

ENDING THE SCHOOL-TO-PRISON PIPELINE

HEARING BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

DECEMBER 12, 2012

Serial No. J-112-95

Printed for the use of the Committee on the Judiciary



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ENDING THE SCHOOL-TO-PRISON PIPELINE

WEDNESDAY, DECEMBER 12, 2012

U.S. SENATE,
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS, AND HUMAN RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2 p.m., in Room SH-216, Hart Senate Office Building, Hon. Richard J. Durbin, Chairman of the Subcommittee, presiding.

Present: Senators Durbin, Leahy, Franken, and Blumenthal.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chairman DURBIN. This hearing of the U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights will come to order, and today's hearing is entitled, "Ending the School-to-Prison Pipeline."

Good afternoon. My name is Dick Durbin. I am honored to be here with the Chairman of the Committee, Senator Pat Leahy. I chair the Subcommittee on the Constitution, Civil Rights, and Human Rights, and for those who are attending their first Congressional hearing, let me explain how we proceed.

I will deliver a brief opening statement, then recognize my colleagues, starting with Senator Leahy. Next we will turn to witnesses for opening statements, and after their statements, Members of the Subcommittee will have some questions for the witnesses. I want to welcome those who have joined us in the hearing room, those watching the live online stream, and all those following the hearing on social media using the hashtag school, the number two, prison.

We are pleased to have a large and enthusiastic audience for today's hearing. It demonstrates the timeliness and importance of this issue. At the outset, I want to note that the rules of the Senate prohibit outbursts, clapping, or demonstrations of any kind at a public hearing. There was so much interest in today's hearing that we moved to this larger room. If anyone could not get a seat in the hearing room, we have an overflow room with a live video feed. That room is on the fifth floor of this building, Hart Room 562.

This is the first ever congressional hearing on what is called "the school-to-prison pipeline." In the past, this Subcommittee examined other troubling aspects of our criminal justice system such as solitary confinement and racial profiling. Today, we discuss another trend. For many young people, our schools are increasingly a gate-

way to the criminal justice system. What is especially concerning about this phenomenon is that it deprives our kids of their fundamental right to an education.

Beginning in the 1990s, concerns about school violence, some of them very rightful concerns, and a growing awareness of bullying led many schools to hire police and institute zero-tolerance policies. This resulted in a dramatic increase in suspensions, expulsions, and even in-school arrests for misbehavior that had been judged to that point to be rather normal for school children.

This school-to-prison pipeline has moved scores of young people from classrooms to courtrooms. A schoolyard fight that used to warrant a visit to the principal's office can now lead to a trip to the booking station and a judge. Sadly, there are schools that look more like prisons than places for children to learn and grow. Students pass through metal detectors and police roam the halls.

Suspensions, expulsions, and in-school arrests lead to kids being out of the classroom and a troubling increase in the number of young people sent to the juvenile justice system. According to one leading study, students who were suspended were twice as likely to repeat a grade and three times as likely to be involved with the juvenile justice system. Once kids enter that system, they are more likely to fail in school, which in turn increases their chances for arrest in the future. This is a cycle with increased public safety risks for everyone in the community, and the pipeline is expensive. The costs of policing schools and unnecessarily housing juveniles in detention are enormous.

The racial disparities in this issue are stark. Nationally, African American students are three times more likely to be suspended and four times more likely to be expelled than their white peers, and more than 70 percent of students arrested in schools are African American or Latino.

What is more, the disparities extend beyond race. Nationally, students with disabilities are suspended at more than twice the rate of students without disabilities, and gay, lesbian, bisexual, and transgender youth are more likely to be disciplined and arrested than their peers.

Let me be clear. We cannot blame teachers and school administrators for this pipeline. Teachers have one of the hardest, and in many ways least appreciated, jobs in America. We have got to give them the tools, the training, and the resources to keep our schools safe. With ever-shrinking resources, many public schools are just overwhelmed.

