

**Policy 4373, Expected Behavior in Safe and Supportive Schools
Executive Summary**

**West Virginia Department of Education
Office of Leadership Support**

Policy Cycle: ___- day Comment Period Adoption of Policy

Policy Process: Revision Repeal and Replace New

Introduction: Policy 4373 is being amended to update language, provide clarification, and add evidence-based practices to the list of expectations.

Background: Policy 4373 was last amended in 2018 and had minimal changes, specifically, inappropriate behaviors were removed from the policy and attached in the appendix. This revision will bring the behaviors back into the body of the policy and will assign them a default level. Since the last revision of this policy much work has been done regarding the supports that can be provided through multi-tiered systems of support and these revisions look to add those expectations into best practice. Also, since the last revision there has been much discussion regarding the use of exclusionary practices and the impact they have on student success and learning. Seeing that impact, this revision looks to provide transparency in the use of such practices by requiring a yearly report by each LEA. In creating this revision the Office of Leadership Support utilized internal and external stakeholders.

Proposed Changes:

- Clarification on PRO/SRO responsibilities and roles.
- Adding required statutory language related to self-harm and eating disorders.
- Providing for the requirement for expected behaviors/rules to be explicitly taught.
- Adding elements of multi-tiered systems of support frameworks throughout the policy.
- Defining interventions and consequences and setting forth requirements to require reporting.
- Setting forth an expectation that the use of exclusionary practices be reported publicly to ensure consistent and equitable use.
- Clarifying the purpose and use of discipline matrices.
- Placing common behaviors under a baseline level with some changes in definitions.
- Clarifying wording for dangerous and deadly weapons.
- Language related to vaping devices and with and without nicotine or THC.
- A requirement for expulsion on the threat of school violence or a felony.
- Recommendations on alternatives to exclusion that county boards may choose to adopt as a research-proven alternative.
- Clarification of dangerous student and persistently dangerous school definition.
- Requirement for accurate reporting of discipline data and reporting procedures.
- Clarification of requirements for alternative learning settings and transportation/enrollment.

Impact: These changes should provide LEAs with the appropriate flexibility and guidance to best answer the unique discipline needs of their district or schools. Students should be provided with appropriate supports and have a better understanding of what is permissible and what is not with the provided expectations. Communities should also have a better understanding of how discipline is being handled at their local school and have the opportunity to provide feedback on what is expected.

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Action:

- Release for 45-day public comment.
 - Approve by WVBE with effective date of 30 days from filing.
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Response to Comments: Comments were received by the following groups: five distinct commenters provided a total of 15 comments.

- Central Office Staff: Two Comments
- Community Member: Seven Comments
- Other: Four Comments
- Principal: One Comment
- Superintendent: One Comment

Comments received resulted in the following changes to the proposed policy.

- Clarification on definition of Inappropriate Appearance to tie into county's dress code policy
 - Changing of "unintentional aggressive conduct" to "reckless conduct"
 - Returning "proactive and preventative" into the language in Chapter 2 related to MTSS supports
 - Amending language in beginning of Chapter 4 to match Chapter 2 language regarding the use and purpose of suspensions
 - Clarification was provided regarding timelines for expulsion hearings in cases where due process was not provided.
 - Reference to Policy 2419 added in reference to transportation related to discipline measures
 - Community service was added as an appropriate alternative to exclusion
 - The word "positive" was kept in related to school climate
 - A typo in Chapter 3 was corrected related to reporting of harassment
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126CSR99

TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION

SERIES 99
EXPECTED BEHAVIOR IN SAFE AND SUPPORTIVE SCHOOLS (4373)

§126-99-1. General.

1.1. Scope. -- This legislative rule sets the requirements for the development of safe and supportive schools that provide optimal learning conditions for both students and staff. Safety and order ~~is~~ are the foundation of a positive school climate/culture that supports student academic achievement and personal-social development. This rule also establishes disciplinary guidelines for student conduct in West Virginia schools in order to assure an orderly, safe, drug-free, violence-~~z~~ and harassment-free learning environment.

