



Special Education Advisory Committee

Draft Policy 8220

STUDENT DISCIPLINARY CONSEQUENCES

Regulation 8220.1 PROCEDURES FOR SHORT-TERM and LONG-TERM SUSPENSION

Regulation 8220.2 EXPULSION by SCHOOL BOARD

Regulation 8220.3 DISCIPLINING STUDENTS WITH DISABILITIES

Recommendations Summary

June 9, 2022

Prepared For:
SEAC Membership
Special Education Community
Loudoun County School Board

Overview: Policy 8220

STUDENT DISCIPLINARY CONSEQUENCES

Accompanying Regulations

Regulation 8220.1 PROCEDURES FOR SHORT-TERM and LONG-TERM SUSPENSION

Regulation 8220.2 EXPULSION by SCHOOL BOARD

Regulation 8220.3 DISCIPLINING STUDENTS WITH DISABILITIES

The opening line of Policy 8220 reads, “The Loudoun County School Board believes that fair and equitable discipline practices contribute to the quality of a student's educational experience.” SEAC agrees with the school division focusing on research based equitable discipline practices that are aligned with research. The next line of the Policy negates the opening statement. “As authorized by this policy, the principal, assistant principal, or teacher designee can suspend a student from school to provide a safe learning environment.” The use of exclusionary discipline practices continues to be one of the most inequitable practices in LCPS. Peer reviewed research indicates that these practices are not very effective, make our schools less safe, and contribute to inequity and disproportionality in educational outcomes.

LCPS students with disabilities are 16 times more likely to be suspended than their non-disabled peers. Research documents the poor outcomes of using exclusionary discipline and suggests four areas that contribute to disproportionality: People, Processes, Policies, and Places. SEAC has reviewed previous LCPS discipline policies and has made recommendations to change the approach from exclusionary practices to a more equitable student-centered approach to reduce disparate impact.

LCPS staff continue to claim to have systems of behavior preventions and supports. LCPS policies continue to be written with a primary focus and theme of using exclusionary and punitive disciplinary practices. The use of equitable behavior preventions and support remains optional, and staff have consistently refused and undermined efforts to improve that since the original recommendations by the Discipline Task Force. If staff are serious about implementing a tiered spectrum of intervention with emphasis on prevention and support, the discipline policies would clearly outline such an approach to promote transparency and consistency across the county.

To date, none of SEAC nor the special education community's concerns have been adequately addressed through policy reform.

What continues to be necessary is for the Loudoun County School Board and LCPS to adopt a fundamentally different mental model of student behavior. First principles should be prevention, meeting students' needs, meaningful inclusion, and teaching. This contrasts strongly with our current “old fashioned” approach that responds after significant behavior incidents have occurred and focuses on excluding and punishing

students until they figure it out for themselves.

Student behavior is often a form of communication. Students with disabilities are often communicating unmet needs to adults and peers. As an educational institution, punishing students for communicating their needs instead of seeking the “why” or “function” of those behaviors is both harmful and contrary to best practices in education.

SEAC has reviewed the draft policy and determined that it does not reflect the needs of students with disabilities.

Exclusionary Discipline – VDOE

https://www.doe.virginia.gov/boe/committees_standing/soa/2021/04-apr/disc-dispro-boe-april.pdf

Reframing Discipline

https://www.doe.virginia.gov/support/student_conduct/resources/reframe-discipline/revising-student-code-conduct.pdf

Summary of Concerns and Recommendations

Concern 1: Policy 8220 and accompanying regulations do not adopt and require research and evidence-based practices in addressing interfering behaviors of students with disabilities in an educational setting.

https://www.doe.virginia.gov/support/virginia_tiered_system_supports/resources/2015_fall_institute/Culturally_Responsive_Positive_Behavior_Supports_considerations_for_practice.pdf

<https://ln5.sync.com/dl/21d811c50/kvrembi6-rxt9xzvj-hbeafws7-abtqpim9>

Concern 2: LCPS is misrepresenting IDEA regulations resulting in a stricter interpretation of the law and a narrowing of the rights of students with disabilities. LCPS must follow the IDEA Regulations, which establish a floor for these rights. School Board policy or accompanying regulation cannot take away or minimize the rights provided by IDEA, Section 504, or the ADA.

