ADVOCACY CENTER
SERVING PEOPLE WITH DISABILITIES AND SENIOR CITIZENS

January 12, 2018

Jennifer Coco
Senior Staff Attorney, Children's Rights Practice Group
Southern Poverty Law Center
1055 St. Charles Avenue, Suite 505
New Orleans, Louisiana 70130

Re: Proposed revisions to La. Rev. Stat. § 17:416

Dear Ms. Coco:

Please accept these comments regarding the revisions to La. Rev. Stat. § 17:416 proposed by the Advisory Council on Student Behavior and Discipline. The Advocacy Center of Louisiana (AC) is Louisiana's federally designated protection and advocacy system, and as such, protects and advocates for the legal and human rights of individuals with disabilities throughout the state.

General Comments

As a general matter, we believe that student behavior should be addressed through positive interventions, not punitive discipline. Though we support the revision of subsection (A)(1)(b) to reflect "a focus on interventions and supports," the statute itself does not reflect this focus.

Further, the statute is not clear enough in its possible exemption of students with disabilities. AC is concerned that the statute does not inform parents and educators of the rights of students with disabilities in this regard.

Finally, The statute does not address the need of non-English speaking families to effective written and verbal communication when it comes to addressing discipline needs of English Language Learners.

Specific Concerns

Our specific suggestions follow. The underlined or stricken portions represent revisions as proposed; our suggested changes are tracked and in green.

Voice 504-522-2337 • Fax 504-522-5507 • Toll Free 1-800-960-7705 • www.advocacyla.org
8325 Oak Street • New Orleans, Louisiana 70118-2043
The Protection and Advocacy System for Louisiana

(A) General Preamble

(A)(1)(a) Every teacher and other school employee shall endeavor to hold every student accountable for their intentional behavior ~~to a strict accountability for any disorderly conduct~~ in school or on the playgrounds of the school, on the street or road. . .

(A)(1)(b) All public schools shall endeavor to address student behavior, with a focus on prevention, interventions and supports. . . .

(A)(2) Students with disabilities are provided with discipline protections under the federal Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973, and R.S. 17:1943 et seq. Nothing in this statute is to be read to supersede overrule any protection under any other state or federal law.

(A)(3)(b)(i) Detention means activities, assignments, or work, other than homework completed by the student on his or her own volition, held before the normal school day . . .

(A)(3)(b)(ii) Failure or refusal by a student to participate in assigned detention may ~~shall~~ subject the student to immediate suspension.

A(3) The Advocacy Center proposes including the following definitions at the appropriate subparagraphs for the following terms:

"Individualized Education Plan" is a plan or program developed in accordance with the Individuals with Disabilities in Education Act to ensure that a child who has a disability identified under the law and is attending an elementary or secondary educational institution receives specialized instruction and related services.

"Section 504 Plan" is a plan developed under Section 504 of the Rehabilitation Act of 1973 to ensure that a student who has a disability and is attending an elementary or secondary educational institution receives accommodations that will ensure academic success and access to the learning environment.

"Behavior Intervention Plan" is a plan developed and incorporated into an Individualized Education Plan that addresses problem behaviors or conduct related to the student's disability.

(A)(3)(e)(i) "In-school suspension" means removing a student from his normal classroom setting but maintaining him under supervision within the school Students participating in in-school suspension shall ~~may~~ receive credit for work performed during the in-school suspension. However, any student who fails to comply fully with the rules for in-school suspension may ~~shall~~ be subject to immediate suspension.

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Comment [1]: This provision should account for extenuating circumstances beyond the student's control.

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Comment [2]: We suggest that students completing work during in-school suspension receive "Shall" receive full credit instead of "may" for work performed. This will minimize the effects of lack of access to direct classroom instructions. If the student has access to all the needed material and he completes his work, full credit should be awarded.

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Comment [3]: Failure to comply may result from extenuating circumstances, including disability-related circumstances, or may be, under the circumstances, a minor infraction.

