

September 11, 2012

Via Email: jamai.deuberry@dc.gov

Jamie Deuberry
Office of the State Superintendent of Education
810 First Street, NE, 9th Floor
Washington, DC 20002

RE: Student Code of Conduct

Dear Ms. Deuberry,

Thank you for the opportunity to comment on the proposed rulemaking that was published in the DC Register on August 17, 2012 regarding the student discipline procedures applicable to all publicly-funded schools in the District of Columbia. I am submitting these comments on behalf of Children's Law Center (CLC),¹ which serves more than 2,000 low-income children and families in the District of Columbia every year. The majority of the children we represent attend DC public schools, including many of the charter schools. Many of the children we represent have disabilities that impact their education and many are in foster care. Our comments are based on our experience representing these children and families.

The decision to remove a child from school for disciplinary reasons has weighty and far-reaching consequences. Children who are suspended or expelled will often fall behind in their classes and lose the benefit of the supportive relationships they have developed with teachers, school staff, and peers. Research shows that suspensions and expulsions may actually increase the likelihood that students will misbehave in the future, become truant, and fail to graduate.² National data makes clear that children in foster care and children with disabilities experience suspension and expulsion at higher rates than their peers.³ School exclusion can have particularly destabilizing consequences for these children who are already at risk. As a result, it is essential that school exclusion be used only in the most extreme cases where it is truly required to assure safety.

Given the harm that school exclusion may cause both to individual students and to the city as a whole when our most vulnerable students become disengaged from school, it is essential that DC establish basic standards for discipline that apply to all schools. Several years ago, DCPS established thorough and appropriate discipline regulations that encourage schools to use an array of instructive disciplinary consequences short of exclusion. While we do have some concern that the implementation of the DCPS regulations varies from school to school, the rules provide good guidance and were a significant step in the right direction. There is currently no such guidance for the charter schools. Many of the DC public charter schools do not have appropriate disciplinary policies on the books at all. While some variance in disciplinary strategies could be a healthy expression of charters' ability to innovate, we have found that a significant number of charter schools are harshly punitive without regard for due process or for the role discipline should serve as a constructive intervention that supports students in improving their future behavior. We have also found that some schools do not follow the requirements of the Individuals with Disabilities Act

(IDEA), the federal law protecting the rights of students with disabilities. The inappropriate disciplinary responses we are aware of at charter schools include:

- Malik,⁴ a four-year-old, was suspended for three days from his charter school for kicking off his shoes and crying in frustration. After further incidents involving Malik fighting with a classmate over a toy, the school threatening to expel him. Malik could not understand the concept of suspension and had no idea why he wasn't allowed to go back to school.
- Jasmine, a 12-year-old with undiagnosed major depressive disorder and generalized anxiety disorder, was suspended multiple times from two different charter schools. The administration at the first school threatened to expel Jasmine if her mother didn't find her a new school. So, Jasmine moved to a new charter school and was again suspended many times, even after her mother requested a special education evaluation. When Jasmine finally received the proper evaluations, she was found eligible for special education, but only after Children's Law Center became involved. Until then, both schools had been punishing Jasmine rather than treating her disability.
- Robert, a 14-year-old in foster care and diagnosed with emotional disabilities, was suspended multiple times from his charter school. Some of the infractions for which he was suspended were as minor as talking during quiet time. The school ultimately had him sign paperwork unenrolling himself from the school without even informing his social worker or group home staff.
- Erica, a middle school student, was suspended multiple times for minor infractions. Her mother requested that she be evaluated to determine if she had a disability, but instead of performing the evaluation the school told Erica's mother that they would expel her if she got in trouble again. Erica's mother chose to take her out of the charter school so that she wouldn't have an expulsion on her record.
- Michelle, a high school student with severe emotional disabilities, was expelled from a charter school for trying to burn the school down and trying to kill herself while on school premises. When she enrolled at her new charter school, her parents provided the school with full documentation regarding her emotional needs. The new charter school nonetheless refused to provide her with more than an hour per week of counseling. Instead of providing Michelle with the supports she needed, the school repeatedly suspended her for behavior problems and truancy. When Michelle's mother retained an attorney who filed a complaint requesting that Michelle be moved to a therapeutic school, the school retaliated by calling the Child and Family Services Agency (CFSA) on the mother.
- James, an elementary school student, was suspended multiple times for minor infractions. The school also often called his mother and told her to pick him up early without calling it a suspension. His mother was at risk of losing her job because she had to leave work to go pick him up so many times. When she asked the school to talk to her lawyer before making her come pick him up on one occasion, the school threatened to call CFSA on her.

As the above examples illustrate, there is an urgent need to ensure that all public schools in DC have discipline policies that are clear, consistent, and take into account students' developmental stages and individual needs. We believe that the proposed regulations strike an appropriate balance between the need to ensure that students have equal opportunity to benefit from their schooling regardless of what school they go to and the need to allow charter schools some flexibility to bring new models and ideas to the city. In our comments, we first highlight some of the many strengths of the proposed regulations and then note several areas where we believe the regulations should be strengthened even further.