Concern 3: Previous proactive measures to support students with disabilities and their school communities that was present in Policy 5-55 and removed in previous proposed draft Policy 5340 (See SEAC Review of Policy 5340 dated May 5, 2021). LCPS's own data shows disproportionality for students with disabilities is increasing.

Concern 4: LCPS's appeals processes do not equitably provide a timeline that allows for parents to exercise their appeal rights prior to a student being excluded from instruction and mitigate possible harm resulting from such exclusionary practices.

Concern 5: "Stealth Suspensions." SEAC has received numerous reports that school staff use a variety of exclusionary disciplinary practices tantamount to suspension but designed to avoid student rights and school accountability of suspensions as defined by policy (i.e., sending students home early, removing students from instruction, shortening the school day, etc.). SEAC is concerned that the LCPS discipline data is not an accurate representation of the current disciplinary inequity.

Recommendation 1: Policy 8220, Line 71: Insert as C and C becomes D. “When suspensions or expulsions are being contemplated, a student’s Individual Education Plan (IEP), Section 504 plan, and/or Functional Behavior Assessment/Behavior Intervention Plan will be reviewed to ensure all accommodations and necessary support services are in place and are being implemented with fidelity, and if necessary, convene an IEP, Section 504, or other team meeting to make any necessary changes to those Plans.”

Recommendation 1 is responsive to Concern 3.

Meeting Discussion:

During the SEAC meeting to discuss these recommendations, Donna Smith, Director of Special Education Procedural Support explained that the draft Policy 55340 was never adopted, and Policy 5-55 remains in place.

Recommendation 2: Policy 8220 should require tiering of the disciplinary measures (in which preventative, restorative, and supporting practices must be exhausted prior to the use of exclusion, suspension, and expulsion) appropriate for specific types of infractions. The accompanying regulation 8220.1 shall outline the specific tiers with a focus on prevention, as is done by [Fairfax County Public Schools](#). This approach would afford consistency throughout the school division and ensure exclusionary discipline is only used in the most serious situations and as regulated by the Commonwealth.

Recommendation 2 is responsive to Concern 1.

Meeting Discussion:

During the SEAC meeting to discuss these recommendations, Dr. Doug Fulton, Director of School Administration, explained that LCPS administration has already developed a tiered system of disciplinary responses. As the staff have already adopted proposed approach, there should be no objection to requiring it in policy to ensure that the tiering system is actually used and that staff does not undo this progress without the school board’s approval.

Recommendation 3: Regulation 8220.1 Page 2 line 44 Appeals – after “within 2 school days” ADD “of receipt of written notice of appeal rights and process.”

Recommendation 3 is responsive to Concern 4.

Example: Parents have two days to appeal a short-term suspension. SEAC has received reports that some principals USPS mail the suspension letter advising you of that right, which arrives three days later.

Meeting Discussion:

During the SEAC meeting to discuss these recommendations, Dr. Doug Fulton, Director of School Administration, explained that his office has permitted appeals that were a few days late. SEAC has received reports of LCPS staff strictly enforcing deadlines against parents of students with disabilities before parents received notification of the deadline. As staff have already adopted an approach of not strictly enforcing the appeals deadline against parents, there should be no objection to requiring in policy that the deadline starts after parents have received the notice of their appeal rights.

Recommendation 4: Regulation 8220.2 Page 2 Appeals, line 83 after “within 5 calendar days” ADD “of receipt of written notice of appeal rights and process.”

Recommendation 4 is responsive to Concern 4.

