

Student Discipline and The Emphasis on Restorative Justice

Westchester Putnam School Boards Association (WPSBA)

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Board of Regents Releases Report Recognizing Racial Disparities in School Discipline in New York State

- In December of 2022, the Regents released a report that addressed, among other things, findings in 2019 that recognized racial inequities in discipline across the State.
- A Task Force was formed to examine data related to student exclusionary discipline across the State; it found that exclusionary discipline was administered in a biased and inequitable manner.
- The inequities were seen when comparing white students to black students and, also, general education students to classified students.
- Black male students with special education needs were two times more likely to be suspended than white students with disabilities and ten times more likely to be suspended than white students without disabilities.
- The Task Force found that in NYS, 23 days are lost due to out-of-school suspensions for every 100 students; it is 29 days lost for students who are multi- or biracial; 32 days for American Indian/Alaska Native students; and 47 days for every 100 black students.

Board of Regents Recommendations for Reducing Disparities in and Reforming School Discipline in New York State

- The Task Force developed short-term recommendations to reduce the use of exclusionary discipline and promote alternatives. They include:
- Training and Preparation
 - Amending State regulations regarding pre-service training and certification requirements for all school-based employees, from administrators and teachers to aides;
 - Allocation of permanent legislative funding to develop and deliver training and preparation in effective school discipline;
 - Development and implementation of plans at colleges, universities, and local school districts to recruit, prepare, graduate, and retain diverse teaching candidates, leaders, and counselors

Board of Regents Recommendations for Reducing Disparities in and Reforming School Discipline in New York State

- Recommendations Related to Changes in Practice
 - Amend the NYS Education Law to reframe the model of discipline to be more proactive, developmentally appropriate, positive, and supportive, allowing students to learn from their mistakes
 - Support educators in creating environments that are proactive, developmentally appropriate, positive and supportive of alternatives to discipline that allow students to learn from their mistakes
 - Support schools in building community understanding, buy-in and participation in changes to practice

Board of Regents Recommendations for Reducing Disparities in and Reforming School Discipline in New York State

- Recommendations Related to Codes of Conduct
 - Amend the NYS Education Law and Commissioner's Regulations to provide model language regarding discipline that demonstrates inclusivity, cultural responsiveness, proactive, developmentally appropriate, positive, and supportive language
 - Amend the NYS Education Law and Commissioner's Regulations to limit exclusionary discipline and require proactive discipline responses to misconduct.
 - Codes of Conduct should be amended to include language that focuses on building a positive, inclusive climate that addresses inequities for students and families who have been traditionally marginalized

Board of Regents Recommendations for Reducing Disparities in and Reforming School Discipline in New York State


- Recommendations Related to Data Collection and Analysis
 - Create a technical assistance center/provider to facilitate implementation of the recommendations surrounding exclusionary discipline
 - Develop a Data Analysis Toolkit to facilitate implementation of the recommendations
 - Ensure best practices and responsible use of data collection and reporting
 - Collect additional key data variables at the school and district level in addition to the detailed demographic data provided by NYSED to schools
 - data related to repetitive exclusionary discipline of students;
 - reasons for classroom removal, suspension or violations;
 - conditions that led to the referral;
 - classroom management supports available for staff;
 - the number and type of proactive interventions provided to the student after removal from class but before suspension;
 - interventions to support academic progress when student is removed; and
 - referrals and engagement of the SRO, if any

Board of Regents – “Supporting Student Wellbeing and Equity: Effective School Discipline Practices from New York State School Districts”

- Presented at the February, 2023 Board of Regents Meeting
- Included discussion on disparity in discipline, including based on race/ethnicity
- Specific District presentations addressing:
 - Proactivity v. reactivity
 - Data analysis on discipline
 - Staff training on trauma responsive systems, restorative practices, youth mental health, therapeutic crisis intervention
 - Prevention and intervention

Early Returns/Consent to Discipline

- ❖ Commissioner recently held that if a student is offered an early return to school IF they voluntarily participate in counseling, the District ***must*** ensure that there is a cost-free option.
- ❖ The Commissioner stated that it may create a financial hardship for families and therefore it raises substantial equity concerns.
- ❖ The Commissioner specifically stated that this cost-free option includes direct delivery by school personnel.
- ❖ *Appeal of A.W.*, 62 Ed. Dept. Rep. Decision No. 18,256 (2023)



RECENT STUDENT DISCIPLINE DECISIONS OF THE CURRENT COMMISSIONER OF EDUCATION

Appeal of B.A., Decision No. 18,209 (2022)

- Facts:
 - Student A is out on suspension and receives a message from Student B via social media app which reads “Should I jump [Student C]?”
 - Student A responds “Go ahead...U show film it tho if u do”
 - Student B responds “I will”
 - Student A responds “Ok send that s*@& to me after u do it”
 - Student B responds “Ok”
 - Student A responds “Ima laugh my as[sic] off so hard if u bear his a*@”
 - Student B attacks Student C the next day
 - The principal suspends Student A for “co-conspiring” to injure Student C and after a superintendent’s hearing, Student A was suspended for 11 ½ months with the possibility of return in 6 months
 - Student A’s family appeals

Appeal of B.A., Decision No. 18,209 (2022) (cont.)

