague



The IEP must include an explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class.



Before a child with a disability can be placed outside of the regular educational environment, the group of persons making the placement, must consider whether supplementary aids and services could be provided that would enable the child to be educated in the regular educational setting satisfactorily.



Dear Colleague



The public agency responsible for providing FAPE to a preschool child with a disability, must make available the full continuum of alternative placements, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, to meet the needs of all preschool children with disabilities for special education and related services.



Dear Colleague



Preschool Placement Options

(regardless of whether the LEA operates a public preschool program for children without disabilities)



The Department defines a Regular Early Childhood Program as a program that includes a majority (at least 50%) non-disabled (children who do not have an IEP) and that may include, but is not limited to:

Dear Colleague



✉ Setting options:

- ✉ Head Start
- ✉ Kindergarten
- ✉ Preschool classes offered by the public
- ✉ Private kindergarten* and preschool
- ✉ Group child development centers or child care

✉ Placement in the LRE must be considered individually, and be based on the child's abilities and needs as described in the child's IEP

Apr 18, 2013 – Dear Ms. Johnson

- ✉ What constitutes a natural environment for infants and toddlers with disabilities?
- ✉ Refers to OSEP Letter to Morris (2005)
 - ✉ Many center based programs that formerly served only children with disabilities have now integrated children without disabilities, creating daycare or preschool program constituting a natural environment





Letter to Johnson



Early intervention services are provided to the maximum extent appropriate in natural environments, unless the IFSP team determines that the early intervention services cannot be achieved satisfactorily in a natural environment



If the team determines that the service cannot be provided in the natural environment, the IFSP must include a justification based on the child's outcomes for not providing that service in the natural environment

Letter to Johnson



“The purpose of integrating under Part C, and the LRE requirements under Part B is to ensure that young children with disabilities interact with peers who are not disabled, to the maximum extent appropriate.”

