

A BILL

22-594

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To ensure student safety and access to education by establishing parameters for local education agencies' policies for school climate and discipline, including an emphasis on positive behavior, setting limits on the use of suspensions and expulsions, creating additional supports provided by the Office of the State Superintendent of Education to promote trauma-informed educational settings including a special fund, and expanding annual reporting.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Student Fair Access to School Amendment Act of 2018".

Sec. 2. Title II of the Attendance Accountability Amendment Act of 2013, effective September 19, 2013 (D.C. Law 20-17; D.C. Official Code § 38-235 *et seq.*), is amended as follows:

(a) The title heading is amended to read as follows:

"TITLE II. STUDENT DISCIPLINE".

(b) Sections 201 and 202 are redesignated as sections 208 and 209, respectively.

(c) New sections 201 through 207 are added to read as follows:

"Sec. 201. Definitions.

"For the purposes of this title, the term:

"(1) "Bodily injury" means a physical injury that requires more than trivial treatment or medical attention.

29 “(2) “Community-based organization” shall have the same meaning as provided
30 in § 38-271.01(1A).

31 “(3) “Disciplinary unenrollment” means the expulsion or involuntary transfer of a
32 student from a school.

33 “(4) “Emergency removal” means the immediate out-of-school suspension or
34 disciplinary unenrollment of a student based on the school’s reasonable belief that the student’s
35 presence poses an immediate and continuing danger to other students or school staff.

36 “(5) “Emotional distress” means mental suffering or distress that requires more
37 than trivial treatment or counseling.

38 “(6) “Exclusion” means the removal of a student from the student’s daily class
39 schedule for disciplinary reasons and includes a suspension or a disciplinary unenrollment.

40 “(7) “Expulsion” means the removal of a student from his or her school of
41 enrollment for disciplinary reasons for the remainder of the school year or longer, in accordance
42 with local education agency policy.

43 “(8) “In-school suspension” means temporarily removing a student from the
44 student’s regular class schedule for disciplinary reasons during which the student remains on
45 school grounds under the supervision of school personnel who are physically in the same
46 location as the student.

47 “(9) “Involuntary dismissal” means the removal of the student from school
48 attendance for less than 1/2 of a school day for disciplinary reasons, during which the student is
49 not under the supervision of the school personnel and is not allowed on school grounds.

50 “(10) “Involuntary transfer” means the removal of a student from his or her
51 school of enrollment for disciplinary reasons for the remainder of the school year, or longer, and
52 the student’s enrollment in another school within the same local education agency, in accordance
53 with local education agency policy.

54 “(11) “Local education agency” means the District of Columbia Public Schools
55 system or any individual or group of public charter schools operating under a single charter.

56 “(12) “Out-of-school suspension” means the temporary removal of a student from
57 school attendance to another setting, for disciplinary reasons, during which the student is not
58 under supervision of the school’s personnel and is not allowed on school grounds.

59 “(A) The term includes an involuntary dismissal.

60 “(B) For students with disabilities, the term includes removal to another
61 setting regardless of whether the student continues to receive individual education plan services.

62 “(13) “Parent” means a parent, guardian, or other person who has custody or
63 control of a student enrolled in a school in a local education agency.

64 “(14) “Referral to law enforcement” means an action by school personnel to
65 report a student to a law enforcement agency or official, including a school police unit, for an

incident that occurs on school grounds, during off-campus school activities, or while taking school transportation.

“(15) “School-related arrest” means an arrest of a student for an activity conducted on school grounds, during off-campus school activities, while taking school transportation, or due to a referral to law enforcement.

“(16) “Student with a disability” means a student who qualifies as a child with a disability, as defined in section 602(3) of the Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. § 1401(3)).

“(17) “Suspension” means an in-school suspension or out-of-school suspension.

“(18) “Willful defiance” means disrupting school activities or otherwise intentionally defying the valid authority of school staff.

“Sec. 202. Application.

“This title shall apply to the District of Columbia Public Schools and public charter schools, including the schools’ pre-kindergarten programs, consistent with section 303 of the Pre-k Enhancement and Expansion Amendment Act of 2008, effective June 23, 2015 (D.C. Law 21-12; D.C. Official Code § 38-273.03).

“Sec. 203. Establishment of school discipline policies.

“(a) Local education agencies shall foster positive school climates that engage all students in learning.

