

Student Fair Access to School Amendment Act of 2018

Summary (updated July 2019)

On July 12, 2018, the District of Columbia enacted uniform school discipline reforms applying to both DC Public Schools (DCPS) and public charter schools—the Student Fair Access to School Amendment Act of 2018 (Law 22-157). This new law helps ensure children with disabilities, children of color, and children in the foster care system will no longer be marginalized by being regularly sent home from school instead of receiving the educational supports they need to stay in the classroom and continue learning. Children’s Law Center, along with members of the Every Student Every Day Coalition, helped shape the legislation, which also drew from the experience of parents, teachers, lawyers and experts in the field to determine how to best keep students in school and learning.

Below is a summary of the new law. Unless otherwise noted, provisions of the law are effective as of August 25, 2018. Some of the changes will go into effect immediately, other reforms will be phased in at later dates, and still others will go into effect only if there is funding available.

Reforms to Shorten Removals & Stop Removals for Non-Violent Behavior

The Student Fair Access to School Amendment Act sets limits on schools’ use of suspensions, expulsions, and involuntary transfers as disciplinary consequences.

Attendance-related Discipline Outlawed: Schools are prohibited from using out-of-school suspensions, expulsions, or involuntary transfers for unexcused absences or late arrivals to schools. However, students can be unenrolled after accumulating 20 or more consecutive full-school-day unexcused absences.

Out-of-School Suspension Limit of 5 Days in Elementary School: The duration of each out-of-school suspension cannot exceed **five consecutive school days** in Kindergarten through Grade 5.

Out-of-School Suspension Limit of 10 Days in Middle & High School: The duration of each out-of-school suspension cannot exceed **ten consecutive school days** in Grades 6 through 12.

Out-of-School Suspension Limit of 20 Days Total in All Grades: Regardless of grade, a student cannot be suspended from school for more than **twenty cumulative school days** in a school year. However, an exception may be made if the head of the LEA provides written justification to the student and parent of the student’s conduct resulted in an emergency removal and written justification is provided by the head of the LEA to the student and parent.

Limits on Exclusionary Discipline Use in Elementary & Middle School (Effective Date: SY2019-2020 for Elementary Schools; SY2020-2021 for Middle Schools): The use of out-of-school suspensions, expulsions, and involuntary transfers in Kindergarten through Grade 8 is limited to incidents where a student's behavior poses a safety or emotional distress concern.

Limits on Exclusionary Discipline Use in High School (Effective Date: SY2020-2021): In Grades 9 through 12, an out-of-school suspension, expulsion, or involuntary transfer cannot be used consequently for any dress code violation, willful defiance, or any incident occurring off school grounds that is not part of a school-sponsored activity (unless the student's behavior poses a safety or emotional distress concern),

Uniform Definitions

The Student Fair Access to School Amendment Act provides uniform definitions applicable to all DCPS and public charter schools.

"Out-of-School Suspension" Definition Includes Partial Days: The "out-of-school suspension" definition clearly includes disciplinary removals from school attendance that are less than full school days and includes "involuntary dismissals." An "involuntary dismissal" is the removal of the student from school attendance for less than half of a school day.

Involuntary Transfers Are Same as Expulsions: The definition of "disciplinary unenrollment" is found in several provisions of the law that limit its use and includes both "expulsions" and "involuntary transfers."

"Willful Defiance" Defined: A lot of research show that students of color are seen as insubordinate, defiant, or disrespectful in situations where their white peers are not seen that way for the same behaviors. As such, the definition of "willful defiance" was included to cover such situations.

Right to Due Process Hearing for Shorter Suspensions

Higher Level of Due Process Required Earlier: For purposes of due process before deprivation of the attending school, a suspension of **six school days or more** is now a "long-term suspension." DCPS must provide a hearing at the Office of Administrative Hearing and public charter schools must provide a comparable type of hearing for any out-of-school suspensions of six days or longer.

Improved Disability Protections

Schools Must Consider whether ALL Disabilities were Root Cause of Behavior: In a manifestation determination review (MDR), all of a student's disabilities, of which the school had prior knowledge, must be considered. Schools must stop only considering the Primary Disability listed on the Individualized Education Program as they determine whether the child's conduct was caused by the child's disabilities.

Lack of Parent Attendance Cannot Prolong Suspensions

Outlaws Extended Suspensions because a Parent Has Not Come to the School: Schools cannot keep children out of school longer than the original suspension because a parent/guardian has not come to the school. This includes requiring a parent/guardian to accompany the student to school or attend a conference/re-entry meeting.

School Policies

The Student Fair Access to School Amendment Act fosters reform in local education agencies' (LEA) policies for school climate and discipline, including an emphasis on positive behavior.

School Policy Changes: LEAs are required to develop more transparent, robust, and evidence-based school discipline policies, in consultation with school personnel, students, and parents. The policies must ensure students can access their educational program and clearly state the due process rights and procedures available to students and parents/guardians. In addition:

- The LEA/school must provide students and parents/guardians a copy of its school discipline policy and explanations of the policy, including explanations of expectations, rights, and responsibilities of students under the policy.
- The LEA/school must make the school discipline policy publicly available, including on the LEA/school's website.

Continuity of Education Plan: Schools are required to have a general plan for continued education for any student suspended (in-school or out-of-school). While the plan can be modified to meet the needs of an individual student, it must ensure students:

- Continue their studies during the suspension and receive all appropriate assignments for the duration of the suspension;
- Can communicate with school personnel about academic work; and
- Can make up any school work missed during the suspension, if it cannot be completed during the suspension.

School and Educator Supports

The Act creates additional supports provided by the Office of the State Superintendent of Education (OSSE) to promote trauma-informed educational settings.

School Safety and Positive Climate Fund: OSSE is required to support schools with technical assistance, high-quality professional development, and the facilitation of postsecondary degree/certificate programs, including a trauma-informed educator certificate program. The fund will be used to support these requirements, as well as additional needed school supports for interventions.

School Supports (Effective Date: Upon funding; was not funded in DC's FY19 budget): OSSE is also required to provide LEAs with any needed additional supports for interventions that allow them to reduce their use of exclusionary discipline.