

March 12, 2018

Re: Placement in Alternative Learning Settings

Dear {Superintendent} and members of the {District} County School Board:

We are troubled by the continued trend of removing at-risk students from regular public schools. Excluding students from their schools increases their risk of arrest and decreases their chances of graduation. While the public knows this practice generally as expulsion, our schools are relying on less formal approaches, including pressuring families to voluntarily transfer their students or unilaterally transferring students to an alternative school under the title “alternative placement” or “disciplinary reassignment.”

Whatever the label, we remind you that every child in Florida has a constitutional right to a high quality public school education and any effort to deny that right requires due process.¹ After all, “a sentence of banishment from the local educational system is, insofar as the institution has power to act, the extreme penalty, the ultimate punishment. Stripping a child of access to educational opportunity is a life sentence to second-rate citizenship. . . .”²

Last year, Florida’s Department of Education reported that 7,078 students were disciplined by Placement in Alternative Education Settings,³ which the department describes as “Student is removed from the school for an offense, i.e., disobedient, disrespectful, violent, abusive, uncontrollable or disruptive behavior, not expelled, and placed in an alternative educational setting.”⁴ Some school districts have been using this category to prevent students from attending their regular schools without giving students the ability to challenge such decisions. Florida court affirm students’ due process rights in reassignment decisions.

In December, Florida’s First District Court of Appeals ruled that students removed from their regular schools in the guise of “alternative” or “disciplinary” placement have the right to the due process protections provided by Florida’s Administrative Procedures Act (APA).⁵ The court outlined the only statutory mechanisms “to deprive a student of his or her constitutional right to an education in a traditional school and remove the student from the classroom”: (1) in-school suspension, (2) out-of-school suspension, (3) expulsion and (4) assignment to a dropout prevention or academic intervention program.⁶ While brief suspensions are excluded from the APA, school districts must comply with the APA in decisions to expel students or assign them to dropout prevention or academic intervention programs:

Where the Legislature has determined that expulsions and involuntary assignments to dropout prevention and academic intervention programs do require the procedural protections of the APA, it is logical to further conclude that “disciplinary reassignments” that are factually indistinguishable on the face of the complaint from expulsion and involuntary assignment to dropout prevention and academic intervention programs should also fall within the purview of the APA.⁷

¹ Fla. Const. Art. IX, s. 1.

² *C.J. v. Sch. Bd. of Broward Cty.*, 438 So. 2d 87, 87–88 (4th DCA 1983).

³ Fla. Dept. of Ed., Student Discipline Data, 2015-16, *available online at* <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/students.stml>

⁴ Fla. Dept. of Ed., Information Database Requirements, Data Element 114425, (2015-16), *available online at* <http://www.fldoe.org/core/fileparse.php/12026/urlt/1516-114425.pdf>

⁵ *S.J. v. Thomas*, No. 1D16-3635 (1st DCA Dec. 19, 2017), *available online at*

https://edca.1dca.org/DCADocs/2016/3635/163635_1287_12192017_08200493_i.pdf

⁶ *Id.* at 7.

⁷ *Id.* at 11.



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We urge you to revisit your disciplinary procedures to ensure they are in compliance with these requirements. Decisions to exclude students through expulsion or reassignment must be appealable, and students must be given the opportunity to hear all the evidence against them, examine witnesses against them and call their own witnesses. The opinion by the Florida's First District is binding on all trial level courts in our state.⁸

Racial disparities must be examined and addressed.

We also note that, statewide during school year 2015-16, black students were 2.5 times as likely as white students to be subjected to the practice – a disparity that mirrors the state's racial disparity in exclusionary discipline generally.⁹ In {District} County, black students were {rri} times as likely to be placed in an alternative setting. Such disparities should give you pause given that discriminatory administration of student discipline based on factors like race are prohibited under federal law.¹⁰ We encourage you to assess your disciplinary procedures and their practical impact and examine any mandatory policies or decision points that could contribute to this disparity. Encouraging students and their families to fully participate in the APA process will also ensure your process is formalized and includes proper record keeping to further reduce the risk of inequity.

Isolating and excluding our most troubled students is counterproductive and harmful.

We appreciate the burden you bear to provide a safe, productive learning environment for all our students. We recognize that, in the aftermath of the Parkland tragedy, the weight of this burden may lead to well-intentioned policies and practices with unintended consequences for our youth. Due to the relentless spirit of the Stoneman Douglas students, you have an opportunity to invest in child-focused, trauma-informed interventions. We ask that in building a safe, productive learning environment, you focus on helping students develop the executive functioning skills they will need to navigate life's hurdles and resist exclusionary practices or reliance on law enforcement for discipline. Programming that furthers both goals of school safety and student development without exclusion or criminalization does exist. Restorative practices can build community and use conflict as learning experiences.

Studies tell us that exclusionary discipline, whatever name it is executed under, results in reduced chances of graduation and increased chances of future arrest.¹¹ It is in all of our best interests to limit the use of exclusionary discipline as much as possible. In the rare circumstance where it might be appropriate, students' due process rights must be afforded full protection and any alternative education must be equivalent to our regular public schools. Florida will not stand for warehousing our most vulnerable children.

We recommend mindful evaluation of policies and practices to prioritize student development. In complying with the court's ruling, implementing the newly required programming and investing the newly allocated funds, we encourage you to:

1. Institute restorative strategies in your classrooms and schools to use conflict as an opportunity for education and connection.

⁸ *Pardo v. State*, 596 So. 2d 665 (Fla. 1992).

⁹ Compare Student Discipline Data, 2015-16, *supra* n. 3 with Membership in Florida Public Schools, Preliminary Survey 2, 2015-16, available online at <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/archive.stml>.

¹⁰ U.S. Dept. of Justice & U.S. Dept. of Ed, Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline (2014).

¹¹ Michael Shader, Risk Factors for Delinquency: An Overview. US Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention (2015).



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2. Train teachers and staff to deescalate conflict and identify unmet behavioral and mental health needs.
3. Engage mental health professionals in drafting discipline policies and procedures and in executing discipline.
4. Clearly define the role of law enforcement in your schools as one of protection, not discipline, and limit officer involvement in disciplinary matters that do not pose an imminent risk to student safety.
5. Notify students subject to alternative placement that they have a right to contest it at a hearing where they can be represented by counsel, hear the evidence against them, submit their own evidence or witness testimony, and examine witnesses against them.
6. Give youth previously subjected to alternatively placement without an opportunity to challenge it at a hearing and appeal any final order an opportunity to remove the discipline from their academic record.

Yours is a challenging job – you must take every child as you find her. You cannot filter out the most vulnerable, the ones without family support, the ones with learning and developmental disabilities and the ones struggling with the aftermath of trauma. Not only is this counterproductive, it is not who we are as a state. You must meet these children where they are and guide them to success. When you've decided they should not be in your regular schools, you must give them an opportunity to fight for their right to be there.

Sincerely,

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