Recommendation 5: Regulation 8220.3 should specifically refer to the Virginia IDEA Regulation’s citation versus altering the language in the Virginia Regulations to make the policy more stringent than IDEA allows and more punitive for students with disabilities. Specifically citing the Virginia Regulation would limit LCPS’s potential liability for narrowing the rights of students with disabilities. **Appendix 1** is a highlighted version of Regulation 8220.3 with at least 6 areas identified that are not consistent with Virginia Regulations.

Recommendation 5 is responsive to Concern 2.

Example: Line 114, “and” per VA Regulations this line should read “or”. This is a significant alteration of the language to narrow the rights of the student.

- 113 (a) If the conduct in question was caused by, or had a direct and
114 substantial relationship to, the student’s disability; and
115 (b) If the conduct in question was the direct result of the school
116 division’s failure to implement the IEP.

Meeting Discussion:

During the SEAC meeting to discuss these recommendations, Donna Smith, Director of Special Education Procedural Support explained that the staff did not intend to err in their restatement of the Virginia Regulations. This is an example of why SEAC has consistently recommended that LCPS cite stand and federal regulations rather than copy their text. It has often been the case that SEAC has found errors introduced when staff has copied the text.

Recommendation 6: Policy 8220, add language to combat the disproportionality and overuse of exclusionary practices. Anytime a disciplinary measure is being contemplated, such as when a student’s behavior interferes with their learning or the learning of others, a meeting shall be called to review the student’s Individual Education Plan (IEP), Section 504 plan, and/or Functional Behavior Assessment/Behavior Intervention Plan to ensure all accommodations and necessary support services are in place and are being implemented with fidelity, and if they are not, to ensure that appropriate accommodations and supports are put into place for the student. This aligns with IDEA 2004.

Recommendation 6 is responsive to Concerns 1 and 3.

Meeting Discussion:

During the SEAC meeting to discuss these recommendations, Dr. Doug Fulton, Director of School Administration, explained that it is already in staff’s tiering recommendations to determine whether appropriate preventions and supports are in place. As the staff have already adopted proposed approach, there should be no objection to requiring it in policy to ensure that the tiering system is actually used and that staff does not undo this progress without the school board’s approval.

Recommendation 7: **Policy 8220**, add Prevention and Early Intervention Measures are mentioned in Policy 8210, but there is no explicit focus on utilizing preventions that do not remove students from the educational environment. The FBA, BIP, MTSS, etc.

Recommendation 7 is responsive to Responsive to Concern 1.

Recommendation 8: **Update Policy 8215**

Policy 8215 add Section K – Tracking.

K. Tracking. If any of the above disciplinary measures are implemented against a Student, to include early disciplinary dismissals, an incident report will be completed and shall include the length of time the student is excluded from instruction. A copy of the incident report will be provided to the parent/guardian. The superintendent or designee shall provide yearly reports to the school board regarding disproportionality trends in this data.

Recommendation 8 is responsive to Responsive to Concern 5.

Meeting Discussion:

During the SEAC meeting to discuss these recommendations, Dr. Doug Fulton, Director of School Administration, explained that staff already have a system and are expected to complete incident reports, including the time away from instruction. As the staff have already adopted proposed approach, there should be no objection to requiring it in policy to ensure that the tracking system is actually used and that staff does not undo this progress without the school board's approval.

SEAC Membership Vote

SEAC Membership Vote on Recommendations

Quorum: 14 out of 17 SEAC Members present – Quorum Established

Motion: Lorraine Hightower made a motion to vote on the proposed recommendations as a slate. Rozeena Khattak, seconded the motion.

Vote Summary: Unanimous

DISCIPLINING STUDENTS WITH DISABILITIES

Students with disabilities, who violate the student code of conduct, or engage in conduct for which they may be disciplined, will be disciplined in accordance with this regulation and the regular disciplinary procedures as defined by LCPS policies, and the Student Code of Conduct. School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability as a result of discipline.

