

# OUT FROM THE SHADOWS: RECOMMENDATIONS

January 2022

## U.S. Department of Education (ED)

1. Issue a **guidance document** that addresses informal removal.
  - The guidance should include the following:
    - A clear expectation that all children attend school for a full school day.
    - That informal removal is not a behavioral intervention.
  - A statement that all students receive a full day of services that provides:
    - The same number of school hours as required by the state for all public-school children of that age/grade.
    - That meets all state quality standards (e.g. teacher qualifications, curriculum requirements.)
    - Includes all the course work that the child would receive while in school, as part of the general curriculum, including such courses as social studies, science, PE, and foreign language.
    - Provides all the services required by their IEPs and Section 504 plans.
  - Define IR in the definitions section of the guidance document as “...Any time a child with a disability is removed from school for a sufficient period of time to constitute a “change of placement” without the rights extended to them under the Constitution, state or federal law and/or regulation.”
  - Provides case scenarios that provide examples of common types of informal removal.
  - That SEAs must review state funding mechanisms and remove funding or other incentives that encourage its use.

## 2. **Grantmaking**

ED funding must encourage the use of behavioral supports and interventions that eliminate any incentive to use informal removal.

## 3. **Enforcement**

ED fully enforces the IDEA, Section 504 and the Americans with Disabilities Act (ADA) as applied to public schools, to ensure compliance with the FAPE, discipline, LRE, equity and child find provisions of these statutes,

## **U.S. Department Of Justice (DOJ)**

### 1. **Enforcement**

- DOJ fully enforces statutes within its jurisdiction, to eliminate non-compliance that results in informal removal.
- An important role for DOJ is to investigate and remedy disproportionality in the use of informal removal.
- In recent years, both ED Office for Civil Rights (OCR) and DOJ have investigated and resolved cases involving informal removal. This work is critical, and must both continue and expand.

## **Congress**

1. Prioritize and invest in trauma-responsive, positive, and equitable behavioral interventions and school-wide systems like Positive Behavioral Interventions and Supports (PBIS) to make it easier for LEAs to have the supports in place for staff and students.
2. Invest in the ready availability of mental health professionals including, but not limited to, behavior specialists, psychologists, social workers and “on the ground” behavior intervention staff. Schools need trained personnel who can support the mental health needs of children while respecting and honoring the diversity of students.

3. Pass the *Protection and Advocacy in Education Act* (H.R. 8187)<sup>1</sup> which would provide dedicated grant funding for the P&A Network to protect and advocate for the rights of students with disabilities.

## **State**

1. Provide funding for professional behavior intervention services, quality evaluations, and student and staff behavior supports, as described above.
2. Review state funding mechanisms to identify and eliminate funding incentives that encourage the use of IR.
3. State Departments of Education provide parent-friendly complaint and due process hearing systems that are available to effectively challenge informal removals.
4. SEAs proactively address IR related compliance violations
5. In many locations, IR is so ubiquitous that school staff report that they had never considered that it might not be legal.<sup>2</sup>
  - a. State Education Agencies (SEAs) must provide free and readily accessible training for LEAs, contractors, families and advocates (including Parent Training and Information Center and State Special Education Advisory Panels) about informal removal practices and their relationship to state and federal law, with specific outreach to underserved communities.
  - b. SEAs must provide guidance and resource documents that clarify the law in this area.
6. Collect Data about IRs.

---

<sup>1</sup> H.R.8187 - To authorize grants to establish a national education protection and advocacy program to enforce the rights and protections under the Individuals with Disabilities Education Act, the Americans with Disabilities Act of 1990, and section 504 of the Rehabilitation Act of 1973, and for other purposes. Introduced in the 116<sup>th</sup> Congress.

<sup>2</sup>P&As have reported staff saying things like: "It happens all the time and the principal knows about it, so it's got to be ok."

## **Local**

At the local level, administrators, school boards, advocates, and others should:

1. Ensure that LEAs have the supports in place for staff and students need.
2. Train all staff as described above.
3. Collect disaggregated data on the frequency and type of informal removal.
4. Change policies, enforce violations of state and federal law.
5. Be transparent with community members who are asking questions

And,

6. Get the word out about how and when IR happens and who it harms. Tell the stories of children and families affected to the press, to school boards, state policy makers, on social media and others.
7. Stakeholders, local governments, and school boards request, analyze, and act upon information gathered about IR. Follow up as needed to ensure that change occurs.