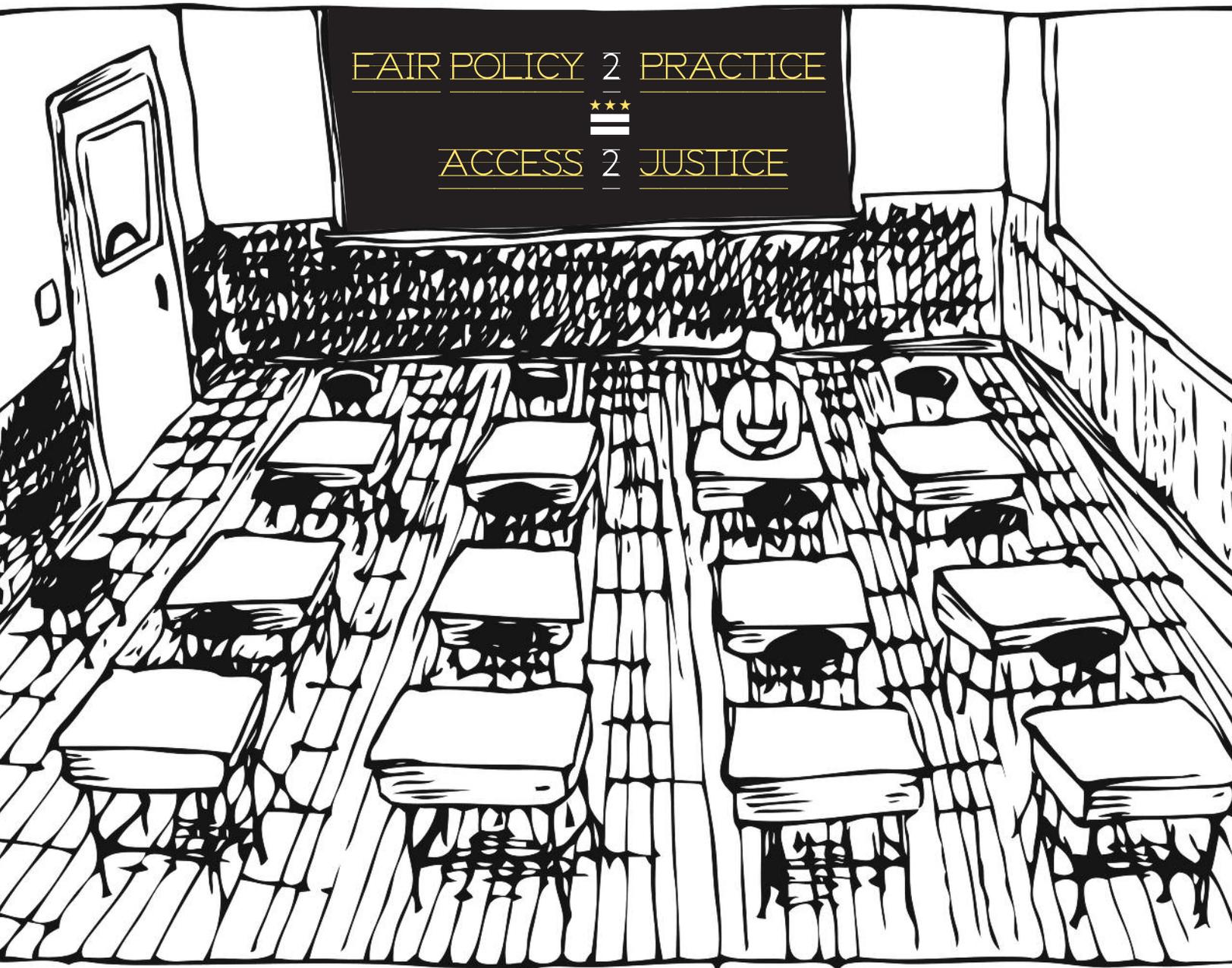


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# EQUITY IN SCHOOL DISCIPLINE

An Examination of School Disciplinary Policies and Practices in the District of Columbia Public Education System and Recommendations for Reform

## About the Council for Court Excellence

Formed in Washington, DC in January 1982, the Council for Court Excellence is a nonprofit, nonpartisan, civic organization. The Council works to improve the administration of justice in the local and federal courts and related agencies in the Washington metropolitan area. The Council accomplishes this goal by:

- Identifying and promoting justice system reforms,
- Improving public access to justice, and
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Council for Court Excellence, March 2015

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Within the Council for Court Excellence, this project was staffed by June Kress, Executive Director; Priscilla Skillman, former Assistant Director; Hillary Evans, CCE Policy Analyst/School Discipline Project Manager; Jarrod Watson, former Law Fellow; and former interns Marjory Marquardt, Gregory Segal, and Ilana Yanku.

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# Executive Summary

The Council for Court Excellence (CCE) is pleased to present its report, “Equity in School Discipline: An Examination of School Disciplinary Policies and Practices in the District of Columbia Public Education System and Recommendations for Reform,” hereinafter “Equity in School Discipline.” In January 2014, the US Departments of Education and Justice released federal guidance to enhance school climate and improve school discipline policies and practices.<sup>1</sup> This groundbreaking guidance addressed what many advocates and researchers have known for years—that harsh and exclusionary school disciplinary policies and practices were having an adverse impact on American youth and particularly on students of color and students with disabilities. In an effort to help school districts across the country adhere to the federal and civil rights protections, thus implement school discipline more equitably and create healthy school climates for children and adults, this guidance offers best practices in school discipline and provides resources, technical assistance and a compendium of the state and local laws that govern school discipline.

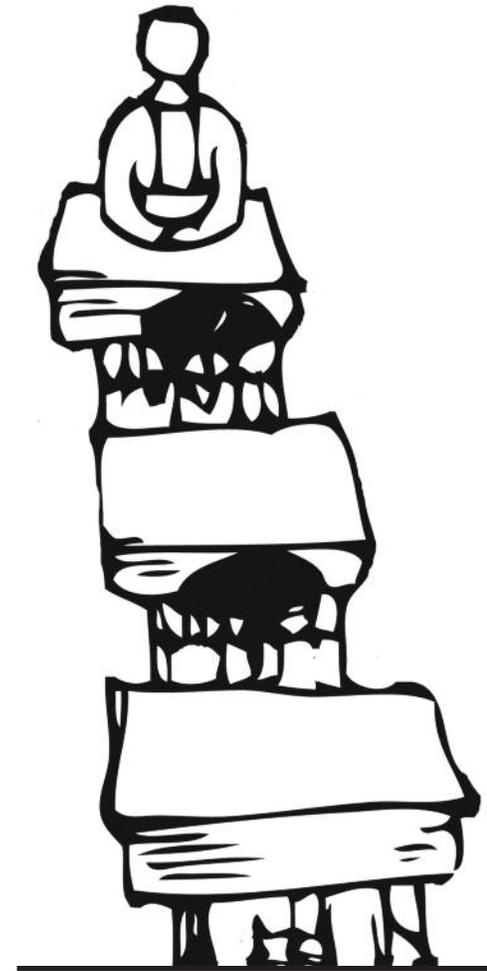
## About This Report

Building on the federal school discipline guidance, “Equity in School Discipline” begins by comprehensively describing the District of Columbia’s traditional and charter public school disciplinary systems. In addition, the report provides an assessment of the discipline policies that traditional and charter schools follow. It then outlines the due process rights that are afforded to District youth who may be facing exclusion from school based on behavior in violation of school discipline codes. This section also offers “Quick Tips” that provide helpful information to attorneys, advocates, parents, and students who may be challenging a disciplinary action. The report ends by profiling the voices of select school administrators from DC traditional and charter middle and high schools who are responsible for developing and implementing school discipline policies. These school administrators share best practices and ways to improve discipline in schools.

### Why did CCE study the school discipline issue and produce this report? And what is the link to the administration of justice?

CCE has a long history of focusing on children in the courts and their involvement in the child welfare system. In more recent years, the Council has studied the District’s juvenile justice system and contributing factors on the front end that may be causing District youth to enter, or be at risk of entering, the juvenile justice system. CCE therefore became concerned with school discipline policies and practices that may push students out of the classroom and result in students falling further behind academically and onto a path of disengagement or involvement with the juvenile and, ultimately, the adult criminal justice systems. CCE saw a need to comprehensively describe and assess these complex disciplinary systems and policies in relation to the justice system.

The report presents the assessment of sixty-two charter school discipline code policies for the 2012-2013 school year and *DC Municipal Regulations* (DCMR) Chapter B25, the discipline code governing DC traditional public schools. Our assessment revealed the following key findings that may perpetuate school push-out and inequity in discipline and educational outcomes:



- More than half, or 64%, of the DC charter school discipline codes use zero-tolerance provisions for non-violent and violent acts that result in automatic expulsion; DCMR Chapter B25 does not provide for zero-tolerance provisions.
- Only 38% of charter school discipline codes expressly obligate or allow a suspended student to participate remotely in academic coursework. Fifty-nine percent of the charter school discipline code policies are silent about remote academic participation. DCMR Chapter B25 expressly allows for students to participate remotely in academic coursework.
- Charter school discipline codes varied in adherence to due process procedures ensured by the US Constitution, including the right to receive notice of a disciplinary infraction, right to a hearing or to respond to alleged behavior, and right to appeal. DCMR Chapter B25 adheres to these due process procedures.
- Just 52% of charter school discipline codes allow for additional due process protections for students with special needs. DCMR Chapter B25 expressly states provisions for disciplining students with disabilities.
- Only 37% of DC charter school discipline codes provide for an impartial hearing officer or other person unaffiliated with the school to hear appeals of discipline decisions to exclude a student from school for a behavioral infraction. DCMR Chapter B25 provides for a hearing officer but does not specify an impartial hearing officer.
- Many charter school discipline codes are not accessible online, nor are they in languages other than English. A sampling of the charter school discipline codes demonstrated the need for a high school reading level to fully understand the codes. DCMR Chapter B25 is available online, in English only and has a college graduate reading level.

### What is the role of the courts and other justice related systems in reviewing student discipline cases?

CCE found that that while there are direct and indirect linkages to the DC juvenile justice system, student discipline cases are not prosecuted with the same frequency as in other jurisdictions. The report also reveals that student discipline cases are handled administratively, as opposed to before a judge in the local trial court. CCE's report examines the role of the Office of Administrative Hearings (OAH), the District's administrative court, in reviewing long-term suspension and expulsion student discipline cases from traditional public schools since 2012. Some of the main findings are:

- OAH has seen a 30% drop in the number of cases heard during the 2012-2013 and 2013-2014 school years.

- There has been a 7% increase in the number of cases where DCPS fails to appear, which results in an automatic default judgment for the student.
- Students in 92% of the 641 student discipline hearings held during the periods of January 2012-June 2012 and September 2012-June 2013, were not represented by a lawyer.
- OAH has seen a trend of DCPS designating cases as "emergency" even when the student's behavior does not rise to the level of an emergency. As a result, a student may not return to the school until final disposition of his or her case which can lengthen the amount of out-of-school time for the student.

### What perspectives do school administrators have on the use of exclusionary disciplinary practices, and what are some of the best practices and ideas around school discipline and keeping District youth in school?



CCE interviewed school administrators from five of the highest and lowest suspending and expelling traditional and charter middle and high schools in the District based on the "2012-2013 District of Columbia School Equity Report" data. The purpose of these interviews was to hear from school leaders who are responsible for implementing school discipline policy "on the ground." While we recognize that the schools profiled only represent

a small segment of the District's public education system, the following highlights from these interviews are instructive and contribute to the ongoing conversation around improving school discipline. Accordingly, CCE found that:

- Almost all of the school administrators interviewed believed that exclusionary discipline, such as out-of-school suspensions and expulsions, should be used as a last resort, and opted to use more restorative disciplinary approaches.
- Of the public charter schools profiled, each of the school administrators identified challenges in funding and having enough resources, such as professional development training on classroom management, on-site social workers and mental health services, etc., to address student discipline.
- Some of the schools allowed for parental and student engagement in evaluating and revising school discipline codes.
- The majority of the schools expressed the need for more data management systems to track students who have had multiple suspensions, and guidance on intervening before a student repeats bad behavior.

## What does CCE propose to make the DC traditional and charter school discipline systems more equitable and to improve school discipline in the District?

CCE offers the following ten policy recommendations for improving and making traditional and charter school discipline systems more equitable. These recommendations are not listed in any priority order.

### 1) The Office of the State Superintendent of Education (OSSE) should finalize and publish District-wide standards or best practices for school discipline.

In June 2014, OSSE released its report, “Reducing Out-of-School Suspensions and Expulsions in the District of Columbia Public and Public Charter Schools.” This report recommended working with stakeholders to finalize discipline-related regulations that establish basic standards for discipline. OSSE should continue working with local education agencies (LEAs) to finalize these standards and consider incentivizing them through funding opportunities.

### 2) Encourage traditional and charter schools to use exclusionary disciplinary practices (e.g., long-term suspensions and expulsions) only as a last resort.

Research overwhelming highlights the deleterious effects of exclusionary disciplinary practices on youth, including low academic achievement and linkages to the juvenile justice system. Restorative justice or other alternative approaches to school exclusion should be considered when disciplining students.

### 3) DCPS and charter school discipline codes and practices should adhere to due process requirements for all students; policies or regulations need to be developed on student discipline hearing waivers.

CCE’s assessment of charter school discipline codes revealed that just 68% of these codes provide for notice of a disciplinary infraction and hearing rights, while 57% of the codes explained students’ right to appeal discipline decisions. Due process procedures should be expressly provided in all discipline codes to ensure that students are aware of their rights when faced with a long-term suspension or expulsion. Additionally, regulations or policies are needed in both traditional and charter schools for waiving a student discipline hearing. There are currently no regulations or policies in place for student discipline hearing waivers to allow students the option of waiving their right to a hearing.

### 4) Increased compliance is necessary for DCPS and charter school discipline policies to provide additional due process protections for students with special education needs.

CCE’s assessment of charter school discipline codes found that 52% of the codes allow for additional due process protections for students with special education needs. That means that nearly half of the codes, or 48%, do not expressly provide for additional due process protections for this student population. Federal disability laws, such as the *Individuals with Disabilities Education Improvement Act*, require both traditional and charter schools to comply with these additional due process protections before excluding a student with a disability from the classroom environment. More efforts should be made to ensure compliance with federal disability law and to expressly provide for these protections in discipline codes.

### 5) DCPS and charter school student discipline hearings should be heard by an impartial hearing officer or someone unaffiliated with the LEA.

CCE’s assessment of charter school discipline codes found that 37% of the codes provided that an impartial person, other than the principal or board of directors, to conduct the student discipline hearing. DCMR Chapter B25 does not expressly provide for an impartial hearing officer, but DCPS has had an agreement since 2012 with the Office of Administrative Hearings (OAH) to hear student discipline cases on appeal. OAH has provided a unique model where an administrative law judge, familiar with the laws and due process requirements, has presided over DCPS student discipline cases. CCE believes that having hearing officers unaffiliated with the school, like the OAH administrative law judges, preside over the student discipline hearings, is a better way to ensure impartiality and fairness in process.

We also urge that parents of DCPS and charter school students facing long-term suspensions or expulsions be given a list of free legal services providers that help with student discipline hearings.

### 6) DCPS and the DC Public Charter School Board should improve school discipline data collection, especially data on involuntary transfers and withdrawals.

Policymakers, school officials, advocates and other stakeholders should track and monitor student transfers and withdrawals from traditional and charter schools to ensure that procedural protections are in place. Additionally, there should be improved data collection in this area that identifies the reasons for transfer or withdrawal.



**7) Law enforcement, namely the DC Office of the Attorney General (OAG) and Metropolitan Police Department (MPD), should improve how data are tracked on law enforcement referrals, school-based arrests and prosecutions involving student misconduct in schools to avoid unnecessary and unwarranted prosecutions.**

Improved data collection will better track school misconduct cases in relation to the juvenile justice system in the District. DC OAG does not track juvenile cases according to location (e.g., whether the incident occurred on or near school grounds). And while MPD keeps data on school-based arrests, the data do not indicate whether the arrest occurred during or after school hours on school days and do not include law enforcement referrals that do not result in arrest. Accordingly, it is hard to determine the number of cases referred to juvenile court due to misconduct at school. More data are needed to determine direct linkages to the juvenile justice system and to assess how these cases are being processed and whether they warrant prosecution.

**8) Assign permanent school resource officers (SROs) to LEAs, as opposed to rotating ones, and offer specialized training for the assigned SROs.**

CCE learned through its interviews with some of the DCPS and charter school administrators that MPD school resource officers (SROs), particularly at charter schools, often rotate instead of being permanently assigned to one campus. Rotating SROs are less likely to build relationships with students and the school community. Given that the role of SROs is to work with schools to mediate disputes before they escalate and to address truancy, it is harder to meet these goals if an SRO is floating. Where possible, permanent school resource officers should be assigned to schools. SROs should also receive specialized training to work with the student population in the school assigned.

**9) Establish a quality alternative school for charter schools and improve conditions and academic instruction at the DCPS alternative school, Choosing Higher Options for Individually Centered Education (C.H.O.I.C.E.) Academy.**

There is currently no formal alternative school for charter schools. When a student is suspended long-term from a charter school, there is no alternative educational setting to attend while awaiting a student discipline hearing or waiting out their suspension which has an impact on their academic achievement. As for the DCPS

alternative education school, the Office of the Ombudsman for Public Education noted several concerns about C.H.O.I.C.E. Academy in its 2014 Annual Report around academic instruction and unsafe conditions that invite further evaluation and improvement.

**10) Allocate funding for LEAs to have frequent training and technical assistance on school discipline and classroom management and establish ongoing discussion forums for LEAs about school discipline practices.**

During CCE's interviews with school administrators, we learned that some traditional and charter schools lack frequent training on school discipline and classroom management. There is also no formal local network that allows school administrators to regularly discuss school discipline practices. Ongoing training about school discipline and having an established formal network for school administrators to share best practices and resources would help to improve approaches to school discipline in schools.



CCE recognizes that these 10 (ten) policy recommendations are not exhaustive, and that efforts to improve school discipline and provide for more equitable systems should be ongoing. The District's dual disciplinary systems which together serve more than 38,000 students in public charter schools and nearly 48,000 students in traditional public schools represent an ever changing landscape. Equity and fairness for all DC youth should be at the heart of these two systems. Further, policies and practices should be implemented in a way that does not lead to unintended consequences, such as student disengagement, low academic achievement, school drop-out or involvement in the juvenile justice system. Schools can still hold students accountable for misbehavior without setting them up to fail and with

meaningful access to public education.

