

Student Discipline



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To Begin ...

When you think about problem-solving around student discipline in your school(s), what comes up for you?

- Please jot down 2-3 issues/scenarios.
- Be as specific as possible.
- Shorthand is fine – these examples are for you. Hopefully, they will help you think about what you would like to most get out of this session.

Civil Rights Data Collection — Understanding The Data on Student Discipline

Annual Data Collection

USED OCR collects civil rights data every year from all schools and all LEA's. This year's submission deadline was April 8th. You and your teams are likely very familiar with the CRDC website, but just in case:

<https://www2.ed.gov/about/offices/list/ocr/data.html>

Report on Discipline for 2017-2018 School Year

- Exclusionary discipline practices down 2%, BUT
- School-related arrests, expulsions with educational services, and referrals to law enforcement increased.
- Boys, black students and students with disabilities were suspended and expelled disproportionately
- 11,205,797 school days missed due to suspension
- Boys and black students disproportionately referred to law enforcement/arrested at school
- Black students disproportionately transferred to alternative schools

**Source: U.S. Department of Education Office for Civil Rights , An Overview of Exclusionary Discipline Practices in Public Schools for the 2017-18 School Year, June 22, 2021

Due Process – Legal Overview: Federal Authorities

14th Amendment Due Process

- 14th amendment prohibits the government and its administrative agencies from depriving an individual of life, liberty or property without due process of law
- This prohibition has been extended to schools and student discipline (particularly removals from school due to suspension)
- *Goss v. Lopez*, 419 U.S. 565 (1975)
 - Supreme Court established that due process applies when suspended from school
 - At a minimum, students must be given NOTICE and an OPPORTUNITY TO BE HEARD
 - Drew a distinction between long term suspensions (more than 10 days) and short-term suspensions (10 days or less) – long term suspensions may require more formal procedures

Due Process – Legal Overview: State Authorities

- [Idaho Code Section 33-205](#) (pp.3-4) sets forth the statutory requirements that apply when a student is expelled or suspended, including due process protections such as a notice requirement, the opportunity to be heard and, in the case of expulsion, the opportunity to engage counsel, present evidence and cross-examine witnesses.
- [The Educator’s Guide to Student Discipline and Supports](#) – Idaho State Department of Education, Reviewed August 2020
 - Due process discussed in detail (pp.56-67)
- [Idaho Compilation of School Discipline Laws and Regulations](#) – USED, March 31, 2021

Due Process in Practice: Short Term Suspensions

Prior to suspending the student,

- (1) student must be given oral or written notice of the charges;
- (2) student must be given an opportunity to present his/her side of the story and/or an explanation for his/her behavior;
- (3) no delay is necessary between the time notice is given and the opportunity that the student is given to be heard; and,
- (4) student is not entitled to counsel, not entitled to confront and cross examine witnesses or to call his own witnesses

Exception to prior notice requirement – if a student's presence poses a continuing danger to persons or property or an ongoing threat of disruption

Due Process In Practice: Long Term Suspensions/ Expulsions (Notice)

Notice

- Statement of the specific grounds for discipline and nature of the evidence on which the proposed disciplinary action is based
 - Courts are split on whether this has to be in writing, whether the names of witnesses and the thrust of their testimony must be included
- There must be sufficient time between the notice and hearing
 - No consensus on what amount of time is sufficient - depends on nature and complexity of the charge, the type of evidence needed to answer the charge and its availability, and the time needed to gather witnesses
 - Amount of time should be “reasonable”
 - School policies should include a standard period of time for disciplinary hearings but allow flexibility under exceptional circumstances

Due Process In Practice: Long Term Suspensions/ Expulsions (Hearing)

Opportunity to be Heard – Hearing

- More formal than what is required for short term suspensions, but not overly formal
- Final decision maker must be impartial
 - Can be a school official
 - Should not be personally biased
 - Schools should avoid using investigator as final decision maker
- Right to counsel
- No right to cross-examination absent compelling circumstances
- Decision maker can only consider evidence presented at the hearing, which the student had an opportunity to respond to
- Student must be allowed to present evidence, including evidence of mitigating factors

- Burden of proof = substantial evidence or preponderance of the evidence

Due Process in Practice: Long Term Suspensions/Expulsions

(Overview of Entire
Process)

Long Term Suspension/Expulsion Process

- 1) Administrator meets with student to discuss incident/get student's side of the story
- 2) Recommendation for long term suspension/expulsion made – student suspended pending hearing
- 3) Parent provided with written recommendation and evidence that school will rely on at the hearing
- 4) Hearing held promptly thereafter
- 5) At the hearing
 - School administrator or designee will present information relied upon to support recommendation
 - Student will be given an opportunity to respond to that information and present any information he/she wants considered; this can include mitigating evidence
 - Student may be represented by an attorney
- 6) Parent notified in writing of final decision promptly after hearing

