

Discipline Definitions:

Chapter 392-400 WAC

Areas of Concern

Joshua Lynch, Program Supervisor, Discipline & Behavior



OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION

Discipline Task Force
November 7, 2016

- Established RCWs.
- Provisions of 4SHB 1541.
- Every Student Succeeds Act (ESSA).
- Federal Guidance

Alignment Concerns





Guiding Principles

A Resource Guide for Improving School Climate and Discipline

U.S. Department of Education

- 1) Climate and Prevention
- 2) Clear, Appropriate, and Consistent Expectations and Consequences
- 3) Equity and Continuous Improvement





Guiding Principles

A Resource Guide for Improving School Climate and Discipline

U.S. Department of Education

ACTION STEPS Include:

- Remove students from the classroom only as a last resort, ensure that any alternative settings provide students with academic instruction, and return students to their regular class as soon as possible.
- Use proactive, data-driven, and continuous efforts, including gathering feedback from families, students, teachers, and school personnel to prevent, identify, reduce, and eliminate discriminatory discipline and unintended consequences.



(1) DESCRIPTIONS.—Each State plan shall describe—

(C) how the State educational agency will support local educational agencies receiving assistance under this part to improve school conditions for student learning, including through **reducing**—

- (i) incidences of bullying and harassment;
- (ii) **the overuse of discipline practices that remove students from the classroom**; and
- (iii) the use of aversive behavioral interventions that compromise student health and safety;

ESSA Sec. 1111: State Plan



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(C) MINIMUM REQUIREMENTS.—Each State report card required under this subsection shall include the following information:

(I) measures of school quality, climate, and safety, **including rates of in-school suspensions, out-of-school suspensions, expulsions,** school-related arrests, referrals to law enforcement, chronic absenteeism (including both excused and unexcused absences), incidences of violence, including bullying and harassment;

ESSA Sec. 1111: State Data



(a) PLANS REQUIRED.—

(11) how the local educational agency will support efforts to **reduce the overuse of discipline practices that remove students from the classroom**, which may include identifying and supporting schools with high rates of discipline, disaggregated by each of the subgroups of students, as defined in section 1111(c)(2);

ESSA Sec. 1112: LEA Plan



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- Corrective Action
- Discipline
- Suspension
- Alternative Actions/Alternatives to Suspension
- In-School Suspension
- Removal from Classroom
- Emergency Removal from Classroom
- Exceptional Misconduct
- Reengagement Plan
- Discretionary Discipline
- Length of an Academic Term
- Educational Services

Discipline Definitions Survey



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Contact Information



Discipline Task Force--Discipline Definitions Survey

This survey was created for task force members to provide feedback and proposed language on discipline definitions identified as areas of concern within Chapter 392-400 WAC in light of HB 1541.

Survey Scale: Each definition should be rated according to how it currently exists in the law. Each member should indicate how they feel about changing or adding definitions on a scale of 1–4 as follows:

1 = Strongly Disagree (*nothing should be changed/added*)

2 = Disagree (*changes/additions are not necessary*)

3 = Agree (*changes/additions are necessary*)

4 = Strongly Agree (*significant changes/additions are required*)

Survey Text Box: New language or suggested modifications to the existing definitions should be entered into the text boxes provided, along with any legal or practical considerations that may need to be addressed. If offering specific proposed word changes, please also include the reasoning behind the proposed changes.

Discipline Definitions

Corrective Action is a broad phrase used in the current rules to refer to all types of student discipline (i.e. suspension, emergency removal, expulsion, detention, etc.). In statute the term “disciplinary action” is often used interchangeably with “corrective action” and does not explicitly include best practices, research-based interventions, or other behavioral strategies. – WAC [392-400-200](#).

- 1 – Strongly Disagree** (*nothing should be changed/added*)
- 2 – Disagree** (*changes/additions are not necessary*)
- 3 – Agree** (*changes/additions are necessary*)
- 4 – Strongly Agree** (*significant changes/additions are required*)

Comments:

Discipline is defined in the current rules as not including suspensions and other exclusionary practices. In statute as well as in practical usage, “student discipline” or “disciplinary action” specifically refers to suspensions and expulsions. – WAC [392-400-205](#) (1).

- 1 – Strongly Disagree** (*nothing should be changed/added*)
- 2 – Disagree** (*changes/additions are not necessary*)
- 3 – Agree** (*changes/additions are necessary*)
- 4 – Strongly Agree** (*significant changes/additions are required*)

Comments:

Suspension is currently defined in the rules to include any denial of attendance exceeding the balance of the immediate class period. Practices that categorically constitute a suspension according to the current rules may not be formally imposed, reported, or even pragmatically understood as such— (i.e. office referrals that result in a student being with an administrator, counselor, or student supports staff for longer than the balance of the immediate class period). – WAC [392-400-205](#) (2).

- 1 – Strongly Disagree** (*nothing should be changed/added*)
- 2 – Disagree** (*changes/additions are not necessary*)
- 3 – Agree** (*changes/additions are necessary*)
- 4 – Strongly Agree** (*significant changes/additions are required*)

Comments:

Alternative Actions and **Alternatives to Suspension** are terms that are used in statute in the context of student discipline but are not defined in the rules. The discipline rules refer only to “alternative forms of corrective action” or “lesser forms of corrective actions” a few times, without elaborating on the meaning or providing any formal definition. Except for the section of the rules concerning reengagement meetings, which uses the phrase “supportive interventions,” the rules do not reference best practices, research-based interventions, or any other specific types of student supports. – WAC [392-400-230](#) (4); [392-400-245](#) (2); [392-400-260](#) (4); [392-400-420](#) (2).

- 1 – Strongly Disagree** (*nothing should be changed/added*)
- 2 – Disagree** (*changes/additions are not necessary*)
- 3 – Agree** (*changes/additions are necessary*)
- 4 – Strongly Agree** (*significant changes/additions are required*)

Comments:

In-School Suspension is a commonly used term and practice that is not defined or mentioned in WA state law. However, because in-school suspensions are reported at the federal level, CEDARS includes a definition similar to the Civil Rights Data Collection (CRDC) definition for reporting purposes: “In-school suspension is an instance in which a child is temporarily removed from his or her regular classroom(s) for at least half a day 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.” The CRDC definition is broad enough that it would include classroom removals in addition to formally imposed in-school suspensions. OSPI rules include a broad definition for “suspension,” but the rules do not explicitly outline due process procedures to follow for in-school suspension, set limitations on the duration of in-school suspension, or establish criteria for what in-school suspension should look like. – 2016–17 [CEDARS Reporting Guidance](#), pg. 49; 2015–16 [CRDC School Form](#), pg. 51.

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- 4 – Strongly Agree** (*significant changes/additions are required*)

Comments:

Removal from Classroom: Statute allows teachers the authority to remove a student who creates disruption of the educational process in violation of building policies from their classroom for any part or the remainder of a school day or up to the following two days—so long as the teacher has attempted one or more alternative forms of corrective action first. The rules do not mention the provision regarding “the following two days,” where the student is to be removed to, or any due process to follow for students in the event that a teacher does not consent to having the student return before the following two days. – WAC [392-400-230](#); RCW [28A.600.020](#) (2).

- 1 – Strongly Disagree** (*nothing should be changed/added*)
- 2 – Disagree** (*changes/additions are not necessary*)
- 3 – Agree** (*changes/additions are necessary*)
- 4 – Strongly Agree** (*significant changes/additions are required*)

Comments:

Emergency Removal from Classroom: Statute allows teachers the authority to remove a student immediately, without first attempting alternative forms of corrective action, in “emergency circumstances”—for any part or the remainder of a school day or up to the following two days. The rules define what constitutes emergency circumstances and requires a student meeting before the following school day, but the rules do not mention the provision regarding “the following two days” or any due process to follow for students in the event that a teacher does not consent to having the student return before the following two days. – WAC [392-400-290](#); RCW [28A.600.020](#) (2).

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- 3 – Agree** (*changes/additions are necessary*)
- 4 – Strongly Agree** (*significant changes/additions are required*)

Comments:

Exceptional Misconduct is not mentioned in statute but is defined in the rules as misconduct that occurs frequently enough or is disruptive enough to warrant imposing short-term or long-term suspension even for a first-time offense and without first attempting alternative forms of corrective action. The rules allow a district to classify certain types of behavior as “exceptional misconduct” with input from an ad hoc citizen’s committee. The types of behaviors that may be classified as “exceptional misconduct” vary significantly between districts and may include violations for which long-term suspension can no longer be imposed. Statutory provisions for classroom removal and emergency expulsion already allow resort to immediate removal in response to disruptive or dangerous behaviors. Moreover, statute now requires districts to consult students, families, and the community when reviewing and updating discipline policies. – WAC [392-400-245](#) (2); [392-400-260](#) (4).

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- 3 – Agree** (*changes/additions are necessary*)
- 4 – Strongly Agree** (*significant changes/additions are required*)

Comments:

Reengagement Plan is defined in the rules as a written plan that is developed between a district and a student and their parent or guardian. The definition includes the statutory language regarding returning the student to the educational setting as soon as possible and aiding the student in remedying the situation that led to the exclusion. The section of the rules on reengagement meetings and plans now includes, without additional guidance, the language introduced with HB 1541 Part 1 that requires families to have access to, provide meaningful input on, and have the opportunity to participate in a culturally sensitive and culturally responsive reengagement plan. Part 2 of HB 1541 concerns expanding cultural competence training for educators, in alignment with current standards developed under RCW [28A.410.270](#) by the professional educator standards board. – WAC [392-400-205](#) (10); [392-400-420](#).

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Comments:

Discretionary Discipline was added as a formal definition in the rules through expedited rulemaking by inserting into the rules, word-for-word, the language from HB 1541 regarding districts no longer being able to impose long-term suspension or expulsion as a form of “discretionary discipline”. The definition provided by statute defines “discretionary discipline” by listing categories of violations for which long-term suspension or expulsion may still be used as a disciplinary action and stating that actions NOT taken in response to the listed violations would constitute “discretionary discipline.” The listed violations reference specific statutes except for the provision that reads: “behavior that adversely impacts the health or safety of other students or educational staff” – how districts interpret this language may vary. – WAC [392-400-205](#) (11); RCW [28A.600.015](#) (6).

- 1 – Strongly Disagree** (*nothing should be changed/added*)
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- 3 – Agree** (*changes/additions are necessary*)
- 4 – Strongly Agree** (*significant changes/additions are required*)

Comments:

Length of an Academic Term: the statutory language allows this provision to be defined by the school board. School districts often have schools that use different academic terms (semester or trimester) that vary in total number of school days, particularly between elementary and secondary schools. Through rulemaking, OSPI could encourage districts to consider certain factors when defining this provision of the law through board policy. – RCW [28A.600.020](#) (6).

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- 3 – Agree** (*changes/additions are necessary*)
- 4 – Strongly Agree** (*significant changes/additions are required*)

Comments:

Educational Services is not defined in the rules but, following expedited rulemaking, the statutory provision that districts may not suspend the provision of educational services as a disciplinary action and that districts must provide an opportunity for students to receive educational services during suspension or expulsion are included in the rules. Additional statutory language stating that the provision of educational services in an alternative setting should be comparable, equitable, and appropriate to the regular education services a student would have received without the exclusionary discipline (alternative high schools, one-on-one tutoring, and online learning being offered as examples) is not represented in the rules. – RCW [28A.600.015](#) (8); [28A.600.020](#) (7).