The District of Columbia courts and other justice-related systems have a large stake in student success, in assuring that all students have a fair chance at living a productive life, and in fine-tuning school disciplinary procedures to maximize students' chances to achieve these worthy goals. Recognizing these important values, CCE has undertaken this study of DC school disciplinary systems and issues this report, "Equity in School Discipline."

# Introduction

The District of Columbia has a longstanding problem of poor school attendance, significant suspension and expulsion rates, high drop-out rates, and low levels of high school graduation. When youth are not in school and do not graduate, they are at greater risk of entering the juvenile justice system or becoming disengaged and on a path to nowhere.<sup>2</sup> National research has shown direct and indirect linkages to the juvenile justice and adult criminal justice systems for students who are excluded from school for disciplinary reasons, who are truant, or have dropped out.<sup>3</sup> Those linkages have become known as the “school-to-prison pipeline,” and across the nation there has been a push to divert students from it.

In a number of school districts across the nation, schools are referring student misconduct cases, even for minor misbehavior, for prosecution in juvenile court.<sup>4</sup> Current research has shown, however, that “tracking the number of referrals to juvenile court that are a direct result of misconduct at school is difficult for many jurisdictions.”<sup>5</sup> This difficulty is present in the District. For example, the DC Office of the Attorney General (OAG), the local prosecutor’s office, does not track its juvenile cases according to whether the incident occurred on or near school grounds.<sup>6</sup> And while the Metropolitan Police Department tracks school-based arrests, the data on whether the arrest occurred before, during or after school hours on school days are not readily available. Even for the juvenile cases that result from misconduct at school and that have been referred for prosecution, OAG sees these prosecutions less frequently than other jurisdictions. School-based arrests are often diverted and do not result in prosecution. Further, school misconduct cases in the District are usually handled within the school, and if referred, as for DC Public Schools, the matter is adjudicated by an administrative court that hears long-term suspension and expulsion cases as opposed to a juvenile court that hears these cases. Nevertheless, DC youth are entering the juvenile justice system.

In 2012, the Council for Court Excellence (CCE) formed a project committee to assess possible contributing factors to the so-called school-to-prison pipeline. At the beginning of CCE’s study, the project committee focused on the District’s truancy crisis in relation to the juvenile justice system, but changed course to focus instead on

school discipline policy and practice because policy and practice can change discipline. Before launching the project, CCE met with a variety of stakeholders, including school officials from DC Public Schools and the Public Charter School Board, the Metropolitan Po-

lice Department, Office of Youth Engagement, Office of Administrative Hearings, social scientists, and DC Council members. During these interviews, CCE learned more about the role that these various stakeholders play in relation to school discipline and about possible issue areas to explore further. CCE planned to conduct future interviews with other stakeholders including the Office of the State Superintendent of Education and the Ombudsman for Public Education. At the time of these initial interviews, these offices were in the midst of transition in leadership or in the process of being established.

The project committee began the first phase of its study by assessing the school discipline code for DC Public Schools and the sixty-plus discipline policies for each of the public charter schools. The purpose of this assessment was to determine gaps and inconsistencies in the

policies as well as to identify policies that could be pushing youth out of school and ultimately into the juvenile justice system or on a path to nowhere good.

In the second project phase, the committee sought to analyze student discipline case data it received from the Office of Administrative Hearings (OAH). OAH serves as the designated hearing officer for long-term suspension and expulsion student discipline cases that are referred by DC Public Schools. OAH began hearing these cases in January 2012.

*While continuing to assess school discipline policy, the project committee also continued to track efforts around reducing truancy in the District.*

While continuing to assess school discipline policy, the project committee also continued to track efforts to reduce truancy in the District. One effort involved the passage of the *Attendance Accountability Amendment Act of 2013*, which requires schools to refer a matter to the DC Superior Family Court Social Services Division, the city's juvenile probation agency, and the DC OAG once a student 14 years or older has 15 (fifteen) or more unexcused absences. Following the passage of this anti-truancy law, DC OAG and Court Social Services experienced a significant uptick in the number of truancy cases being referred to the court for prosecution. Concerned that these referrals would overburden the Persons in Need of Supervision (PINS) system and unnecessarily criminalize students not attending school, CCE and a group of experts began to explore a possible training that would educate relevant stakeholders about the new law in an effort to curtail any unwarranted referrals. Accordingly, in the Spring of 2014, CCE helped to organize a training hosted by the DC Superior Family Court that included Court Social Services, DC OAG, the Office of the State Superintendent of Education, DC Public Schools, Public

Charter School Board, and juvenile justice advocates from DC Lawyers for Youth and the University of the District of Columbia David A. Clarke School of Law.

The third and final phase of the project involved interviewing school administrators from traditional and charter schools at some of the highest and lowest suspending and expelling schools. The purpose of these interviews was to find out what is happening in practice and share best practices, as well as areas to improve school discipline in the District.

The findings from the project's three phases will be presented in this report. The report begins by setting the context and describing the public school discipline systems in the District as well as an assessment of these systems' discipline policies. The next section provides an overview of due process rights that must be followed before a student can be suspended or expelled. The third section profiles the best practices of five traditional and charter schools in the District and recommends ways to improve school discipline in the District.



Photo credit: SmileyManWithAHat/Creative Commons

# Description of the District of Columbia Traditional and Charter Public School Disciplinary Systems and Assessment of Discipline Policies

In order to fully understand how school discipline works in the District of Columbia, this section provides some context about the structure and administration of the traditional and public charter school disciplinary systems and begins with a brief history of how these two systems were created within the District's public education system. Following this overview, the section will present findings from CCE's assessment of traditional and charter school discipline policies.

## Legal and Statutory Framework of the District of Columbia Public Education System

The public education system in the District of Columbia during the early 1990s was in crisis.<sup>7</sup> This crisis resulted from failures to budget adequately for public education, which led to inadequate facilities, operating systems, unprepared teachers, and significantly low student achievement. In an effort to resuscitate the District's failing public education system, Congress stepped in by enacting the *DC School Reform Act of 1995*, which was signed into law by President Clinton in 1996.<sup>8</sup>

This law not only provided a comprehensive reform for public education, but authorized the establishment of DC charter schools to provide District families with alternatives to the District's traditional public schools. Under this Act, each DC charter school was given autonomy to function as its own local education agency ("LEA") governed by a board of trustees. In 1996, the DC Public Charter School Board (PCSB) was created by an amendment to the DC School Reform Act and ultimately became the sole, independent authorizer of public charter schools in the District.

Eleven years later, the Council for the District of Columbia passed the *Public Education Reform Amendment Act of 2007*.<sup>9</sup> This Act fundamentally altered the governance structure of the public education system in the District. Among its many changes, the law transferred control over DC Public Schools (DCPS) to the Mayor including the authority to promulgate legally binding rules and regulations governing DCPS.<sup>10</sup> The law also transferred oversight, but no direct authority, over DC traditional and public charter schools from the State Board of Education to the Office of the State Superintendent of Education (OSSE).

Under DC Code § 38-1802.04(c)(3)(b), however, charters are statutorily exempt from "District of Columbia statutes, policies, rules and regulations established for the District of Columbia public schools by the Superintendent, Board of Education, Mayor, District

of Columbia Council, or Authority." DC Charter Schools must comply with all federal and DC civil rights and health and safety laws.<sup>11</sup> This legal framework provided under the DC Code has therefore given charter schools broad authority over the creation and enforcement of their discipline systems.

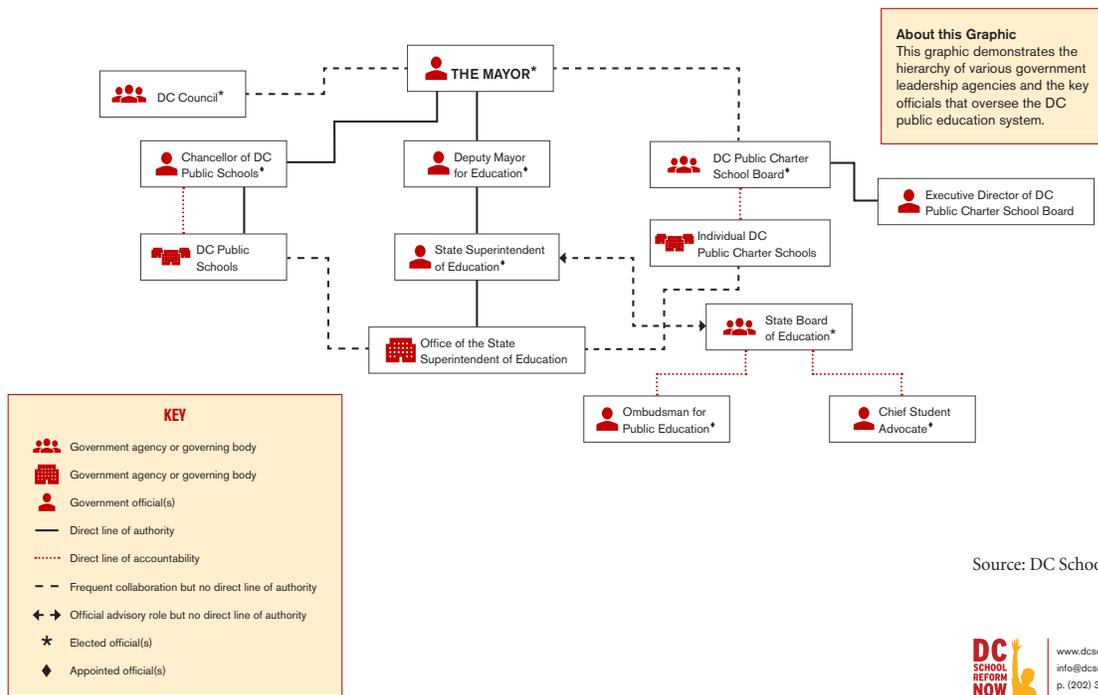
## Oversight and Accountability for School Discipline

The DC public education system has a decentralized hierarchy of leadership in that there are various government agencies and school officials with or without oversight authority and with the ability or inability to hold DC Public Schools and public charter schools accountable. At the top of this hierarchy is the District's Mayor. As mentioned earlier, the Mayor has direct authority over DCPS but no direct authority over public charter schools. Below is further explanation of the roles played by these government agencies and school officials in relation to school discipline beginning with the agencies directly under the Mayor, followed by oversight and accountability within DC traditional and charter public schools and ending with other key officials that have a role in school discipline.

## Deputy Mayor for Education

The *Public Education Reform Amendment Act of 2007* created the Deputy Mayor for Education (DME), a position responsible for "developing and implementing the Mayor's vision for academic excellence and creating a high quality education continuum from birth to 24 (from early childhood to K-12 to post-secondary and the workforce)."<sup>12</sup> The position has several primary functions. First, the DME is the Mayor's chief policy advisor on education; the DME reports directly to the Mayor to help craft education policy and oversee this strategy.<sup>13</sup> Second, the DME provides oversight and support for education-related agencies in the District, including DC Public Schools, the Public Charter School Board and OSSE.<sup>14</sup> The Deputy Mayor seeks to support these agencies, track their progress, and hold them accountable for their use of resources. In addition, the DME plays an important

# DC Public Education Leadership



role in facilitating coordination between educational and non-educational governmental agencies or between educational groups such as the city’s Truancy Taskforce to support truancy prevention and intervention. Another major DME interagency and cross-agency effort involves connecting disengaged youth who are falling off the track to graduation or who are currently disconnected. The DME’s role only indirectly touches upon issues of school discipline. For example, the DME along with OSSE, DCPS, PCSB and the New Schools Venture Fund worked collaboratively to create the District’s first-ever *DC School Equity Reports* in December 2013. These reports include data on school discipline for traditional and public charter schools for the 2012-2013 school year.<sup>15</sup>

## Office of the State Superintendent of Education

At the center of DC’s public education system is the Office of the State Superintendent of Education (OSSE). OSSE directs District-wide public education policy, possessing many of the same responsibilities as a state-level department of education.<sup>16</sup> Created in the *Public Education Reform Amendment Act of 2007*, the OSSE superintendent serves as the “chief state school officer” and DC’s representative before the US Department of Education and educational organizations.<sup>17</sup> OSSE receives “all operational authority for state-level functions.”<sup>18</sup> As the law states, “The Office of the Superintendent of Education shall serve as the state education agency and

perform the functions of a state education agency for the District of Columbia under applicable federal law...”<sup>19</sup> OSSE’s oversight covers both DCPS and public charter schools.

The main functions of OSSE include overseeing federal education programs and grants in DC, developing state-level readiness standards, ensuring access to childcare and universal pre-kindergarten, as well as providing an array of other resources and support to schools. In addition, OSSE has a pivotal role in data collection in the District. Related to school discipline data collection, OSSE issued a report (hereinafter “OSSE Report”) in June 2014 with findings and recommendations on how to dramatically reduce the number of out-of-school suspensions and expulsions.<sup>20</sup> This report utilized the federal Civil Rights Data Collection by the US Department of Education, the DC School Equity Reports, and reporting from local education agencies to make an array of suggestions to improve District education policies and reduce exclusionary discipline.<sup>21</sup> CCE will cover some of the findings of this report related to suspension and expulsion data on page 14 of this publication.

OSSE has also developed proposed standards on student conduct and discipline that would apply to all local education agencies, including all traditional and public charter schools in the District. The agency has attempted to publish these proposed standards four times beginning in 2009 and most recently in 2012.<sup>22</sup> In OSSE’s June 2014 report, it states that “OSSE will work with stakeholders to create

statewide discipline standards” and that it “intends to publish the draft regulations for public comment by Fall 2014.”<sup>23</sup> These proposed standards would “establish minimum standards for discipline and require due process parameters before school exclusions or the imposition of discipline.”<sup>24</sup> At the time of the writing of this report, these proposed standards had not yet been published for comment or finalized.

## Oversight and Accountability within DC Public Schools

### DCPS Chancellor

The head of DC Public Schools is its Chancellor who reports directly to the Mayor. The Chancellor serves as the chief executive officer of DCPS, possessing broad authority to shape DC Public Schools which include more than one hundred schools in the District.<sup>25</sup> These powers include the ability to organize DCPS and create agencies as necessary, carry out collective bargaining, hold public meetings, and exercise personnel and procurement authority if desired by the mayor.<sup>26</sup>

The Chancellor has a variety of powers over school discipline policies. In addition to the power to develop “policies, standards, and appropriate procedures” for implementing a variety of administrative codes, the Chancellor “at his or her discretion, may review and modify any proposed disciplinary action.”<sup>27</sup> The DC regulations continue to provide that, “With respect to all disciplinary actions, the Chancellor may overrule or modify any proposed disciplinary action including expulsion. The Chancellor shall provide written justification for any modification of disciplinary action.”<sup>28</sup> He or she is also empowered to designate a person or persons to carry out a variety of responsibilities, from reviewing cases in which a student is being suspended more than twice in a semester to helping place students when they are ready to return to school.<sup>29</sup> A person designated by the Chancellor also has the ability to authorize suspensions and expulsions.<sup>30</sup>

### Instructional Superintendents

Instructional Superintendents usually serve as the Chancellor’s designees as described above. For DC Public Schools, there are nine Instructional Superintendents who are assigned by cluster. Each Instructional Superintendent oversees 10-12 schools that are typically organized by grade level, such as elementary, middle school, education campus and high school.<sup>31</sup> One of the roles is to oversee discipline recommendations, such as suspensions and expulsions, made by the school principal.

### DCPS Office of Youth Engagement

The Office of Youth Engagement (OYE) works “to ensure students are present, healthy, positive members of a learning community and are able to engage in their academic and extracurricular programs.”<sup>32</sup> OYE is divided into five teams: attendance, school discipline and

school climate, student placement, health and wellness, and response to intervention.<sup>33</sup> The school discipline and school climate teams work to “promote positive student behavior and school culture.”<sup>34</sup>

When a student is expelled, except in cases related to the *Gun-Free Schools Act*, the head of the Office of Youth Engagement must authorize the expulsion pursuant to the recommendation of a person designated by the Chancellor.<sup>35</sup> When a student is suspended for fewer than eleven days, the head of OYE receives the written summary of conference proceedings.<sup>36</sup> If a student is recommended for long-term suspension or expulsion, the Office of Youth Engagement contacts the student to schedule a hearing.<sup>37</sup>

## Oversight and Accountability within DC Public Charter Schools

### Public Charter School Board

The District of Columbia Public Charter School Board manages the District’s charter school system, which currently consists of 112 public charter school campuses operated by 61 nonprofits.<sup>38</sup> PCSB formed in 1996 by the *DC School Reform Act of 1995* (as amended). After the disbanding of the State Board of Education, PCSB became the only authorizer of charter schools. The Board is comprised of six board members, nominated by the Mayor and confirmed by the DC Council. PCSB is principally responsible for opening and closing charter schools, but also oversees the health, safety, and civil rights within chartered schools. The Board regularly evaluates schools for academic results, compliance with applicable local and federal laws and fiscal management, and holds them accountable for results.<sup>39</sup>

While each DC charter school has its own unique discipline policy, PCSB monitors these policies and procedures in light of basic due process rights, the *Americans with Disabilities Act* and the *Individuals with Disabilities Education Improvement Act* for students with special education needs.<sup>40</sup> PCSB reviews school discipline policies when an application for a charter school is pending and when a charter school is up for review. PCSB also monitors monthly school discipline data, such as numbers of suspensions and expulsions, report trends, and works with schools with higher suspension and expulsion rates.

## Other Key Officials and Government Agencies

### State Board of Education

The DC State Board of Education has a reduced role in overseeing the District’s traditional and charter schools as a result of the *Public Education Reform Amendment Act of 2007*, which transferred this oversight to the Office of the State Superintendent of Education. The State Board of Education is comprised of nine elected representatives, one from each DC ward and one at-large. The mission of the State Board is “to provide policy leadership, support, advocacy, and oversight of public education to ensure that every student is valued and learns the skills and knowledge necessary to become informed,

competent, and contributing global citizens.<sup>41</sup> One of the main responsibilities of the State Board is to advise the State Superintendent on educational matters, including state standards, state policies, state objectives and state regulations proposed by the Mayor or State Superintendent.<sup>42</sup> All in all, the State Board has a limited role in school discipline. The Ombudsman for Public Education and the Office of the Student Advocate, both within the State Board of Education, have more direct roles and responsibilities related to school discipline.