I remember when Derrion Albert—I am sure Congressman Davis remembers this—was killed near his high school on the South Side of Chicago in 2009. It was a tragedy for his community and the entire city. In the aftermath of tragedies like that, our first instinct is to protect, and our number one priority has to be keeping our kids safe. The challenge is how to accomplish this without overdisciplining students into failure.

Today our witnesses will explain how we can meet this challenge. Around the country, students, judges, educators, and police have instituted some really creative reforms. They have made our schools and communities safer, saving millions of dollars in re-

duced incarceration costs and investing in a better future for our kids.

My home state of Illinois is part of this movement. Redeploy Illinois, a bipartisan initiative, helps counties provide comprehensive services to at-risk youth. For an annual cost of \$2.4 million, participating counties have reduced juvenile detention rates by more than 50 percent, saving the state \$40 million. And Chicago Public Schools are also taking steps to address the pipeline, reducing the length of automatic suspensions, encouraging what is known as restorative justice, which involves fellow students mediating conflicts.

Just this summer, the CPS system announced a brand-new Student Code of Conduct to promote positive learning environments and limit unnecessary disciplinary action. Yesterday I spoke with our new CPS CEO, Barbara Byrd Bennett, and I am committed to working with her to build on these positive steps.

I look forward to hearing more about the solutions to this problem during the course of this hearing, and now I want to recognize the Chairman of the full Committee, Senator Pat Leahy.

**STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR
FROM THE STATE OF VERMONT**

Chairman LEAHY. Thank you, Chairman Durbin, and I appreciate you bringing the attention to this as you have in chairing the Constitution, Civil Rights, and Human Rights Subcommittee. You have had a series of hearings that have really spoken to what should be the conscience of our Nation. And the issue of whether we are creating a school-to-prison pipeline is something of pressing national importance, no matter what part of the country you come from.

I look forward to working with you on a number of hearings, including questions of sentencing and the way we sentence people, the mandatory minimums and others. I think if anyone looks at today's *New York Times*, you see a 27-year-old woman for a rather minor crime, because of the laws, is given a life sentence. Oh, come on. What are we doing? Already, in our country, the United States has the highest reported rate of incarceration of any country. Any country. I mean, this is—something is wrong here.

I am concerned that too young people are being funneled into the criminal justice system, and I think everybody here knows that when they are, their problems only multiply. Anybody who has been a prosecutor knows the importance of holding criminals accountable. But we also have to know what kind of a society do we have, and when we are talking about young people, we should be thinking about the best way to teach them to become responsible, contributing members of society as adults, but also to rehabilitate them away from lives of crime. That makes our communities safer, not just saying a "lock-them-all-up" attitude.

Now, the Chairman has mentioned about young people from minority communities. By any standard, they are overrepresented in our juvenile justice and criminal justice systems. I have been fighting for decades because of my concern that too many runaway and homeless youth are still locked up for status offenses even though they did not commit any crime. I have consistently fought for new and effective juvenile justice legislation. I introduced the Juvenile

Justice and Delinquency Prevention Reauthorization Act. I will reintroduce it in the next Congress. We will keep fighting for these things. This would refocus attention on prevention programs, trying to keep children from being in the criminal justice system in the first place.

Senator Durbin is absolutely right. These children should not be in adult prisons, and our legislation will help with that, especially when you are talking about at-risk youth, many times needing mental or drug rehabilitation, not prison.

The *Reconnecting Homeless Youth Act* reauthorized a critical Federal grant program to help States and local communities address the needs of runaway and homeless youth in both urban and rural areas, youth who sometimes end up in jail not having committed any crime. In fact, President Bush signed this bipartisan bill into law in October 2008. There is the *Second Chance Act*, which Senator Durbin has been a champion of that. Congressman Davis, you know yourself, sir, from what you have seen how important that is. These can help keep children from being enmeshed in the juvenile justice system.

