

Addressing Disproportionate Discipline for Minority & Special Education Students

Presented by: Esperanza Lujan and Dawn Vernoooy



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WALSH GALLEGOS
KYLE ROBINSON & ROALSON P.C.

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Laws Governing Student Discipline

What Laws and Local Policies Determine How Students Are Disciplined?

- ❑ Federal Law
 - ❑ Title VI
 - ❑ Section 504 of the Rehabilitation Act
 - ❑ Americans with Disabilities Act
 - ❑ Individuals with Disabilities Education Act
- ❑ State Law
 - ❑ NMSA 1978, § 22-5-4.3 (2021) (Discipline and Non-Discriminatory Enforcement)

What Laws and Local Policies Determine How Students Are Disciplined? (cont.)

- ❑ State Regulations
 - ❑ 6.11.2.7 (8/25/2020) NMAC (Definitions :“Weapon”)
 - ❑ 6.11.2.9 (8/25/2020) NMAC (Rules of Conduct)
 - ❑ 6.11.2.10 (8/25/2020) NMAC (Enforcing Rules of Conduct)
 - ❑ 6.11.2.11 (8/25/2020) NMAC (Disciplinary Removals of Students, including Students with Disabilities)
 - ❑ 6.11.2.12 (8/25/2020) NMAC (Procedure for Detentions, Suspensions, and Expulsions)
- ❑ Local Board Policy
 - ❑ J-2300 © JIC STUDENT CONDUCT
 - ❑ J-4850 © JKD STUDENT SUSPENSION/EXPULSION

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Local Board Policies Governing Student Discipline

Discipline Policies: Board Authority & Responsibilities

- ❑ Authority and responsibility to develop disciplinary rules, regulations, policies, procedures, and discipline:
 - ❑ May be appropriate to local conditions
 - ❑ May afford more protections to students than required
 - ❑ May authorize administrative authorities to make such determinations

See *Bivens v. Albuquerque Public Schools*, 899 F. Supp. 556 (D.N.M. 1995) (dress code policy prohibiting saggy pants upheld).

Constitutional Guardrails

- ❑ Responsibility to exercise authority consistently with constitutional safeguards

Nondiscriminatory Enforcement

- ❑ Responsibility to refrain from discriminatory enforcement:
 - ❑ “Nondiscriminatory enforcement: Local school boards and administrative authorities shall not enforce school rules or impose disciplinary punishments in a manner which discriminates against any student on the basis of race, religion, color, national origin, ancestry, sex (including sexual orientation and transgender status), or disability, except to the extent otherwise permitted or required by law or regulation. This statement shall not be construed as requiring identical treatment of student for violation of the same rule; it shall be read as prohibiting differential treatment which is based on race, religion, color, national origin, ancestry, sex (including sexual orientation and transgender status), or disability rather than on other differences in individual cases or students.”

NMAC 6.11.2.10(D)(2)(8/25/2020).

Nondiscriminatory Enforcement Cont.

- ❑ “No local school board shall allow for the imposition of discipline, discrimination or disparate treatment against a student based on . . . Culture or because of the student’s use of protective hairstyles of cultural or religious headdresses.”

Section 22-5-4.3(A), NMSA 1978.

Federal and State Tracking and Responses to Student Discipline

Who Tracks Student Discipline

- ❑ Federal Government
 - ❑ Department of Education
 - ❑ Office of Civil Rights (OCR)
 - ❑ Office of Special Education Programs (OSEP)
- ❑ State of New Mexico
 - ❑ Office of Special Education (under federal mandate in the Individuals with Disabilities Education Act)
 - ❑ Indicator 4a and 4b

Why Does Disproportionate Discipline Matter?

- ❑ According to the U.S. Department of Education, being suspended is associated with lower academic achievement, lower grade retention, higher likelihood of dropping out, and higher instances of juvenile delinquency and adult incarceration rates.

