



Memorandum

Date: January 7, 2015
To: Senate Committee on Early Learning and K-12 Education
From: Ailey Kato, Senate Committee on Early Learning and K-12 Education Staff
Re: Student Discipline Interim Project

As a 2014 interim project, Senate Education Committee Staff examined current student discipline trends and issues. This memorandum summarizes Washington law, federal law, recent reports, and other state legislation regarding student discipline.

Washington law overview. Chapter 28A.600 RCW provides the majority of student discipline law in Washington. This chapter includes provisions regarding suspensions and expulsions, including the length of this type of discipline, types of behavior that mandate or allow for this type of discipline, due process requirements, and the use of alternative forms of punishment.

In 2013, the Legislature passed ESSB 5946, which made changes to student discipline law. These changes included:

- Ending indefinite expulsions and suspensions
- Limiting expulsions and suspensions to one year in length
- Requiring the conversion of emergency expulsions to another form of corrective action within 10 days
- Encouraging school districts to convene reengagement meetings after an expulsion or suspension
- Requiring the Office of Superintendent of Public Instruction (OSPI) to disaggregate data by certain subgroups
- Creating a Student Discipline Task Force to develop standard definitions for student disciplinary actions for data collection

Student Discipline Task Force. As ESSB 5946 (2013) requires, a Task Force was formed and began meeting in September 2013. The Task Force includes a number of stakeholders, and it has worked on standardizing discipline categories, interventions, and mandatory data elements for the existing statewide data collection system (CEDARS). Based on the Task Force's work, OSPI and the K-12 Data Governance Group will incorporate these new standards into CEDARS and will begin collecting data based on these new standards during the 2015-16 school year. The Task Force had its last meeting in December 2014, and it plans to disseminate its final report at the end of January 2015.

Federal law. In January 2014, the U.S. Department of Education and the U.S. Department of Justice issued a “Dear Colleague” letter to provide guidance on student discipline to public elementary and secondary schools.¹ It explained that federal law “prohibits public school districts from discriminating in the administration of student discipline based on certain personal characteristics.”² The letter focused on discrimination based on race but noted that federal law also prohibits discriminatory discipline based on other protected classes such as disability, religion, and sex.

According to data collected by the Office of Civil Rights, “students of certain racial or ethnic groups tend to be disciplined more than their peers.”³ “For example, African-American students without disabilities are more than three times as likely as their white peers without disabilities to be expelled or suspended.”⁴

Additionally, the letter noted that a number of studies have suggested a correlation between expulsions and suspensions and “an array of serious educational, economic, and social problems, including school avoidance and diminished educational engagement; decreased academic achievement; increased behavior problems; increased likelihood of dropping out; substance abuse; and involvement with juvenile justice systems.”⁵

The Departments explained that it would investigate possible discriminatory student discipline policies and practices based on complaints from students, parents, and community members.

Recent updates and reports. Three updates and reports were published in 2014 that have focused on the issue of student discipline both locally and nationally.

OSPI Discipline Data. In December 2014, OSPI provided the Senate Committee on Early Learning and K-12 Education a statewide summary of student discipline data reported in CEDARS. OSPI presented data disaggregated by race/ethnicity, grade, gender, bilingualism, income, and special education status. This data is attached as an appendix.

Washington Appleseed Update. Washington Appleseed, a nonprofit group that works to address social and economic problems, published a 2014 update to its 2012 report titled “Reclaiming Students: The Educational and Economic Costs of Exclusionary Discipline in Washington State.”⁶ The 2014 update looks at 2012-13 discipline data from nine school districts throughout the state (Bellevue, Edmonds, Federal Way, Marysville, Olympia, Seattle, Spokane, Tacoma, and Yakima).⁷ The update disaggregates the data by race, language, special education, section 504, free and reduced price meals, and foster care. For example, in Seattle, the data suggests that African-American students were suspended and expelled at five times the rate of white students in the 2012-13 school year.⁸

