

# 2024-2025 Buffalo Public Schools Suspension Policy (7313) Amendment Draft Proposal

Legal Aid Bureau of Buffalo, New York Civil Liberties Union, Partnership for the Public Good, Western New York Law Center

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Board policy amendments to adopt the New York State Education Department's current recommendations for student suspensions.

NYSED Recommendations:

1. Eliminate use of suspensions for grades PK-3
2. Cap the maximum length of suspension at 20 days, reducing the maximum from 180 days.
3. Prohibit suspensions for minor, subjective infractions like insubordination and disrespectful behavior
4. Guarantee access to academic instruction and schoolwork for suspended students

## Buffalo Public Schools Board Policy 7313

The principal may suspend the following students from required attendance upon instruction:

- a. ~~[A student who is insubordinate or disorderly; or]~~
- b. A student who is violent ~~[or disruptive];~~ or
- c. A student whose conduct otherwise endangers the safety, morals, health, or welfare of others.

### **7313.1 Suspension**

- A. Recordkeeping
- B. The District shall maintain records of suspensions kept in digital form, made public (minus identifying information denoted with \*) on the Data Dashboard, and include:
  1. The name(s) of student(s) involved\*
  2. Name(s) of administrator(s) involved
  3. Name(s) of school security officers or resource officer(s) involved (if any)
  4. Date of incident
  5. Date of suspension notification to parent
  6. Manner of notification
  7. Date of informal conference and disposition of informal conference
  8. Date of suspension hearing if applicable and disposition of suspension hearing
  9. Date of Manifestation Determination Review hearing and disposition of MDR hearing if applicable
    - a. Date of notices sent and to whom they were sent
    - b. Who was present for the MDR
    - c. What, if any, evaluations are to be completed
  10. Start date of suspension
  11. Date of return to school
  12. Incident details\*
  13. Investigation details\*
    - a. Names of witnesses
  14. Any follow up by the school (for instance, a Dignity for All Student Act (DASA) complaint)
  15. Records of suspensions should also include demographic information about the student, including but not limited to: grade, age, school, race/ethnicity, gender, disability status, income status, English learner status, foster care status, homelessness status, and other DASA-protected characteristics and indicators required by the Department of Education Civil Rights Data Collection.
  16. If a suspension is expunged, the behavior shall be recorded separately. This is in order to keep a record of behavior that has happened but also keep separate so that an impartial hearing officer will not take the behavior into account when determining punishment at a suspension hearing.
- C. In determining how to best address inappropriate conduct, it is necessary to evaluate the totality of the circumstances surrounding the conduct. The following facts must be considered prior to determining the appropriate disciplinary measures:
  1. the student's age and maturity;
  2. the student's disciplinary record (including the nature of any prior misconduct, the number of prior instances of misconduct, and the disciplinary and guidance intervention measures applied for each and excluding any misconduct or behaviors where a manifestation was found pursuant to a Manifestation Determination Review);

3. the nature, severity, and scope of the behavior;
4. the circumstances/context in which the conduct occurred and mitigating factors;
  - a. For example:
    - i. Whether the student is or has been experiencing bullying behaviors or bullying classroom environments;
    - ii. Whether the student was reacting or responding in self-defense;
    - iii. Whether there was any effort to address the situation using positive, preventative methods prior to the incident;
    - iv. Whether other interventions, such as positive behavior supports and restorative practices, can adequately address the behavior at issue while enabling the student to remain in school, and whether such interventions have been tried before; and
    - v. Whether the student is being disciplined for engaging in bullying behavior and, if so, whether restorative practices have been in place, and whether there is a restorative practices approach to discipline that would be more effective than exclusionary discipline at addressing the situation.
5. the frequency and duration of the behavior;
6. the number of persons involved in the behavior;
7. the social emotional status/needs of all persons involved in the behavior; and
  - a. For example:
    - i. Family or community situations; and
    - ii. Substance use or addiction.
8. the student's IEP (Individualized Education Plan), BIP (Behavioral Intervention Plan), and/or 504 Accommodation Plan, if applicable.<sup>1</sup>

### **7313.2 Classroom Interventions and Supports**

- A. Student feedback or redirection
- B. Student/teacher conference
- C. Daily behavior progress sheet
  1. Classroom behavior plan
  2. Individual behavior improvement plans
- D. Family conference
- E. Classroom check-in plan
- F. Initiate a student-centered discussion about the incident

### **7313.3 Administrative and Student Support Team Interventions and Supports**

- A. Reflection activity
- B. Mentorship

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<sup>1</sup> New York City Department of Education, *Citywide Behavioral Expectations to Support Student Learning Grades K–5* (2019), <https://www.schools.nyc.gov/docs/default-source/default-document-library/discipline-code-kindergarten-grade-5.pdf>.