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Focus on Federal Tracking by OCR

Office for Civil Rights

- ❑ The Office for Civil Rights is a federal agency that focuses on ensuring equal access to educational opportunities in schools by enforcing civil rights laws that prohibit discrimination in programs or activities that receive federal funds. The OCR:
 - ❑ Publishes policy guidance
 - ❑ Investigates complaints of discrimination on the basis of race, color, national origin, religion, age, sex, and disability
 - ❑ Monitors schools' compliance with adherence to federal anti-discrimination laws by conducting data collection reviews

Civil Rights Data Collection

- ❑ The Civil Rights Data Collection (CRDC) is a mandatory collection of district-and school-level data every two years. The CRDC is administered by OCR, which uses the data to enforce civil rights statutes that prohibit discrimination based on race, color, national, origin, sex, and disability.
- ❑ The data are collected from public-school districts and public schools and includes civil rights indicators K-12levels. It measures factors such as student access to courses, programs, resources, instructional and other staff — and school climate factors, such as student discipline and harassment.

Office for Civil Rights & Title VI

- ❑ The Office for Civil Rights (OCR) enforces Title VI – which prohibits discrimination on the basis of race, color, or national origin in programs or activities that receive federal financial assistance.
- ❑ Schools are responsible under Title VI and its regulations for providing students with a nondiscriminatory educational environment.
- ❑ The OCR has a particular interest in ensuring that students are not disciplined more frequently or more severely because of their race, color, or national origin.
- ❑ The OCR also investigates whether a hostile environment based on race, color, or national origin exists and if so, whether the conduct was sufficiently serious – severe, persistent, or pervasive – to deny or limit a student’s ability to participate in or benefit from the schools’ program.

Office for Civil Rights & Section 504

- ❑ The Office for Civil Rights (OCR) enforces the Section 504 rights of all students, including those that receive services under the Individuals with Disabilities Education Act (IDEA). Section 504 of the Rehabilitation Act of 1973 is a civil rights law that prohibits discrimination on the basis of disability. Schools' obligations under Section 504 include:
 - ❑ Provide a free appropriate public education to K-12 students with disability-based behavior;
 - ❑ Make reasonable modifications to disciplinary policies for students with disabilities; and
 - ❑ Administer student discipline requirements in a nondiscriminatory manner.

Data from the Civil Rights Data Collection

- ❑ **Example of overrepresentation in discipline outcomes:** For 2020-2021, the CRDC reported that nationally Black boys were disciplined at higher rates, compared to other races. Black boys represented 8% of total K-12 enrollment, but 15% of students who received one or more in-school-suspensions, 18% of those who received one or more out-of-school suspensions, and 18% of those who were expelled.
- ❑ **Example:** American Indian or Alaska Native students represented 1% of total K-12 student enrollment, but 2% of students referred to law enforcement, and 2% of students subjected to school-related arrests.

Data from the Civil Rights Data Collection Cont.

- ❑ In 2020-2021, Students with disabilities served under IDEA represented 14% of K-12 student enrollment, but 22% of students referred to law enforcement, and 22% of students who were subjected to school-related arrests.
- ❑ Students with disabilities served only under Section 504 represented 3% of total student enrollment, but 5% referred to law enforcement, and 6% of students who were subjected to school-related arrests.

Different Treatment

- ❑ When similarly situated students of different races (or disability/no disability) are disciplined differently for the same offense, discrimination can be a reasonable explanation for the different treatment.

2017 Paramount Academy (AZ)

- ❑ Parent complained that the school treated her son differently in administering the dress code because he is African American with an afro hairstyle that was three inches high. The School alleged the hair was “distracting.”
- ❑ The School code read in part:...No distracting headwear, or hair restraints...no unnatural or distracting hair colors or trendy hair styles...no faux hawks, shaved designs, or under shaving...hair color and/or styles that are not in compliance are required to be fixed before a student may return to school.
- ❑ OCR requested from the school, and reviewed all records related to students who violated the dress code policy for SY 2015-2016 and SY 2016-2017. The OCR wanted data disaggregated to reflect race, discipline outcome, and description of offense (type of dress code violation). The school did not provide this.

