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Know Your Rights:

Student Discipline

Margaret Chen, Staff Attorney
Vanessa Hernandez, Youth Policy Director
ACLU of Washington

Overview

- Legal Framework
  - Right to Education
  - Additional protections for students with special needs
- "Due Process Path"
  - 5 key questions
- "Special Needs Path"
  - 3 key questions

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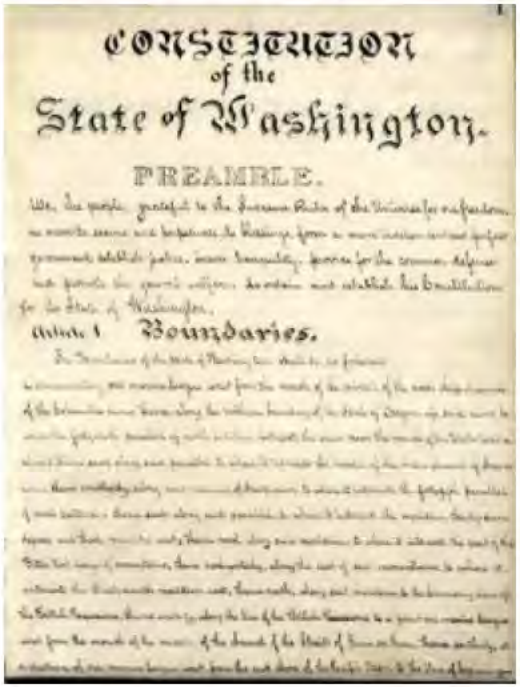
Legal Right to Education

Washington Law Against Discrimination, RCW 49.60

RCW 28A.642

Washington Constitution, Article IX, s. 1



CONSTITUTION
of the
State of Washington.

PREAMBLE.

We, the people, grateful to the Supreme Ruler of the Universe for our freedom,

Article I Boundaries.

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"Due Process"

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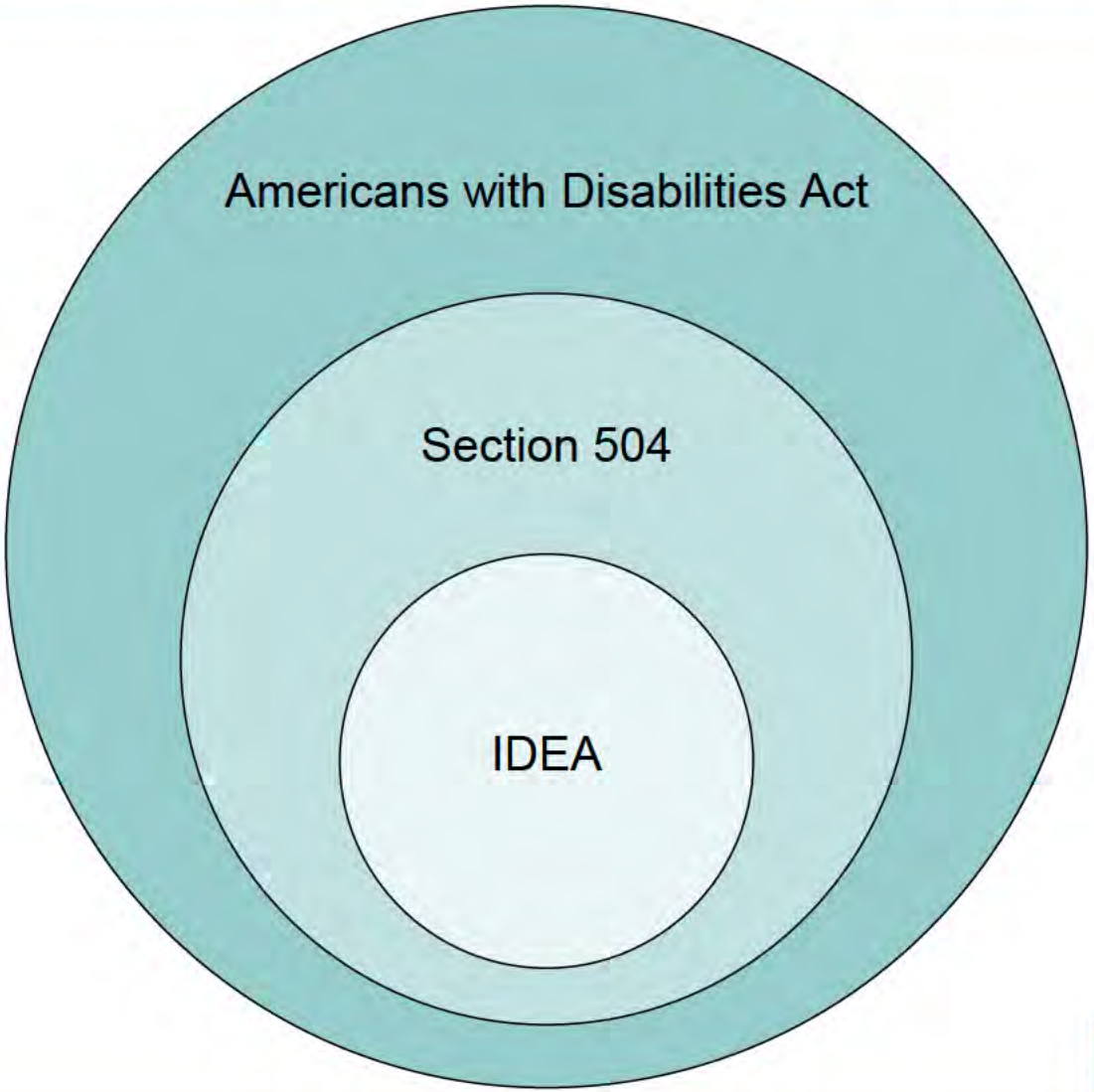
Rights of Students with Disabilities