## Buffalo Public Schools Board Policy 7313

- C. Peer mediation
- D. Mediated conflict solution conference
- E. Short-term behavioral progress report
- F. Referral to school-based health or mental health professionals
- G. Individual/group counseling
- H. Restorative practices or conference
- I. Check-in Check-out (CICO)
- J. Behavior Support Plan (BSP)/Functional Behavioral Assessment (FBA)/Behavioral Intervention Plan (BIP)
- K. Positive behavioral interventions and supports (PBIS)
- L. Referral to a community-based organization (CBO)
- M. Referral to Behavioral Support Team

### **7313.4 Disciplinary Options based on Severity of Behavior**

- A. Pedagogical school staff meeting with student to address the behavior and its impact
- B. Student/teacher conference
- C. Formal meeting with student by appropriate administrator (e.g., assistant principal, principal) to address the behavior and understand its impact
- D. Parent conference
- E. In-school disciplinary response (e.g., formal restorative conference, exclusion from extracurricular activities or communal lunchtime)
- F. Principal's suspension for one to five school days
- G. Superintendent's suspension that results in immediate reinstatement with a welcome-back restorative circle upon return
- H. Superintendent's suspension that results in a suspension for a fixed period of six to ten school days with a welcome-back restorative circle upon return
- I. Superintendent's suspension that results in a suspension for 11–15 school days with a welcome-back restorative circle upon return
- J. Superintendent's suspension that results in a suspension for 16–20 school days with a welcome-back circle upon return.
- K. For cases when law requires imposition of a suspension period longer than 20 days,<sup>2</sup>
  - 1. A threat assessment shall be completed by an independent qualified professional (ex. LCSW, LMHC, Psychologist, etc.) in a timely manner.

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<sup>2</sup> New York City Department of Education, *Citywide Behavioral Expectations to Support Student Learning Grades K–5* (2019), <https://www.schools.nyc.gov/docs/default-source/default-document-library/discipline-code-kindergarten-grade-5.pdf>.

2. b. Timely manner shall be less than 20 days without good cause to extend the time (i.e., parent/guardian rescheduling, weather, illness, etc.)
3. A Threat Assessment shall be used to determine on a case by case basis if the student may return earlier than required by law.
4. A Threat Assessment shall include possible services and interventions the student may need to address the behavior that resulted in suspension and a plan for the student's eventual reentry to the school environment.

### **7313.5 Restorative Practices**

- A. All members of a school community bring with them diverse abilities, interests, viewpoints, and family and cultural backgrounds. These differences can be a source of great energy and strength when members of the community value and respect one another. Using restorative practices to foster positive interpersonal and intergroup relations and to address inappropriate behavior when it occurs is a cornerstone of a progressive approach to discipline.
- B. Students are the largest group of stakeholders in a school community and its greatest resource in creating and sustaining a safe and supportive school environment. Building community among students and between students, families, and staff members is integral to creating a supportive and inclusive school culture. When students feel accepted, valued, respected, and included, they build a positive connection to school and foster resiliency.
- C. A restorative approach to discipline changes the fundamental questions that are asked when a behavioral incident occurs. Instead of asking who is to blame and how those engaged in the behavior will be punished, a restorative approach asks four key questions:
  1. What happened?
  2. Who was harmed or affected by the behavior?
  3. What needs to be done to make things right?
  4. How can people behave differently in the future?
- D. Glossary of Restorative Practices
  1. Circle Process: Regular use of restorative circles within the instructional program of a school is a significant prevention and intervention strategy. The circle process enables a group to build relationships, establish understanding and trust, create a sense of community, learn how to make decisions together, develop agreements for the mutual good, resolve difficult issues, and address other issues as they arise.
    - a. Community building circles focus on:
      1. Safety and Trust. Community members need a sense of safety and trust to connect with one another.
      2. Honor. Members interact with fairness and integrity and acknowledge their personal responsibility for their actions.