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Comments:

Review of Discipline Data

Katie Weaver Randall
Director of Student Information

Discipline Task Force

November 7, 2016



Questions we can address today

- ▶ Discipline Rates by Student Group
- ▶ Discipline Rates by Grade
- ▶ Receipt of Academic and Behavior Services by Discipline Action
- ▶ Percentage of Behavior Incidents Resulting in Discipline Action

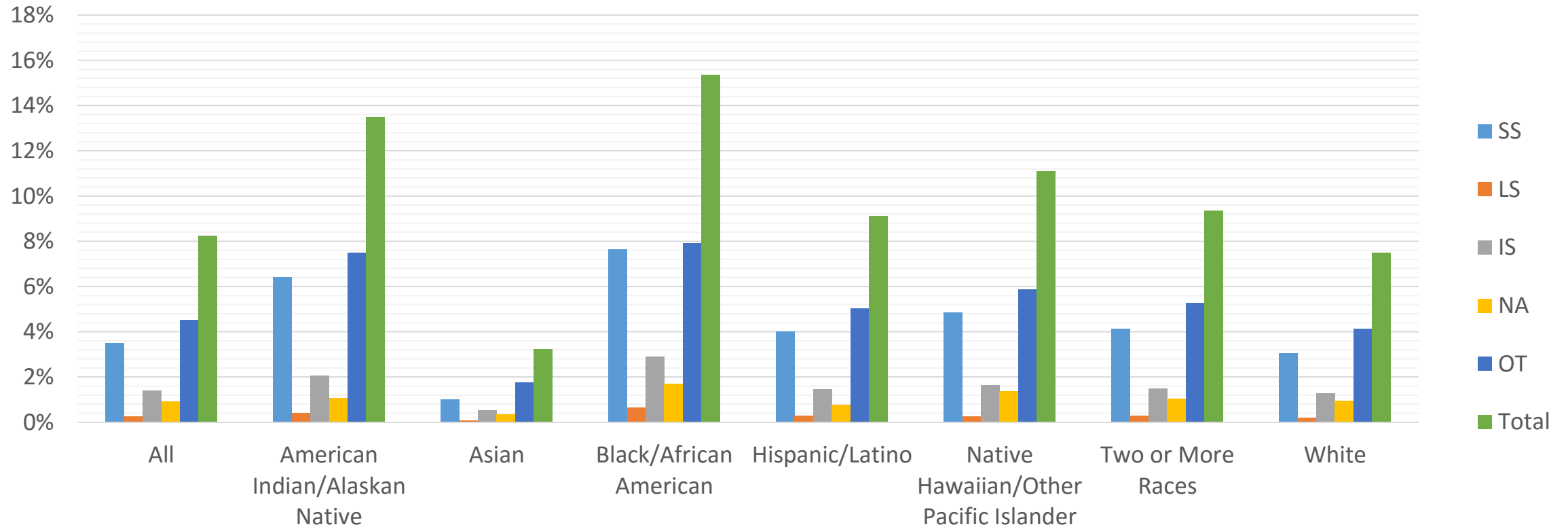


Overview

- In 2015-16, there were –
 - A total of 248,128 discipline incidents
 - 28% of the incidents were short-term suspensions
 - 1% of the incidents were long-term suspensions
 - 9% of the incidents were in-school
 - 9% of the incidents had no action
 - 52% of the incidents were other
 - A total of 95,875 distinct students had a discipline event or 8.2% of all enrolled students.
 - 3.5% had one or more short-term suspensions
 - 0.2% had one or more long-term suspensions
 - 0.1% had one or more emergency expulsion or expulsion
 - 1.4% had one or more in-school
 - 0.9% had no action
 - 4.5% had other



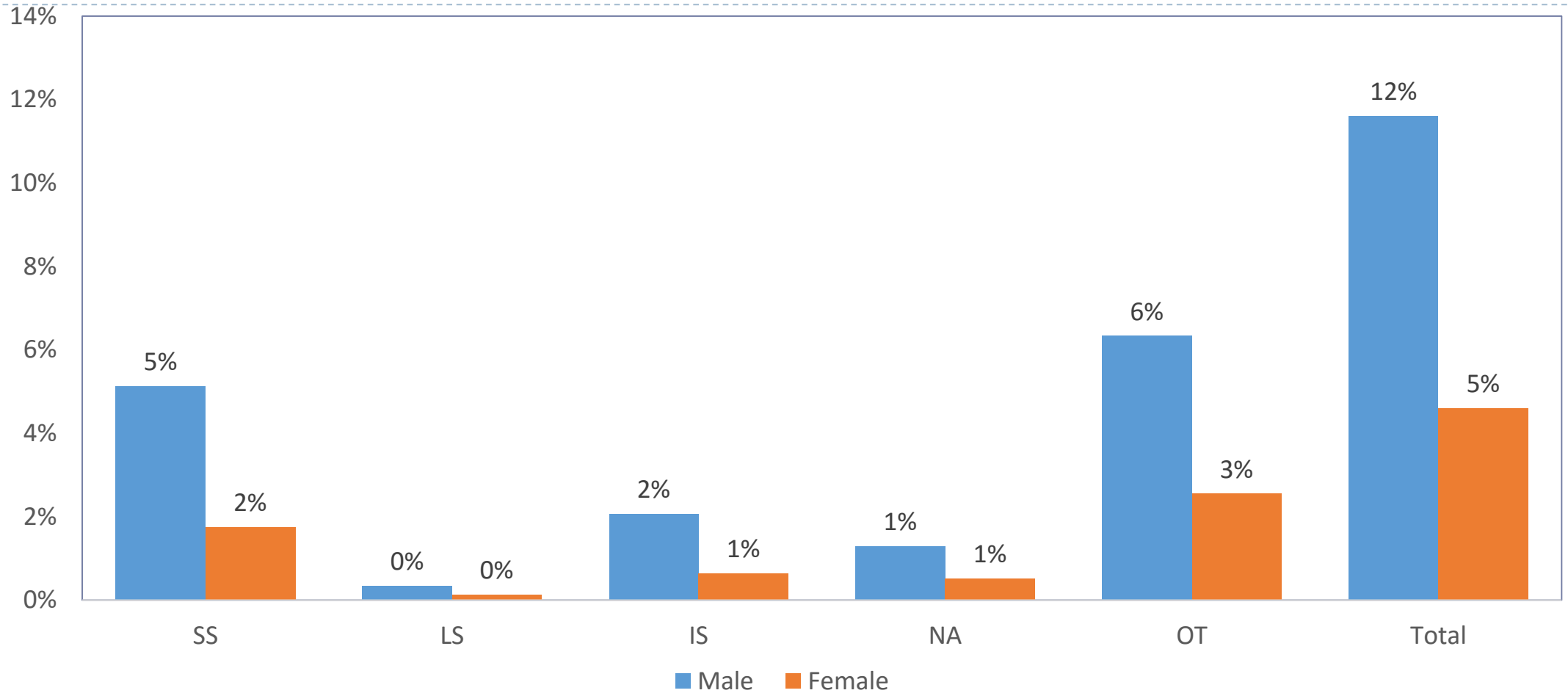
2015-16 Discipline Rates* by Race/Ethnicity



*This chart does not show the 1,696 Expulsion and Emergency Expulsion discipline incidents which make up a total of .01% of the total discipline events.



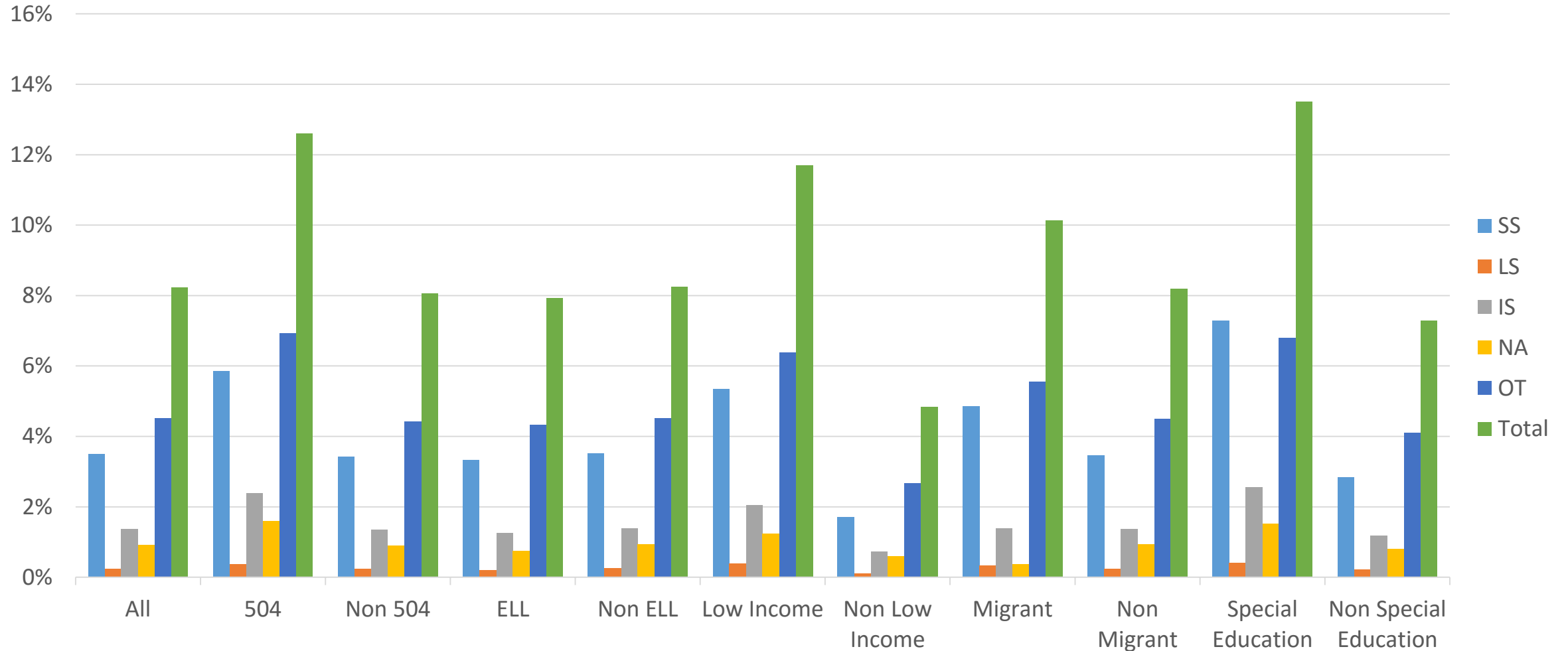
2015-16 Discipline Rates by Gender



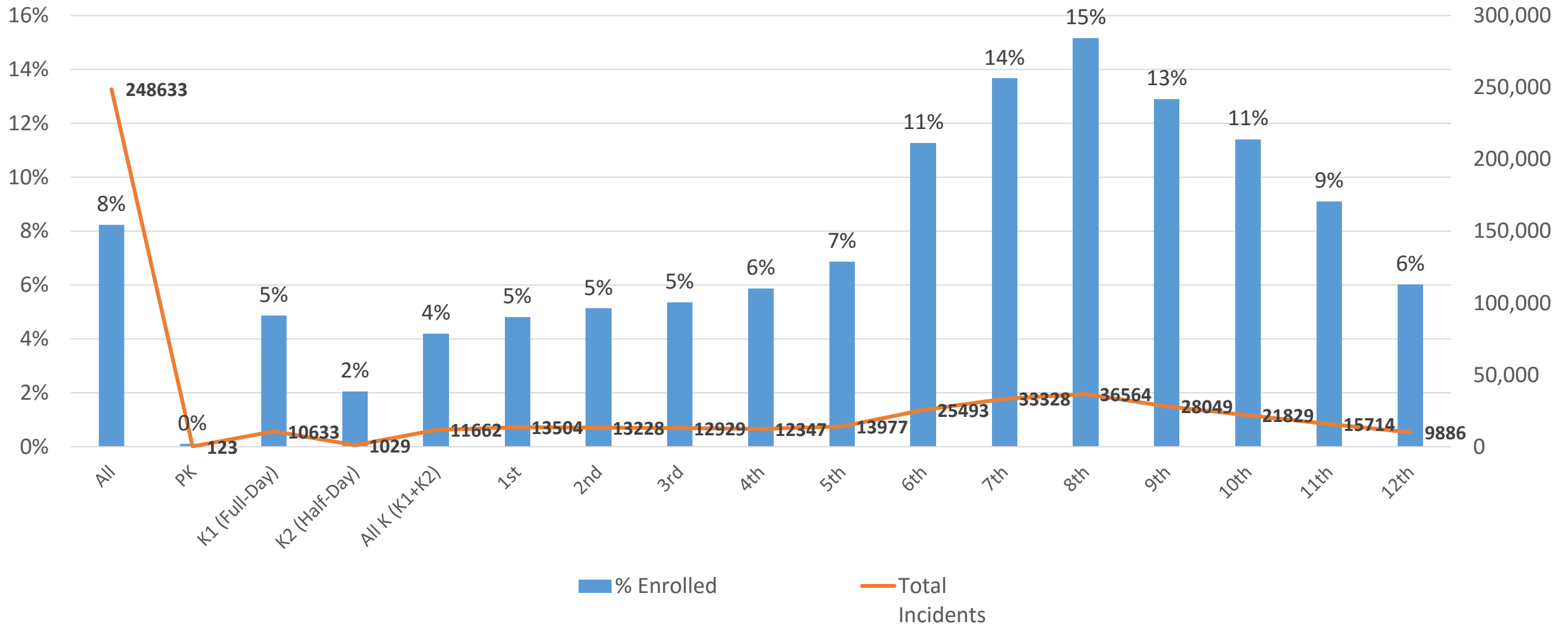
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2015-16 Discipline Rates by Student Group