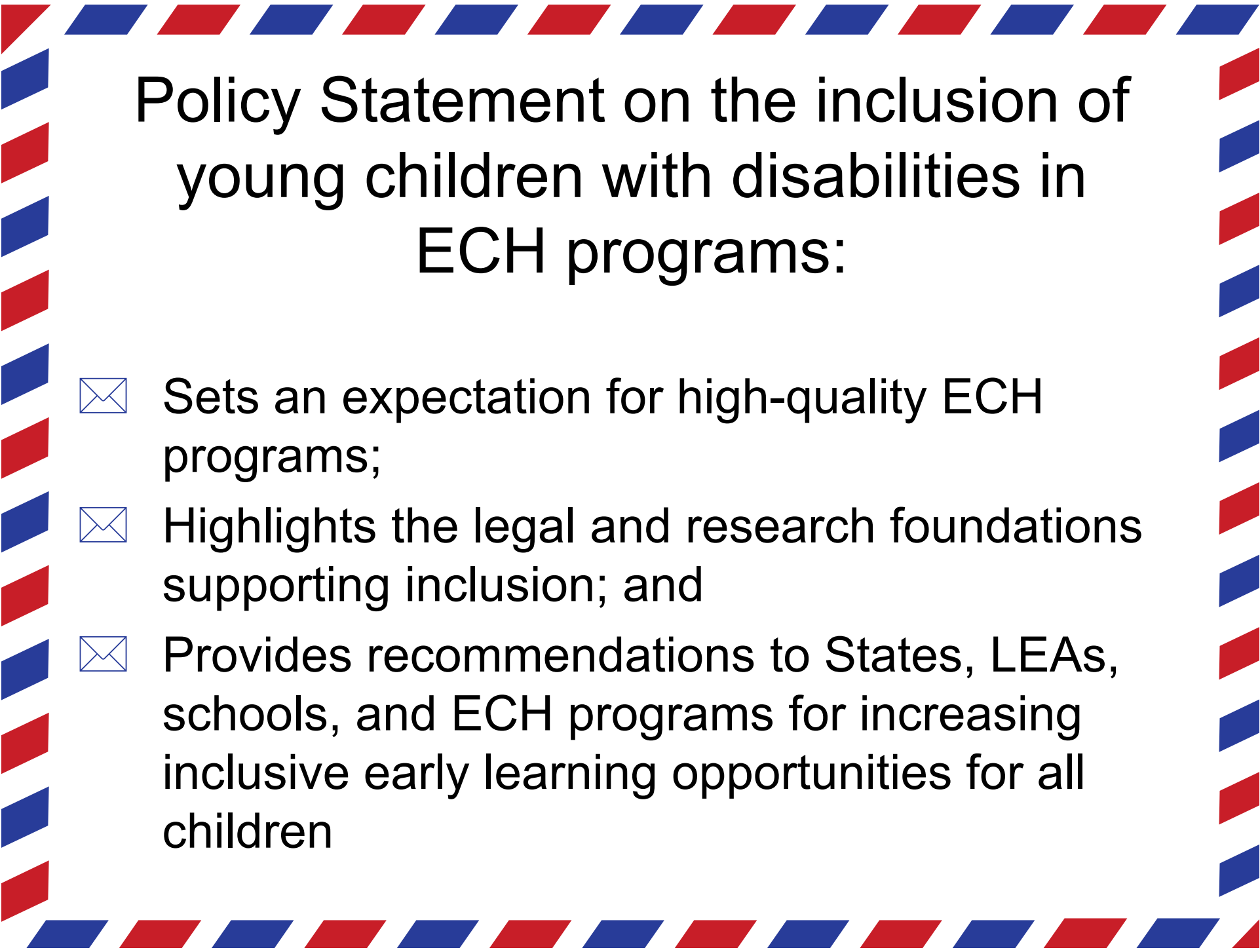




Sept 14, 2015 - Joint Policy Statement

✉ Purpose: to set a vision and provide recommendations to States, LEAs, schools, and public and private ECH programs to increase inclusion of infants, toddlers, and preschool children with disabilities.

✉ “It is the Departments’ position that all young children with disabilities should have access to inclusive high-quality early childhood programs, where they are provided with individualized and appropriate support in meeting high expectations.”



Policy Statement on the inclusion of young children with disabilities in ECH programs:

- ✉ Sets an expectation for high-quality ECH programs;
- ✉ Highlights the legal and research foundations supporting inclusion; and
- ✉ Provides recommendations to States, LEAs, schools, and ECH programs for increasing inclusive early learning opportunities for all children

Joint Policy

4 Reasons to change our practices of exclusion:



Being meaningfully included as a member of society is the first step to equal opportunity and is every person's right;



Research supports that ECH inclusion is beneficial to children with and without disabilities;



Operating inclusive ECH programs is not necessarily more expensive than operating separate ECH programs for children with disabilities; and



Meaningful inclusion can support children with disabilities in reaching their full potential resulting in broad societal benefits, including higher productivity in adulthood and fewer resources spent on interventions and public assistance later in life.

Jan 9, 2017 – Dear Colleague (round 2)



Reaffirming position of the Dept. of Ed from the Feb 29, 2012 Dear Colleague Letter



“Despite the expansion of ECH programs, there has not been a proportionate expansion of inclusive early learning opportunities for young children with disabilities”



This letter supersedes the 2012 OSEP Letter



Includes additional information on reporting educational environments data for preschool



Dear Colleague (2)



Reiterates/restates that LRE requirements as stated in the regulations apply to preschool age children



Right to be educated in the LRE with children who do not have disabilities



A strong preference for children to be educated in a “regular class” (defined as a preschool setting with a majority – at least 50% of the children do not have disabilities – those who do not have an IEP)



Must consider the use of supplementary aids and services to enable the child to be educated in the regular education setting



Dear Colleague (2)



If the LEA does not offer services to children without disabilities, the “LEA must explore alternative methods to ensure that the LRE requirements are met for each preschool child with a disability”



For children with disabilities who already participate in a regular public preschool – services should be provided in the school that he or she would attend if non-disabled (the school where he already is attending)



Dear Colleague (2)




IDEA presumes that the first placement option considered for a preschool child with a disability is the regular public preschool program the child would attend if the child did not have a disability.





The team must consider whether the LEA, in collaboration with the regular public preschool program, can ensure that the child receives all of the special education and related services included in the child's IEP in order to meet the needs of the particular child with a disability.

Dear Colleague (2)

- ✉ Are informal settings, such as weekly school based or neighborhood playgroups, or home settings considered to be a regular ECH program?
- ✉ OSEP's answer..  **No!**
- ✉ because they are generally not required to comply with a State's early learning programs standards or curricula

Dear Colleague (2)

- ✉ Does “*in the regular ECH program*” mean that a child must receive the majority of special education and related services in the child’s classroom, or
- ✉ can some other location in the building also be considered the “regular ECH program?”
- ✉ OSEP’s answers...  and 



Dear Colleague (2)



Special education and related services delivered in the child's classroom in the course of daily activities and routines in which all children in the classroom participate (e.g. circle time, learning centers), would be considered as being received in the regular ECH program.