### Ombudsman for Public Education

The Ombudsman for Public Education was first established under the *District of Columbia Public Education Reform Amendment Act of 2007* but lost its funding in 2009.<sup>43</sup> Recognizing the great need that this office could meet, the DC Council in 2012 re-established this office for fiscal year 2014 in the *State Board of Education Personnel Authority Amendment Act of 2012*.<sup>44</sup> This office officially opened its doors in February 2014. The main role of the Ombudsman for Public Education is to assist students and parents with resolving issues in areas such as special education accommodations, student discipline and bullying.<sup>45</sup> To this end, the office offers conflict resolution services to parents, families and students from DC traditional and charter schools in an effort to resolve disputes quickly and efficiently in all areas that affect student learning.<sup>46</sup> The Ombudsman for Public Education, while officially part of the Office of the State Board of Education, serves as a neutral party and operates independently and impartially.<sup>47</sup>

According to the 2014 *Ombudsman for Public Education Annual Report*, this office received 150 complaints from March 2014 to August 2014.<sup>48</sup> The majority, or more than two thirds of these complaints, came from traditional schools, over one fourth came from charter schools and nearly half of the complaints came from families living in Wards 7 and 8.<sup>49</sup> Of these 150 complaints, 20 percent involved student discipline matters and a disproportionate number of these complaints involved African American students and students with special education needs.<sup>50</sup> In these complaints, the Ombudsman noted concerns with the amount of time students missed while suspended for multiple days, weeks and sometimes months. For example, parents complained about being uninformed about the disciplinary process and when their child could return to school; the use of the “emergency” case designation for DCPS cases, which allows for suspension before a student receives due process; and with issues related to the DCPS alternative education school, such as not providing adequate schoolwork and complaints from parents that the setting is unsafe and unfit for students to learn.<sup>51</sup>



### Office of the Student Advocate

The Office of the Student Advocate is a newly established office created by the *Parent and Student Empowerment Act of 2013*, that is within the Office of the State Board of Education. This office provides outreach to students, parents, and guardians about school choice options in DC public education. The Chief Student Advocate in this office helps to facilitate the student enrollment process in DC traditional and public charter schools and helps students, parents, and guardians with access to education resources offered by public schools.<sup>52</sup> The Chief Student Advocate may also serve as an advocate for students in conflict resolution proceedings before the Office of the Ombudsman for Public Education that could involve a school discipline matter.

### CCE Assessment of Traditional and Charter Public School Discipline Policies

The DC public education system consists of a bifurcated disciplinary system in that DC Public Schools are regulated by local laws and regulations while discipline in DC public charter schools is not guided by any common regulation. The DCPS discipline code is contained within Chapter B25 of the District of Columbia Municipal Regulations.<sup>53</sup> These discipline regulations govern all DC traditional public schools and became effective in 2009 after significant input from education and legal advocates. The DCPS discipline code organizes its discipline violations and responses to these violations by tier. There are five tiers that ascend based on the severity of the student’s behavioral violation and the response available. Tier 1 violations are the least severe and Tier 5 violations are the most severe.<sup>54</sup>

As previously stated, DC public charter schools have great autonomy under the DC Code, which allows each individual charter school the freedom to design and implement its own discipline policy. The Council for Court Excellence collected and analyzed 62 charter school discipline code policies from the 2012-2013 school year. Additionally, CCE analyzed the DCPS discipline code. A total of 63 distinct codes were assessed. Before discussing the key findings from this assessment, the following is a brief explanation of the methodology and data collected.

### Discipline Code Assessment Methodology and Data Collected

CCE obtained electronic versions of each of the discipline codes for the 57 public charter schools in existence during the 2012-2013 school year. There were some schools that had separate policies by grade level, yielding a total number of 62 assessed charter school

discipline codes. While a few of the charter schools have closed, grade levels have changed, and new charter schools have opened, the CCE charter school discipline code data only reflects what was available during the 2012-2013 school year. Collecting these discipline codes proved to be a challenge. At the time, the Public Charter School Board had not centralized these discipline codes on its Web site, and most of the charter schools do not post their discipline codes on the school's Web site. CCE was able to receive these discipline codes by requesting them through the Public Charter School Board.

After receiving these discipline codes, the CCE School Discipline Project Committee developed an assessment/survey tool consisting of 29 questions. Many of the questions were designed to be closed-ended, requiring a "yes" or "no" response but allowed for detail to be provided in the response. These questions covered the following areas: school level information (e.g., grade levels, city ward and quadrant); the school's core values and mission; levels of discipline or types of behaviors being disciplined; discipline off-school premises; school officials involved in the discipline process; the involvement of law enforcement and school resource officers; approaches to discipline; alternative discipline practices; ranges of suspension (i.e., minimum and maximum number of days suspended); availability of in-school suspension; remote access to schoolwork and academic instruction if suspended; use of zero tolerance policies; due process rights for all students and additional due process protections for students with special education needs; accessibility of the code in other languages; and overall readability of the code.

The Project Committee first conducted a pilot test of the assessment tool on a few discipline code policies before getting started. Following this pilot test, the 63 discipline codes were then analyzed using the assessment tool by one person to ensure consistency in analysis. The information from these assessed codes was then entered into a dataset organized by discipline code and by responses to the questions. The dataset also included a total percentage based on responses to each question and percentages of the data by ward and quadrant. Finally, CCE used a data-checking process to ensure the accuracy of the coding or data entry.

## **Key Findings from Assessment of DC Traditional and Charter School Discipline Codes**

### **DC public charter schools are represented in every city ward except for Ward 3.**

Based on the charter school discipline codes collected, the school level data revealed that public charter schools have no campuses in Ward 3. The District of Columbia neighborhoods are organized by city wards. There are a total of eight wards in the District, and each ward is represented by a member of the DC Council. Ward 3 has an average household income of \$240, 044.<sup>55</sup> This ward has 21% people of color and 2% children living in poverty.<sup>56</sup> While there are no public charter school campuses in Ward 3, there are 4,166 DC public school students represented in this ward with 10 quality, traditional right-to-attend elementary and middle schools.<sup>57</sup>

### **76% of DC public charter school discipline codes and DCMR Chapter B25 reflect core values and missions.**

DCMR Chapter B25 and a majority of the charter school discipline codes state core values or missions that are essential to creating an ideal environment for students to learn and that embrace the type of school community the charter school aspires to be. These core values and missions are important because they shape school culture that can influence school discipline policy and foster academic achievement.

### **75% of DC public charter school discipline codes have a tiered system or levels of discipline.**

DCMR Chapter B25 and 75% of charter school codes have a tiered discipline system. A tiered discipline system is one in which there are different levels of infractions and punishment based on the severity of the behavior as opposed to using the same level of punishment for both minor and more serious misconduct.

### **89% of DC public charter school discipline codes provide non-punitive, restorative approaches to discipline.**

A large number of the charter school discipline code policies and DCMR Chapter B25 provide alternative, non-punitive approaches to discipline including community service, counseling, mediation and behavioral contracts. 38% of the charter school policies offered positive incentives, such as rewards for good behavior. DCMR Chapter B25 does not expressly provide for reward incentives.

### **92% of the DC public charter school discipline codes involve the parent or guardian.**

DCMR Chapter B25, and nearly all the charter school discipline codes assessed, involve parents or guardians in the discipline process.

### **70% of the DC public charter school discipline codes provide for in-school suspension.**

A number of the charter school discipline codes expressly provide for in-school suspension (ISS); however, the definition of ISS varies in the codes. Some of the schools have the student remain in class but wear a different color shirt or sit in a certain spot. Some codes allow for an instructor or monitor in the ISS room. Fewer codes require academic instruction or require students to complete school work while in ISS. DCMR Chapter B25 provides for ISS and includes a definition of "in-school disciplinary action."<sup>58</sup>

### **77% of DC public charter school discipline codes provide for 30 or more days for maximum suspension.**

Of the codes that offer 30 or more days for long-term suspension, three (3) of the codes included suspensions up to 90 days. DCMR Chapter B25 includes maximum suspension of 90 days.

### **38% of DC public charter school discipline codes obligate or allow the suspended student to participate remotely academically; 59% of these codes are silent about remote participation in academics.**

DCMR Chapter B25 allows for students to participate remotely on coursework. Without remote access to coursework while a student is

serving his or her suspension, he or she is likely to fall farther behind academically.

**64% of DC public charter school discipline codes have “zero tolerance” provisions for non-violent and violent acts that result in automatic expulsion.**

Despite the national research<sup>59</sup> and recent federal school discipline guidance discouraging the use of “zero tolerance” policies, well over half of the charter school discipline codes continue to automatically expel students, without opportunity to challenge the expulsion, for both violent (e.g., behavior involving the use of a weapon) and certain non-violent (e.g., behavior involving use/and or possession of an illegal drug) behaviors. DCMR Chapter B25 does not include “zero tolerance” policies.

**60% of the DC public charter school discipline codes involve police in some discipline related incidents.**

Considerable research exists to demonstrate that law enforcement officers in schools often contribute to inequity, particularly when they are involved in school discipline decision-making rather than solely serving as liaisons with the community and to intervene when a criminal law has been broken. DCMR Chapter B25 is silent on police involvement in discipline.

**Only 2 DC public charter school discipline codes were available in a language other than English.**

DCMR Chapter B25 is available in English only; DCPS schools, however, make available their student handbook, which includes provisions of Chapter B25, in other languages based on the student populations served.

Using the Flesch-Kincaid Readability Test, 50 out of the 62 DC public charter school discipline codes had an average readability score of approximately a tenth or eleventh grade reading level.<sup>60</sup> DCMR Chapter B25 scored at a college graduate reading level.

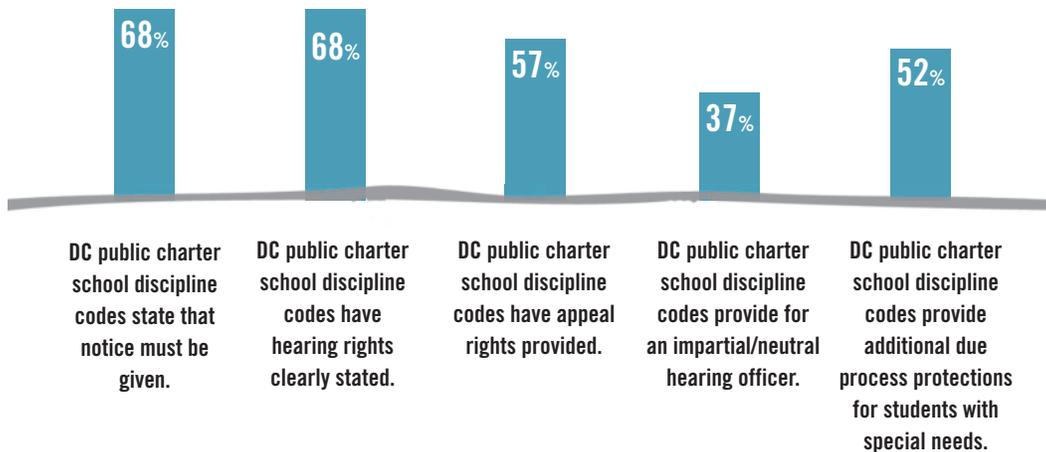
**DC public charter school discipline codes varied in adherence to procedural due process requirements.**

The below graph presents a percentage breakdown of procedural due process protections stated in the charter school discipline codes. DCMR Chapter B25 provides for procedural due process protections and additional protections for students with special education needs.

While CCE’s assessment of the charter school discipline codes revealed great variance, the biggest discrepancies in these codes are their use of zero tolerance policies, lack of remote participation to receive academic instruction and coursework, variance in adherence to procedural due process for all students, additional protections for students with special education needs, and accessibility of the codes electronically and in other languages. Further, the federal guidance on school discipline released in January 2014 and the highly anticipated District-wide discipline standards from the Office of the State Superintendent of Education would clarify what is required to ensure consistency and equity in disciplinary policies and practices.<sup>61</sup>

## Adherence to Procedural Due Process

An analysis of procedural due process protections stated in the charter school discipline codes revealed the following percentage breakdown:



# Overview of Due Process for Students Facing Suspension, Expulsion or Involuntary Transfers

Before providing an overview of the procedural due process rights that protect students who are facing an exclusionary disciplinary action, we present a landscape of what suspension and expulsion look like in the District's public school system.

## A Snapshot of Suspension and Expulsion in DC Traditional and Charter Public Schools

The District of Columbia traditional and public charter schools have frequently resorted to using exclusionary disciplinary practices, such as suspensions and expulsions, to address student misbehavior. It has been difficult to analyze the scope of these practices, in part because the District's traditional and charter school systems did not have robust school discipline data systems in place until recently.<sup>62</sup> Every Student, Every Day, a coalition of organizations and individuals working to enhance student engagement in the District while reducing school exclusions, published a June 2013 report titled *District Discipline*. This report analyzed discipline data for the 2011-2012 school year from the District of Columbia Public Schools and the Public Charter School Board.<sup>63</sup> The main findings of this report showed that traditional and charter schools imposed 18,950 total exclusions from the classroom.<sup>64</sup> The report also found that in the two systems combined, 10,156 students, or 13 percent of students, were suspended at least once.<sup>65</sup>

The District of Columbia Office of the State Superintendent of Education (OSSE), in accordance with the *Attendance Accountability Amendment Act of 2013*, issued the report, "Reducing Out-of-School Suspensions and Expulsions in District of Columbia Public and Public Charter Schools" in June 2014 that provides findings and recommendations to eliminate out-of-school suspensions and expulsions.<sup>66</sup> This report analyzed discipline data from the District's first-ever "2012-2013 DC Equity Report" released in December 2013.<sup>67</sup> OSSE's findings, similar to the findings of Every Student, Every Day, revealed that nearly 10,000 DC students were suspended at least once during the 2012-2013 academic year.<sup>68</sup>

Every Student, Every Day and OSSE reports also capture data by subgroup including race, socioeconomic status, gender, grade level, special education, homelessness and foster care status. According to that data, students of color are suspended and expelled at rates disproportionately high relative to their enrollment in the District. The OSSE report found that African American students were almost six times more likely to be disciplined than white students. Latino students were more than two times more likely to be disciplined than

white students.<sup>69</sup> Students who lived in wards with higher levels of child poverty or who were eligible for Free and Reduced Price Lunch (FRL) were more likely to be suspended than students living in more affluent wards or who were not eligible for FRL.<sup>70</sup> Males were more regularly disciplined than females.<sup>71</sup> Middle school students, who are at a critical and transformational period of physical, social and emotional development, showed a higher prevalence of being disciplined over other grade levels.<sup>72</sup> Students receiving special education services had a greater likelihood of facing suspension and expulsion compared to students not receiving special education services.<sup>73</sup> And students who were homeless or were in the foster care system were more likely to be disciplined than students who did not fall under these status subgroups.<sup>74</sup>

The OSSE Report provided more recent data on short- and medium-term suspensions, long-term suspensions and expulsions for traditional and charter schools during the 2012-2013 school year. With respect to the prevalence of short- and medium-term suspensions, data revealed that 12% of all students received an out-of-school suspension for at least one day.<sup>75</sup> As for long-term suspensions, less than 1% of all students were suspended for more than 11 days.<sup>76</sup> There were 187 expulsions during the 2012-2013 school year resulting in an expulsion rate of 0.22%.<sup>77</sup> Overall, DCPS students were 1.58 times more likely to be disciplined than charter school students.<sup>78</sup> The majority of disciplinary actions involved violence without injury. The next most frequent disciplinary action involved other drugs or violence with injury.<sup>79</sup>

The following overview of due process protections is meant to inform parents of students facing suspension or expulsion of their rights and options. Additionally, advocates, policymakers and other stakeholders may benefit from understanding the procedural rights in place that are meant to ensure fairness of process for everyone involved. CCE wishes to thank Advocates for Justice and Education (AJE), a local legal services provider that represents students facing long-term suspension or expulsion, and AJE staff attorney Timothy Riveria, for contributing to this section of the report. The overview will begin with the District of Columbia Public Schools (DCPS) and then discuss public charter schools.

## Procedural Due Process Rights for DCPS Students Facing Suspension or Expulsion

The United States Constitution's Fourteenth Amendment Due Process Clause provides that no state shall "deprive any person of life, liberty, or property, without due process of law..." The Fourteenth Amendment does not apply to the District of Columbia as it is not a state. It is the Fifth Amendment's due process clause that provides due process protections to DC residents.<sup>80</sup> The United States Supreme Court, in the seminal case *Goss v. Lopez*, concluded that a student's right to public education is a protected property interest that cannot be taken away for disciplinary reasons unless the school follows constitutional due process requirements.<sup>81</sup> The United States Supreme Court went further to establish minimal due process rights, requiring that students facing short-term or long-term suspension or expulsion should, at minimum, be given notice and afforded some kind of hearing.<sup>82</sup> Student discipline in DCPS is regulated under Chapter B25 of Title 5 of DC Municipal Regulations (DCMR). These rules were last revised in August 2009.

DCPS follows a tiered disciplinary system. Students are disciplined for misconduct on one of five tiers, with Tier 1 being the lowest offense, e.g., a student caught using profanity, and Tier 5 being the highest offense, e.g., a student selling or distributing drugs. Tiers 1 and 2 can result in school-based and administrative disciplinary responses. Only behaviors falling within Tiers 3 through 5 can result in off-site suspensions, and only Tier 5 behaviors can result in expulsion. The school must follow specified procedures depending on whether a DCPS student is facing a short-term,<sup>83</sup> medium-term,<sup>84</sup> or long-term suspension<sup>85</sup> or expulsion.