A. Long-Term Suspensions, Expulsions or Short-Term Suspensions Which Constitute a Pattern are Long Term Removals and Considered a Disciplinary Change in Placement

For the purpose of removing students with disabilities from their current educational placements, a disciplinary change in placement occurs when:

1. the removal is for more than 10 consecutive school days at a time; or
2. there is a series of removals during the school year, each of which is for 10 days or less and they cumulate to more than 10 days in a school year and constitute a pattern because of:
 - (a) the length of each removal,
 - (b) the proximity of the removals to each other,
 - (c) the total time the student is removed, and
 - (d) the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals in the school year.

If the disciplinary action will result in a change of placement for the student, then the student's parents must be sent notice of the disciplinary action and a copy of the procedural safeguards on the same day of the recommendation for discipline. The procedures outlined in Section IV must also be followed. The special education and disciplinary records of the student must be available to the person who makes the final decision regarding the discipline.

The school division determines on a case-by-case basis whether a pattern of removals constitutes a change in placement. A parent may request a due process hearing to challenge this determination.

For any disciplinary change in placement, a Manifestation Determination Review ("MDR") must be held, and the Individualized Education Program (IEP) team must meet to determine the educational services to be provided during the long-term removal.

B. Short-Term Suspensions

A short-term suspension is a suspension of 10 consecutive days or less at a time.

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School authorities may remove a student with a disability from the student's current educational setting for up to 10 school days cumulative in a school year to the extent that such removals would be applied to students without disabilities and for additional short-term suspensions during the school year provided no pattern exists. Additional short-term suspensions during the school year are also permissible even if a pattern exists provided that an MDR team finds that the behavior that led to the disciplinary removal was not a manifestation of the student's disability.

No MDR or IEP meeting is required for a short-term removal where no change in placement has occurred, although an IEP meeting may be held if needed. Educational services will be made available to the student for each day of removal after the first ten days of removal in a school year. Educational services should also be made available during the first ten days of removal if services are made available to students without disabilities in the same circumstances.

C. Functional Behavior Assessments and Behavior Intervention Plans

If the MDR team members determine that a manifestation exists, then the IEP team must:

- conduct a Functional Behavioral Assessment (FBA) and implement a Behavioral Intervention Plan (BIP), if no FBA was conducted previously; or,
- if the student already has an FBA and a BIP in place, review and modify the BIP, as necessary to address the behavior.

If a manifestation is found, the school division and the parent may still agree to a change in placement made through the IEP process. Without this agreement, the student must return to the placement from which the student was removed. Nothing in this section limits the authority of the school division for the first ten days of removal in a school year or for applicable forty-five school day removals.

If the MDR team members determine that there is no manifestation, then the IEP team should decide whether there is a need to conduct or review an FBA and BIP.

D. Educational Services While Disciplined

For the first 10 days of removal in a school year, the School Board is not required to provide educational services to the student with a disability if services are not provided to students without disabilities who have been similarly removed.

DISCIPLINING STUDENTS WITH DISABILITIES

After the first 10 days of removal in a school year, the School Board shall make available educational services to the student during the period of removal.

The services must enable the student to:

1. continue to progress in the general curriculum, although in another setting, and
2. make progress toward meeting the goals set out in the student's IEP.

The determination of the educational services is made by the IEP team if the discipline constitutes a change in placement. For a short-term removal which exceeds 10 cumulative days in a school year, but is not a change in placement, then the determination of the education services is made by school personnel in consultation with the student's special education teacher.

E. Manifestation Determination Review

When a disciplinary action is proposed that will result in a disciplinary change of placement, an MDR shall be conducted within 10 school days after the date on which the decision to take disciplinary action is made. This review shall be conducted by the MDR Team which consists of a local educational agency representative, the parent(s) and relevant members of the IEP team (as determined by the parent and the school division).

The MDR Team shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parent(s). The MDR team then shall determine the conduct to be a manifestation of the child's disability:

- (a) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; and
- (b) If the conduct in question was the direct result of the school division's failure to implement the IEP.

