

Ohio Association of Pupil Service Administrators

September 20, 2019

Current Trends Affecting Student Discipline

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I. OSERS Aug 2016 Dear Colleague Letter (DCL) on Ensuring Equity and Providing Behavioral Supports to Students with Disabilities

A. Letter determined to be “significant guidance.” What does that mean?

1. From US Department of Education Website:

Significant guidance document – a guidance document disseminated to regulated entities or the general public that may reasonably be anticipated to:

- a. Lead to an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- b. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- c. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- d. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866, as further amended.

B. Why was the DCL Issued?

1. “Recent data on short-term disciplinary removals ... strongly suggests that many children with disabilities may not be receiving appropriate behavioral interventions and support ...in their IEPs.”
2. “[I]n light of research about the detrimental impact of disciplinary removals, including short-term removals, the Department is issuing this guidance to clarify that schools.... [m]ust provide appropriate behavioral supports to children ...who require such supports in order to receive FAPE and placement in the [LRE].”
3. “This letter serves to remind school personnel that the authority to implement disciplinary removals does not negate their obligation to consider the implications of the child’s behavioral needs and the effects of the use of suspensions (and other short-term removals) when ensuring the provision of FAPE.”

C. Summary

1. The DCL emphasizes the requirement that schools provide positive behavioral supports to students with disabilities who need them. It also clarifies that the

repeated use of disciplinary actions may suggest that children with disabilities may not be receiving appropriate behavioral interventions and supports.

2. “When schools fail to consider and provide for needed behavioral supports through the Individualized Education Program (IEP), it is likely to result in children not receiving the free appropriate public education to which they are entitled under federal law. ...Current law allows educators to remove students with disabilities from their classrooms if the student violates a code of conduct. Data indicates students with disabilities are disciplined at far higher rates than their non-disabled peers.”

D. Key Points

1. “Interventions and supports that could assist a child with a disability to benefit from special education may include instruction and reinforcement of school expectations, violence prevention programs, anger management groups, counseling for mental health issues, life skills training, or social skills instruction.”
2. LRE emphasis: “In general, placement teams may not place a child with a disability in special classes, separate schooling, or other restrictive settings outside the regular education environment solely due to the child’s behavior when behavioral supports ...could be provided for that child that would be effective in addressing his or her behavior in the regular education setting. ... Children with disabilities may only be removed from the regular educational environment when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
3. “Behavioral supports are most effectively organized within a multi-tiered behavioral framework that provides instruction and clear behavioral expectations for all children, targeted intervention for small groups, not experiencing success, and individualized supports and services for those needing the most intensive support.
4. Circumstances that may indicate potential denials of FAPE or placement in the LRE:
 - a. IEP team failed to consider the inclusion of positive behavioral interventions and supports in the IEP.
 - b. District failed to schedule an IEP team meeting after reasonable parental request to review the IEP to address behavioral concerns.
 - c. The IEP team failed to discuss the parent’s concerns about the child’s behavior and its effects on the child’s learning

- d. There are no behavioral supports in the child’s IEP, even when the IEP team determines they are necessary for the child.
- e. The behavioral supports are inappropriate (i.e. they are not working)
- f. The behavioral supports are not being implemented
- g. School personnel are implementing behavioral supports that are not included in the IEP and are not appropriate for the child.
- h. When a continuum of placements that provides behavioral supports is not made available (e.g. behavioral supports not provided in the regular education setting) and, as a result, the student is placed in special classes, separate schools or other restrictive placements (home/online instruction)

E. Comments about disciplinary removals:

1. “Research demonstrates that short term removals (suspensions) or other exclusionary measures generally do not help to reduce or eliminate the recurrence of misbehavior. In fact, school suspensions are consistently associated with lower academic performance, student disengagement and drop outs. “
2. “Disciplinary removals may indicate a need to review and revised the child’s IEP to address the behavioral needs.”
3. School personnel should considering whether behavioral supports are needed to address or improve patterns of behavior that impede learning, even if the student is not removed for 10 days.
4. Exclusionary disciplinary measures could include:
 - a. Pattern of office referrals, extended time excluded from instruction (time out) or extended restrictions on privileges
 - b. Repeatedly sending children on “administrative leave” or a “day off”
 - c. Repeatedly sending children out of school with a condition for return (such as a risk assessment or psych evaluation)
 - d. Regularly requiring children to leave school early and miss instructional time (shortened day)

See *In re Millennium Community School*, 116 LRP 11957 (OH SEA 3/25/16). A public charter school violated the IDEA by failing to provide a student with ED and autism with an MDR after the school shortened his school day to resolve his afternoon behavioral incidents.