The School Discipline Consensus Report. In June 2014, The Council of State Governments Justice Center, a nonprofit organization that provides nonpartisan advice, in collaboration with a number of other organizations published a comprehensive report about school discipline.⁹ The report

states that a “disproportionately large percentage of disciplined students are youth of color, students with disabilities, and youth who identify as lesbian, gay, bisexual, or transgender (LGBT).”¹⁰ Experts and stakeholders in education, health, law enforcement, and juvenile justice systems contributed to this report and provided nearly two dozen policy statements and 60 recommendations. These policy statements and recommendations fall into the following categories: (1) conditions for learning (i.e. developing a positive school climate), (2) target behavioral interventions (i.e. meeting behavior health and disability needs of students), (3) school-police partnerships, and (4) courts and juvenile justice.

Washington law and other states. According to “The School Discipline Consensus Report,” state legislation and regulations regarding student discipline typically address the following:

- Articulating maximum and minimum duration of out-of-school suspension
- Requiring the exhaustion of other forms of corrective action prior to removing students from school
- Defining offenses that warrant expulsion from school
- Mandating reporting of disciplinary data to meet federal and other requirements
- Requiring the provision of alternative education services when students are removed from school
- Establishing protections that must be afforded to special education students
- Delineating students’ due process rights¹¹

Each of these categories will be discussed below with examples from other states and a description of existing Washington law.

Duration of Suspensions. Some states set limits on the number of days a student can be suspended. For example, California’s code states that generally students may not be suspended for more than 20 days during a school year.¹²

As previously noted, ESSB 5946 (2013) prohibits indefinite suspensions and expulsions in Washington. This bill provides, “Any corrective action involving a suspension or expulsion from school for more than ten days must have an end date of not more than one calendar year from the time of corrective action.” Additionally, chapter 392-400 WAC sets limits for short-term and long-term suspensions based on the grade the student is in.¹³

Alternative Forms of Corrective Action. A few states have legislated the use of alternative forms of discipline. For example, in 2012, the Colorado legislature required school districts when they are creating and enforcing a school conduct and discipline code to “include plans for the appropriate use of prevention, intervention, restorative justice, peer mediation, counseling, or other approaches to address student misconduct, which approaches are designed to minimize student exposure to the criminal and juvenile justice system.”¹⁴

Currently, a Washington statute encourages school districts to find alternatives to suspensions. Specifically, RCW 28A.600.410 provides, “School districts are encouraged to find alternatives to suspension including reducing the length of a student’s suspension conditioned by the commencement of counseling or other treatment services. Consistent with current law, the conditioning of a student’s suspension does not obligate the school district to pay for the counseling or other treatment services except for those stipulated and agreed to by the district at the inception of the suspension.” Additionally, chapter 392-400 WAC provides the general rule that suspensions should not be used “unless another form of corrective action reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature.”¹⁵

Offenses that Warrant Expulsion. Some states have made changes to the offenses that require or allow for suspensions or expulsions. For example, in 2014, the California legislature approved a bill that limits the school district’s discretion to suspend or expel students for willfully defying school authorities.¹⁶ California also passed a bill that clarifies that students will not face mandatory expulsion if they bring imitation firearms such as toy guns to school.¹⁷

In Washington, there are certain offenses that are specifically identified as requiring or allowing for the suspension or expulsion of a student. Under RCW 28A.600.420, a student who possesses a firearm on school premises or school-provided transportation must be expelled from school for not less than one year subject to some limited exceptions. However, the superintendent may modify the expulsion on a case-by-case basis. Other provisions explain that a student may be suspended or expelled if a student is a member of a gang and knowingly engages in gang activity on school grounds¹⁸ or if a student commits a criminal offense (e.g. assault, kidnapping, harassment, arson, malicious mischief).¹⁹

School Discipline Data. The Council of State Governments Justice Center states that 18 states, including Washington, require some type of student discipline data collection.²⁰ Additionally, Washington is one of eight states that require student discipline data to be disaggregated by a number of subgroups.²¹ Washington requires disaggregation by race, low income, transitional bilingual, migrant, special education, and students governed by section 504.²² Additionally, under ESSB 5946 (2013), data must also be disaggregated by additional subgroups: gender, foster care, homeless, school district, school, grade level, behavior infraction, intervention applied, and length of suspension or expulsion.

