

March 12, 2018

Florida Department of Education  
Turlington Building, Suite 1514  
325 West Gaines Street  
Tallahassee, Florida 32399

Re: Placement in Alternative Learning Settings

Dear Commissioner Stewart and members of the State Board of Education,

We write to urge you to provide much needed guidance to school districts on the need to respect students' rights in disciplinary procedures. Districts have been removing students from their regular schools through "alternative placement" and preventing students from appealing such decisions, even when such reassignments far exceed the 10-day limitation of suspensions.

Last year, department discipline reports indicate there were 7,078 "Placements in Alternative Education Settings," which is described 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."<sup>1</sup> Regardless of the categorization of an exclusion, 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.<sup>2</sup>

*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).<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

School districts need your guidance and support in ensuring their procedures comply with these requirements, as the ruling is binding on all trial courts in our state.<sup>6</sup> Decisions to exclude students through expulsion or reassignment must be appealable, and students must be given the

---

<sup>1</sup> 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>

<sup>2</sup> Fla. Const. Art. IX, s. 1.

<sup>3</sup> *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](https://edca.1dca.org/DCADocs/2016/3635/163635_1287_12192017_08200493_i.pdf)

<sup>4</sup> *Id.* at 7.

<sup>5</sup> *Id.* at 11.

<sup>6</sup> *Pardo v. State*, 596 So. 2d 665 (Fla. 1992).



4343 W. Flagler St.  
Miami, FL  
(786) 363-2700  
acluf.org

Michelle Morton  
Juvenile Justice Policy  
Coordinator

opportunity to hear all the evidence against them, examine witnesses against them and call their own witnesses.

*Recommendation: More clearly define alternative placement.*

Until 2005, DOE's data collection<sup>7</sup> reflected that students could go through the expulsion process but be placed in an alternative placement instead of expelled. Schools reported this outcome using the discipline/resultant action code A for Alternative Placement.<sup>8</sup> This process ensured that school districts understood that these students' due process rights must be honored. We recommend returning to this categorization.

In 2003, the Legislature directed principals,<sup>9</sup> superintendents,<sup>10</sup> school boards,<sup>11</sup> and even parents<sup>12</sup> to fully support the authority of their teachers and bus drivers to remove disruptive, disobedient, disrespectful, abusive or uncontrollable students from the classroom or bus and, when appropriate and available, to place the student in an alternative educational setting. Two years later, the department updated its discipline reporting forms to replace the Alternative Placement discipline code with "Placement in Alternative Educational Setting"<sup>13</sup>

This seems to have caused confusion among the districts, some of which believe that an alternative placement is a discipline category that does not require the same level of due process as expulsions and involuntary assignments to dropout prevention programs, no matter how long the assignment. About 7,000 alternative placements are made each year.

While the state average rate of alternative placements was 2.5 per 1,000 students in school year 2015-16, 11 districts used the practice at least twice as often, with Jackson and Hardee districts reporting more than 60 alternative placements per 1,000 students and Jefferson County reporting 93 alternative placements for its total enrollment of 791 students.<sup>14</sup> It seems perhaps districts are not all using this category to report the same practice, further illustrating the need for additional guidance.

<b>Highest Rates of Alternative Placement</b>		
District	Total Alt. Placements	Rate per 1000 students
Jefferson	93	118
Jackson	463	68
Hardee	328	63
Lee	863	9
Escambia	348	9
Okaloosa	198	6
Clay	217	6
Okeechobee	38	6

<sup>7</sup> Student Discipline/Resultant Action record, available online at <http://www.fldoe.org/accountability/data-sys/database-manuals-updates/2015-16-student-info-system/student-discipline-resultant-action.stml>

<sup>8</sup> Fla. Dept. of Ed., DOE Information Database requirements, revised, May, 2003, available online at [http://www.fldoe.org/core/fileparse.php/8849/urlt/0090774-st57\\_1-2.pdf](http://www.fldoe.org/core/fileparse.php/8849/urlt/0090774-st57_1-2.pdf)

<sup>9</sup> Fla. Stat. ss. 1001.54, 1006.09. See also Ch. 2003-391, L.O.F.

<sup>10</sup> Fla. Stat. ss. 1001.51, 1006.08.

<sup>11</sup> Fla. Stat. ss. 1001.42.

<sup>12</sup> Fla. Stat. s. 1003.04.

<sup>13</sup> Fla. Dept. of Ed., DOE Information Database requirements, Changes for 2005-06, July 2005, available online at <http://www.fldoe.org/core/fileparse.php/7574/urlt/0099902-update072705.pdf>.

<sup>14</sup> Compare Student Discipline Data, 2015-16, 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/students.stml>



4343 W. Flagler St.  
Miami, FL  
(786) 363-2700  
acluf.org

Michelle Morton  
Juvenile Justice Policy  
Coordinator

Putnam	61	5
Wakulla	27	5
Bay	145	5

Seven districts account for half of all the students who've been alternatively placed: Lee, Orange, Jackson, Broward, Pinellas, Polk and Hillsborough. These districts account for 35 percent of the state's students; while many of these are our larger districts, Jackson County enrolls fewer than 10,000 students, yet accounts for 6.5% of the state's alternative placements.