F. Disciplinary Action Following an MDR Determination that there is No Manifestation

If the behavior for which the student was disciplined is determined not to be a manifestation of the student's disability, the disciplinary procedures will be applied in the same manner as applied to students without disabilities. During a removal that constitutes a change in placement, the student must continue to receive the educational services necessary to enable the student to continue to participate in the general curriculum, although in another setting, and to progress

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toward meeting the goals set out in the student's IEP. The IEP Team must also consider whether to conduct or review an FBA and BIP.

A parent may request an expedited due process hearing if the parent disagrees with the determination that the behavior for which the student was disciplined is not a manifestation of the student's disability or if the parent disagrees with any decision regarding placement of the student under these disciplinary procedures. During any appeal, the student will remain in the interim alternative education setting pending the decision of the hearing officer or until the expiration of the disciplinary period (whichever comes first); provided, however, the student may still serve the balance of any applicable forty-five school day removal. The placement may also be changed through the IEP process with the consent of the parent.

G. Disciplinary Action Following MDR Determination that there is a Manifestation

A student with a disability whose behavior is determined to be a manifestation of the student's disability may not be disciplined except to the extent a removal is otherwise permitted by law. The student may be removed to a more restrictive placement following an IEP team decision and parental consent to the change in placement. The IEP team must conduct or review an FBA and/or BIP as provided in Section III.

H. Interim Alternative Educational Settings for Weapons, Drugs and Infliction of Serious Bodily Injury

Students with disabilities may be removed to an interim alternative educational setting without parental consent by school personnel for the same amount of time that a child without a disability would be subject to discipline, but for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the child's disability when the student:

1. carries or possess a weapon to or at school, or on school premises, or to or at a school function under the jurisdiction of a state or local educational agency;

2. knowingly possess or uses illegal drugs or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency; or

3. inflicts serious bodily injury upon another person at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency may be disciplined pursuant to Policies 8220, 8235 Weapons, 8240 Alcohol, Drug, Tobacco and Electronic Cigarettes.

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The terms “weapon”, “controlled substance”, and “serious bodily injury” have the meaning given the terms under state regulation 8 VAC 20-81-10. The term serious bodily injury has the same meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18 of the United States code.

For purposes of this forty-five (45) school day removal, a weapon must meet the following definition:

“a weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocketknife with a blade of less than 2 ½ inches in length.”

I. Placement During Appeals

During the course of any appeals, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time for the disciplinary period, whichever comes first, unless the parent and the school division agree otherwise.

J. Protection for Students Not Yet Eligible for Special Education and Related Services

A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code of student conduct of school division may assert any of the discipline protections provided by the IDEA if the school division had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. A school division will be found to have knowledge of the student’s disability if, before the behavior that precipitated the disciplinary action occurred, one of the following occurred:

1. the parent expressed concern in writing (or orally if the parent(s) does not know how to write or has a disability that prevents a written statement) to school personnel that the student is in need of special education and related services; or
2. the parent requested an evaluation of the student for special education eligibility; or
3. the student’s teacher or other school personnel expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the school division.

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A school division would not be found to have knowledge of a student's disability if:

1. the parents refused to allow an evaluation of the student or refused special education services; or
2. the student was evaluated and found not eligible for special education services.

If the school division does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to a child without a disability who engages in comparable behaviors.

If a request for an evaluation is made during the period a student is subject to disciplinary measures, but after the behavior that led to the disciplinary removal, then the evaluation shall be conducted in an expedited manner. The student is not entitled to an MDR. If the student is found eligible as a child with a disability, taking into consideration information from the evaluation conducted by the school division and information provided by the parents, then the student must be provided special education and related services, although in another setting. Pending the results of the evaluation, the student shall remain in the educational placement determined by the school authorities, which can include suspension or expulsion without educational services.

K. Disciplining Certain Section 504 Students Who Violate Alcohol and Drug Policies

Students who are identified as disabled solely under Section 504 of the Rehabilitation Act, and who are currently engaging in the illegal use of drugs or alcohol, may be disciplined for violating the division's alcohol and drug policies to the same extent as non-disabled students. The student is not entitled to protections under Section 504 in this circumstance, but the student does retain the protections afforded to non-disabled students.