2017 Paramount Academy Cont.

- ❑ OCR found that although a few other students had been warned for faux hawks, the Student was the only one in the last two school years who was disciplined for having natural hair bigger than three inches. The OCR found that the School discriminated against the Student on the basis of race.
- ❑ Evidence that showed the rule was applied inconsistently:
 - ❑ Administrators could not define “clean cut”
 - ❑ School photos showed non-African American students who appear to have hair higher than 3 inches, or shaggy hair hanging in front of their faces
 - ❑ The school could not produce any reports about Student’s hair being distracting

Loleta Union Elem. School District 2017 (CA)

- ❑ It was alleged that Native American students were disciplined more harshly than non-Native American students. Native American students constituted 30% of enrolled students.
- ❑ The OCR reviewed the District's discipline-related Board Policies and Regulations, which stated that specific enumerated offenses cannot be suspended for more than 20 cumulative days in a school year....and the District must exhaust other means of correction (positive behavior supports....before issuing a suspension.
- ❑ The OCR also reviewed the School's Student Discipline Code for categories of prohibited conduct.

Loleta Union Elem. School District Cont.

- ❑ The OCR reviewed discipline data for 2 school years for disciplinary referrals, in-school suspensions, out-of-school suspensions; involuntary transfers; expulsions, and referrals to law enforcement.
- ❑ Referrals: School Year 2012-2013: 72 referrals were made in total. 71 of those were for Native American students, and 1 was for a White student.
- ❑ In-School Suspension: 2012-2013: 11 total in-school suspensions. 6 for Native American students; 4 for White students; and 1 for a Latino student.
- ❑ Out-of-School Suspension: 2013-2014: 37 total out-of-school suspensions. 33 for Native American students and 4 for White students.

Loleta Union Elem. School District Cont.

Examples of similarly situated students being treated differently:

- ❑ A white student received a disciplinary referral for refusing directions of adults several times. The student was not allowed to go on a field trip the next day. In comparison, a Native American student received a disciplinary referral, for being “defiant”. He was sent home for the rest of the day.
- ❑ A Native American student received a referral for hitting another student. She received one day of out-of-school suspension, and it was categorized as Disruptive Behavior, Category B. In comparison, a white student received a referral for fighting/physical aggression for punching another student. It was classified as a Major Problem Behavior. A school conference was held between the students, “apology was accepted,” and he received a time out/lunch detention.

Loleta Union Elem School District Cont.

- ❑ A White student received two behavior referrals for slapping other students. It was the student's 5th and 6th referral, and the conduct was categorized as a Major Problem Behavior. For the first slapping incident, a conference was held with the student, and for the second slapping incident there was a time out/lunch detention.
- ❑ The OCR found that for several years reviewed, Native American students were more likely to receive discipline than white students and the District could not provide a legitimate, nondiscriminatory reason for the disparities in discipline.

Different Treatment of Students with Disabilities

- ❑ A school's use of discipline could discriminate against students with disabilities under Section 504 when: (1) the school subjects a student to unnecessary different treatment based on disability or (2) when the schools' criteria, policies, practices, or procedures have unjustified discriminatory effects on students based on disability.
- ❑ Example: a School provides students out on out-of-school suspension with a packet of instructional materials to review while out. For a student with a disability who learns in a separate special education classroom during the period of suspension, however, the teachers did not print the materials because it would have required a considerable number of extra materials. Unnecessarily treating the student with a disability differently when administering discipline would violate Section 504.

Different Treatment of Students with Disabilities Cont.

