



# OCR Conference

## *Disrupting the School to Prison Pipeline*

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### Agenda

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Disability Law Colorado

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What is the School-to-Prison Pipeline?

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Applicable Laws

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Free Appropriate Public Education (FAPE)/Least Restrictive Environment (LRE)

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Discipline & Manifestation Determination Reviews (MDRs)

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Restraint & Seclusion

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Dispute Resolution Options

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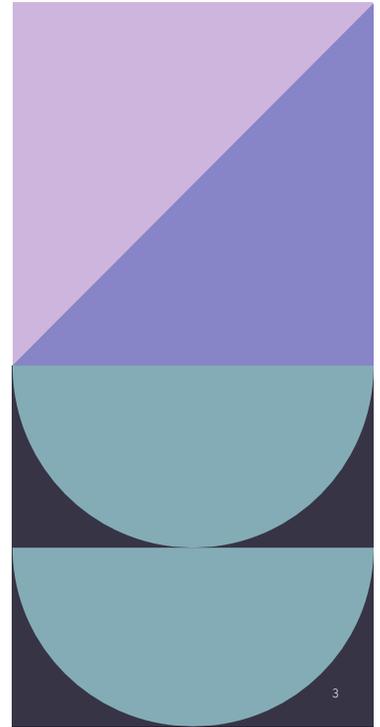
Disrupting the School-to-Prison Pipeline

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## Disability Law Colorado

- Colorado's Protection & Advocacy System
- Nonprofit legal services organization
- Mission is to protect and promote the rights of individuals with disabilities through direct legal representation, monitoring, advocacy, education, and legislative analysis
- Areas of work: [Priorities 2023-24](#)



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## What is the School-to-Prison pipeline?

- The school-to-prison pipeline refers to practices and policies that disproportionately place certain groups of students into the criminal justice system.
- Most commonly, these groups are students with disabilities, students of color, and students at the intersection of these identities.
- Harsh discipline and overuse of referrals to law enforcement contribute to the problem.
- Students with disabilities comprise less than 12% of high school students nationwide, but represent 75% of students restrained, 58% of students who are secluded, more than 13% of students subject to out-of-school suspension, and 25% of students arrested and referred to law enforcement.
- Since students with disabilities are disproportionately disciplined in school, they are more likely to enter the school-to-prison pipeline.



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## Applicable Laws

### Federal

- Section 504 of the Rehabilitation Act (Section 504)
- Americans with Disabilities Act (ADA) Title II or III
- Individuals with Disabilities Education Act (IDEA)

### State

- Exceptional Children's Education Act (ECEA)
- Colorado Anti-Discrimination Act (CADA)
- Protection of Individuals from Restraint and Seclusion Act (PPRA)

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## Two major components of IDEA & Section 504

# FAPE

Free and Appropriate  
Public Education

# LRE

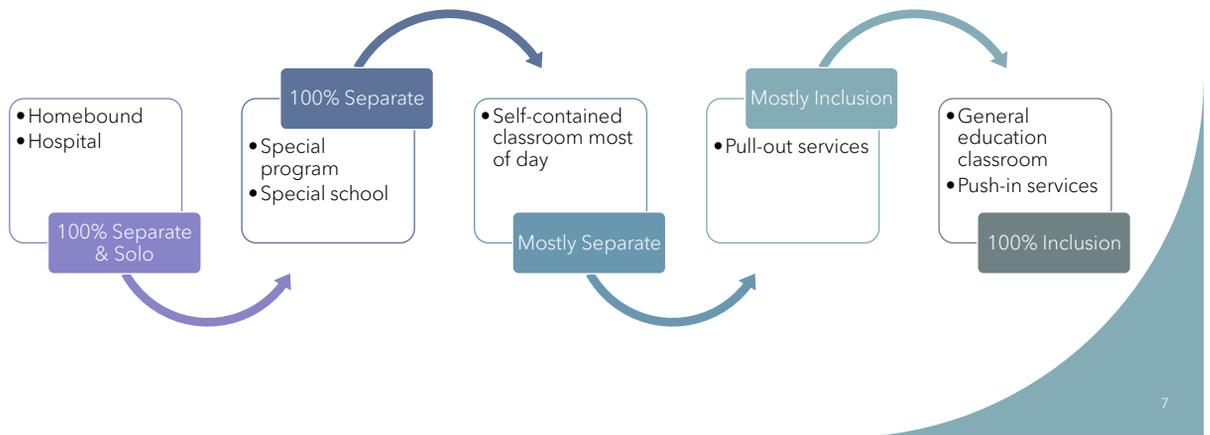
Least Restrictive Environment

Every child with a disability who qualifies under these laws, is entitled to a FAPE in the LRE.