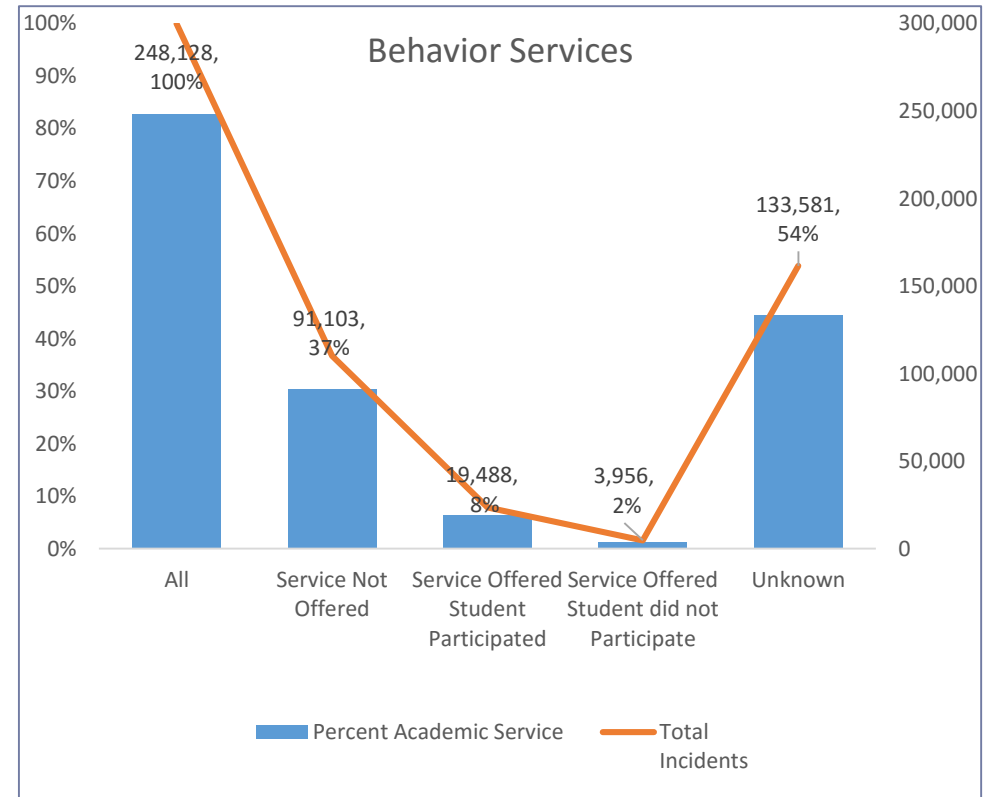
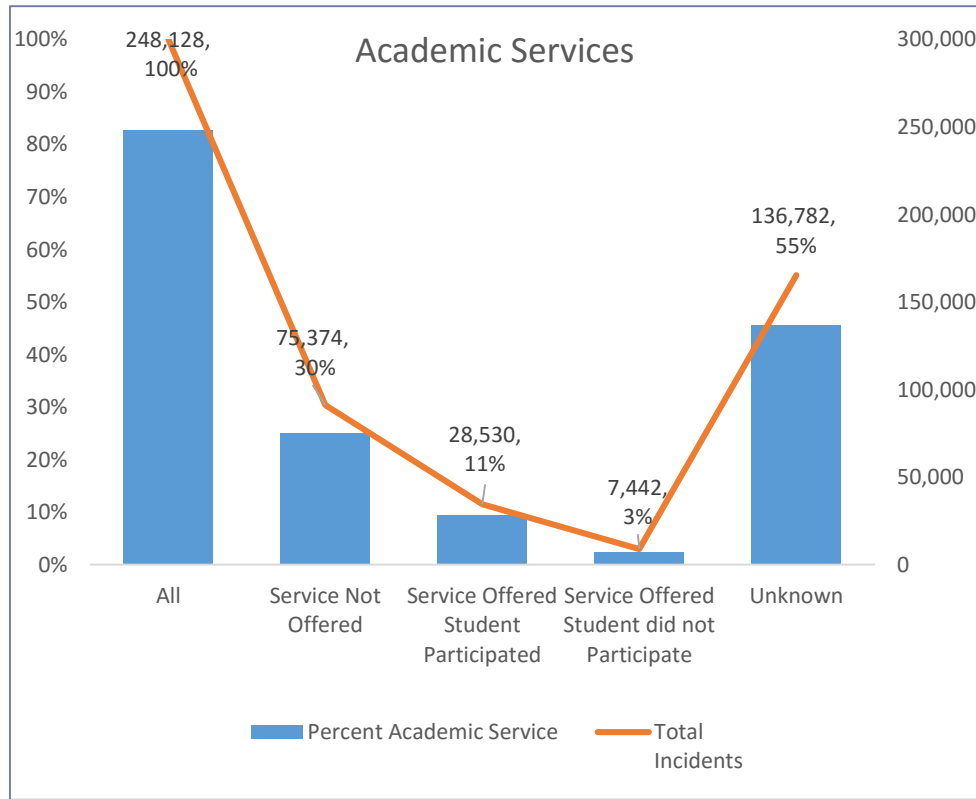


2015-16 Discipline Rates and Number of Incidents by Grade Level





2015-16 Discipline Incidents and Provision of Services



% of Behavior Types that Result in Specific Discipline Incidents – ***For example, 70% of Alcohol behaviors results in short-term suspension***

Behavior Type	SS	LS	IS	EE	EX	NA	OT
Any behavior type	28%	1%	10%	0%	0%	9%	52%
Academic Dishonesty/Plagiarism	1%	0%	9%	0%	0%	15%	74%
Alcohol	70%	15%	7%	1%	2%	1%	4%
Bullying	30%	1%	15%	0%	0%	10%	43%
Destruction of Property/Vandalism	26%	1%	11%	0%	0%	10%	52%
Discriminatory Harassment	29%	0%	19%	1%	0%	7%	44%
Disruptive Conduct	14%	0%	9%	0%	0%	9%	68%
Failure to Cooperate	10%	0%	9%	0%	0%	10%	71%
Fighting Without Major Injury	54%	1%	11%	1%	0%	5%	28%
Illicit Drug (Other than marijuana)	60%	22%	5%	2%	3%	2%	5%
Marijuana	62%	23%	5%	4%	3%	0%	3%
Multiple Minor Accumulated Incidents	15%	1%	7%	0%	0%	8%	71%
Other behavior resulting in Intervention	66%	1%	7%	1%	1%	12%	11%
Possession of a Weapon	62%	8%	9%	4%	5%	2%	11%
Serious Bodily Injury	71%	5%	4%	2%	2%	5%	11%
Sexual Harassment	46%	2%	16%	1%	1%	6%	28%
Sexually Inappropriate Conduct	30%	1%	14%	1%	1%	13%	40%
Theft or Possession of Stolen Property	31%	1%	18%	0%	0%	8%	41%
Tobacco	50%	1%	22%	0%	0%	3%	24%
Violence With Major Injury	56%	5%	9%	2%	2%	8%	17%
Violence Without Major Injury	36%	1%	11%	1%	1%	9%	42%



Can a districts/schools receive data from CEDARS on student enrolled in their school from previous records?

Yes they can and there is an EDS tool called the Student Information Exchange which allows them to view this information. Please see this link:

The [Student Record Exchange User Guide](#) provides information on this on pages 6 & 7.



Other Behavior Resulting in Intervention

Total “Other Behavior Resulting in Intervention” has decreased from 2013-14 to 2015-16

- 45,062 “other behaviors” reported in 2013-14
- 39,275 “other behaviors” reported in 2014-15
- 29,750 “other behaviors” reported in 2015-16



Questions that were asked, but we can't answer today

- # of re-engagement meetings per suspension/expulsion and the lengths of discipline actions and whether they are reduced. *Not enough time to develop this analysis.*
- Report on race/ethnicity/gender of staff referring students for suspension/expulsion and match with student race/ethnicity/gender? *We do not have teacher demographic information in CEDARS. This type of analysis would require considerable time.*
- Report on 20 districts with highest rates of discipline and see how their data indicators for attendance, graduation, 9th grade failure? *Looking at a combination of performance indicators is something OSPI is building towards, but we have not yet developed that capacity.*
- Report on exclusion and relationship to dropout rates? *Not enough time to develop this analysis.*



Next steps





**A Parent's
Guide to
Understanding student
discipline
policies in
Maryland
Public
Schools**

Lillian M. Lowery, Ed.D.
State Superintendent of Schools

Charlene Dukes, Ed.D.
President, Maryland State Board of Education

Martin O'Malley
Governor

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Vice President

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Dear Parents,

The Maryland State Department of Education has prepared this guide to assist you in understanding student discipline policies and the recent changes to discipline regulations and Code of Discipline. The Guide's goal is to be informative to all parents and community stakeholders, it is primarily intended to provide the information and answers to questions parents might have about when their child has experienced disciplinary consequences at school. The Guide addresses the following topics:

- Overarching Philosophical Principles for schools and education in Maryland
- Expectations for school stakeholders
- Maryland's Student Discipline Reform
- Maryland's Student Discipline Regulations
- How Maryland establishes the State Code of Discipline
- The Guidelines for a State Code of Discipline
- The authority of local boards of education in establishing policies and practices
- The disciplinary process related to suspension and expulsion from school

The Guide provides general information about Maryland laws and policies. To have an immediate question answered about a particular school system, a parent or stakeholder should communicate directly to that local school system. The Guide is intended to be consumable and jargon-free. Some of the answers in the question and answer section will include reference to the Code of Maryland Regulations (COMAR).

The Maryland State Department of Education hopes that the Guide encourages you to:

- Build relationships with your child/ children's teacher's.
- Build relationships with the school's administration.
- View the school as a welcoming place.
- Carefully review and discuss the local school system's Code of Conduct with your child/children.
- Advocate for your child/children.
- Assist the school in developing and maintain nurturing, safe, and secure environments in which all students feel responsible and a member of the school community.
- If your child/children has a disciplinary problem at school work with the school to ensure responsible behavior.

PHILOSOPHICAL PRINCIPLES

The Maryland State Board of Education, educators, and community members throughout the state are committed to creating school systems where teaching and learning take place every day in safe, supportive, and respectful school environments, and where students, school staff, and families are valued and have the opportunity to succeed.

Healthy and safe school climates and successful school discipline policies and practices are guided by the following philosophical principles:

1. School safety and academic success are created and strengthened when students effectively and actively are engaged in their learning, when positive relationships exist between students and school staff, and when families, communities, and school staff work collaboratively to support positive student outcomes.
2. Schools should provide behavioral expectations for all members of the school community that are fair and developmentally appropriate. Educators and other adults within the school should teach students to behave in ways that conform to those policies, and contribute to academic achievement and school success. This is achieved by fostering, teaching, and acknowledging positive behavior, focusing on preventing misbehavior before it occurs, providing necessary supports, and restoring relationships among all members of the school community when the need arises.
3. No student comes to school “perfect,” academically or behaviorally, and many face challenges in their homes and communities. All students, however, can succeed and deserve the opportunity to do so. Schools should provide the instruction and support necessary to address students’ academic and behavioral needs.
4. Students should be afforded opportunities to learn from their mistakes. To do this, school staff should use graduated consequences and interventions to teach students appropriate behavior, and to correct any harm that results from their behavior. Removing a student from school through exclusionary discipline measures, such as out-of-school suspension, expulsion, or referral to an alternative educational setting should always be a last resort. Students who are removed should have the opportunity to make up work for credit, so that they may stay on pace with their classwork and on track to graduate.
5. School discipline should be administered fairly, equitably, and consistently, and in accordance with due process protections. Schools must not allow harsh or exclusionary discipline to disproportionately impact specific groups of students, including but not limited to students of color, students with disabilities, male students, and LGBTQ students. Where such disparities exist, school systems must make continuous efforts to understand the causes of and reduce such disproportionality.
6. To the extent possible, school staff should be provided access to interventions and supportive services, as well as adequate training and professional development to

administer discipline most effectively and appropriately. Partnerships with community-based, city, and local organizations and agencies will help to ensure that school staff and students have access to the supports they need.

7. Safe and positive school environments are built on trusting relationships between students and school staff. Schools should report a student to school resource officers, other law enforcement, or, as a last resort, to the juvenile justice system, only when the immediate safety of students or school community members is threatened. Schools should avoid the unnecessary criminalization of students, which is prompted by frequent school resource officer, police, and juvenile justice system involvement.
8. When students experience a system of school discipline that is administered fairly, equitably, and consistently they will accept responsibility for their actions and the consequences resulting from their behavior.

EXPECTATIONS FOR THE SCHOOL COMMUNITY

All members of the school community have a role in building schools that embody the aforementioned principles. Our schools are the safest and the most successful when everyone collaborates, values and respects each other's roles, and is invested in common-sense school discipline practices. The following are shared expectations for school staff/administrators, students, parents/guardians, and community/city/local organizations, agencies, and others. While not binding these expectations should guide interactions and involvement with school discipline matters.