3. Openness. Community members feel free to share their thoughts and feelings.
  4. Respect. To bond as a community, members must feel they are valued and respected as individuals, and they must respond respectfully to one another.
  5. Empowerment. A sense of empowerment is a crucial element and a desired outcome of being a member of a community. Community support enables members to gain a new view of themselves and a new sense of confidence in their abilities.
- b. When used as an intervention measure to address inappropriate student behavior, restorative circles empower community members to take responsibility for the well-being of others; prevent or deal with conflict before it escalates; address underlying factors that lead youth to engage in inappropriate behavior and build resiliency; increase the pro-social skills of participants, particularly those who have harmed others; and provide wrongdoers with the opportunity to be accountable to those they have harmed and enable them to repair the harm to the extent possible. A circle can also be used in response to a particular issue that affects the school community.
2. Collaborative Negotiation: Using the collaborative negotiation process enables an individual to talk through an issue or conflict directly with the person with whom they disagree to arrive at a mutually satisfactory resolution. Training in collaborative negotiation includes learning active listening and other conflict resolution communication skills.
  3. Peer Mediation: An impartial, third-party mediator (in a school, a student who has been trained to serve as a peer mediator) facilitates the negotiation process between conflicting parties so they can come to a mutually satisfactory resolution. Mediation recognizes that there is validity to conflicting points of view that disputants bring to the table and helps disputants work out a solution that meets both sets of needs. Disputants must choose to use mediation and must come to the process willingly. Mediation is not used where one individual has been victimized by another (for example, in cases of harassment or bullying), due to an imbalance of power.
  4. Formal Restorative Conference: A conference is facilitated by an individual who has received specific training in bringing together individuals who have acknowledged causing harm with those who have been harmed. Regardless of the circumstances, the mental and physical health, safety, and welfare of the individual who was harmed are of paramount importance when considering this option in a school setting. Both sides may bring supporters to the circle who have also been affected by the incident. The purpose of the conference is for the harm-doer and the harmed to understand each other's perspective and come to a mutual agreement that will repair the harm as much as it is able to be repaired. A formal restorative conference may be used as an intervention in conjunction with a disciplinary response or may be used as a disciplinary intervention to address misconduct that does not require suspension.

This conference should not be used when there is a perceived power imbalance between participating students.

5. Welcome-Back Circle: A welcome-back circle is a process designed to formally welcome the returning student back into the school community and to establish a support system for the student (such as, key relationships and resources). The returning student and other circle participants (for instance, school staff and parents) make commitments about how to foster a smooth return and address individual or community circumstances that contributed to the suspension event. The Circle provides a space for students to express themselves, actively listen to one another's perspectives, and build a sense of community. This practice helps build a strong school culture that students, staff, and those in the community can rely on and return to in times of need. A welcome-back circle may be used as an intervention in conjunction with a disciplinary response (for example, a student participates in a welcome-back circle after a teacher removal or principal's or superintendent's suspension).

#### **7313.6 PK-3 Students**

- A. If a student in grades PK-3 engages in a behavior outlined in the code of conduct, they shall not be suspended. At their grade level, a suspension or other exclusionary forms of discipline are not developmentally appropriate. Supportive classroom, student-centered, or social emotional learning interventions have been found to be more effective at re-directing behaviors at this age. If a behavior is so severe that the principal believes it requires a suspension, the principal, counselor, and other school support staff shall have an informal conference with the student's parent or guardian within twenty-four (24) hours of the incident. This meeting shall include the Building's Committee on Special Education (CSE) Chair if the student has an Individualized Education Plan (IEP) or Section 504 plan. The parent is allowed to bring an advocate and/or attorney. Any evidence the school will present must be available to the family at least twelve (12) hours before this meeting. Furthermore, a principal shall only have the authority to suspend a child for a suspension of five (5) days or less in grades PK-3 with the express written approval of the Superintendent, or their designee.
- B. Principals with over 5% of suspensions in any month made without offering the informal conference prior to suspension shall be required to meet with the Director of Office of Pupil Personnel Services by the end of the following month.
- C. A student in grades PK-3 may be subject to suspension only if that student engages in pervasive or serious aggressive acts that cause serious injury or immediately threaten children's safety in the classroom. However, the principal shall attempt non-exclusionary, supportive interventions to address that student's behavioral issues first in coordination with the school's student support team and the Office of Student Support Services as needed. If a principal deems an in-school or out-of-school suspension is still necessary, that principal shall make a written request to the Superintendent or Superintendent's

designee to suspend a student between one to three days from the informal conference. The principal will be required to detail the date and resolution of the informal conference and the student's support and intervention plan for the next thirty (30) days.

