

2018 AASA Discipline Survey:

An analysis of how the 2014 Dear Colleague Letter on Nondiscriminatory Administration of School Discipline is impacting district policies and practices

Introduction

Over the past four months, AASA has sought to understand how the 2014 Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline has changed or informed school district discipline practices and policies. AASA conducted one-on-one interviews with superintendents whose districts have been subject to investigations by the Office of Civil Rights (OCR) for discriminatory discipline and, in April 2018, AASA¹ completed a survey of 950 school leaders in 47 states on the impact of the 2014 Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline (referred to hereafter as “the 2014 discipline guidance”).

Findings

The 2014 discipline guidance has had a limited influence on school districts.

Only 16 percent of district leaders surveyed in 2018 indicated their district has modified their school discipline policies and practices because of the 2014 discipline guidance.

- Of the 16 percent who modified district policies and practices, approximately 4.5 percent of those respondents—or less than 1 percent of all respondents—indicated the 2014 discipline guidance has had a negative or very negative impact on school personnel’s ability to address disciplinary issues of students or remove students who are disruptive, aggressive or abusive to students or staff. One of the major concerns voiced by school leaders is their perceived inability to remove one or two aggressive students in a class, which at times has led to a meaningful loss of instructional time for other students. In addition, the decreased morale of school personnel who felt unable to ameliorate bad behavior or who must spend considerable time trying to manage individual students was identified as a major problem. Other respondents said that moving away from a punitive discipline system has empowered students to misbehave

¹ The survey was administered by AASA, the Association of School Business Officials International (ASBO) and the Association of Educational Services Agencies (AESA) but for purposes of this report we will refer to “AASA”

since the students are no longer sent home. Here is a sampling of the responses received:

- “Staff is not happy. Minority students benefit and are empowered.”
- “The changes have worsened school climate as administrators fear holding students to the same standard. I do agree that restorative discipline practices work best; however, more staff is needed to properly implement restorative discipline, which means more funding for staff.”
- “There are times when minority students have received more lenient consequences than non-minority students in order to prevent minority students from accusing the school of racism.”
- “Teachers and students have a ‘this is not fair’ attitude about the extra steps involved.”
- “We feel our hands are tied.”
- “Attempts to keep students in school after multiple infractions (some serious in nature) have empowered these students, and in some cases, decreased the morale of our staff.”
- “Some staff have indicated that as a result of keeping students in school, there are increased disruptions to the learning environment.”
- “It has had a negative effect on staff morale and created a classroom situation that has made it more difficult for the other students to participate in hands-on/interactive and collaborative activities.”
- Of the 16 percent of respondents who modified district policies and practices because of the guidance, 44 percent of these respondents—or 7 percent of all respondents—indicated that it has been a positive experience and/or has led to positive outcomes for the district. Here is a sampling of their responses:
 - “The outcome has forced our administrators to use more forethought, consideration and find alternatives before treating all discipline matters the same. Similarly, many proactive procedures have been implemented to anticipate potential discipline issues.”
 - “We are addressing bias and prejudice with our staff, increasing their awareness and understanding. We are also providing professional development on the importance of developing relationships with students to develop mutual trust and respect.”
 - “In order to reduce out-of-school suspension, we hired teachers to provide instruction and social emotional support to help students follow expectations.”
 - “The changes have been positive for a majority of our families and students, but the public perception of the school district has suffered.”
 - “We still do right by every student. We just call this restorative justice.”
 - “Positive experience implementing restorative justice practices and reviewing all discipline data.”
 - “Lower suspension rates and less instructional time lost.”