### Right to Conference and Notice

Any student facing suspension or expulsion has a right to stay in school until he or she has a conference with the Principal, an Assistant Principal, or Dean of Students unless the student is contributing to an emergency situation in school.<sup>86</sup> In the suspension context, an emergency situation is defined as either a general emergency condition in the school or the student's behavior is disruptive or dangerous. This disruptive or dangerous behavior must pose "a very real and immediate threat to the health and safety of other members of the school community, or to the ability of the school community or the school or portion thereof to continue normal operations."<sup>87</sup> If an emergency condition does exist, the conference must be held within three (3) school days of the emergency start of the suspension.<sup>88</sup> The conference allows parties to discuss the incident and the proposed sanction.<sup>89</sup> It also gives the student the opportunity to hear school staff explain the school's evidence, and to give his or her version of the facts.<sup>90</sup>

If the school decides to suspend or expel a student, whether or not it is on an emergency basis, then the school must provide written notice of the suspension or expulsion within one (1) school day before the proposed suspension or expulsion.<sup>91</sup> The written notice must be given to the parent, guardian, or adult student in a verifiable manner.<sup>92</sup> Among other required contents, it must include the name and citation to the alleged infraction, a summary of the facts, the length of the proposed suspension, and a proposed plan for the student to be educated during the suspension.<sup>93</sup>

### Right to Appeal for Short- and Medium-Term Suspensions

The Instructional Superintendent<sup>94</sup>, designated by the DCPS school chancellor, may approve, modify, or deny the proposed suspension or expulsion.<sup>95</sup> Short-term suspensions (1-5 school days) are directly appealable to the school principal, and medium-term (6-10 school days) suspensions may be appealed to the person designated by the school chancellor, which is typically the Instructional Superintendent.<sup>96</sup> All appeals must be made by the parent, guardian or adult student.<sup>97</sup> They can be made orally or in writing within two (2) days after receiving the notice of suspension, but the requester does not have to wait to receive written notice of the suspension to request an appeal. The principal or Instructional Superintendent must hear the appeal within one (1) school day after the appeal is requested. The person requesting the appeal, however, may request an extension for up to three (3) school days. At the appeal hearing, the student and his or her parent or guardian may present evidence and ask witnesses to speak in support of their appeal. Once the appeal hearing concludes, the principal or Instructional Superintendent must render and give a written decision within one (1) school day.

Students who are suspended for fewer than eleven (11) days have the right to an education plan that meets the student's educational needs and allows the student to make up any class and homework assignments without penalty.<sup>98</sup> A student who is suspended long-term, or expelled, must be placed in an Alternative Educational Setting, which for DCPS is usually Choosing Higher Options for Individually Centered Education C.H.O.I.C.E. Academy.<sup>99</sup> C.H.O.I.C.E. Academy only serves DCPS students. There is currently no city-wide alternative educational setting in the District for charter schools.

### Right to Hearing for Long-Term Suspension or Expulsion and the Role of the Office of Administrative Hearings

Students facing long-term suspension (11 school days or more) or expulsion are entitled to a formal discipline hearing within four (4)



days after a written notice regarding the disciplinary action is provided.<sup>100</sup> In early 2012, DCPS and the Office of Administrative Hearings (OAH) entered into a memorandum of understanding (MOU) in which OAH agreed to serve as the Chancellor's designated impartial hearing officer. OAH is an independent agency that holds administrative hearings and decides appeals from various District of Columbia agency decisions. Formed in 2001 by the DC Council, this administrative court provides centralized adjudication services to District residents.

Pursuant to the MOU with DCPS, OAH hears student disciplinary hearings and issues formal findings of fact and conclusions of law. It issues as well a recommendation concerning discipline. While DCPS is bound by these findings of fact and conclusions of law, it is not bound by the recommended discipline. DCPS ultimately determines the appropriate discipline to be imposed that is permitted under the student discipline regulations. OAH developed rules governing these DCPS disciplinary hearings, found in Title 1, § 2900 of the DC Code of Municipal Regulations (DCMR). OAH began hearing long-term suspension, expulsion, and contested residency cases<sup>101</sup> referred from DCPS in January 2012, the second semester of the 2011-2012 school year (SY).

Prior to this time, these hearings were usually held at the school proposing the disciplinary action by contract hearing officers. Parents had the ability to appeal and had broader due process rights. However, there were no regulations equivalent to those at 1 DCMR § 2903.2, which state that DCPS is bound by defined factual and legal conclusions. Practically, Instructional Superintendents had unlimited authority to modify the factual and legal determinations of the hearing officers.

CCE sought and received DCPS student discipline case data from OAH in a Freedom of Information Act (FOIA) request in September 2013. The data covered January 2012 – June 2012 and September 2012 – June 2013. The Council also interviewed the principal administrative law judge (ALJ) overseeing student discipline cases in August 2012 and then met again with this principal ALJ along with the interim chief ALJ in September 2014.<sup>102</sup> The data collected from both OAH's response to CCE's FOIA request and the interviews yielded the following information and analysis.

During the second semester of the 2011-12 SY, 267 student discipline cases were filed and 260 hearings were held at OAH. For the 2012-2013 school year, there were 381 student discipline cases filed and 381 hearings held. During the 2013-2014 school year, there were 274 student discipline cases filed and 281 hearings held.

OAH explained that for the second semester of the 2011-2012 school year, the number of cases filed is slightly more than hearings held because some cases may be filed, then withdrawn, and no hearing held.

Relatedly, a case could have more than one hearing, which would explain why for the 2013-2014 school year, there were more hearings than cases filed. For the 2012-2013 school year, the number of cases filed and heard were the same.

From the 2012-2013 and 2013-2014 school years, OAH saw nearly a 30 percent drop in cases being referred to OAH. OAH indicated that this decrease may be attributed to DCPS relying more on short- and medium-term suspensions or in-school suspensions, which would not trigger hearings at OAH.

Since conducting these hearings, OAH has also noted a seven percent increase in DCPS failing to appear for hearings. When DCPS does not show up for a hearing, there is an automatic default judgment in favor of the student. This means that the proposed discipline does not get imposed. OAH indicated that a number of schools do not like coming to OAH and have expressed concerns about the time commitment to appear, particularly when there are multiple hearings for one student. To accommodate schools, ALJs have encouraged

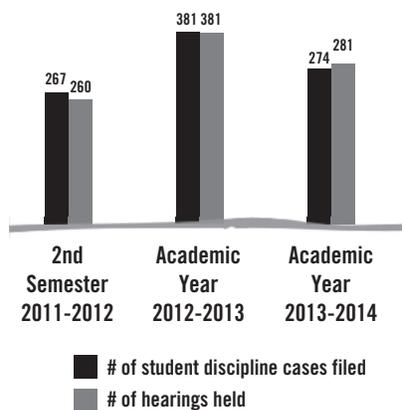
them to participate in video conferencing and have also worked with schools in scheduling hearings around their schedules.

Cases heard during the September 2012-June 2013 period resulted in approximately 170 cases, or 44%, of the cases being modified down or ALJ deciding a lesser infraction. Modification could mean that the tier or discipline is modified by the ALJ's decision. While the school is bound by an ALJ's factual decision to modify the tier, they are not bound by the ALJ's recommended discipline. That is, even if an ALJ finds that the student's conduct was a Tier 4 instead of a Tier 5, the school could still suspend a student for up to 90 days. A modification of a tier or discipline does not result in dismissal of punishment.

OAH has also noted a recent trend with DCPS using the emergency designation in student

discipline cases even when the situation involving the student misbehavior may not rise to the level of an emergency. A student has a right to stay in school unless his or her behavior is contributing to an emergency situation in school. Once a student's case has been deemed an emergency, he or she is not allowed to return to school until after final disposition of the case. Based on anecdotal evidence, this period from the time of incident to final case disposition can typically last from four to six weeks.<sup>103</sup> A student facing long-term suspension or expulsion, however, must be placed in an alternative school setting which for DCPS students is usually C.H.O.I.C.E. Academy. However, students on emergency suspension are not allowed to attend C.H.O.I.C.E. Academy while they await final decisions on their suspensions. Upon receiving a post-hearing notices of suspension, these students are instructed to contact C.H.O.I.C.E. Academy to register.

### DCPS STUDENT DISCIPLINE CASES AT OAH



OAH held a total of 641 student hearings during January 2012–June 2012 and September 2012–June 2013. Students facing long-term suspension or expulsion were only represented by a lawyer in only approximately 50 of these hearings, which means that students were unrepresented by counsel in about 92 percent of these hearings. Attorneys in these cases came from local legal services organizations, law school clinics, the DC Public Defender Service and the private bar. A lawyer who specializes in school disciplinary cases is likely to know the applicable law for the process and would also be skilled in questioning witnesses and reviewing evidence. Counsel would also ensure that the case is conducted fairly and impartially and establish an accurate administrative record if the student has a concurrent case with the local trial court. Therefore, it is in the student’s best interest to be represented by counsel, particularly when facing a high-stakes consequence such as a long-term suspension or expulsion.

OAH has a Resource Center on-site to serve unrepresented litigants. This Resource Center does not provide direct legal representation but offers self-help information and legal referrals to local services organizations and law school clinics that represent students in these types of cases. Additionally, staff attorneys from Advocates for Justice and Education are on-hand at OAH on Mondays, Wednesdays and Fridays to provide brief legal advice to parents that appear for their hearings.

CCE requested demographic data such as student gender, grade level, race, ethnicity, special education status, English Language Learner status, and free and reduced meals; however, OAH does not track this information. OAH also does not track any data on the underlying behavioral infraction. But if the student discipline hearing is heard at OAH, then the types of disciplined behaviors would have to fall under DCMR Chapter B25 Tiers 4 and 5.

### DCPS Student Discipline Case Hearings by OAH

The municipal regulations at 1 DCMR § 2900-2909 govern all student discipline cases referred to OAH by DCPS.<sup>104</sup> The generally applicable procedural rules in Title 1, Chapter 28 apply for procedural issues not covered in the sections dedicated to DCPS cases, and OAH is not obligated to follow other procedural rules adopted by DCPS.<sup>105</sup>

### Standard of Review

Section 2901.1 states that the assigned administrative law judge (ALJ) must decide the following three issues at DCPS discipline hearings:

- 1) The material facts;
- 2) Whether required due process procedures, including notice and the opportunity to respond to the charges, have been followed or have been waived, including whether there was prejudicial failure to follow procedures identified in 5 DCMR B § 2505; and

- 3) Whether the facts show that the student committed any of the violations upon which a proposed disciplinary action is based and the proper tier for any violation, as specified in 5 DCMR B § 2502.<sup>106</sup>

As for material facts, the primary factual issue in long-term suspension or expulsion hearings at OAH is whether the “the student did commit the infraction(s) upon which the disciplinary action is based.”<sup>107</sup> DCPS has the burden of proving that the student committed one infraction by a preponderance of the evidence.<sup>108</sup> Some, but not all, infractions are defined in sections under 5 DCMR § B2599.2.

If DCPS establishes that the student committed an infraction, Title 1, section 2903.4 requires the ALJ to specify it and make a recommendation of appropriate disciplinary action, using the factors listed at 5 DCMR § B2500.9. These factors include:

- 1) the nature of the infraction;
- 2) circumstances related to the infraction;
- 3) the age of the student;
- 4) the student’s previous behavioral history;
- 5) previous participation in counseling or conflict resolution efforts such as peer mediation;
- 6) whether injury occurred;
- 7) whether a weapon or controlled substance was involved;
- 8) the safety of other students or staff;
- 9) the educational needs of other students;
- 10) the educational needs of the student (including those enumerated in an IEP or a plan issued pursuant to § 504 of the Rehabilitation Act of 1973); and
- 11) extenuating circumstances.

These material facts may be established by testimony, documents, video, audio, or other evidence with some bearing on whether or not the student committed the alleged disciplinary infraction and the specified related factors.

**QUICK TIP:**  
*Parents and attorneys representing students in these matters should review supplemental documents to get details about what actually occurred. These documents serve as the basis for the proposed suspension.*

**QUICK TIP: Parents and attorneys representing students in these matters should review supplemental documents to get details about what actually occurred. These documents serve as the basis for the proposed suspension. Discussing the reason for the suspension with school staff can also provide needed details about the circumstances leading to the proposed school suspension. Attorneys should research and clarify ethical limitations concerning contact with represented parties when making these inquiries. Whether this type of contact is permitted under the District of Columbia Rules of Professional Conduct or other substantive law is outside the scope of this report.**

The ALJ must also determine the proper discipline tier for any violation established by DCPS, as specified in 5 DCMR § B2502. As previously mentioned, B2502 lists a series of five tiers of behavioral infractions. They are commonly referred to as Tier 1 through Tier 5. As the tier numbers increase, the infractions and available disciplinary responses are more severe. For instance, Tier 1 at B2502.1

contains infractions such as “refusal to present school-issued identification upon request” and “unexcused lateness for class.” These Tier 1 infractions have the least severe available disciplinary responses such as “verbal redirection or reprimand” and “teacher/student conference.”

Out-of-school suspension is not allowed for infractions listed in Tiers 1 and 2. Tier 3 allows for in-school disciplinary actions, short-term, and medium-term suspensions. Tier 4 infractions allow only short-, medium-, or long-term out-of-school suspensions. Tier 5, at B2502.5, includes infractions such as “the possession or distribution of alcohol,” “assault or physical attack on student or staff,” or “possession or bringing to school a loaded or unloaded firearm.” The only disciplinary responses available under Tier 5 are long-term suspension or expulsion.<sup>109</sup>

Given the range of available tiers into which the established infraction may be placed and the varied disciplinary responses within them, the ALJ’s identification of the proper tier for the behavioral infraction largely determines the length of the student’s final suspension.

1 DCMR § 2901.1(b) requires the ALJ to decide whether DCPS followed “due process” procedures or if they have been waived. It states that these procedures include notice, the opportunity to respond to the charges, and whether there was a “prejudicial failure” to follow procedures identified in the DCPS disciplinary rules at 5 DCMR B2505. There are detailed requirements for notice conferences, and hearings at B2505, but the term “prejudicial failure” is not defined in Title 1, Chapter 29 or Chapter B25. Chapter 29 seems to distinguish between the standard for the general due process requirements of *Goss v. Lopez* from the more specific requirements for DCPS. Whether a “prejudicial failure” means affecting the outcome of the hearing or simply the loss of school days is unclear.

DCPS cannot modify the findings of fact and conclusions of law of the ALJ, which are the material facts, the determination of due process, and the designated tier of an established infraction.<sup>110</sup> If the ALJ decides that due process was denied or if the student did not commit any of the violations upon which the disciplinary action is based, then the disciplinary action cannot proceed.<sup>111</sup> Also, all school records concerning the disciplinary action have to be destroyed if the ALJ determines that the student did not violate any DCPS rule or policy.<sup>112</sup>

**QUICK TIP: Parents should ensure that their child’s student discipline records are destroyed after transition from elementary to middle or middle to high school in accordance with 5 DCMR § B2503.5.**

If the ALJ does find that the student committed an infraction upon which the discipline is based, the ALJ must also determine the

appropriate tier and make a recommendation as to the appropriate disciplinary response.<sup>113</sup> DCPS is not bound by this recommendation. OAH returns the case to DCPS for it to decide the final disciplinary action within the determined tier.<sup>114</sup> This means that if the ALJ determines that an alleged infraction is within Tier 4, and recommends a short-term, 4 day suspension, then DCPS may still modify this suspension to a long-term, 45 day suspension as allowed by Tier 4.

## Scheduling

Hearings are required to be held no more than four school days from the date that written notice is provided to the parent, guardian, or adult student.<sup>115</sup> However, if it is necessary for the attendance of necessary parties or to prepare for the hearing, parents can request a postponement of their hearing for up to five school days.<sup>116</sup> Prior to the date of the hearing, parents should make this request to the DC Office of Youth Engagement, the DCPS office responsible for scheduling long-term suspension hearings.

If the parent, guardian, or adult student fails to appear for their hearing, they may ask OAH for a new hearing date.<sup>117</sup> However, they must file their request for a new hearing within one school day after the scheduled hearing date.<sup>118</sup>

In general, no party in a school discipline case has a right to file a motion for reconsideration, or for a relief from a final order.<sup>119</sup> However, a parent can request another hearing before an ALJ after one school day from the date of the scheduled hearing and once DCPS has issued a final notice of disciplinary action.<sup>120</sup> This request for another hearing before an ALJ is limited to parents who did not receive actual notice of the hearing.<sup>121</sup> They may only request that DCPS reschedule it.<sup>122</sup> This request cannot go to OAH. DCPS has the discretion to decide whether it will refer the case back to OAH for a new disciplinary hearing or to OAH in order to

decide whether to grant a new hearing per 1 DCMR § 2904.2.

**QUICK TIP: If parents cannot obtain confirmation that their disciplinary hearing is scheduled and they suspect that it is occurring on a particular morning, they should contact the Office of Youth Engagement and OAH either in person or by phone. In person contact with OAH is preferable, given the limited information they can share about DCPS matters to non-parties and their limited ability to verify the identity of callers.**

## Evidence

*Goss v. Lopez* requires that schools provide at least a summary of the basis for the suspension prior to the required opportunity for the student to be heard.<sup>123</sup> Accordingly, rule 2902.3 requires DCPS to allow the student or parent to inspect or copy the student’s disciplinary file before the hearing.<sup>124</sup> The regulations do not mandate that

### QUICK TIP:

*If parents cannot obtain confirmation that their disciplinary hearing is scheduled to proceed, they should contact the Office of Youth Engagement and OAH either in person or by phone.*

DCPS provide the file for any length of time before the hearing. However, in order for the hearings to be fair and to allow for appropriate parent participation, timely access to necessary records is vital. Unfortunately, many parents are not given the disciplinary file until the morning of the hearing when OAH gives a copy to them.

**1 DCMR 2999.2, the OAH Rules for DCPS, defines the student disciplinary file as:**

“any and all tangible evidence, in DCPS’s possession, which forms the basis for the school’s decision to propose the specific disciplinary action, including, but not limited to, student, staff, and other witness statements, incident reports, photographs, police reports, and security camera footage.”

**QUICK TIP: As soon as possible before the hearing, the parent, guardian, adult student or their attorney should contact the school proposing the suspension to request the student disciplinary file. If the school is unable or unwilling to provide this file, they should contact the DCPS Office of Youth Engagement to request it. The DCPS Office of Youth Engagement has access to the electronic record keeping system for school discipline records. This system is often referred as the “student behavior tracker.”**

### Hearings

School discipline hearings at OAH are usually held at either 9:15 a.m. or 11:15 a.m. on days when DCPS schools are in session. School discipline hearings are closed to the public unless the involved parent, guardian, or adult student agrees to make the hearing public.<sup>125</sup> Also, school discipline case documents held at OAH are confidential except to the adult student, parent, representative, a person with written consent, or a school official with a legitimate interest.<sup>126</sup>

### Waiver of Hearings

Students who are suspended for more than ten (10) school days, are usually sent to the DCPS alternative school named, C.H.O.I.C.E. Academy. C.H.O.I.C.E. Academy is the primary way that DCPS provides the “Alternative Educational Setting” required by 5 D.C.M.R. § B2504.10(b). However, there is anecdotal evidence that DCPS has an unpublished procedure that allows a parents, guardians, or adult students to waive their long-term suspension or expulsion hearings at their option. During the 2012-2013 school year, there were 301 students referred to DCPS’s alternative educational setting.<sup>127</sup> Students who were referred more than once are included within this number only once. From the numbers given to CCE by OAH for this school year, there were only 152 suspensions that could have been referred to C.H.O.I.C.E. if all of the cases were processed through OAH.<sup>128</sup> There is evidence that during the 2012-2013 school year, some students attended C.H.O.I.C.E. without hearings at OAH.