85 “(b) Local education agencies shall adopt, in consultation with school personnel,
86 students, and parents, school discipline policies to promote the safety and well-being of students
87 and staff. School discipline policies shall:

88 “(1) Set high expectations for student behavior and adopt an instructional and
89 corrective approach to school discipline;

90 “(2) Permit out-of-school suspension or disciplinary unenrollment as a
91 disciplinary action only to ensure safety and in response to the most serious offenses, as laid out
92 in school policy;

93 “(3) Avoid policies requiring automatic suspension or disciplinary unenrollment
94 for particular behaviors unless otherwise required by law;

95 “(4) Include a plan for continuity of education for any student subject to a
96 suspension, including a mechanism for modifications to the plan to meet the needs of an
97 individual student, as necessary, to facilitate the student’s return to the classroom, and
98 appropriate measures to ensure the student:

99 “(A) Continues the student’s studies during the suspension and receives all
100 assignments for the duration of the suspension; and

101 “(B) Can communicate with school personnel regarding academic work;

102 “(5) Require school personnel to seek and facilitate the involvement of
103 parents in the response to an incident resulting in a disciplinary action, particularly with regard to
104 the plan for continuity of education, to the degree that a parent is able to participate;

“(6) Identify conduct or categories of conduct, by severity of offense, including conduct that constitutes causing, attempting, or threatening bodily injury or emotional distress, for which a student may be disciplined;

“(7) Identify graduated levels of disciplinary action for misbehavior through a list of options available to teachers and administrators for each level of misconduct; provided, that such a list need not be exhaustive;

“(8) Describe the local education agency’s in-school and out-of-school suspension practice and policy;

“(9) Promote disciplinary actions that are individualized, fair, equitable, developmentally appropriate, proportional to the severity of the student’s offense, and, if appropriate, restorative;

“(10) Provide that school personnel shall consider whether student behavior can be safely and appropriately handled through other disciplinary action before making referrals to law enforcement or seeking school-related arrests in response to student behavior;

“(11) Outline procedures for communicating with students and parents regarding disciplinary actions; and

“(12) Articulate clearly the due process rights and procedures available to students and parents.

“(c) With respect to attendance, school discipline policies shall be consistent with sections 2(f-1) and (f-2) of Article II of An Act To provide for compulsory school attendance, for

the taking of a school census in the District of Columbia, and for other purposes, approved February 4, 1925 (43 Stat. 806; D.C. Official Code § 38-203(f-1) & (f-2)).

“(d) The school discipline policy of a local education agency that operates a pre-kindergarten program shall be consistent with the requirements of section 303 of the Pre-k Enhancement and Expansion Amendment Act of 2008, effective June 23, 2015 (D.C. Law 21-12; D.C. Official Code § 38-273.03).

“(e) A school, or local education agency, as appropriate, shall provide school discipline policies to students and parents and shall provide students and parents with explanations of the policies, including explanations of expectations, rights, and responsibilities of students and parents under the policies. The school, or local education agency, as appropriate, shall make the school discipline policy publicly available, including in a conspicuous place on the school and local education agency’s website.

“(f) Local education agencies shall proactively evaluate and update school discipline policies and practices to ensure fairness and equity, including by using data and feedback from students, families, and school personnel to identify, reduce, and eliminate discriminatory discipline practices or outcomes and unintended consequences.

“Sec. 204. Limitations on exclusion as a disciplinary action.

“(a) Unless otherwise required by federal or District law:

“(1) Beginning school year 2019-2020, no student in grades kindergarten through 8 shall be subject to an out-of-school suspension or disciplinary unenrollment, unless a school

administrator determines, consistent with school policy, that the student has willfully caused, attempted to cause, or threatened to cause bodily injury or emotional distress, to another person, including off school grounds and not as part of a school-sponsored activity; and

“(3) Beginning school year 2020-2021, no student in grades 9 through 12, except a student over the age of 18 at a school where more than 1/2 of the students are over the age of 18, may be subject to an out-of-school suspension for:

“(A) Violating local education agency or school dress code or uniform rules;

“(B) Willful defiance; or

“(C) Behavior that happens off school grounds and not as part of a school-sponsored activity, unless the student has willfully caused, attempted to cause, or threatened to cause bodily injury or emotional distress, to another person.

“(b) No student, except a student over the age of 18 at a school where more than 1/2 of the students are over the age of 18, shall be subject to an out-of-school suspension for longer than:

“(1) Five consecutive school days for any individual incident in grades kindergarten through 5;

“(2) Ten consecutive school days for any individual incident in grades 6 through 12; or

“(3) Twenty cumulative school days during an academic year regardless of grade,
unless:

“(A) The head of a local education agency provides a written justification
to the student and parent describing why exceeding the 20-day limit is a more appropriate
disciplinary action than alternative responses; or

“(B) The student’s conduct necessitated an emergency removal, and the
head of the local education agency provides a written justification for the emergency removal to
the student and parent.

