



EDUCATION LAW CENTER

PUBLIC COMMENTS

OCDEL's Proposed Announcement 15-#1,

"Reduction of Expulsion and Suspension in Early Childhood Programs"

Submitted by the Education Law Center

October 23, 2015

"A child's early years set the trajectory for the relationships and success they will experience for the rest of their lives, making it crucial that children's earliest experiences truly foster – and never harm – their development."

U.S. Departments of Justice and Education Policy Statement
On Expulsion and Suspension Policies in Early Childhood Settings (December 2014)

Thank you for the opportunity to provide public comment on the Office of Child Development and Early Learning (OCDEL) Announcement 15-#1, *Reduction of Expulsion and Suspension in Early Childhood Programs* ("Proposed Announcement"). The Proposed Announcement, focused on the exclusion—suspension and expulsion¹—of young children from early childhood programs seeks to align Pennsylvania policy with recent federal guidance promulgated jointly by the U.S. Departments of Justice and Education, *Policy Statement on Expulsion and Suspensions Policies in Early Childhood Settings* (December 2014) (hereinafter "Federal Guidance"). It is an important first step, and with our recommended changes, it will truly make a difference for children in Pennsylvania.

The Education Law Center ("ELC") is a non-profit, legal advocacy organization dedicated to ensuring that all Pennsylvania's children, from birth through age twenty one, have access to a quality public education program, including appropriate early childhood education and early intervention services. For the past forty years, our Center has provided legal advice, consultation and technical assistance to thousands of parents, advocates and other professionals on issues of public education, focused on the most at risk populations—children of color, children in poverty, children with disabilities, English language learners, children in the child welfare and juvenile justice system, and children experiencing homelessness.

We provide legal consultation to the Statewide Coalition of Early Intervention Advocates, dedicated to pressing for state and regional systemic reforms for Pennsylvania's youngest children. We also work closely with the Bridges Collaborative in Allegheny County and the Children's Work Group in Philadelphia to press for statewide reforms that protect the rights of young children to equal access to quality early childhood programs, with a focus on those most at risk. ELC is also a sponsoring organization of the Pre-K for PA

¹ The Proposed Announcement adopts the definition of "suspension" and "expulsion" from Pennsylvania's school code, applicable to school-age students. 22 Pa. Code Chapter 12. It defines "suspension" as "removal of a child from participation in an early childhood program for 1-10 consecutive programming days in response to a behavioral incident(s)." It goes on to define, "expulsion" as "removal from an early childhood program in response to a behavioral incident(s) for a period that exceed 10 program days or terminating a child from services." (Proposed Announcement p. 1). We object to the use of this school-age definition and continue to assert that suspensions and expulsions in early childhood settings are not developmentally appropriate and in any case, the definitions should be evaluated in light of early childhood evidenced-based, developmentally appropriate practices.

campaign and is a strong voice for at-risk children in early pre-K programs. We work collaboratively with OCDEL and have participated in the Early Intervention Policy and Leadership forums for the past several years at OCDEL's invitation.

For decades, the Education Law Center has also been at the forefront of school-age reforms in school discipline. Again, on behalf of the most at-risk students, ELC works to press for systemic reforms to school discipline that address issues of access and equity and promote positive school climates. Specifically, we are working closely with the Pennsylvania School Climate Coalition, the ACLU, the National Girls Initiative, and a number of other state, local, and national groups to decrease and eliminate school exclusions for school-aged students and press for systemic reforms to address issues of racial, disability and gender disproportionality.

These comments are informed by this extensive experience and are submitted on behalf of the hundreds of children and families we serve.

Introduction

We are pleased that the Commonwealth has announced its commitment to decrease exclusionary discipline in early childhood programs across Pennsylvania. The Proposed Announcement is an important first step to align Pennsylvania's policies and practices with the recent Federal Guidance and current evidence-based research. We urge OCDEL to establish overarching statewide policies and practices, consistent with the Federal Guidance, that support the use of positive and preventative measures, responses that are developmentally appropriate, and strategies to address racial disproportionately. Most importantly, **ELC strongly urges OCDEL to prohibit the disciplinary exclusion of any young children by an early childhood program.**

Before offering our specific concerns, **we want to acknowledge the challenge OCDEL faces** in creating a policy that conforms to legal standards and implements developmentally appropriate policies and practices to decrease exclusionary practices in early childhood programs. This is particularly challenging, given the State's concomitant commitment and obligation to promote the inclusion of all young children in early childhood programs and an overarching goal to support the healthy development, education, safety and well-being of all young children.