DCPS discipline regulations state, “a student who has been suspended for eleven (11) days or more or who has been expelled shall have a disciplinary hearing pursuant to the procedures in § 2506.” This section requires a disciplinary hearing for long-term suspensions and expulsions, but does not state a procedure for hearing waivers. There are no regulations or DCPS policies defining the regulatory authority for hearing waivers or the policy defining rules as to school discipline hearing waivers.

### DCPS Student Discipline Case Decisions and Post-Hearing Appeal Rights for Long-Term Suspension and Expulsion Cases

Once the ALJ hears a DCPS case, he or she has one school day to render a written decision.<sup>129</sup> When the ALJ issues his or her written decision containing the binding determination of material facts, conclusions of law, and any recommendation as to the disciplinary action, the appropriate Instructional Superintendent receives it.

The Instructional Superintendent then has one additional day to issue a decision on the disciplinary action, usually contained in a document entitled, “Final Notice of Disciplinary Action.”<sup>130</sup> In sum, after the conclusion of the hearing, the result should be determined within two school days. The decision issued by the Instructional Superintendent must be mailed to the parent, guardian, or adult student within twenty four (24) hours.<sup>131</sup> For expulsions, the Office of Youth Engagement renders a decision no later than one school day after receiving the ALJ’s recommendation, and they are also required to mail the decision within twenty four (24) hours.<sup>132</sup>

Long-term suspensions may be appealed directly to the Office of Youth Engagement.<sup>133</sup> During the 2013-2014 school year, appeals were heard by the Deputy Chief of the Office of Youth Engagement. Parents can appeal long-

term suspensions orally or in writing by informing the Office of Youth Engagement that they wish to appeal.<sup>134</sup> It is best for parents to submit a written request to the Office of Youth Engagement via email or fax. Parents must request an appeal within five school days from the date they receive notice of the finalized long-term suspension.<sup>135</sup>

Once an appeal is requested, the Office of Youth Engagement must hold an appeal conference within three school days.<sup>136</sup> In order to prepare for the appeal hearing, parents or their attorneys should request a recorded copy of the OAH hearing. These are available at no cost and can be obtained by filing a request form with OAH. At this appeal conference, parents and counsel may present arguments in support of an appeal. The appeal conference may be held by telephone at the request of the parent.<sup>137</sup> The Office of Youth Engagement must render a final decision within two school days

**QUICK TIP:**  
*As soon as possible before the hearing, the parent, guardian, adult student or their attorney should contact the school proposing the suspension to request the student disciplinary file.*

from the date of the conference in the form of a written summary provided to the parent.<sup>138</sup>

Expulsions may be appealed directly to the Chancellor.<sup>139</sup> The procedures for appeal are identical to those for long-term suspension, except that the appeal request should go to the Chancellor's office.<sup>140</sup> Parents have the same timetable for appeal, which is five school days from notice of the final disciplinary action.<sup>141</sup> The Chancellor, or his or her designee, must also schedule a hearing within three school days of the appeal.<sup>142</sup> As with the Office of Youth Engagement, the Chancellor must issue a final written decision and provide it to the parent within two school days after the appeal conference.<sup>143</sup>

After the appeal decision from either the Office of Youth Engagement or the Chancellor, there are no further appeals described in the DCPS disciplinary code. However, the Chancellor may overrule or modify any disciplinary decision with written justification.<sup>144</sup> Parents or their attorneys may request that the Chancellor review a long-term suspension decision, but the Chancellor would not be obligated to review, modify, or overturn it. Parents may also be able to appeal to DC local court following a final disciplinary decision under the District of Columbia Administrative Procedures Act.<sup>145</sup>

## Alternative Education Setting

As stated previously, students who are suspended for more than ten days have a right to an alternative education setting that will allow them to continue to earn credits toward graduation or promotion to the next grade.<sup>146</sup> DCPS usually designates C.H.O.I.C.E. Academy as the required alternative education setting. This school is located at 1720 1st St. NE, Washington, DC 20002 and has this description on the DCPS website:<sup>147</sup>

C.H.O.I.C.E. Academy provides a specialized alternative setting for students in grades 6-12 who are in a long-term suspension or expulsion status due to an infraction of the Student Discipline Code of Conduct Chapter 25. Our goal is to offer a structured program of academic support with behavior modification strategies that prepares students for a successful re-entry into their home schools.

There is currently no alternative education setting for students in kindergarten to fifth grade. As stated earlier, students who have a pending long-term suspension or expulsion hearing at OAH, do not get access to an alternative education setting. This is true even if they are out of their school due to their case being designated as an emergency suspension pending hearing. Students in this situation should request an education plan per 5 DCMR § B2504.10(a), which includes all classwork, homework, and exams.

Once students are referred to C.H.O.I.C.E. Academy, it is important that their parents or attorneys determine which of their classes are offered there. Some students with advanced or career and technical education (CTE) courses will not have any instruction for these classes available at C.H.O.I.C.E. Parents should request a different alternative educational setting if their students cannot obtain an opportunity to earn credits towards promotion or graduation as required by B2504.10(b) at C.H.O.I.C.E. If DCPS will not provide a

school with appropriate instruction, the student should obtain homework, classwork, quizzes and exams from his or her original school. The student can work on this course work while attending C.H.O.I.C.E. At the end of a student's time at C.H.O.I.C.E., he or she should receive a grade for the work he or she completed, and this is averaged into year-long grades.

**QUICK TIP: Remember that disciplinary responses should consider the educational needs of the student under 5 DCMR § B2500.9(j). If there is no identified appropriate alternative education setting at the time of the hearing, then this may be a basis to modify the disciplinary action to allow the student to remain in his or her original school or return to it sooner. This argument may be made at the conference, ALJ hearing, or appeal levels.**

## Additional Due Process Hearing Rights for Students with Special Education Needs

Students with disabilities are not exempt from disciplinary action, but they have additional protections from suspensions.<sup>148</sup> This section will discuss these protections.

In the context of DCPS school discipline hearings, DCPS must ensure that the person or persons making the final determination regarding the disciplinary action have special education and disciplinary records available in order to take them into account.<sup>149</sup> These records include: the student's IEP (Individualized Education Program), Section 504 Plan, discipline file, cumulative file, anecdotal records from teachers or other school personnel, and reports or recommendations from health or mental health clinicians.<sup>150</sup> Given that ALJs make binding factual and legal determinations in disciplinary hearings, they should be provided with these records for consideration at school discipline hearings. Also, ALJs are required to make their recommendation as to the final disciplinary action considering the educational needs of the student, which includes the needs described in the IEP or Section 504 Plan.<sup>151</sup>

The primary school discipline protection for students with disabilities is the manifestation determination review. If DCPS proposes a suspension of more than ten school days for a student with special needs, then they must examine whether the student's disability caused the problem behavior.<sup>152</sup> This examination, among other required topics, must occur at the manifestation determination review.<sup>153</sup> The student may be suspended similar to students without disabilities if the behavior was not a manifestation of the student's disability.<sup>154</sup> However, students with disabilities have an additional right to receive services and modifications to their educational program, including the ones described in their IEPs, in their alternative educational setting.<sup>155</sup> They also have a right to services and modifications designed to address the problem behavior so that it does not recur.<sup>156</sup>

DCPS must hold the manifestation determination review within ten school days from the date they propose a suspension of more than ten days.<sup>157</sup> Federal law also requires public schools to hold manifestation determination reviews if they suspend a student with a disability for a total of more than ten nonconsecutive days in one academic year and the multiple suspensions constitute a pattern.<sup>158</sup>

The manifestation determination review meeting should include the parent of the student or adult student, a representative from DCPS, and relevant members of the student's IEP team.<sup>159</sup> The student's IEP team is the team that convenes on a regular basis to determine appropriate special education services for the student.<sup>160</sup> To determine whether the suspension will be allowed to proceed as proposed, the group must examine the following at the manifestation determination review:

- 1) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- 2) If the conduct in question was the direct result of DCPS's failure to implement the IEP.<sup>161</sup>

In order to decide these two questions, the group must review all relevant information in the student's file, including the IEP, teacher observations, evaluations and diagnostics results, any relevant information provided by the parents or any information deemed relevant by the group.<sup>162</sup> The group *has to* decide that the behavior was a manifestation of the student's disability unless they conclude that all of the following are true:

- 1) In relationship to the behavior subject to the disciplinary action, the student's IEP and placement were appropriate and the student's special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
- 2) This student's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to the disciplinary action; and
- 3) The child's disability did not impair the ability of the child to control the behavior subject to the disciplinary action.

If the group decides that the behavior was a manifestation of the student's disability, the suspension cannot proceed. However, the parents and school can agree to allow the suspension.<sup>163</sup> Also, DCPS may be able to suspend, regardless of the manifestation determination, within three special circumstances. The first of these is for carrying a dangerous weapon to school as defined by federal law.<sup>164</sup> The second special circumstance is if the student knowingly possessed or used illegal drugs, or sells or solicits the sale of a controlled substance at school.<sup>165</sup> This special circumstance applies if the drugs are possessed, sold, or solicited at a school function or on the school premises.<sup>166</sup> The definitions of "controlled substance" and "illegal drug" are defined in the federal regulations at 34 CFR § 300.530(i)(1)-(2). The third exception is if the student has inflicted serious bodily injury while at school.<sup>167</sup> "Serious bodily injury" is defined as injury which involves a substantial risk of death, extreme physical pain, or protracted and obvious disfigurement.<sup>168</sup>

If any of the special circumstances apply, federal regulations allow school personnel to remove the student to an interim alternative educational placement for up to 45 days.<sup>169</sup> Under these special

circumstances, the school may remove the student to another educational placement even if the behavior was a manifestation of the student's disability.

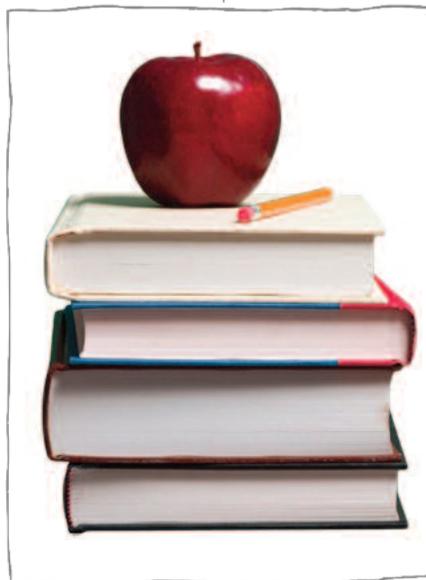
DCPS regulations at 5 DCMR § B2510.5 may restrict immediate removals of students with disabilities from their current educational placements to the above three special circumstances. It is also important to note that DCPS discipline regulations do not mirror the federal regulations allowing 45-day suspensions despite a determination that the behavior was a manifestation of the student's disability. The only discussion in the DC regulations of the three exceptions addresses immediate removal of students with disabilities from their current educational placement. Consequently, the local law in this area on the three special circumstances is unclear.

An interim alternative education setting for a student with special needs is determined by the student's IEP team.<sup>170</sup> Please note that the definition of "interim alternative educational setting" may differ from the "alternative education setting" discussed at 5 DCMR §

2504.10(b), which is required for all students on long-term suspensions. The interim alternative educational setting provided to DCPS students with disabilities during suspensions should provide their special education instruction and related services, including those listed in the student's IEP.<sup>171</sup> Whether or not the legal term of "interim" is applied to the setting in which the student is placed, B2510.6 still obligates DCPS to provide the services and instruction specified in the student's IEP once they are removed from their original school for more than ten days.

During manifestation determination review meetings, the group members may not agree on the required manifestation determination review questions. If the group cannot agree, the representative from the school district is able to enter the decisions for the group. A parent may request a special education hearing

if they disagree with a determination that behavior is not a manifestation of the child's disability.<sup>172</sup> This hearing would not occur at OAH, but at the Office of State Superintendent of Education's (OSSE) Office of Dispute Resolution. This hearing would be held within an expedited timeline of twenty school days, and the final decision must be rendered within ten school days from the date of the hearing.<sup>173</sup> While the hearing is pending, the student would stay in the interim alternative education setting identified by the IEP team.<sup>174</sup> At this hearing, DCPS must demonstrate that the student's behavior was not a manifestation of his or her disability.<sup>175</sup> The hearing officer has the authority to overturn the manifestation determination review and place a student back in his or her original school.<sup>176</sup> Parents who disagree with the decision of the hearing officer in the special education case may appeal the decision to US Federal District Court or to the DC local court.<sup>177</sup>



Protections provided to students with disabilities may apply to students suspected of having disabilities. If DCPS had knowledge that the student had a disability before the behavior resulting in the disciplinary action occurred, then they have to provide the same protections that are afforded to students with disabilities.<sup>178</sup> DCPS will be considered to have knowledge if any of the following are true:

- 1) The parent expressed concern, in writing, that the student is in need of special education services and this was provided to the school administration or the child's teacher;
- 2) The parent of the child requested an evaluation of the child;
- 3) The child's teacher, or other school personnel, expressed specific concerns about a pattern of behavior demonstrated by the child to the director of special education or other supervisory school personnel.<sup>179</sup>

If DCPS does not have knowledge of a student's disability, then the student is subject to general school discipline procedures.<sup>180</sup>

However, a parent may request an expedited evaluation while a disciplinary action is pending.<sup>181</sup> If the evaluation shows that the student has a disability, then DCPS must afford the student all protections for students with disabilities.<sup>182</sup>

Students without IEPs but with Section 504 Plans under the *Rehabilitation Act of 1973* have the same protections, if not more, than students with IEPs.<sup>183</sup>

### **Due Process Rights for DCPS Student Facing Involuntary Transfer**

Under DCMR Title 5, Chapter E-21 § 2107, a student shall not be involuntarily transferred without receiving notice of the reasons for the transfer and an opportunity for a hearing prior to the proposed transfer. In the discipline context, involuntary transfer means assigning a student during the school year for disciplinary purposes to a DCPS school other than the school in which the student was originally enrolled. Transfers may occur without a hearing if the matter involves a change of address; failure to enroll and to attend school or a career education program; the closing of a facility or program; or maintaining eligibility for a special or city-wide program.<sup>184</sup>

If a DCPS student wishes to appeal an involuntary transfer, he or she may appeal only to the Chancellor. The Office of Administrative Hearings (OAH) used to hear involuntary transfer cases when it initially began hearing student discipline cases in January 2012. However, DCPS no longer refers these cases to OAH.

Students may be immediately and involuntarily transferred to another, appropriate DCPS school if a student is charged with or accused of a criminal offense as a juvenile or an adult.<sup>185</sup> The immediate transfer will result if the Superintendent or designee believes that the peace, health, safety or welfare of the students or staff of DCPS may be disturbed by maintaining the student in their prior placement.<sup>186</sup> A student or their parent still has a right to request a hearing to review the involuntary transfer and a final decision will be made thereafter.<sup>187</sup>

The regulations explicitly state that involuntary transfers cannot be used as a disciplinary response. The only exception is when a student

is referred to the placement team to determine a more appropriate setting due to failure to comply with the uniform policy four or more times.<sup>188</sup> This referral can only occur after a student has been provided a behavior contract aimed at addressing the uniform violation issue.

### **Due Process Rights for a Charter School Student Facing Suspension or Expulsion**

As covered earlier in the report, each charter school in the District has its own discipline policy that varies from DC public schools and from other charter schools. Even though charter schools have their own specific discipline procedures, these procedures must be consistent with due process and other federal laws. Charter schools must follow the minimal due process standards for suspension and expulsion cases that are provided under the US Supreme Court decision *Goss v. Lopez*.<sup>189</sup> Under *Goss*, public education for students creates important liberty interests and property rights, and administrators may not suspend those rights without meaningful review. Students facing suspension should therefore at minimum be given notice and afforded some kind of hearing.<sup>190</sup>

### **Due Process for Charter School Student Facing Short-Term Suspension**

#### **Right to Notice**

A charter school student facing a short-term suspension (i.e., 10 days or less), should be provided with oral or written notice.<sup>191</sup> If the student denies the allegations, the student is entitled to an explanation of the evidence against him or her.<sup>192</sup> Prior to the hearing, the student must be told by the school what he or she is accused of doing and the basis of the accusation.<sup>193</sup>

#### **Right to Hearing**

If a student denies the allegations, then he or she has the opportunity to present his or her side of the story and explain his or her version of the facts.<sup>194</sup> This setting could be in the form of a suspension hearing, suspension conference, expulsion hearing or expulsion conference. It is then the school's responsibility to provide evidence that the allegations are true and that the suspension is justified. The notice and the hearing should occur before the student is suspended unless an emergency condition exists that would create disruption or danger at the school.<sup>195</sup> Upon removal for emergency purposes, notice and hearing should follow shortly thereafter.<sup>196</sup>

### **Due Process for Charter School Students Facing Long-term Suspension or Expulsion**

#### **Right to Notice**

While *Goss* is limited to short-term suspensions, the Supreme Court also concluded that more formal processes may be required for suspensions longer than ten days or expulsions.<sup>197</sup> These due process rights must include written notice of intent to suspend or expel and must give the student an opportunity to be heard. If a student is facing expulsion, he or she has a right to an expulsion conference with the principal or principal's designee.

## Right to Hearing

If expulsion is recommended, then the student has the right to a hearing. Unlike DCPS, charter school students do not have access to the Office of Administrative Hearings for appealing long-term suspension or expulsion cases. Charter schools often use their board of trustees or contract hearing officers to hear these cases. DC law does not currently provide any formal appeal rights at the conclusion of a suspension or expulsion hearing for a charter school student.

A student facing suspension cannot be put out of school prior to his or her hearing unless his or her presence would create a danger to property or people or would cause disruption within an academic setting. Expelled charter students may enroll in their neighborhood DCPS school immediately as long as school is in session. However, DCPS may review the circumstances of the withdrawal or expulsion to determine the “appropriate placement within DCPS.”<sup>198</sup>

Although a neighborhood DCPS school may be an option for an expelled charter school student or a student who has withdrawn from a charter school, anecdotal evidence shows that many families chose the charter school option because their DCPS neighborhood school was either grossly underperforming or in some cases unsafe. Therefore, a neighborhood school may not be a viable option for these families.