The school made the decision to shorten his days because he would “spend time in the hall or the office anyway” because of his behavior problems that occurred in the afternoons. Because the decision to reduce the student’s school days to half days was made outside the scope of an IEP meeting, it constituted a constructive removal. Therefore, the school was required to conduct an MDR, obtain consent for any change in placement, and create a plan to ensure that the student received all required services before reducing his schools.

5. Minor instances of misbehavior that are unrelated to issues of child or school safety can and should be addressed through supports and guidance.

F. Technical Assistance Documents

1. Supporting and Responding to Behavior: Evidence-Based Classroom Strategies for Teachers
 - a. Identifies classroom interventions and supports
 - b. Provides empirical evidence and resources to support practices
 - c. Describes systems to collect data on student behavior
 - d. Presents scenarios to describe how teachers may use the strategies with a decision-making guide to support student behavior in the classroom.
2. Positive Behavioral Interventions and Supports: Implementation Blueprint and Self-Assessment

II. HB 318 – Supporting Alternatives for Education (SAFE) Act – Delivered to the Governor July 24, 2018; effective 90 days after signing.

A. Key Provisions

1. Positive Behavior Intervention and Supports (PBIS)

a. PBIS Framework Requirements - ORC §3319.46(B-C)

- i. Defines PBIS, and clarifies that school districts must implement a PBIS framework on a system-wide basis that complies with any policy and standards adopted by the State Board.
- ii. School district PBIS frameworks may focus on data systems, evidence-based curricula, and instructional strategies matched to students’ needs, an expectation by school administrators that classroom practices be linked to and align with the school-wide system, and improving staff climate and culture regarding the role of discipline in the classroom.

2. **PBIS Professional Development** – ORC §3319.237(B)

- a. Within three years after the effective date, school districts must provide professional development or continuing education in PBIS as part of the school-wide implementation.
- b. According to ORC §3319.237(A), this must be provided to:
 - i. Teachers who teach in buildings that serve students in any of grades Pre-k to 3 and who completed a teacher preparation program prior to the bill’s effective date; and
 - ii. All district administrators who serve students in any of grades Pre-K to 3, including the superintendent, building principals, and assistant principals who have not already completed a course of instruction, professional development, or continuing education in PBIS.
 - iii. Local professional development committees must monitor compliance and establish model professional development courses.
 - iv. Institutions that provide teacher preparation programs must include a semester course for all students pursuing a license to teach in grades Pre-K through 5 that includes instruction in PBIS and related topics specified in the bill.
- c. **State Report Card** – ORC §3302.03(C)(2)(h) – Requires ODE to indicate on state report cards whether a school district or building has implemented a PBIS framework in compliance with the bill (no letter grade assigned).

3. **Student Discipline**

- a. **Suspensions** – ORC §3313.66(A) and (K)
 - i. If a student is issued an out-of-school suspension, the school district must (rather than “may” under current law) permit the student to complete any classroom assignments missed because of the suspension.
 - ii. Students serving an in-school suspension must also be permitted to complete any missed assignments, and the student must serve the suspension in a supervised learning environment.
 - iii. The bill specifies that a suspension is an “in-school suspension” only if the student will serve all of the suspension in a supervised learning environment within a school setting.

