

Sample  
Checklist  
Inside



## **Out-of-School Suspension: Will Your School District's Due Process Procedures Stand up in Court?**

Students have a right to education. So, when a school deprives a student of that right through disciplinary proceedings such as suspension, a student's right to due process is invoked. Due process essentially means that a student should be told about any alleged offenses they committed and given a chance to tell their side of the story before a suspension determination is made.

When we think of school-imposed discipline, what naturally comes to mind is exclusionary punishment, such as in-school suspension, out-of-school suspension, and expulsion. In recent years, some have criticized these forms of discipline. Many studies have shown significant negative outcomes resulting from suspensions and expulsions,

including repeating a grade level, failure to graduate, disproportionate impact on students of color and students with disabilities, and increased likelihood of involvement with juvenile and criminal justice systems.<sup>1</sup> Furthermore, in 2017, student suspensions,

<sup>1</sup> See Brookings Institution study, "The 2017 Brown Center Report on American Education: How Well are American Students Learning?" March 2017 by Tom Loveless, Nonresident Senior Fellow, at <https://www.brookings.edu/wp-content/uploads/2017/03/2017-brown-center-report-on-american-education.pdf>; the Council of State Governments Justice Center and Public Policy Research Institute of Texas A&M University joint study, "Breaking Schools' Rules: a Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement," July 2011, at <https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking-Schools-Rules-Report-Final.pdf>; and the U.S. Department of Education Office of Civil Rights report, "2013-14 Civil Rights Data Collection," issued in July 2016/revised October 2016, at <https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>.

and the lawsuits arising from those suspensions, have frequently made news headlines—from Long Island<sup>2</sup> to Houston<sup>3</sup> to suburban San Francisco.<sup>4</sup>

*“Getting discipline right is an integral characteristic of a good school. Getting it wrong can be a disaster.”*

Source: “The 2017 Brown Center Report on American Education: How Well are American Students Learning?”

To avoid some of the reported problems arising from suspensions, some school districts across the country have adopted innovative behavior modification methods to help build a culture that promotes appropriate student behavior instead of simply punishing bad behavior. These methods include positive behavior interventions and support (PBIS)<sup>5</sup> and restorative practices.<sup>6</sup>

Despite the negative impact of traditional exclusionary punishments and potential lawsuits flowing therefrom, most public schools still regularly use suspensions and similar punishments. Per recent data collected by the U.S. Department of Education, of the 50 million students enrolled in public schools, 2.8 million

<sup>2</sup> “Teens, Their Dads Sue School District over Sexting Suspension,” New York Post, September 19, 2017, at <http://nypost.com/2017/09/19/teens-their-dads-sue-school-district-over-sexting-suspension/>.

<sup>3</sup> “Houston student Kicked Out of Her High School for Sitting during Pledge of Allegiance,” New York Daily News, October 7, 2017, at <http://www.nydailynews.com/news/national/>.

<sup>4</sup> “Four California High School Students Sue District over Suspensions for ‘Liking’ Racist Instagram Posts,” Los Angeles Times, May 5, 2017, at <http://www.latimes.com/local/education/la-essential-education-updates-southern-four-california-high-school-students-1493997174-htmlstory.html>.

<sup>5</sup> PBIS is a preventative approach to achieving appropriate student behavior by teaching and reinforcing positive social behaviors on a school-wide basis. See for example, discussions provided by the Technical Assistance Center on PBIS, and organization funded by the U.S. Department of Education’s Office of Special Education Programs (OSEP), at <https://www.pbis.org/school>.