Civil Rights Implications

Federal law prohibits public school districts from discriminating in the administration of student discipline based on certain personal characteristics

Title VI of the Civil Rights Act of 1964 – race, color, national origin

Title IX of the Education Amendments of 1972 – sex

Section 504 of the Rehabilitation Act of 1973; Title II of the Americans with Disabilities Act of 1990 – disability

Schools must identify, avoid and remedy discriminatory disciplinary practices to ensure that all students are provided with equal educational opportunities

Intentional Discrimination

School has discipline policy that is discriminatory on its face – explicitly treats students differently based on race, national origin, color, disability, or sex

School has discipline policy that is neutral on its face but school administers the policy in a discriminatory manner

- (1) Similarly situated students of different races are disciplined differently for the same offense
- (2) Selective enforcement of a facially neutral policy against students of one race
- (3) School policy is adopted with the intent to target students of a particular race for invidious reasons
- (4) Teachers or administrators act based on racially discriminatory motives

Is there a legitimate, nondiscriminatory reason for the different treatment?

FACT PATTERN: Intentional Discrimination – Real-Life Application

- Two students in a fight – one white, one black – both have similar disciplinary histories
- Black student receives 3 day suspension; white student receives 2 day suspension
- Looks like different treatment, BUT...is there a legitimate nondiscriminatory reason?
 - What if black student instigated the fight?
 - Is there evidence to support this? Has the school treated instigators more harshly in other situations?

Unintentional Discrimination

Rule

- Schools violate federal civil rights laws when they implement facially neutral policies and practices that have an unjustified adverse impact against students on the basis of race, color, national origin, disability or sex (Disparate Impact)

Three Part Test

- Is there an adverse impact – look for disproportionality
- Is the discipline policy necessary to meet an important educational goal
- Are there comparably effective alternative policies or practices that would meet the school's stated educational goal with less of an adverse impact

Examples of Policies That Can Raise Disparate Impact Concerns

- Mandatory consequences
- Policies that prevent students who are involved in the juvenile justice system from enrolling
- Policies that impose out of school suspensions or expulsions for truancy

FACT PATTERN: Unintentional Discrimination – Real-Life Application

- Zero tolerance tardy policy: > 5 minutes tardy to class results in spending remainder of class period in principal's office; automatic 1 day suspension after 5 tardies
- Asian-American students tend to have longer commute to school and are tardy more often than white and black students – losing more instructional time
- School's goals in tardy policy:
 - reducing disruption caused by tardiness,
 - encouraging good attendance, and
 - promoting a climate where school rules are respected
- Are these important educational goals?
- Is this policy reasonably likely to reduce tardiness?
- Is there another way to reduce tardiness with less of an adverse impact?

Enforcement

Who Enforces

- Department of Justice's Civil Rights Division (DOJ)
- Department of Education's Office of Civil Rights (OCR)

Information that DOJ and OCR Examine When Investigating These Issues

- Written policies and unwritten practices
- Data indicating number of referrals to administrators and/or law enforcement
- Discipline incident reports
- Student discipline records and discipline referral forms
- School discipline data disaggregated by subgroup, offense, other relevant factors
- Interviews

Now What?

The US Department of Education issued guidance in 2014 (rescinded by Trump administration) with recommendations for schools to consider in order to avoid discriminatory disparities in discipline – Biden administration likely to issue new guidance similar to this.

Climate and Prevention

Take a proactive approach to student behavior/discipline

PBIS

Social and emotional learning

Referral for tiered interventions as needed

Use of programs such as peer mediation and restorative justice

Training for all school staff on the following topics

Evidence-based techniques on classroom management, conflict resolution and de-escalation approaches

The school's written discipline policies and how to apply it equitably

Cultural awareness training

Targeted training for struggling teachers

Appropriate use of law enforcement – SROs are not there to administer routine student discipline



Now What?

Clear, Appropriate, and Consistent Expectations and Consequences

- Nondiscriminatory, fair, and age-appropriate discipline policies
- Include a wide range of measures that can be taken to improve student behavior prior to disciplinary action
- Clearly define offenses and penalties based on specific and objective criteria; consequences should be proportionate to misconduct
- Clear process for referrals
- Designate individuals with authority to assign consequences
- Address distinction between first time offenders and repeated offenders
- DUE PROCESS

Now What?