We had a hearing in August of this year that I chaired talking about rising prison costs. This just pointed out that people are being incarcerated longer and longer, increased costs, an enormous strain on Federal, State, and local budgets, and it has not made anybody safer. So we ought to be trying to find out ways to keep children out of the criminal justice system, not add to it.

Mr. Chairman, I will put my full statement in the record. I apologize for the voice, but I wanted to be here at least for this part just to say how proud I am of Senator Durbin for doing this.

You know, these are the things that really affect every community, whether they are in large States like Illinois, small States like Vermont, large cities, small towns. It affects us all. As a Nation, we can do better. More importantly, as a Nation, for the sake of our own soul, we have to do better.

Thank you.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Chairman DURBIN. Senator Leahy, thank you for being here and for your statement and for your leadership on the Judiciary Committee.

Senator Lindsey Graham is my Ranking Republican Member.

He has been fully cooperative in setting the agenda today but has a conflict and cannot attend this hearing. His staff is following it. He may have follow-up questions to our witnesses, but I want to personally thank Senator Graham for his personal interest.

I also received an interesting phone call, which I will share with another colleague, from Senator-elect Chris Murphy of Connecticut, who expressed his interest in this issue as well. Soon he will be sworn in and an official part of the Senate, and I look forward to working with him to resolve some of the differences that we see during the course of this hearing.

I would like to ask Senator Blumenthal, if he has an opening statement, I would give him that opportunity.

**STATEMENT OF HON. RICHARD BLUMENTHAL, A U.S.
SENATOR FROM THE STATE OF CONNECTICUT**

Senator BLUMENTHAL. Just a few words. Thank you to you, Senator Durbin, for your leadership and your vision and your very vigorous leadership on this issue, and particularly to Senator Leahy for his chairmanship of the Committee and encouraging this step.

And to all of the folks who are here today, your expression of interest in this very impressive way, I think, gives us heart that real progress is possible. And it is necessary progress. The two opening witnesses that we have before us today, I not only thank you but express my admiration to you for your work in achieving progress.

And I look forward to continuing on this Subcommittee. I am very proud to serve on it with you, Senator Durbin, and thank you very much for giving me this opportunity.

Chairman DURBIN. Thanks, Senator Blumenthal.

Our first panel, we are honored to be joined by two Members of the House and good friends: Congressman Bobby Scott and Congressman Danny Davis. Each of them will have five minutes for an opening statement, and we will go in order of seniority.

Congressman Bobby Scott has represented Virginia's Third District for almost 20 years. He serves on the House Committee on the Judiciary where he is the former Chair and current Ranking Member of the Crime Subcommittee. He is a long-time champion of civil rights and criminal justice reform. We have worked together in the past.

Bobby, it has been a real joy for me to work with you on so many issues. Among many other efforts, I was pleased to work with you on the Fair Sentencing Act to finally reduce the sentencing disparity between crack and powder cocaine. I am sorry it did not reach the number we were looking for, but I think we made some progress. Perhaps we can visit that again sometime soon.

Now, Congressman Scott, I will give you a chance to say a few words before I introduce my Illinois colleague.

**STATEMENT OF HON. BOBBY SCOTT, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF VIRGINIA**

Representative SCOTT. Thank you very much, Mr. Chairman, Mr. Blumenthal, Chairman Leahy. I want to thank you for developing this hearing and for providing me with an opportunity to testify. I also want to thank you for your long record in human and civil rights, especially the issues that you mentioned.

I am happy to be here with my colleague from Illinois, Mr. Davis, who is testifying. We have been working in a bipartisan manner with our House colleagues to address the topic of today's hearing, the school-to-prison pipeline or, as the Children's Defense Fund calls it, "the cradle-to-prison pipeline."

