

APPEALING FOR AN APPEAL PROCESS FOR SHORT-TERM SUSPENSIONS IN NORTH CAROLINA

John A. Williams III, PhD and Marilyn Green, MPA*

The purpose of this policy brief is to discuss and weigh the implications of North Carolina's regulations governing school discipline, more specifically the lack of an appeal process for short-term suspensions. Following an explanation of statewide data of short-term suspensions, an overview of NC. G.S.§115C-390 is discussed followed by call to action recommendations for North Carolina state legislators, school staff, and local boards of education to amicably implement an equitable appeal process.

INTRODUCTION

The striking number of school disciplinary outcomes incurred by students of color (African American, Latinx, and Native American students) across the United States is alarming, particularly in southern states such as North Carolina (Smith & Harper, 2015). While this trend has plagued the K-12 education system for several decades, more recent attempts to rectify such inequities is causing a tremendous focus on the policies and procedures related to how school

discipline is enforced, how school staff are trained to analyze discipline incidents and to responsibly enforce discipline decisions, and the ability for both students and families to appeal disciplinary decisions. When combined, these components are known as due process; and unfortunately, the ability for a student and their family to gain due process is dependent on state legislators making it a civil right rather than a privilege for a select few.

*John A Williams III, PhD.; Assistant Professor of Multicultural Education at Texas A&M University, School Discipline Strategist; Marilyn Green, MPA.; Policy Strategist, JFY Consulting, Inc.

LITERATURE REVIEW

SCHOOL DISCIPLINE DATA AND CONSEQUENCES

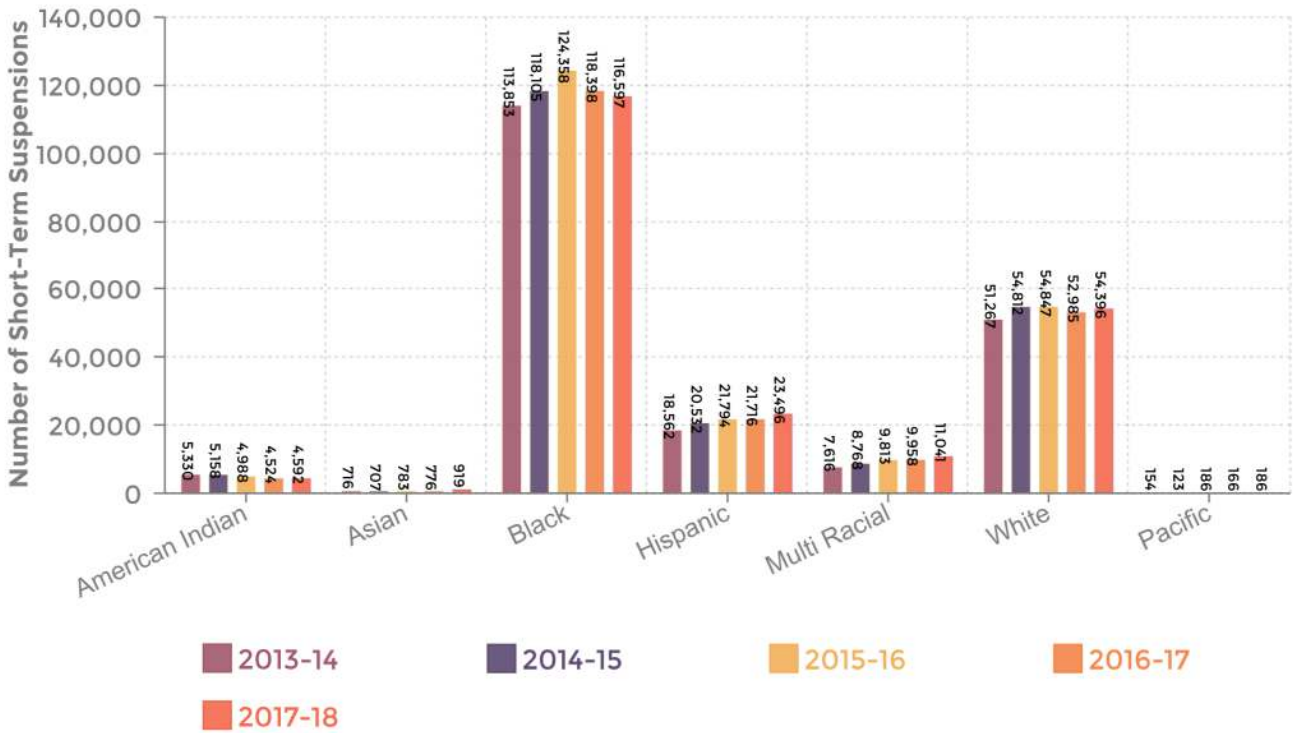
According to the U.S. Department of Education, Office of Civil Rights, in the 2013-2014 academic year, students of color accounted for 64% of the 49,347 out-of-school suspensions given in North Carolina (U.S. Department of Education, 2014), despite being less than 50% of the K-12 student enrollment. The North Carolina Department of Public Instruction (NCDPI) produces an annual report (see the Report to the North Carolina General Assembly, 2019) on disciplinary outcomes, and for the most recently available report (2017-2018 academic year), African American, Latinx and Native American students had the highest rates of short-term suspensions (suspensions resulting in a loss of instruction from 1 to 10 days in North Carolina). A bevy of studies on school discipline disparities for students of color have chronicled that there are multiple factors which contribute to such disparities. Some of the moderating factors include a lack of financial and staffing resources in schools with a large concentration of economically disadvantage and culturally diverse students, poor support for teachers in