- D. A student with a disability (IEP, 504 Plan, and/or Behavioral Intervention Plan) in grades PK-3 may also be subject to suspension only if that student engages in pervasive or serious aggressive acts that cause serious injury or immediately threaten children's safety in the classroom. However, the principal shall attempt non-exclusionary interventions to address that student's behavioral issues first in consultation with the Building CSE Chair and Student Support Team. A Manifestation Review Determination should be held within three (3) days of the decision to suspend regardless of the student's days of school missed. If the MDR deems an in-school or out-of-school suspension is still necessary, the Principal and Building CSE Chair shall make a joint written request seeking the authorization of the Superintendent, or their designee, for a proposed principal's suspension of a student with a disability in grades PK-3, limited to three (3) days or less.
- E. There shall be no long-term suspensions of six (6) or more days for grades PK-3 unless required by federal or state law, such as in the instance of bringing a firearm into the school.
- F. Every reasonable effort must be made to correct student behavior through counseling and other school-based interventions such as restorative practices. Supports and interventions are essential because inappropriate behavior or violations of the Discipline Code may be symptomatic of more serious problems that students are experiencing. It is, therefore, important that school personnel be sensitive to issues that may influence the behavior of students and respond in a manner that is most supportive of their needs.
- G. Appropriate disciplinary responses should emphasize prevention and effective intervention, foster resiliency, prevent disruption to students' education, and promote positive school culture. When a student's misconduct results in a placement out of the classroom, the school should consider, where appropriate, using the restorative welcome-back circle process (see page 17 for more information) as an effective strategy to support a successful return to the student's regular program.<sup>4</sup>

#### **7313.7(a) Students Grades 4 to 12**

- A. The principal of the school where the student attends has the power to suspend a student for a period not to exceed five (5) school days. In the absence of the principal, the designated acting principal may then suspend a student for a period of five (5) school days or less.
- B. ~~[When the principal (the "suspending authority") proposes to suspend a student for five school days or less, the suspending authority must provide the student with notice of the charged misconduct. If the student denies the misconduct, the suspending authority will~~

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<sup>4</sup> New York City Department of Education, *Citywide Behavioral Expectations to Support Student Learning Grades K-5* (2019), <https://www.schools.nyc.gov/docs/default-source/default-document-library/discipline-code-kindergarten-grade-5.pdf>.



~~provide an explanation of the basis for the suspension.]~~ When a student in grades 4-12 is suspended from school for a period of five (5) school days or less, the suspending authority shall provide the student with notice of the charged misconduct. The suspending authority shall provide an explanation for the basis of the suspension, including any investigation undertaken, the evidence against the student, and the District's Code of Conduct violation charged. If a student engages in misconduct, supports and interventions as outlined above should be provided in order to address the student's behavior and/or underlying needs. Suspensions and other forms of exclusionary discipline should only be used after behavioral supports and interventions have been put into place to address behavior.

- C. The suspending authority cannot suspend a student for a Level 1 or 2 infraction (as stated in the District's Code of Conduct). In a case of insubordination or disrespectful behavior, the principal should utilize support personnel to help address underlying causes of behavioral issues. As outlined above, Discipline Responses A-E are appropriate for issues of insubordination or disrespectful behavior. The school's student support team, teachers, guidance counselors, school psychologists, social workers, or other mental health personnel, ensuring at least one non-administrative support person and the student's parents or persons in parental relation should be involved in the behavioral intervention plan for a student repeatedly engaging in a Level 1 or 2 infraction. Suspensions should be utilized by the suspending authority as a last resort after a student has received resources and school or community-based supports and in more serious cases. Low level infractions like insubordination, a classroom disruption, or disrespectful behavior are better responded to with positive and restorative behavioral supports in order to prevent future misconduct.
- D. When suspension of a student for a period of five (5) school days or less is proposed, the principal will also immediately (within twenty four (24) hours of the decision to suspend and before the start of the suspension) notify the parent or person in parental relation in writing that the student may be suspended from school.
- E. Written notice will be provided by personal delivery, express mail delivery, or equivalent means reasonably calculated to assure receipt of the notice within twenty-four (24) hours of the decision to propose suspension at the last known address or addresses of the parents or persons in parental relation. Under no circumstances should a notice be handed to a student or any other person, as required under Education Law 3214. Without proper notice, a student is to remain in school. Where possible, notification will also be provided by telephone if the school has been provided with a telephone number(s) for the purpose of contacting parents or persons in parental relation. However, email or telephone notice alone, without written notice, is insufficient.
- F. The notice will provide a description of the incident(s) for which suspension is proposed and will inform the student and the parent or person in parental relation of their right to request an immediate informal conference with the principal in accordance with the provisions of Education Law Section 3214(3)(b). Both the notice and the informal conference will be in the dominant language or mode of communication used by the parents or persons in parental relation. At the informal conference, the student or parent

or person in parental relation will have the opportunity to present the student's version of the event(s) and to ask questions of the complaining witnesses.