Alternative Education Services. According to “The School Discipline Consensus Report,” some groups are moving away from the term “alternative education” because of its negative connotation.²³ Terms such as “promising or multiple pathways to education” are sometimes used instead.

In Washington, the statutes state that schools districts are not prevented from providing suspended or expelled students with education services in alternative settings.²⁴ Additionally, under ESSB 5946 (2013), the Student Discipline Task Force was directed to include in its data

collection standards “data about education services provided while a student is subject to a disciplinary action” and “credit retrieval during a period of exclusion.”

Protection for Special Education Students. Federal and state law provide additional protections for special education students. Additionally, Washington is among a number of states that have recently adopted legislation regarding the restraint and isolation of students with individualized education programs or plans developed under section 504 of the rehabilitation act.²⁵ In 2013, ESHB 1688 established procedures when restraint or isolation are used and required school districts to provide families with their policies regarding the use of restraint or isolation.

Due Process Rights. In Washington, RCW 28A.600.015 authorizes the Superintendent of Public Instruction to adopt “reasonable rules prescribing the substantive and procedural due process guarantees of pupils in common schools.” Chapter 392-400 WAC provides these rules. Following the enactment of ESSB 5946 (2013), OSPI proposed and adopted new administrative rules in this chapter. One of the new discipline rules requires that notice of due process rights are provided any time a student is suspended or expelled.²⁶ If a student is emergency expelled, due process rights must be provided when the emergency expulsion is converted to another form of corrective action.²⁷

¹ U.S. Department of Education & U.S. Department of Justice, Dear Colleague Letter (January 8, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>.

² U.S. Department of Education & U.S. Department of Justice, Dear Colleague Letter (January 8, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>, page 2.

³ U.S. Department of Education & U.S. Department of Justice, Dear Colleague Letter (January 8, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>, page 3.

⁴ U.S. Department of Education & U.S. Department of Justice, Dear Colleague Letter (January 8, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>, page 3.

⁵ U.S. Department of Education & U.S. Department of Justice, Dear Colleague Letter (January 8, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>, page 4.

⁶ Washington Appleseed & TeamChild, “Reclaiming Students: The Educational and Economic Costs of Exclusionary Discipline in Washington State” (2012), available at http://media.wix.com/ugd/4569ed_e44ccb42cff21777ea479f4125d347df.pdf.

⁷ Washington Appleseed, “Transforming School Discipline” (2014), available at http://media.wix.com/ugd/4569ed_22a38ac956c744e4a5cd9b81eeeefb4c.pdf.

⁸ See also Linda Shaw, The Seattle Times, “Suspensions Hit Minorities, Special-Ed Students Hardest, Data Show” (April 21, 2014), available at http://seattletimes.com/html/education/2023423257_schooldisciplinexml.html.

⁹ Morgan, E., Salomon, N., Plotkin, M., and Cohen, R., The School Discipline Consensus Report: Strategies from the Field to Keep Students Engaged in School and Out of the Juvenile Justice System (New York: The Council of State Governments Justice Center, 2014), available at http://csgjusticecenter.org/wp-content/uploads/2014/06/The_School_Discipline_Consensus_Report.pdf.

¹⁰ Morgan, E., Salomon, N., Plotkin, M., and Cohen, R., The School Discipline Consensus Report: Strategies from the Field to Keep Students Engaged in School and Out of the Juvenile Justice System (New York: The

Council of State Governments Justice Center, 2014), available at http://csgjusticecenter.org/wp-content/uploads/2014/06/The_School_Discipline_Consensus_Report.pdf, page ix.

¹¹ Morgan, E., Salomon, N., Plotkin, M., and Cohen, R., *The School Discipline Consensus Report: Strategies from the Field to Keep Students Engaged in School and Out of the Juvenile Justice System* (New York: The Council of State Governments Justice Center, 2014), available at http://csgjusticecenter.org/wp-content/uploads/2014/06/The_School_Discipline_Consensus_Report.pdf, page 73.

¹² California Educ. Code § 48900-48927-48903.