<sup>6</sup> Restorative practices is a social science that studies how to build social capital and achieve social discipline through participatory learning and decision making. See, for example, restorative practices guide for educators at, <http://schottfoundation.org/restorative-practices>

## Fast Facts: Nationwide Student Discipline

### Fact #1: 2.8 million K-2 students received one or more out-of-school suspensions:

- 1,100,000 Black students
- 610,000 Latino students
- 700,000 IDEA-served students
- 210,000 English learners

### Fact #2: Disparities in suspensions exist:

- Black K-12 students are 3.8 times as likely to receive one or more out-of-school suspensions than white students
- Students with disabilities served by IDEA are more than twice as likely to receive one or more out-of-school suspensions than students without disabilities
- Asian and white students did not disproportionately receive one or more out-of-school suspensions
- English learners are not disproportionately suspended from school

Source: U.S. Department of Education Office of Civil Rights report, “2013-14 Civil Rights Data Collection,” issued in July 2016/revised October 2016.

K-12 students received one or more out-of-school suspensions.<sup>7</sup> Given these statistics, the issue of whether students receive due process remains highly relevant to all public school districts.

How can you be certain that your school district follows the right procedures to afford students due process? SLRMA is here to help your school district get discipline right through use of a brand new tool—the Due Process Requirements for Out-of-School Suspension Self-Audit Checklist and Best Practices. This checklist provides a systematic approach for discipline incidents and gives guidance on how your school district can work toward creating positive climates and avoid behaviors that lead to disciplinary action.

<sup>7</sup> U.S. Department of Education Office of Civil Rights report, “2013-14 Civil Rights Data Collection,” issued in July 2016/revised October 2016, at <https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>.

## Recent Updates from the Newsroom Available on SLRMA.org

### U.S. Department of Education Changes Course on Title IX Responsibilities for Sexual Misconduct

**October 9, 2017**

On September 22, 2017, the U.S. Department of Education Office for Civil Rights issued a Dear Colleague Letter withdrawing the statements of policy and guidance reflected in two key documents about Title IX and sexual violence issued under the Obama administration: the Dear Colleague Letter on Sexual Violence dated April 4, 2011, and the Questions and Answers on Title IX and Sexual Violence, dated April 29, 2014. Read this discussion which summarizes the policy change and explains the implications for school districts.

### Stacy Fry, et vir, as next friends of minor E.F. v. Napoleon Community Schools

**September 26, 2017**

The legal rights of students with disabilities are complex and interconnected. In this recent decision, the U.S. Supreme Court addressed these rights with regard to a student with profound physical limitations who was not allowed to have her service dog at school. Read the case summary of this decision to read about the potential ramifications for your school district.

### Deferred Action for Childhood Arrivals (DACA) program rescinded

**September 8, 2017**

On September 5, 2017, the Department of Homeland Security (DHS) issued an official memorandum rescinding the Deferred Action for Childhood Arrivals (DACA) program, which allowed certain individuals to receive deferred action from deportation and eligibility for temporary U.S. work permits. The change has impact across many U.S. employers, including school districts. Read this discussion which summarizes the key aspects for employees covered by DACA and their employers.

*continued from page 2*

The guiding principles throughout this checklist encourage school districts to focus on prevention, develop clear, appropriate, and consistent expectations and consequences to address disruptive student behaviors, and ensure fairness, equity, and continuous improvement. Your school district can use this list as an excellent jumping off point for updating student discipline policies and procedures.

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## 2017 Top 4 Downloads

- 1) **Electronic Data Checklist**
- 2) **Electronic & Information Technology Accessibility Checklist**
- 3) **Cybersecurity & Privacy Risk Management for Cloud Computing Checklist**
- 4) **Fair Labor Standards Act Checklist**

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The Mission of the School Leaders Risk Management Association (SLRMA) is to assist public school districts (K-12) with supplemental risk management support. We help you accomplish your own mission of risk avoidance in a number of ways.

- We provide pro-active, timely tools to help prevent unwanted and unwarranted school board legal liability claims.
- We keep members informed of the current legal issues that will likely affect your school district through our work with the Federal Legislation Insurance Committee (FLIC).
- We give members access to special reports featured in our Newsroom. The topics are specific to the School Board Legal Liability school boards face today and will in the future.