Expectations for School Staff and Administrators

School staff and administrators should:

1. Create and promote a positive, supportive, safe, and welcoming school environment that is conducive to teaching and learning.
2. Be respectful and courteous to students, parents/guardians, and other school staff.
3. Be knowledgeable about discipline policies, regulations, and rules, and inform the community about such policies as well as resources available to support students.
4. Strive to recognize and eliminate disproportionality in discipline, and administer discipline rules fairly, consistently, and equitably, regardless of race, ethnicity, culture, gender, color, national origin, ancestry, religion, age, disability, sexual orientation, and/or gender identity.
5. Reward and acknowledge positive and appropriate conduct by students. Exercise good judgment and implement a graduated consequences approach so that discipline is administered in a progressive fashion – the lowest possible response is used to address each incident of misbehavior as much as possible, and more intensive responses are used when behavior is repeated, as appropriate.
6. Make every reasonable effort to keep students in school, and, unless required by law, use exclusionary discipline measures, including out-of-school suspension and referrals to law enforcement and/or school resource officers, as a last resort.
7. Strive to develop positive and productive relationships with school resource officers, police, school staff, and others, and avoid having school resource officers or police respond to typical student misbehavior.
8. Where appropriate and available, refer students who misbehave to community-based organizations, local agencies, and others external to the school community who may have expertise applicable to the specific situation.
9. Make every reasonable effort to communicate with and respond to parents/guardians in a timely manner and in a way that is accessible and easily understood.
10. Provide students with due process as it relates to school discipline, including written notice of a disciplinary action, the opportunity to respond and appeal, and the opportunity to have parents/guardians or other adults present at hearings or during processing/questioning by law enforcement.

11. Receive training and professional development as it relates to student discipline and classroom management.
12. Provide students who are suspended or expelled from school with make-up work, and allow them to complete that work for credit so that they do not fall behind academically.

Expectations for Students

Students should:

1. Work to make school a positive, supportive, safe, and welcoming place for all students and staff.
2. Be respectful and courteous to fellow students, parents/guardians, and school staff.
3. Be knowledgeable about discipline policies, regulations, and rules.
4. Follow school rules and policies, and contribute to a positive school climate by behaving appropriately, even when not specifically asked to do so.
5. Make every reasonable effort to participate actively in any conferences, activities, interventions, or programs recommended appropriately by school staff.
6. Recognize how their conduct affects other students and school staff, and make every reasonable effort to restore relationships affected by their conduct.
7. Seek access to and complete make-up work while they are out of school for disciplinary reasons, so that they do not fall behind.
8. Share ideas and strategies for improving school climate and school discipline practices.
9. Be proactive in promoting a positive, supportive, safe, and welcoming school environment.

Expectations for Parents/Guardians

Parents/guardians should:

1. Help ensure their children create and promote a positive, supportive, safe, and welcoming school environment that is conducive to teaching and learning, and talk with their child about appropriate conduct at school.
2. Be respectful and courteous to other students, fellow parents/guardians, and school staff.
3. Read and be familiar with school policies, regulations, and rules.
4. Have regular contact with school staff.
5. Make every reasonable effort to be involved in conferences, hearings, and other disciplinary matters concerning their child.
6. Expect to be promptly notified by the school if their child is suspended or expelled, and if there is any investigation by law enforcement or school resource officers, related to school discipline.
7. Make every reasonable effort to help their child access supportive groups or programs designed to improve his/her conduct, including but not limited to counseling, after-school programs, and mental health services within the school and the community.
8. Share any concerns or complaints with school officials in a timely manner.

9. Work with school staff and administrators to address any behavioral problems their child may experience.
10. Share ideas and strategies for improving school climate and school discipline practices.

Expectations for Community-based/City/Local Organizations & Agencies

Community-based/City/Local Organizations & Agencies should:

1. Offer assistance to schools working to create positive, safe, supportive, and welcoming environments.
2. Be respectful and courteous to students, parents/guardians, and school staff.
3. Make every reasonable effort to confer, consult, and collaborate with school staff and/or parents/guardians on student misconduct and potential responses.
4. Make every reasonable effort to collect and distribute information and data that might be useful in schools' decision-making processes overall and for individual students.
5. Be informed and serve as a resource for students and their families in understanding discipline policies, rules, and regulations.
6. Serve as a liaison for and provide support to students and their families involved in discipline-related proceedings.
7. Provide assistance to parents/guardians and families in communicating with school staff.
8. Identify individuals who can serve as mentors and role models for students both formally and informally.
9. Make every reasonable effort to provide support to school staff if and when requested or appropriate around school discipline matters.
10. Share ideas and strategies for improving school climate and school discipline practices.

HISTORICAL BACKGROUND

In August 2009, the Maryland State Board issued an opinion in an appeal of the almost year-long expulsion of a 9th grade student. The Maryland State Board of Education put local school systems on notice about its concerns related to the lack of educational services provided in 81,331 out of school suspensions and the time taken to process appeals.

In December 2009, the State Board approved the Maryland State Department of Education's plan to study the use of long-term suspension/expulsion and the meaningful access to educational services. The public was invited to offer testimony on the subject at future Board meetings.

At the April 2010 Board meeting, and with the Board's invitation, representatives of 8 stakeholder groups including, Maryland Association of Boards of Education (MABE), Public School Superintendents Association of Maryland (PSSAM), Secondary School Principals, Elementary School Principals, Maryland State Education Association (MSEA), Maryland Association of Student Councils(MASC), American Civil Liberties Union (ACLU), and the Open Society Institute of Baltimore (OSI) provided comments on whether and how educational services should be continued when a student is suspended or expelled from school and what types of services, if any, should be provided.

During the August 2010 Board meeting, the members were briefed on and accepted the report entitled *Study of Student Long Term Suspensions and Expulsions* prepared by the Department. The report included results of: (1) a survey of local systems concerning what educational services were currently offered to long-term and expelled students; (2) response from the public to a web based survey; (3) input from stakeholder groups; and (4) an analysis of public comment at Board meetings. The report included recommendations for amending the discipline regulations and revisions to Student Records manual to enhance data on long-term suspensions and expulsions.

At the February 2011 meeting, The Maryland State Board of Education, in response to a news article on the suicide of a suspended student in another state, directed the State Superintendent to discuss the tragedy with the 24 local superintendents to determine if Maryland's local school systems had similar zero-tolerance discipline policies the goal was to determine what steps could be taken to avoid such a tragedy in Maryland.

As one way to address these issues during the April 2011, Maryland State Board of Education meeting members approved the draft *Guidelines for the Timely Disposition of Long Term Discipline Cases* and posted that document for public comment.

Based on response to proposed *Guidelines for Timely Disposition*, the Board requested that panels of stakeholder be invited to address the Board on this topic. The panels as follows:

- August 2011 Panel Presentation –Public Schools Superintendents Association of Maryland, Maryland Association of Boards of Education, Montgomery County Public Schools
- September 2011 – Maryland Disability Law Center, Legal Aid, Office of Public Defender, Maryland Chapter of NAACP
- October 2011 – Maryland Foster Parents, Maryland PTA, Students
- December 2011 – Maryland State Education Association, Baltimore Teachers Union, 2011 National Teacher of the Year (Michelle Shearer of Maryland), 2012 Maryland Teacher of the Year (Joshua Parker of Baltimore County)

In February 2012, the Board released a draft report entitled *A Safe School, Successful Students, and A Fair and Equitable Disciplinary Process Go Hand in Hand*. In that draft Report, the Board explained the negative effects of suspension and expulsions, reviewed the discipline data and found that over 63 percent of the out-of-school suspensions were for non-violent offenses, and concluded that disproportionate impact of school discipline falls on students of color and students with disabilities. The Report contained a draft of “Possible Regulatory Changes” and the Board once again asked for public comment on the Report and the possible regulatory changes.

In May and June of 2012, the Board reviewed and considered the comments on the draft Report and the proposed regulations. The President of the Board placed the discussion in context:

No student comes to school “perfect,” academically or behaviorally. We do not throw away the imperfect or difficult students. Wise school discipline policies fit our education reform agenda because those policies show all students that we want them to receive a world class education. We want that for them because the desired sustainable result is a better economy and quality of life for everyone in Maryland. *Every student who stays in school and graduates, college and career ready, adds to the health and wealth of the State of Maryland and improves the global competitiveness of this county.* It is that simple. It is that important.

Thereafter, the Board considered changes they wished to make in the draft regulations based on the hundreds of comments received.

The Board agreed with the commenters to change the draft regulations among other things, to better reflect its general philosophy of school discipline, returned the concept of expulsion to the regulations, and addressed issues around the 10-day return to school policy. The Board also discussed the ways to revise the draft report.

At the July 2012 meeting, the Board issued its final report, entitled *School Discipline and Academic Success: Related Parts of Maryland’s Education Reform; linking changes in school discipline philosophy to better academic performance and reduction in the achievement gap*. The Board also granted permission to publish proposed school discipline regulations. During the public comment period on those proposed regulations, 803 commenters made 2,213 suggestions for changing the proposed regulations.

In January of 2013, the Board reviewed all of the comments and agreed to make substantive changes to the proposed regulations. The proposed regulations were withdrawn.

Based on suggestions from MABE, PSSAM, MSEA, and public commentary, the Maryland State Board of Education convened a workgroup to address specific issues. The workgroup began its work in April 2013. It was co-chaired by Dr. D’Ette W. Devine, Superintendent, Cecil County Public Schools and Diana Morris, JD, of the Open Society Institute of Baltimore. The workgroup convened four meetings between May and June of 2013. The workgroup presented its findings at the June 25, 2013, Maryland State Board Meeting. The Board accepted the workgroup’s findings and voted to publish new proposed regulations.

At the October 2013 Maryland State Board of Education meeting, the proposed disciplinary regulations were withdrawn due to inaccurate language and the revised disciplinary regulations were published in the Maryland Register, Vol.40, Issue 25, on Friday, December 13, 2013. Below is the information from the Maryland Register

Maryland Register

Issue Date: December 13, 2013
Volume 40 • Issue 25 • Pages 2053 - 2148

Subtitle 08 STUDENTS

13A.08.01 General Regulations

Authority: Education Article, §§2-205, 7-303—7-305, 7-307, 7-308, and 8-404, Annotated Code of Maryland

Notice of Proposed Action

[13-402-P]

The Maryland State Board of Education proposes to amend Regulations **.11**, **.12**, and **.15** and adopt new Regulation **.21** under **COMAR 13A.08.01 General Regulations**. This action was considered at the Maryland State Board of Education on October 30, 2013.

Statement of Purpose

The purpose of this action is to have each local board of education adopt a set of discipline policies and regulations that: (1) Address school safety; (2) Reflect a discipline philosophy based on the goals of fostering, teaching, and acknowledging positive behavior; (3) Are designed to keep students in school so that they may graduate college and career ready; (4) Provide for disciplinary policies based on the use of discretion; (5) Explain why and how long-term suspensions or expulsions are last resort options; and (6) Explain how the education and counseling needs of suspended students will be met.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed addition to COMAR 13A.08.01.11(F)(1)(b), Minimum Education Services, requires assigning a school staff person the responsibility of serving as a liaison between teachers and the suspended student or his/her parents. Recognizing the current fiscal situation at both the State and local levels, there are a variety of low-cost options to meet the liaison requirement, including assigning an additional planning period to a teacher, and/or designating this duty to a portion of a current administrator or counselor’s job responsibilities if they have not already done so. The use of technology is another way to ensure that suspended students are able to continue their instructional program while out of school. Currently, most local school systems have instructional portals through Blackboard or Schoolmax, which allow class work and instructional materials to be posted and accessed by students and parents.

Since COMAR 13A.08.01.03 Lawful Absence was adopted, suspension from school has been deemed a lawful absence. COMAR 13A.08.01.05(B)(5), Student Attendance Policy, has required that each local school system institute make-up work requirements including classroom teacher and student responsibilities, time limits, and grading policy for make-up work. The proposed addition to COMAR 13A.08.01.11(F)(1)(b), Minimum Education Services, strengthens that existing requirement by adding an explicit liaison component. The proposed regulation requires a liaison between teachers and suspended students or his/her parents. Some schools and districts already have an identified person who serves the liaison role during the suspension process. The Dropout Prevention/School Completion Intervention/Resource Guide (2011) contains a listing of alternative schools and programs reported by local school systems. Twenty-two school systems reported they provide either alternative programming and/or alternative school assignments to suspended students.

The proposed addition of data collection in COMAR 13A.08.01.12 and .15 requiring annual reporting of school arrests and referrals to law enforcement agencies or to the juvenile justice system will require changes to the Maryland Student Records System Manual and the collection of new data. The Department is able to absorb these costs through its current data collection systems.

Local school systems might experience economic impact by having to update their student data collection systems to record school arrests and referrals to law enforcement agencies or to the juvenile justice system. Estimated costs would vary depending on the local school systems’ budget and technology systems.

The addition of COMAR 13A.08.01.21, Reducing and Eliminating Disproportionate/Discrepant Impact, will require the Department to enter into a contract with experts to design a Disproportionate Impact Model and analyze local school system discipline data to determine whether there is a disproportionate impact on minority students. Current studies done by the Department are being expanded to include this new requirement.