¹³ See WAC 392-400-245; WAC 392-400-260.

¹⁴ Colorado House Bill 12-1345.

¹⁵ WAC 392-400-245(2); WAC 392-400-260(2); *see also* WAC 392-400-275(2) (“No student shall be expelled unless other forms of corrective action reasonably calculated to modify his or her conduct have failed or unless there is good reason to believe that other forms of corrective action would fail if employed.”).

¹⁶ California Assembly Bill 420 (2014).

¹⁷ California Assembly Bill 2537 (2012).

¹⁸ RCW 28A.600.455.

¹⁹ RCW 28A.600.460.

²⁰ The Council of State Governments Justice Center, *School Discipline Data: A Snapshot of Legislative Action* (2014), available at <http://csgjusticecenter.org/wp-content/uploads/2014/03/NCSL-School-Discipline-Data-Brief.pdf>.

²¹ The Council of State Governments Justice Center, *School Discipline Data: A Snapshot of Legislative Action* (2014), available at <http://csgjusticecenter.org/wp-content/uploads/2014/03/NCSL-School-Discipline-Data-Brief.pdf>.

²² RCW 28A.300.042.

²³ Morgan, E., Salomon, N., Plotkin, M., and Cohen, R., *The School Discipline Consensus Report: Strategies from the Field to Keep Students Engaged in School and Out of the Juvenile Justice System* (New York: The Council of State Governments Justice Center, 2014), available at http://csgjusticecenter.org/wp-content/uploads/2014/06/The_School_Discipline_Consensus_Report.pdf, page 400 n.170.

²⁴ See RCW 28A.600.020; RCW 28A.600.420.

²⁵ See Education Commission of the States (ECS) State Policy Database, retrieved October 1, 2014.

²⁶ WAC 392-400-250; WAC 392-400-265; WAC 392-400-280.

²⁷ WAC 392-400-295.

Appendix

OSPI Washington State Discipline Data

December 2014

Follow-up to Review of K-12 Outcomes

Deb Came, Ph.D.
Director of Student Information

Senate Committee on Early Learning
& K-12 Education

December 2014



OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION

Washington State Discipline Data

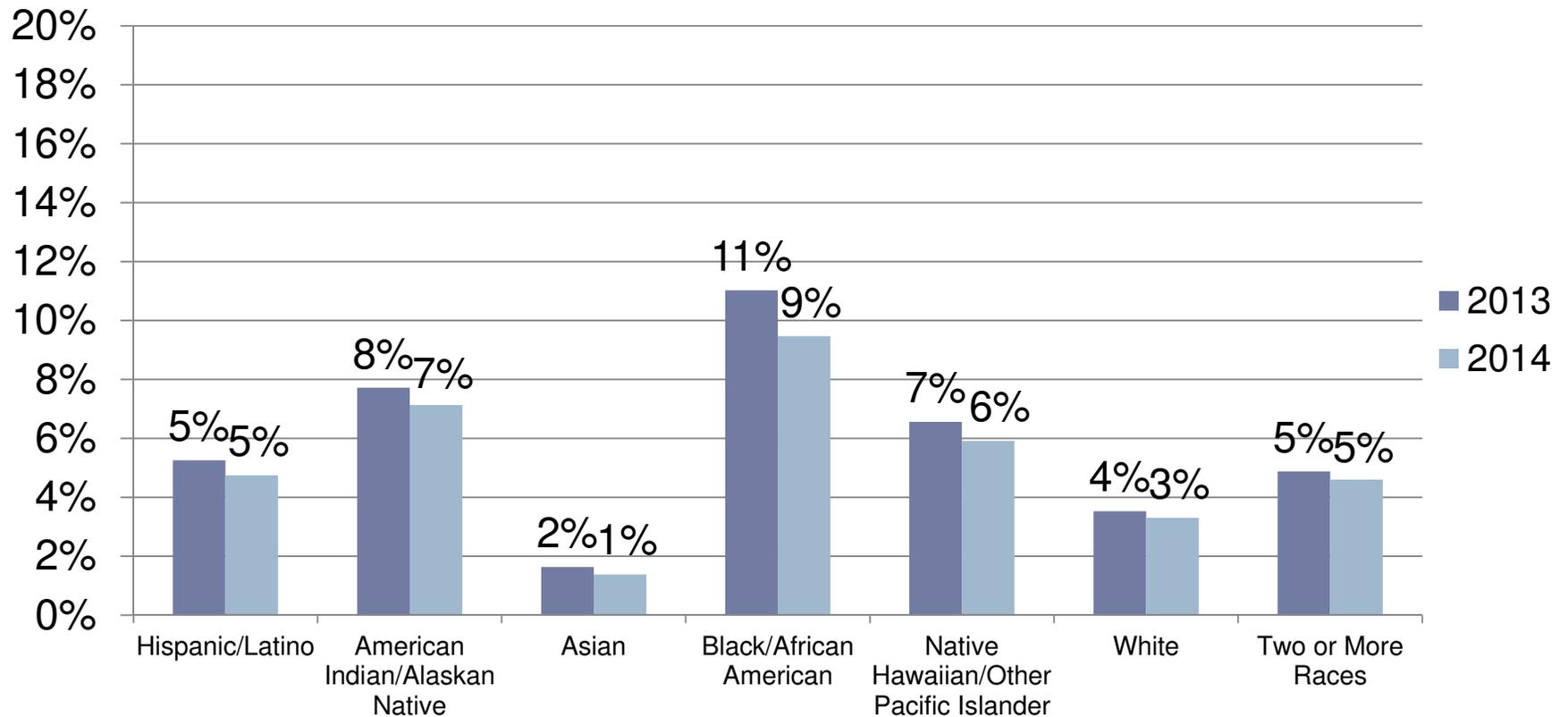
State-wide Summaries of CEDARS Student-level
Discipline Data Submissions



OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION

Discipline Rates by Race/Ethnicity

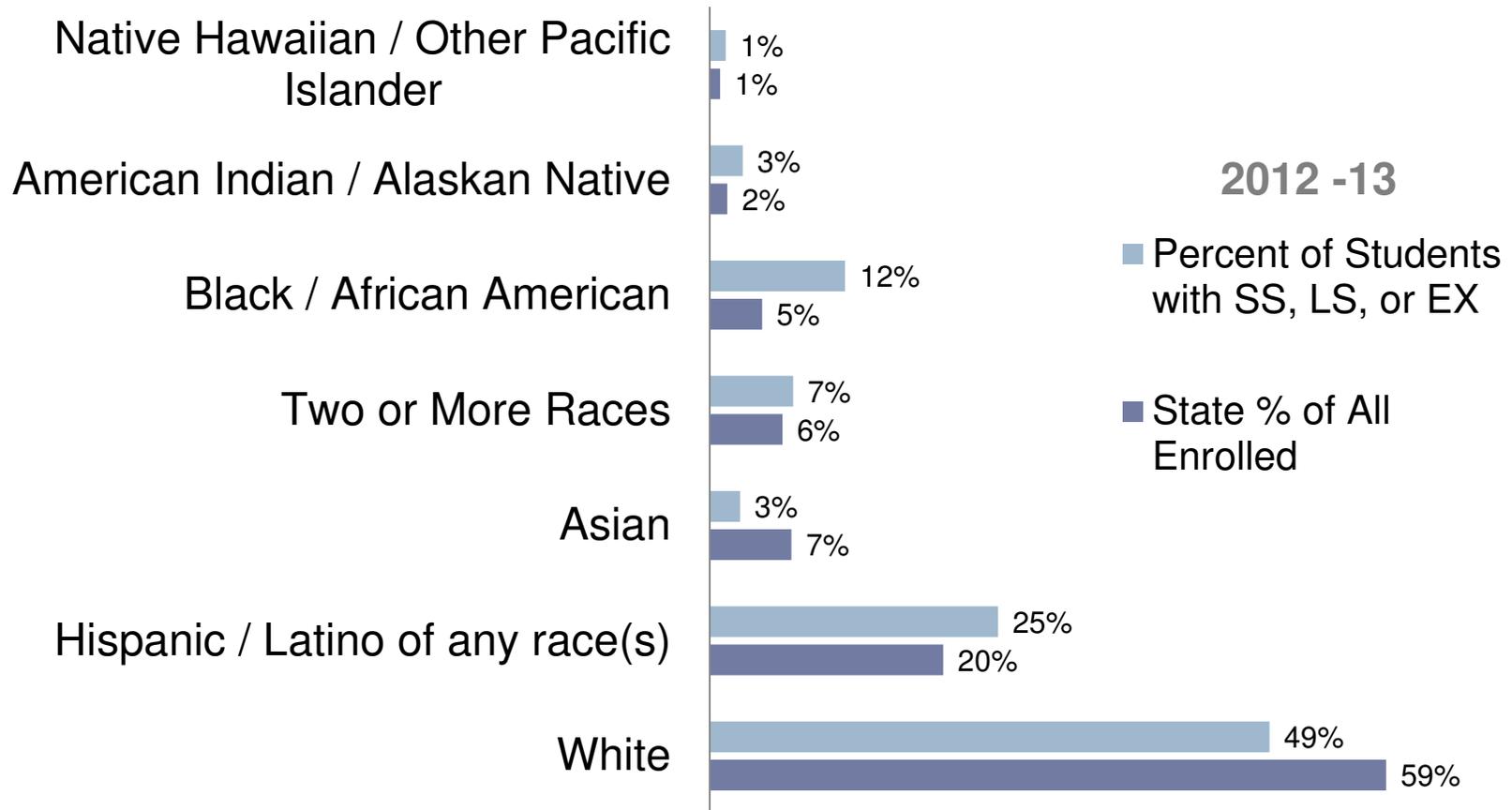
Example: 9% of Black/African American students were suspended or expelled in 2014.



