

Questions and Answers: Distance Learning and School Discipline

April 27, 2021

The Minnesota Department of Education (MDE), Division of Assistance and Compliance, has developed this document to provide technical assistance to parents and school districts that have questions regarding distance learning and school discipline. The intention of this document is to provide helpful, general information to the public based on existing federal and state laws, current Minnesota executive orders and federal guidance. It does not constitute legal advice nor is it a substitute for consulting with a licensed attorney. The information below should not be relied upon as a comprehensive or definitive rendition of applicable state and federal law.

Question 1: What equity concerns should school districts and charter schools keep in mind when considering disciplinary action against students during the COVID-19 pandemic?

Answer: During the 2020-21 school year, due to public health concerns associated with the COVID-19 pandemic, school districts and charter schools are implementing Minnesota’s [Safe Learning Plan](#) and operating in three instructional models as appropriate: in-person, hybrid, or distance learning, as well as offering a distance learning model that meets the educational needs of students who choose not to receive in-person instruction.¹ Beginning in January and February 2021, Minnesota schools were able to choose to operate in an in-person learning model, if able to implement all mitigation strategies.²

Regarding school discipline considerations as students return to in-person learning, the U.S. Department of Education stated in a recent handbook on reopening schools:³

As more schools reopen for in-person instruction, districts and schools are revisiting their approach to school safety and inclusiveness, including discipline policies to ensure that those implemented are designed to best support and respond to students — including students with disabilities — returning to in-person instruction after the extended absence due to COVID-19. Research increasingly shows that school safety and discipline practices that create and sustain safe, stable, positive, inclusive, and identity-safe learning environments for all students are more effective in meeting students’ social, emotional, physical and mental health, and academic needs than zero tolerance exclusionary

¹ [Minn. Exec. Order No. 20-82](#) (July 30, 2020).

² MDE’s [Safe Learning Plan for the 2020-21 School Year](#) (last accessed April 12, 2021).

³ U.S. Department of Education (ED), [ED COVID-19 Handbook Volume 2: Roadmap to Reopening Schools Safely and Meeting All Students’ Needs](#), April 9, 2021, pg. 18-19, (last accessed April 12, 2021).

approaches. Further, safe and inclusive schools can provide the support required to reengage those students most disconnected from school during the pandemic.

Each year thousands of Minnesota students miss school due to suspensions and expulsion, and students of color, Indigenous students and students with disabilities are disproportionately impacted.⁴ In addition, the State of Minnesota has recognized that the challenges associated with periods of distance learning have made learning especially difficult for many of the same students disproportionately impacted by exclusionary school discipline practices, compounding the challenges faced by our students of color, Indigenous students and students receiving special education services.⁵ Dismissals from school are associated with negative student outcomes such as lower academic performance, higher dropout rates, failure to graduate on time, decreased academic engagement and future disciplinary exclusion, and therefore, alternatives to exclusionary school discipline practices should be utilized whenever possible.⁶

Question 2: What alternatives to exclusionary school discipline practices should school districts and charter schools consider when addressing student behavior and other needs as students return to in-person learning?

Answer: As schools reopen to in-person learning, students will need help to recover and catch up on learning. School districts and charter schools will need to address the needs of all students, including students with and without disabilities, who return to in-person learning with signs of regression, gaps in their learning, or indicators of trauma as a result of the closure of schools to in-person learning and other impacts of the COVID-19 pandemic.⁷

To mitigate and address student regression, learning gaps and trauma associated with the pandemic, school districts and charter schools are encouraged to provide general education recovery services,⁸ to utilize resources available to reduce out-of-school suspensions and to serve students in-person as consistently as possible. The following non-exhaustive list of resources is directed at reducing out-of-school suspensions:

- [Alternatives to suspension](#);⁹
- [A Resource Guide for Improving School Climate and Discipline](#);¹⁰

⁴ MDE aggregates, summarizes, and publishes the disciplinary incident data as well as student demographic data (grade, gender, race, ethnicity) for disciplinary actions (suspensions, exclusions and expulsions) by district and state totals, as well as a trend report of student disciplinary actions by district and state totals for the last three school years found at [Dangerous Weapons and Disciplinary Incidents Report](#) (June 2020) (last accessed April 14, 2021).