Communicating with and engaging school communities

Involve all stakeholders in the development and implementation of policies

Provide policies to students and families in an easily understandable format

Process for notifying parents of incidents and consequences

Post discipline policies on school website; provide policies to parents

Translate all policies and related documents to ensure access to individuals with limited English proficiency; provide interpreters for discipline-related meetings



Emphasize positive interventions over student removal

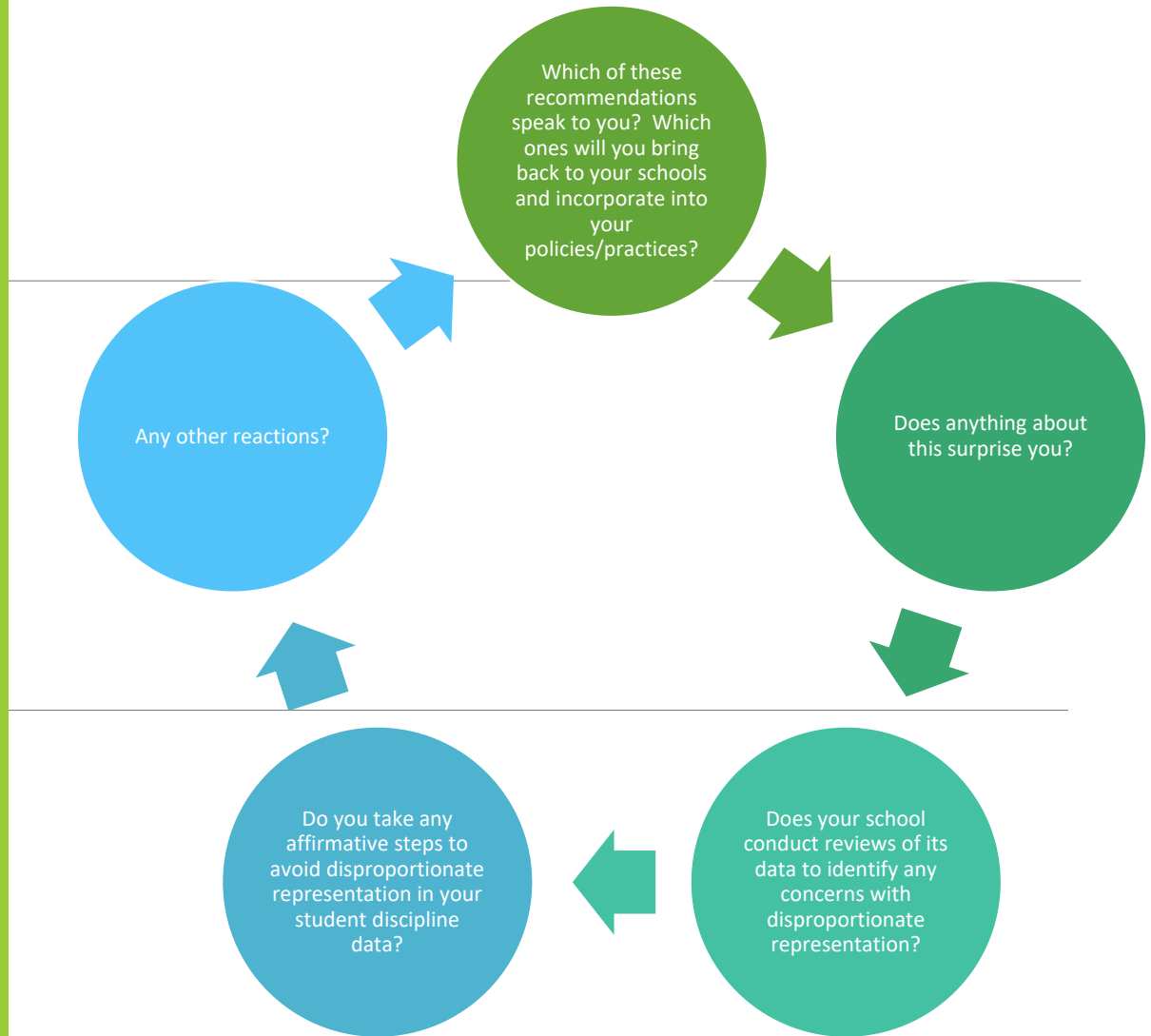


Now What?

Equity and Continuous Improvement

- Monitoring and self-evaluation
 - Regularly evaluate your discipline policies and their impact – revise policies whenever possible to limit disparate impact
 - Periodic review of discipline referrals and consequences to ensure fair application of policies
- Data Collection and Responsive Action
 - Collect and review data and investigate as necessary
 - If disparities are identified, develop a plan to determine what modifications to the school's discipline policy would address those disparities


Reactions



To Close ...

Going back to the 2-3 issues/scenarios you jotted down at the beginning of the session, did we address them?

- If not, please keep them close at hand. At the end of the day, we would like to hear what issues we have not addressed and what concerns remain for you.



As you reflect on this session, what 2 follow-up actions will you take back to your schools?