

November 13, 2017

Dierk Meierbachtol, Chief Legal Officer
Officer of Superintendent of Public Instruction
PO Box 47200
Olympia, WA 98504-7200
via email to: disciplinerulecomments@k12.wa.us

Dear Mr. Meierbachtol,

The undersigned organizations (which include civil rights organizations, legal services providers, education advocates, social service providers, disability rights organizations, and organizations representing parents, students, and communities of color) submit these joint comments on the proposed school discipline rules.

As the legislature recognized in passing House Bill 1541 in 2016, reducing suspension and expulsion and engaging families in student supports are crucial to fulfilling the promise of educational excellence and opportunity for students.ⁱ Exclusionary discipline is strongly correlated with reduced academic achievement and high school graduation rates.ⁱⁱ It increases the likelihood that young people will become involved in the juvenile justice system.ⁱⁱⁱ And exclusionary discipline is associated with negative school climate and disconnection to school,^{iv} even for students who have not been suspended or expelled.^v These impacts fall most harshly on students of color (Black, Latinx, Native American, Pacific Islander, and multiracial students) and students with disabilities, all of whom are disproportionately disciplined throughout Washington.

The proposed rules include significant improvements that will help guide development of better systems to support students. We appreciate the Office of the Superintendent of Public Instruction's (OSPI's) efforts to develop clearer and more equitable rules, and to engage stakeholders in the process (including holding rulemaking hearings throughout the state). We encourage OSPI to modify the proposal in several crucial ways that will more fully implement the intention of House Bill 1541 and better support students, families and teachers.

Requiring Alternatives to Suspension and Expulsion. Our organizations strongly support the use of evidence-based positive and restorative systems that can improve school climate, school safety, and academic achievement for all students, without resort to suspension and expulsion.^{vi} In many instances, behavior incidents are best addressed by targeted supportive school interventions. And, even in the

limited circumstances where temporary exclusion from the classroom or school setting may be necessary, schools should use supportive interventions to ensure that the student is successfully reengaged in school. Though the proposed regulations encourage the use of best practices for behavior, OSPI should require the use of best practices and other forms of non-exclusionary discipline before students are suspended or expelled, and clarify that schools should administer discipline in ways that respond to the holistic needs of the student and support the student in meeting behavioral expectations. We also encourage OSPI to limit the use of emergency expulsion to situations that pose a threat to safety, and use other interventions to prevent disruption to the educational process.

Engaging Parents in Discipline in a Culturally Appropriate Manner and Ensuring Language Access.

Parents are crucial partners in educational success; when parents and schools communicate, they share valuable information about children's behavior and can reinforce more positive behaviors at home and school.^{vii} We appreciate the significant changes to the regulations to encourage early communication with parents about discipline issues. To strengthen the rules, OSPI should require parents to be notified of an initial conference between a student and school administrator who may impose suspension or expulsion. It should also require that districts provide language access services to parents for initial conferences with school administrators, and all stages of discipline proceedings. Finally, the rules should define culturally responsive discipline.

Collecting Data on Informal Exclusion. Any exclusion from class undercuts student learning and connection to school. In addition, informal exclusion (like classroom exclusion and informal suspension) goes unrecorded, limiting efforts to target supports and interventions where they are most needed. We appreciate that OSPI has adopted regulations on classroom exclusion. We encourage OSPI to require districts to collect and report data on classroom exclusions, to better facilitate early intervention.

Ensuring Instruction in Education Services and Facilitating Parent Input. House Bill 1541 categorically required comparable, equitable and adequate education services for every student, recognizing the damaging impact that any exclusion from education could have on students' ultimate academic achievement. We appreciate that the proposed regulations include significant detail about the considerations that should go into developing educational services. We are concerned, though, that the proposal does not require sufficient instruction and other supports to keep students in school and learning. We encourage OSPI to clarify that students should receive *instruction* when they are excluded from their ordinary classes for any length of time, and that all relevant services and supports must be

provided. In addition, we ask that OSPI clarify the process for parents to provide input on educational services, by requiring notices of educational services to include contact information for relevant district coordinators and ensuring notices are provided in the language the parents understand.

Limiting Overly Coercive Behavior Agreements. We applaud OSPI for including new rules on the use of behavior agreements, which are widespread and vary significantly across the state. Our organizations are concerned that behavior agreements are often onerous and trap students in a cycle of punishment, rather than providing supports or resources that promote improved outcomes. We encourage OSPI to require that conditions in behavior agreements must be rationally related to the behavioral violation that gave rise to the agreement (for instance, a student suspended for bullying should not be required to complete drug testing) and should incorporate evidence-based strategies. We also encourage OSPI to amend the section to ensure that students have the full panoply of due process protections if they are facing suspension or expulsion due to a violation of a behavior agreement.