- G. The notice and opportunity for informal conference will take place prior to suspension of the student unless the student's presence in the school poses a continuing danger to persons or property or an ongoing threat of disruption to the academic process~~[, in which case the notice and opportunity for an informal conference will take place as soon after the suspension as is reasonably practical]~~. This is reserved for extreme circumstances. If a student is deemed a danger to the school, the decision to postpone the informal conference should involve the principal or designee, School Support Team, and Office of Student Support Services and the student and parent or person in parental relation should be notified of the suspension. A student support and intervention plan should be determined for the suspended student following the next thirty (30) days to ensure existing supports while suspended and returning to school.

~~Teachers will immediately report or refer a violent student to the principal or Superintendent for a violation of the District's Code of Conduct and a minimum suspension period.~~

#### **7313.7(b) Grades 4-12: More Than Five School Days**

- A. In situations where the Superintendent and/or designee determines that a suspension in excess of five (5) school days may be warranted, the student and parent or person in parental relation, upon reasonable notice, will have an opportunity for a fair hearing. At the hearing, the student has protected due-process rights such as the right to be represented by counsel, the right to question witnesses against him or her, and the right to present witnesses and other evidence on his or her behalf.
- B. For students in grades 4 through 12, if the school proves the allegations and the suspension is upheld, the Superintendent or their designee may order a suspension for a fixed period of between six (6) to twenty (20) school days. This disposition may be utilized only if appropriate alternative education is provided at home for PK-8 grade and at an alternative instruction site, with free transportation, for students in 9-12 grade that occurs within twenty-four (24) hours of the suspension start time. If preparations for alternative instruction cannot be met within 3 school days, the suspension will be automatically overturned, expunged, and the student will be allowed to return to school the following day. For students with disabilities, if placing the student on a continued suspension will constitute a disciplinary change in placement, or if the continued suspension is for more than ten (10) school days, this disposition may be utilized only if the determination of the MDR was that the student's behavior was not related to his/her disability. At the end of the suspension period, the student must be reinstated to their original school with a welcome-back circle.
- C. ~~Where the basis for the suspension is, in whole or in part, the possession on school grounds or school property by the student of any firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto or any of the weapons, instruments or appliances specified in Penal Law Section 265.01, the hearing officer or Superintendent and/or designee, will not be barred from considering the admissibility of the weapon,~~

~~instrument, or appliance as evidence, notwithstanding a determination by a court in a criminal or juvenile delinquency proceeding that the recovery of the weapon, instrument, or appliance was the result of an unlawful search or seizure.~~

- D. Superintendent's suspensions for more than 20 school days may be imposed only when required by law or for Level 4 infractions that involve seriously dangerous and/or violent behavior where the circumstances warrant the imposition of a longer suspension. Seriously dangerous and/or violent behavior can include, but is not limited to, behavior that results in serious physical injury or forcing another to engage in sexual activity. All suspensions in excess of 20 school days require approval by the Superintendent directly, not a designee. Students must be reassigned to an alternate instructional site within three school days with an automatic review for early reinstatement at 30 school days and every 15 school days thereafter. Every effort must be made to reinstate the student early. If early reinstatement is not granted, the student will remain in the alternate instruction site for the remainder of the suspension and must be reinstated to the suspending school at the termination of the suspension with a welcome-back circle (see page 17) upon return.
- E. One-Year Suspension with an Automatic Review for Early Reinstatement at 60 School Days and Every 30 School Days Thereafter: Consistent with the Federal Gun-Free Schools Act of 1994, any student who is determined to have brought to or possessed at school a firearm, bomb, or other explosive, must be suspended for a period of not less than one year. The Superintendent may order that a student be suspended for one year and reassigned to an alternate instructional site, with an automatic review for early reinstatement to the suspending school at 60 school days and every 30 school days thereafter. If early reinstatement is not granted, the student will remain in the alternate instructional site for the remainder of the suspension and must be reinstated to the suspending school at the termination of the suspension with a welcome-back circle upon return.
- F. Superintendent's Suspension hearings shall be bifurcated into two distinct phases, a determination phase, and a penalty phase. In the determination phase the Superintendent or their designee are to be presented with the school's case and the family's case, if they choose to offer testimony, and make a determination to uphold, modify, or dismiss the charges. If the charges are upheld or modified and upheld, the student is entitled to a Manifestation Determination Review (MDR), it shall be held after the determination phase. If the charges are upheld or modified and upheld and the student is not entitled to an MDR or no manifestation of the disability is found, the Superintendent or their designee shall conduct a penalty phase whereby the school and the family review the student's disciplinary record, and any character statements or pertinent information the family has provided, and both parties input into the length of the student's suspension.