The school-to-prison pipeline arises when overly harsh, nondiscretionary school discipline practices such as zero tolerance policies are applied to address even minor misbehavior through harsh disciplinary actions that are ineffective and often counterproductive. Research shows that these get-tough approaches to discipline not only reinforce bad behavior, but set up a progression from disciplinary proceedings to suspensions, expulsions, arrests, juvenile or criminal proceedings, jail, and then prison.

Minority students are much more likely to be subject to the pipeline than white students who commit similar infractions, and students with disabilities are more likely to receive one or more out-of-school suspensions than those without disabilities. Not surprisingly, there is a high correlation between harsh school discipline and school dropout. If a student is not doing well in school and is acting out, the last thing the student needs is to be put out of school and end up at home or hanging out in the streets with no supervision and nothing constructive to do.

As a result of the choices to use counterproductive school disciplinary strategies as well as codification of ineffective slogans and sound bites, the United States leads the world in incarceration of its children. I passed out, Mr. Chairman, a chart that shows where we are, just off the chart in terms of juvenile incarceration. The minority rate is even worse. In D.C., 98 percent of the incarcerated juveniles are minorities.

The juvenile justice part of the school-to-prison pipeline is a feeder system for the adult incarceration where we also lead the world by far. We have a chart that shows the incarceration rate, number one in the world at over 700 per 100,000, and the minority rates just off the chart. These numbers are particularly egregious because 700 per 100,000 is way over what the Pew Research Center shows: 350 per 100,000, diminishing returns; anything over 500 is actually counterproductive, meaning that they contribute more to crime than reducing crime.

It is clear that we need more than ever for our schools to be change agents for our students who are at risk of falling into the school-to-prison pipeline. The approach must be comprehensive and evidence based, starting with teen pregnancy prevention to reduce the number of babies born into dysfunctional families, prenatal care to reduce the incidence of mental retardation and learning disabilities, nurse visits and parental training to reduce child abuse and neglect, preschools so that children can start school ready to learn. In addition, we need policies which include school-wide positive behavior supports and programs that encourage college attendance so that we can replace the cradle-to-prison pipeline with a cradle-to-college-and career pipeline.

Comprehensive strategies work. They not only reduce crime and other social pathology like teen pregnancy, but they also save more money than they cost. The Youth Promise Act follows this approach, and we would hope that you would give that consideration.

Now, the question of can we afford these initiatives. The Pew study shows that incarceration beyond 500 per 100,000 is counterproductive, and if we were to reduce the African American rate, which is over 2,000 per 100,000, down to that level, we would have more than enough savings to fund any programs that we want. In fact, the chart on the back shows the arithmetic, that if you put the counterproductive incarceration money targeted to at-risk children, you could spend \$5,000 per child every year. In ten states, that number is almost \$10,000 per child per year that you are wasting in counterproductive incarceration.

So, in closing, the research and evidence shows that Frederick Douglass was right when he said, "It is easier to build strong children than to repair broken men." We need to stop wasting money

on counterproductive and ineffective slogans and sound bites. We need to invest in our children, and when we do, we will reduce crime and save money.

I want to thank you for your leadership, Mr. Chairman.

[The prepared statement of Representative Scott appears as a submission for the record.]

Chairman DURBIN. Thanks, Congressman Scott.

Congressman Danny Davis has been in the U.S. House of Representatives since 1996 and before that was on the Cook County Board of Commissioners and on the Chicago City Council. He is the Ranking Member of the Subcommittee on Health Care, District of Columbia, Census, and the Archives. Danny has been a national leader when it comes to issues related to incarceration. He is the author of the Second Chance Act, which assists ex-offenders with reentry and helps prevent recidivism. I can tell you firsthand, I have been to his district, I have visited the churches and the centers where these ex-offenders come and try to rebuild a life. Danny Davis spends his life with them, helping them in that journey.

Danny, I know this comes from the heart, so we appreciate your testimony today, and please proceed.