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Parallel Paths

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GENERAL DISCIPLINE PATH

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5 Key Questions

- What **FORM** of discipline is proposed?
- What **BEHAVIOR** is my student accused of?
- Is the discipline **FAIR**?
- What **EDUCATION** will my student receive while suspended or expelled?
- How will my student be **REENGAGED** in school after the discipline?

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What form of discipline is proposed?

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What form of discipline is proposed?

Non-Exclusionary Discipline	Exclusionary Discipline
Detention	Short-term suspension
Going to the office	Long-term suspension
Revocation of privileges (e.g., computer, athletics participation)	Expulsion
"Extras" (e.g., apology letter)	

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Why does the form of discipline matter?

- **Procedural Protections**
  - Hearings
  - Re-engagement meetings

- **Fairness Limits in State Law**
  - **Age** Limits (below 5th grade)
  - Behavior limits for long-term suspension/ expulsion

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Discipline and Criminal Prosecution

- Police in schools cannot:
  - Conduct generalized searches of student backpacks/person
  - Use unreasonable force against students
  - Question students without informing them of their rights (and policies also cover parent notification)
- Tips if arrest or referral:
  - Request an attorney before speaking to police or school officials.
  - Coordinate with attorney on discipline/juvenile justice

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What behavior is my student accused of?

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What behavior is my student accused of?

More Serious Behaviors	Less Serious Behaviors
Can be punished with long-term suspension and/or expulsion	State law limits ability to impose long-term suspension and/or expulsion
For behaviors designated "exceptional misconduct", school can immediately suspend or expel	Generally, school cannot suspend until other interventions have been tried