### **7313.8 Minimum Periods of Suspension**

## Buffalo Public Schools Board Policy 7313

In accordance with law, Commissioner's regulations, and the District's *Code of Conduct*, minimum periods of suspension will be provided for the following prohibited conduct, subject to the requirements of federal and state law and regulations:

- A. Consistent with the federal Gun-Free Schools Act, any student who is determined to have brought a firearm to school or possessed a firearm on school premises will be suspended for a period of not less than one calendar year. However, the Superintendent and/or designee, has the authority to modify this suspension requirement on a case-by-case basis.
- B. ~~[A minimum suspension period for s]~~Students who repeatedly are substantially disruptive of the educational process or substantially interfere with the teacher's authority over the classroom~~], provided that the suspending authority may reduce the period on a case-by-case basis to be consistent with any other state and federal law]~~ shall be referred to the principal and counselor for intervention. Any student with an IEP or Section 504 plan shall additionally be referred to the building CSE chair. The principal must exhaust alternative options to suspension and document these attempts before engaging in in-school or out-of-school suspensions. The definition of "repeatedly is substantially disruptive of the educational process or substantially interferes with the teacher's authority" is set forth in Commissioner's regulations.
- C. A minimum suspension period for acts that would qualify the student to be defined as a violent student in accordance with Education Law Section 3214(2-a)(a), provided that the suspending authority may reduce the period on a case-by-case basis to be consistent with any other state and federal law.

### **7313.9 Suspension of Students with Disabilities**

- A. Generally, disciplinary action against a student with a disability or presumed to have a disability will be in accordance with procedures set forth in the District's *Code of Conduct* and in conjunction with applicable law, and the determination of the Committee on Special Education (CSE).
- B. For suspensions or removals up to ten (10) school days in a school year that do not constitute a disciplinary change in placement, students with disabilities must be provided with alternative instruction or services on the same basis as non-disabled students of the same age.
- C. If suspension or removal from the current educational placement constitutes a disciplinary change in placement because it is for more than ten consecutive school days or is a pattern of removals which constitutes a change of placement, a manifestation determination must be made. The District determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings. The District shall track the number of suspensions for which the Manifestation Determination Review results in finding of a manifestation and returns the child to the classroom, disaggregated by grade, age, school, race/ethnicity, gender, disability status, income status, English learner status, foster care status, homelessness status, and other DASA-protected characteristics and indicators required by

the Department of Education Civil Rights Data Collection. This shall be kept in electronic format and made public on the Data Dashboard.

### **7313.10 Manifestation Determinations**

- A. A review of the relationship between the student's disability and the behavior subject to disciplinary action to determine if the conduct is a manifestation of the disability must be made by a manifestation team immediately, if possible, but in no case later than ten (10) school days after a decision is made:
  - 1. By the Superintendent, and/or designee, to change the placement to an interim alternative educational setting (IAES);
  - 2. By an Impartial Hearing Officer (IHO) to place the student in an IAES; or
  - 3. By the Board, District Superintendent, Superintendent, and/or designee, or building principal to impose a suspension that constitutes a disciplinary change of placement.
- B. The manifestation team will include a representative of the District knowledgeable about the student and the interpretation of information about child behavior, the parent, and relevant members of the CSE as determined by the parent and the District. The parent must receive written notice twenty-four (24) hours prior to the meeting to ensure that the parent has an opportunity to attend. This notice must include the purpose of the meeting, the names of those expected to attend and notice of the parent's right to have relevant members of the CSE participate at the parent's request. The notice must also include the parent's right to bring an attorney.
- C. The manifestation team will review all relevant information in the student's file including the student's individualized education program (IEP), any teacher observations, and any relevant information provided by the parents to determine if: the conduct in question was caused by or had a direct and substantial relationship to the student's disability; or the conduct in question was the direct result of the District's failure to implement the IEP. If the team determines the conduct in question was the direct result of failure to implement the IEP, the District must take immediate steps to remedy those deficiencies. The principal or their designee and the building's CSE chair must submit their remediation plan to the parent and superintendent's designee within two (2) days of receiving the MDR disposition if the conduct is found to be a direct result of the failure to implement the IEP.

### **7313.11 Finding of Manifestation**

- A. If it is determined, as a result of this review, that the student's behavior is a manifestation of his or her disability, the CSE will conduct a functional behavioral assessment (FBA) within seven (7) days, if one has not yet been conducted, and implement or modify a behavioral intervention plan (BIP).