This Proposed Announcement is timely. Recent national data, and emerging Pennsylvania data, show increasing numbers of children are being pushed out and excluded from early childhood programs through the use of suspensions and expulsions. Most disturbing to us is the trend of stark disparities within these discipline practices based on race, gender and disability.² This is particularly troubling given that exclusionary practices are associated with immediate negative developmental and educational progress, as well as long-term life outcomes. Not only do these practices hinder social-emotional and behavioral development, they also remove children from early learning environments and the corresponding cognitively enriching experiences that contribute to healthy development and academic success later in life.

² Recent data indicate that African-American boys make up 18% of preschool enrollment, but 48% of preschoolers suspended more than once. Hispanic and African-American boys combined represent 46% of all boys in preschool, but 66% of boys suspended.

In short, given the significant negative effects of exclusionary discipline and the disparate impact of discipline practices on young children in early childhood programs, we urge OCDEL to promulgate a comprehensive, statewide, coordinated, integrated policy, applicable across all early childhood programs, that is consistent with the Federal Guidance and reflects OCDEL's commitment to ultimately eliminating all disciplinary exclusions in early childhood programs.

Specifically, we recommend OCDEL revisit the Proposed Announcement to develop a statewide policy set forth in one comprehensive document that includes: (1) clear state-level goals, guidance, and policies for addressing racial disproportionality and eliminating exclusions; (2) mandated data collection, monitoring and enforcement; (3) targeted professional development; and (4) due process rights.

Priority Areas of Concern

Our concerns about the Proposed Announcement's legality and effectiveness and corresponding recommended actions can be categorized into four priority areas:

- 1) **Lack of Coordinated and Integrated State-Level Policy.** The Proposed Announcement does not include an overarching, coordinated, statewide policy, applicable across all early childhood programs, that reflects OCDEL's commitment to eliminating all exclusions in early childhood programs. Nor does it set forth specific goals, or policies and guidance to meet those goals, through the use of developmentally appropriate, race positive, gender responsive, trauma informed alternatives to exclusionary discipline.

Recommended Action:

- i. The policy should make an explicit commitment to decreasing and ultimately eliminating all exclusions in early childhood programs across Pennsylvania, with a focus on eliminating racial and disability disproportionality.
 - ii. OCDEL should convene a group of state and local stakeholders, including policymakers, educators, parents, and behavioral and mental health specialists, charged with developing short and long term goals for addressing inequities often caused by highly subjective and vague discipline policies and eliminating expulsion and suspension in early childhood programs. These goals should be data driven. (See Federal Guidance, page 9, for examples of such goals)
 - iii. The policy should mandate interagency collaboration and promote increased understanding of the interagency resources and overlapping legal responsibilities to young children, including those who have developmental delays, limited English language proficiency, are experiencing housing instability or are involved in the child welfare system.
 - iv. The policy should include explicit reference to the reciprocal collaborative obligations between and among early childhood providers, the early intervention service system and the Department of Human Services to identify and refer young children with behavioral challenges for early intervention and/or behavioral health services. (See Announcement EI-10-#08 "Amended Behavior Supports Announcement for Young Children.")
- 2) **Lack of a Coordinated and Integrated Data System:** The Proposed Announcement should address the State's need to collect, report and monitor statewide data on the exclusion of young children from

early childhood programs. Despite multiple data collection and reporting systems across early childhood programs, the Proposed Announcement lacks a commitment to mandated data collection and reporting as part of an integrated and coordinated system that accurately reflects exclusionary practices.

Recommended Action:

- i. OCDEL should develop a coordinated and integrated statewide system for collecting and publicly reporting disaggregated data on early childhood exclusionary disciplinary practices across all early childhood programs. The Proposed Announcement should reflect the State's expectation that this data be collected and reported by local programs and that it be aligned with K-12 data systems³. The Policy should also include information about OCDEL's policies for monitoring and enforcement.
 - ii. The data should track the number of suspensions, expulsions, and the reason for each exclusion. The data should be disaggregated by race, gender, age, English language learner status, and disability. This tracking system could be piloted through existing early childhood/early intervention data programs.
- 3) **Increased Professional Development and Support for Alternatives to Exclusion:** The Proposed Announcement reinforces the State's long-standing commitment to positive preventative measure, behavior supports and alternatives to exclusionary discipline. With this commitment, the policy also needs to ensure that early childhood professionals receive the targeted professional development and support needed to use preventative measures and responses and to ensure that they are developmentally appropriate, race positive, gender responsive and trauma informed.