1.1.a. County/Counties. -- For purposes of this rule, county includes county boards of education, ~~West Virginia Schools for the Deaf and the Blind, and secure juvenile predispositional, postdispositional facilities and schools and facilities under the supervision of the West Virginia Board of Education (WVBE).~~

1.2. Authority. -- West Virginia Constitution, Article XII, §2~~;~~ and W. Va. Code §§16-9A-4, 16-9A-9, 18-2-5, 18-2-7b, 18-2-9, 18-2C-1, 18-2C-2, 18-2C-3, 18-2-41 18-5A-2, 18-8-8, 18-16-1, 18A-1-1, 18A-5-1, 18A-5-1a, 18-9F-9, 18-9F-1, et seq., 49-2-803(a-b), 49-4-701, 60A-1-101, 61-2-15, 61-3-13, 61-7-2, 61-7-11a, 20 U.S.C. §1400 et seq., and 20 U.S.C. §6301 et seq.

1.3. Filing Date. -- ~~March 14, 2019.~~

1.4. Effective Date. -- ~~July 1, 2019.~~

1.5. Repeal of Former Rule. -- This rule ~~repeals and replaces~~ amends W. Va. 126CSR99, WVBE Policy 4373, Expected Behavior in Safe and Supportive Schools (Policy 4373), ~~filed October 12, 2017~~ March 14, 2019, and effective ~~November 13, 2017~~ July 1, 2019.

§126-99-2. Purpose.

2.1. The ~~West Virginia Board of Education (WVBE)~~ recognizes the need for students, teachers, administrators, and other school personnel to have a safe and supportive educational environment. Public schools should undertake proactive, preventive approaches which integrate services using a Multi-Tiered System of Supports (MTSS) framework. MTSS frameworks utilize evidence-based strategies to promote students' academic success, behavioral and mental health, including social and emotional needs, trauma sensitivity, bullying prevention, dropout prevention, and truancy reduction to ensure a ~~positive~~ positive school climate and culture that fosters learning and personal-social development. This rule requires county boards of education to design and implement procedures to create and support continuous school climate and culture improvement processes within all schools that will ensure an orderly and safe environment that is conducive to learning for all.

§126-99-3. Incorporation by Reference.

Section 79. Dress Codes Requiring School Uniforms for Students

County boards of education may implement a dress code requiring students to wear school uniforms. The uniforms may be required by the county board of education for either the entire county or for certain schools within the county.

County boards of education considering the option of adopting a dress code requiring the wearing of school uniforms shall create an advisory committee consisting of parents or guardians, school employees, and students. The advisory committee shall consider whether the county board of education should adopt a dress code requiring school uniforms for students in the county or for certain schools within the county. If the advisory committee recommends to the county board of education a dress code requiring school uniforms, then the county board of education may adopt a dress code requiring school uniforms for students. The advisory committee shall make recommendations on methods of paying for the school uniforms. However, nothing in this policy shall require any level of funding from the Legislature, state, or county boards of education, or any other agency of the government.

This policy does not require county boards of education to adopt dress codes requiring students to wear school uniforms nor prevent a county board of education from adopting a dress code policy.

Chapter 2 INAPPROPRIATE BEHAVIOR AND MEANINGFUL INTERVENTIONS AND CONSEQUENCES

Section 1. Addressing Inappropriate Behavior with Meaningful Interventions and Consequences

The purpose of this policy is to provide schools with guidance that creates and ensures an orderly and safe environment that is conducive to teaching and learning for all. ~~Inappropriate behaviors include but are not limited to harassment, intimidation, bullying, substance abuse, and/or violence.~~ All interventions and consequences are in effect on all school property and at all school-sanctioned events, including extracurricular and co-curricular activities. Each county will implement ~~proactive, preventative, and responsive~~ **proactive, preventative, and** evidence-based practices utilizing a MTSS framework, outline investigatory and reporting procedures, and delineate meaningful interventions and consequences in response to inappropriate behavior. Schools will provide explicit instruction on expected behaviors, model and reteach expectations when needed, and provide feedback to maximize the probability of student success in all school settings, including extracurricular, co-curricular, and school-sanctioned events.

