The AASA Legislative Trends Report was requested by AASA's Governing Board and is intended to inform AASA members of legislative trends from around the country. Each legislative report focuses on a specific type of education policy and is released on a quarterly basis.

On January 8, 2014 the Obama Administration released a School Discipline Guidance Package\(^1\) (hereinafter “guidance”) that contained several resources including a Compendium of School Discipline Laws and Regulations related to school discipline in each of the 50 States and D.C. The winter edition of the Legislative Trends report reviews commonalities in state discipline policies, examines recent trends in state policy and predicts what changes to state law may be likely.\(^2\) Specifically, the report analyzes the treatment of truant students, the ability of teachers to remove students, suspension and expulsion policies, approaches to specific infractions such as chronic discipline, substance abuse and willful defiance, the role and training of SROs in schools and early intervention and prevention strategies in state policy.

**Truancy**

Pressure is mounting on state legislators to modify the extent to which districts discipline truant students and their parents or guardians. Nineteen laws in 17 states were enacted since 2011. There is growing interest among a variety of education and civil rights stakeholders in prohibiting the use of out-of-school suspension for truant students. In 2013, two states (AR and RI) passed laws prohibiting local school districts from using out-of-school suspension as a discipline measure for truancy. Four other states (FL, IL, NM, VA) and D.C. have provisions prohibiting or significantly limiting district’s ability to suspend students because of excessive absence. AASA predicts more states will follow their lead and limit the use of out-of-school suspensions for truancy or chronic absenteeism. Superintendents may want to review their exclusionary policies for truancy because the guidance stresses that districts imposing out-of-school suspensions and expulsions for truancy could be in violation of Title IV if they are unable to prove that the exclusion was “necessary to meet an important educational goal.”\(^3\)

Another issue addressed by state legislatures is the role of courts in disciplining students for truancy. Since 2011, six states\(^4\) have enacted laws addressing the referral and

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\(^1\) [http://www2.ed.gov/policy/elsec/guid/secletter/140108.html](http://www2.ed.gov/policy/elsec/guid/secletter/140108.html)

\(^2\) While the data in the Compendium is valid through 05/13, the data presented in the Legislative Trends report is valid through 01/14.

\(^3\) [http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf)

\(^4\) CO, DE, TX, UT, WA, WV
treatment of truant students into juvenile and truancy courts. This issue has received significant attention in Texas in light of a complaint filed with the U.S. Department of Justice regarding the requirement in Texas law that districts report students to truancy court when they have 10 or more unexcused absences within a six-month period. In contrast to Texas’ disciplining of truant students, Colorado amended its law in 2011 to allow school districts to initiate court proceedings only as a last-resort approach and only if the child continues to be habitually truant after the school has created and implemented a plan to improve the child's attendance. AASA anticipates more states will make changes to their referral requirements and legal treatment of students for truancy in the future.

Since 2011, several states amended their statutes to restrict arrests and penalties for parents or legal guardians of truant students, including Maryland, which removed the required criminal charges and Montana, which shifted the emphasis from monetary and criminal punishment to a requirement that parents or guardians develop a truancy reduction plan along with the student and school officials. In 17 states and D.C., fines, imprisonment, community service or prosecution are still used as truancy reduction strategies. Eight states and D.C. allow parents or guardians of truant students to be charged with a misdemeanor.

While a few states have chosen to dictate the actions districts must take to discipline truant students, 14 states provide district leaders with the authority to determine how they discipline students for truancy. This means local leaders are empowered to use alternative means of discipline for truant students and employ best practices and research-based strategies to address chronic absenteeism. The National Center on School Engagement has identified components of effective truancy reduction programs that superintendents should consider when reviewing their local truancy policies.

Removal of Students by Teachers

The guidance clearly states that districts will be held accountable for racially biased referrals, even if the referral does not lead to the imposition of sanctions. State statutes that empower teachers to discipline students without oversight can make it more difficult for administrators to ensure that individual teachers are not disciplining students of one race differently than others. These state policies also prevent superintendents from being