Recommended Action:

- i. The Proposed Announcement should require early childhood programs across the Commonwealth to make targeted professional development a key feature of their discipline policy.
 - ii. Through EITA, the PA Key and other state programs and supports, OCDEL should ensure that professional development for early childhood program and providers include information about the negative consequences of exclusionary discipline, as well as, strategies and resources to promote the wellbeing and mental health of all children, including developmentally appropriate, trauma informed, race positive and gender responsive alternatives to exclusionary discipline. *See Federal Guidance, page 10, for sample interventions.*
 - iii. OCDEL should further interagency collaboration and support by providing early childhood programs with cost-effective and efficient access to behavioral and mental health consultants with expertise in early childhood development. (*See Federal Guidance – Appendix III*).
- 4) **Lack of Statewide Guidance and Dissemination of Due Process Rights and Protections:** The Proposed Announcement fails to provide a statewide, interagency coordinated system of due process protections

³ In many cases, public preschool programs are already required to collect data for purposes of Civil Rights Data Collection (CRDC), *see also*, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and under the Department of Education's Organization Act, 20 U.S.C. 3413.

to ensure that young children who are being excluded from early childhood programs are afforded basic due process rights, as well as due process protections guaranteed by federal and state laws. Specifically, it fails to raise or address the special legal protections afforded to young children with disabilities when exclusionary discipline is proposed.

Recommended Actions:

- i. OCDEL should create a statewide, interagency, policy that sets forth the due process procedures that protect the rights of children subjected to exclusionary discipline, and ensures all the rights and protections guaranteed to them by myriad federal and state laws, including rights that protect against discrimination based on race and national origin.⁴ The policy should provide explicit guidance to ensure that programs which exclude children with disabilities are complying with the legal requirements governing discipline for misconduct caused by, or related to, a child's disability.⁵
- ii. OCDEL should develop model policies, resources and rights-based tools that are available and accessible to all parents, including parents with limited English proficiency.⁶ We urge OCDEL to integrate these due process protections into existing rights-based information communicated to parents and providers. OCDEL should include provisions that require local agencies to inform and engage parents around disciplinary policies and their rights to due process.

Conclusion

Given the importance of access to critical early education services for the youngest, most vulnerable children, we respectfully recommend that OCDEL not promulgate this Announcement as proposed. Instead, we suggest you convene a working group of key stakeholders to inform the development of the missing, but critical provisions of this Proposed Announcement. We encourage OCDEL to use existing administrative forums, including the State Interagency Coordinating Council, to assist with the development and implementation of the statewide policy. We also urge OCDEL to listen and consider the voices of diverse parents and providers who live and work with the children being excluded.

With a strong state policy and a commitment to inclusive high quality early childhood programs that use developmentally appropriate, race positive, gender responsive, trauma informed practices as alternatives to exclusionary discipline, Pennsylvania will be poised to ensure that all of our youngest learners have the opportunities and experiences they need to learn and succeed.

Respectfully submitted,
Nancy A. Hubley
Nancy A. Hubley
Pittsburgh Director
Education Law Center

⁴ These include Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000 (d-7); Title IX, 20 U.S.C. §§1681-1688; Individuals with Disabilities Education Act, 20 U.S.C. §§1400 et seq.; Title II and Title II of the Americans with Disabilities Act, 42 U.S.C. §§12131-12134; and §§12181-12189 and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794.

⁵ This includes guidance on implementing reasonable modifications to policies, practices or procedures to ensure that children with disabilities are not being excluded for disability related behaviors. See 34 C.F.R. 104.4; 104.38; 28 C.F.R. 35.130(b)(1)(7).

⁶ Under the reauthorized Child Care and Development Block Grant Act of 2014, states are required to disseminate consumer education information to parents, the general public and child care providers. These efforts must include positive behavior models, and policies on the exclusion of young children in programs receiving assistance under the Child Care and Development Fund.