## Additional Due Process Rights for Charter School Students with Special Education Needs

Compared to the rights of DCPS students with disabilities, largely similar rights apply for charter school students with disabilities. The principal difference are the additional DCPS requirements for determining that a disability was not a manifestation of a student’s disability may apply only to DCPS.<sup>199</sup> This section will briefly outline what is required for charter school students with special education needs.

For further detail, the reader is encouraged to reference the previous section of this report on additional due process rights for DCPS students with special education needs.

All charter schools must comply with the federal *Individuals with Disabilities Education Improvement Act* (IDEIA).<sup>200</sup> This law ensures that all students with disabilities receive a free and appropriate public education (FAPE) comparable to students without a disability. It also requires that students with disabilities facing long-term suspension or expulsion are provided to additional procedural protections.

## Manifestation Determination Review

These additional procedural protections include holding a Manifestation Determination Review (MDR) meeting within 10 school days. This meeting determines whether the reported misbehavior is a manifestation or a result of the student’s disability. If the participants in the MDR meeting determine that the reported behavior is a manifestation of the student’s disability or is a direct result of the

school’s failure to follow the student’s Individualized Education Program plan (IEP), then the student must be allowed to return to school except under certain circumstances.

Following the MDR meeting, the IEP team must determine whether they should conduct a Functional Behavioral Assessment (FBA) and implement a Behavior Intervention Plan (BIP) or if both have already been developed, then the IEP team may need to modify the BIP to address the behavior.

A student with a disability can be removed from school for up to 45 days, regardless of the decision on the two required questions, if they are: (1) carrying or possessing a weapon on school grounds; (2) knowingly possessing, using or selling drugs at school; or (3) inflicting serious bodily injury while at school.

If the IEP team determines that the behavior is not a manifestation of the disability, the same disciplinary procedures applicable to a student without a disability would apply as long as the school provides FAPE. During a suspension, FAPE requires provision of access to the

general education curriculum and an opportunity to continue to work on the goals identified in the student’s Individualized Education Program. DC charters are required to begin providing FAPE after a student with a disability is suspended for ten school days in one school year. Similar to DCPS students, charter school students can challenge manifestation determination reviews. These challenges are also filed at OSSE’s Office of Dispute Resolution.

## Charter School Student Facing Involuntary Withdrawal from School

There is no law or regulation that provides procedural protections for a charter school student facing involuntary withdrawal from school. Anecdotal evidence shows that there is a growing trend for some charter schools to pressure parents to withdraw their child from school to avoid expulsion. The existing data,

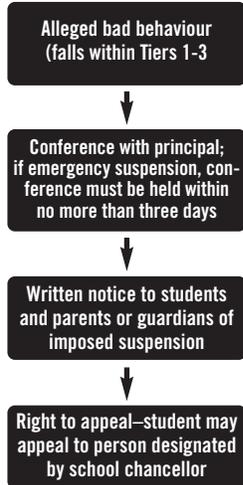
however, is inconclusive in identifying the reasons for students who are withdrawing from school. In February 2013, the DC Office of the State Superintendent of Education administered its first ever mobility study.<sup>201</sup> This study looked at both traditional and charter schools during the 2011-2012 school year. Findings revealed that there were 17,286 students entering and 15,081 exiting these public school systems.<sup>202</sup> The study found that there were many more students migrating from charter schools to traditional schools. It is unclear from this data whether these students withdrew from the charter school to avoid expulsion or withdrew for other non-disciplinary reasons. Policymakers, school officials, advocates and other stakeholders should continue to track and monitor student withdrawals to ensure that procedural safeguards are in place and to avoid any involuntary withdrawals. Additionally, there should be improved data collection in this area that identifies the reasons for withdrawal and that is disaggregated by race and gender.



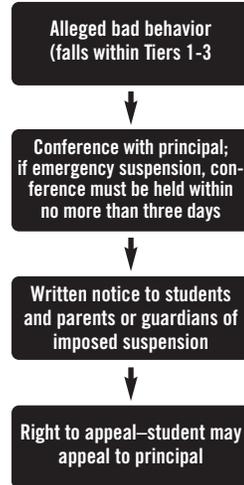
**DCPS STUDENT CHALLENGING A LONG-TERM SUSPENSION**



**DCPS STUDENT CHALLENGING A MEDIUM-TERM SUSPENSION**



**DCPS STUDENT CHALLENGING A SHORT-TERM SUSPENSION**



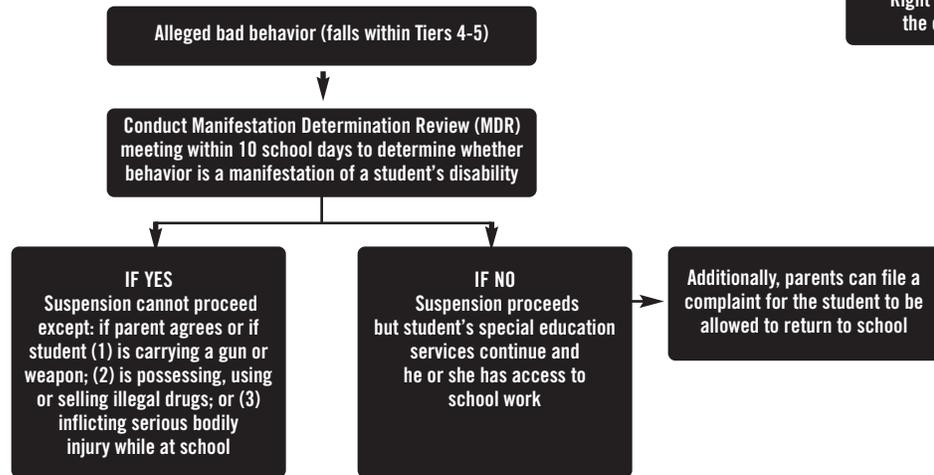
**DCPS STUDENT CHALLENGING AN INVOLUNTARY TRANSFER**



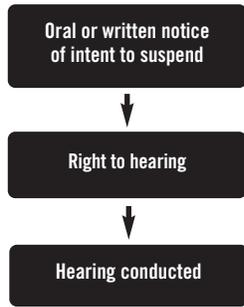
**DCPS STUDENT CHALLENGING AN EXPULSION**



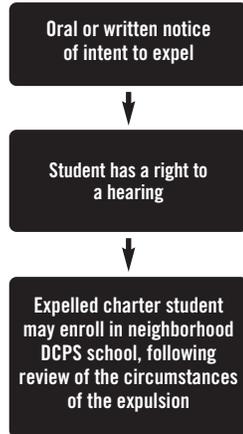
**DCPS STUDENT WITH SPECIAL EDUCATION NEEDS CHALLENGING A LONG-TERM SUSPENSION OR EXPULSION**



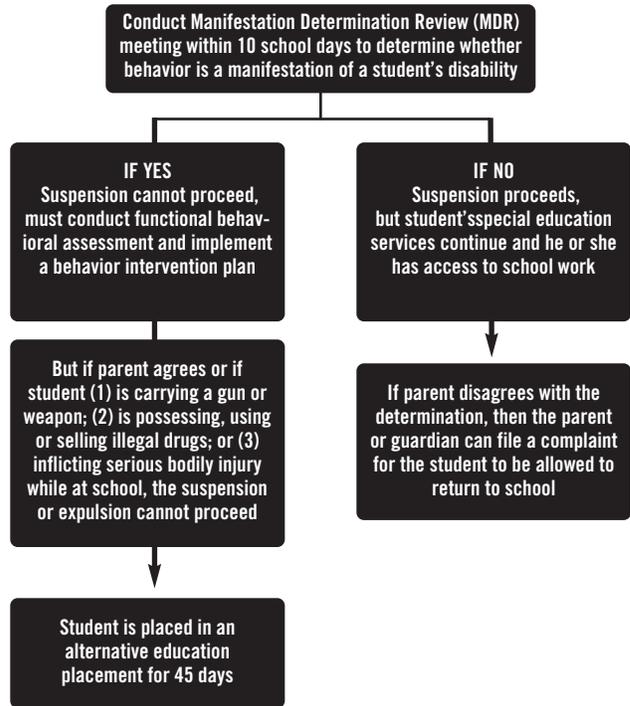
**CHARTER STUDENT  
CHALLENGING SHORT OR  
LONG-TERM SUSPENSION**



**CHARTER STUDENT FACING  
EXPULSION**



**CHARTER STUDENT WITH  
SPECIAL EDUCATION NEEDS CHALLENGING  
A LONG-TERM SUSPENSION OR EXPULSION**



# DC Best Practices in School Discipline from the School Administrator Perspective

The perspective of school leaders who are responsible for developing, implementing and overseeing school discipline in practice allows for a clear understanding, beyond the discipline policies themselves, of what is happening “on the ground,” what is being emphasized, and perhaps most importantly, what may or may not be taking place around school discipline. Accordingly, CCE interviewed school leaders from five traditional and public charter schools who are responsible for overseeing and implementing discipline policies. These conversations revealed that discipline is practiced differently at each school and that these varied approaches to discipline allow the school administrators to tailor practices to best meet the school’s needs.

## Select School Profiles and Best Practices

Given that the needs and goals of school administrators vary from school-to-school, the five schools profiled and their best practices are not to suggest that any one model will work effectively for other schools. Instead, these examples of best practices come from what CCE gleaned in its interviews and are meant to inform other school leaders, policymakers and other stakeholders of what is working and what may not be working within urban schools that may be similar to these DC schools. Moreover, this sharing of best practices could also work towards the overarching goal of preventing exclusionary disciplinary practices that could have a deleterious impact on youth and help schools address disciplinary challenges in more productive ways that hold youth accountable for their misbehavior but keep them in school.

## Methodology

During the Fall of 2014, CCE sought to interview school administrators from some of the lowest and highest suspending and expelling traditional and charter middle and high schools in the District. CCE based its interview selections on suspension and expulsion data in the District’s “DC School Equity Report,” which presented school discipline data from the 2012-2013 school year. From this list, CCE selected 10 schools to interview: Ballou High School; Brightwood Education Campus; Cardozo Education Campus; Cesar Chavez Public Charter School for Public Policy - Parkside Campus; Deal Middle School; E.L. Haynes Public Charter School; Ideal Academy Public Charter School; Johnson Middle School; SEED Public Charter School; and Wilson High School.

The following schools ultimately granted interviews: Cesar Chavez Public Charter School for Public Policy – Parkside campus, Deal Middle School, E.L. Haynes Public Charter School, Ideal Academy Public Charter School and Wilson High School. Brightwood Education Campus and Ballou High School denied CCE’s requests for an

interview. SEED Public Charter School, Johnson Middle School and Cardozo Education Campus never responded to the interview request even after repeated outreach.

Each interview covered nine topic areas in-depth including: school climate and culture; alternative disciplinary practices; memorandum of understanding (MOU) with police/law enforcement or use of school resource officers; access to resources; staff training on discipline; parental/community engagement; compliance with local and federal laws; accommodating students with special education needs; and race and socioeconomic status of students. Examples of questions asked were: Does your school have a system-wide disciplinary philosophy? What kinds of alternative disciplinary practices, if any, are used in lieu of suspensions or expulsions? Does your school have an MOU with the police? Do you have adequate resources to carry out effective and fair discipline within your school? Do you offer training for school personnel on your school’s discipline policy and classroom management techniques? How active is the parent community within your school? How is student discipline within your school being applied fairly and equitably in compliance with local and federal laws? What procedures does your school follow before disciplining a student with special needs? Have you seen any instances of disproportionality with respect to race and socioeconomic status in the imposition of suspensions and expulsions?

All five interviews were conducted in-person at the participating school with a CCE staff member and one representative of CCE’s School Discipline Project Committee. Interviewees included Cesar Chavez Public Charter School—Parkside Campus Principal Dwan Jordon; Deal Middle School Principal James Albright and Assistant Principal Patrick Rottman; E.L. Haynes Public Charter School Founder and former Head of School Jennifer Niles; Ideal Academy Public Charter School Dean of Students Louis Jones; and Wilson High School former Principal Peter Cahall, Dean of Scholars Andrew Barnes, and Dean of Students Angelo Hernandez.

*The following five school profiles and accompanying practices around school discipline resulted from the interviews conducted.*

## Cesar Chavez Public Charter Middle/High School for Public Policy

### About Cesar Chavez

Cesar Chavez Public Charter School—Parkside Campus is a DC public charter school that serves children in grades 6-8 (middle school) and 9-12 (high school). The student population is 98% African American and many students come from the highest poverty wards in the city (specifically, Wards 7 and 8). There are high expectations for student achievement, as Cesar Chavez seeks to prepare all students for success in college. Meeting this expectation is often a challenge, however, because many students have severe social and emotional needs such as coming from communities with high poverty, violence and crime. These social and emotional needs can impair a student's ability to focus and learn. For many, Cesar Chavez is a second home and a place to escape the chaotic environment that students face at home.

Academically, the emphasis is on public policy and teaching students to use their voice in order to affect change. The school in November 2014 celebrated a major milestone in receiving Tier 1 status, the highest public charter school ranking, by the Public Charter School Board. This ranking is based on such factors as performance on the District's standardized test, improvements in student academic achievement, student attendance and parent engagement.

Cesar Chavez has made some gains in reducing its suspension and expulsion rates, which have in recent years been on the higher end. For example, during the 2012-2013 school-year, the middle school with a student population of 318<sup>203</sup> had a suspension rate of 51% (163 students) and expulsion rate of 3.77% (12 students).<sup>204</sup> The high school with a student population of 391 had a suspension rate of 25% (98 students) and an expulsion rate of 1.53% (6 students) during the 2012-2013 school year. During the 2013-2014 school year, Cesar Chavez middle school reduced its expulsion rate from 3.8% to 2.0%.<sup>205</sup> The school also reduced its out-of-school suspensions for the middle school from 163 to 106 in the last school year.<sup>206</sup>

Cesar Chavez takes a progressive disciplinary approach; first there is a warning from the teacher to the student about the misbehavior, then there is a conference if the behavior persists, after which the student's parents are contacted and the matter is referred to one of the school's deans. In recent years, female students have experienced more disciplinary issues than males. Last school year, the majority of fighting incidents involved females. The school is equipped with metal

detectors and all students and guests must go through a security screen upon entrance. There are also two private security guards on-site and one school resource officer who rotates from other schools. The school offers professional development for teachers every Wednesday after school. Parent participation is limited, but the school often organizes town hall meetings to hear concerns and ideas from students and parents. The school indicated concerns around the lack of resources to adequately train staff and accommodate some students with extensive special education needs requiring more hours than teachers can provide in a school day while also tending to other students.

### Cesar Chavez's Best Practices

- Uses discipline data management systems, such as the Educator's Handbook<sup>207</sup>, to routinely track student behavior and better inform discipline practices.
- Established strong management systems, processes and procedures.
  - Developed a "School Culture Team" to provide wraparound services from counseling services to working with a social worker who can address student and family needs beyond education.
  - Holds town hall meetings to engage students and parents.
  - Sets high expectations for student achievement.
  - Offers positive incentives for student academic achievement and for students who abide by school rules.

*"Advocates need to understand or be able to identify with what youth and families are going through and be prepared to respond to their needs."*

—Cesar Chavez Principal Dwan Jordon

*"It is important to have everyone on the same page and have common goals and a common vision."*

—Deal Principal James Albright

### Deal Middle School

Deal Middle School is a DC public school that has one of the largest student enrollments in the city at around 1,165 students. The racial make-up at Deal is mixed; white students make up 45% of the student population, African American students make up 33%, Latinos make up 14%, and students of other races

compose the remaining 8%.

The school has typically had lower suspension rates and no expulsions. For example, during the 2012-2013 school year, Deal's suspension rate was 5% and had zero expulsions.<sup>208</sup> The school culture is structured and rule-based, though there are progressively fewer rules as students advance to the next grade level. Deal uses the "No-Nonsense Nurturing" approach to school discipline.<sup>209</sup> The goals of this approach include: building strong relationships with students, enhancing cultural competence among teachers, establishing routines and procedure that promote learning, setting high academic expectations for students, and fostering respect within the school community.<sup>210</sup> There is an emphasis on providing detailed instructions to students so that they can recognize when their behavior deviates from expectations. A color coding system is used to categorize students based on their behavior each day, with blue being

the highest level of good student behavior and red being the worst. Discipline is also approached in a restorative way, so that students can learn from their mistakes and not feel that they are being punished.

At Deal, there are metal detectors as well as a required security screen. While there is no MOU with local police, there are school resource officers who rotate from other schools. The Washington Metropolitan Area Transit Authority has a special bus route that transports Deal students to and from school from different parts of the city; Deal staff will often ride the bus to monitor student behavior. Given the District's per pupil funding formula and Deal's high student enrollment, this school is well-funded and thus equipped with adequate resources to address discipline issues and serve students with special needs. Teachers are trained on school discipline as well as the "No-Nonsense Nurturing" approach to discipline. There is also parental participation in discipline matters.

### Deal's Best Practices

- Establishes a common vision and goals for the school community.
- Adopts the "No-Nonsense Nurturing" approach to school discipline.
- Uses restorative approaches to discipline so that students can learn from their mistakes.
- Creates a highly structured, rule-based school culture which includes structured lunchtime and grade level assistant principals to address discipline issues.

### E.L. Haynes Public Charter Middle/High School

E.L. Haynes is a DC public charter school that focuses on college readiness. The school has adopted a restorative justice approach to discipline which involves a non-punitive, rehabilitative approach that teaches students to learn from their misbehavior to avoid making the same choices in the future. There is, however, sometimes a "disconnect" between parents and the school, as parents often do not fully understand the restorative justice approach to discipline. E.L. Haynes' discipline policy is modeled after DCPS Chapter 25, which follows a tiered system to impose disciplinary infractions. Students suspended for longer than 3 days must attend a school judiciary conference, which encourages students to be honest about the events of the incident. A restorative conference is also sometimes held in order to bring together any and all persons affected by the incident.

