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November 11, 2017

Dierk Mierbachtol
Chief Legal Officer
Office of Superintendent of Public Instruction
DisciplineRuleComments@k12.wa.us

Re: Comments on Proposed Changes to student Discipline Rules

Dear Mr. Mierbachtol,

The Washington State Governor's Office of the Education Ombuds (OEO) respectfully submits these comments in regards to the Office of Superintendent of Public Instruction (OSPI's) proposed revisions to Chapter 392-400 of the Washington Administrative Code, governing student discipline in Washington's k-12 public schools.

OEO serves as an independent source for information regarding our state's k-12 public schools for families, community members and educators. OEO also provides support for collaborative problem solving between families and schools and engages with statewide policy makers, sharing recommendations on ways to reduce opportunity gaps, foster family and school collaboration and improve outcomes for every student.

We believe OSPI's proposed revisions will increase clarity and transparency in student discipline processes. They also promise to further the goals of limiting exclusions of students from their educational environments; ensuring students have a meaningful opportunity to remain engaged with learning when they do face suspension or expulsion; and supporting students' early and effective re-engagement with their school communities after periods of exclusion.

We offer the following suggestions to help further clarify expectations in some sections of the rules; protect against unintended impacts in relation to transportation; and ensure that considerations of cultural responsiveness include reflective practices that illuminate the influence of school and classroom cultural dynamics on student behavior and disciplinary actions.

Clarifying Expectations for Notice, Factors Relevant to Discipline Decisions

Timely Notice of Classroom Removals: The proposed revisions add important clarity to when and how families can expect to receive notice of proposed disciplinary actions. However, in regards to classroom exclusions, at WAC 392-400-335, the rules leave some ambiguity around the notice to parents. The proposed rules require the teacher, principal or designee to notify the parents "as soon as reasonably possible." The next subsection includes a similar direction that principals confer with the teacher, "as soon as reasonably possible," but clarify that this must

happen “no later than the start of the following school day.” The rules as currently proposed do not include a similar maximum period to inform parents of classroom removals that do not exceed the balance of the immediate subject or class period.

We urge OSPI to consider clarifying that the notice to parents should occur “as soon as reasonably possible *and no later than the start of the following school day.*” Only with consistent, clear and timely notice of these less significant disciplinary actions can parents and schools effectively collaborate to address concerns before they escalate.

Notice and Communication in a Language Students and Parents Understand: In several sections, the proposed revisions to the rules call out the districts’ duty to provide notice to limited English proficient students and parents in a language they can understand. However, this reminder is not included in every section. As an example, the section on classroom exclusions, WAC 392-400-335, requires notice to parents but does not call out the requirement to ensure this is in a language the parent understands. By including the reminder in some places but not others, there is a risk that the rules would be misinterpreted as establishing that in those instances in which the obligation to provide language access is not specified, it is not required.

We urge OSPI to consider clarifying that the obligation to communicate with limited English proficient parents and students in a language they can understand applies throughout the chapter, to all communications.

Factors Relevant to Discipline Decisions: Consistent with the recent legislation, the rules help define new categorical limits on the kinds of student misconduct that may warrant exclusion from the educational environment. The rules also encourage consideration of individual circumstances before imposition of suspensions or expulsions. Allowing individual consideration of relevant factors can help avoid unduly harsh or ineffective discipline. However, without further guidance, giving such discretion can also open the doors to biased application of a discipline policy.

We urge OSPI to consider providing additional guidance in WAC 392-400-430, including listing some specific factors that may be relevant, and how those factors should be taken into account. For example, the rules might call attention to consideration of factors such as a history of trauma, or homelessness. When considering factors such as these, a school administrator might be encouraged to consider: (a) the efficacy of the proposed disciplinary sanction as a means to change behavior in light of the specific circumstances; and (b) whether there are alternatives to exclusion that would not cut a child off from a safe place and support for basic needs.

Transportation and Unintended Impacts

For those students whose only viable option for getting to school is the school bus, the current proposed rules may not offer sufficient due process protection to ensure that their access to school is not unduly restricted or removed. In the current proposed rules, under WAC 392-400-110(1)(h), each district would have discretion to define due process procedures for exclusions from transportation. OEO’s engagement with families and schools teaches us that removals from transportation, for some students, can mean that they are effectively unable to get to school. Discipline and behavior on school buses is also an area where families sometimes

encounter a lack of clarity regarding who is responsible for making decisions relating to discipline, and how to appeal proposed disciplinary actions.

We urge OSPI to consider including exclusions from school district transportation in the types of disciplinary actions that would trigger the defined due process protections outlined for short and long-term suspensions, and emergency and other expulsions.

Similarly, we urge further consideration of the sections addressing district responsibilities for providing educational services during suspension or expulsion. The rules should make it clear that where access to district provided transportation, technology or other related supports would be necessary for a student to access the educational services, that those supports must be provided.

Ensuring Cultural Responsiveness Involves Reflection on the Cultural Dynamics within a School

The proposed revised rules explain that they are intended to ensure that school districts will “implement culturally responsive discipline policies and procedures that provide opportunity for all student to achieve personal and academic success.” WAC 392-400-010(2). This raises the question: What are culturally responsive discipline practices?

In the sections addressing re-engagement planning, consistent with statutory mandate, the proposed revised rules direct school districts to collaborate with the student and parents to develop a “culturally sensitive and culturally responsive re-engagement plan.” In WAC 392-400-710(2)(b), the proposed rules direct districts to consider “as appropriate, students’ cultural histories and contexts, family cultural norms and values, community resources, and community and parent outreach.” This is a critically important step in building relationships between students and the adults in schools after a period of exclusion. However, if this process does not also include reflection on the cultural dynamics within the school, meaningful re-engagement will be hampered.

At OEO, we hear frequently from families and educators about how the culture of a school or classroom can affect student behaviors, adults’ perceptions of those behaviors, disciplinary responses, and the development or lack of development of positive relationships between students and adults in the schools. As the large majority of our state’s teachers, principals, and superintendents are white, it is not surprising to find that the cultures of schools and classrooms often reflect the cultures they experience at home. Members of a group whose own culture reflects the ‘norm,’ are often unaware of how decisions they believe are objective or unbiased are indeed influenced by their particular set of cultural values.

We urge OSPI to consider adding guidance to make it clear that cultural responsiveness requires both self-reflection and an effort to understand others. The rules should make it clear that in order to develop culturally responsive and culturally sensitive re-engagement plans, the educators, students and families should have opportunity to consider the cultural values of the student and family *and* the cultural dynamics of the classroom and school to which the student will be returning. They should consider whether and how the cultural dynamics of the school or classroom might foster, or impede, a student’s meaningful re-engagement.

The same reflective and open practices should be applied in the development and review of a district's discipline policies. The rules should encourage districts to invite the often difficult, but essential, conversations that bring together those most directly impacted by the policies with those charged with their implementation. Districts should be encouraged to engage in reflective practices that can help illuminate how unspoken cultural norms of a dominant group may create barriers for students and families with different cultural backgrounds and how to eliminate those barriers.

The more clarity the state rules can provide for educators and families, and the more they support reflective practices to ensure cultural responsiveness, the more likely it is that we will see incidents of student discipline turning into opportunities for deepening family and school collaborations and supporting student learning.

Thank you for considering these suggestions as you finalize the revisions to our state's student discipline rules. Please do not hesitate to contact me at 206-430-0753 with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Carrie Basas". The signature is written in a cursive, flowing style.

Carrie Basas, Director
Governor's Office of Education Ombuds