(A)(3)(h) "Suspension," also referred to as out-of-school suspension, means the temporary removal of a student from all classes of instruction on public school grounds and all other school-sponsored activities.

(B) Responding to Student Misconduct

(B)(1)(a)(iii) The form described should include a separate item that solicits whether the student has an Individualized Education Plan or a plan under section 504 of the Rehabilitation Act of 1973.

(B)(1)(a)(iv) The form described should include a separate item that solicits whether the student has an Individualized Education Plan or a plan under section 504 of the Rehabilitation Act of 1973.

(B)(1)(c)(i) When a student's behavior poses an immediate threat to the safety or physical well-being of any student or teacher, the teacher may have the student immediately removed from his classroom and placed in the custody of the principal or his designee. When a student's behavior prevents to orderly instruction of other students or violates the school's code of conduct, the teacher may have the student removed from the classroom and placed in the custody of the principal or his designee, provided other methods of discipline have been attempted prior to removal. Removal of a student from a classroom should be seen as a last resort unless the safety or well-being of the student or others is at risk.

In subjecting a student to discipline, a teacher and other school personnel must account for and abide by any relevant provisions contained in the student's Individualized Education Plan, Behavior Intervention Plan, or Section 504 Plan.

(B)(1)(c)(ii)(aa) Upon being sent to the principal's office pursuant to the provisions of this Subparagraph, the principal or his designee shall advise the student of his particular misconduct of which he is accused and the basis of such accusation and the student shall be given an opportunity at that time to explain his version of the facts. The principal or his designee then shall conduct a counseling session with the student as may be appropriate to establish a course of action, consistent with local education agency policy to identify and correct the behavior for which the student is being disciplined.

In carrying out the activities of this Subparagraph, the principal or his designee shall account for and abide by any relevant provisions contained in the student's Individualized Education Plan, Behavior Intervention Plan, or Section 504 Plan.

(B)(1)(c)(iii) Unless otherwise provided for in a student's Behavior Intervention Plan, Individualized Education Plan, or Section 504 Plan, a student in kindergarten through grade fifth removed from a class pursuant to this

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Comment [4]: Special Education law accounts for partial day exclusions; i.e., it is an exclusion (suspension) when a child is sent home during the day, suspending her from activities for the remainder of the day.

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Subparagraph shall not be permitted to return to the class for at least thirty minutes unless agreed to by the teacher initiating the disciplinary action. Unless otherwise provided for in a student's Behavior Intervention Plan, Individualized Education Plan, or Section 504 Plan, a student in grades six through twelve . . .

(B)(1)(c)(iii)(gg) Voluntary assignment to an alternative school.

(B)(1)(c)(v) Each local education agency may adopt a policy that requires the parent or legal guardian of a student removed from the classroom pursuant to this Subparagraph the opportunity to attend after school or Saturday intervention sessions with the student. Such policies must include exemptions for parents and legal guardians who demonstrate an inability to attend such sessions due to work; family obligations; disability or health matters pertaining to the parent, legal guardian, or a family member under his care; or other extenuating circumstances.

(B)(1)(d)(i) Upon the third removal from the same classroom pursuant to this Subparagraph, the teacher and the principal shall discuss the disruptive behavior patterns of the student and the potentially appropriate disciplinary measure or referral for assistance or interventions before the principal implements a disciplinary measure. The teacher and principal shall specifically consider whether the behaviors may be related to a disability, and it is appropriate to refer the student for evaluation for special education or other disability-related services, or to revision any plans or services already in place. If appropriate, a referral of the matter may be made to an appropriate school building level committee. In addition, a conference between the teacher or other appropriate school employee and the student's parent or legal guardian shall be required prior to the student being readmitted to that same classroom.

(B)(2)(a)(iv) A student whose presence in or about a school poses a continued danger to any person, shall be immediately removed from the school premises without the benefit of the procedure described hereinabove; however, the necessary procedure shall follow as soon as is practicable.