E.L. Haynes' suspension and expulsion rates have varied by grade level, and the school is working to address the higher suspension and expulsion rates seen at the high school level. During the 2012-2013 school-year, E.L. Haynes' suspension rate for their middle school,

grades 5-8, was 7% with a student population of 395.<sup>211</sup> Its high school, with a student population of 227, had a higher suspension rate of 24% and expelled 6 students at a rate of 2.64% during the 2012-2013 school-year.<sup>212</sup>

The school is piloting a Positive Behavioral Interventions and Supports (PBIS) discipline framework in an effort to help promote their restorative justice approach.<sup>213</sup> PBIS utilizes evidence-based strategies to promote staff behaviors, student behaviors, and decision making that lead to social competence and academic achievement. They also have a "Wellness Team" that consists of attendance and engagement specialists, 9 full-time social workers, and programs that teach mindfulness, yoga, and physical health. The school partners with the Mary Center, a local health care center, to provide health care services to students and families.

E.L. Haynes has no metal detectors or security screens and no formal police presence, though police often partake in school judiciary conferences. Given that there is no alternative school for DC public charters schools, the school has limited options if a student needs to spend a period of time outside of the mainstream classroom. E.L. Haynes offers training for its teachers on school discipline and professional development. The school serves a significant number of students with special education needs; in fact, E.L. Haynes has the largest population in the city of level 3 and 4 special education students, which includes students with autism and Down syndrome.

The total student population is about 50% African American, 35% Latino, and 12% white. However, there are no white students in the high school grades. Twenty-five percent of students are English Language Learners. The socioeconomic status of students varies, as two-thirds are eligible for free and reduced meals while other students come from families with greater economic means. Thirty-five percent of students are considered "at-risk" and are from parts of the city with greater crime, illegal drug use, homelessness, and unemployment. Overall, the emphasis at E.L. Haynes is on equity over diversity.

*"Approaches to student discipline do not have bright lines; systems and approaches to discipline should be reevaluated yearly...When there is disproportionality that means something is wrong."*

—E.L. Haynes Founder and Former Head of School Jennifer Niles

*"Our goal is to keep students in school."*

—Dean of Students Louis Jones

### E.L. Haynes' Best Practices

- Models discipline policy after DCPS Chapter 25.
- Uses wrap-around services to address students' needs, such as partnering with Mary's Center and having a school "Wellness Team".
- Uses Positive Behavioral Interventions and Supports (PBIS) for all grades.
- Invited outside groups to come in and assess school discipline practices to determine areas for improvement.

## Ideal Academy Public Charter Elementary/Middle School

Ideal Academy is a DC public charter school that emphasizes keeping students in school. As a result, the school's suspension and expulsion rates have remained low, with a suspension rate of 5% out of 280 students and zero expulsions during the 2012-2013 academic year.<sup>214</sup> The school has adopted a family-centered environment, whereby teachers and administrators are referred to as "Baba" meaning father in Swahili and "Mama" by students. Ideal teaches its students respect for self and others as well as acceptance of all. They use the Transcendental Meditation technique at the start and end of each school day in order to re-center students and de-stress from the trauma that many youth have in their turbulent home lives. Students below fifth grade do "quiet time." The school has a transcendental meditation specialist on staff in addition to student ambassadors who have become leaders in meditation and help guide other students. Ideal is one of the few schools, if there are any others, in the District that uses this technique.

Ideal takes a consequential approach to school discipline, which is adjusted by grade level. Students are taught why a particular behavior is inappropriate instead of simply being punished for it. The school has removed most of its zero-tolerance policies, though zero-tolerance policies remain for weapons and assaults on teachers. Ideal does not have metal detectors or security screens, but there are two rotating school resource officers. There is no formal discipline training for staff and the school is without an on-site social worker. Parents play a key role in school discipline, and are given an overview of discipline policies at the start of every school year. Ten percent of students at Ideal are eligible for special education services. Because Ideal has adopted an inclusion model, students with special needs are included in the mainstream classroom. For disciplinary issues involving students with special needs, Ideal employs support services, such as behavior intervention plans, to address the issues. The student population is 95% African American and students are transported from all wards of the city. The staff is also mostly African American, a number of whom are retired principles and former teachers.

### Ideal's Best Practices

- Adopts a family-centered school culture where teachers are called "Baba" and "Mama".
- Teaches transcendental meditation technique to help student de-stress and focus on learning.
- Organized a parent retreat for the purpose of addressing parent/community needs and also discussing issues like discipline.

## Wilson High School

Wilson High School endorses a school climate of tolerance and acceptance of all. School administrators have worked to build strong relationships between students and the outside community. The large student population at Wilson with 1,713 students is racially mixed: 46% of its students are African American, 25% are white, 17% are Latino/Hispanic, and 12% represent other races.

Suspensions at Wilson have declined. Three years ago, Wilson had 332 suspensions; two years ago the number dropped to 224; and last year, there were just 209 suspensions.<sup>215</sup> Lower suspension rates could be attributed to efforts to hire like-minded teachers and administrators that embrace a proactive approach to student discipline.

At Wilson, long-term suspensions are considered a last resort and are usually reserved for persistent misbehaviors and more serious behavioral infractions, such as those involving drugs, gang fights, or weapons. Most of the disciplinary issues that arise at Wilson involve students with emotional disabilities or students who are 18 years or older and feel that they do not have to abide by the rules. This past school year, the highest number of suspensions resulted from fighting. Before administrators resort to suspension they will consider alternative forms of discipline, such as a community service activity. The school has adopted a wrap-around discipline approach that uses counselors to address any underlying issues that may be contributing to a student's misbehavior. The school has also adopted an adult mentor program where at-risk students are assigned to an adult mentor to address issues of low academic achievement, truancy and discipline.

Wilson has metal detectors, security screens, and three permanent school resource officers. The school asserts "door-to-door" jurisdiction over its students, which means that it takes responsibility for its students from when they

leave home to attend school to when they leave school to return home. The staff at Wilson is trained on student discipline, which includes the Therapeutic Crisis Intervention System program.<sup>216</sup> This program trains staff on ways they can help youth learn constructive methods of dealing with frustration, anger, failure, rejection, and depression. The school is under-resourced to adequately handle students with severe emotional disabilities. Wilson involves the parent community when creating and/or changing discipline policies. There is a parent committee on discipline and parent engagement that allows parents to express their opinions on discipline policies and practices that may result in change.

*"Here at Wilson we work to build personal relationships with our students and the outside community."*

—Former Principal Peter Cahall

## Wilson's Best Practices

- Builds relationships with students and the outside community.
- Established parent committees for school discipline and parent engagement.
- Adopted an adult mentor program for “at-risk” students to address academic performance and discipline.
- Uses the Therapeutic Crisis Intervention System program to train staff on how to help youth learn constructive ways of dealing with frustration, anger, failure, rejection and depression.
- Instituted a “dean system” in which a dean is assigned to each grade level to oversee student discipline.

## Common Themes, Possible Gaps and New Trends

### Common Themes

After interviewing all five schools, several themes began to stand out. Almost all of the schools consider out-of-school suspensions as a last resort and implement them only after attempting other disciplinary actions first or where there is an immediate threat to school safety. Four out of the five schools use in-school suspensions (ISS) which could be contributing to the reductions in out-of-school suspensions as seen at Cesar Chavez PCS - Parkside and Wilson High School.

Many of the schools attempt to build strong relationships with the outside community, and in particular, Deal Middle School and Wilson High School have incorporated community service projects into their alternative discipline approaches. At all of the schools interviewed except for E.L. Haynes, there is some form of law enforcement presence, either in the form of metal detectors and security screens, school resource officers, police, or all three. Three out of the four schools with school resource officers do not have a permanent officer, and instead are assigned officers who rotate from other schools.

There is a distinct difference between DCPS and public charter schools in terms of funding and allocation of financial resources. The charter schools (Cesar Chavez Public Charter School for Public Policy – Parkside, E.L. Haynes, and Ideal) all expressed concerns with limited resources when compared to Deal and Wilson that both have high student enrollments and benefit from the District’s “per pupil funding” formula.

Though it varied somewhat from school to school, the racial makeup at most of these schools is predominantly African American, both in student and staff populations.

### Possible Gaps

Perhaps the most significant gap across schools was the lack of training offered for staff on school discipline. The No-Nonsense Nurturing training at Deal Middle School and the Therapeutic Crisis Intervention System training program at Wilson High School were the only staff training programs geared specifically toward school

discipline. Though several of the schools offered professional development training and other classroom management programs, there was a clear disparity between those schools offering discipline training and those schools without specific discipline training and the resources to provide this training on their own. There could also be more parental involvement around developing school discipline policy and education to parents about school discipline policies and practices.

At Deal Middle School, parents are encouraged to involve themselves in discipline matters but are not approached when creating new discipline policies. At E.L. Haynes, now-former Head of School Jennifer Niles expressed a need for parents to have additional support and training related to restorative justice as an approach to discipline. With that being said, all other schools interviewed do in fact include and engage parents on discipline matters. Wilson High School even has a committee set up so that parents have a hand in possibly creating and changing discipline policies. Overall, parental engagement varied across the schools, with some schools more successful at engaging parents in the school community than others.

Some of the schools, including Wilson and E.L. Haynes, have expressed difficulty in dealing with students who have multiple suspensions. There is a need for guidance on not only how best to discipline students with multiple suspensions but how to break the cycle so that their behavior can be rectified before it worsens. Only Cesar Chavez Principal Dwan Jordan mentioned using a data management system, the EducatorsHandbook, to track all discipline-related matters and identify patterns of misbehavior. This allows for remedial measures to be put in place and intervene before resorting to suspension. And finally, unlike DCPS, there is no alternative school available for public charter schools in DC. An alternative school would provide charter schools with the opportunity to place students outside of the mainstream classroom for a period of time of the suspension, while the student would still have access to instruction and coursework.

### New Trends and Innovative Ideas

Each school offered distinct, innovative ideas with direct ties to student discipline. First, it is worth mentioning that many of the schools take a restorative justice approach to school discipline, whereby disciplinary punishment is meant to foster educational and/or developmental growth. In particular, E.L. Haynes has instituted the use of a restorative conference, for the purpose of bringing everyone affected by the incident together and determining appropriate consequences for the student(s). This trend toward a more restorative approach to discipline is important because it stands in stark contrast to a punitive approach to discipline. E.L. Haynes has also been a leader in providing “wrap-around” services for their students. Their partnership with Mary’s Center has allowed the school community to gain access to health services to which they might not otherwise have access.

At Cesar Chavez, Principal Jordon has created a mentors program in which students from the high school act as mentors and guides to students in the middle school. A similar mentor program is also in place at Wilson, where “at-risk” students are matched with an adult mentor who can help them address such issues as low academic achievement, truancy, and discipline. Principal Jordon also highlighted what might be a new “trend to watch” in the growing number of female students facing disciplinary action as a result of fighting and other misbehaviors. According to a September 2014 report released by the NAACP Legal Defense and Education Fund and the National Women’s Law Center, females disproportionately face harsher disciplinary actions, such as suspensions, than males and white females.<sup>217</sup> This trend may be one to watch at other traditional and charter schools in the District.

At Ideal, students in grades five and above practice transcendental meditation; students below fifth grade do “quiet time.” Transcendental meditation allows students, especially those who have experienced trauma in their lives, to de-stress in preparation for effective learning. Aside from their implementation of a “No-Nonsense Nurturing” approach to school discipline, Deal has also taken on the challenges of providing consistent, reliable transportation to and from school through partnering with the Washington Metropolitan Area Transit Authority. WMATA provides buses that travel special routes throughout the city before and after school to transport Deal students. These trends highlight just a few of the innovative practices being employed at these five traditional and public charter schools profiled.

Based on the interviews with school administrators from these five profiled schools, the following (6) recommendations were offered as ways to improve school discipline in practice.

### Recommendations from School Administrators on Improving School Discipline in Practice

- Assign *permanent* school resource officers (SROs) to Local Education Agencies (LEAs), as opposed to rotating ones, and offer specialized training for SROs.
- Establish a quality alternative school for charter public schools.
- Provide more funding opportunities for LEAs to access classroom management training, technical assistance from outside organizations, and discussion forums around school discipline practices.
- Utilize data disaggregated by race, gender, socioeconomic status, disability and English language learner status to inform disciplinary practices—data sources might include the *Graduation Pathways Project* report by Raise DC.<sup>218</sup>
- Establish policies and procedures for students who chronically misbehave and have multiple suspensions to address root causes for misbehavior.
- Use DCMR Chapter B25 as a model school discipline policy for DC Public Charter Schools.



Efforts to improve school discipline in the District’s traditional and charter public schools are ongoing and will require both incremental and systemic change. CCE’s policy recommendations offer some approaches to reform, but there is no silver bullet and some of these recommendations will depend on the fiscal impact that they may have and the practical realities of implementation. However, we cannot afford to wait for change to come. It is important that we act now and hold school officials, government agencies, lawmakers and community leaders accountable in providing a fair school discipline process for all District youth. Meaningful access to public education is a right of every student in the District and, as such, the aim of the public educators is to create healthy learning environments where students can remain in school, and on track to graduation and teachers can go about educating future generations.

# Helpful Resources

## Local Government and Charter School Information

### Office of the State Superintendent of Education

810 1st Street, NE, 9th Floor

Washington, DC 20002

(202) 727-6436

<http://osse.dc.gov/>

### Office of Dispute Resolution

810 1st Street, NE

Washington, DC 20002

(202) 698-3819

<http://osse.dc.gov/service/office-dispute-resolution-odr>

### DC Public Schools

1200 1st Street, NE

Washington, DC 20002

(202) 442-5885

<http://dcps.dc.gov/portal/site/DCPS/>

### Office of Youth Engagement

1200 1st Street, NE, 10th Floor

Washington, DC 20002

(202) 442-5099

### State Board of Education

One Judiciary Square

441 4th Street, NW, Suite 723N

Washington, DC 20001

(202) 741-0888

<http://sboe.dc.gov/>

### Ombudsman for Public Education

One Judiciary Square

441 4th Street, NW 723N

Washington, DC

(202) 741-0886

Email: [ombudsman@dc.gov](mailto:ombudsman@dc.gov)

### Public Charter School Board

3333 14th Street, NW

Washington DC, 20010

(202) 328-2660

<http://www.dcpcsb.org/>

### DC Association of Chartered Public Schools

1351 Nicholson Street, Suites 215-217

Washington, DC 20011

(202) 545 – 3089

<http://dcacps.org/>

## Legal Services Organizations/Legal Resources

### Advocates for Justice and Education

25 E Street, NW

Washington, DC 20001

(202) 678-8060; toll free: (888) 327-8060

### Children’s Law Center

616 H Street, NW #300

Washington, DC 20001

(202) 467- 4900

### Elderly and Disability Law Center

1020 19th Street, NW

Washington, DC 20036

(202) 452-0000

### Office Administrative Hearings

Resource Center

441 4th Street, NW Suite 450N

Washington, DC 20001

(202) 442-9094

<http://oah.dc.gov/service/oah-resource-center>

### University Legal Services

220 I Street, NE #130

Washington, DC

(202) 547-4747

### Student Rights Alliance

American Civil Liberties Union of the Nation’s Capital and  
University of the District of Columbia David A. Clark School of Law  
(202) 670-1486

<http://studentrightsalliance.org/>

Email: [studentrightsalliance@gmail.com](mailto:studentrightsalliance@gmail.com)

### Georgetown University Law Center

Juvenile Justice Clinic

600 New Jersey Avenue, NW, Suite 127

Washington, DC 20001

Phone (202) 662-9590

Fax (202) 662-9681

Email: [jjc@law.georgetown.edu](mailto:jjc@law.georgetown.edu)

## Local Education Advocacy Groups

### DC Alliance for Restorative Practices

1351 Nicholson Street, NW

Washington, DC 20011

<http://dcallianceforrestorativepractices.wordpress.com/tag/dc-alliance-for-restorative-practices/>

### Every Student, Every Day Coalition

#### DC Lawyers for Youth (member organization)

1220 L Street, NW, Suite 605

Washington, DC 20005

(202) 386-7104

[http://www.dcly.org/every\\_student\\_every\\_day\\_coalition](http://www.dcly.org/every_student_every_day_coalition)

### School Reform Now

1730 Massachusetts Ave

Washington, DC 20036

(202) 315-2424

<http://www.dcschoolreform.org/>

## School Discipline Data Collection Resources

### DC School Equity Reports

<http://osse.dc.gov/service/equity-reports-sy-2012-2013>

### Civil Rights Collection Data

<http://ocrdata.ed.gov/>

### DC School Discipline Public Documentation Forum

July 12, 2012

<http://www.law.udc.edu/news/99191/DC-School-Discipline-Public-Documentation-Forum.htm>

## DC Traditional and DC Charter School Discipline Laws, Regulations and Guidance

### Washington, DC Compilation of School Discipline Laws and Regulations,

Prepared: August 15, 2014

<http://safesupportivelearning.ed.gov/sites/default/files/discipline-compendium/District%20of%20Columbia%20School%20Discipline%20Laws%20and%20Regulations.pdf>

### Public Charter School Board Guidance on Discipline Policies and Due Process Procedures for Long-term Suspensions and Expulsions

<http://udcdcsclinicmanuals.pbworks.com/f/TAB+11-PCSB+Recommendations+-+Discipline.pdf>

### Principal's Guide to DCPS Code of Student Discipline, August 2009

<http://udcdcsclinicmanuals.pbworks.com/f/TAB+12-Principal+Guide+to+Student+Discipline.pdf>

