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**STUDENT DISCIPLINE:
Updates from the 2023 Legislative Session**

July 17, 2023

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I. CHANGES FROM THE 2023 LEGISLATIVE SESSION RELATED TO DISCIPLINE

- A. Disciplinary Dismissals Prohibited.** Effective July 1, 2023, for students in a preschool or prekindergarten program and students in kindergarten through grade three, dismissal is prohibited. Dismissal is defined to include suspension, expulsion, and exclusion. This does not apply to dismissal for less than one school day, except as provided under chapter 125A and federal law for students receiving special education services. Minn. Stat. § 121A.425, subd. 1.
- 1. Dismissal Defined.** A dismissal is the denial of the current educational program to any student and includes exclusion, expulsion, and suspension. It does not include removal from class. Minn. Stat. § 121A.41, subd. 2.

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2. **Exception.** Expulsion or exclusion may only be used after nonexclusionary discipline has been exhausted and only in circumstances where there is an ongoing serious safety threat to the child or others. Minn. Stat. § 121A.425, subd. 1. Nonexclusionary discipline must include at least one of the following: 1) collaborating with the student’s family or guardian, child mental health consultant or provider, education specialist, or other community based support; 2) creating a plan, written with the parent or guardian, that details the action and support needed for the student to fully participate in the current education program; or 3) providing a referral for needed support services including parenting education, home visits, other supportive education interventions, or where appropriate, an evaluation to determine if the student is eligible for special education services or section 504 services.

B. Nonexclusionary Policies and Practices. Beginning with the 2023-2024 school year, a school cannot dismiss a student without first attempting to use nonexclusionary policies and practices unless the student will create an immediate and substantial danger to themselves or to surrounding persons or property. Minn. Stat. § 121A.45, subd. 1.

1. Most incidents that result in expulsion present an immediate and substantial danger to self, surrounding persons, or property.

2. **Definition of Nonexclusionary Policies and Practices.** Nonexclusionary policies and practices are policies and practices that are alternatives to dismissing a pupil from school “including but not limited to evidence-based positive behavior interventions and supports, social and emotional services, school-linked mental health services, counseling services, social work services, academic screening for Title 1 services or reading interventions, and alternative education services.” Minn. Stat. § 121A.41, subd. 12.

3. School districts must implement a policy detailing their nonexclusionary policies and practices.

C. Suspension & Readmission Plans. According to the amendments to the statute on readmission plans, the definition of suspension under section 121A.41, subd. 10, “does not apply to a student’s dismissal from school for less than one school day, except as provided under federal law for a student with a disability.” Minn. Stat. § 121A.47, subd. 14(b). This implies that if a district dismisses a student for part of a school day that does not count as a suspension.

- D. Reporting Provision.** Beginning next school year, the school board must report through the MDE electronic reporting system each exclusion, withdrawal agreement, or expulsion within 30 days of the effective date of the action to the Commissioner. This report must include a statement of nonexclusionary disciplinary practices, or other sanctions given to the pupil and the reason for, the effective date, and the duration of the exclusion or expulsion. The report must also include the student's age, grade, gender, race, and special education status. Minn. Stat. § 121A.53, subd. 1.
- E. Withdrawal Agreements.** Withdrawal agreements are now defined as “a verbal or written agreement between a school administrator or district administrator and a pupil’s parent to withdraw a student from the school district to avoid expulsion or exclusion dismissal proceedings. The duration of the withdrawal agreement cannot be for more than a 12 month period.” Minn. Stat. §121A.41, subd. 13.
1. Withdrawal agreements must be reported to MDE in accordance with the provision above.
 2. If a Student signs a withdrawal agreement they must be accorded the services detailed below until they are enrolled in another district.
- F. Services During Expulsion, Exclusion, or if a Withdrawal Agreement has been executed.**
1. If a student remains enrolled in the district or is awaiting enrollment in a new district, the school district has a continuing responsibility to review the student’s schoolwork and grades on a quarterly basis to ensure the student is on track for readmission with the student’s classmates. The district must communicate on a regular basis with the student’s parents or guardian to ensure that the pupil is completing the work assigned through the alternative educational services. These services are required until the pupil enrolls in another school or returns to the same school. Minn. Stat. §121A.55(d)(1).
 2. A student receiving school-based or school-linked mental health services in the district continues to be eligible for those services until the student is enrolled in a new district. Minn. Stat. §121A.55(d)(2).
 3. A school district must provide the student’s parent or guardian information on accessing mental health services, including any free or sliding fee providers in the community. This information must also be posted on the district website. Minn. Stat. §121A.55(d)(3).