- B. An FBA is the process of determining why the student engages in behaviors that impede learning and how the student's behavior relates to the environment. An FBA must be developed consistent with the requirements of Commissioner's regulations Section 200.22(a) and will include, but not be limited to, the identification of the problem behavior, the definition of the behavior in concrete terms, the identification of the contextual factors that contribute to the behavior (including cognitive and affective factors), and the formulation of a hypothesis regarding the general conditions under which a behavior usually occurs and probable consequences that serve to maintain it.
- C. BIP is a plan that is based on the results of an FBA and, at a minimum, includes a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs, and intervention strategies that include positive behavioral supports and services to address the behavior. The BIP must identify intervention strategies to be used to alter antecedent events to prevent the occurrence of the behavior, teach individual alternative and adaptive behaviors to the student, and provide responses for the targeted inappropriate behavior(s) and alternative acceptable behavior(s). Baseline data must be used as a standard to establish performance criteria and against which to evaluate intervention effectiveness. The BIP must be monitored (and reported to the parent) using the same data collection measures (frequency, intensity, duration, and/or latency) that were used to collect baseline data for the FBA. The goal is for the problem behavior to decrease as the replacement behavior increases.
- D. After an FBA has been conducted, the CSE must be convened to review the results of the FBA, develop a corresponding BIP (if appropriate), and update the student's individualized education program (IEP) to indicate if a particular device or service, including an intervention, accommodation or other program modification, is needed to address the student's behavior.
- E. Unless the change in placement was due to behavior involving serious bodily injury, weapons, illegal drugs or controlled substances, the student must be returned to the placement from which the student was removed unless the parent and the District agree to a change of placement as part of the modification of the BIP.

#### **7313.12 No Finding of Manifestation**

- A. If it is determined that the student's behavior is not a manifestation of his or her disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner and for the same duration for which they would be applied to students without disabilities, subject to the right of the parent or person in parental relation to request a hearing objecting to the manifestation determination and the District's obligation to provide a free, appropriate public education to the student. These determinations must be aggregated and tracked on the Data Dashboard with identifying information removed.

**7313.13 Provision of Services Regardless of the Manifestation Determination**

- A. Regardless of the manifestation determination, students with a disability will be provided the services necessary for them to continue to participate in the general education curriculum and progress toward meeting the goals set out in their IEP as delineated below:
1. During suspensions or removals for periods of up to ten (10) school days, including in-school suspension days, in a school year that do not constitute a disciplinary change in placement, students with disabilities of compulsory attendance age will be provided with alternative instruction on the same basis as nondisabled students. Students with disabilities who are not of compulsory attendance age will be entitled to receive services during suspensions only to the extent that services are provided to nondisabled students of the same age who have been similarly suspended.
  2. During subsequent suspensions or removals for periods of ten (10) consecutive school days or less, including in-school suspension days, that in the aggregate total more than ten (10) school days in a school year but do not constitute a disciplinary change in placement, students with disabilities will be provided with services necessary to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP and to receive, as appropriate, an FBA, behavioral intervention services and modifications that are designed to address the behavior violation so it does not recur. School personnel, in consultation with at least one of the student's teachers, will determine the extent to which services are needed, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress in meeting the goals set out in the student's IEP.
  3. During suspensions or other disciplinary removals, for periods in excess of ten (10) school days in a school year, including in-school suspension days, which constitute a disciplinary change in placement, students with disabilities will be provided with services necessary to enable the student to continue to participate in the general education curriculum, to progress toward meeting the goals set out in the student's IEP, and to receive, as appropriate, an FBA, behavioral intervention services and modifications that are designed to address the behavior violation so it does not recur. The IAES and services will be determined by the CSE. Removals are capped at twenty (20) days. Any proposed removal of a student with a disability triggers an immediate superintendent or their designee's review with a decision to modify or eliminate the suspension to be rendered within five (5) business days.

**7313.14 Interim Alternative Educational Setting (IAES)**

- A. Students with disabilities who have been suspended or removed from their current placement for more than ten (10) school days may be placed in an IAES which is a

temporary educational setting other than the student's current placement at the time the behavior precipitating the IAES placement occurred.

- B. Additionally, an Impartial Hearing Officer in an expedited due process hearing may order a change in placement of a student with a disability to an appropriate IAES for up to forty-five (45) school days if the Hearing Officer determines that maintaining the current placement is substantially likely to result in injury to the students or others.
- C. There are three (3) specific instances when a student with a disability may be placed in an IAES for up to forty-five (45) school days without regard to a manifestation determination:
  - 1. Where the student carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of the District; or
  - 2. Where a student knowingly possesses 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 the District; or
  - 3. Where a student has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the District. Serious bodily harm has been defined in law to refer to one of the following:
    - a. Substantial risk of death;
    - b. Extreme physical pain; or
    - c. Protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- D. School function means a school-sponsored or school-authorized extracurricular event or activity regardless of where the event or activity takes place, including any event or activity that may take place in another state.
- E. School premises means in or within any building, structure, athletic playing field, playground, parking lot or land contained within the real property boundary line of a public elementary or secondary school.
- F. School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a student with a disability who violates a code of student conduct. In all cases, the student placed in an IAES will:
  - 1. Continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress towards the goals set out in the student's IEP, and
  - 2. Receive, as appropriate, an FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not reoccur.
- G. The period of suspension or removal may not exceed the amount of time a non-disabled student would be suspended for the same behavior.