their implementation of culturally responsive classroom management techniques, strained racial and cultural relationships between schools and their surrounding communities, and the absence of highly-qualified teachers of color in schools (Lindsay & Hart, 2017). While these factors are not mutually exclusive, they do highlight the complex, interconnected ways in which internal and external structural issues affecting schools can contribute to students of color being marginalized from school and into the school-to-prison pipeline (STTP). The STTP is known as the punitive mechanisms, policies, procedures, and practices concerning school discipline which propel students of color out of school, making them more susceptible to become involved in the juvenile and adult justice system. Furthermore, recent studies have attributed exclusionary discipline practices to be a factor in students dropping out of school, becoming disengaged with academics, being over referred for special education services, and developing anti-social behaviors (Fabelo et al., 2011).

The consequences of exclusionary disciplinary practices not only do an academic disservice to students of color, but these tactics and practices have consistently, based on research, failed to fulfill the intended mission – to prevent future

misbehavior (American Psychological Association, 2008). Specifically relating to North Carolina, in the 2017-2018 academic year (see Figure 1), 211,228 short-term suspensions were reported and students of color accounted for 68 percent of that number (144,685).

FIGURE 1
Short-Term Suspensions by Race/Ethnicity



North Carolina Short-Term Suspensions for the 2013 through 2017 academic years. Retrieved from NCDPI (2019) <http://www.ncpublicschools.org/docs/research/discipline/reports/consolidated/2017-18/consolidated-report.pdf>

The average duration of a single short-term suspension was 3.02 days. Although NCDPI indicates that their count of short-term suspensions does not represent “number of unique students”

(e.g., meaning that individual students could have multiple short-term suspensions), potentially, students of color missed anywhere between 144,685 and 436,948 days of school

during the 2017-2018 academic year. Again, the number of short-term suspensions were drastically higher than long-term suspensions over the last several years (211,228 short-term and 673 long-term). While stakeholders may consider this an issue only related to larger more urban districts like Charlotte-Mecklenburg Schools (Helms, 2017; Richardson, Williams, & Lewis, 2019; Russell, 2019), the severity of school discipline disparities for students of color in rural and suburban

areas is an indication of a state-wide epidemic, and a threat to the hard work that educators and communities engage in daily to promote academic achievement. Any truly serious attempts to ameliorate the tremendous loss of instruction and learning opportunities of students of color due to short-term suspensions cannot be fairly achieved without considerable, definitive and intentional movement toward the inclusion of an appeal process to the language of N.C. GS § 115C.

NORTH CAROLINA SHORT-TERM SUSPENSIONS AND DUE PROCESS

The North Carolina General Statutes 115C provides the general overview of the regulations and laws concerning school discipline. NC GS § 115C-390.12 is the exact governance regarding short-term suspensions, and it states “the exclusion of a student from school attendance for disciplinary purposes for up to 10 school days from the school to which the student was assigned at the time of the disciplinary action”. In NC §115C-390.5, “the principal shall have authority

to impose short-term suspension on a student who willfully engages in conduct that violates a provision of the Code of Student Conduct authorizing short-term suspension”. Essentially, the removal of a student for up to 10 days is of the sole subjective discretion of the principal. When examining due process, NC § GS 115C-390.6 (a)(b)(c) (d)(e) indicates that parents or guardians must be notified by the end of the workday, but no more than two days after the suspension is imposed.