Services delivered in other locations that remove the child from the opportunity to interact with nondisabled children would not be considered as being received in the regular ECH program






Dear Colleague (2)

- ✉ IDEA Part B Child Count and Educational Environment will be updated for the 2017-2018 school year.
- ✉ The new reporting will clarify and specify
 - ✉ Informal settings as regular ECH programs
 - ✉ When special education and related services are considered as being provided in the regular ECH program

Dear Colleague (2)

Use of IDEA Part B funds for Preschoolers with disabilities

-  LEAs must use Part B 619 funds (3-5), **and** as applicable 611 funds (3-21) only to pay the excess costs of providing special education and related services
-  If State and local funds are used to fund gen ed preschool, Part B funds may only be used to fund excess costs of providing SpEd and related services
-  If no State or local funds are used to fund gen ed preschool, IDEA does not prevent an LEA from funding all of the costs directly associated with providing a preschooler with FAPE

Categorical Eligibility & Services





Nov 12, 2014 – DOE & DOJ Dear Colleague



A critical aspect of participation is communication with others.



IDEA requires that schools make available a FAPE consisting of special education and related services to all eligible children.





Title II (ADA) requires schools to ensure that students with disabilities receive communication that is as effective as communication with others through the provision of appropriate auxiliary aids and services.

DOE & DOJ – Dear Colleague



The FAQ document provides nice guidance for schools to comply with requirements.

-  Must provide the aid or service requested by parents unless the school can prove that a different auxiliary aid or service is as effective in meeting the student's communication needs.
-  Schools are not required to provide aids or services greater than what is needed to ensure effective communication

Apr 17, 2015 – Memo to State Directors

- ✉ Addresses eligibility for special education and related services under IDEA for children with disabilities with high cognition – students referred to as “twice exceptional” or “2E students”
- ✉ Letter to Delisle (Dec 20, 2013) states the Departments position – “students who have high cognition, have disabilities, and require special education and related services are protected under the IDEA and it’s regulations.



Memo to State Directors



The Department continues to receive letters concerning students with disabilities with high cognition, particularly those with emotional disturbance or mental illness, expressing concern that some LEAs are hesitant to conduct initial evaluations to determine eligibility for special education and related services for children with high cognition



Reminder – each LEA has an obligation to evaluate all children regardless of cognitive skills, if they are suspected of having a disability.

July 6, 2015 – Dear Colleague Letter

- ✉ Addresses “growing concern” that children with Autism may not be receiving needed speech and language services, and that SLPs and other appropriate professionals may not have been included in evaluation and eligibility determinations, or as team members for IFSPs and IEPs.
- ✉ OSEP places a high priority on ensuring that infants, toddlers and children with disabilities are identified as early as possible under the IDEA and that appropriate services are provided

Procedural Issues



Sept 23, 2016 – Dear Ms Kashyap

✉ Is the right to examine education records limited only to parents of children who have already been deemed eligible for special education services, or does the right also extend to children with suspected disabilities?

✉ OSEPs answers...



and



Letter to Kashyap



“We believe that a parent’s right to inspect and review a child’s education record also extends to parents who suspect their child may have a disability”



A parent may wish to review referral documents, assessment and evaluation reports, and required notices under the IDEA to gain a better understanding of the public agency’s recommendations and decisions.



Wouldn’t the Family Educational Rights and Privacy Act (FERPA) apply anyway?

Oct 22, 2016 – Dear Ms Carroll

✉ Once the district's evaluation is complete and the parent requests their child be assessed in a particular area in which they have not previously expressed concern, would the district have the opportunity to conduct an evaluation in the given area before a parent invokes the right to an IEE?

✉ OSEPs answer... **NO**



Letter to Carroll



Parents have a right to seek an IEE at public expense, if the parents disagree with the evaluation conducted by the public agency.



This is so even if the reason for the parent's disagreement is that the public agency's evaluation did not assess the child in all areas related to the suspected disability.

Letter to Carroll



The IDEA affords a parent the right to an IEE at public expense and does not condition that right on a public agency's ability to "cure the defects" of the evaluation it conducted prior to granting the parent's request for an IEE



Family Engagement





May 5, 2016 – Joint Policy Statement

✉ Purpose: To guide the development of effective family engagement policies and practices

✉ “It is the goal of the Departments that all ECH systems recognize and support families as essential partners in providing services that improve children’s learning, development, and wellness



Joint Policy Statement

✉ The joint statement aims to advance strong family engagement by:

- ✉ Reviewing the research, legal requirements, and best practices;
- ✉ Identifying core principles of effective family engagement;
- ✉ Providing recommendations to States, LEAs, Early Intervention providers, community based ECH systems; and
- ✉ Highlighting resources to build programmatic and family capacity to be effective partners.