- ❑ An Investigation by the U.S. Department of Justice (DOJ) into the Wichita Public Schools found that the district inappropriately and repeatedly secluded and restrained students with disabilities, including for punitive reasons in response to noncompliance with school rules and staff directives. (2021-2023).
- ❑ Example: students with disabilities received more than 98% of the district's roughly 3,000 restraints and seclusions. Those students lost over 10,000 minutes of instruction because of restraint and seclusion.
- ❑ At least 44 students with disabilities experienced 20 or more restraints or seclusions.

Different Treatment of Students with Disabilities Cont.

- ❑ The DOJ also found that the Wichita District used restraints and seclusions in its schools when there was no safety threat, and instead to enforce school rules, to address refusals to comply with staff directives, to prevent students from leaving a room or areas, and to transport students.
- ❑ Example: Restraints were used to remove a student after he refused to take off his hat and to move a student after he kicked over a trash can and refused to pick it up, and a student was secluded for peeling paint off a school wall.

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Broad Takeaways

Draft Clear Policies and Track Consistent Implementation

- ❑ Develop and implement clearly defined policies and procedures that determine when conduct gets referred to law enforcement to avoid criminalizing routine school discipline matters.
- ❑ Use the same categories of prohibited conduct, and level of consequences, consistent across all discipline referral forms, PowerSchool entries, and other discipline-related reports.
- ❑ Implement consistent discipline practices. Provide training for staff and administrators.
 - ❑ Avoid incomplete, or inconsistent recordkeeping of facts, and outcome.
 - ❑ Always provide a complete description of the facts, including aggravating factors or other relevant factors considered when imposing discipline.

Draft Clear Definitions and Align Disciplinary Matrix

- ❑ Ensure that the district-wide code of conduct with clear definitions for prohibited conduct.
- ❑ Ensure your disciplinary matrix aligns with those definitions and with Board policies and regulations.
 - ❑ Reduce reliance on vague terms such as “disruptive conduct”, “insubordination,” “inappropriate behavior,” “defiance”, “disruption”, etc. because they allow for problematic subjectivity.
 - ❑ For example, in Wichita, in incident reports for “insubordination” offenses, Black girls were 3.5 times as likely as white girls to be sanctioned for stereotypical terms like “attitude” and “drama.”

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Questions for Boards to Ask

Data Collection and Reporting

- ❑ How does our district collect and report on disaggregated data on suspensions, including the
 - ❑ number and demographics of students suspended,
 - ❑ number of instructional days lost, number of incidents, and
 - ❑ reasons for out-of-school suspensions?
- ❑ How is this similar or dissimilar to how the state collects and reports this data? (Indicator 4a and 4b)
- ❑ How do we use this data to drive policy?
- ❑ How do we use this data to drive policy?
- ❑ What conclusions can we draw from the data we have?
- ❑ Are there gaps in our data?
- ❑ Does the states curriculum emphasize social and emotional learning as a tool for students and staff to promote safe and positive school learning communities?

Building Capacity of Students, Teachers, and Principals

- ❑ Does the states curriculum emphasize social and emotional learning as a tool for students and staff to promote safe and positive school learning communities?

Advocating for Comprehensive Approaches

- ❑ What is the perspective of stakeholders most affected by suspension disparities?
- ❑ Have we established a structure to hear from these communities? • Who are potential allies for changing school discipline policies locally and statewide?
- ❑ What type of funding might be available to find solutions for this challenge?
- ❑ Do we have the capacity to create educational settings equivalent to our regular classrooms for students who must be removed for legal, safety or other reasons?
- ❑ What is the state's responsibility on this issue?

Esperanza Lujan
and
Dawn Vernooy



WALSH GALLEGOS
KYLE ROBINSON & ROALSON P.C.

500 Marquette Ave. NW, Suite 1310
Albuquerque, NM 87102
(505) 243-6864
elujan@wabsa.com and
dvernooy@wabsa.com

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WALSH GALLEGOS
KYLE ROBINSON & ROALSON P.C.