II. Types of Economic Impact.	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE		
B. On other State agencies:	NONE		
C. On local governments:			
Costs on local education agency	(E+)		Minimal
	Benefit	(+)	Magnitude
	Cost (-)		
D. On regulated industries or trade groups:	NONE		
E. On other industries or trade groups:	NONE		
F. Direct and indirect effects on public:	NONE		

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

C. For the school systems that currently have alternative education programs in place, the expense of providing education services to suspended/expelled students is already included in their budgets. Twenty-two of the 24 local education agencies report that they have alternative programs and/or schools currently in place. These program staff could serve the role of liaison.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Robert A. Murphy, M.Ed., Specialist, School Completion, Discipline, and Alternative Programs, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0305 TTY: 410-333-

6442, or email to rmurphy@msde.state.md.us, or fax to 410-333-8148. Comments will be accepted through January 13, 2014. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on January 28, 2014, at 200 West Baltimore Street, Baltimore, MD 21201.

.11 Disciplinary Action.

A. Local [Regulations. Each local board of education shall adopt a set of regulations designed to maintain an environment of order and discipline necessary for effective learning. These regulations should provide for counseling and standards for appropriate disciplinary measures, and may permit suspension or expulsion.] *Board Authority. Each local board of education has both the responsibility and authority to adopt policies designed to create safe schools. In the context of school discipline, by the beginning of school year 2014—2015, each local board shall review and revise its student discipline policies and regulations with the goal of maintaining an environment of order, safety, and discipline necessary for effective learning. The policies and regulations at minimum shall:*

- (1) *Reflect a discipline philosophy based on the goals of fostering, teaching, and acknowledging positive behavior;*
- (2) *Be designed to keep students connected to school so that they may graduate college and career ready;*
- (3) *Describe the conduct that may lead to in-school and out-of-school suspension or expulsion;*
- (4) *Allow for discretion in imposing discipline;*
- (5) *Address the ways the educational and counseling needs of suspended students will be met; and*
- (6) *Explain why and how long-term suspensions or expulsions are last-resort options.*

B. Terms Defined. In this regulation, the following terms have the meanings indicated:

(1) (text unchanged)

(2) "Expulsion" means[, at a minimum,] the [removal] *exclusion* of the student from the student's regular school program [and may be further defined by a local board of education.] *for 45 school days or longer, which only may occur under the following circumstances:*

(a) *The superintendent or designated representative has determined that the student's return to school prior to the completion of the expulsion period would pose an imminent threat of serious harm to other students or staff;*

(b) *The superintendent or designated representative limits the duration of the exclusion to the shortest period practicable; and*

(c) *The school system provides the excluded student with comparable educational services and appropriate behavioral support services to promote successful return to the student's regular academic program.*

(3) "Extended suspension" means the [temporary removal] *exclusion* of a student from [school for a specified period of time longer than 10 school days for disciplinary reasons by the local superintendent or the local superintendent's designated representative.] *a student's regular program for a time period between 11 and 45 school days, which only may occur under the following circumstances:*

(a) *The superintendent or designated representative has determined that:*

(i) *The student's return to school prior to the completion of the suspension period would pose an imminent threat of serious harm to other students and staff; or*

(ii) *The student has engaged in chronic and extreme disruption of the educational process that has created a substantial barrier to learning for other students across the school day, and other available and appropriate behavioral and disciplinary interventions have been exhausted.*

(b) *The superintendent or designated representative limits the duration of the exclusion to the shortest period practicable; and*

(c) *The school system provides the excluded student with comparable educational services and appropriate behavioral support services to promote successful return to the student's regular academic program.*

(4) (text unchanged)

(5) "Long-term suspension" means the removal of a student from school for a time period between 4 and 10 school days for disciplinary reasons by the principal.

[(5)] (6) (text unchanged)

[(6)] (7) "Short-term suspension" means the removal of a student from school for up to but not more than [10] 3 school days for disciplinary reasons by the principal.

[(7)] (8) "Suspension" means the application of extended suspension, in-school suspension, [or] short-term suspension, or long-term suspension.

C. Suspension and Expulsion.

[(1)] In those instances when the behavior of a student is disruptive and detrimental to the operation of the school, the student may be suspended or expelled.]

[(2)] (1)—[(3)] (2) (text unchanged)

[(4)] (3) Suspension for More than 10 Days or Expulsion.

(a)—(b) (text unchanged)

(c) If after the investigation the local superintendent or designated representative finds that [a longer] *an extended suspension or an expulsion* is warranted, the superintendent or designated representative promptly shall arrange a conference with the student and the student's parent or guardian.

(d) *The process described in §C(3)(a)—(c) of this regulation shall be completed by the 10th school day of the initial suspension. If additional time is necessary to complete the process, either because of delays due to parent or guardian unavailability or due to the complexity of the investigation, the student shall be allowed to return to school, unless the local superintendent or designated representative determines that the student's return to school would pose an imminent threat of serious harm to other students or staff.*

(e) *If the student is not allowed to return to school after the 10th day, the superintendent or designee shall notify the student and the parent or guardian within 24 hours and provide the reasons for the delay in the process and the denial of reentry and send a copy of the notice to the State Superintendent of Schools;*

[(d)] (f) If after the conference the local superintendent or designated representative finds that [a] *an extended suspension [of more than 10 school days] or an expulsion* is warranted, the student or the student's parent or guardian may[:]

[(i)Appeal] *appeal to the local board within 10 days after the determination[;].*

[(ii) Be heard before the local board or its designated committee; and

(iii) *Bring counsel and witnesses to the hearing.]*

(g) *If an appeal is filed, the local board or its designated committee or hearing officer shall have 45 days from the date the appeal was received to hear the appeal and issue a decision, as follows:*

(i) *This timeline period may be extended if the parent, guardian, or his/her representative requests additional time; and*

(ii) *This timeline shall also apply in the event that the local board elects to use a hearing examiner.*

(h) *If due to extraordinary circumstances or unusual complexity of a particular appeal, the local board determines that it will be unable to hear an appeal and issue a decision within 45 days, it may petition the State Superintendent for an extension of time.*

(i) *The student or the student's parent or guardian or representative:*

(i) *Shall be provided the school system's witness list and a copy of the documents that the school system will present at the hearing 5 days before hearing; and*

(ii) *May bring counsel and witnesses to the hearing.*

[(e)] (j)—[(g)] (l) (text unchanged)

[(5)] (4) (text unchanged)

(5) *A student suspended or expelled from school shall be allowed to return to school on the day that the terms and conditions of the suspension or expulsion are met whether or not the student, parent, or guardian has filed an appeal of the suspension.*

(6)—(7) (text unchanged)

(8) *A local superintendent may deny attendance to a student who is currently expelled or on extended suspension from another school system for a length of time equal to that expulsion or extended suspension. A school system shall forward information to another school system relating to the discipline of a student, including information of an expulsion or extended suspension of the student, on receipt of the request for information.*

D.—E. (text unchanged)

F. *Minimum Education Services. In order to establish accountability and keep suspended or expelled students on track with classroom work, as is reasonably possible, each local board shall institute education services that at a minimum provide that:*

(1) *Each student suspended or expelled out-of-school who is not placed in an alternative education program shall receive daily classwork and assignments from each teacher, which shall be reviewed and corrected by teachers on a weekly basis and returned to the student; and*

(2) *Each principal shall assign a school staff person to be the liaison between the teachers and the various students on out-of-school suspension or expulsion and to communicate weekly about classwork assignments and school-related issues by phone or email with those out-of-school suspended/expelled students and their parents.*

G. *Education Services During Short-Term Suspensions.*

(1) *For short-term suspensions, the local board of education shall inform all schools under their jurisdiction:*

(a) *To provide all students who receive short-term suspensions with the opportunity to complete the academic work they miss during the suspension period without penalty; and*

(b) *To provide all students who receive short-term suspensions, and their parents or guardians, with the contact information for a school employee who will be responsible for ensuring that the requirement described in §G(1)(a) is met.*

(2) *All other aspects of the process for suspended students receiving missed assignments, completing missed assignments, and making up tests shall be identical with each school's established policy and practice for makeup work in the event of any other excused absence.*

.12 Arrests on School Premises.

A.—E. (text unchanged)

F. Beginning in the 2015—2016 school year, data on school arrests shall be reported in a manner and format developed by the Department, in consultation with local school systems, and approved by the State Board.

.15 Reporting Delinquent Acts.

A.—B. (text unchanged)

C. Beginning in the 2015—2016 school year, the local school systems shall report data to the Department on school arrests and referrals to law enforcement agencies or to the juvenile justice system in a form and manner developed by the Department, in consultation with local school systems, and approved by the State Board.

.21 Reducing and Eliminating Disproportionate/Discrepant Impact.

A. The Department shall develop a method to analyze local school system discipline data to determine whether there is a disproportionate impact on minority students.

B. The Department may use the discrepancy model to assess the impact of discipline on special education students.

C. If the Department identifies a school's discipline process as having a disproportionate impact on minority students or a discrepant impact on special education students, the local school system shall prepare and present to the State Board a plan to reduce the impact within 1 year and eliminate it within 3 years.

D. The local school system will report its progress annually to the State Board.

LILLIAN M. LOWERY, Ed.D.

State Superintendent of Schools

The regulations were adopted by the Maryland State Board of Education on January 28, 2014. Though the regulations were adopted in January 2014, some of the new regulations apply to school year 2014-2015. Below are some frequently asked questions about the discipline regulations by stakeholders the questions are in bold and underlined.

Frequently Asked Questions

- **Which regulations apply to the current school year 2014-2015?**

COMAR 13a.08.01.11 applies to the current and future school years.

- **Which regulations apply to future school years?**

COMAR 13A.08.01.12, COMAR 13A.08.01.15, and COMAR 13A.08.01.21

- **Have the new discipline regulations and State Code of Discipline banned all suspension?**

No. The Code of Maryland Regulations 13A.01.08.11 A (3)-(6) all mention suspension options for schools and discretion for administrators. The regulations require local school systems to describe the conduct that would lead to in-school and out of school suspension to students, parents, and guardians.

The State Code of Discipline adopted in July 2014 is a framework from which Maryland local school systems can develop a code of discipline. The State Code of Discipline does not take precedence over local school systems codes of discipline.

- **Have the definitions for the types of suspension changed?**

Yes. Some of the definitions and lengths of suspension have changed because of the regulations. Below are the new definitions and lengths.

Suspension- The application of extended suspension, in-school suspension, short-term suspension, or long-term suspension

Short-term suspension- The removal of a student from school for up to but not more than 3 school days for disciplinary reasons by the principal.

In-school suspension- The removal within the school building of a student from the student's current education program for up to but not more than 10 school days in a school year for disciplinary reasons by the school principal.

A student may not receive an in-school suspension unless the student has been informed of the reasons for the suspension and has been given an opportunity to respond before the suspension becomes effective.

(c) The school principal shall provide the student's parents with written notification of the in-school suspension action taken by the school.

(d) After 10 days of cumulative in-school suspension, the student, the student's parents or guardian, and the principal shall confer.

Long-term suspension- The removal of a student from school for a time period between 4 and 10 school days for disciplinary reasons by the principal.

Extended Suspension- The exclusion of a student from a student's regular program for a time period between 11 and 45 school days, which only may occur under the following circumstances:

(a) The superintendent or designated representative has determined that:

(i) The student's return to school prior to the completion of the suspension period would pose an imminent threat of serious harm to other students and staff; or

(ii) The student has engaged in chronic and extreme disruption of the educational process that has created a substantial barrier to learning for other students across the school day, and other available and appropriate behavioral and disciplinary interventions have been exhausted.

(b) The superintendent or designated representative limits the duration of the exclusion to the shortest period practicable; and

(c) The school system provides the excluded student with comparable educational services and appropriate behavioral support services to promote successful return to the student's regular academic program.

- **What is the difference between the discipline regulations adopted in January 2014 and the State Code of Discipline adopted by the Maryland State Board of Education in July of 2014?**

The regulations adopted in January are state law and the guidelines for the state code of discipline is a framework document to provide local school systems with a structure by which to develop their local codes of discipline

- **Can the discipline regulations adopted in January 2014, be retroactively applied to impact school disciplinary decisions made during the 2013-2014 school year?**

No. Student disciplinary decisions made by principals or local school systems authorities during the 2013-2014 school year are subject to the regulations, policies, and practices from those school years.

How Maryland Establishes a Code of Discipline

Maryland law, specifically § 7-306 of the Education Article, directs the Maryland State Board of Education to establish “guidelines defining a state code of discipline for all public schools with standards of conduct and consequences for violation of the standards”.

The Maryland State Department of Education is typically charged with convening stakeholders to update the State Code of Discipline. During the most recent revision MSDE invited over 40 organizations to participate in revising the State Code of Discipline.