### Advocates for Justice and Education

Know-Your-Rights handouts on due process for

DCPS and Charter School students suspended or Expelled

<http://www.aje-dc.org/legal-services>

# r s t u v w x y z Endnotes

- [1] See *School Discipline Guidance Package* available at: <http://www2.ed.gov/policy/gen/guid/school-discipline/index.html>.
- [2] Tony Fabelo et al., *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement* (Council of States Governments Justice Center and The Public Policy Research Institute, Texas A&M University, July 2011) at 5, [http://justicecenter.csg.org/files/Breaking\\_Schools\\_Rules\\_Report\\_Final.pdf](http://justicecenter.csg.org/files/Breaking_Schools_Rules_Report_Final.pdf).
- [3] *Id.* and Balfanz, R., Byrnes, V., & Fox, J. (2013). *Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade*. Paper presented at the Closing the School Discipline Gap: Research to Practice, Washington, DC.
- [4] Morgan, E., Salomon, N., Plotkin, M., and Cohen, R., *The School Discipline Consensus Report: Strategies from the Field to Keep Students Engaged in School and Out of the Juvenile Justice System* (New York: The Council of State Governments Justice Center, 2014).
- [5] *Id.* at 276.
- [6] CCE, October 10, 2012 interview with Metropolitan Police Department Assistant Chief Diane Groomes.
- [7] Board, District of Columbia Financial Control. 1996. "Children in Crisis: A Report on the Failure of DC Public Schools." The District of Columbia Financial Responsibility and Management Assistance Authority.)
- [8] *District of Columbia School Reform Act of 1995*, approved April 26, 1996 (110 Stat. 1321; DC Official Code § 38 1802).
- [9] *Public Education Reform Amendment Act of 2007*, effective June 12, 2007 (DC Law 17-9; DC Official Code § 38-171 et seq.).
- [10] DC Code § 38-172
- [11] DC Code § 38-1802.04(c)(4)(5).
- [12] Office of the Deputy Mayor for Education, "About DME," <http://dme.dc.gov/page/about-dme>.
- [13] Greater, Greater Education, "The Deputy Mayor for Education Explains her Role," by Abigail Smith, September 4, 2013, <http://greatergreatereducation.org/post/19958/the-deputy-mayor-for-education-explains-her-role/>.
- [14] *Id.*
- [15] DC Public Schools, Office of the State Superintendent of Education & Public Charter School Board, "District of Columbia School Equity Reports 2013," available at [http://issuu.com/pcsb/docs/dc\\_equity\\_reports\\_part\\_one](http://issuu.com/pcsb/docs/dc_equity_reports_part_one).
- [16] "What Does OSSE Do?," <http://osse.dc.gov/service/what-does-osse-do>; Greater Greater Education, "New Superintendent is Not New to DC," <http://greatergreatereducation.org/post/20210/new-superintendent-of-education-is-not-new-to-dc/>.
- [17] *Public Education Reform Amendment Act of 2007*, §302 effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-171 et seq.), also available at: [http://dme.dc.gov/sites/default/files/dc/sites/dme/publication/attachments/Public\\_Education\\_Reform\\_Act\\_of\\_2007.pdf](http://dme.dc.gov/sites/default/files/dc/sites/dme/publication/attachments/Public_Education_Reform_Act_of_2007.pdf) at 7.
- [18] *Id.*
- [19] *Id.*
- [20] Office of the State Superintendent of Education, "Reducing Out-of-School Suspensions and Expulsions in the District of Columbia Public and Public Charter Schools" at 3, June 2014, hereinafter "OSSE Report."
- [21] *Id.*
- [22] Proposed "Standards for Student Conduct" have been published at the following times: February 6, 2009 (56 DC Register 1301), November 13, 2009 (56 DC Register 8855), September 17, 2010 (57 DC Register 8423) and August 12, 2012 (59 DC Register 10007).
- [23] "OSSE Report" at 16.
- [24] *Id.*
- [25] DCPS at a Glance, <http://dcps.dc.gov/DCPS/About+DCPS/DCPS+Data/DCPS+at+a+Glance>.
- [26] *Public Education Reform Amendment Act of 2007*, §105 effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-171 et seq.), also available at: [http://dme.dc.gov/sites/default/files/dc/sites/dme/publication/attachments/Public\\_Education\\_Reform\\_Act\\_of\\_2007.pdf](http://dme.dc.gov/sites/default/files/dc/sites/dme/publication/attachments/Public_Education_Reform_Act_of_2007.pdf) at 3-4.
- [27] DCMR § B2408; §B2503.3.
- [28] DCMR § B2508.2.
- [29] DCMR § B2504.
- [30] DCMR § B2505.
- [31] See <http://dcps.dc.gov/DCPS/About+DCPS/Who+We+Are/Instructional+Superintendents>.
- [32] See presentation entitled, "Title IX, New Heights Program, DC Public Schools," by Andrea DeSantis, New Heights Program Manager. [http://www.hhs.gov/ash/oah/oah-initiatives/paf/508-assets/titleix\\_slides.pdf](http://www.hhs.gov/ash/oah/oah-initiatives/paf/508-assets/titleix_slides.pdf). Slide 32.
- [33] *Id.*
- [34] *Id.*
- [35] DCMR § B2505(1)(e).
- [36] DCMR § B2505.14.
- [37] DCMR § B2507.7.
- [38] See <http://www.dcpsb.org/about-us>.
- [39] *Id.*
- [40] PCSB Discipline Policy and Suspension Reporting Requirements, <http://udcdclclinicmanuals.pbworks.com/f/TAB+11-PCSB+Recommendations+-+Discipline.pdf>
- [41] State Board of Education, "Roles and Responsibilities," <http://sboe.dc.gov/page/roles>
- [42] *Id.*
- [43] *Public Education Reform Amendment Act of 2007*, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-171 et seq.).
- [44] *Public Education Personnel Amendment Act of 2008*, effective March 20, 2008 (D.C. Law 17-122).
- [45] "District of Columbia Office of the Ombudsman for Public Education 2014 Annual Report," September 17, 2014 at p. 5
- [46] *Id.* and "About the Ombudsman," <http://sboe.dc.gov/page/about-the-ombudsman>.
- [47] *Id.*
- [48] "DC Ombudsman for Public Education 2014 Annual Report" at 3.
- [49] *Id.*
- [50] *Id.*

[51] *Id.* at 12-13.

[52] DC State Board of Education Seeks Chief Student Advocate; New Office within the State Board, <http://sboe.dc.gov/release/dc-state-board-ed-seeks-chief-student-advocate-new-office-within-state-board>

[53] DCMR Chapter B25.

[54] See “DCPS Disciplinary Responses to Student Behavior,” available at <http://dcps.dc.gov/DCPS/Files/downloads/SCHOOLS/Youth%20Engagement/DCPS-Student-Discipline-Policy-Tiers-August-2009.pdf>.

[55] DC School Reform Now, 2013-14 High Quality Schools Campaign Final Report, November 2014 at 5.

[56] *Id.*

[57] *Id.*

[58] In-school disciplinary action is defined as disciplinary actions such as after-school detention, loss of privileges (including recess), exclusions from extracurricular activities, written reflection, conflict resolution, mediation or similar actions of short duration that do not result in the student’s loss of academic instruction time. See 5 DCMR B2599.2.

[59] American Psychological Association Zero Tolerance Task Force, “Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations,” *American Psychologist* 63, no. 9 (2008): 854.

[60] Flesch-Kincaid readability tests are designed to indicate comprehension difficulty when reading a passage of contemporary academic English. DCPS Chapter 25, however, had the highest readability score of 16.5 or the equivalent of a college graduate level.

[61] U.S. Department of Education, “Guiding Principles: A Resource Guide for Improving School Climate and Discipline,” Washington, D.C., 2014; and 2014 “OSSE Report.”

[62] CCE interviewed Special Assistant Alexandra Williamson in the DCPS Office of Youth Engagement on November 13, 2012. During this interview she explained that the DCPS discipline data system, Student Behavior Tracker, was not developed until 2010. Also, due to national and local efforts to increase transparency and improve school discipline data collection systems, traditional and charter schools have been under scrutiny to comply.

[63] The Every Student, Every Day Coalition, “District Discipline: The Overuse of Suspension and Expulsion in the District of Columbia,” *DC Lawyers for Youth* (June 2013); hereinafter “District Discipline.”

[64] *Id.* at 3.

[65] *Id.* at 3.

[66] “Reducing Out-of-School Suspensions and Expulsions in District of Columbia Public and Public Charter Schools,” Office of the State Superintendent of Education (June 2014); hereinafter “OSSE Report.”

[67] See “Equity Reports” for 2012-2013 school-year, <http://osse.dc.gov/service/equity-reports-sy-2012-2013>.

[68] “OSSE Report” at 7.

[69] “OSSE Report” at 12.

[70] “District Discipline” at 7-8; OSSE Report at 12.

[71] “OSSE Report” at 11.

[72] “District Discipline” at 3; OSSE Report at 10.

[73] “District Discipline” at 7; OSSE Report at 14.

[74] “OSSE Report” at 13.

[75] “OSSE Report” at 15.

[76] *Id.*

[77] *Id.*

[78] *Id.* at 11.

[79] *Id.* at 9.

[80] *Bolling v. Sharpe*, 347 US 498.

[81] *Goss v. Lopez*, 419 U.S. 565, 574 (1975).

[82] *Id.* at 579.

[83] Short-term suspension is defined as 1-5 school days for secondary students and 1-3 school days for elementary students.

[84] Medium-term suspension is defined as suspension for 6-10 school days.

[85] Long-term suspension is defined as suspension for 11 to 90 school days.

[86] See DCMR Chapter B25 §§ B2504.4 and B2505.3.

[87] *Id.* at § B2504.6.

[88] *Id.* at § B2505.6.

[89] 5 DCMR § B2505.5.

[90] *Id.*

[91] *Id.* at § B2505.6.

[92] 5 DCMR § B2505.6(b).

[93] 5 DCMR § B2505.6(d).

[94] DCPS has nine instructional superintendents that are assigned schools by cluster. To see a current list of DCPS instructional superintendents, visit: <http://dcps.dc.gov/DCPS/About+DCPS/Who+We+Are/Instructional+Superintendents>

[95] 5 DCMR § B2505.7-B2505.13.

[96] *Id.* at § B2505.14.

[97] *Id.*

[98] *Id.* at § B2504.10 (a).

[99] *Id.* at § B2504.10 (b); see <http://profiles.dcps.dc.gov/C.H.O.I.C.E.+Academy+@+Emery>.

[100] *Id.* at § B2506.2.

[101] A contested residency is challenging whether a child is a District of Columbia resident and therefore eligible to receive free public education.

[102] CCE, August 12, 2012 interview with Administrative Law Judge (ALJ) Erika Pierson; and September 4, 2014 interview with Interim Chief Judge Wanda Tucker and ALJ Pierson.

[103] See also 34 CFR § 300.515.

[104] See 1 DCMR § 2900.1.

[105] See 1 DCMR § 2900.2-2900.3.

[106] See 1 DCMR § 2901.1.

[107] See 5 DCMR § B2506.7.

[108] *Id.*

[109] See <http://studentrightsalliance.org/media/1974/DCPS-Student-Discipline-Policy-Tiers-August-2009-4.pdf>.

- [110] 1 DCMR § 2903.1 & 2901.3.
- [111] 5 DCMR § B2507.6; *Goss v. Lopez*.
- [112] 5 DCMR § B2507.6.
- [113] 1 DCMR § 290 3.4.
- [114] *Id.*
- [115] 5 DCMR § B2506.2.
- [116] 5 DCMR § B2506.2; 1 DCMR § 2902.1.
- [117] 1 DCMR § 2902.8.
- [118] *Id.*
- [119] 1 DCMR § 2904.1.
- [120] 1 DCMR § 2904.2.
- [121] *Id.*
- [122] *Id.*
- [123] *Goss v. Lopez*, 419 US 565, 581 (1975).
- [124] 1 DCMR § 2902.3.
- [125] 5 DCMR § 2506.3.
- [126] 5 DCMR § 2909.1.
- [127] See February 9, 2014 DC Council Performance Oversight Hearing, available at <http://dccouncil.us/events/education-performance-oversight-hearing3>.
- [128] Based on Office of Administrative Hearings data from the 2012-2013 school year, out of a total of 381 long-term suspension cases referred to OAH, 112 were dismissed, defaulted for the student, or denied on factual grounds. This leaves only 269 cases that could have resulted in an approved long-term suspensions.
- [129] 1 DCMR § 2903.2.
- [130] 5 DCMR § B2507.2.
- [131] 5 DCMR § B2507.4.
- [132] 5 DCMR § B2507.3.
- [133] 5 DCMR § B2507.7.
- [134] *Id.*
- [135] 5 DCMR § B2507.7(a).
- [136] 5 DCMR § B2507.7(b).
- [137] 5 DCMR § B2507.7(c).
- [138] 5 DCMR § B2507.7(d).
- [139] 5 DCMR § B2507.9.
- [140] 5 DCMR § B2507.9(a)-(d).
- [141] *Id.*
- [142] 5 DCMR § B2507.9(b).
- [143] 5 DCMR § B2507.9(d).
- [144] 5 DCMR § B2508.1 and B2508.2.
- [145] See DC Code 2-501, et seq.
- [146] 5 DCMR § B2504.10(b).
- [147] <http://profiles.dcps.dc.gov/C.H.O.I.C.E.+Academy+@+Emery>
- [148] 5 DCMR § B2510.1; 34 CFR § 300.530.
- [149] 5 DCMR § B2510.2.
- [150] *Id.*
- [151] 5 DCMR § B2500.9(j).
- [152] 5 DCMR § B2510.3.
- [153] 34 CFR § 300.530.
- [154] 5 DCMR § B2510.4.
- [155] 5 DCMR § B2510.7(a).
- [156] 5 D.C.M.R. § B2510.7(b).
- [157] 5 DCMR § 2510.9.
- [158] 34 CFR § 300.536(a)(2).
- [159] 5 DCMR § 2510.9.
- [160] 34 CFR § 300.321(a).
- [161] 5 DCMR § B2510.9.
- [162] *Id.*; 5 DCMR § B2510.12(a).
- [163] 34 CFR § 300.530(f)(2); 34 CFR § 300.530(g).
- [164] 34 CFR § 530(g)(1); 34 CFR § 530(i)(4).
- [165] 34 CFR § 300.530(g)(2).
- [166] *Id.*
- [167] 34 CFR § 300.530(g)(3).
- [168] 34 CFR § 300.530(i)(3); 18 USC § 1365(h)(3).
- [169] 34 CFR § 300.530.
- [170] 34 CFR § 300.531.
- [171] 5 DCMR § B2510.6.
- [172] 5 DCMR § B2510.14.
- [173] 5 DCMR § B2510.15; 34 CFR § 300.532(c)(2).
- [174] 5 DCMR § B2510.19.
- [175] 5 DCMR § B2510.16.
- [176] 34 CFR § 300.532(b)(2).
- [177] 34 CFR § 300.532(c)(5).
- [178] 5 DCMR § B2510.22-B2510.23; 34 CFR § 300.534.
- [179] *Id.*
- [180] 5 DCMR § B2510.24.
- [181] 5 DCMR § B2510.26.
- [182] 34 CFR § 300.534 (d)(iii).
- [183] *S-1 v. Turlington*, 635 F.2d 342, 3350 (5th Cir. 1981); Weber, Mark C. "A New Look at Section 504 and the ADA in Special Education Cases." *Texas Journal on Civil Liberties and Civil Rights*, Volume 16:1, 23 (2010).
- [184] 5 DCMR § E2107.7
- [185] 5 DCMR § E2108
- [186] *Id.*
- [187] 5 DCMR § E2108.2
- [188] 5 DCMR §§ B2500.13; B2408.16.
- [189] *Goss v. Lopez*, 419 U.S. 565 (1975).

[190] *Id.*

[191] *Id.* at 581.

[192] *Id.*

[193] *Id.* at 582.

[194] *Id.*

[195] *Id.* at 582-583.

[196] *Id.*

[197] *Id.* at 584.

[198] 5 DCMR § B2504.16.

[199] 5 DCMR § B2510.12.

[200] DC Code § 38-1802.04 (c)(5).

[201] See <http://osse.dc.gov/release/osse-releases-districts-first-student-mobility-study>

[202] *Id.* at 5.

[203] DC Public Schools, Office of the State Superintendent of Education & Public Charter School Board, “District of Columbia School Equity Reports 2013,” available at [http://issuu.com/pcsb/docs/dc\\_equity\\_reports\\_part\\_one](http://issuu.com/pcsb/docs/dc_equity_reports_part_one).

[204] *Id.*

[205] SY 2013-2014 DC Public Charter School Discipline and Attendance Briefing, September 4, 2014, at slide 4.

[206] *Id.* at slide 6.

[207] See <http://www.educatorshandbook.com/>.

[208] DC Public Schools, Office of the State Superintendent of Education & Public Charter School Board, “District of Columbia School Equity Reports 2013,” available at [http://issuu.com/pcsb/docs/dc\\_equity\\_reports\\_part\\_one](http://issuu.com/pcsb/docs/dc_equity_reports_part_one). Black students had a suspension rate of 12%, Hispanic/Latino students 6%, and Asian and White students had a 0% suspension rate.

[209] See <http://godsmen.wikispaces.dpsk12.org/file/view/No+Nonsense+Nurturer+2+Pager.pdf>.

[210] *Id.*

[211] DC Public Schools, Office of the State Superintendent of Education & Public Charter School Board, “District of Columbia School Equity Reports 2013,” available at [http://issuu.com/pcsb/docs/dc\\_equity\\_reports\\_part\\_one](http://issuu.com/pcsb/docs/dc_equity_reports_part_one). Multiracial students had a suspension rate of 13%, Black students 10%, and Hispanic/Latino and White students had a 3% suspension rate.

[212] *Id.* Black students had a suspension rate of 28% and Hispanic/Latino students had a suspension rate of 16%.

[213] See <http://www.pbis.org> for further details.

[214] DC Public Schools, Office of the State Superintendent of Education & Public Charter School Board, “District of Columbia School Equity Reports 2013,” available at [http://issuu.com/pcsb/docs/dc\\_equity\\_reports\\_part\\_one](http://issuu.com/pcsb/docs/dc_equity_reports_part_one).

[215] *Id.* Black students had a suspension rate of 15%, Hispanic/Latino students 8%, Multiracial students 4%, Asian students 2% and White students had a 1% suspension rate and see “The Economic Impact of School Discipline,” *National Journal*, October 23, 2014, available at <http://www.nationaljournal.com/next-america/economic-empowerment/the-economic-impact-of-school-discipline-20141023>.

[216] See <http://rccp.cornell.edu/tcimainpage.html>.

[217] NAACP Legal Defense and Educational Fund and National Women’s Law Center, “Unlocking Opportunity for African American Girls: A Call to Action for Education Equity,” September 2014, available at: [http://www.nwlc.org/sites/default/files/pdfs/unlocking\\_opportunity\\_for\\_african\\_american\\_girls\\_final.pdf](http://www.nwlc.org/sites/default/files/pdfs/unlocking_opportunity_for_african_american_girls_final.pdf).

[218] See Graduation Pathway Report at [http://dme.dc.gov/sites/default/files/dc/sites/dme/publication/attachments/DME\\_gradPathways\\_FinalReport\\_20140924\\_vF.pdf](http://dme.dc.gov/sites/default/files/dc/sites/dme/publication/attachments/DME_gradPathways_FinalReport_20140924_vF.pdf).



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