“(c) No student subject to a suspension shall be denied the right to continue to access and
complete appropriate academic work or to earn credit toward promotion or graduation during a
suspension.

“(d) The return of a student to school upon conclusion of an out-of-school suspension
shall not be made contingent on a parent accompanying the student, attending a conference, or
otherwise being present at the school.

“(e) No student shall be removed from school or prohibited from returning to school, for
disciplinary reasons, unless the student is subject to an out-of-school suspension or disciplinary
unenrollment.

“(f) For purposes of due process, a suspension of 6 school days or more shall be
considered a long-term suspension.

“Sec. 205. Exclusion of students with disabilities.

“ (a) School administrators shall take special consideration regarding the exclusion of a student with a disability.

“ (b) All of a student’s disabilities, as defined in section 3(1)(A) and (B) of the Americans with Disabilities Act, approved July 26, 1990 (104 Stat. 329; 42 U.S.C. § 12102(1)(A)-(B)), of which the school had knowledge shall be considered in a manifestation determination review conducted pursuant to section 615(k)(1)(E).

“Sec. 206. Support for positive school climate and trauma-informed educational settings.

“ (a) The Office of the State Superintendent of Education (“OSSE”) shall support local education agencies and schools to implement strategies to prevent and reduce the use of exclusion, including achieving and maintaining compliance with the provisions of section 204. The OSSE shall maintain an array of supports to develop and sustain trauma-informed educational settings, including providing:

“ (1) Guidance and distributing materials that inform local education agencies and school communities about developments in the fields of school climates and behavioral management;

“ (2) Regular, high quality professional development opportunities and technical assistance, and recommendations for further instruction outside of these opportunities, for local education agency and school personnel on:

“ (A) Trauma and chronic stress, their effects on students and learning, and effective responses;

204 “(B) Classroom management, positive behavioral interventions, and
205 fostering positive school climate;

206 “(C) Disciplinary approaches that utilize instruction and correction;

207 “(D) Restorative practices and other evidence-based or promising
208 behavioral interventions;

209 “(E) Implementation of high quality functional behavior assessments,
210 behavioral intervention plans, and manifestation determination reviews as those terms are used in
211 the Individuals with Disabilities Education Act, approved December 3, 2004 (118 Stat. 2745; 20
212 U.S.C. § 1400 *et seq.*); and

213 “(F) Implicit bias and culturally responsive corrective action techniques;

214 “(3) Opportunities for local education agencies and schools to share promising
215 practices regarding the topics in paragraph (2) of this subsection; and

216 “(4) Direct funding and supportive services to schools, local education agencies,
217 and community organizations partnering with schools, to reduce the use of exclusion.

218 “(b) The OSSE shall collaborate with other government agencies, local education
219 agencies and schools, and postsecondary educational institutions to facilitate the provision of
220 postsecondary degree or certificate programs covering the topics described in subsection (a)(2)
221 of this section, including the identification or creation of a trauma-informed educator certificate
222 program.

“(c) Within 2 years of the effective date of the Student Fair Access to School Amendment Act of 2018, and every 5 years thereafter, the OSSE shall submit to the Mayor and the Council an evaluative report on local education agency and school implementation of practices to promote school safety and reduce the use of exclusion, which shall:

“(1) Be based upon rigorous research techniques, including quantitative and qualitative methods;

“(2) Draw on the information maintained and reported pursuant to section 209 as well as other sources, with a particular focus on:

“(A) Ensuring the fidelity of data reporting;

“(B) Unanticipated consequences of the disciplinary policies and practices adopted pursuant to this title;

“(C) Barriers schools face in implementing the policies and practices required pursuant to this title; and

“(D) Effective approaches utilized by schools to avoid reliance on exclusion and reduce disparities in its use;

“(3) Provide specific recommendations for further action by the Council, executive branch, and schools; and

“(4) Provide suggestions for further research.

“Sec. 207. School Safety and Positive Climate Fund.

242 “(a) There is established as a special fund the School Safety and Positive Climate Fund
243 (“the Fund”), which shall be administered by the Office of the State Superintendent of Education
244 (“OSSE”) in accordance with subsection (c) of this section.

245 “(b) Revenue from any annual appropriation shall be deposited into the Fund.