Strengths of the Proposed Regulations

The proposed regulations appropriately encourage Local Educations Agencies (LEAs) to address disciplinary violations in ways that encourage student engagement and achievement. In particular, we strongly support:

- The requirement that LEAs' discipline policies include the utilization of progressive measures of discipline that are developmentally appropriate (2502.6(a)).
- The requirement that disciplinary responses used by LEAs minimize disruption to students' instructional programs (2502.3).
- The requirement that LEAs use research-based interventions both for individual students and on a school-wide basis (2502.4).
- The requirement that LEAs not implement suspensions before the student has a hearing unless the alleged violation involves violence or a weapon (2503.4).
- The requirement that LEAs only impose suspensions for the most serious classifications of misconduct (2503.6).
- The requirement that LEAs provide students who are suspended with an education plan that allows them to continue to obtain academic credit at the pace they would have if they had not been suspended (2503.4).

We also strongly support the proposed policy's requirements regarding parent and community involvement, including:

- The requirement to provide parents with the disciplinary policy by the first day of school (2502.5)
- The requirement to give parents same-day notice of suspensions and expulsions (2503.2).
- The requirement to give parents notice within 24 hours of all incidents of restraint or emergency separation (2504.7, 2505.4).
- The requirement that each LEA convene a team of professionals and parents to review each incident of restraint or emergency separation (2506).

Recommendations to Strengthen the Proposed Regulations

Limit School Exclusions

While we recognize that the proposed regulations do encourage LEAs to “take into consideration limits on exclusion for behaviors that do not cause serious harm to others” (§ 2503.1), we encourage the Office of the State Superintendent of Education (OSSE) to include more specific limitations on school exclusions. A wealth of research data shows that suspensions and expulsions have serious negative consequences on students’ future behavior and academic achievement. One recent study compared the behavior of two groups of students in an urban public school, finding that students misbehaved more when suspension was used as a punishment.⁵ A study last year involving over one million students in Texas showed that a student who was suspended or expelled for a disciplinary action was twice as likely to repeat his or her grade as a student with the same characteristics who had not been expelled.⁶ Another study found that students who received an out-of-school suspension in middle school were half as likely to graduate on time as students who did not.⁷ Studies also question whether the use of suspensions and expulsions makes schools more conducive to learning and show that students are in more danger outside of school than in school.⁸ Studies also clearly demonstrate that African American students and students with disabilities receive a disproportionate number of suspensions and expulsions, especially under discipline policies that allow for a greater amount of discretion by school staff.⁹ As a result of these and similar findings, the American Academy of Pediatrics and the American Psychological Association recommend that school exclusions should be limited to the most egregious offenses.¹⁰ Additionally, the American Academy of Pediatrics recommends that “for in-home suspension or expulsion, the school must be able to demonstrate how attendance at a school site, even in an alternative setting with a low ratio of highly trained staff, would be inadequate to prevent a student from causing harm to himself or herself or others.”¹¹

Based on these professional recommendations and our clients’ experiences, we recommend that OSSE’s proposed discipline regulations provide clear limits on the use of out-of-school suspensions and expulsions. Providing clear limits on school exclusion will reduce the likelihood that students will be deprived of the opportunity to learn and should make it less likely that suspensions and expulsions will be applied disproportionately to African American students and students with disabilities. We propose that OSSE adopt the following limitations on school exclusions in Section 2503 of the proposed regulations:

- Expulsions should only be used as a response to behaviors that cause serious and clear harm or risk of harm.
- Suspensions should be served in-school unless there is documented evidence that allowing the student to remain in the school setting risks danger to that student or others and that danger cannot be mitigated with reasonable, in-school measures.
- Out-of-school suspensions and expulsions should never be used for preschool or elementary school students.
- Out-of-school suspensions should be limited to three consecutive days and 10 cumulative days for middle school students.

- Out-of-school suspensions should be limited to five consecutive days and 15 cumulative days for high school students.
- Expulsions should be limited to one semester, except expulsions for violation of the federal Gun-Free School Act, which may be up to one year.
- LEA policies should make clear that sending a child home for any portion of the day qualifies as a suspension for purposes of due process requirements.

Limit Restraint and Emergency Separation

We strongly support OSSE in issuing regulations to guide the use of restraint and emergency separation in all DC schools. We agree with OSSE that both restraint and emergency separation should only be used in cases where they are necessary to prevent serious physical harm, and that they should never be used as a disciplinary intervention. However, we believe that OSSE should take additional steps to ensure that the use of restraint and emergency separation is limited to only cases of true emergency and does not harm students.

First, we recommend that any LEA that plans to use restraint or emergency separation as part of its crisis intervention plan should have to apply to OSSE for permission to do so. As part of their application, the LEA should provide documentation that school personnel have been trained in appropriate techniques for restraint and emergency separation. The LEA should also provide documentation that any school building where the LEA plans to use emergency separation includes an appropriate space for such separation, free of dangerous objects and providing a way for school personnel to directly supervise the student throughout the period of separation. The application should also include documentation of the LEA's policy regarding use of restraint and emergency separation, specifically documenting the alternative interventions that should be used before restraint and separation and also including specific provisions for students with disabilities. Only upon approval of an LEA's application should an LEA be authorized to use restraint and emergency separation.

