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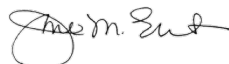


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GUIDANCE MEMORANDUM #19-08

To: Local Education Agencies
From: Jhone M. Ebert, Superintendent of Public Instruction 
Date: October 22, 2019
Subject: Updates to Discipline Laws, Data Reporting Requirements, and Restorative Justice/Practices per the 80th Session of the Nevada Legislature (2019)

Introduction

During the 2019 legislative session, a number of bills were passed related to ensuring a safe and respectful learning environment. Assembly Bill 168 (AB 168) was one such bill, and its requirements change current statute regarding school discipline to reflect practices related to restorative justice. Restorative justice recognizes school districts' efforts to create equitable systems where, rather than removing students, the norm is teaching positive behaviors, repairing relationships, and increasing accountability through reversing harm. This guidance memo includes the following sections regarding implementing AB 168 and other relevant legislation from the 2019 session:

- Background and Purpose
- Statutory Requirements
- Dates and Deadlines for Schools and Districts
- Timeline for Implementation
- Definitions

Background and Purpose

When the federal Every Student Succeeds Act (ESSA) was enacted, it brought renewed commitment by states and districts to safe learning environments that provide learning opportunities for all students while promoting academic excellence and equity. ESSA accelerated a trend that was already underway in some states and districts to move away from zero tolerance discipline policies and toward more positive approaches to addressing student behavior. AB 168 builds on this trend by altering state expectations regarding districts' approach to student discipline. In many ways, AB 168 supports positive practices already in place in Nevada's districts and schools.

Restorative justice is an alternative to exclusionary disciplinary practices which removed students from the academic environment; instead, restorative justice seeks to repair the harm done when a standard of conduct is violated. In its September 2014 publication titled *Restorative Justice: Overview*, the American Association of School Superintendents reported that “a

restorative approach often requires a cultural shift for the entire school community; educators must shift to see students as persons deserving of the opportunity to correct their wrongdoings and to learn from their mistakes, rather than as children in need of reprimand . . . [this approach] is rooted in positive relationships and behavior and helps create a supportive environment where students thrive personally and academically.”

The expectations of AB 168 reflect that professional learning will be vital to successful implementation and must necessarily include district Boards of Trustees, superintendents, principals, and educational and support personnel as well as students, parents, and guardians. The intent of this memo is to support districts’ implementation of AB 168 and is not meant to expand, minimize, or interpret the law. Districts are encouraged to consult with local counsel as they implement the provisions of AB 168 and SB 89.

Statutory Requirements

The major components of the changes under AB 168 can be understood as a set of *Student-level Changes* and *Systems Changes*:

Student-level Changes:

- 1) Changes to discipline laws for all students, including restrictions on suspending and expelling students who are not more than 10 years of age; and
- 2) Changes to discipline laws for students in a program receiving special education services under an Individualized Education Program (IEP), including some additional restrictions on suspending and expelling such students.

Systems Changes:

- 3) Shift from progressive discipline school-wide plans to restorative discipline district-wide plans; and
- 4) Changes to data collection and reporting regarding student discipline and attendance.

Specific student-level and systems changes are described in more detail below. In addition, the attachment *Student-Level Changes of Discipline Laws* may serve as a helpful reference.

Student-level Changes

1) Changes to Discipline Laws for ALL Students

Suspension or Expulsion

- Only students who are at least 11 years old may be removed from a school, suspended, or expelled, with the following exceptions:
 - A general education student in possession of a firearm or dangerous weapon (NRS 392.466.3), or
 - Under extraordinary circumstances, in which case a school may request an exception to this prohibition from the district Board of Trustees (NRS 392.466.9, NRS 392.467.1).

District Superintendent Modification of Suspension or Expulsion

- A district superintendent may, for a good cause shown in a particular case in that school district, allow a modification to a suspension or expulsion made pursuant to sections 1-5 of NRS 392.466, if such modification is set forth in

writing. If the superintendent determines that a plan of action based on restorative justice may be used successfully, the superintendent must allow the modification (NRS 392.466.7).

Removal Solely Based on Attendance Not Permitted

- A student may not be expelled, suspended, or removed *solely* for offenses related to attendance or if the student has been deemed a truant or habitual truant (NRS 392.467.5).