STATEMENT OF HON. DANNY DAVIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Representative DAVIS. Thank you very much, Senator Durbin, Chairman Leahy, Senator Franken, Senator Blumenthal, and other Members of the Subcommittee. I applaud you for holding this historic hearing to discuss the problem of and potential remedies for the school-to-prison pipeline. Given that minority men disproportionately experience exclusionary discipline, I and my colleagues in the Congressional Black Caucus, including Representative Bobby Scott, have advocated vigorously for over a decade that the Federal Government should lead the effort to address the overdisciplining of youth, a key factor involved in the educational crisis of African Americans, and especially African American men.

I am grateful for the opportunity to testify today and, again, Senator Durbin, I must thank you for your leadership in raising one of the most profound, most pernicious, and most complex but most elusive issues of our day and in examining how do we really get at the school-to-prison pipeline that has helped cause us to become the most imprisoned nation on the face of the Earth.

We all know that education is absolutely central to making it in modern-day society, and we know that the more time spent being instructed, the more likely one will be able to learn. The less time spent in instruction, the less likely one will be able to learn.

Whatever comes from this hearing, we will all owe you a tremendous debt of gratitude because you will have helped put the spotlight on one of America's most glaring but most elusive problems.

We know that there are many important steps to address the problem of pushout. I briefly will highlight certain actions that I believe are critical based on my tenure in Congress and my work as Chair of the Education and Labor Task Force of the Congressional Black Caucus.

To begin, we must view discipline as an indicator for identifying struggling schools and for directing supports to them. To do this,

we must first collect and examine discipline data. The Congressional Black Caucus strongly praised the Administration's enhanced discipline variables within the Civil Rights Data Collection. The Civil Rights Data Collection is instrumental to understanding compliance with Federal civil rights laws. However, we must also use discipline data to direct supports to struggling schools prior to a civil rights violation.

For this reason, I and other legislators champion bills to promote school-wide, evidence-based disciplinary systems such as positive behavior interventions and supports, social and emotional learning, and restorative justice programs. Research demonstrates that these programs improve school climate, academic performance, and student attendance, as well as to reduce discipline referrals, suspensions, expulsions, and out-of-class time due to discipline referrals.

Given that minority men disproportionately experience exclusionary discipline, we cannot truly understand pushout or the success of interventions without examining discipline data by the interaction of gender, race, and ethnicity. I am much more likely to be suspended not just because I am male or not just because I am African American, but because I am an African American male.

We must focus on the early years as well. It is unacceptable that African American male preschoolers are expelled at almost nine times the rate of African American girls, with white preschool boys being expelled at only four times the rate of their female peers. Further, to ensure that all public schools address systematic discipline problems, the authorizing entities for charter schools should integrate discipline issues in a substantive way into charter reviews and renewal policies.

The executive branch also plays an important role in promoting better discipline practices. The Supportive School Discipline Initiative, the collaboration between the Department of Justice and the Department of Education, represents a critical step.

I thank you again for the opportunity to share in this historic—and when I say “historic,” I mean historic—and meaningful hearing. So I thank you and all of your colleagues for the interest that you have shown, and I do believe that this moves us to another level, and I thank you.

Thank you very much.

[The prepared statement of Representative Davis appears as a submission for the record.]

Chairman DURBIN. Congressman Davis, thank you very much. And you are both welcome to stay. We have two excellent panels here that I think will make a contribution toward this conversation. And then, afterwards, we need to get back together so that this just is not a nice talk, but that we end up, as you said, Congressman Scott, taking a look at specific legislation. Let us see what we can do here to address this problem. Thank you, both of you, for the leadership that you have shown. And I am going to move to the second panel now, but I invite you to stay if you wish. I know you are busy, too.

Representative DAVIS. Thank you.

Chairman DURBIN. I will ask the witnesses for the second panel to please come to the table. They are representatives of the Obama Administration from the U.S. Departments of Justice and Edu-

cation. We are about to hear more on the Administration's initiative to address the school-to-prison pipeline on the Federal level.