- b. **Knives** – ORC §3313.66(B)(3), §3313.661(A)
 - i. Under current law, boards of education may adopt a resolution authorizing a school superintendent to expel a pupil from school for bringing a knife to school. If adopted, board policy must define the term “knife.”
 - ii. The bill specifies that this provision applies only to a knife capable of causing serious bodily injury.
- c. **Emergency Removals** – ORC §3313.66(C)(3)
 - i. If a student is removed from a curricular activity or school premises because the student’s presence poses a continuing danger or ongoing threat of disrupting the academic process, a hearing must be held on the next school day (rather than within three school days).
 - ii. As explained below, a hearing is not required for a Pre-K to 3 student if the student is returned to classes and activities on the next school day.
- d. **Pre-K through 3 Emergency Removals** – ORC §3313.66(C)(2)
 - i. If a student in grades pre-kindergarten through grade 3 is removed from curricular activities or school premises, the student may be removed only for the remainder of the school day. The PK-3 student must be permitted to return to curricular and extracurricular activities on the following school day. If districts comply with this requirement, they are not required to hold a hearing for these removals.
 - ii. Districts prohibited from initiating a suspension or expulsion proceeding for a PK-3 student who was removed unless the student committed certain violations described in ORC §3313.668(B)(1)(a) or (b).
- e. **Pre-K through grade 3 Out-of-School Suspension or Expulsion** – A school district is prohibited from issuing an out-of-school suspension or expulsion to PK-3 students except as follows (R.C. 3313.668(B)(1)):
 - i. The student engaged in behaviors described in R.C. 3313.66(B)(2) to (5) (bringing a firearm, or a knife capable of causing serious bodily injury, to school or to school activities, extracurricular events, etc.; committing an act while at school or school activities that is a criminal offense when committed by an adult and results in serious physical harm to persons or property; or making a bomb threat). (R.C. 3313.668(B)(1)(a).)

- ii. For students who have not engaged in behaviors described in R.C. 3313.66(B)(2) to (5), only as necessary to protect the immediate health and safety of the student, the student's classmates, the classroom staff and teachers, or other school employees. (R.C. 3313.668(B)(1)(b).)
- iii. Prior to suspending or expelling a PK-3 student, the principal must consult with a mental health professional under contract with the district or school whenever possible. If the behavior indicates a need for additional mental health services, the principal or district mental health professional must assist the student's parent with locating providers or obtaining those services, including referral to a mental health professional, in any manner that does not result in a financial burden to the district. (R.C. 3313.668(B)(2).)
- iv. PK-3 students who are suspended or expelled must be afforded the same due process prescribed under R.C. 3313.66. (R.C. 3313.668(B)(3).)
- v. A school's authority to issue an in-school suspension to a PK-3 student is not limited by these provisions, provided that any in-school suspension is served in a supervised learning environment. (R.C. 3313.668(B)(4).)

f. Delayed Implementation

- i. An uncodified provision of the bill (Section 9) delays full implementation of the PK-3 prohibition on out-of-school suspensions or expulsions for minor offenses.
- ii. For school years 2018-2019 through 2021-2022, school districts must report out-of-school suspensions and expulsions for PK-3 students to the Ohio Department of Education by three specified categories: serious offenses described in R.C. 3313.66(B)(2) to (5); immediate health and safety; and any other offense ("minor offense").
- iii. For the 2019-2020 and 2020-2021 school years, schools must comply with R.C. 3313.668(B)(2) (mental health consultation and assistance/referral) and (B)(3) (due process). Schools will be considered to be in compliance with R.C. 3313.668(B)(1) (out-of-school suspension or expulsion prohibition) if they reduce out-of-school suspensions and expulsions for minor offenses by 25% in 2019-2020, and by 50% for 2020-2021, using numbers reported in 2018-2019 as a baseline. Full

compliance is required for the 2021-2022 school year and thereafter.

- g. **Treasurer Notice** – ORC §3313.66(D) – A superintendent or principal must notify the board treasurer in writing of an expulsion (rather than an expulsion or suspension) within one school day.
- h. **Zero Tolerance** – ORC 3313.534(A) – School district zero tolerance policies must comply with PK-3 suspension and expulsion limitations (R.C. 3313.668) and PBIS (R.C. 3319.46) provisions.