⁵ [Minn. Exec. Order No. 20-82](#) (July 30, 2020).

⁶ Achilles, McLaughlin, Croninger, 2007; Arcia, 2006; Christle, Jolivet & Nelson, 2005; Costenbader & Markson, 1998; Lee, Cornell, Gregory, & Fan, 2011; Raffaele-Mendez, 2003; Rodney et al., 1999; Skiba & Paterson, 1999.

⁷ [Minn. Exec. Order No. 20-94](#) (November 5, 2020).

⁸ For more information about providing general education recovery services to address student needs during and after the COVID-19 pandemic, please review MDE's [Guide to Addressing the Impact of the COVID-19 Pandemic on Students with Disabilities](#) (last accessed April 14, 2021).

⁹ MDE's webpage, [Alternatives to Suspension](#) (last accessed April 9, 2021).

¹⁰ U.S. Department of Education, [Guiding Principles: A Resource Guide for Improving School Climate and Discipline](#), January 2014 (last accessed April 9, 2021).

- [Social emotional learning](#);¹¹
- [Positive Behavior Supports and Interventions \(PBIS\)](#);¹² and
- [Restorative practices](#).¹³

The U.S. Department of Education has recently stated:¹⁴

Professional development for all educators and school staff should support individuals in identifying and addressing bias in themselves and in their communities, and help school teams to replace exclusionary discipline practices with social and emotional supports best suited to address the impacts of COVID-19, including [restorative justice approaches](#), social emotional learning, and [positive behavioral intervention and supports](#). Positive discipline practices should acknowledge the lived experience of all students, including implementing culturally inclusive dress codes that do not perpetuate gender stereotypes, and creating an environment that promotes belonging.

Question 3: If a school district or charter school prohibits a student from receiving in-person learning for reasons unrelated to public health mitigation efforts, is that considered a dismissal (suspension, exclusion or expulsion) under the Pupil Fair Dismissal Act (PFDA)?

Answer: Yes. If a student engages in willful conduct¹⁵ that leads to disciplinary action, and a school district or charter school prohibits the student from attending school in-person, the student has been subject to a dismissal under the PFDA.¹⁶ The PFDA defines dismissal as the denial of the current educational program to any student, including exclusion, expulsion, and suspension.¹⁷ The PFDA provides due process and equal protection

¹¹MDE’s webpage, [Social Emotional Learning](#) (last accessed April 13, 2021). *See also* Collaborative for Academic, Social, and Emotional Learning (CASEL). [What is SEL?](#) (Dec. 2020).

¹² MDE’s webpage, [Positive Behavioral Interventions and Supports](#), (last accessed April 9, 2021) and [Minnesota PBIS webpage](#) (last accessed April 9, 2021).

¹³ MDE’s webpage, [Restorative Practices](#) (last accessed April 9, 2021).

¹⁴ U.S. Department of Education, [ED COVID-19 Handbook Volume 2: Roadmap to Reopening Schools Safely and Meeting All Students’ Needs](#), April 9, 2021, pg. 23 (last accessed April 12, 2021).

¹⁵ Under the PFDA, a student may be subject to a dismissal from school (suspension, exclusion, or expulsion), if the student engages in certain identified willful conduct. *See* Minn. Stat. § 121A.45, subd.2 (outlining student conduct which constitutes grounds for dismissal as: (a) willful violation of any reasonable school board regulation. Such regulation must be clear and definite to provide notice to pupils that they must conform their conduct to its requirements; (b) willful conduct that significantly disrupts the rights of others to an education, or the ability of school personnel to perform their duties, or school sponsored extracurricular activities; or (c) willful conduct that endangers the pupil or other pupils, or surrounding persons, including school district employees, or property of the school).

¹⁶ *See* Minn. Stat. § 121A.41, subd. 2. *See also* Minn. Stat. § 121A.41, subd. 10. (stating a “[s]uspension means an action by the school administration, under rules promulgated by the school board, prohibiting a pupil from attending school for a period of no more than ten school days.” *See also* Minn. Stat. § 121A.41, subds. 4 and 5, and Minn. Stat. § 121A.47 (defining exclusion and expulsion as “[e]xclusion means an action taken by the school board to prevent enrollment or reenrollment of a pupil for a period that shall not extend beyond the school year,” and “[e]xpulsion’ means a school board action to prohibit an enrolled pupil from further attendance for up to 12 months from the date the pupil is expelled”).