246 “(c) Money in the Fund shall be used solely to support the activities described in section
247 206 through contract or a competitive or formula grant to local education agencies, public
248 schools or partnerships developed among public school or with organizations with expertise in
249 those or similar activities.

250 “(d)(1) The money deposited into the Fund shall not revert to the unrestricted fund
251 balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any
252 other time.

253 “(2) Subject to authorization in an approved budget and financial plan, any funds
254 appropriated in the Fund shall be continually available without regard to fiscal year limitation.”.

255 (d) Redesignated section 209 (D.C. Official Code § 38-236) is amended as follows:

256 (1) Subsection (a) is amended as follows:

257 (A) Paragraph (1)(H) is amended by striking the phrase “; and” and
258 inserting a semicolon in its place.

259 (B) Paragraph 2 is amended as follows:

(i) Subparagraph (A) is amended by striking the phrase “out-of-school and in-school suspensions” and inserting the phrase “in-school suspensions, out-of-school suspensions, involuntary dismissals, and emergency removals” in its place.

(ii) Subparagraph (C) is amended by striking the phrase “suspension;” and inserting the phrase “suspension, and whether the student attended;” in its place.

(iii) Subparagraphs (D) through (F) are amended to read as follows:

“(D) Whether the student was subject to a disciplinary unenrollment during the school year;

“(E) Whether the student voluntarily withdrew or voluntarily transferred from the school during the school year;

“(F) Whether the student was subject to referral to law enforcement;”.

(iv) New subparagraphs (G) and (H) are added to read as follows:

“(G) Whether the student was subject to school-related arrest; and

“(H) A description of the misconduct that led to or reasoning behind each suspension, involuntary dismissal, emergency removal, disciplinary unenrollment, voluntary withdrawal or transfer, referral to law enforcement, school-based arrest and, for students with disabilities, change in placement; and”.

(C) A new Paragraph (3) is added to read as follows:

280 “(3) Special education services data, including whether a student received during
281 the school year:

282 “(A) A functional behavioral assessment;

283 “(B) An updated behavior improvement plan; or

284 “(C) A manifestation determination review, including the number of
285 suspension days that triggered the review, whether the suspension days were cumulative, and the
286 outcome of the review.”.

287 (2) Subsection (b) is amended to read as follows:

288 “(b) By August 15 of each year, each local education agency or entity operating a
289 publicly funded community-based organization shall submit a report to the Office of the State
290 Superintendent of Education disaggregated by each of the demographic categories identified in
291 subsection (a)(1) of this section. The report shall include:”

292 “(1) The students suspended for at least one and no more than 5 days, and whether
293 the suspension was an in-school suspension or an out-of-school suspension;

294 “(2) The students suspended for at least 6 and no more than 10 days and whether
295 the suspension was an in-school suspension or an out-of-school suspension;

296 “(3) The students suspended for more than 10 days and whether the suspension
297 was an in-school suspension or an out-of-school suspension;

298 “(4) The students who received more than one suspension in a school year and
299 whether the suspensions were in-school or out-of-school suspensions;

300 “(5) The students who were referred to an alternative educational setting for the
301 course of a suspension;
302 “(6) The students involuntarily dismissed at least once and no more than 5 times;
303 “(7) The students involuntarily dismissed at least 6 times and no more than 10
304 times;
305 “(8) The students involuntarily dismissed more than 10 times;
306 “(9) The students subject to emergency removals;
307 “(10) The students subject to a disciplinary unenrollment, disaggregated by type
308 of disciplinary unenrollment;
309 “(11) The students who voluntarily withdrew or transferred;
310 “(12) The students subject to referral to law enforcement;
311 “(13) The students subject to school-related arrest;
312 “(14) A description of the misconduct that led to or reasoning behind each
313 suspension, involuntary dismissal, emergency removal, disciplinary withdrawal, voluntary
314 withdrawal or transfer, referral to law enforcement, school-based arrest, and, for students with
315 disabilities, change in placement;
316 “(15) Whether the student received a functional behavior assessment, an updated
317 behavioral improvement plan, or a manifestation determination review, as those terms are used
318 in the Individuals with Disabilities Education Act, approved December 3, 2004 (118 Stat. 2745;
319 20 U.S.C. § 1400 *et seq.*), and the outcomes of those actions;

“(16) Whether the student was subject to suspensions exceeding the time limits described in section 204(b), and a summary of the written justification provided by the local education agency for those disciplinary actions; and

“(17) Whether the student received in-person instruction consistent with the curriculum of the student’s daily class schedule, participated in counseling or other behavioral health supports, or engaged in restorative processes during the course of an in-school suspension.”.