Regarding emergency separation, the proposed regulations should require that any student in emergency separation be supervised by someone who can see the student at all times to ensure that the student does not get hurt, in line with the U.S. Department of Education's recent recommendations.¹² The duration of emergency separation should be limited to one hour total, and the regulations should also keep the current requirement at 2505.3(b)(3) that the situation be reassessed every 10 minutes.

For students who have an Individualized Education Programs (IEPs) or 504 plans, the proposed regulations should make clear that restraint and emergency separation may only be used if authorized by the student's Behavior Intervention Plan (BIP), as required by the Office of Special Education Programs (OSEP) guidance.¹³

We support the proposed regulations' emphasis on community and parent involvement in decision-making about the appropriate use of restraint and emergency separation, and further recommend that LEAs include their policies on restraint and separation in their student handbooks

so that parents are fully informed when choosing schools. The reports generated by each LEA's designated team for reviewing restraint and emergency separation should be made available to the public, with any identifying student data redacted. Finally, the applications that we recommend OSSE require for any LEAs desiring to include restraint and emergency separation in their school-wide crisis response plan should be made available to the public upon request.

Forbid Push-Out

DC has a continuing problem with charter schools and out-of-boundary DCPS schools telling parents that they must withdraw their children or else they will be suspended or expelled. This school push-out in our experience disproportionately affects students with disabilities and most often happens when LEAs are not willing to provide the necessary supports to allow a student with a disability to succeed. Jasmine's and Erica's stories illustrate this practice. We urge OSSE to add to these regulations a specific prohibition against LEAs threatening to punish students with long suspensions or expulsions if their parents do not withdraw them from the school. As we have suggested in our comments on previous iterations of these regulations, we suggest that OSSE add a new section at 2502.6(o) stating:

Prohibitions on school officials threatening a student or his/her parent or guardian with any disciplinary action if that student is not withdrawn from the school or local education agency.¹⁴

Technical

The regulations require each LEA to adopt a "school-wide crisis intervention plan" (§ 2502.) but do not appear to describe what elements such a plan must include. We recommend that the proposed regulations provide sufficient guidance to make clear to LEAs and the public what a school-wide crisis intervention plan must entail, especially because that plan is likely to be a critical component of the LEA's positive behavior support strategy.

Conclusion

School disciplinary decisions have tremendous consequences on children's lives. In order to ensure that these decisions are made with fairness and consistency across DC, I encourage OSSE to adopt the recommendations above.

Respectfully,



Sharra E. Greer
Policy Director

¹Children's Law Center works to give every child in the District of Columbia a solid foundation of family, health and education. We are the largest provider of free legal services in the District and the only to focus on children. Our 80-person staff partners with local pro bono attorneys to serve more than 2,000 at-risk children each year. We use this expertise to advocate for changes in the District's laws, policies and programs. Learn more at www.childrenslawcenter.org.

² See, e.g., "Putting Kids Out of School: What's Causing High Suspension Rates and Why They Are Detrimental or Students, Schools, and Communities." Open Society Institute—Baltimore. "Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement," Justice Center: The Council of State Governments and Public Policy Research Institute, July 2011.

³ See, e.g., National Working Group on Foster Care and Education, "Education is the Lifeline for Children in Foster Care," July 2011, p.3, available at <http://www.casey.org/Resources/Publications/pdf/EducationalOutcomesFactSheet.pdf>; Connecticut Appleseed, "Keep Kids in School: Improving School Discipline," p. 4, available at <http://www.ctappleseed.org/pdfs/S2PP-ExecutiveSummary.pdf>; Texas Appleseed, "Texas's School to Prison Pipeline: Dropout to Incarceration," 2007, p. 5, available at <http://www.texasappleseed.net/pdf/Pipeline%20Report.pdf>.

⁴ Names have been changed.

⁵ "Putting Kids Out of School: What's Causing High Suspension Rates and Why They Are Detrimental or Students, Schools, and Communities." Open Society Institute—Baltimore, p. 6.

⁶ Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement, Justice Center: The Council of State Governments and Public Policy Research Institute, July 2011, p. xi.

⁷ OSI report, p. 7.

⁸ "Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations," American Psychological Association Zero Tolerance Task Force, Dec. 2008, p. 854.

⁹ "Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations," American Psychological Association Zero Tolerance Task Force, Dec. 2008, p. 854.

¹⁰ "Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations," American Psychological Association Zero Tolerance Task Force, Dec. 2008, p. 858. "Out-of-School Suspension and Expulsion," American Academy of Pediatrics Committee on School Health, p. 3.

¹¹ "Out-of-School Suspension and Expulsion," American Academy of Pediatrics Committee on School Health, p. 3.

¹² Restraint and Seclusion Resource Document, U.S. Department of Education, p. 19, available at <http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.

¹³ 50 IDELR 228 , 108 LRP 33624, *Letter to Anonymous*, Office of Special Education Programs, March 17, 2008.

¹⁴ **Bold** indicates proposed addition and ~~strikethrough~~ indicates proposed deletion.