¹⁷ Minn. Stat. § 121A.41, subd. 2. The definition of dismissal does not include removal from class.

of the law to any Minnesota public school student, including charter school students, involved in a dismissal proceeding which may result in suspension, exclusion, or expulsion.¹⁸

Question 4: What protections are afforded to students when dismissed (suspended, excluded, or expelled) from in-person learning for disciplinary purposes, unrelated to public health mitigation efforts?

Answer: When a student is dismissed from in-person learning for engaging in willful conduct which constitutes grounds for dismissal, the student is entitled to the protections afforded by the PFDA, which may include an informal administrative conference,¹⁹ written notice of the grounds for suspension,²⁰ alternative educational services,²¹ a readmission plan,²² providing the superintendent with a reason for the dismissal,²³ and parent notification and mental health screening.²⁴

¹⁸ The PFDA is found at Minn. Stat. §§ 121A.40 – 121A.56.

¹⁹ See Minn. Stat. § 121A.46, subd. 1 (providing that school administration shall not suspend a student from school without an informal administrative conference with the student and that such conference shall take place before the suspension, except where it appears that the student will create an immediate and substantial danger to self or to surrounding persons or property, in which case the conference shall take place as soon as practicable following the suspension).

²⁰ See Minn. Stat. § 121A.46, subd. 3 (providing that a written notice of suspension containing the grounds for suspension, a brief statement of the facts, a description of the testimony, a readmission plan, and a copy of the PFDA shall be personally served upon the student at or before the suspension is to take effect and upon the student’s parent or guardian by mail within 48 hours of the administrative conference and directing the district to make reasonable efforts to notify the parents of the suspension by telephone as soon as possible following the suspension and in the event a student is suspended without an informal administrative conference on the grounds that the student will create an immediate and substantial danger to surrounding persons or property, the written notice shall be served upon the student and the student’s parent or guardian within 48 hours of the suspension).

²¹ See Minn. Stat. § 121A.41, subd. 11 (defining alternative education services as services that may include, but are not limited to, special tutoring, modified instruction, other modifications or adaptations, instruction through electronic media, special education services as indicated by appropriate assessment, homebound instruction, supervised homework, or enrollment in another district or in an alternative learning center selected to allow the student to progress toward meeting graduation requirements although in different setting). See also, Minn. Stat. § 121A.55(a) (informing that alternative educational services, if the student wishes to take advantage of them, must be adequate to allow the student to make progress towards meeting the graduation standards and help prepare the student for readmission).

²² See Minn. Stat. § 121A.41, subd. 10 and Minn. Stat. § 121A.47, subd. 14(b) (indicating each suspension action may include a readmission plan which shall include, where appropriate, a provision for implementing alternative educational services upon readmission and may not be used to extend the current suspension or obligate a parent to provide a sympathomimetic medication for the parent’s student as a condition of readmission nor obligate a parent or guardian to provide psychotropic drugs to their student or to consent to a psychiatric evaluation, screening or examination of the student as a ground, but itself, to prohibit the student from attending class or participating in a school-related activity, or a basis of a charge of child abuse, child neglect or medical or educational neglect).

²³ See Minn. Stat. § 121A.41, subd. 10 (providing that if a suspension is longer than five days, the suspending administrator must provide the superintendent with a reason for the longer suspension).

²⁴ See Minn. Stat. § 121A.45, subd. 3 (providing that if a student’s total days of removal from school exceeds ten cumulative days in a school year, the district shall make reasonable attempts to convene a meeting with the student and the student’s parent or guardian before subsequently removing the student from school and, with the permission of the parent or guardian, arrange for a mental health screening for the student). For a short overview of suspension requirements and the PFDA, review MDE’s [Q & A: Pupil Fair Dismissal Act \(PFDA\)](#) (last accessed April 9, 2021).

If a student is dismissed from in-person learning, or prevented from enrolling in in-person learning, for engaging in willful conduct which constitutes grounds for dismissal, and that dismissal is over 10 days long, the dismissal may constitute an expulsion or exclusion, and the student is entitled to additional protections.²⁵

Question 5: What additional protections are afforded to students with disabilities when dismissed (suspended, excluded or expelled) from in-person learning for disciplinary purposes, unrelated to public health mitigation efforts?