- “More overall awareness and more thorough investigations into discipline determinations.”
- “We are promoting a ‘growth mindset’ which includes mindfulness, restorative justice circles and collaborative problem solving. All of these changes have reduced out-of-school suspensions and disciplinary consequences. We also added parent liaisons to work directly with parents to promote a welcoming school culture.”
- “I would characterize our changes as positive. We have transitioned to restorative practices and community building. Our discipline referrals and suspensions for all groups have decreased significantly.”
- About 25 percent of respondents who changed their discipline policy to conform to the parameters of the guidance—or a little over 4 percent of total respondents—indicated that it is too early to tell whether these changes are positive or negative, or would rate the changes as having a neutral impact. Here is a sampling of their responses
 - “Our new discipline policy is currently under review and not yet implemented.”
 - “It has not fundamentally changed any results. It is just more of an awareness of practice and reflection while acting.”
 - “Things are sadly the same. While our awareness and alternatives to disciplinary procedures have increased, I feel we still don’t have a team approach to certain families. Here, we don’t see data separated by racial lines; instead it’s more low-income and out of district boundaries.”
 - “Still in the early stages of restorative practices and adding mental health and other student support specialists.”
 - “It is still relatively early, so the overall outcomes are yet to be determined. Anecdotally it appears to be having a positive impact on climate and culture. The impacts on instruction and student achievement are not yet definitive.”
 - “We had already taken steps to address the disproportionality, but the guidance helped focus our efforts. No changes to report at this time”
- Another 12 percent of respondents who have changed their disciplinary practices—or 2 percent of all respondents—indicated that the new district policies and practices adopted because of the guidance have had mixed results. Here is a sampling of their responses:
 - “Positive in that we have less suspensions. Negative in that student behavior is becoming more difficult to manage.”
 - “Disproportionality has decreased, positive for students, difficult for adults.”
 - “Overall, it’s positive for students as they are being kept in school where they can learn instead of being suspended. The challenge is limited funds to work with teachers to help move their philosophical beliefs about students who, at times, have challenging behaviors. The limited funds also make it difficult to

provide for alternative programs and supports for all students that might help manage student behaviors and offer options.”

- “It’s a mixed bag.”

A quarter of district leaders were unsure of how the 2014 discipline guidance changed their discipline practices and policies.

A quarter of district leaders indicated they were unsure as to whether changes to their discipline policies and practices were a result of local stakeholder pressure, state law changes or federal policy pressures. While a few were specific that they made modifications as a result of state policy changes, many more were unsure as to what effect, if any, the federal guidance has played in their district discipline policies and practices.

Urban and large districts were more likely to adopt new discipline policies and practices because of the 2014 discipline guidance.

District leaders in urban districts were three times more likely to change their discipline policies because of the guidance. Suburban districts were twice as likely than rural districts to change their policies in light of the 2014 discipline guidance.

- Districts larger than 10,000 students were three times more likely than districts with less than 2,500 students to change their discipline policies because of the guidance. Districts with 2,500 to 10,000 students were twice as likely as districts with less than 2,500 students to change their discipline policy.

Twenty percent of district leaders confirmed that pressure from OCR, but not necessarily the guidance itself, has led them to keep students in school who school staff would have preferred to remove.

- There were clear trends among respondents delineating what consequences, if any, occurred as a result of keeping a student in school who staff would have preferred to remove. The lack of staff, redirection of staff and student time away from instruction and learning, and decreased staff morale were frequently listed as major concerns for districts that were trying to reduce out-of-school time. Here is a sampling of responses received:
 - “Morale among staff has been negatively affected by keeping certain students in school who may have previously been expelled.”
 - “There is continued distraction to teaching and learning efforts, diminished morale and increased frustration by teachers.”
 - “Without proper additional staffing and facilities to keep these students in school, staff do experience a perceived (sometimes real) safety concern.”
 - “Schools are not equipped to provide supports to mentally or emotionally unstable children. We need help.”
 - “We are tolerant of behaviors that used to be unacceptable.”