- On appeal, the Commissioner found Student A did not “conspire” with Student B, as conspiracy requires an agreement to do something illegal or wrongful.
 - The Commissioner reported the district presented no evidence that Student B only acted because Student A and he made an agreement.
 - The Commissioner reported the district presented no testimony from Student B.
 - The Commissioner reported Student A testified that he did not think Student B would listen to him.
 - The Commissioner found that, at most the district demonstrated that Student A encouraged Student B.

Appeal of B.A., Decision No. 18,209 (2022) (cont.)

In the decision, the Commissioner wrote :

“Students must understand that impulsive and juvenile comments can have real world consequences. ‘Punitive and exclusionary’ suspension, however, will not impart that lesson. The facts of this appeal proves the point: the student sent the messages at issue while suspended for a previous infraction. Learning and success are not solely academic in nature; they are dependent upon the social-emotional support that school districts are required to provide. In this respect, I take notice [the district’s] Core Beliefs, the second of which – ‘every student can learn and achieve success – is inclusive of *all* students. Thus, respondent is responsible for ensuring that *all* students have equitable access to interventions that will support their holistic academic and social-emotional development as learners and developing, contributing members of society. Instead of punishment, respondent should have helped the student ‘learn to assume and accept responsibility for [his] own behavior’ while simultaneously establishing remedial supports to foster, and thus augment, the student’s emotional intelligence. Punishment for its own sake does not reform; it only creates cycles of resentment and distrust.”

Appeal of E.R., Decision No. 18,309 (2023)

- **Facts**

- Student ate lunch in school library as usual
- Two teens, who turned out not to be students of the school, told him they had weapons and would use them against him if he told anyone
- Non-students showed student a video of them assaulting someone
- Student accompanied one of the non-students to the east gym locker
- Non-students eventually discovered by district – search revealed one had a taser and pepper spray, and another had a butterfly knife

- **Hearing**

- Student was charged with (1) being with a non-student who was not authorized to be on school grounds and (2) escorting non-student to east gym locker room while knowing non-student was in possession of a weapon.
- Student was found guilty of only charge 2, and suspended for the remaining 5.5 months of the school year

Appeal of E.R., Decision No. 18,309 (2023) (cont.)

- On appeal, the Commissioner found that the student admitted the conduct of which he was found guilty, so the record supported a guilty finding.
- However, the Commissioner further found mitigating circumstances rendered the penalty excessive, and “so shocking to the conscience as to warrant substitution of the Commissioner’s judgment for that of the board of education.”
- The Commissioner accepted the student’s explanation that he feared for his safety and found no support in the record for finding that the student willingly joined the non-student.
- The Commissioner ordered that the records of both the short and long-term suspensions to be expunged.

Appeal of M.W., Decision No. 18,068 (2022)

- Student suspended for 30 days for sending inappropriate electronic communications
- Long-term suspension expunged due to denial of fair hearing because:
 - MDR held prior to factfinding, presupposing student's guilt
 - Superintendent did not ensure he served as neutral hearing officer (responded to questions from parent and advocate as if he was the District's representative)
 - Superintendent failed to enter evidence into hearing record
 - Superintendent made statements reflecting unwillingness to consider parent's arguments (saying arguments were "technicalities" or "troublesome")
 - District witness read testimony from prepared statement, but despite request by parent's advocate, statement was not provided to advocate or entered into evidence.
- Commissioner also ordered previous suspensions that had been found to be manifestations of student's disability expunged

Appeal of J.R., Decision No. 18,091 (2022)

- Student suspended for 7 months for (1) possession of vaping pen/vaping substance and (2) attempted sale of drugs
- Only evidence presented was testimony of building principal, who stated:
 - Parent of another student told him that her child (the “buyer”) agreed to buy “acid” from the student.
 - The buyer’s parent displayed screenshots of a social media conversation between the student and buyer.
 - The principal and the parent contacted police, who conducted a “forensic ... scan” of the buyer’s phone revealing a social media chat between the student and buyer.
 - According to the principal, in that chat, the student told the buyer to bring \$5 to school the next day for the acid tab, and the student would bring the acid tab to school to give the buyer the day after.
- The school introduced no documentary evidence and the principal could not identify the date of the alleged sale

Appeal of J.R., Decision No. 18,091 (2022) (cont.)

- Hearing officer denied requests by the student’s parent to subpoena the buyer’s parent and the police officers involved
- Despite student’s admission on the first charge, the Commissioner ordered record expunged – 7-month suspension for vaping “shocks the conscience”
 - Failure of hearing officer to issue subpoenas for parent and police officers constituted abuse of discretion
 - Although “[h]earsay evidence is admissible in administrative hearings, and hearsay alone may constitute competent and substantial evidence so long as ‘such evidence is sufficiently relevant and probative or sufficiently reliable and is not otherwise seriously controverted,’ here, the District’s evidence was entirely hearsay, much of it double or triple hearsay
 - Given this limited evidence, the buyer’s parent and the police would likely have been able to offer testimony or evidence directly relevant to the student’s guilt.

