



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

## **SPECIAL EDUCATION POLICY BULLETIN**

Toileting Skills: Nondiscrimination and IDEA Obligations

August 2021

The Office of the State Superintendent of Education (OSSE) provides this guidance on local education agency (LEA) responsibilities related to nondiscrimination against students due to a lack of or delay in toileting skills and related Child Find obligations. LEAs may not exclude children from enrollment or discriminate against a child based on an inability to complete toileting tasks or delays in toileting due to a known or suspected disability. This document generally constitutes nonregulatory guidance and does not impose any additional requirements beyond those included in applicable federal and local law and regulations.

Excluding or failing to accommodate children who are unable to complete toileting tasks or who have a delay in toileting skills may constitute discrimination in violation of federal civil rights laws. Section 504 of the Rehabilitation Act of 1973,<sup>1</sup> which applies to all programs receiving federal financial assistance, and Title II of the Americans with Disabilities Act,<sup>2</sup> which applies to public entities, prohibit discrimination on the basis of disability. As recipients of federal financial assistance and as public institutions, LEAs are subject to these laws. Both statutes prohibit the exclusion of a qualified person with a disability from participation in, denial of the benefits of the services programs or activities, or otherwise be subject to discrimination on the basis of disability.

Under District of Columbia law, public charter schools are prohibited from limiting enrollment on the basis of a student's status as a student with a disability.<sup>3</sup> Similarly, the District of Columbia Human Rights Act (DCHRA) prohibits the District of Columbia Public Schools (DCPS) from discrimination on the basis of actual or perceived disability.<sup>4</sup>

Under the ADA, toileting is a major bodily function, and anyone experiencing a substantial limit on toileting skills is considered a person with a disability.<sup>5</sup> Toileting skill delays may be caused by a child's known or suspected disability; as such, LEAS may not exclude children from enrollment or discriminate against a child based on an inability to complete toileting tasks or delays on toileting resulting from a

---

<sup>1</sup> 29 U.S.C. § 794.

<sup>2</sup> 42 U.S.C. § 12131 *et seq.*

<sup>3</sup> DC Code § 38-1802.06.

<sup>4</sup> DC Code § 2-1401.01 *et seq.* (*defining disability as a physical or mental impairment that substantially limits one or more of the major life activities of an individual having a record of such an impairment or being regarded as having such an impairment.*)

<sup>5</sup> 42 U.S.C. § 12102(2)(B).

disability.<sup>6</sup> If a child's lack of toilet-training is or may be due to a disability, an LEA must provide reasonable accommodations to allow the child to access educational programming, unless doing so would fundamentally alter the nature of the service, program, or activity.<sup>7</sup>

The LEA must also consider whether the delay in toileting skills may be a sign of a disability that could impact the child's education. If the LEA suspects the child may be a child with a disability, the LEA must consider the need for an initial evaluation consistent with the LEA's child find obligations.<sup>8</sup> Additionally, if a child is a child with a disability under IDEA and the child's toilet training is related to the child's disability, the LEA should consider impacts on the child's ability to access the general education curriculum in the least restrictive environment. LEAs should design individualized supports where the student's disability impacts their ability to perform age appropriate toileting skills.

LEAs should develop and implement policies and procedures that promote the inclusion of all children, and that address age-appropriate behaviors and expectations. LEAs should also review and, if necessary, revise policies and handbooks to address nondiscrimination on the basis of toileting ability, exceptions to toileting expectations, "school readiness" definitions, and child find obligations in consideration of the guidance provided herein.

Please direct any questions regarding the content of this document to OSSE's Division of Systems and Supports, K-12 Office of Special Education at [OSSE.DSEPolicy@dc.gov](mailto:OSSE.DSEPolicy@dc.gov).

---

<sup>6</sup> 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104; 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35.

<sup>7</sup> 28 C.F.R. § 35.130(b)(7).

<sup>8</sup> 34 CFR § 300.111(a)(1)(i).