Answer: In addition to protections afforded to students by the PFDA, if a student with a disability who is receiving special education and related services under an individualized education program (IEP) is prohibited from attending in-person instruction for a reason other than protecting public health, the student is entitled to the discipline protections afforded by the Individuals with Disabilities Education Act (IDEA)²⁶ and Section 504,²⁷ including, as appropriate, a manifestation determination upon any change of placement,²⁸ a functional behavioral assessment,²⁹ a behavioral intervention plan³⁰ and the continued provision of a free appropriate public education.³¹ Further, if a student’s behavior is impeding his or her learning or that of others, the student’s IEP team must consider positive behavioral interventions and supports, and other strategies, to address that behavior.³²

Question 6: Could a school district or charter school use distance learning as alternative educational services during a student’s dismissal (suspension, expulsion, or exclusion)?

Answer: Yes. A student who has been dismissed from in-person learning may (and if the dismissal exceeds five consecutive school days, must) be provided alternative educational services, including instruction through

²⁵ See Minn. Stat. § 121A.47 (stating that a student is then entitled to a written notice of intent to take action, the right to a hearing in front of an impartial hearer within ten days of the written notice at a convenient time and place, access to the student’s records, the right to compel testimony and present evidence, and a readmission plan).

²⁶ 34 C.F.R. § 300.530 and the U.S. Department of Education, Office of Special Education and Rehabilitation Services (OSERS), [Questions and Answers on Discipline Procedures](#), revised June 2009 (last accessed April 9, 2021).

²⁷ 34 C.F.R. § 104.4. See also, *Dunkin (MO) R-V Sch. Dist.*, 52 IDELR 138, 109 LRP 24381 (Complaint No. 07-08-1210) (O.C.R. January 8, 2009) (stating “the Section 504 implementing regulations allow for disciplinary removals of less than 10 days without the need to reevaluate a student and determine whether the misconduct was caused by the student’s disability ... however, a series of suspensions that are each 10 days or fewer in duration may create a pattern of exclusions that constitutes a significant change in placement”).

²⁸ 34 C.F.R. § 300.530(e) and Minn. Stat. § 121A.43(d).

²⁹ See 34 C.F.R. § 300.530(f); Minn. R. 3525.0210, subd. 22 (defining functional behavioral assessment as a process for gathering information to maximize the efficiency of behavioral supports and including a description of problem behaviors and the identification of events, times, and situations that predict the occurrence and nonoccurrence of the behavior and also identifies the antecedents, consequences, and reinforcers that maintain the behavior, the possible functions of the behavior and possible positive alternative behaviors and includes a variety of data collection methods and sources that facilitate the development of hypotheses and summary statements regarding behavioral patterns).

³⁰ See 34 C.F.R. § 300.530(f).

³¹ See 34 C.F.R. §§ 300.101 and 300.536 (specifying that a free appropriate public education must be available to all students with disabilities, including students with disabilities who have been suspended or expelled from school).

³² 34 C.F.R. § 300.324(a)(2)(i) and Minn. R. 3525.2810, subp. 2B(1).

electronic media or other modes of instruction.³³ Distance learning may be considered an alternative educational service during a student’s dismissal (suspension, expulsion, or exclusion).³⁴

Question 7: When a student is dismissed from receiving in-person instruction for reasons unrelated to public health mitigation efforts, and the school district or charter school provides alternative educational services in the form of distance learning, is that still considered an out-of-school suspension?

Answer: Yes. When a student engages in willful conduct which results in a dismissal from in-person learning for more than one day up to ten school days, for reasons unrelated to public health mitigation efforts, the dismissal is an out-of-school suspension, even if the student receives distance learning as an alternative educational service.³⁵ Out-of-school suspensions should be reported in the Disciplinary Incident Reporting System (DIRS) in accordance with guidance for DIRS reporting during the 2020-21 school year.³⁶

Question 8: Who is exempt from Minnesota’s executive orders requiring face coverings to be worn indoors in school buildings and district offices or riding on school transportation vehicles?