Members are equipped with an array of self-audits and checklists to help ensure you are in compliance with the latest requirements and guidelines which govern school boards and school districts. We are a not-for-profit and are governed by a Board of Directors. The Board consists of current Executive Directors of State School Boards Associations.

**Checkout [slrma.org](http://slrma.org) to see all the benefits of membership.**

## SCHOOL LEADERS RISK MANAGEMENT ASSOCIATION

### Due Process Requirements for Out-of-School Suspension: Self-Audit Checklist and Best Practices

This self-audit checklist is intended for use by public school district personnel who wish to assess their district’s effectiveness in providing due process for students facing out-of-school suspension. Constitutional requirements, references to State-level laws and regulations, and federal agency-supported best practices are incorporated, as well as an understanding of the everyday experience of school administrators.

School District	
State/Jurisdiction	
Completed by (Name/Title)	
Completed on (Date)	

#### **School Climate and Discipline**

Information in this section has been excerpted from ED’s 2014 Resource Guide. Use these guiding principles and action steps to determine the extent to which your district incorporates best practices to proactively improve school climate and school discipline. Remember, suspension should be a last resort—What is your school district doing to ensure that it is?

#### ***Does your school district create positive climates and focus on prevention?***

In other words, does your school district:	<input type="checkbox"/> Yes <input type="checkbox"/> No
➤ Engage in deliberate efforts to create positive school climates?	<input type="checkbox"/> Yes <input type="checkbox"/> No
➤ Prioritize the use of evidence-based prevention strategies to promote positive student behavior?	<input type="checkbox"/> Yes <input type="checkbox"/> No
➤ Promote social and emotional learning to complement academic skills and encourage positive behavior?	<input type="checkbox"/> Yes <input type="checkbox"/> No
➤ Provide regular training and supports to all school personnel on how to engage students and support positive behavior?	<input type="checkbox"/> Yes <input type="checkbox"/> No
➤ Collaborate with stakeholders to align resources, strategies, and services?	<input type="checkbox"/> Yes <input type="checkbox"/> No
➤ Ensure that school-based law enforcement officers’ roles focus on improving school safety and reducing inappropriate referrals to law enforcement?	<input type="checkbox"/> Yes <input type="checkbox"/> No

<p><b><i>Does your school district develop clear, appropriate, and consistent expectations and consequences to address disruptive student behaviors?</i></b></p>	
<p>In other words, does your school district:</p> <ul style="list-style-type: none"> <li>➤ Set high expectations for behavior and adopt an instructional approach to school discipline?</li> </ul>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<ul style="list-style-type: none"> <li>➤ Involve stakeholders in the development and implementation of discipline policies or codes of conduct, and communicate those policies regularly and clearly?</li> </ul>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<ul style="list-style-type: none"> <li>➤ Ensure that clear, developmentally appropriate, and proportional consequences apply for misbehavior?</li> </ul>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<ul style="list-style-type: none"> <li>➤ Create policies that include appropriate procedures for students with disabilities and due process for all students?</li> </ul>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<ul style="list-style-type: none"> <li>➤ Remove students from the classroom only as a last resort, ensure that any alternative settings provide students with academic instruction, and return students to their regular class as soon as possible?</li> </ul>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p><b><i>Does your school district ensure fairness, equity, and continuous improvement?</i></b></p>	
<p>In other words, does your school district:</p> <ul style="list-style-type: none"> <li>➤ Train all school staff to apply school discipline policies and practices in a fair and equitable manner so as not to disproportionately impact students of color, students with disabilities, or at-risk students?</li> </ul>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<ul style="list-style-type: none"> <li>➤ Use proactive, data-driven, and continuous efforts to appropriately address discriminatory discipline and unintended consequences?</li> </ul>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p><b>Monitoring</b>                  School districts should monitor the effectiveness of school climate and discipline policies by periodically assessing their impact. Are stakeholders (administrators, faculty, staff, parents, and students) invested in the process? Do students know and appreciate the school’s approach to behavior management? Has behavior improved? Have suspensions been reduced? What can be done to promote continuous improvement?</p>	