Enrollment & Discipline by Race/Ethnicity

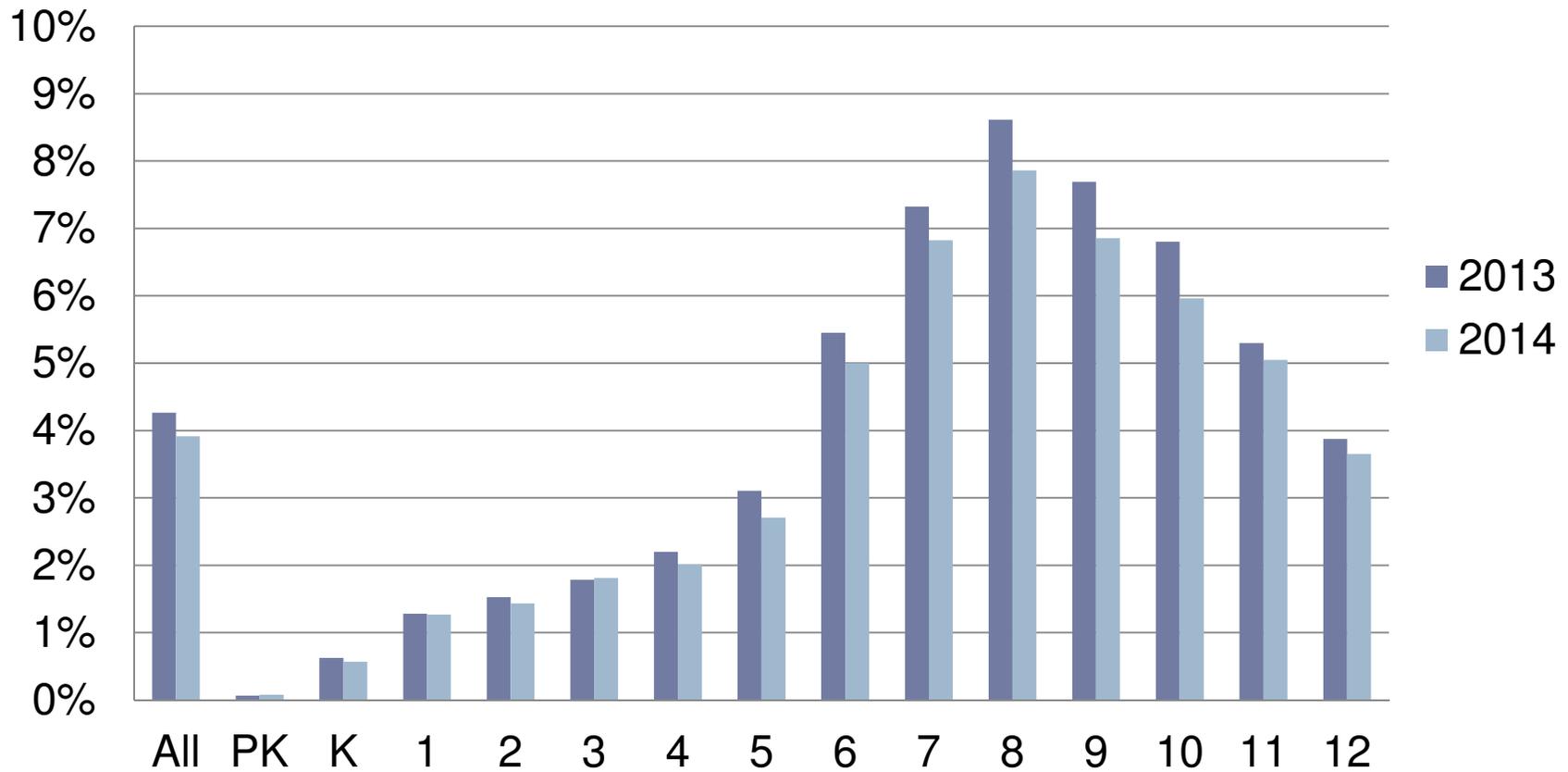
Example: In 2013, Asian students comprised 7% of the student population and 3% of students that are suspended

OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION



Suspension & Expulsion Rates by Grade

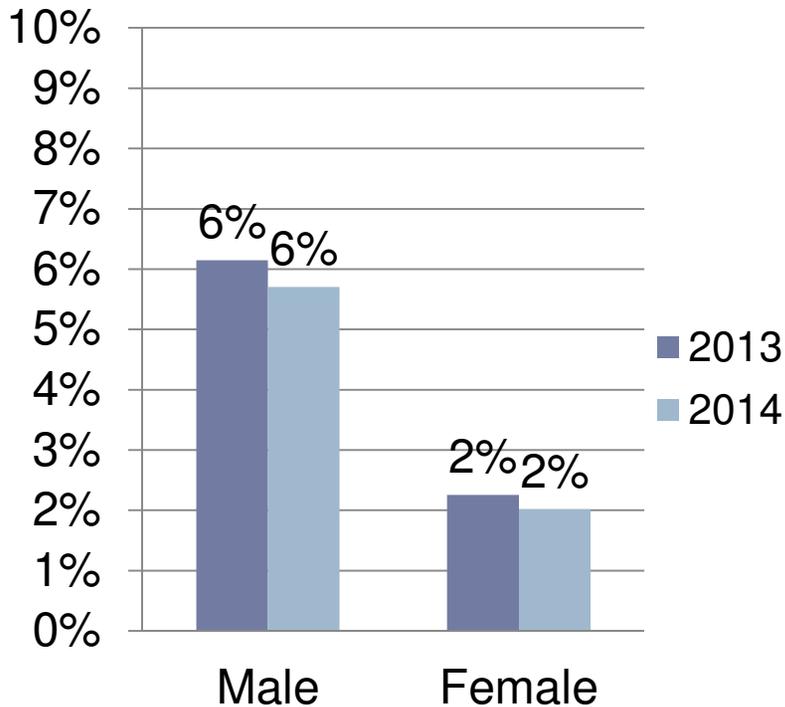
Example: 8% of 8th graders were either suspended or expelled at some point during the 2012-13 school year.