Answer: [Minnesota Executive Order 20-81](#) provides exemptions to the face covering requirement indoors in school buildings and district offices or riding on school transportation vehicles, as follows:

Individuals with a medical condition, mental health condition, or disability that makes it unreasonable for the individual to maintain a face covering. This includes, but is not limited to, individuals who have a medical condition that compromises their ability to breathe, and individuals who are unconscious, incapacitated, or otherwise unable to remove a face covering without

³³ See Minn. Stat. § 121A.43(c) (providing that a student with a disability shall be provided alternative educational services to the extent a suspension exceeds five consecutive school days). See also, Minn. Stat. § 121A.41, subd. 11 (defining alternative educational services to include, but not limited to special tutoring, modified curriculum, modified instruction, other modifications or adaptations, instruction through electronic media, special education services as indicated by appropriate assessment, homebound instruction, supervised homework, or enrollment in another district or in an alternative learning center ... selected to allow the [student] to progress toward meeting graduation standards ... although in a different setting).

³⁴ But see Minn. Stat. § 124D.095, online learning options (describing online learning option enrollment as parent/student choice by stating, “[a] student may apply for full-time enrollment in an approved online learning program under section 124D.03 or 124D.08 or chapter 124E . . . No school district or charter school may prohibit a student from applying to enroll in online learning”).

³⁵ See Minn. Stat. § 121A.41, subd. 10 (defining suspension as an action by the school administration, under rules promulgated by the school board, prohibiting a student from attending school for a period of no more than ten school days, except where the school district or charter school is in the process of initiating an expulsion, in which case the school administration may extend the suspension to a total of 15 school days. Suspension does not apply to dismissal from school for one day or less (general education student) except as provided in federal law for a student with a disability (special education). But see, U.S. Department of Education, Office of Civil Rights, [Master List of Civil Rights Data Collection \(CRDC\) Definitions](#) (last accessed April 7, 2021) (defining in-school suspension as in instance in which a student is temporarily removed from his or her regular classroom(s) for at least half a day for disciplinary purposes, but remains under the direct supervision of school personnel meaning school personnel are physically in the same location as the students under their supervision).

³⁶ For more information about [DIRS reporting](#) (last accessed April 13, 2021).

assistance. These individuals should consider using alternatives to face coverings, including clear face shields, and staying at home as much as possible.

Further, students in grades kindergarten through grade 12 may use face shields, in lieu of face covering, if they are “unable to tolerate a face covering due to a developmental, behavioral, or medical condition” or for students in kindergarten through grade 8, “when wearing a face covering is otherwise problematic for the student.”³⁷

Question 9: What should a school district or charter school do if a student is unable or refuses to wear a face covering?

Answer: If possible, exempt students, staff or other persons should consider using alternatives to face coverings, including clear face shields, and staying at home as much as possible.³⁸ For students with a medical or other health condition, disability, or mental health, developmental, or behavioral need that prevents those students from being able to tolerate wearing a face covering, all learning options offered by their school district or charter school are available, and students exempt from the requirement to wear a face covering may not be required to move to distance learning for being unable to tolerate wearing one.³⁹ For students receiving services under the Individuals with Disabilities Education Act (IDEA), the student’s IEP team should also review and revise the student’s IEP to address information provided to, or by, the parents related to the student’s ability to wear a face covering. As set forth in the [MDH 2020-2021 Planning Guide for Schools](#), school leaders should work with students who cannot tolerate face coverings due to legitimate health reasons (e.g., health conditions, disability) and work to create a school climate that will combat stigma and bullying of these students.

The U.S. Department of Education has stated that school districts and charter schools should develop policies for how to appropriately address situations when a student is not wearing a mask or is not wearing a mask correctly.⁴⁰

The U.S. Department of Education has further stated:⁴¹

³⁷ [Minn. Exec. Order No. 20-81](#) (July 22, 2020); MDE’s [Special Education Due Process Guidance for the 2020-21 School Year](#); and see also MDE’s [Safe Learning Plan for the 2020-21 School Year](#), pg. 17 (last accessed April 12, 2021) (stating “[s]tudents who have medical conditions, mental health condition, or disability that makes it unreasonable for the individual to maintain a face covering are not required to wear a face covering”); see also U.S. Department of Education, [Questions and Answers for K-12 Public Schools in the Current COVID-19 Environment](#), September 28, 2020 (last accessed April 12, 2021) (stating “[a]nd in some instances, such as where a child with a disability has extreme sensory issues and cannot tolerate wearing a face covering in school or at all, OCR also recognizes that enforcing a face covering requirement could impede the child’s ability to receive the FAPE required by Section 504”).

