2. Laws Controlling Student Discipline

STATE AND FEDERAL OVERSIGHT

14th Amendment, U.S. Constitution

“No state shall deprive any person of life, liberty, or property without due process of law.”

Goss v. Lopez (U.S. Supreme Court 1975)

- State law
- "Property interest"
- Due Process
- Notice of charges

- If extends the right to public education to students, then it creates a...
- Protected by the 14th Amendment's Due Process Clause
- Cannot be taken away for misconduct without...
- Opportunity to explain evidence, present his/her side of story
NY Education Law § 2801: Code of Conduct
- Required to be adopted by the Board
- Required to be reviewed annually
- Multiple required components
- Maintaining order in the school

NY Education Law § 3214
- Governs suspensions and removals
  - Insubordinate, disorderly, violent, disruptive
  - Conduct that endangers safety, morals, health, welfare of others
- Due process protections:
  - Parent notification
  - Right to counsel
  - Right to appeal to board, Commissioner, courts

SED oversight over IDEA
- Requirement of federal IDEA $$
- Disproportionality: over/under representation
- Suspensions (ISS, OSS) and expulsions
- Minimum “n” number
- Required policy: public report on revisions
U.S. Office of Civil Rights/Dept. of Justice

• 2014 “Dear Colleague Letter” and guidance
• Discrimination by race, color, national origin
• Investigations under the Obama Administration
  o Based on complaints by students, parents, others
  o Based on public reports
• Discrimination could be due to:
  o Different treatment
  o Disparate impact (neutral policy has discriminatory effect)
• Likelihood of these investigations continuing?

NY Attorney General: settlement agreements

• Syracuse City School District (July 2014)
  o Investigation initiated due to complaints from parents, advocates, community leaders.
• Albany City School District (December 2015)
  o “a continuation of the Attorney General’s broader statewide initiative to reverse zero tolerance policies in school districts”
  o “It is time for school districts nationwide to learn from these examples and reform their policies to be more inclusive and supportive of all students.”
• Who could be next?

Syracuse’s agreement

• Retain an independent monitor to provide oversight during the agreement and audit the district’s compliance with the agreement and with state and federal laws and report his or her findings to the Attorney General’s Office;
• Create plans for the adoption and implementation of preventative techniques at its schools aimed at encouraging students to avoid misbehavior;
• Amend its Code of Conduct to adopt or encourage the use of disciplinary strategies that do not rely on exclusion as a form of discipline, except as a last resort;
• Train its staff on these new preventative strategies, and on the new provisions of the Code of Conduct;
Syracuse’s agreement (cont.)

- Designate an Ombudsman to help the district and individual schools comply with the new Code of Conduct, and address school-level issues;
- Upgrade its data-keeping and analysis capabilities to ensure that it has the tools necessary to identify issues in its discipline practices and act accordingly;
- Enter into a memorandum of understanding with any entity that supplies the District with school safety officers that will provide policies governing officer’s conduct and training for officers on interacting with children in a school environment; and
- Implement new measures aimed at informing teachers, parents, and students of their rights, and protecting their voices in the formulation of the discipline process.

Albany’s agreement

District efforts, both before and after the AG investigation, to address disparities:

- Changes to its Code of Conduct;
- Updated its procedures for ensuring student disciplinary due process; and
- Began rolling out approaches to discipline that do not rely on exclusion.
- However, these measures were not yet consistently implemented District-wide.

Albany’s agreement (cont.)

More was needed:

- Retain an independent monitor to audit the district’s compliance with the agreement and with state and federal laws and report his or her findings to the Attorney General’s Office;
- Amend its policies to provide more clarity, and to ensure that exclusion as discipline is reduced;
- Create and expand existing programs that emphasize alternative disciplinary approaches – preventative techniques and additional supports for struggling students;
- Provide staff training, and parent opportunities to learn about and discuss the District’s policies;
- Improve data recorded for discipline, and expand data analysis.
Myth:

- Students have always been suspended at current rates.
Fact:
Suspensions, and disproportionality, have increased

Myth:
- Suspensions are an effective deterrent for both suspended students and other students.

Fact:
If that were the case, it would be constant or downward
Rethinking Student Discipline

Myths vs. Facts

- Also, research shows that out-of-school suspension and expulsion is not effective in reducing disruptive incidents, increasing school safety, or improving climate, and may even have the opposite effect.


Myth:

- Students of color simply engage in behaviors worthy of suspension more often.

Facts – studies have shown:

- Black students are frequently disciplined more harshly for less serious or more subjective disciplinary incidents. (1, 2, 3)
- Black elementary school students were more likely to receive out-of-school suspension for minor misbehaviors (such as inappropriate language, defiance, noncompliance, and disruption) than were White students. (4)
- Black middle school students were more likely than White students to be suspended or expelled for abusive language, bullying, lying and cheating, and tardiness or truancy. (4)
Rethinking Student Discipline

Observed tendencies

- Racial disparities in discipline tend to be larger for offense categories that are subjective or vague, and smaller in categories that are easy to document:

<table>
<thead>
<tr>
<th>White students</th>
<th>Black students</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smoking, vandalism, leaving without permission, using obscene language.</td>
<td>Disrespect, excessive noise, threatening behavior, loitering.</td>
</tr>
</tbody>
</table>

(3, 4)

- Where a judgement call is needed, black students may be singled out unfairly.

First offenses, Wake County, North Carolina

Suspension rates for first offense by infraction (5)

Research

5. Losen, D.J., Discipline Policies, Successful Schools, and Racial Justice, National Education Policy Center, nepc.colorado.edu/publication/discipline-policies (2011)
Research, cont.


CDC YRBSS

CDC’s Youth Risk Behavior Surveillance System
- Anonymous survey given to high school students
- Every other year in the spring since 1991
- Over 3.8 million students have taken the survey

- Similar frequencies by race of:
  - drinking alcohol
  - smoking marijuana
  - physical fights
  - drinking and driving
  - possessing a weapon
  - bringing a weapon to school

Reasons for Disproportionality

- Implicit bias
- Cultural differences
- Yale Pre-K eye-tracking study

Can we change implicit bias?


Time for a Break!