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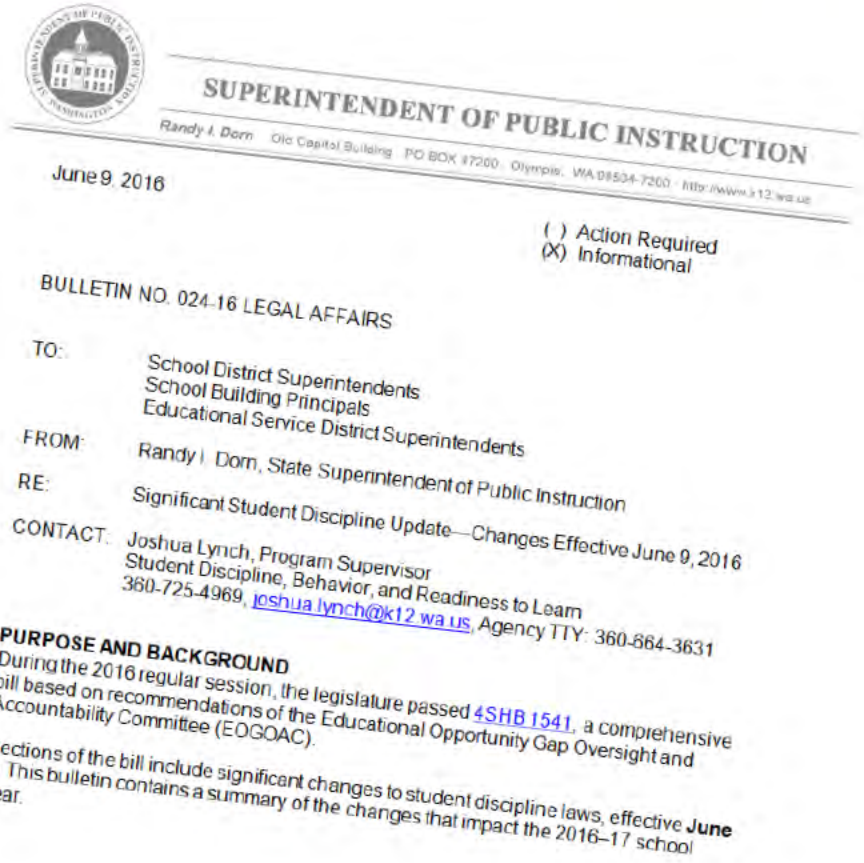
What are "non-discretionary" offenses?



SUPERINTENDENT OF PUBLIC INSTRUCTION

Randy I. Dorn · Old Capitol Building · PO BOX 47200 · Olympia, WA 98504-7200 · http://www.k12.wa.us

June 9, 2016

( ) Action Required
(X) Informational

BULLETIN NO. 024-16 LEGAL AFFAIRS

TO: School District Superintendents
School Building Principals
Educational Service District Superintendents

FROM: Randy I. Dorn, State Superintendent of Public Instruction

RE: Significant Student Discipline Update—Changes Effective June 9, 2016

CONTACT: Joshua Lynch, Program Supervisor
Student Discipline, Behavior, and Readiness to Learn
360-725-4969, joshua.lynch@k12.wa.us, Agency TTY: 360-664-3631

PURPOSE AND BACKGROUND

During the 2016 regular session, the legislature passed 4SHB 1541, a comprehensive bill based on recommendations of the Educational Opportunity Gap Oversight and Accountability Committee (EOGOAC).

Sections of the bill include significant changes to student discipline laws, effective **June 9**. This bulletin contains a summary of the changes that impact the 2016–17 school year.

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What is "exceptional misconduct"?

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Is the discipline fair?

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Is the discipline fair?

- Your student didn't do it.
- The behavior is constitutionally protected.
- There are other factors besides the behavior to consider.
- The district violated behavior/age/time restriction in state law or the punishment isn't proportional.
- The discipline violates state law or school policy.