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## LRE Continuum



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## Discipline: Manifestation Determination Reviews (MDRs)

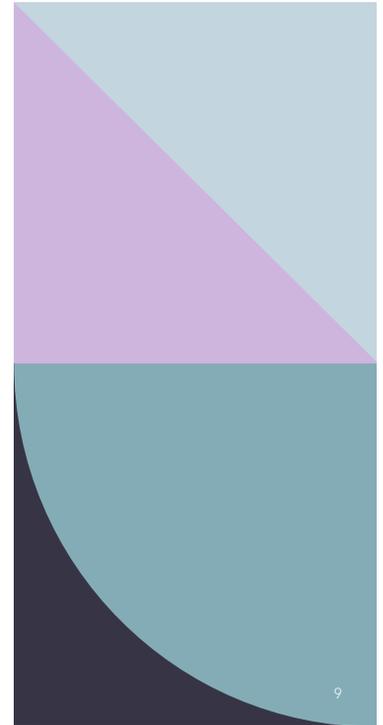
- Triggered when there is a change in placement of 10 or more days (aggregate for related behavior)
- Includes relevant members of the IEP/504 team
- Only two questions are discussed at the MDR:
  - Was the conduct caused by, or did it have a direct and substantial relationship to, the student's disability?
  - Was the conduct the direct result of the school district's failure to implement the IEP/504 Plan?
- NOT a meeting about whether the student understands right and wrong
- NOT a hearing!
- Must provide notice to parents to allow meaningful participation and give them opportunity to invite other relevant members

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## After the MDR

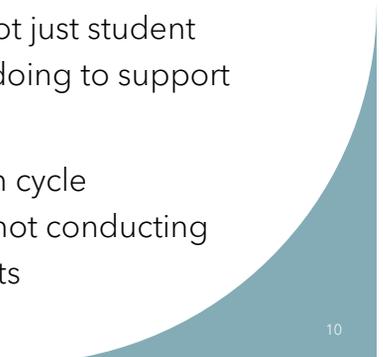
- If the behavior was a manifestation of the disability OR a failure to implement the plan, the student may not be disciplined
- If the behavior was not a manifestation of the disability OR a failure to implement the plan, the student may be disciplined
  - If the student is on an IEP, still entitled to FAPE
  - If the student is on a 504 Plan, not entitled to FAPE
- Good idea to have an IEP or 504 meeting to discuss services
- Likely need to conduct a Functional Behavior Assessment (FBA) and/or review existing Behavior Intervention Plan (BIP)



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## Functional Behavior Assessments & Behavior Intervention/Support Plans

- If the student was having behaviors in school, the team should have conducted FBA and/or revised BIP if already existing (may be required even if they haven't gotten to the 10-day trigger for a manifestation determination review)
- Should focus on positive supports for the student (not just student will do x, y, z) - what are the adults around the child doing to support positive behavior?
- Red flags: behavior contracts, safety plans, escalation cycle management plans, risk and/or threat assessments, not conducting FBA or reviewing BIP after multiple behavior incidents



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## Special Circumstances

- Interim Alternative Educational Setting (“IAES”)–Not more than 45 school days
- Drugs: illegal drug or controlled substance
- Weapons: a device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of, causing death or serious bodily injury (does not include a pocket knife with a blade of less than two and one-half inches)
- Serious Bodily Injury: bodily injury which involves a 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



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## Informal Removal

In resolving complaints, both the U.S. Department of Education’s Office for Civil Rights (OCR) and the Colorado Department of Education (CDE) have found that the right to a FAPE was denied to students who were informally removed from school in similar manners.



School calls parent to pick student up early every day, or most days



School will not allow student to return to school due to behavior issues, but does not label it a “suspension”



School sends student home for violating a school policy, but does not label it a “suspension”



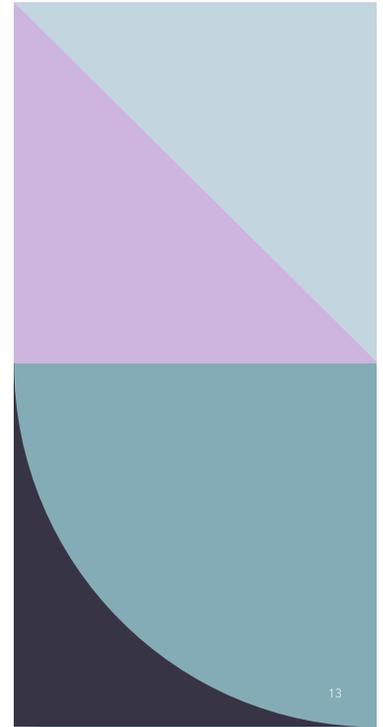
These are Red Flags that a student might need an MDR if these “informal removals” or “informal suspensions” go beyond 10 days

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## Potential Impacts in the School-to-Prison Pipeline

- Students who experience harsh or frequent discipline are more likely to end up in carceral settings.
- Students belong in school and should not be denied the schoolwork and social-emotional learning that takes place at school.
- When children miss school, they fall behind socially and academically. They also miss critical opportunities to practice appropriate behaviors.