This policy defines disciplinary levels and provides definitions ~~(see Appendices)~~ for common inappropriate student behaviors. County policies may provide additional guidance in the implementation and classification for specific offenses and/or levels provided the treatment of the inappropriate behavior is consistent with W. Va. Code.

County and school policies should identify appropriate and meaningful interventions and consequences. The interventions and consequences in this policy serve as examples, with the exception of Level 4 offenses. It is not a requirement that all schools offer every intervention and consequence listed in this policy. Through a MTSS framework, school administrators and staff should exhaust leverage all available school and community resources to provide appropriate school evidence-based intervention strategies designed to keep students in school and engaged in instruction improve student behavior, maximize student attendance, and increase student engagement.

duration of the out-of-school suspension or expulsion.

When administering interventions and consequences, ~~the county~~ is required to determine if a student warrants protection under the Individuals with Disabilities Education Act (IDEA), W. Va. 126CSR16, ~~WVBE~~ Policy 2419, Regulations for the Education of Students with Exceptionalities (Policy 2419), and/or Section 504 (504 Plan) of the Rehabilitation Act of 1973.

Section 2. Inappropriate Behavior Levels:

The following behaviors have been assigned levels based on the nature of severity. It is important for the principal to evaluate behaviors with a holistic and developmentally appropriate approach. The principal may change a level 1, 2, or 3 behavior level in WVEIS, if the circumstances dictate it. If a behavior level is changed, the principal shall document in the WVEIS discipline referral the reason as to why the level was changed. Level 4 behaviors are defined in W. Va. Code §18A-5-1 and shall not be changed.

Level 1: Minimally Disruptive Behaviors disrupt the educational process and the orderly operations of the school but do not pose a direct danger to self or others.

<u>Behavior</u>	<u>Definition</u>
<u>Cheating</u>	<u>Plagiarizing or copying the work of others or breaking rules to gain advantage in a competitive situation. Interventions could result in academic sanctions.</u>
<u>Cell Phone Violation</u>	<u>Not adhering to classroom, school, or county rules or policies regarding the use of cell phones, tablets, or other electronic devices.</u>
<u>Deceit</u>	<u>Deliberately concealing or misrepresenting the truth, deceiving another, or causing another to be deceived by false or misleading information.</u>
<u>Disruptive Conduct</u>	<u>Exhibiting behavior that violates classroom/school rules and results in distraction and/or obstruction of the educational process.</u>
<u>Failure to Serve Detention</u>	<u>Failing to serve an assigned detention of which the student and/or parent or guardian have been notified.</u>
<u>Falsifying Identity</u>	<u>Providing false identification to any school official with intent to deceive school personnel or falsely obtain money or property.</u>
<u>Inappropriate Appearance</u>	<u>Dressing or grooming in a manner that disrupts the educational process, is detrimental to the health, safety, or welfare of others, or is a in violation of the county board of education’s dress code policy. Distractive or indecent dress that interferes with the teaching and learning process, including wearing any apparel that displays or promotes behavior and/or items prohibited by this policy.</u>
<u>Inappropriate Display of Affection</u>	<u>Engaging in inappropriate displays of intimate</u>

126CSR99

Code §61-7-2	
<u>Profane Language/Obscene Gesture/Indecent Act Toward an Employee or a Student</u>	<u>Directing profane language, obscene gestures, or indecent acts towards a school employee or a fellow student. This includes, but is not limited to, verbal, written, electronic, and/or illustrative communications intended to offend and/or humiliate.</u>
<u>Technology Misuse</u>	<u>Violating W. Va. 126CSR41, Policy 2460, Educational Purpose and Acceptable Use of Electronic Resources, Technologies, and the Internet.</u>
<u>Unintentional Aggressive Reckless Conduct</u>	<u>Creating an unsafe environment through actions that are not intentionally directed towards someone. Carelessly throwing a door open, shoving a chair or other object that inadvertently strikes or nearly strikes another, would both be examples of unintentional aggressive conduct.</u>

Level 3: Severely Disruptive, Imminently Dangerous, Illegal, and/or Aggressive Behaviors are willfully committed and are known to be illegal and/or harmful to people and/or property. (Specific level 3 behaviors are outlined in W. Va. Code §18A-5-1a (c) and the principal shall address these inappropriate behaviors accordingly.)