Largest Share of Alternatively Placed Students					
District	Enrollment		Alternative Placements		
	Total Students	Share of State	Total Placements	Rate per 1000 students	Share of State
Lee	91,310	3.3%	863	9	12.2%
Orange	196,853	7.1%	587	3	8.3%
Jackson	6,845	0.2%	463	68	6.5%
Broward	269,114	9.6%	443	2	6.3%
Pinellas	103,481	3.7%	421	4	5.9%
Polk	101,643	3.6%	419	4	5.9%
Hillsborough	211,936	7.1%	396	2	5.6%
Escambia	40,656	1.5%	348	9	4.9%
Brevard	72,709	2.6%	332	5	4.7%
Hardee	5,233	0.2%	328	63	4.6%



4343 W. Flagler St.  
Miami, FL  
(786) 363-2700  
acluf.org

Michelle Morton  
Juvenile Justice Policy  
Coordinator

We recommend you work with these districts that seem to be relying on alternative placement to an unusual degree to ensure proper due process procedures are being followed.

Racial disparities must be examined and addressed.

We also note that, statewide, 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. Twenty eight percent of school districts in Florida had relative rate indexes higher than the state rate.<sup>15</sup> In Leon County, black students were 12.5 times as likely to be subjected to alternative placement as white students. In Sarasota County, black students were 8.6 times as likely to be so disciplined as their white peers.

Largest Racial Disparities					
District	Total Alt. Placements	Rate per 1000 students			Relative Rate Index <sup>15</sup>
		Overall	White Students	Black Students	
Leon	72	2.1	.34	4.27	12.5
Sarasota	41	1.0	.51	4.39	8.6
Hillsborough	396	1.9	.86	4.75	5.5
Pinellas	421	4.1	2.2	11.75	5.3
Seminole	281	4.2	2.35	6.2	5.3
Duval	108	0.8	.30	1.53	5.1
Palm Beach	20	0.1	.05	.22	4.6
Orange	587	3.0	1.3	5.93	4.6
Lake	74	1.2	1.08	4.53	4.2
Broward	443	1.7	.68	2.85	4.2

<sup>15</sup> Relative rate index measures the relationship between two rates; here, the rate at which black students are put into alternative placements compared to the rate at which white students are placed into alternative placements. The relative rate indexes here are the black multiplier for the white rate – so black students in Leon County are 12.5 times as likely to be subject to alternative placement as white students.

Such disparities should give you pause given that discriminatory administration of student discipline based on factors like race is prohibited under federal law.<sup>16</sup> We encourage you to assist these counties in assessing their policies and practices for potential factors contributing to these disparities. Encouraging students and their families to fully participate in the APA process will also ensure their processes are formalized and include proper record keeping to further reduce the risk of inequity.

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

In examining this practice in the broader context of the new policies and procedures the department and school districts will be implementing under SB 7026, we ask that you be mindful that often well-intentioned policies and practices lead to unintended consequences for our most vulnerable youth. We ask that you consider past lessons learned from zero-tolerance policies and increased law enforcement in schools. Such practices have been shown to increase youth arrests for minor offenses and have disparate impact on students of color and students with disabilities.

Due to the relentless spirit of the Stoneman Douglas students, schools have an opportunity to invest in child-focused, trauma-informed interventions. We ask that in building a safe, productive learning environment, you direct them 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, for example, 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.<sup>17</sup> 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.

#### *Summary of recommendations*

In complying with the court's ruling, implementing the newly required programming and investing the newly allocated funds, we ask that you:

1. Amend the discipline/resultant action code "Placement in Alternative Educational Setting" to clearly apply to students who have gone through the expulsion process but was offered and placed in alternative placement instead of expulsion.
2. Issue an advisory to school boards explaining the applicability of the APA to, and the due process requirements for, any action that results in a student being removed from traditional schools for more than 10 days.
3. Direct school boards to 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.

Furthermore, to minimize the necessity for exclusionary discipline and the criminalization of student misbehavior, we ask you to encourage districts to:

---

<sup>16</sup> U.S. Dept. of Justice & U.S. Dept. of Ed, Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline (2014).

<sup>17</sup> Michael Shader, *Risk Factors for Delinquency: An Overview*. US Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention (2015).



4343 W. Flagler St.  
Miami, FL  
(786) 363-2700  
aclufl.org

Michelle Morton  
Juvenile Justice Policy  
Coordinator

1. Implement restorative strategies in classrooms and schools to use conflict as an opportunity for education and connection.
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 schools as one of protection, not discipline, and limit officer involvement in disciplinary matters that do not pose an imminent risk to student safety.

We thank you for your attention and leadership on these issues. More than 60 years ago, the U.S. Supreme Court wrote in *Brown v. Board of Education*, “In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”<sup>18</sup> We urge you to ensure that our students are rarely excluded from traditional school, and when they are that they have an opportunity to fight for their right to be there.

Sincerely,

Michelle Morton  
Juvenile Justice Policy Coordinator



4343 W. Flagler St.  
Miami, FL  
(786) 363-2700  
acluf.org

Michelle Morton  
*Juvenile Justice Policy  
Coordinator*

---

<sup>18</sup> 347 U.S. 483, 493 (1954).