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## Restraint & Seclusion Basics

- Types: Chemical, Mechanical, Physical, Seclusion
- Rules vary depending on setting (public school, residential treatment, DYS, etc.)  
**Statute:** C.R.S. 26-20-101  
**CDE Rules:** [1 CCR 301-45](#)  
**CDHS Rules:** [12 CCR 2509-8](#)
- There are limits on what type, when, and how restraint and seclusion are defined and can be used



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## Potential Impact on FAPE

- For a student not identified as having a disability, instances of the use of restraint or seclusion may indicate the need to evaluate the student to determine whether the student has a disability.
- For a student already identified as having a disability, instances of the use of restraint or seclusion may:
  - Signal the need to re-evaluate the student;
  - Signal the need to conduct a functional behavioral assessment (FBA) and create a behavioral intervention plan (BIP) for the student;
  - Signal the need to review and revise services, accommodations, etc. for the student;
  - Cause the student to miss the delivery of general or special education or related services, which in turn, may need to be made up; and/or
  - Cause trauma that has an educational impact on the student (e.g., school avoidance, declining academic performance, etc.), and consequently, should be addressed

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## Potential Impacts in the School-to-Prison Pipeline

- As we mentioned, students with disabilities comprise less than 12% of high school students nationwide, but represent 75% of students restrained, 58% of students who are secluded.
- Experiencing restraint or seclusion in school can have lasting effects, including PTSD, that follows students who may end up in jail or prison.

“When I am escalated and guards put their hands on me, I’m taken back to being restrained in school growing up and I have a more severe reaction to them that lands me with more charges.” - Former client who spent time in a county jail

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## Different Treatment

An individual with a disability was treated differently than an individual without disability under similar circumstances

The different treatment resulted in the denial or limitation of services, benefits, or opportunities for the individual with a disability

The recipient did not have a nondiscriminatory, non-pretexual reason for the different treatment

- Scheduling
  - Ex. Shortened school day for students with disabilities
- Discipline
  - Ex. Disciplining a student with a disability more harshly than a student without a disability who commits the same offense
  - Restraining or secluding a student with a disability for behavior that does not result in restraint or seclusion of students with disabilities
- Facilities
  - Location, quality, etc.

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## What if a student is incarcerated?

The Division of Youth Services (DYS), Department of Corrections (DOC), and County Jails:

- Must make reasonable accommodations and provide equal access
- For the provision of educational services, generally have the same requirements as public schools with an exception if there is a "bona fide security risk"
- Must identify and evaluate students for educational services under Section 504 and the IDEA
- Must provide a free appropriate public education (FAPE) based on student's needs, not "what's available in that facility"
- Must have specific requirements around use of restraint and seclusion/isolation

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## Disrupting the School-to-Prison Pipeline

The National Council on Disability estimates that as much as 85% of youth in juvenile detention facilities have a disability that could qualify them for special education services.

However, about 37% of youth in detention facilities nationwide are receiving special education services.

In the Division of Youth Services in Colorado, the percentage of students determined to be IDEA-eligible typically fluctuates between 20% and 30%, with some exceptions in both directions.

\*This does not include IDEA-eligible students who are also in DOC or County Jails.

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## Why is this important?

- The IDEA and Section 504 provides students with disabilities the right to FAPE within the LRE.
- Many students with behavioral challenges may have a disability that would make them eligible for special education services, but these students are instead being more harshly disciplined and ending up in juvenile detention centers. These students often later end up in adult jails and prisons.
- Students with disabilities deserve proper educational services both during and prior to incarceration.

"I think it all stems from not being given the help that I needed at school at the most important time. No one else's decisions and no one else's lack of support can put me here [in prison]. My own issues put me here. But I think it would have helped to have that stability and support in schools."

Slinger, Daliah. "School Discipline Can Lead Students into the Justice System" (2023), available at: <https://collective.coloradotrue.org/stories/school-discipline-can-lead-students-into-the-justice-system/>.

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## How can we disrupt this pipeline?

- It is never too late to request an evaluation for a student if there is a suspected disability, even if they are already incarcerated. Remember that child find is a proactive obligation. If a student is having behaviors at school, think about evaluating or re-evaluating and consider a functional behavior assessment and creating or revising a behavior plan.
- It is important to advocate for students experiencing harsh discipline at every level to try and stop students with disabilities from continuing to experience harsher and harsher discipline. Not doing so could lead to denials of FAPE and different treatment.
- If a youth gets in trouble at school or with the law, there may be an underlying disability for which they should be getting better, more appropriate services.
- Ensure MDRs are legally compliant and focus on supporting the student going forward.
- Instead of calling the police, school staff should focus on how to support the student and keep the disciplinary proceedings within the context of school.
- Focus on building relationships with students, not controlling them.