The Guidelines for a State Code of Conduct were revised in 2013 by a working group of district representatives and other stakeholders from across Maryland. The revision was part of a statewide effort to reform school discipline, so that all policies and practices related to student conduct foster and teach appropriate behavior, strive to create a positive school climate and safe environment, and keep students in school so that they may graduate college and career ready.

The purpose of these guidelines is to provide a framework for Maryland local school systems to use in establishing local codes of conduct and in developing new discipline-related policies. These guidelines include behavioral expectations for all members of the school community who have a direct impact on creating healthy teaching and learning environments and on promoting student success.

The Guidelines for a State Code of Discipline can viewed at the following link http://www.marylandpublicschools.org/MSDE/divisions/studentschoolsvcs/student_services_alt/docs/MDGuidelinesforStateCodeDiscipline_08072014.pdf

Reports and Resources on discipline data and resources about equity and disparate impact

http://marylandpublicschools.org/MSDE/divisions/planningresultstest/prim_pubs.htm

The web address above provides annual discipline data reports from Maryland Public Schools.

<http://www2.ed.gov/policy/gen/guid/school-discipline/index.html>

The web address above provides information and resources on school discipline from the United States Department of Education.

<http://www2.ed.gov/about/offices/list/ocr/index.html>

The web address above provides semi-annual discipline data reports from the United States Department of Education Office of Civil Rights (OCR). Viewers can view data by state and locality. Reports and resources are also located on the page.

<http://csgjusticecenter.org/youth/projects/school-discipline-consensus-project/>

The web address above provides discipline data, reports, and resources to stakeholders. The Council of State Governments Justice Center developed two reports on school discipline in Texas that reviewed over one million student records. The second report the School Discipline Consensus Project is a comprehensive report that provides stakeholders with policy suggestions and practice tools.

<http://www.indiana.edu/~equity/>

The web address above provides discipline data, reports, and resources to stakeholders.

<http://civilrightsproject.ucla.edu/>

The web address above provides discipline data, reports, and resources to stakeholders.

<http://www.fixschooldiscipline.org/>

The web address above provides discipline data, reports, resources to stakeholders.

Excerpt from U.S. Department of Education, Office of Special
Education and Rehabilitative Services
Dear Colleague Letter on ensuring equity and providing
behavioral supports to students with disabilities
August 1, 2016

**IV. Implications for Short-Term Disciplinary Removals and Other Exclusionary
Disciplinary Measures**

Schools should note that recent research demonstrates that disciplinary measures such as short-term removals from the current placement (e.g., suspension), or other exclusionary disciplinary measures that significantly impede the implementation of the IEP, generally do not help to

²⁰ Under 34 CFR §300.536 a series of disciplinary removals that constitute a pattern is a change in placement. A pattern of removals is a series of removals that total more than 10 school days within a school year, for behavior that is substantially similar to the child's behavior in previous incidents that led to removals, with consideration for additional factors such as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

reduce or eliminate reoccurrence of the misbehavior. In fact, there is a growing awareness that school suspensions produce unintended and undesirable results. Longitudinal studies, for example, have found that suspension from school does not deter misbehavior. These studies found a high rate of repeat offending in out-of-school suspension, ranging from 35% to 42%.²¹ Research also shows that suspension from school is associated with significant adverse consequences for the children suspended.²² Suspensions from school are consistently associated with lower academic performance.²³ As a suspended child's education is interrupted, he or she is more likely to fall behind, to become disengaged from school, and to drop out.²⁴

Removals from the current placement generally do not address the needs of a child with a disability for positive behavioral interventions and supports. Accordingly, we remind States, LEAs, and IEP Teams that while 34 CFR §300.530 explicitly permits school personnel to implement short-term disciplinary removals from the current placement, such removals may indicate a need to review and revise the child's IEP to address his or her behavioral needs. In addition, exclusionary disciplinary measures that do not constitute a removal from the current placement may also indicate the need to review and revise the child's IEP.

Authority of School Personnel under 34 CFR §300.530

Under IDEA and its implementing regulations, school personnel have the authority to remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for up to 10 consecutive school days in a school year, to the extent those alternatives are applied to children without disabilities, and for additional removals of up to 10 school days in the same school year for separate incidents of misconduct, provided that the additional removals do not constitute a change of placement. 34 CFR §§300.530(b) and 300.536.²⁵

While the IDEA and its implementing regulations recognize that school officials need some reasonable degree of flexibility when disciplining children with disabilities who violate a code of student conduct and that school safety is paramount, the Department cautions that the use of short-term disciplinary removals from the current placement may indicate that a child's IEP, or

²¹ Skiba, R.J., Shure, L.A., Middelberg, L.V., & Baker, T.L. (2012). Reforming school discipline and reducing disproportionality in suspension and expulsion. In Jimerson, S.R., Nickerson, A.B., Mayer, M.J., & Furlong, M.J. (Eds.) *Handbook of School Violence and School Safety*, 2nd Ed. New York: Routledge.

²² Lee, T., Cornell, D., Gregory, A., & Xitao, F. (2011). High suspension schools and dropout rates for black and white students. *Education & Treatment Of Children*, 34(2), 167-192. See also Brooks, K., Schiraldi, V., & Zeidenberg, J. (2000). *School house hype: two years later*. Washington, DC: Justice Policy Institute / Covington, KY: Children's Law Center. See also Civil Rights Project. (2000). *Opportunities suspended: the devastating consequences of zero tolerance and school discipline policies*. Cambridge, MA.

²³ Id.

²⁴ Id.

²⁵ Disciplinary removals of more than 10 consecutive school days or a series of removals that cumulate to more than 10 school days in a school year that constitute a pattern are considered a change in placement. 34 CFR §300.536.

the implementation of the IEP, does not appropriately address his or her behavioral needs. This, in turn, may result in the child not receiving a meaningful educational benefit, which could constitute a denial of FAPE. As noted above, these determinations are highly factual, and would be made on a case-by-case basis. We are concerned, however, that some SEAs and LEAs may have erroneously interpreted the IDEA to provide school personnel with the broad authority to implement short-term removals without restriction and without regard to whether the child's IEP is properly addressing his or her behavioral needs. It has come to the Department's attention that there are a number of legal memos and technical assistance documents which have erroneously characterized the 10-day period as "free days."²⁶

This characterization may discourage school personnel from considering whether behavioral supports are needed to address or improve patterns of behavior that impede learning before, during, or after short-term disciplinary removals are implemented. The Department reminds SEAs and LEAs that, under IDEA, IEP Teams have an obligation to develop appropriate IEPs based on the individual needs of each child. Teachers must also be fully informed about their specific responsibilities related to implementation of the child's IEP, including the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. 34 CFR §300.323(d). Further, IDEA requires States and LEAs to ensure that all personnel necessary to carry out the purposes of Part B of IDEA are appropriately and adequately prepared and trained. 34 CFR §§300.156 and 300.207. This responsibility would include appropriately training teachers and other school personnel to provide required behavioral supports to children with disabilities. Therefore, a failure to provide appropriate behavioral supports (because they are not offered or because teachers and other staff are not adequately trained to implement such supports) that results in the child not receiving a meaningful educational benefit may constitute a denial of FAPE.

Use of Exclusionary Disciplinary Measures

Schools should take care when implementing exclusionary disciplinary measures that significantly interfere with a child's instruction and participation in other school activities. In some schools, staff are properly trained to implement and document measures such as the use of study carrels, time outs, and restrictions in privileges, in a manner consistent with a child's right to FAPE.²⁷ However, in other schools, staff may not be properly trained in the appropriate use of

²⁶ National Council on Disability. (2015). Breaking the school-to-prison pipeline for students with disabilities. Available at https://www.ncd.gov/sites/default/files/Documents/NCD_School-to-PrisonReport_508-PDF.pdf. This report highlights an excerpt from a legal pamphlet designed for school districts: "Schools have free use of up to 10 school days of short-term removals per school year without IDEA implications. The days can be used in any combination, quickly or slowly, although caution would warrant using the 10 'free' days judiciously over the school year, and avoiding multiple suspension days if at all possible."

²⁷ The Department has previously stated that the use of measures such as study carrels, time outs, or other restrictions in privileges is permissible so long as such measures are not inconsistent with a student's IEP (OSEP Memorandum to Chief State School Officers, Questions and Answers on Disciplining Students with Disabilities, April 1995).

these measures; consequently, their improper use of these measures could rise to the level of a disciplinary removal. These exclusionary disciplinary measures also could include:

- A pattern of office referrals, extended time excluded from instruction (e.g., time out), or extended restrictions in privileges;
- Repeatedly sending children out of school on “administrative leave” or a “day off” or other method of sending the child home from school;
- Repeatedly sending children out of school with a condition for return, such as a risk assessment or psychological evaluation; or
- Regularly requiring children to leave the school early and miss instructional time (e.g., via shortened school days).²⁸

In general, the Department does not consider the use of exclusionary disciplinary measures to be disciplinary removals from the current placement for purposes of 34 CFR §300.530, so long as children with disabilities are afforded the opportunity to continue to be involved in and make progress in the general education curriculum, receive the instruction and services specified on their IEPs, and participate with nondisabled children to the extent they would have in their current placement.²⁹ It is likely that the exclusionary disciplinary measures listed above, if implemented repeatedly, would constitute a disciplinary removal from the current placement. For example, when school personnel regularly require a child with a disability to leave school early and miss instructional time due to their behavior, it is likely that the child’s opportunity to be involved in and make progress in the general education curriculum has been significantly impeded; in such circumstances, sending the child home early would constitute a disciplinary removal from the current placement. To the extent that schools implement exclusionary disciplinary measures in a manner tantamount to a suspension – or other removal from the

²⁸ We have deliberately omitted from this list of examples any reference to referrals to law enforcement authorities due to our recommendation to schools, described in the Department’s *Guiding Principles: A Resource Guide for Improving School Climate and Discipline*, that school resource officers not be involved in routine disciplinary matters. The Guiding Principles can be found at www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf

²⁹ The Department would apply the same analysis to the use of exclusionary discipline measures that apply to in-school suspensions, for purposes of 34 CFR §300.530. In the Preamble to the August 14, 2006 final Part B regulations, the Department explained: “It has been the Department’s long term policy that an in-school suspension would not be considered a part of the days of suspension addressed in 34 CFR §300.530 as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child’s IEP, and continue to participate with nondisabled children to the extent they would have in their current placement. This continues to be our policy.” The explanation concludes by indicating that whether an in-school suspension would constitute a day of suspension would depend on the unique facts and circumstances of each case. 71 Fed. Reg. 46715 (Aug. 14, 2006).

child's current placement – they are required to fulfill their statutory obligation to report such removals,³⁰ and act within the authority of school personnel provided under 34 CFR §300.530.

Further, as we noted earlier, the use of exclusionary disciplinary measures may indicate that a child's IEP, or the implementation of the IEP, does not appropriately address his or her behavioral needs. To ensure that each child receives a meaningful educational benefit, IEP Teams must consider the need for positive behavioral interventions and supports for children with disabilities whose behavior impedes their learning or that of others, and, when determined necessary to ensure FAPE, include or revise needed behavioral supports in the child's IEP. Such behavioral supports also may include supports for school personnel, so that teaching staff are trained in best uses of such behavioral supports.

³⁰ IDEA mandates that States provide data each year to the Secretary of Education and the public on the use of long-term suspensions and expulsions (20 U.S.C. §1418(a)(1)(A)(v)(III)) and on the incidence and duration of disciplinary actions, including suspensions of one day or more, by race, ethnicity, limited English proficiency status, gender, and disability category (20 U.S.C. §1418(a)(1)(D)). Further, States are required to collect and examine data to determine whether significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to the incidence, duration, and type of disciplinary actions, including suspension and expulsions (34 CFR §300.646(d)(1)(C)), and whether significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among LEAs in the State or compared to the rates for nondisabled children within LEAs (34 CFR §300.170).

Apportionment and Provision of Educational Services

Discipline Task Force

November 7, 2016

Becky McLean

Supervisor, Enrollment and Categorical Funding
OSPI – School Apportionment and Financial Services
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Factors that Drive State Funding for K–12 Students

- Monthly student enrollment reported on the P223 (BEA) and P223H (SPED). Used as a factor for:
 - Basic Ed funding.
 - Special Ed funding.
 - K–3 High Poverty funding.
 - ALE funding.
 - Transitional Bilingual Instructional Program (TBIP) funding.
 - CTE funding.
 - Running Start and Open Doors funding.
 - K–3 Class Size compliance funding.
- Personnel reporting submitted on the annual S275. Used as a factor for:
 - District’s staff mix.
 - Staff ratio compliance.
 - K–3 Class Size compliance funding.