- G. Minimum Education Services During Suspension.** Beginning in the 2023-2024 school year, school districts must allow all suspended students the opportunity to complete all school work assigned during the period of the student's suspension. The student must have the opportunity to receive full credit for satisfactorily completing the assignments. Minn. Stat. § 121A.46, subd. 5.
1. School principals are encouraged to designate a district or school employee as a liaison to work with suspended students' teachers to allow the suspended students to timely receive course materials, complete daily and weekly assignments, and receive feedback from teachers on those assignments.
 2. This new provision applies to students regardless of the length of their suspension.
- H. Legal Assistance Resource List.** This document must be posted to the District website prior to the start of the 2023-2024 school year.
- I. Recess Detention & Other Breaks.**
1. **Recess Detention Defined.** Recess detention means excluding or excessively delaying a student from participating in a scheduled recess period as a consequence for student behavior.
 - a. Recess detention does **not** include providing alternative recess at the student's choice.
 2. **Prohibition on Recess Detention.** School districts can no longer use recess detention unless 1) a student causes or is likely to cause serious physical harm to other students or staff; 2) the student's parent or guardian specifically consents to the use of recess detention; or 3) for students receiving special education services, the student's IEP team has determined that withholding recess is appropriate based on the individualized needs of the student. Minn. Stat. § 121A.611(c). Additionally, recess must not be withheld from a student based on incomplete schoolwork. *Id.* at (d).
 3. **Parent Notification.** School staff must make a reasonable attempt to notify a parent or guardian within 24 hours of using recess detention. Minn. Stat. § 121A.611(e).
 4. **Recess Detention Data.** School districts must compile information on each recess detention at the end of the school year, including the student's

age, grade, gender, race or ethnicity, and special education status. Minn. Stat. § 121A.611(f).

5. **Students that Do Not Have Recess.** For students in the upper grade levels, the statute encourages school districts to ensure that students are receiving their structured or scheduled breaks from the demands of school. Minn. Stat. § 121A.611(f).
6. **Mealtimes.** School districts must not withhold or excessively delay a student's participation in mealtimes. Minn. Stat. § 121A.611(g).

J. Reasonable Force.

1. Previously, a district staff member could only use reasonable force when it was necessary to prevent bodily harm or death to another.
2. Under the new reasonable force standard, a district employee may use reasonable force when necessary to prevent imminent bodily harm or death to the student or another. Minn. Stat. § 121A.582.
 - a. This allows staff to step in if a student is harming themselves as well as if they are harming or about to harm another.
3. District must report data on their use of any reasonable force used on a student with a disability.
4. Districts must annually report by July 15 data from the prior school year about any reasonable force used on a general education student.

K. Prone Restraints and Certain Physical Holds.

1. **Prone Restraints.** Placing a child in a face-down position is a prone restraint. Minn. Stat. §121A.58, subd. 1(b). Prone restraints should not be used by any district employees including school resource officers, security personnel, and police officers contracted with the district. *Id.* at 2a(a).
2. **Physical Holds.** Physical holds that restrict or impair a student's ability to breathe; restricts or impairs a student's ability to communicate distress; places pressure or weight on a student's head, throat, neck, chest, lungs, sternum, diaphragm, back or abdomen; or results in straddling a student's torso is prohibited. Minn. Stat. §121A.58, subd. 2a(b).