(B)(2)(d), which concerns repayment for damage to school property, disproportionately punishes students who are poor. We recommend its elimination or, in the alternative, provide for an alternate method of reimbursement or reconciliation if the student or family is unable to make financial restitution.

(B)(2)(f) When a student is suspended for a second time within one school year, the principal may require that a counseling session be held with the parent and student by the school counselor if a counselor is assigned or available to that school. In the event there is no school counselor available, the principal may require a conference between the parent, student, and all the student's teachers and the principal or other administrator. Before resorting to this conference, the

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Comment [5]: Without the word "voluntary," inclusion of this option implies that a student can be assigned to an alternative school without a suspension or expulsion, which is incorrect.

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Comment [6]: While the Advocacy Center believes that there are a number of circumstances under which a parent should not be penalized for not meeting such a requirement, and have suggested them here, in order to comply with federal law on reasonable accommodations, LEAs must provide exemptions for disability-related reasons, and the statute should reflect that.

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Comment [7]: While we understand the need to take immediate action to safeguard health and safety of other students and educators, property destruction—which is not defined and could be applied to relatively minor infractions—should be eliminated from this paragraph.

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principal or other school administrator must demonstrate that good-faith efforts to obtain the services of a counselor were unsuccessful.

(B)(3)(a)(i) Upon the recommendation by a principal for the expulsion of any student as authorized by statute or a local education agency code of conduct, a hearing shall be conducted by the superintendent or their designee within fifteen school days to determine the facts of the case and make a finding of whether or not the student is guilty of conduct warranting a recommendation of expulsion. Upon the conclusion of the hearing and upon a finding that the student is guilty of conduct warranting expulsion, the superintendent, or his designee, shall determine whether such student shall be expelled from the local education agency or if other corrective or disciplinary action shall be taken. The school must provide written notice to the student and his parent or legal guardian of the hearing. Such notice must advise the student and parent or legal guardian of the student's right to be represented by an advocate at the hearing.

(D) Local Education Agency Code of Conduct

(D)(5) Within their codes of conduct, and provided their actions are not otherwise prohibited by federal or state law, local education agencies have discretion to:
. . .

(E) Serious Disciplinary Incidents

(E)(2)(c) A student who is found carrying or possessing a knife with a blade less than two-and-a-half inches in length . . .

(E)(2)(d) The principal shall immediately suspend a student who is found carrying or possessing a knife the blade of which equals or exceeds two-and-a-half inches in length. . . .

E(4)(a) . . . However, such student shall provide the principal or his designee with a physician's order for the controlled substance or carry such prescription or order on his person. . . . .

17:416(B)(5)(a)(iii) The provisions of this Subparagraph shall be applicable to students provided special education services pursuant to Part I of Chapter 8 of this Title, or students who have an Individualized Education Plan or a Section 504 plan, only to the extent the provisions are not in conflict with the provisions of the student-specific plan, federal rules, regulations, and guidelines applicable to the education of exceptional students.

(F) The provisions of this Section shall be applicable to exceptional children provided special education services pursuant to Part I of Chapter 8 of this Title, or who have an Individualized Education Plan or a Section 504 Plan, to the maximum extent allowed by federal law and rules applicable to the education of

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Comment [8]: 18 USC 930 (g)(2) defining a "dangerous weapon" and Special education law differentiates between knives over and under 2.5 inches. We suggest this be raised to 2.5 to avoid confusion.

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exceptional children in the state. No policy adopted by the State Board of Elementary and Secondary Education applicable to exceptional children as provided in this Subsection shall be more restrictive than required by federal law and rules.

(L) Any and all notices or communications, whether written or oral, referred to in the foregoing sections of this statute, shall be made in a manner accounting for the language abilities of the student and the parent or legal guardian. The local education agency must account for limited English proficiency and/or disability in both making and receiving communications, and provide language- or disability-related accommodations where appropriate.

Thank you for the opportunity to submit these comments. If you have any questions, please do not hesitate to contact me at (504) 208-4681 or Debra Weinberg at (504) 717-2791.