Joint Policy Statement

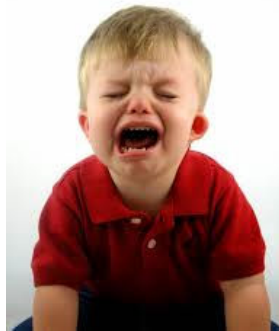


“Family” is an inclusive term for all adults who interact with ECH systems in support of their child, to include biological, adoptive, and foster parents; grandparents; legal and informal guardians; and adult siblings.



“ECH programs have the responsibility to promote and implement effective family engagement to improve children’s learning, development and wellness.”

Suspension & Expulsion





Dec 10, 2014 – Joint Policy Statement

- ✉ Purpose: Preventing and severely limiting expulsions and suspensions in early learning settings
- ✉ “Expelling or suspending 3- and 4-year old children, sets the trajectory in a negative direction before their first day of kindergarten – we share the responsibility of ensuring that all young children have access to enriching opportunities that will set them up for success and empower them to be our future leaders.”



Joint Policy Statement



The practice of suspension and expulsion in ECH settings is troubling given that the research suggests that these practices are associated with negative educational and life outcomes.



“These trends warrant immediate attention from the ECH field to prevent, severely limit and work toward eventually eliminating the expulsion and suspension – and ensure the safety and well-being - of young children in early learning settings.”



Joint Policy Statement




- ✉ The joint DOE & HHS policy statement aims to:
 - ✉ Raise awareness about expulsion, suspension, and other exclusionary discipline practices in ECH settings;
 - ✉ Provide recommendations to the ECH field;
 - ✉ Provide recommendations about using data to set goals and monitor progress;
 - ✉ Highlight ECH workforce competencies and evidence-based interventions and approaches;
 - ✉ Identify free resources to support ECH programs in addressing children's social emotional, and behavioral health.



Joint Policy Statement



Statistics on ECH suspension & expulsion:

-  Young Children who are expelled or suspended are as much as 10 times more likely to drop out of high school, experience academic failure and grade retention, hold negative school attitudes, and face incarceration than those who are not
-  Public Pre-k teachers – 10% report suspension or expulsion of at least one child per year.
-  Child Care providers – 39% report suspension or expulsion of at least one child per year.

Joint Policy Statement



More statistics:

Preschoolers	%of PreK Population	% of PreK Suspensions & Expulsions
African American Boys	18%	48% - more than once
Hispanic and African American Boys	46%	66%
Boys v. Girls		79% of all children suspended one time - are boys 82% of all children suspended multiple times – are boys



These statistics may not be catching the “he’s having a bad day...come pick him up, and we will try again tomorrow” type of child.

Aug 1, 2016 – Dear Colleague



Purpose: This letter is part of the Department's broader work to encourage school environments that are safe, supportive, and conducive to teaching and learning, where educators actively prevent the need for short-term disciplinary removals by effectively supporting and responding to behavior.



The Department strongly supports child and school safety, and this letter is not intended to limit the appropriate use of disciplinary removals that are necessary to protect children.



Dear Colleague



IDEA requires teams to consider the use of positive behavioral interventions and supports, and other strategies, to address behavior that impedes his or her learning or that of others.



If a child already has behavioral supports, upon repeated incidents of child misbehavior or classroom disruption, the IEP team should meet to consider whether the child's behavioral supports should be changed.

What We Need to Do



Prevention Steps in the ECH Field:



Combine developmentally appropriate and non-discriminatory discipline procedures and policies



Targeted professional development focused on promoting the social-emotional and behavioral health of all children and enhancing teacher and provider self-reflective capacity to prevent and eliminate biases in practice

Resources

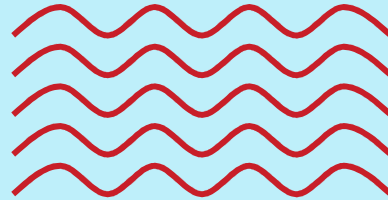
- ✉ Presentation materials include a two page list of resources with active links to each document.
- ✉ Review these and other documents to assist with analyzing your program needs, which will lead to effective policies & practices.





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