2015–16 State Summary Average Per Funding Levels

Annual Allocation		
Basic Education	\$5,638	Per AAFTE
Special Education	\$6,281	Per Average Headcount
TBIP	\$932	Per Average Headcount
Exited TBIP	\$585	Per Average Headcount



Resources for Enrollment Reporting

- Enrollment Reporting Handbook.
 - 2016–17 handbook is available at:
<http://www.k12.wa.us/safs/INS/ENR/1617/eh.asp>.
- Rules regarding enrollment – WAC 392-121-106 through 188.
- Becky McLean, OSPI
 - 360-725-6306.
 - becky.mclean@k12.wa.us.



Enrolled Student

- Is a resident of Washington State.
- Is a resident district or attending a nonresident district pursuant to Choice Transfer or Interdistrict Agreement, **OR**
- Attends a Washington State charter school or tribal compact school.
- Under 21 years of age before September 1st for the new school year.
- Enrolled on or before the monthly count day.
- Participated in a course of study on or before the monthly count day.
- Does not meet any enrollment exclusions.

◆ WAC 392-121-106 defines enrolled student.



Count Date

- A Snapshot.
- Count date is:
 - 4th school day in September.
 - 1st school day of October through June. For Open Doors (OD) programs, July and August.
 - Running Start is 1st school day of October through June.
- Count date can be determined by an individual school or grade's start date or calendar.
 - ◆ WAC 392-121-119 defines enrollment count dates.



Enrollment Exclusions

- A student shall not be counted as an enrolled student if any of the following are met:
 - Consecutively absent for > 20 consecutive school days.
 - Allowance exists when an agreement is in place with the parent and the district that states the student will continue his educational progress while absent and the student returns to school before the end of the school year to be counted for two additional count days.
 - Dropped out or transferred.
 - Met high school graduation requirements before the beginning of the school year (September 1st).
 - Paying tuition.
 - Claimed by an institution.
 - Resident of either the Washington State School for Blind or Washington School for the Deaf.
- ◆ WAC 392-121-108 defines enrollment exclusions.



Course of Study Includes

- Basic education instruction.
- Special education.
- Alternative Learning Experience (ALE).
- Open Doors programs.
- Running Start.
- Direct-funded technical college.
- Ancillary service.
- Work Based Learning.
- UW transition.

◆ WAC 392-121-107 defines course of study.



Course of Study Does Not Include

- Home-based instruction.
- Private school instruction.
- Adult education – over 21 years old after September 1.
- GED prep instructions when:
 - Additional adult education state/federal dollars are generated or
 - Instruction does not earn high school credit.
- Extra-curricular activities.
- College enrollment not earning dual credit at a high school.



Headcount (HC) versus Full-Time Equivalent (FTE)

- Two types of enrollment is reported for state funding.
 - HC is the count of individual students – a whole number. Either 1 or zero.
Used for:
 - Special Ed funding.
 - TBIP and Exited TBIP funding.
 - FTE is the measurement of student's enrollment and is used to fund districts. Used for:
 - Basic Ed funding.
 - Vocational funding.
 - K-3 High Poverty funding.
 - ALE funding.
 - Open Doors funding.
 - Running Start funding.



Full-Time Equivalent - FTE

- Claiming FTE is based on:
 - Enrolled weekly hours. Applies to:
 - Traditional seat-time classroom instruction and
 - Direct-funded technical college.
 - Enrolled college credits. Applies to:
 - Running Start,
 - UW Transition program,
 - Open Doors college level classes, and
 - College classes for students to earn credit for a high school diploma, but who credit deficient and have dropped out of high school or have not demonstrated success in the traditional high school environment. WAC 392-121-188(18).
 - Estimated hours of learning in Written Student Learning Plan. Applies to:
 - ALE enrollment.
 - Actual hours. Applies to:
 - Work based learning, and
 - Ancillary services.
 - Open Doors (OD) program's total planned hours of instruction. Applies to:
 - Below 100 level instruction.



FTE Calculations

- For enrolled weekly hours or estimated hours of learning, 1.0 FTE is:
 - For Grades K–3: 4 daily hours, 20 weekly hours, or 1,200 weekly minutes.
 - For Grades 4–12: 5 daily hours, 25 weekly hours, or 1,500 weekly minutes.
- For enrolled college credits, 1.0 FTE is:
 - 15 college credits equals 1.0 FTE.
- For actual hours, 1.0 AAFTE is:
 - For Grades K–3, 720 annual hours.
 - For Grades 4–12, 900 annual hours.
- For Open Doors below-100 class, a student is claimed as a 1.0 FTE for up to three months. For the fourth month, must have evidence of academic progress in the last three months.



Claiming a Student for Special Ed Funding

- For the monthly count day, the following requirements are in place:
 - Enrolled in the school district,
 - Has a current IEP,
 - Evaluation is current, and
 - Received special education services as defined under WAC 392-172A-01175 and -01155 on or before the count day but since the prior monthly count day.

Claiming a Student for TBIP Funding

- For the monthly count day, the following requirements are in place:
 - The student has been identified as eligible through a placement test, and
 - Received TBIP services on or before the count day but since the prior monthly count day.



Few Options for Suspended or Expelled Students

- Attends class in an alternative location setting where attendance is taken and the class is supervised by a teacher.
 - FTE would be based on enrolled weekly hours.
 - For example, student is attends 2 hours a day or 10 weekly hours. FTE would be 0.40 ($10 \div 25$).
- Enrolls in an ALE program.
 - FTE would be based on the estimated hours of learning in the Written Student Learning Plan (WSLP).
 - For example, student's WSLP say there would be 25 estimated hours of learning. FTE would be 1.0 ($25 \div 25$).
- Stays home and continues his educational progress while temporarily absent from school.
 - Student could be claimed for 2 monthly count days provided he/she returns to school prior to the end of the school year.
 - FTE would be based on the student's enrollment prior to being suspended.



Few Options for Suspended or Expelled Students

- Enrolls in an Open Doors program.
 - Limited for student who are age 16 as of September 1 but under the age of 21 on August 31.
 - Student must be credit deficient or recommended to enroll.
 - FTE is based on either:
 - For Below 100 level classes, 1.0 FTE provided the student makes academic progress within 3 months.
 - For college level classes, based on the student's enrolled college credits.
- Enrolls in Running Start classes.
 - FTE would be based on the student's enrolled college credit.
 - Limited to:
 - Enrolling at the beginning of a new Fall, Winter, or Spring college quarter.
 - Only 11th or 12th grade students.
 - Meeting the college's eligibility requirements.





Northwest Comprehensive Center

at Education Northwest

Discipline Task Force
Provision of Education Services
November 7, 2016

Vicki Nishioka
Melinda Leong

Objectives

- Review objectives of school discipline
- Discuss factors related to providing educational services
 - Equity
 - Access to quality services
 - Meaningful learning experiences

You are the choir!



What are our challenges?

SCHOOL DISCIPLINE

Our Changing World

- By 2030, over half of the students in U.S. schools will be children of color
- Continued disproportional representation in racial, ethnic, and socio-economic groups
 - Achievement
 - Discipline
 - Dropout

To achieve our goals, we must reach every student





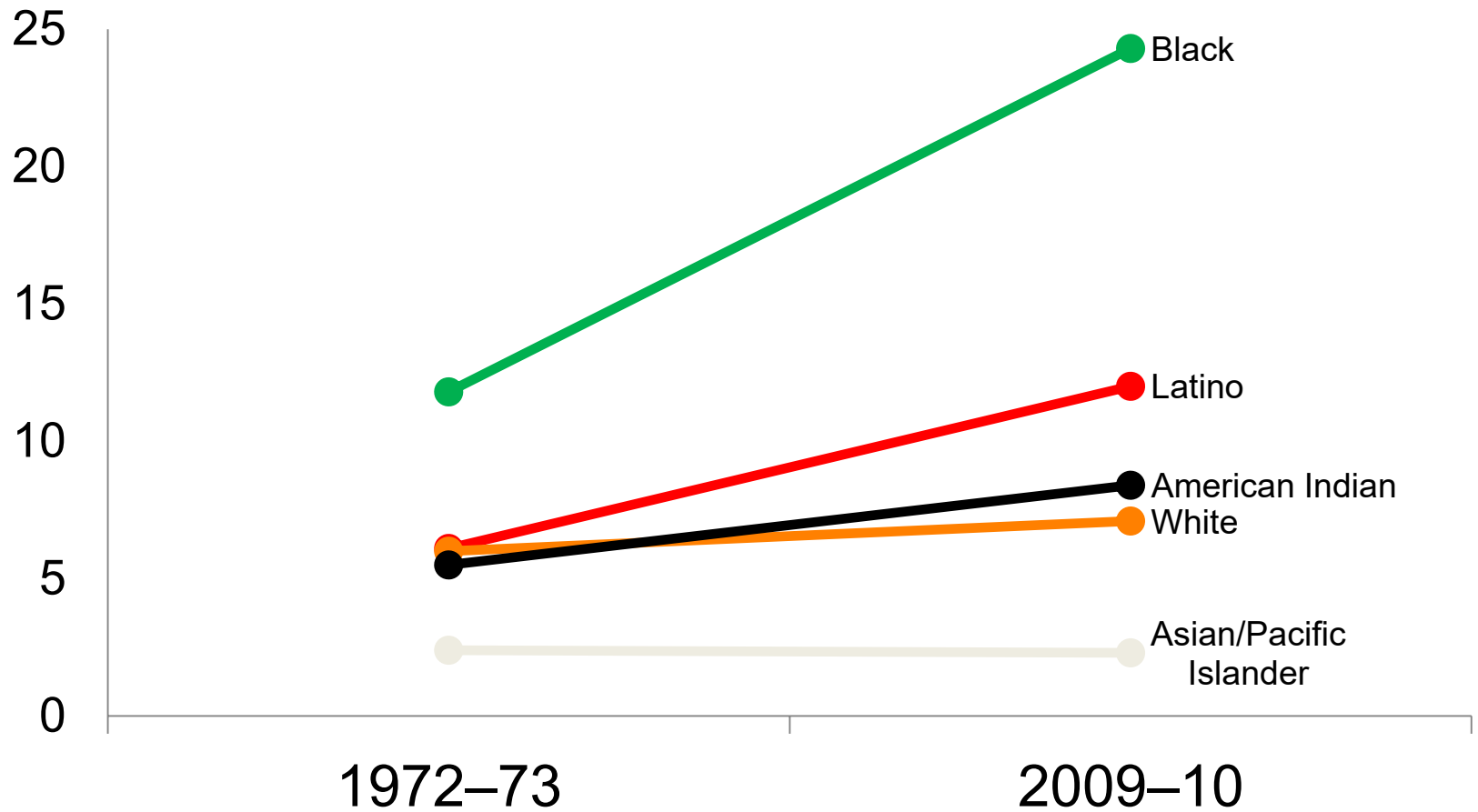
Zero Tolerance and School Safety

"Zero Tolerance" initially was defined as consistently enforced suspension and expulsion policies in response to weapons, drugs and violent acts in the school setting.



Did it increase
school safety?

Suspensions By Race/Ethnicity





Zero tolerance policies

- Higher rate of exclusionary discipline
- Wider racial discipline gap
- Used for nonviolent offenses
 - Disrespect
 - Defiance
 - Disruptive
 - Minor verbal and physical aggression

(American Psychological Association, 2008; Wallace et al., 2008)

Suspensions and chronic absenteeism are costly for students

- Removes students from classroom instruction
- Weakens academic achievement
- Contributes to dropout and delinquency



Impact on Educators

- In a 2005 national survey, 44% of teachers who left the profession pointed to student behavior as a reason
- 39% of highly qualified teachers left for that reason



Think, pair, share

What is the purpose of school discipline?

- Non-discretionary
- Discretionary



Purpose of School Discipline

- Safe and caring schools
 - Emphasize positive relationships
 - Maintain well-managed classrooms and school
 - Create a culture of learning
- Respect and celebrate cultural differences
- Impose discipline without bias

School Discipline Policies Are Changing

- Focusing on prevention and keeping students in school
- Allowing administrators more discretion in discipline decisions for “zero tolerance” offenses 1
- Limiting expulsions:
 - Credible and immediate threats to health or safety of others
 - Expulsions required by the Gun Free Schools Act

And . . .

- Requiring discipline actions that include *prevention, early intervention, and intensive support*
- Individualizing discipline decisions based on circumstances and needs of the student
- Documenting changes in student/parent handbooks and codes of conduct

PARENT/STUDENT
HANDBOOK



*“Let me add that an understanding of students and community **cultural perspective** is **critical** in dealing with disciplinary problems.*

*This is because people from different ethnic or racial backgrounds may **interpret disciplinary problems** differently based on their culture.”*

(Murkuria, 2003, p. 448)

What considerations should we be making?

PROVISION OF EDUCATION SERVICES

Exclusionary Discipline

- In-school suspensions
- Out-of-school suspensions
- Removal to alternative settings
- Expulsions
- Shortened school days

Removal from classroom instruction for disciplinary reasons

SCHOOL DISCIPLINE

Federal and State
Policies

Gun Free Schools Act of 1994

- Expels students for a minimum period of one year for bringing a **firearm** to school or possessing a firearm at school.
- Permits the LEA's chief administering officer to modify an expulsion for a student, in writing, on a case-by-case basis.
- LEAs may also provide an alternative educational setting for expelled students.