Additionally, students are entitled to an informal hearing with the principal, however it is **not** required that the parents or guardians be present during this informal hearing with the principal. Lastly, while the principal holds the informal hearing, section (e) states that “a student is not entitled to appeal the principal’s decision to impose a short-term suspension to the superintendent or local board of education, nor can there be a judicial review”. Finally, if an appeal is to occur, it based on the subjective discretion of the local board of education.

Critically analyzing NC GS § 115C, parents whose children are suspended from North Carolina schools have little recourse to appeal a principal’s decision, regardless of how egregious or harsh the short-term suspension may be for the violation of the Code of Student Conduct. While the decision to suspend a student may be justified, the governing body to uphold and protect the rights of students may or may not entertain a parent’s plea to appeal

the principal’s decision. Without access through due process for the students and families to a higher authority to review a principal’s decision, potentially thousands of students could be removed from learning opportunities without any superintendent or local board of education being fully aware of the issues. Furthermore, the inability to access a due process pertaining to a principal’s disciplinary decision could add to the mistrust that economically disadvantaged and historically marginalized communities have with schools and school district personnel. Given the enormity of short-term suspensions in North Carolina towards students of color, and research on the propensity for subjective decisions to occur within the school discipline process particularly at school administrative level (Skiba et al., 2014), it is imperative that N.C. GS. § 115C be reformed so as to ensure the creation of a truly equitable due process that allows for all students to appeal their short-term suspensions beyond the principal.

RECOMMENDATIONS

Currently no state North Carolina policy, statute, or law exists which allows parents or guardians to initiate an appeal for a short-term suspension beyond the school's principal. However, there is such a process for parents and guardians seeking to appeal a suspension longer than 10 days (long-term suspension). The lack of due process which gives parents and guardians the ability to advocate for their children could be contributing to the high number of short-term suspensions, and the disproportionate distribution of short-term suspensions towards students of color in North Carolina. Thus, the following are call to action recommendations to offer guidance and opportunities to give voice to the need for an equitable due process by multiple stakeholders:

1. Develop state legislation language which affords parents and guardians the ability to appeal short-term suspensions to a higher authority, through an equitable process (i.e., superintendent, local board of education).

Enacting legislation which allows parents to appeal short-term suspensions could serve to limit the number of short-term suspensions given, and the number of days that their child(ren) is to remain off of school grounds. One school district, the Guilford County Board of Education recently passed a provision to add an appeal process (see Guilford County Board of Education, 2019) in a continued effort to reduce discipline disparities in their district.

2. Provide funding and resources for schools to form review teams composed of teachers, the assistant principal, the principal, parents and community members from culturally and linguistically diverse organizations to review and to support a potential influx of appeals.

Having an interdisciplinary team can alleviate principals from having to make such life changing decisions in isolation, and it would allow for a transparent and consistent process that values students' rights and student safety. Similar to the policy passed by Guilford County, North Carolina could also allow for parents and guardians to appeal the interdisciplinary team's decision to the superintendent, and then to the local board of education. Also, this recommendation would allow parents, guardians, and community members to gain a stronger understanding of why the decision was made in addition to sending a message to community members that their input is just as valid as the staff who serve in the school regarding academic and disciplinary outcomes for students.

3. Conduct informal hearings only with advocates for students in the room only after proper notice has been served to all interested parties.

4. Offer culturally appropriate and linguistically diverse information through multiple outlets such as social media, electronic, paper and phone, etc. to parents on a monthly basis regarding students' due process and their rights to appeal a short-term suspension.

In addition, school districts across North Carolina should offer a new culturally responsive student code of conduct handbook to students and staff as well as access and interpretation of legal statutes that could be cumbersome for parents, especially for parents who may not speak fluent English.

5. Offer parents and guardians information on how to get current or older suspensions expunged off of their child(ren)'s record(s).

The combination of these aforementioned recommendations will promote inclusion and equity with North Carolina's discipline process by providing parents and guardians the right to advocate for less time out of school for their child(ren) when the appearance of bias (racially or culturally) could be an underlying factor at play. Further, these recommendations will also ensure that policymakers, schools districts, and school personnel are offering the least restrictive environment for students while promoting accountability and transparency for students, parents, and school staff.

RESOURCES

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North Carolina General Statute § 115C-390

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