- “The ones who suffer are the students who are having their learning environments disrupted.”
- “Students who are allowed to stay in school after gross offenses amp up their behavior in order to see how much they’ll get away with without consequence.”
- “There is a feeling that by keeping some students in school, we are risking the safety of students.”
- “Teachers are not prepared to work with these students. Additional time and funding is needed to support teachers in learning about alternative approaches.”
- “We have received numerous complaints from parents and staff about students who should not be in school based on their disciplinary records.”
- “We see victims of bullying and harassment tend to miss more days of school and are more likely to leave the district when the perpetrators are not removed from school.”
- “The consequence to keeping a disruptive student in class is disruption to teaching and learning, so all kids suffer the consequences. We have our hands tied combating disruptive behavior.”
- Urban districts were far more likely than rural districts to indicate they were keeping students in school whom staff would have preferred to remove. 43 percent of urban districts who responded indicated they felt pressure from OCR to keep students in school compared to 23 percent of suburban districts who responded and 15 percent of rural districts who responded.
- 18 percent of all survey respondents were unsure as to whether pressure from OCR has led them to keep students in school whom school staff would have preferred to remove.

District leaders say OCR’s method of investigating individual student complaints of discipline discrimination need to be reformed.

AASA conducted a series of one-on-one interviews with district leaders who have been investigated by OCR for discrimination in discipline policies since 2010. The statements below were expressed multiple times by district leaders during the interviews:

- Investigations into individual complaints quickly morphed into district-wide investigations that required school personnel to compile information on discipline infractions and policies in every grade and school.
- The gathering and collecting of data for OCR investigations was commonly described as unprecedented, intimidating and costly. Multiple districts estimated it cost tens of thousands of dollars to meet the paperwork and personnel demands of OCR investigations.
- The completion of investigations lasted multiple years or at least one year, leading to considerable uncertainty and unease in districts. As school leaders, personnel and school boards waited an answer from OCR, they felt unable to change disciplinary interventions, adjust policies and practices and were unsure

as to whether current professional development activities and programs for students were appropriate or maintainable.

- The district's fiscal health was not considered by OCR during its investigations nor was past data on discipline that the district produced that would demonstrate significant gains or improvements.
- Despite being found to be compliant with Title IV and Title VI of the Civil Rights Act, teachers and principals discussed feeling undermined and scared by the process. Several high-performing teachers were so shook-up after the interviews they questioned whether they should remain in the teaching profession. There was a noticeable decline in staff morale after these investigations concluded that did not fade once the district was found to be legally compliant.

Analysis

Discipline policies and practices have long been a contentious issue for school district leaders and changing these practices and policies requires collaboration and judiciousness. The 2014 discipline guidance has not been transformative in changing school discipline policies, practices and outcomes related to discipline. Given that only 16 percent of district leaders surveyed in 2018 indicated their district has modified their school discipline policies and practices because of the 2014 discipline guidance, we cannot say that it is having the positive or negative effects some advocates in Washington are claiming.

A quarter of district leaders indicated they were unsure whether changes in their discipline policies and practices were a result of local stakeholder pressure, state law changes or federal policy pressures. Given that the reception and review of federal guidance, regulations, grants and other federal monitoring documents is at the central office level, it is unlikely that school superintendents and related central office leaders would make substantive changes to discipline policies and practices without a meaningful discussion of federal-level directives with their general counsel, school board and other key stakeholders. Further, since states like Illinois, California, Maryland and Oregon have made substantial changes to how districts can discipline students, it is possible that these states and others that have made less wholesale or controversial changes are driving changes to district discipline policies.

It also appears that more generalized pressure from OCR has changed local policies and practices in a different and more substantial way than the guidance. Beginning in 2009, OCR opened hundreds of investigations or compliance reviews that forced districts to change discipline practices and policies. The noticeable uptick in investigations and compliance reviews over the last nine years seems to have acted as a more powerful lever in influencing districts to reduce out-of-school time for students even if teachers, parents or students preferred for that specific child to be removed from class. Twenty percent of district leaders confirmed that pressure from OCR has led them to make changes in their discipline practices that specifically allowed students to stay in school whom they or staff would have preferred to remove. This contrasts to 16 percent of school leaders who indicated their district made changes to discipline

policies and practices because of the guidance. Interestingly, only 44 percent of school leaders who indicated they had changed district practices because of the guidance also indicated that pressure from OCR led them to keep students in school whom school staff would have preferred to remove. Therefore, 22 percent of all superintendents surveyed changed practices either because of the guidance or because of pressure from OCR.