### **7313.15 Suspension from BOCES**

- A. The BOCES principal may suspend District students from BOCES classes for a period not to exceed five (5) school days per procedures outlined in Sections 7313.1-7313.13.

### **7313.16 In-School Suspension**

- A. In-school suspension will be used as a lesser discipline to avoid an out-of-school suspension. The student will be considered present for attendance purposes. The program is used to keep each student current with his or her class work while attempting to reinforce acceptable behavior, attitudes, and personal interaction. Coursework from each teacher should be delivered at the beginning of each day. The in-school suspension room must be staffed by a certified teacher. Students should be allowed to use the bathroom when needed and have their same lunch, music, gym, and art or other electives when scheduled. In-school suspensions must be noticed according to the out-of-school suspension procedures listed above. Total in-school suspensions days are capped to ten (10) days a year for each student. Each school's number of in-school suspension days must be collected electronically and updated on the Data Dashboard, disaggregated by grade, age, race/ethnicity, gender, disability status, income status, English learner status, foster care status, homelessness status, and other DASA-protected characteristics and indicators required by the Department of Education Civil Rights Data Collection.

### **7313.17 After School Activities**

- A. After school activities, like field trips and other activities outside the building itself, are considered an extension of the school program. Therefore, an infraction during after school activities is to be considered as an act within the School District itself.
- B. A student who is ineligible to attend a District school on a given day may also be ineligible to attend after school activities. The decision rests with the Superintendent or designee.
- C. Parents can opt their students out of after-school detention. All parents must be made aware of this option via written letter in the home language mailed home at the beginning of the school year, with an opt-out letter and stamped return envelope.

### **7313.18 Exhaustion of Administrative Remedies**

- A. Any appeal of a decision of the building principal or Superintendent to suspend a student from school, regardless of the length of the student's suspension, may be made to the Board before it can be made to the Commissioner of Education. An appeal to the Board must be commenced within thirty (30) days from the date of the Superintendent's decision unless good cause is shown. To be timely, the appeal must be received by the District Clerk within this 30-day period. Parents may also directly appeal to the Commissioner of Education within thirty (30) days of the incident they are appealing. The

Board of Education shall return appeal decisions within seven (7) calendar days of receipt of the appeal. The Board decision is appealable to the Commissioner of Education within thirty (30) days. All timelines and procedures for appeal must be documented on the suspension and disposition notices.

#### **7313.19 Procedure After Suspension**

- A. ~~[When a student has been suspended and is of compulsory attendance age, immediate steps will be taken to provide alternative instruction which is of an equivalent nature to that provided in the student's regularly scheduled classes.]~~ All suspended students must be provided with the materials and assignments from each core class from that class's lesson plan for each day of suspension. All suspended students must be allowed to submit work to their regular core class teachers. All suspended students shall be provided with feedback and grading from materials which are submitted to their regular teachers. Additionally, all suspended shall receive at least two (2) hours of alternate instruction Monday through Friday. The Office of Student Support Services is responsible for the delivery of alternate instruction and coursework delivery for a student on short or long term suspensions. If preparations for alternative instruction cannot be met within three (3) school days, the suspension will be automatically overturned, expunged, and the student will be allowed to return to school the following day.
- B. When a student has been suspended, the suspension may be revoked by the Board whenever it appears to be in the best interest of the school and the student to do so. The Board may also condition a student's early return to school and suspension revocation on the student's voluntary participation in counseling or specialized classes, including anger management or dispute resolution, where applicable.

#### **7313.20 Administrative Staff and Hearing Officer Training and Development**

- A. All Principals, Assistant Principals & Student Support Team staff shall complete an annual training on the Restorative Justice Practices from an outside organization facilitating restorative justice training.
- B. All Hearing Officers, Principals, Assistant Principals & administrative staff involved with the production of suspension notices shall complete an annual training on the Short-Term Suspension process provided by an outside attorney practicing Education Law.
- C. All Hearing Officers, Principals, Assistant Principals & administrative staff involved with the production of suspension notices shall complete an annual training on the Superintendent's Suspension process provided by an outside attorney practicing Education Law.