³⁸ [Minn. Exec. Order No. 20-81](#) (July 22, 2020).

³⁹ [Minn. Exec. Order No. 20-94](#) (November 5, 2020); see also MDE’s [Special Education Due Process Guidance for the 2020-21 School Year](#) (Sept. 23, 2020) (last accessed April 13, 2021).

⁴⁰ U.S. Department of Education, [ED COVID-19 Handbook Volume 1: Strategies for Safely Reopening Elementary and Secondary Schools](#), February 12, 2021, pg. 9, (last accessed April 14, 2021).

⁴¹ U.S. Department of Education, [ED COVID-19 Handbook Volume 1: Strategies for Safely Reopening Elementary and Secondary Schools](#), February 12, 2021, pg. 9, (last accessed April 14, 2021).

Schools should carefully consider appropriate responses to students with disabilities whose disability may impact their ability to wear a mask, thus ensuring that students with disabilities continue to receive FAPE. For example, if a student's difficulty wearing a mask is related to an emotional disturbance or sensory disability, the school's response should be different from a response for a student without a disability.

For students without a medical or other health condition, disability, or mental health, developmental, or behavioral need that prevents them from being able to tolerate wearing a face covering, school districts and charter schools are encouraged to use positive behavioral strategies and to teach, model and change the cultural norm to reinforce the use of face coverings and/or face shields for students.⁴²

Question 10: May a school district or charter school discipline a student who is not exempt but refuses to comply with the face covering executive orders?

Answer: For students who are able to wear a face covering but refuse to do so, school districts and charter schools are strongly discouraged from using suspension but may require such students to move to distance learning.⁴³ Distance learning was created as a response to the COVID-19 pandemic in order to protect the health, safety, and wellness of our students, staff, and community and continues to be a widespread, equitable learning option for families concerned about in-person learning.⁴⁴ As permitted by Minnesota Executive Order 20-94, distance learning is also an equitable option for students who are able to wear a face covering but refuse to do so. Under these circumstances, requiring a student to move to distance learning is not a disciplinary dismissal under the PFDA but is part of a school district or charter school's efforts to mitigate the spread of COVID-19. A student may opt to return to in-person learning by complying with the face covering executive orders or when the executive orders requiring a face covering in Minnesota schools are no longer in effect.

School districts and charter schools should refer to guidance for DIRS reporting during the 2020-21 school year on reporting students required to move to distance learning as part of public health mitigation efforts.⁴⁵

If a student with a disability who is able to wear a face covering but refuses to do so is required to move to distance learning, the school district or charter school must also continue to ensure that the student receives a free appropriate public education.⁴⁶ To address the student's anticipated needs related to a move to distance learning, the student's IEP team or Section 504 team may need to meet to review and revise the student's education program, as appropriate, to provide for additional special education and related services or

⁴² See [MDH 2020-2021 Planning Guide for Schools](#), pages 8-12. See also, MDE's [Special Education Due Process Guidance for the 2020-21 School Year](#) (both last accessed April 14, 2021).

⁴³ [Minn. Exec. Order No. 20-94](#) (November 5, 2020).

⁴⁴ [Minn. Exec. Order No. 20-82](#) (July 30, 2020).

⁴⁵ For more information about [DIRS reporting](#) (last accessed April 13, 2021).

⁴⁶ 34 C.F.R. §§ 300.17 and 300.101; 34 C.F.R. § 104.33; Minn. Stat. § 125A.03 and Minn. Stat. § 125A.08.

supplementary aids and services, including positive behavioral supports and strategies to help the student develop the skills needed to follow public health guidance.⁴⁷

If a student without a disability who is able to wear a face covering but refuses to do so is required to move to distance learning, that student may also benefit from positive behavioral interventions and supports, mental health services, or other services to support the student's wellbeing and to enable the student to develop the skills needed to follow public health guidance.⁴⁸

⁴⁷ 34 C.F.R. § 300.324.

⁴⁸ See, e.g., the list of resources provided in response to Question 2, including [Social Emotional Learning](#), [Positive Behavioral Interventions and Supports](#) and [Restorative Practices](#).