U.S. Office for Civil Rights

Ensure equal access to education and to promote educational excellence throughout the nation through enforcement of civil rights.

Federal Anti-Discrimination Laws

- Civil Rights Act of 1964
- Prohibits discrimination in public schools based on
 - Race, color, and national origin
 - Religion
 - Disability
 - Sex



Discipline Policy Elements

1

Equity is a District Priority

- Identifies elimination of disproportionate discipline is a district priority
- Mandates that discipline actions are imposed without bias



2

Focus on Prevention

- Expectations and rights are stated positively
- Positive acknowledgement systems are in place
- Discipline approach includes
 - Prevention and early intervention strategies
 - Research-based practices



3

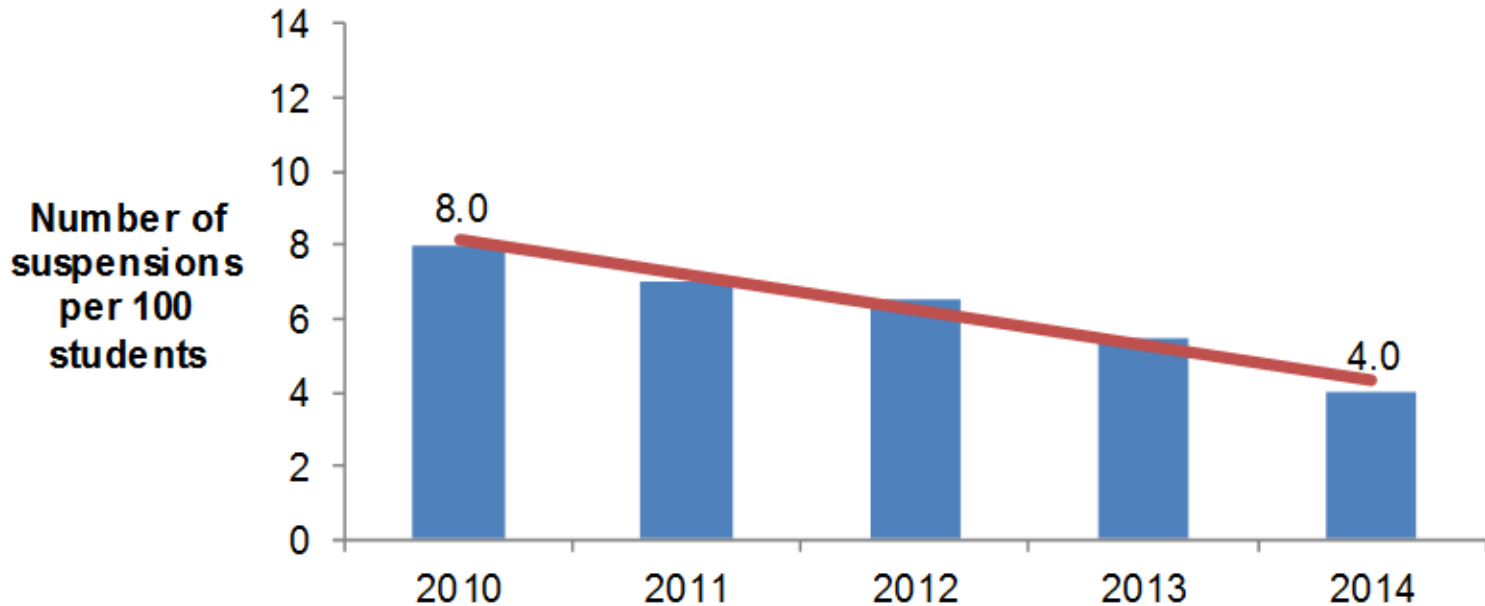
Parent Involvement

“The best way of formulating a comprehensive discipline policy was involving everyone . . . principal, deans, teachers, parents, students, and community members at large, and ask them what they could see as the problem. If that was done, then everyone would be supportive.”

4

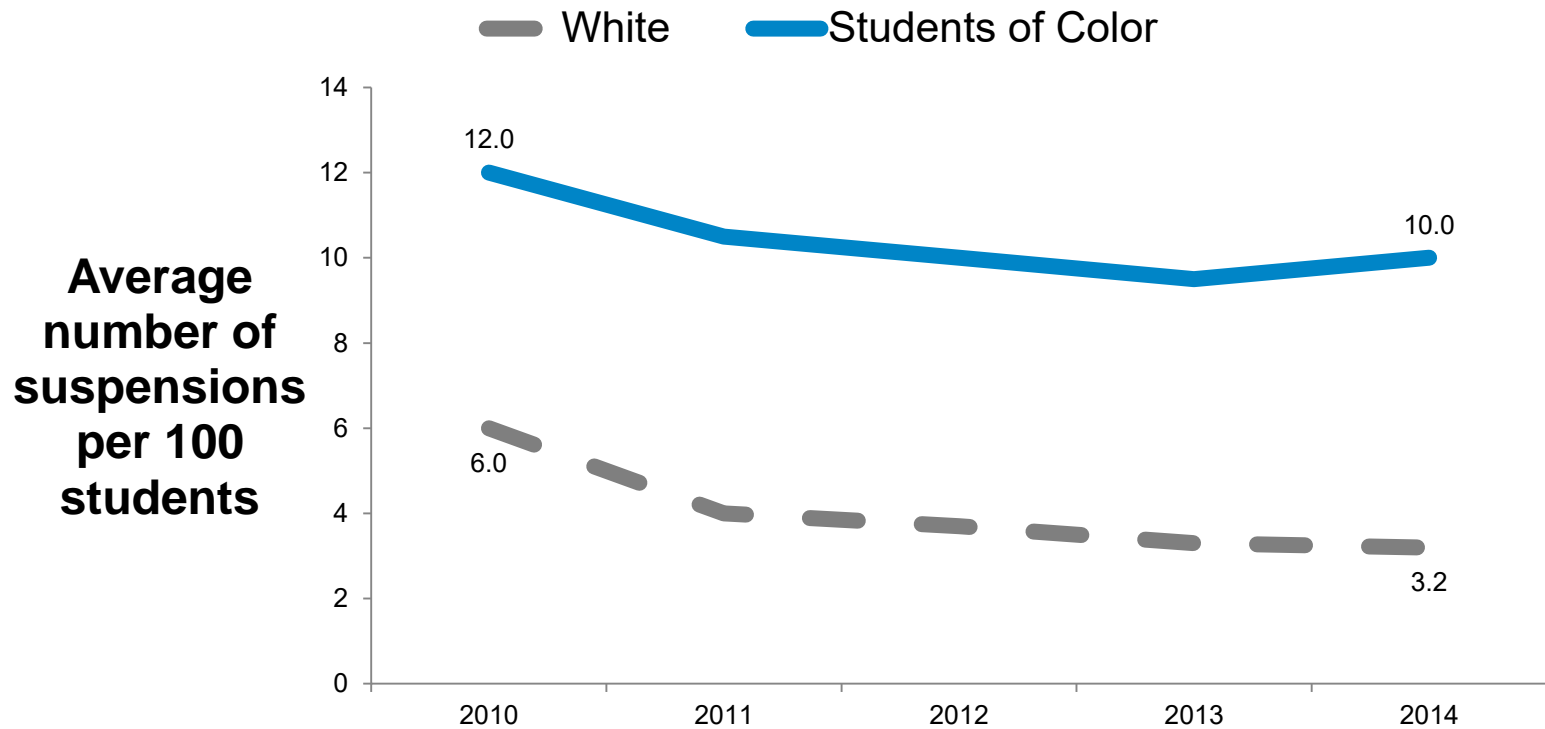
Use Disaggregated Data

Figure 1. Number of suspensions per 100 students, 2010–2014



Source: Fictitious data for example purposes

Disaggregated Data Often Tell a Different Story



5

Minimize Academic Penalties

- Prohibits issuing academic penalties for disciplinary concerns
- Students can earn credit for assignments missed during exclusion



6

Applies to School Only

- Applies to school activities only
 - On school grounds
 - School activities that are off school grounds
- Prohibits assigning discipline consequences for incidents that *do not directly* influence school functioning

7

Alternatives to Suspension

- Use discipline policies that focus on early intervention and student support
- Limits use of exclusionary discipline and includes alternatives to suspension



If - Then

- If students brings marijuana to school, then they will be suspended for three days.
- If students skips class, then they will be suspended for one day.

Administrative Action Guiding Questions

1. What is the age, ability level, and behavioral history of the student?
2. What happened before the incident occurred?
3. What happened after the incident occurred?
4. What was the student trying to gain or avoid?
5. What was the teacher or adult who responded to the incident trying to gain or avoid?
6. What are different ways to address these concerns? What should we teach the student?
7. What will restore the environment and social relationships (teachers and peers) in the classroom and/or school?

Mild

Student Conference

Parent Conference/Involvement in Planning

Prompted Reflection

Verbal Reprimand

Planning with Counselor

Loss of Privilege

After School Conference with Teacher

Coordinated Behavior Plan/Monitoring Plan

Alternative Programming

Counseling/Mentoring

Restorative

Restitution

Community/School Service

Work Duties or Tasks

Verbal/Written Apologies

Leadership Project(s)

Punitive



Suspension

In-School Suspension

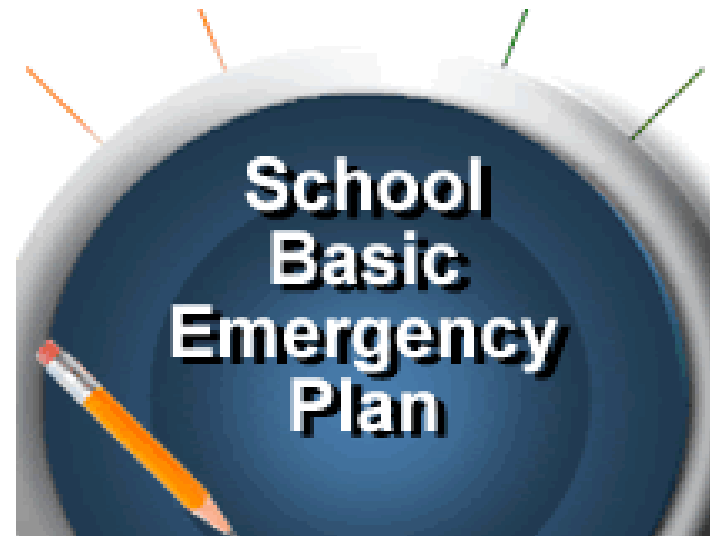
After School Detention

Saturday School

Lunch Academy

8 Emergency Removal Procedures

- Procedures to address behaviors that pose a serious and credible threat to the safety of students and self



Providing Educational Services Linking Policy and Practice



5

Minimize Academic Penalties

- Earning credit for assignments missed during exclusion
- Attendance or participation considered part of the course grade
- Grade influenced by late assignments
- Group assignments



Providing Educational Services

School districts may not suspend the provision of educational services to a student as a disciplinary action, whether discretionary or nondiscretionary.

Providing Educational Services

While students may be excluded from classrooms and other instructional or activity areas for the period of suspension or expulsion, districts must provide students with an opportunity to receive education services during that time.

Providing Educational Services

If educational services are provided in an alternative setting, the alternative setting should be comparable, equitable, and appropriate to the regular education services a student would have received without the exclusionary discipline.

Forms of Exclusionary Discipline

- Referral to the office
- In-school suspensions
- Out-of-school suspensions
- Removal to alternative settings
- Expulsions
- Shortened school days

Removal from classroom instruction for disciplinary reasons

What are educational services?

- Homework assignments
- On-line learning
- Tutoring
- Home instruction
- Alternative education
- Content areas

Considerations

How should students access their course work? What are the responsibilities of the district, teachers, students, or parents?

Who is advantaged and who is disadvantaged by this policy or practice?

Are there potential unintended consequences?

Considerations

- **Should the school discipline policy focus on certain courses? Should districts have the option of providing social-emotional learning to students receiving suspensions?**

Considerations

- **Who should provide instruction or support for educational work? What minimum level of support should students receive? What qualifications should the educator have?**

Questions? Comments?



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OSPI
School Discipline Task Force
November 7, 2016

Please write the recommendations do you have regarding the provisions of educational services for exclusionary discipline”

Consideration	Short-term suspension	Long-term suspension	Expulsion	Alternative Education
Teacher qualifications				
Access to materials				

Consideration	Short-term suspension	Long-term suspension	Expulsion	Alternative Education
Minimize academic penalties (grades)				
Transportation				
English learner services				

Consideration	Short-term suspension	Long-term suspension	Expulsion	Alternative Education
Data				
Other				
Other				