

NYSED: INCREASE HOURS OF ALTERNATIVE INSTRUCTION FOR SUSPENDED STUDENTS

INSIGHT

The New York State Education Department (“NYSED”) recently released a “Formal Opinion of Counsel” regarding the number of instructional hours school districts must provide to students who are suspended from school.

Education Law § 3214(3)(e) requires that a student of compulsory school age who is suspended from school receive alternative instruction. Such instruction must be substantially equivalent to that received by the student prior to the suspension. The equivalency of the instruction is determined on a case-by-case basis and based on the student’s circumstances.

The Commissioner of Education previously opined that, in general, a minimum of five hours of weekly alternative instruction (i.e., one hour daily) for elementary students (grades K through six) and a minimum of ten hours of weekly alternative instruction (i.e., two hours daily) for secondary students (grades seven through twelve) was considered sufficient. However, on October 10, 2023, NYSED’s Office of Counsel issued an opinion that the minimum amount of alternative instruction to be provided to suspended students should conform with the recently amended Commissioner’s regulations for the minimum amount of instruction for students in home, hospital, or institutional settings. Accordingly, the Office of Counsel opined that the minimum amount of instructional hours during suspension for elementary students should be increased from five to ten hours per week (i.e., from one to two hours per day) and for secondary students from ten to fifteen hours per week (i.e., from two to three hours per day). The Office of Counsel reminds districts that these represent the minimum requirements, and ultimately the amount of alternative instruction should be determined on a case-by-case basis.

Although this opinion from the Office of Counsel does not represent a change in law, it is anticipated that future Commissioner’s appeals will adopt this interpretation related to the minimum requirements for alternative instruction.

Harris Beach’s Education team is following this and other education issues. If you have any questions about this legal alert of related matters, please contact attorney Anne M. McGinnis at (585) 419-8613 and amcginnis@harrisbeach.com; attorney Jeffrey J. Weiss at (716) 200-5141 and jweiss@harrisbeach.com; or the Harris Beach attorney with whom you usually work.

This alert is not a substitute for advice of counsel on specific legal issues.

Harris Beach has offices throughout New York state, including Albany, Buffalo, Ithaca, Long Island, New York City, Rochester, Saratoga Springs, Syracuse and White Plains, as well as Washington D.C., New Haven, Connecticut and Newark, New Jersey.

To read more from our Education Team:

[Podcast: New York Schools' Obligation to Provide Special Education Services Through Age 22](#)

[Top 10 Special Education Issues for the 2023-24 School Year](#)

[New York Issues Legal Opinion that School Districts Provide Special Education Services Until Age 22](#)

[New York Adopts New Regulations on Prohibition of Corporal Punishment, Aversive Interventions, Prone Restraint and Seclusion](#)

[New York State Updates Guidelines on Transgender and Gender-Expansive Students](#)

[U.S. Supreme Court Eases Pathway for Parents of Students with Disabilities to Initiate Lawsuits Seeking Monetary Damages from Public School Districts](#)

■ AUTHORS

Anne M. McGinnis, Ph.D.

Member

(585) 419-8613

amcginnis@harrisbeach.com

Jeffrey J. Weiss

Member

(716) 200-5141

jweiss@harrisbeach.com

Attorney Advertising. Prior results do not guarantee a similar outcome.
© 2022 Harris Beach PLLC
Content current as of October 17, 2023 5:49 am