<u>Behavior</u>	<u>Definition</u>
<u>Battery Against a Student</u>	<u>Injuring another student unlawfully and intentionally.</u>
<u>Disruptive/Defiant Conduct</u>	<u>Exhibiting escalating behavior that violates classroom/school rules, resulting in distraction and obstruction of the overall educational process. Conduct becomes defiant when the student refuses to comply with any redirection and will not obey the directives they have been provided, responding in an aggressive or insubordinate manner.</u>
<u>Defacing School Property/ Vandalism</u>	<u>Defacing or damaging property of the school or others. Actions such as writing in school textbooks or library books, writing on desks or walls, carving into woodwork, desks, or tables, and spray-painting surfaces are acts of defacement. Examples of damage to school property include, but are not limited to, ruining bulletin boards, intentionally clogging the plumbing system, breaking light bulbs or fixtures, and damaging school equipment to the point where repair is necessary.</u>
<u>False Fire Alarm</u>	<u>Setting off a fire alarm knowingly and willingly without cause.</u>
<u>Fraud/Forgery</u>	<u>Deceiving another or causing another to be deceived by false or misleading information or signing the name of another person in order to obtain anything of value or defrauding authorities.</u>
<u>Gambling</u>	<u>Engaging in any game of chance or contest wherein money or other items of monetary value are awarded to the winner, except for those games and contests authorized as official</u>

search, or if their assistance has been requested by school officials. It is the duty of the school officials, teachers, and students to cooperate with the police and each other to ensure that the rights of all involved persons are respected.

Prevention Resource Officers (PRO)/School Resource Officers (SRO). PROs/SROs are certified police officers, working fulltime within a public school. The PRO/SRO duties, salary, and responsibilities should be determined through an agreement with the county board of education and the authorized police department law enforcement agency. The principal is the immediate supervisor while the PRO/SRO officer is present in the school. There may be a time during the course of PRO/SRO duties when the officer's position as law enforcement would take precedence, such as intervening in or investigating criminal activity.

Police Other Law Enforcement Officer Conducting an Investigation in the School. When a student is questioned by the police law enforcement or by school officials in the presence of the police law enforcement, the school administration and police law enforcement must cooperate to ensure the privacy of the student is protected. It is the police law enforcement officer's responsibility to ensure the student's constitutional rights are not violated and to determine if the student's parent or guardian, or lawyer should be contacted prior to questioning. The officer must also determine when the use of restraints is necessary to control an unruly student to prevent the student from harming him/herself or others during questioning.

W. Va. Code §49-4-701 specifies that statements made by a student under the age of fourteen, while being questioned by law enforcement officials, cannot be used in a court proceeding unless his/her lawyer is present. Statements made by students who are fourteen or fifteen years old cannot be used in a court proceeding unless their lawyers are present or a parent or guardian is present and, the parent or guardian has been informed of the student's rights.

Chapter 3 PROCEDURES FOR ADDRESSING ALLEGATIONS OF INAPPROPRIATE BEHAVIORS

Section 1. Procedures for Reporting Complaints of Inappropriate Behavior

School employees are responsible for assuring a safe and supportive school climate and culture. When incidents of inappropriate behavior are witnessed by school staff, the behavior shall be addressed consistently as outlined in this policy.

Inappropriate behaviors observed by students or guests must be reported to the appropriate personnel for action to be taken according to county policy.

County boards of education shall develop and publicize procedures to assure that any person who believes he or she is a the victim of or a witness to a violation of Policy 4373 has an identified, easily accessible mechanism to report the alleged acts immediately to the appropriate official(s) designated by the county. These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the West Virginia Human Rights Commission, initiating civil action, or seeking redress under the state criminal statutes and/or federal law, including Title IX.