Appeal of J.R., Decision No. 18,091 (2022) (cont.)

- In the Decision, the Commissioner wrote:
 - While the parents ultimately prevailed on appeal, these are pyrrhic victories for parents whose children were improperly suspended for weeks or months. School districts should carefully consider the nature and quality of proof against students before pursuing long-term suspensions. Should they choose to proceed, school districts must ensure the assiduous protection of students' due process rights.

Appeal of J.F., Decision No. 18,272 (2023)

- Facts

- Middle School Student B reported that Student A made a threat during lunch a few weeks previously to shoot up the school and claimed to have a list of people. Student B said Student C heard it, too. Parent of Student B confirmed that Student B reported to the allegations to her a few weeks prior.
- Student C reported Student A said he was going to shoot up the school on June 3.
- Student A denied the threats, and said he had a “character list” of “people he intended to draw.”
- Three other students who sat at the lunch table denied Student A made any threats.
- Student was suspended for 5 days, from June 2-8, and hearing was held.
- Hearing evidence consisted of principal’s hearsay testimony regarding the investigation including the conflicting reports of the students, and a written summary of statements of students and staff. Student A testified and denied the charge.

Appeal of J.F., Decision No. 18,272 (2023) (cont.)

- Hearing officer found student guilty and recommended suspension through 1/27/23, with the “option” to return in September 2022, if the student participated in counseling and threat assessment, and completed an alternative education program. Superintendent adopted these findings and recommendations
- Appeal sustained
 - Hearing officer failed to address the conflicting evidence, given that Students B and C reported the threats, but three other students denied it had occurred
 - Hearing officer failed to make credibility determination regarding Student A
- District failed to meet its burden of producing competent and substantial evidence that the student engaged in the charged conduct

Appeal of C.W., Decision No. 18,121 (2022)

- Student permanently suspended for incident involving display of suicide note, statement that he had a list of students he did not like on his phone, and asking fellow student if she had a gun he could use
- Five-day suspension expunged for failure to comply with Education Law Section 3214 procedures
- School District's 15-day timeline for appeal of long-term suspension constituted denial of due process
- In lieu of remanding proceeding to Board for further review, Commissioner noted that student was not permanently suspended, as he had been placed by the district's CSE in a BOCES program. Moreover, permanent suspension is only appropriate if it is "is necessary to safeguard the well-being of other students." The district demonstrated it did not believe this was true, since the CSE enrolled him in a program with other students. As the appeal had been pending for nearly a year, the Commissioner ordered suspension expunged.

Appeal of C.W., Decision No. 18,253 (2023)

- Part 2
 - Fifteen days after the Commissioner expunged the permanent suspension, the Superintendent issued letter banning the student from school grounds absent written permission from the principal or superintendent, because his “presence on school property pose[d] serious and significant safety concerns to the school community”
 - School boards do have the authority to “impose reasonable restrictions on individuals’ access to school property”
 - This does not apply to resident students, who have a constitutional right to a sound basic education
 - Any restriction of a student’s right to access school grounds must be in conjunction with suspension.
 - In the Decision, the Commissioner wrote:
 - While it is undeniable that ‘our nation is beset by an epidemic of such shootings’, and ‘school officials [must] retain the ability to protect their students and staff,’ these sentiments do not provide districts with unfettered license to disregard students’ rights.

Appeal of P.M., Decisions No. 18,373 (2024)

- In June, 2023, teacher asked two students to stop pushing each other in the hallway. Each student then pushed the teacher.
- P.M. was suspended from the start of 2023-2024 school year through 11/10/23.
- Commissioner noted that pushing is unacceptable. But found that the push was “innocuous.” The record indicated that the students were jokingly pushing one another in the hallway, and when the teacher asked the students to stop, the teacher was pushed by the students, causing her to take a few steps backward. Students testified they had a good relationship with the teacher, no one was harmed, and they had since apologized to the teacher.

Appeal of P.M., Decision No. 18,373 (2024)

- Commissioner noted that the District presented no witnesses/evidence to rebut the student's testimony, and the teacher did not testify or submit an affidavit.
- Commissioner said the student engaged in innocent, if ill advised jocularity that did not warrant a long term suspension.
- Commissioner rebuffed District's argument that the Commissioner has routinely held that a lengthy suspension is warranted when there is physical violence by a school. The Commissioner said this argument "presupposed that the student's conduct can be characterized as 'violent'", which was not supported in the record
- Commissioner found that the suspension was shocking to the conscience and was to be expunged from the student's record

Appeal of D.W., Decision No. 18,370 (2024)

- 9th grade student recorded a 4 second video in the school cafeteria of a school security guard breaking up an altercation between 2 students using her personal cell phone.
- Student was suspended for 1 day. Commissioner sustained the appeal for insufficient notice of an informal conference.
- Commissioner stated: “I am compelled to comment on the superintendent’s opinion that the student’s conduct “require[d] a disciplinary response that [was] a deterrent not only to the student ... but also to the rest of the student body should there be subsequent incidents.” Given the confidentiality of student disciplinary records, suspensions cannot serve as a “deterrent” to others.”