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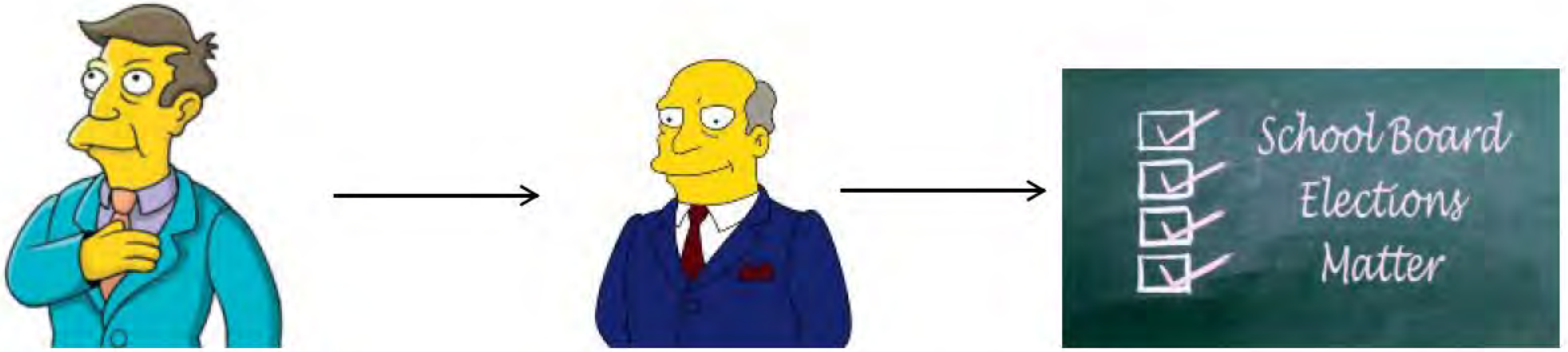
Challenging Non-Exclusionary Discipline



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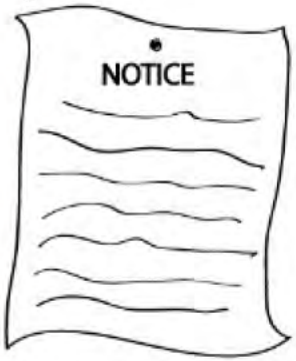
Challenging Exclusionary Discipline

Short-term
(<10 days)



Long-term
(>10 days)

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What education services will my student receive during the period of exclusion?

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House Bill 1541

- Comparable
- Equitable
- Appropriate to the regular services the student would have received

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What are the right education services?

- Make up assignments
- Online education
- Tutoring or one-on-one
- Alternative school
- IDEA compliance

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How will my student be reengaged in school when the discipline is over?

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House Bill 1541: Re-Engagement Meetings

- Mandatory
- Individualized

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The Process: To Get Educated/Reenrolled

Comparable, adequate and equitable education services

Culturally responsive reengagement meeting and plan

Petition for readmission

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SPECIAL NEEDS PATH

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Guiding Principles

Free

Appropriate

Public

Education

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3 Key Questions

- Does the proposed discipline count as a CHANGE OF PLACEMENT?
- Is the behavior a "MANIFESTATION" of my student's disability?
- Would additional services or SUPPORTS prevent recurrence of the behavior?

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Does the proposed discipline count as a "change of placement"?

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Is this a change of placement?

- Is this a single 10+ day exclusion (i.e., long-term suspension or expulsion)?
- Is it part of a pattern of removals that add up to 10+ days of exclusion?

- If YES → ENTITLED to manifestation determination review
- If NO →
  - General path for challenging school discipline
  - General path for IEP/504

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Is the behavior a "manifestation" of my student's disability or a failure to implement IEP?

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Why does it matter?

- Generally a special education student cannot be disciplined for behavior that is a manifestation of disability or a failure to implement his/her IEP
- If behavior is related to disability, student is entitled to:
  - Functional Behavior Assessment
  - Behavior Intervention Plan
  - Return to current placement (unless special circumstances or parent agrees to change placement)

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Would additional services or supports prevent recurrence of the behavior?

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Why does it matter?