County boards of education shall develop and publicize appropriate procedures for investigating,

- a written notice of the conclusion of the investigation will be reported in writing to the complainant or his/her legal guardian by the principal or his/her designee, but the report itself will not be shared with the complainant or his/her legal guardian.

Confidentiality of the filing of complaints, the identity of subjects and witnesses, and any action taken as a result of such complaint is essential to the effectiveness of this policy. Only those individuals necessary for the investigation and resolution of the complaint shall be provided information gathered in the investigation. A violation of confidentiality may itself be grounds for disciplinary action.

County boards of education and the WVDE shall develop procedures following the above guidelines to investigate complaints of religious/ethnic, racial or sexual harassment or violence by a student, teacher, administrator or other school personnel of the county board of education. For the WVDE, the State Superintendent of Schools shall take the place of the ~~P~~principal.

Section 3. Procedures to Prevent Reprisal

The county board of education shall develop and publicize discipline procedures to take appropriate action against any student or employee who retaliates against any person who reports alleged violations or any person who testifies, assists, or participates in an investigation, or who testifies, assists, or participates in a proceeding or hearing relating to such violations. Retaliation includes, but is not limited to, any form of intimidation, reprisal, or harassment. Likewise, the county board of education shall develop a disciplinary process to take appropriate action against any student, administrator, or other school employee who falsely reports violations of this policy.

Chapter 4 PROCEDURES FOR TAKING ACTION ON SUBSTANTIATED INAPPROPRIATE BEHAVIORS

Section 1. Interventions and Consequences of Inappropriate Behavior

Inappropriate behavior should be addressed with meaningful interventions and consequences that strive to improve future behavior using a MTSS framework. School administrators and staff shall ~~exhaust leverage~~ all available appropriate school and community resources to provide appropriate ~~school evidence-based~~ interventions designed to keep students in school and engaged in instruction maximize student attendance and engagement. Out-of-school suspension strategies should be used sparingly and shall never deny a student access to instructional material and information necessary to maintain academic progress. Out-of-school suspension is not a recommended consequence or intervention for minimally disruptive Level 1 and 2 behaviors; however, the determination of interventions and consequences is at the discretion of the school administrator, with input considered from teachers/service personnel, for Levels 1, 2, and 3. Specific Level 3 behaviors mentioned in W.Va. Code shall be referred directly to the appropriate administrator because of the serious/unlawful nature of the misconduct.

In determining the appropriate intervention and/or consequence in response to a Level ~~1, or 2, or 3~~ or 3 behavior, the principal, county superintendent, and/or ~~local~~ county board of education should consider:

- the surrounding circumstances;
- the ~~nature~~ intent of the behavior;
- past incidents, ~~or~~ continuing, or escalating patterns of behavior; and
- the relationships between the parties involved and the context in which the alleged incidents

occurred.

Section 2. Guidelines for Specific Responses to Inappropriate Behavior

Alternatives to Exclusion. When designing or adopting discipline plans, county boards of education and schools shall also consider and adopt alternatives to exclusion. Because student academic progress can be negatively impacted by exclusionary practices, processes should be considered that provide students support that are designed to decrease the chance of repeated behavior and increase the chance of academic success such as:

- restorative practices;
- mentoring;
- mental health supports;
- civil citations;
- academic and behavior supports;
- behavior contracts;
- **community service;**
- school-wide Positive Behavior Supports and Interventions (PBIS); and
- community health.