Another important factor to consider when determining the impact of the guidance on district discipline practices and policies is timing. This guidance was released in January 2014. In 2013, AASA, in partnership with the Council of State Governments, surveyed school leaders about school discipline policies and practices. In that survey, AASA found that 56 percent of district leaders had recently revised their student codes of conduct. The most common discipline policy changes were implementing a new, graduated system of responses to misbehavior and modifying the types of offenses that warranted removal from a school setting. In addition, districts responded that they changed their codes to increase the use of non-punitive responses to student misbehavior and to limit the use of suspension and expulsion. Clearly, district leaders were already taking steps to align their district policies and practices with the recommendations presented in the 2014 discipline guidance and the goal of reducing out-of-school time and punitive responses to school discipline was happening absent a federal directive. It is less clear, however, if the enhancement of the investigatory arm at OCR was playing a meaningful role in encouraging districts to change their discipline policies and practices. If so, fear of an investigation by OCR or the experience of being investigated by OCR could also be attributed to changes that many districts made between 2011 and 2013 to discipline practices and policies.

In interviews with school leaders who were investigated by OCR for discipline discrimination, AASA was astonished by the scope of investigations by OCR and how frequently an individual complaint by a student alleging discrimination led to a much broader district-wide investigation of discrimination. District officials described the scope of the investigatory process as overwhelming and intimidating for school personnel. Of concern to the leaders who AASA interviewed was the discretion afforded by OCR to request incredibly large amounts of unwritten disciplinary practices and data, and to interview teachers and administrators at length. While the 2014 discipline guidance states that not having complete files of unwritten incident reports could be reason for a finding of discrimination, our interviews indicate that OCR leveraged the lack of data to force districts into resolution agreements prior to 2014.

Superintendents told AASA that finding and organizing the data that has OCR requested—as delineated in the 2014 discipline guidance—can take considerable time and resources away from teaching and learning. One medium-size district said that a single complaint from a student that was eventually dismissed required them to find and submit every single office referral for the entire district to OCR. OCR then interviewed teachers, principals, and assistant principals about how and why those referrals (some dating back many months prior to the investigation) were made and how they were handled.

Conclusion

Whether the guidance should stay or go is not something AASA can adequately weigh in on, given the feedback from our survey and our interviews with school leaders. As a general principle, AASA believes less is more and expressed initial concern at the use of the disparate impact analysis for school discipline. AASA continues to worry about the application of this analysis in the K-12 educational context and whether it is appropriate.

However, AASA believes the expanded reach of OCR in how it investigates districts for alleged discrimination in student discipline practices is the most substantial problem for districts that can and should be addressed at the federal level. The adoption of a new case-processing manual at OCR and a narrowing of the types of unwritten disciplinary practices OCR can request should make a meaningful positive difference. Outside of OCR's pace and style of investigating discipline discrimination, the 2014 discipline guidance itself has not been transformative in changing discipline policies and practices for districts.

AASA recommends the Department do the following:

First, continue to improve the case-processing manual to ensure the scope of data and process for investigation is reasonable. In the past, these investigations consisted of huge compliance reviews comprising thousands of data points, thousands of dollars in time gathering data and meeting with attorneys, and thousands of dollars in lost time when staff could be teaching and leading rather than sitting in interviews with investigators and doing administrative work.

Second, continue to ensure the investigatory process is expedient, and that the resolution process is a collaborative one for both parties and looks distinctly at the individual complaint filed.

Third, continue to promote practices in the guidance that are working for districts to reduce punitive discipline like PBIS and restorative justice. The use of the Department's discretionary dollars to award grants to districts with high disciplinary rates so they can adopt evidence-based measures for reducing inappropriate discipline rates could also be a powerful lever for improving district discipline rates.

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