5 http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=966&Itemid=
6 AR, CA, GA, ME, MA, MN, MS, MO, MT, NM, OK, OR, PA, RI, VT, WV, WY
7 GA, MD, NM, ND, OK, SD, TN, WY
8 AK, AZ, CO, CT, GA, IA, KY, NE, NV, NC, OH, SC, WA, WV
9 1) parent/guardian or whole family involvement; 2) a continuum of supports, including meaningful incentives for good attendance and consequences for poor attendance; 3) collaboration among community actors such as law enforcement, mental health workers, mentors and social service providers, in addition to educators and 4) concrete and measurable goals for program performance and student performance. See https://www.ncjrs.gov/pdffiles1/pr/217271.pdf
10 “In their investigations of school discipline, the Departments have noted that the initial referral of a student to the principal’s office for misconduct is a decision point that can raise concerns, to the extent that it entails the subjective exercise of unguided discretion in which racial biases or stereotypes may be manifested. If a school refers students for discipline because of their race, the school has engaged in discriminatory conduct regardless of whether the student referred has engaged in misbehavior...Therefore, it is incumbent upon a school to take effective steps to eliminate all racial discrimination in initial discipline referrals.”
able to concentrate disciplinary responses to several highly trained administrators, which increases likelihood that conscious or unconscious bias will influence the decision to discipline students or refer them for misconduct. In 19 states and D.C., teachers have the authority to remove students from the classroom without caveats, while six states allow teachers to remove students with restrictions, namely allowed for repeated offenses or if the student exhibits violent or extreme behavior. Five states leave the decision of whether a teacher can remove a student up to the board or district. Only one state (AL) has language explicitly banning teachers from removing a student from the classroom unless in an emergency. In eight states, teachers or administrators are authorized to suspend and/or expel students; in 18 states and D.C., principals have that authority. Tennessee addressed the issue of teacher removal most recently in 2012 when it passed a law prohibiting a principal from challenging the decision of a teacher to remove a student from a classroom if the student’s behavior was considered threatening or persistently disruptive. AASA anticipates the guidance will spur state legislatures and district leaders to scrutinize teacher removal policies with more regularity.

**Suspension or Expulsion Policies**

The guidance contains a strong warning to district leaders to review their codes of conduct and school disciplinary data to ensure their district’s discipline policies do not disparately impact students of a particular race or intentionally treat students of one race differently than others. However, well-intentioned district leaders can find their efforts to reduce exclusionary discipline practices are stymied by state law that mandates suspensions and expulsions for particular misconduct. Mandatory suspension and expulsion policies, known as “zero tolerance policies”, are increasingly being contested by civil rights advocates, parents and students. Since 2011, five states have passed laws or regulations ending or greatly limiting the mandatory use of out-of-school suspension or expulsion.

In accordance with federal law, all states require at least one year of expulsion for a student who possesses a firearm on school grounds, buses, or at school-sponsored activities. Most states also have statutes requiring the automatic suspension or expulsion of a student for violating other rules. Assault is grounds for automatic suspension or expulsion in 16 states, particularly assault against a school employee. Other causes for mandatory suspension or expulsion include drug use or possession, sexual assault, or possessing a weapon. Most states allow for a case by case modification of the mandatory suspension or expulsion.

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11 CA, CO, DE, IL, IN, LA, MD, MI, MS, MT, NV, NY, OH, PA, TX, VA, WA, WV, WI
12 AZ, AR, FL, GA, HI, KY
13 AL, CT, MI, MN, TN
14 AR, FL, MT, NY, SC, TX, VA, WY
15 FL, HI, ID, IN, MA, MI, MT, NE, NJ, NY, NC, PA, RI, SC, SD, TN, UT, VA
16 CA, CO, MD, NC, OR
17 CO, GA, IA, KY, LA, ME, MI, MS, NV, NJ, OK, RI, TN, TX, UT, WV
18 IA, LA, NV, OK, TN
19 AL, AR, CT, DE, FL, GA, HI, IN, IA, LA, MN, MS, MO, MT, NE, NH, NJ, NM, NY, ND, OH, OK, OR, PA, SC, SD, TX, UT, VT, VA, WV, WI
State statutes on when and how an expelled student can return to school vary. Students can apply for readmission in five states. Eight states and D.C. require a student to satisfactorily complete an appropriate rehabilitation program before returning to school, and Illinois and Indiana require the student to complete an alternative education program before returning to his or her previous school.

**Discipline for Specific Infractions**

In the past two years, advocates have drawn increased attention to how student misconduct is categorized in states and districts. In particular, the disciplining of students for “willful defiance” or “disruptive behavior” has been targeted because it is seen as too vague and subject to teacher and administrator discretion. In 2012, the Governor of California vetoed legislation that would have barred suspensions for willfully defiant behavior. AASA found 23 states explicitly authorized districts to discipline for this type of misconduct. Four other states allowed districts to discipline for behavior that was similarly vague. AASA anticipates that state laws permitting the discipline of students for willful defiance or disruptive behavior will become increasingly scrutinized and challenged.

Chronic disciplinary issues are cause for suspension or expulsion in most states. Students with chronic disciplinary issues are referred to juvenile court in three states (AL, CA, LA), and are sent to alternative schools in seven states. Behavioral conferences (LA, MS, NO), parent conferences (GA, MI, NV), and psychological evaluation (MS) are also used to combat chronic disciplinary issues.