Plan of Action Based on Restorative Justice PRIOR to Removal of a Student

- A school must provide a plan of action based on restorative justice prior to the expulsion of any student (NRS 392, new section).
- A school must provide a plan of action based on restorative justice prior to the removal of a student for (1) committing a battery that results in bodily injury of an employee or (2) sale/distribution of controlled substances (NRS 392.466.1).
- A school must make a reasonable effort to complete a plan of action based on restorative justice prior to the suspension or expulsion of a student deemed a habitual disciplinary problem (NRS 392.466.5).

See attached sample plan of action based on restorative justice.

Battery or Sale/Distribution of Controlled Substances (NRS 392.466.1)

- If a student (1) commits battery that results in bodily injury of an employee, or (2) sells or distributes any controlled substance on school grounds, a school bus, or at a school sponsored activity **AND is at least 11 years old**:
 - The student must meet with the school and the parents/guardians; and
 - The school must provide a plan of action based on restorative justice to the parents/guardians; and
 - The student **may** (but no longer “*must*”) be expelled (NRS 392.466.1).
 - Existing requirements for enrollment elsewhere remain if the student is expelled (NRS 392.466.1).
- If a student has committed battery of an employee of a school, the employee may appeal the plan of action based on restorative justice if (1) the employee feels that any actions taken pursuant to that plan are inappropriate; and (2) for a special education student, the Board of Trustees has reviewed the circumstances and determined that the appeal is in compliance with Individuals with Disabilities Education Act (IDEA) (NRS 392.466.2).

Possession of a Firearm or Dangerous Weapon (NRS 392.466.3)

- A student who is found to be in possession of a firearm or a dangerous weapon may be removed from the school immediately upon being given an explanation of the reasons for the removal and pending proceedings (NRS 392.467.2).
- The first occurrence of possession of a firearm or a dangerous weapon (as defined in NRS 392.466.11(b) and (c)) still requires a mandatory one-year minimum expulsion OR placement in another kind of school for a period not to exceed the period of the expulsion; a second occurrence still requires permanent expulsion from the school (NRS 392.466.3). Existing requirements for enrollment elsewhere remain if the student is expelled (NRS 392.466.3).

Removal to Another School (NRS 392.466.4)

- If a school is unable to retain a student due to safety concerns OR if it is not in the best interest of the student, the student may be suspended, expelled, or (now under AB 168) placed in another school for offenses outlined in NRS 392.466.
 - If placement in another school is made, the current school of the student shall explain what services will be provided to the student at the new school that the current school is unable to provide to address the specific needs and behaviors of the student.
 - The district of the originating school must coordinate with the receiving school and/or district to create a plan of action based on restorative justice and to ensure that the receiving school has the resources required to execute that plan of action.

Habitual Disciplinary Problem (NRS 392.466.5)

- If a student is suspended, the school shall develop a plan of behavior for the student in consultation with the student and the parents/guardians of the student. The plan must be designed to prevent the student from being deemed a habitual disciplinary problem (NRS 392.4655.5).
 - Parents/guardians may choose to have their student not participate in the behavior plan that must be developed. (NRS 392.4655.5)
 - If the parents/guardians opt their student out of participating in the behavior plan, the school must inform them of the consequences of not participating (e.g., that the student may be deemed to be a habitual disciplinary problem) (NRS 392.4655.5).
- If a student is deemed to be a habitual disciplinary problem **AND is at least 11 years old**, the student may be suspended (for a period not to exceed one semester) OR may be expelled under extraordinary circumstances as determined by the principal, **if and only if the school has made a reasonable effort to complete a plan of action based on restorative justice** (NRS 392.466.1).
 - Existing requirements for enrollment elsewhere remain if the student is expelled (NRS 392.466.1).

Student Charged With a Crime (NRS 392.467.3)

- If a student has been charged with a crime, the district Board of Trustees may authorize the expulsion, suspension, or removal of a student regardless of the outcome of criminal or delinquency proceedings ONLY if the school (1) conducts an independent investigation of the student's conduct, AND (2) gives notice to the student of the charges brought by the school against the student.
 - Though the statute indicates that the board "may authorize" the suspension or expulsion of a student, it should not be interpreted to require board action for each suspension and/or expulsion, unless the board policy so requires (Attorney General Opinion 97-21).