Discipline Rates by Student Group

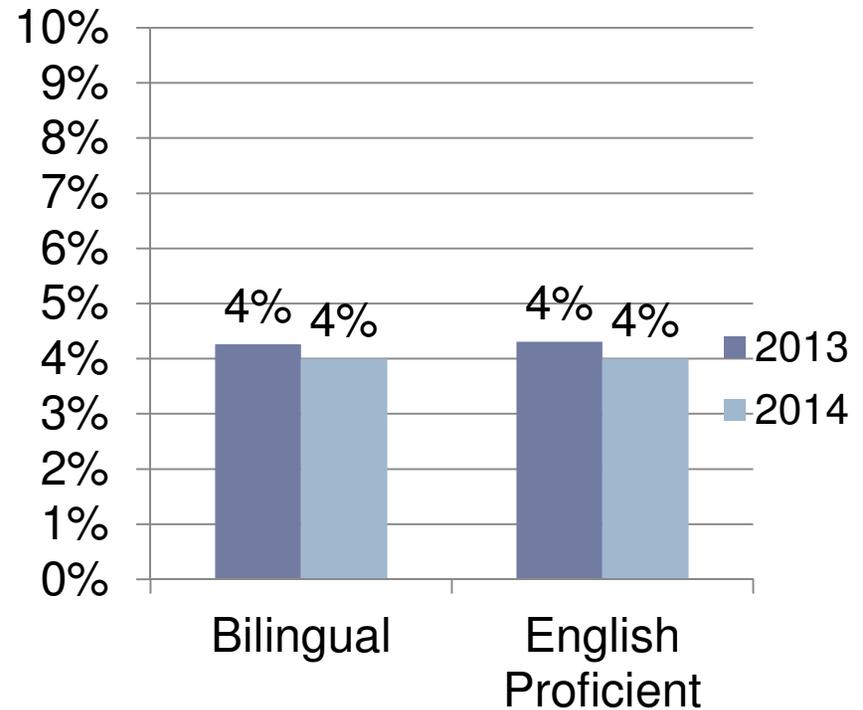
Gender

Example: 2% of Females were suspended or expelled in 2014.



Bilingual

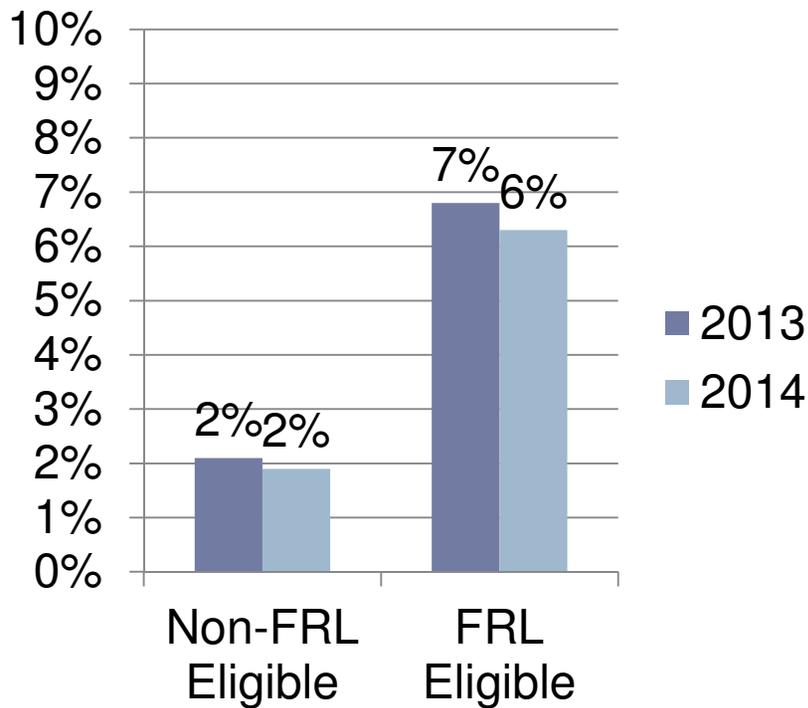
Example: 4% of Bilingual students were suspended or expelled in 2014.



Discipline Rates by Student Group

Low Income

Example: 6% of students eligible for free or reduced lunch were suspended or expelled in 2014.



Special Education

Example: 9% of Special Education students were suspended or expelled in 2014.