- Parent involvement in behavior intervention plan
- Potential revision of IEP or 504 plan

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The Process: Discipline and Special Needs

Change of placement determination

Manifestation Determination Review

BIP / FBA

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ADDITIONAL RESOURCES

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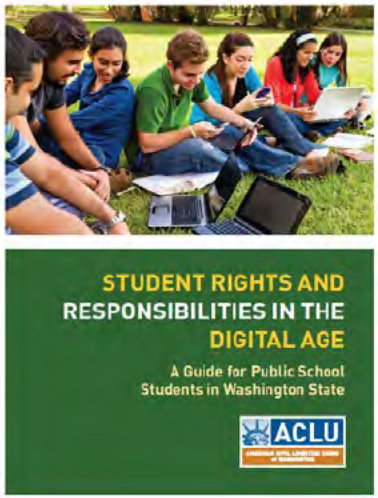
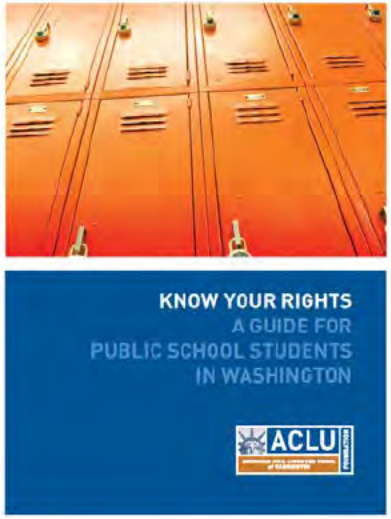
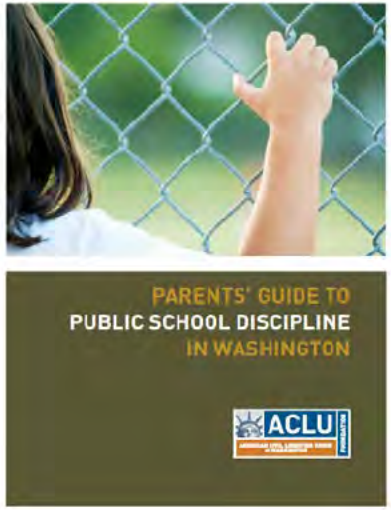
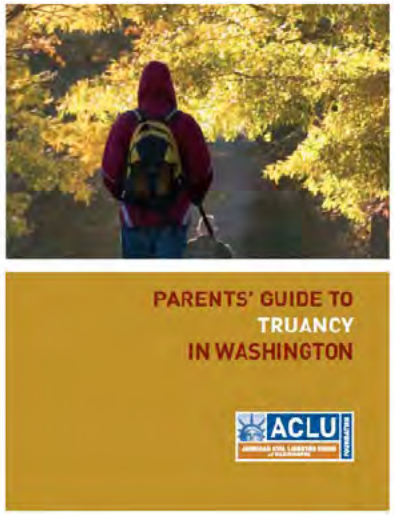
ACLU Publications

https://www.aclu-wa.org/teacher-resources









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Office of Education Ombuds (Governor)

Basic Education Rights and Opportunities in Public Schools

English | Español (Spanish)

How to be an Education Advocate

English | Español (Spanish)

http://oeo.wa.gov/publications-reports/publications/

Discipline in Public Schools

English | Español (Spanish)

Protecting the Educational Rights of Students with Disabilities in Public Schools *(Updated July 2012)*

English | Español (Spanish)

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OSPI Equity and Civil Rights

- http://www.k12.wa.us/Equity/A-ZTopics.aspx

Topics A-Z

Affirmative Action Plans

Athletic Self-Evaluation

Athletic Survey for Students

Bias in Instructional Materials

Bullying

Civil Rights Laws

Complaint Process

Compliance Coordinators

Consolidated Program Review

Counseling and Guidance Services - Equity in Course and Program Enrollment

Disability (Section 504)

Discipline - Equity in Student Discipline

Gender Identity and Gender Expression

iGrants

Interpretation and Translation Services

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www.aclu-wa.org/schooldiscipline

Questions?

Comments?

Brilliant Ideas?

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