2) Changes to discipline laws for students who receive special education services in accordance with an Individualized Education Program (IEP) *Suspension or Expulsion*

- A student with an IEP **who is at least 11 years old** may be removed from a school, suspended, or expelled only after the district Board of Trustees has reviewed the circumstances and determined that the action is in compliance with the Individuals with Disabilities Education Act (IDEA) (NRS 392.466.10; NRS 392.467.6), except in the case of possession of a firearm or dangerous weapon by a student, which is described below.
- Suspension of a student with an IEP is limited to 1-5 days for each occurrence of misconduct (NRS 392.466.10; NRS 392.467.6).
- As with general education students, a student with an IEP who is younger than 11 years old must not be permanently expelled except under extraordinary circumstances, in which case a school may request an exception to this prohibition from the district Board of Trustees (NRS 392.466.9, NRS 392.467.1).

Battery or Sale/Distribution of Controlled Substances (NRS 392.466.1)

- If a student with an IEP has committed battery of an employee of a school, the employee may appeal the plan of action based on restorative justice if (1) the employee feels that any actions taken pursuant to that plan are inappropriate; and (2) the Board of Trustees has reviewed the circumstances and determined that the appeal is in compliance with Individuals with Disabilities Education Act (IDEA) (NRS 392.466.2).

Possession of a Firearm or Dangerous Weapon (NRS 392.466.3)

- A student with an IEP who is at least 11 years old who is found to be in possession of a firearm or a dangerous weapon may be removed from the school immediately upon being given an explanation of the reasons for their removal and pending proceedings.
 - A student with an IEP who is 10 years old or younger cannot be removed from school immediately; this age limitation does not apply to general education students.

Systems Changes

3) District Restorative Discipline Plans (formerly Site Progressive Discipline Plans)

As required by NRS 392.4644 (which was amended by both AB 168 and SB 89):

- Per AB 168, the requirement for establishment of a plan to provide for the restorative discipline of students and on-site review of disciplinary decisions is now at the district Board of Trustees level rather than at the principal level, as it had been previously. The plan must:
 - Be developed with input and participation of teachers, school administrators, and other educational and support personnel, and the parents/guardians of students enrolled in schools within the district; and
 - Include provisions designed to address the specific disciplinary needs and concerns of each school within the district.
- Additions to the District Restorative Discipline Plan per AB 168 and SB 89:
 - The plan must provide for placement at a different school in accordance with NRS 392.466 (including all new changes/additions resulting from AB 168 and SB 89).

- Per SB 89, the plan may *allow* for assignment to a temporary alternative placement (now reads “may”) rather than require it (former language was “must”).
- Principal review and distribution of the District Restorative Discipline Plan:
 - Each principal must review the District Restorative Discipline Plan in consultation with recommendations of teachers, school administrators, other educational and support personnel, parents/guardians, and students who are enrolled in the school; and
 - On or before September 15th of each year, make recommendations for revisions to the district Board of Trustees; and
 - Post the plan on the school’s website; and
 - Distribute a copy of the plan (written or electronic) to each teacher, school administrator, and all educational and support personnel who are employed at or assigned to the school.

NOTE: The requirement for a District Restorative Discipline Plan (formerly “Progressive Discipline Plan”) pursuant to NRS 392.4644 is an entirely separate requirement from the “plan of action based on restorative justice” that must be provided in certain circumstances before removing a student from school.

4) Changes to Data Collection and Reporting on Student Discipline and Attendance

The Nevada Department of Education has provided a sample template (*attached*) to support compliance with new data collection and reporting requirements in advance of the vendor-approved data collection template. Templates for reporting requirements that are not related to the state’s accountability framework will be provided by NDE for the 2019-20 school year. These include but are not limited to the requirements of AB 114, AB 261, AB 378, and SB 89.