Students in most states can also be expelled or suspended for substance use. Rehabilitation is required in California and Louisiana, and alternative schools are provided or required in six states. Teachers are required to report any suspicion of substance use in four states, and law enforcement must be notified of substance use in Kentucky and Ohio. Pennsylvania and Wisconsin require schools to provide all students in K-12 schools with alcohol and drug classes. States are moving toward rehabilitation and recovery in their treatment of substance use in schools. For example, Rhode Island recently passed a law allowing for the establishment of recovery high schools for students with drug addictions which offer a comprehensive high school education, in order to combine treatment and rigorous educational opportunities.

Alternative schools are required or offered in many states as a solution for students with chronic disciplinary issues, attendance issues and substance use. Students who are
suspended or expelled in five states\textsuperscript{29} must be provided alternative placement or educational services.

**School Resource Officers**

The role of school resource officers (SROs) or other law enforcement personnel in schools gained national attention in light of the tragic shooting in Newtown, CT. In the aftermath of Newtown, many parents, educators and state lawmakers lobbied for more SROs in schools. Their support for increasing the number of SROs clashed with growing pressure from the civil rights community to reduce the number of SROs in schools and limit their ability to discipline students. Many civil rights groups argued that the increased presence of police in school have led to more arrests for minor, routine disciplinary disturbances and the creation of a “school-to-prison pipeline.” The guidance articulates that school district leaders are accountable for discriminatory actions taken by school resource officers. In 2013, 101 state laws were proposed related to school police. While only 12 bills became law, there were no discernable trends to be found among the laws enacted. In reviewing the state compendium, AASA identified the following areas where commonalities existed among states regarding their treatment of SROs.

Fourteen states\textsuperscript{30} permit SROs to take minors into custody or escort them to school. Nine states\textsuperscript{31} authorize SROs to arrest anyone who violates a law on school grounds. States vary in the training requirements for law enforcement personnel acting as SROs. Only four states\textsuperscript{32} require SROs to complete a SRO training course. Georgia mandates that SROs have peace officer training, while Indiana requires SROs to have law enforcement training in addition to SRO training. Virginia provides training specifically for SROs, and Mississippi requires law enforcement officers acting as SROs undergo an annual comprehensive course of training and education.

The use of memoranda of understanding by school districts and local law enforcement also varies significantly between states. Only three states (DE, NH, TN) require that all school districts have an MOU with law enforcement. Eight states\textsuperscript{33} allow school districts to have MOUs with local law enforcement. The remaining 39 states have no policy regarding MOUs. The National Association of School Resource Officers recommends that every district have an MOU specifying the role of the SRO in enforcing the law and making referrals to administrators for school discipline.\textsuperscript{34}

\textsuperscript{28} DE, GA, HI, SC, SD
\textsuperscript{29} HI, IA, KY, MA TX (for students under 10 years old)
\textsuperscript{30} CA, IN, IA, MI, MT, NV, NH, NY, OK, SD, TX, UT, VT, WI
\textsuperscript{31} FL, GA, IL, KS, MO, NE, PA, SC, TN
\textsuperscript{32} MO, IN, SC TN
\textsuperscript{33} FL, MD, NJ, PA, MS, OK, TX, VT
\textsuperscript{34} http://www.nasro.org/sites/default/files/pdf_files/NASRO_Protect_and_Educate.pdf
Prevention

Prevention is emphasized throughout state discipline laws to avoid violence and behavior problems. In 12 states,\textsuperscript{35} early intervention programs and recommended curricula are made available to districts and schools by the state. In four states,\textsuperscript{36} schools are required to develop early intervention and prevention strategies addressing disruptions, violence, bullying, truancy and chemical abuse. Prevention and intervention provisions in Arkansas, D.C., West Virginia, and Wyoming, restorative justice programs in Colorado and increased access to mental health counseling and social services for students in Oklahoma also aim to reduce discipline issues.

Conclusion

While superintendents, teachers and administrators work to ensure that all students can learn in a safe and supportive environment and that disciplinary measures are used as necessary in an equitable way, some state policies can impede this goal. Vague wording, mandatory suspensions or expulsions and laws that do not best support students are present in many states, but the trends show that these policies are being eliminated or improved. AASA encourages members to review their codes of conduct and their discipline data to ensure that out-of-school suspension and expulsion are not over-used or disproportionately administered. AASA will continue to track these changes, especially as states and districts consider the guidance from the U.S. Departments of Justice and Education.

\textsuperscript{35} AL, DE, GA, IN, IA, MN, MS, MO, NV, NM, TN
\textsuperscript{36} CT, LA, NC ND