3. **Reasonable Force.** This section does not preclude the use of reasonable force under section 121A.582.

L. Policies and Procedures Related to Discipline that are Required to be Implemented. Beginning in the 2023-2024 school year, there are several new policies and practices required by law in addition to the policy on Nonexclusionary disciplinary policies.

1. **Alternative Educational Services.** The district is responsible for ensuring that alternative educational services are adequate to allow a student to make progress towards graduation standards and help prepare the student for readmission. Minn. Stat. §121A.55(b).
2. **Complaint Procedures.** School districts are now required to implement a policy that details the procedure that may be used for any member of the school community to file a complaint regarding the application of discipline policies and seek corrective action. Minn. Stat. § 121A.61, subd. 1. If a complaint is made, the school must allow the involved parties to submit additional information related to the complaint and then begin to investigate the complaint within three (3) school days of receipt. Once the investigation is complete, a written determination on the complaint should be made addressing each allegation and containing findings and conclusions. If it is found that requirements of Minn. Stat. § 121A.40 to 121A.61 have not been followed, then a corrective action plan to correct the student’s record and provide training to staff must be completed. There can be no retaliation or reprisal against a person who submits a complaint. Minn. Stat. § 121A.61, subd. 4.
3. **Written Rules of Conduct for Students.** The policy governing student conduct (Policy 506) must now include 1) any procedures determined appropriate for ensuring victims of bullying who respond with behavior not allowed under the school’s behavior policies have access to remedial response; 2) a prohibition on the use of exclusionary practices for students in preschool or prekindergarten through third grade; and 3) a prohibition on the use of exclusionary practices to address attendance and truancy issues. Minn. Stat. § 121A.61, subd. 3(1)(t)&(u).
4. **Malicious and Sadistic Conduct.** Along with the bullying policy statutes, the legislature added a statute on malicious conduct.
 - a. Malicious and sadistic conduct is defined as “creating a hostile learning environment by acting with the intent to cause harm by intentionally injuring another without just cause or reason or

engaging in extreme or excessive cruelty or delighting in cruelty.”
Minn. Stat. § 121A.0312(a).

- b. Districts must adopt a policy to address malicious and sadistic conduct and sexual exploitation by a district staff member, independent contractor, or student enrolled in a public school against a staff member, independent contractor, or student that occurs under the scope of bullying.
- c. The policy must prohibit malicious and sadistic conduct involving race, color, creed, national origin, sex, age, marital status, status with regard to public assistance, disability, religion, sexual harassment, and sexual orientation and gender identity and sexual. Minn. Stat. § 121A.0312(b).
- d. This policy must apply to student, independent contractors, teachers, administrators and other personnel. Moreover, it must comply with the local policy components described in subdivision 4 of the bullying policy statute. Additionally, it must include disciplinary actions for each violation of the policy.
 - i. Disciplinary actions must comply with collective bargaining agreements and the Pupil Fair Dismissal Act.
- e. This policy must be posted throughout each school building, distributed to each district employee at the time of hiring or contracting and must be included in the school’s handbook on policies. Each school must develop a process for discussing this policy with all school staff, students, and contractors.

M. Policies that are Encouraged. There are two policies that the new statutes encourage school districts to implement. *See* Minn. Stat. Stat. § 121A.61, subd. 5.

- 1. School boards are encouraged to adopt a policy that promotes the understanding in school staff that when a student is unable to meet adult expectations it is often because the student lacks the skills to respond to a situation appropriately. The school district must support school staff in using a tiered intervention system that teaches students skills and prioritizes relationships between students and teachers.
- 2. School boards are encouraged to adopt a policy that discourages teachers and staff from reacting to unwanted student behavior with approaches that

take away the student's opportunity to build skills for responding more appropriately.

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