The following changes have been made to the requirements for collecting and reporting of student discipline and attendance data:

- ❖ Per Assembly Bill 168:
 - Each public school (including charter schools) must collect data on student discipline, including the number of expulsions and suspensions and the number of placements of students in another school.
 - The discipline data must be disaggregated into subgroups of students (see list below per SB 89) and by the types of offense.
 - The principal of each school shall review the data and take appropriate action and report the data to their district’s Board of Trustees each quarter.
- ❖ Per Assembly Bill 490 (2019):
 - NDE will engage stakeholders in the development of standard definitions for offenses and sanctions as required by AB 490 during the 2019-20 school year for implementation during the 2020-21 school year.
 - Each public school (including charter schools) must collect student discipline data, which must:
 - Be reported annually to NDE through the automated system of accountability (Nevada Report Card);

- Be disaggregated into subgroups of students (see list below per SB 89); and
 - Include occurrences of suspension and expulsion as separate offenses.
- ❖ Per Senate Bill 89 (2019):
- SB 89 adds a new requirement that the annual report of accountability (Nevada Report Card) must include records of the attendance and truancy for students in all grades AND information on student discipline, which must be disaggregated by gender as well as pupils who are:
 - Economically disadvantaged;
 - From major racial and ethnic groups;
 - Individuals with disabilities;
 - English learners;
 - Migratory children;
 - Homeless;
 - In foster care; and
 - Whose parent or guardian is a member of the Armed Forces of the United States, a reserve component thereof, or the National Guard.

Dates and Deadlines for Districts and Schools

- On or before September 15 of each year:
The principal of each school must review the district's Restorative Discipline Plan and, in consultation with teachers, school administrators, other educational and support personnel, parents/guardians, and students who are enrolled in the school, make recommendations for revisions to the district Board of Trustees
- On or before November 15 of each year:
Each district Board of Trustees shall submit a written report to the Superintendent of Public Instruction that describes the progress made by each school in the district with respect to complying with the requirements of AB 168. The progress report must also be posted on the district's website.
- Each quarter of each year:
The principal of each school must report data related to student discipline to the district Board of Trustees which must include, without limitation: the number of expulsions and suspensions of pupils and the number of placements of pupils in another school. Such data must be disaggregated into subgroups of students and types of offense.

Timeline for Implementation

- On or before **November 15, 2019**, each district superintendent shall submit to the Superintendent of Public Instruction the name of one administrator and one teacher who will jointly serve as the district's representatives to a statewide restorative justice planning team (RJPT). This team will convene once in November 2019 and once in January 2020 to provide advice to NDE on how to strengthen support to school communities related to implementation of AB 168.
- On or before **December 15, 2019**, NDE will post to its website sample restorative justice

action plans, professional development curriculum, models and best practices, and names of consultants or presenters who can provide training on restorative justice for staff and community.

Definitions

- **Battery** (NRS 392.466.11(a), NRS 200.481.1(a)): means any willful and unlawful use of force or violence upon the person of another.
- **Dangerous weapon** (NRS 392.466.11(b)): includes, without limitation, a blackjack, slungshot, billy, sand-club, sandbag, metal knuckles, dirk or dagger, a nunchaku or trefoil, as defined in NRS 202.350, a butterfly knife or any other knife described in NRS 202.350, a switchblade knife as defined in NRS 202.265, or any other object which is used, or threatened to be used, in such a manner and under such circumstances as to pose a threat of, or cause, bodily injury to a person.
- **Firearm** (NRS 392.466.11(c)): includes, without limitation, any pistol, revolver, shotgun, explosive substance or device, and any other item included within the definition of a “firearm” in 18 U.S.C. § 921, as that section existed on July 1, 1995.
- **Habitual disciplinary problem** (NRS 392.4655): a principal of a school shall deem a pupil a habitual disciplinary problem if the school has written evidence which documents in one school year that:
 - The pupil has threatened or extorted, or attempted to threaten or extort, another pupil or a teacher or other personnel employed by the school two or more times; OR
 - The pupil has a record of five suspensions from the school for any reason; AND
 - The pupil has not entered into and participated in a plan of behavior pursuant to subsection 5 of NRS 392.4655.
- **Restorative justice** (AB 168): non-punitive intervention and support provided by the school to a pupil to improve the behavior of the pupil and remedy any harm caused by the pupil.
- **Restorative disciplinary practices** (SB 89): the Restorative Discipline Plan required by NRS 392.4644 must provide restorative disciplinary practices which include, without limitation:
 - (1) Holding a pupil accountable for his or her behavior;
 - (2) Restoration or remedies related to the behavior of the pupil;
 - (3) Relief for any victim of the pupil; and
 - (4) Changing the behavior of the pupil.

Attachment(s): Quick Reference Guide to Student-Level Changes of Discipline Laws
Nevada Report Card 2019-20 School Year Discipline Reporting Template
Sample Plan of Action based on Restorative Justice
Restorative Plan of Action Information