Know Your Rights:

Student Discipline

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ACLU of Washington
Overview

- Legal Framework
  - Right to Education
  - Additional protections for students with special needs
- “Due Process Path”
  - 5 key questions
- “Special Needs Path”
  - 3 key questions
Legal Right to Education

Washington Constitution, Article IX, s. 1

Washington Law Against Discrimination, RCW 49.60

RCW 28A.642
“Due Process”
GENERAL DISCIPLINE PATH
5 Key Questions

- What **FORM** of discipline is proposed?
- What **BEHAVIOR** is my student accused of?
- Is the discipline **FAIR**?
- What **EDUCATION** will my student receive while suspended or expelled?
- How will my student be **REENGAGED** in school after the discipline?
What form of discipline is proposed?
What form of discipline is proposed?

<table>
<thead>
<tr>
<th>Non-Exclusionary Discipline</th>
<th>Exclusionary Discipline</th>
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<tbody>
<tr>
<td>Detention</td>
<td>Short-term suspension</td>
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<tr>
<td>Going to the office</td>
<td>Long-term suspension</td>
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<tr>
<td>Revocation of privileges (e.g., computer, athletics participation)</td>
<td>Expulsion</td>
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<tr>
<td>“Extras” (e.g., apology letter)</td>
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Why does the form of discipline matter?

- **Procedural Protections**
  - Hearings
  - Re-engagement meetings

- **Fairness Limits in State Law**
  - Age Limits (below 5th grade)
  - Behavior limits for long-term suspension/expulsion
Discipline and Criminal Prosecution

- Police in schools cannot:
  - Conduct generalized searches of student backpacks/person
  - Use unreasonable force against students
  - Question students without informing them of their rights (and policies also cover parent notification)

- Tips if arrest or referral:
  - Request an attorney before speaking to police or school officials.
  - Coordinate with attorney on discipline/juvenile justice
What behavior is my student accused of?
## What behavior is my student accused of?

<table>
<thead>
<tr>
<th>More Serious Behaviors</th>
<th>Less Serious Behaviors</th>
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<tbody>
<tr>
<td>Can be punished with long-term suspension and/or expulsion</td>
<td>State law limits ability to impose long-term suspension and/or expulsion</td>
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<tr>
<td>For behaviors designated “exceptional misconduct”, school can immediately suspend or expel</td>
<td>Generally, school cannot suspend until other interventions have been tried</td>
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</table>
What are “non-discretionary” offenses?

SUPERINTENDENT OF PUBLIC INSTRUCTION

June 9, 2016

BULLETIN NO. 024-16 LEGAL AFFAIRS

TO: School District Superintendents
    School Building Principals
    Educational Service District Superintendents

FROM: Randy Dorn, State Superintendent of Public Instruction

RE: Significant Student Discipline Update—Changes Effective June 9, 2016

CONTACT: Joshua Lynch, Program Supervisor
         Student Discipline, Behavior, and Readiness to Learn
         360-725-4969, joshua.lynch@k12.wa.us, Agency ITY: 360-684-3631

PURPOSE AND BACKGROUND
During the 2016 regular session, the legislature passed 438HB 1541, a comprehensive bill based on recommendations of the Educational Opportunity Gap Oversight and Accountability Committee (EOGAC).

Sections of the bill include significant changes to student discipline laws, effective June 9. This bulletin contains a summary of the changes that impact the 2016–17 school year.
What is “exceptional misconduct”? 
Is the discipline fair?
Is the discipline fair?

- Your student didn’t do it.
- The behavior is constitutionally protected.
- There are other factors besides the behavior to consider.
- The district violated behavior/age/time restriction in state law or the punishment isn’t proportional.
- The discipline violates state law or school policy.
Challenging Non-Exclusionary Discipline
Challenging Exclusionary Discipline

- Short-term (<10 days)
- Long-term (>10 days)
- School Board Elections Matter
What education services will my student receive during the period of exclusion?
House Bill 1541

- Comparable
- Equitable
- Appropriate to the regular services the student would have received
What are the right education services?

- Make up assignments
- Online education
- Tutoring or one-on-one
- Alternative school
- IDEA compliance
How will my student be reengaged in school when the discipline is over?
House Bill 1541: Re-Engagement Meetings

- Mandatory
- Individualized
The Process: To Get Educated/Reenrolled

- Comparable, adequate and equitable education services
- Culturally responsive reengagement meeting and plan
- Petition for readmission
SPECIAL NEEDS PATH
Guiding Principles

Free
Appropriate
Public
Education
3 Key Questions

- Does the proposed discipline count as a CHANGE OF PLACEMENT?
- Is the behavior a “MANIFESTATION” of my student’s disability?
- Would additional services or SUPPORTS prevent recurrence of the behavior?
Does the proposed discipline count as a “change of placement”?
Is this a change of placement?

- Is this a single 10+ day exclusion (i.e., long-term suspension or expulsion)?
- Is it part of a pattern of removals that add up to 10+ days of exclusion?

If YES → ENTITLED to manifestation determination review

If NO →
  - General path for challenging school discipline
  - General path for IEP/504
Is the behavior a "manifestation" of my student’s disability or a failure to implement IEP?
Why does it matter?

- Generally a special education student cannot be disciplined for behavior that is a manifestation of disability or a failure to implement his/her IEP.

- If behavior is related to disability, student is entitled to:
  - Functional Behavior Assessment
  - Behavior Intervention Plan
  - Return to current placement (unless special circumstances or parent agrees to change placement)
Would additional services or supports prevent recurrence of the behavior?
Why does it matter?

- Parent involvement in behavior intervention plan
- Potential revision of IEP or 504 plan
The Process: Discipline and Special Needs

1. Change of placement determination
2. Manifestation Determination Review
3. Mediation
4. BIP / FBA
5. Petition to file for due process hearing
ADDITIONAL RESOURCES
ACLU Publications
https://www.aclu-wa.org/teacher-resources

STUDENT RIGHTS AND RESPONSIBILITIES IN THE DIGITAL AGE
A Guide for Public School Students in Washington State

KNOW YOUR RIGHTS
A GUIDE FOR PUBLIC SCHOOL STUDENTS IN WASHINGTON

PARENTS’ GUIDE TO PUBLIC SCHOOL DISCIPLINE IN WASHINGTON

PARENTS’ GUIDE TO TRUANCY IN WASHINGTON

ACLU AMERICAN CIVIL LIBERTIES UNION of WASHINGTON
Office of Education Ombuds (Governor)

Basic Education Rights and Opportunities in Public Schools
English | Español (Spanish)

How to be an Education Advocate
English | Español (Spanish)

Discipline in Public Schools
English | Español (Spanish)

Protecting the Educational Rights of Students with Disabilities in Public Schools (Updated July 2012)
English | Español (Spanish)

http://oeo.wa.gov/publications-reports/publications/
OSPI Equity and Civil Rights

- http://www.k12.wa.us/Equity/A-ZTopics.aspx

Topics A-Z
- Affirmative Action Plans
- Athletic Self-Evaluation
- Athletic Survey for Students
- Bias in Instructional Materials
- Bullying
- Civil Rights Laws
- Complaint Process
- Compliance Coordinators
- Consolidated Program Review
- Counseling and Guidance Services - Equity in Course and Program Enrollment
- Disability (Section 504)
- Discipline - Equity in Student Discipline
- Gender Identity and Gender Expression
- iGrants
- Interpretation and Translation Services
www.aclu-wa.org/schooldiscipline

Questions?
Comments?
Brilliant Ideas?

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