~~Exclusion. According to W. Va. Code §18A-5-1, a teacher or bus driver may exclude from a classroom or bus any student who is guilty of disorderly conduct; interferes with the orderly educational process; threatens, abuses, or otherwise intimidates a school employee or student; willfully disobeys a school employee; or directs abusive or profane language at a school employee. Any student excluded shall be placed under the control of the principal of the school or a designee a student may be removed from a classroom or school bus. Requirements for re-entry into the classroom and/or bus are outlined in the code section.~~

~~The excluded student may be admitted to the classroom or school bus only when the principal, or a designee, provides written certification to the teacher that the student may be readmitted and specifies the specific type of disciplinary action, if any, that was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written and, if possible, telephonic notice of the action to the parent or guardian.~~

~~When a student is excluded from a classroom or a school bus two times in one semester, and after exhausting all reasonable methods of classroom discipline provided in the school discipline plan, the student may be readmitted to the classroom or the school bus only after the principal, teacher and, if possible, the parent or guardian of the student have held a conference to discuss the student's disruptive behavior patterns and agree on a course of action. If they are not present at the conference then the parent or guardian must be notified of the course of action. Thereafter, if the student's disruptive behavior persists, upon the teacher's request, the principal may, to the extent feasible, transfer the student to another setting.~~

Bus drivers operators must follow the guidelines outlined in W. Va. §126CSR92, Policy 4336, West Virginia School Bus Transportation Policy and Procedures Manual Regulations, Procedures, and Specifications for the Design and Equipment of Schools Buses **and Policy 2419**. When the bus driver operator excludes a student from the school bus, the driver bus operator shall notify the student and the student's principal. The principal/designee shall notify the student's parent or guardian. All students shall be transported

- of their choosing, including legal counsel; and
- students are entitled to be given reasonable time to prepare for the hearing.

Expulsion. The county superintendent, upon recommendation by the principal, may recommend that a county board of education expel a student from school if the student's conduct is judged to be detrimental to the progress and general conduct of the school. In all cases involving expulsion, the student is entitled to formal due process procedures. These procedures are outlined in W. Va. Code §18A-5-1 and §18A-5-1a. In expulsions involving students with an IEP or 504 Plan, a manifestation determination must be completed prior to the expulsion hearing, pursuant to Policy 2419 and IDEA.

W. Va. Code §18A-5-1 and §18A-5-1a requires mandatory out-of-school suspension by the principal and mandatory expulsion for a period of not less than ~~twelve~~ 12 consecutive months by the county board of education for: possession of a deadly weapon, battery of a school employee, or sale of a narcotic drug. Procedures that must be followed when dealing with an expulsion include:

- the student and parent or guardian must be given a written statement of the specific charges against the student;
- the county board of education must hold a hearing regarding the recommended expulsion;
- the student and parent or guardian must be given a written notice of the time and place of the county board of education hearing at which the expulsion will be considered. This notice must be given far enough in advance for the student to have time to prepare an adequate defense against the charges;
- the student and parent or guardian have the right to be present at the county board of education hearing and to defend against the charges;
- the student has the right to be represented by an attorney at the hearing at his/her own expense;
- the student has the right to present witnesses on his/her behalf, to hear the testimony of witnesses against him/her, and to question the witnesses against him/her;
- if the board of education decides that the charges against a student do not warrant his/her expulsion from school, the student may remain in school or return to school without being subjected to punishment or harassment;
- in all expulsion hearings, facts shall be found by a preponderance of the evidence;
- expulsion by the board of education is final. However, if a student or parent or guardian believes that the student was not given procedural due process, he/she may appeal to the State Superintendent of Schools, within 10 days of receiving the expulsion decision. If the State Superintendent of Schools finds that the board's decision to expel the student was properly made, then the expulsion will stand unless overturned by a court.
- If the State Superintendent of Schools finds the board's decision lacked procedural due process, the board shall ensure all due process procedures are provided and readminister the expulsion hearing within 10 days of receiving the decision.

Section 3. Considerations for Transferring Students with Expulsions

Students who have been suspended or expelled from a public or private school in West Virginia or another state, currently residing within the county, may not be denied enrollment in ~~the~~ a county school system unless determined to be a "dangerous student" under the procedures set forth in W. Va. Code §18A-5-1a. Pursuant to W. Va. Code §18A-1-1(j) "dangerous student" means a student who is substantially likely to cause serious bodily injury to himself, herself, or another individual within that student's educational environment, which may include any alternative education environment, as evidenced by a pattern or