Reconciling Definitions of Corporal Punishment with Restraint and Isolation Laws. We are concerned that the definition of corporal punishment undermines Washington's law on restraint and isolation. The current language excludes from the definition of corporal punishment "reasonable physical force by [school staff] as necessary to *maintain order*," implying that such force is permissible. Yet, RCW 28.600.485 defines "restraint" as any physical intervention or force used to control a student, and prohibits the use of restraint only as necessary to control spontaneous behavior that poses an imminent likelihood of serious harm. This is a significantly higher standard than force used to "maintain order." We encourage OSPI to remove the term "maintain order" from WAC 392-400-825 to ensure consistency with restraint and isolation law.

Increasing Focus on Reducing Disparities for Students with Disabilities. Finally, we encourage OSPI to consider opening comprehensive rulemaking on the discipline of students with disabilities. Students with disabilities are more than twice as likely as their peers to be suspended or expelled throughout the state. We appreciate that OSPI reaffirmed that the discipline WACs must be interpreted consistent with state law governing discipline of students with disabilities (and encourage it to reference federal law as well). We also believe that OSPI should reevaluate the existing WACs both to incorporate federal guidance on the inclusion of behavioral supports for students with disabilities and to address the systemic crisis in discriminatory discipline of students with disabilities.

Conclusion

These changes will ensure that the proposed regulations fully implement House Bill 1541 and best serve Washington’s students. Thank you for your consideration and your action on this important issue.

Sincerely,



A Common Voice



African American Leadership Forum



American Civil Liberties Union of Washington



The Arc of King County



The Arc of Washington State



Bellevue Special Needs PTA

Bellevue Special Needs Parent Teacher Association Board of Directors



Community Alliance for Service and Advancement, LLC



Civil Survival



Center for Justice



Coalition of Immigrants, Refugees, and Communities of Color



Cocoon House



Community Passageways



Columbia Legal Services



Community Youth Services



Culturally Appropriate and Responsive Education Center



Disability Rights Washington



El Centro de la Raza



Equity in Education Coalition



Families of Color Seattle



Glover EmpowerMentoring



Kitsap SURJ (Showing Up for Racial Justice)



League of Education Voters



Legal Counsel for Youth & Children



Legal Voice



The Mockingbird Society



Multicultural Education Rights Alliance



National Center for Restorative Justice



Oasis Youth Center



One America



Open Doors for Multicultural Families



RAINBOW CENTER

Rainbow Center



REACH Tacoma



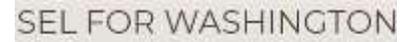
School's Out Washington



Seattle Alliance of Black School Educators



Seattle King County NAACP



SEL (Social Emotional Learning) for Washington



Skyway Solutions



Smith-Barbieri Progressive Fund



Solid Ground



South East Seattle Education Coalition



Spokane NAACP



STAND for Children Washington



Statewide Poverty Action Network



Tacoma Urban League



Team Child



Treehouse



Washington Appleseed



Washington Autism Alliance and Advocacy



Washington Defender Association



West Sound for Social Justice



Vadis



Vibrant Schools Tacoma Coalition



Center for Children & Youth Justice



NAACP Tacoma



Consejo Latino



Indivisible WA-- Richland

Somos Educational Institute

Pierce County Coalition to End Homelessness

Apostolic Assembly of the
Faith in Christ Jesus

Tri-Cities Immigrant Coalition

Northwest Behavioral Clinic

ⁱ <http://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bills/Session%20Laws/House/1541-S4.SL.pdf#page=1>

ⁱⁱ See, e.g., Robert Balfanz et al, *Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade*, Prepared for the Center for Civil Rights and Remedies (December 2012) (finding based on a longitudinal cohort study of tens of thousands of high school students that each suspension decreases the likelihood of graduation or post-secondary education and increases the likelihood of drop out).

ⁱⁱⁱ See, e.g., Christine Christle et al, *Breaking the School to Prison Pipeline: Identifying School Risk and Protective Factors for Youth Delinquency*. *Exceptionality*, 2005. 13: p. 69-88.

^{iv} American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools?*, *American Psychologist* (December 2009), p. 854, available at <https://www.apa.org/pubs/info/reports/zero-tolerance.pdf>.

^v Brea L. Perry, *The Overuse of Suspension in American Public Schools Threatens the Success of All Students* (discussing results of a large comparative study), available at <http://blogs.lse.ac.uk/usappblog/2015/01/05/the-overuse-of-suspension-in-american-public-schools-threatens-the-success-of-all-students/>.

^{vi} Bradshaw, C., Koth, C.W., Thornton, L.A., & Leaf, P.J., (2009). Altering school climate through school-wide positive behavioral interventions and supports: findings from a group-randomized effectiveness trial. *Prevention Science* 10(2), 100-115; Skiba, R.J. et. al. (2004) Beyond Guns, Drugs, and Gangs: The Structure of Student Perceptions of School Safety. *Journal of School Violence* 3: 149-171.

^{vii} El Nokali, N., et. al. (2010). Parent involvement and children's academic and social development in elementary school. *Child Development* 81(3): 988-1005, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2973328/>