(3) Subsection (c) is amended as follows:

(A) Designate the existing text as paragraph (1).

(B) A new paragraph (2) is added to read as follows:

“(2) The OSSE shall collaborate with local education agencies and publicly funded community-based organizations to develop consistent definitions for the types of misconduct and explanations of reasoning required to be maintained or reported pursuant to subsections (a)(2)(H) and (b)(14) of this section.”.

(4) Subsection (d) is amended as follows:

(A) Strike the phrase “suspensions and expulsions that were imposed in local education agencies and publicly funded community-based organizations” and insert the phrase “data provided by local education agencies and community-based organizations in subsection (b) of this section” in its place.

(B) Strike the period and insert the phrase “. The report shall include a trend analysis based on available data, including data drawn from the Youth Risk Behavior Survey, school climate surveys, and any other available sources, of the exclusion of students who identify as lesbian, gay, bisexual, questioning of the student’s sexual orientation, transgender, gender nonconforming, or questioning of the student’s gender identity or expression.” in its place.

(5) Subsection (e) is repealed.

(6) A new subsection (e-1) is added to read as follows:

“(e-1) The OSSE may issue rules to implement the provisions of this section.”.

Sec. 3. Section 2(c) of Article II of An Act To provide for compulsory school attendance, for the taking of a school census in the District of Columbia, and for other purposes, approved February 4, 1925 (43 Stat. 806; D.C. Official Code § 38-203(c)), is amended as follows:

(a) Subsection (f-1) is amended to read as follows:

“(f-1) No student enrolled in a public school, other than an adult education program, may be expelled or receive an out-of-school suspension due to an unexcused absence or due to a late arrival to school.”.

(b) Subsection (f-2) is amended as follows:

(1) Strike the phrase “Beginning school year 2016-2017, no minor covered by § 38-202(a)” and insert the phrase “No student” in its place.

(2) Strike the phrase “unless the minor” and insert the phrase “unless the student” in its place.

Sec. 4. Conforming amendments.

(a) The Pre-k Enhancement and Expansion Amendment Act of 2008, effective July 18, 2008 (D.C. Law 17-202; D.C. Official Code § 38-271.01 *et seq.*), is amended as follows:

(1) Section 101(5A) (D.C. Official Code § 38-271.01(5A)) is amended by striking the phrase “the removal of a student from school attendance for an entire school day or longer” and inserting the phrase “the temporary removal of a student from school attendance to another setting for disciplinary reasons, during which the student is not under supervision of the school’s personnel and is not allowed on school grounds” in its place.

(2) Section 303(a) is amended by striking the phrase “be expelled” and inserting the phrase “receive a disciplinary unenrollment, as defined in section 201(3) of the Attendance Accountability Amendment Act of 2013, passed by the Committee on Education on March 13, 2018 (B22-594),” in its place.

(b) Section 2206(g) of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1802.06(g)), is amended to read follows:

“(g) Expulsion and suspension. – (1) A public charter school shall comply with sections 203 through 205 of the Attendance Accountability Amendment Act of 2013, as approved by the Committee on Education on March 13, 2018 (Committee print of Bill 22-594).

“(2) The principal of a public charter school may expel or suspend a student from the school based on criteria set forth in the charter granted to the school, consistent with sections 204 and 205 of the Attendance Accountability Amendment Act of 2013, as approved by the Committee on Education on March 13, 2018 (Committee print of Bill 22-594), section 2(f-1) of Article II of An Act To provide for compulsory school attendance, for the taking of a school census in the District of Columbia, and for other purposes, approved February 4, 1925 (43 Stat. 806; D.C. Official Code § 38-203(f-1)), and section 303 of the Pre-k Enhancement and Expansion Amendment Act of 2008, effective June 23, 2015 (D.C. Law 21-12; D.C. Official Code § 38-273.03).”.

Sec. 9. Applicability.

(a) Sections 204(a), 204(b), 206, and 207 of section 2(b) shall apply upon the date of inclusion of their fiscal effects in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effects in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(l) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 10. Fiscal impact statement.

ENGROSSED ORIGINAL

398 The Council adopts the fiscal impact statement in the committee report as the fiscal
399 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
400 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

401 Sec. 11. Effective date.

402 This act shall take effect following approval by the Mayor (or in the event of veto by the
403 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
404 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
405 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
406 Columbia Register.