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## How can we disrupt this pipeline? (cont.)

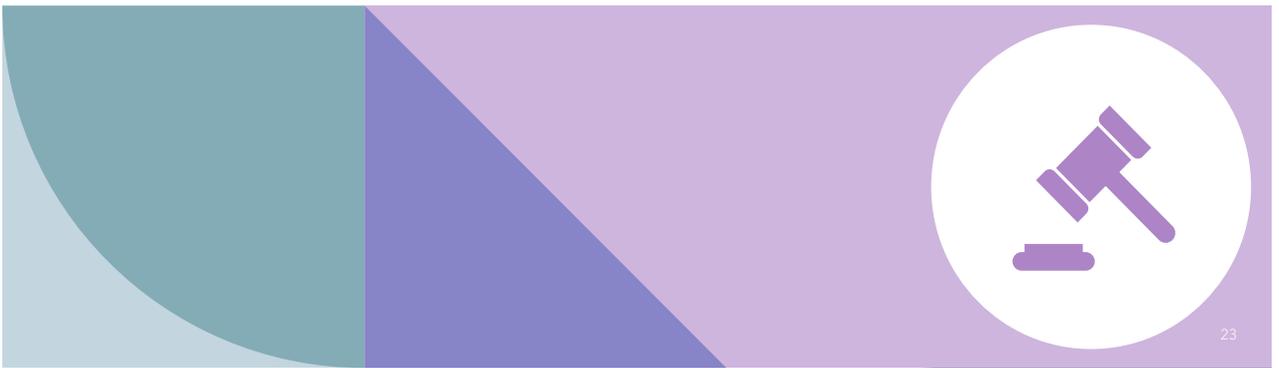
- Limit the use of physical restraint and eliminate seclusion in schools.
  - Update district, school, and classroom policies to focus on positive behaviors supports and relationship building with students.
  - Ensure discipline and the use of restraint is not disproportionate for students with disabilities through reviewing district and school data on a regular basis.
  - Provide trauma-informed training to staff on FAPE, LRE, MDRs, discipline, different treatment, and the use of restraint, as well as the harm to students caused by harsh school discipline.
  - If a student is already incarcerated, they are entitled to receive the same or similar services that they would receive in public school.
  - Utilize the dispute resolution options, as appropriate, to address concerns, change policies, and obtain compensatory services for students.
- Complaints cannot be filed anonymously, but OCR may keep the complainant's information confidential in certain circumstances. The state complaint process requires the complainant self-identify when the complaint is filed.**

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## Dispute Resolution Options

Check out our video: [K-12 Dispute Resolution Options](#)  
[K-12 Dispute Resolution Options-Spanish Translation](#)

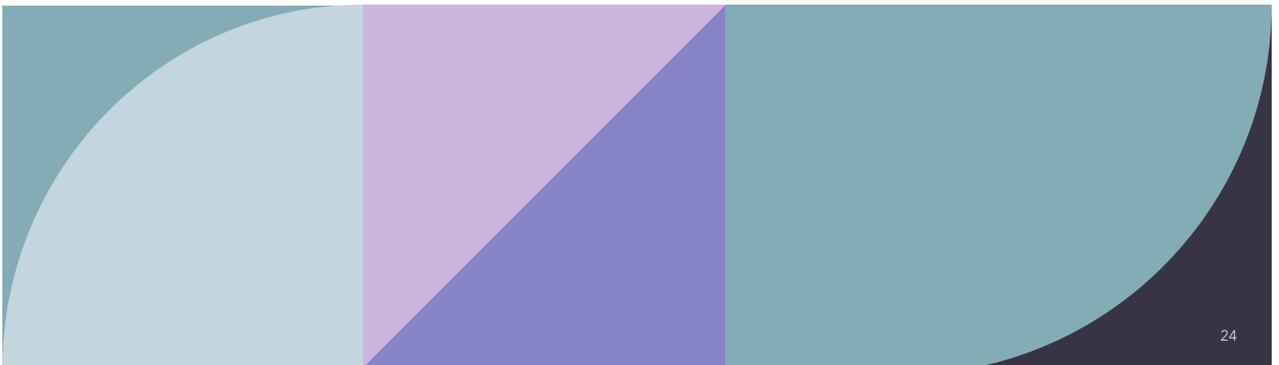


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## Thank you!

Find more info at: [Fact Sheets | Disability Law Colorado](#)

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