On another matter related to the safety of our children, just this morning our National Task Force on Children Exposed to Violence presented its final recommendations. This is in addition to the Department of Justice's National Forum on Youth Violence Prevention, which is the kind of multidisciplinary approach we need to reduce youth violence and improve public safety. I am pleased Chicago was one of the first cities to join that forum.

Now, each of our witnesses here will have five minutes for an opening statement. Their complete written statements will be part of the record, and we are going to start, as is the tradition of this Committee, by swearing in the witnesses. And after your testimony, questions will be asked, and some written questions may be sent your way. So if you would not mind standing, please, and raise your right hand?

Do you affirm the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. DELISLE. I do.

Ms. HANES. I do.

Chairman DURBIN. Thank you. Let the record reflect that both witnesses have answered in the affirmative.

Deborah Delisle is the Assistant Secretary for Elementary and Secondary Education at the U.S. Department of Education. She is responsible for Federal policy to assist State and local education agencies. She also serves as a principal advisor to Secretary Arne Duncan on all pre-kindergarten, elementary, and secondary education issues. Assistant Secretary Delisle has worked in the education field for 37 years, including tenure as the State Superintendent of Public Instruction in Ohio. Please proceed.

STATEMENT OF HON. DEBORAH DELISLE, ASSISTANT SECRETARY, OFFICE OF ELEMENTARY AND SECONDARY EDUCATION, U.S. DEPARTMENT OF EDUCATION, WASHINGTON, DC

Ms. DELISLE. Thank you very much. Thank you for inviting me to participate in this hearing. I am pleased to be part of this really important conversation and, on behalf of Secretary Duncan, I want to thank you, Senator Durbin and Members of the Subcommittee, for convening a discussion on an issue that affects the educational and life outcomes of millions of youth across our Nation. Your leadership on this issue, Senator Durbin, is commendable.

I also appreciated hearing from Congressman Scott and Congressman Davis on this important issue, and I certainly hope it is one that we will continue to have in the near future.

I welcome the opportunity to share with you the Department's efforts to support all of America's children by keeping them in school, engaged in learning, and, most especially, out of the judicial system as well as prison. This is clearly an issue of grave concern for all of us.

Over the past 18 months, the Department's efforts have been galvanized by findings from two distinct data collections: first, the 2011 Breaking Schools' Rules study, a longitudinal study by the

Council of State Governments that included more than one million public school students in the State of Texas; and, second, the Department of Education's own 2012 Civil Rights Data Collection (CRDC). Together, these two pieces reveal three very disturbing trends, and while you have heard about these already, they bear repeating:

First, there is an overreliance on suspensions, expulsions, and referrals to law enforcement as a means of managing student behavior;

Secondly, the disproportionate impact of such practices on students of color, students with disabilities, and other subgroups; and last, the increased risk of juvenile justice involvement for students who are suspended or expelled.

While many schools implement evidence-based supportive strategies to manage student behavior, it is clear that too many schools are overly reliant on discipline practices that remove students from schools. Based on data from the 72,000 schools that participated in the last CRDC study, released last spring, we estimate that over three million students were suspended out of school during the 2009–10 school year. During that same timeframe, 108,000 students were expelled, and over 240,000 students were referred to law enforcement.

The Breaking Schools' Rules report helps place these figures into context. Nearly 60 percent of all Texas students studied were suspended or expelled at least once between seventh and 12th grade, and 15 percent of students were punished by suspension or expulsion 11 or more times during that same time period.

It is also important to note that, according to research, the vast majority of such disciplinary actions are not related to guns, drugs, or violence; rather, they are used to discipline students for minor acts of misconduct, such as non-attendance, disobedience, or classroom disruption.

School discipline practices which unnecessarily remove students from their classrooms directly conflict with our goal of helping all students to achieve college and career readiness. And until more schools recognize the essential relationships interconnecting social, emotional, and behavioral skills and student achievement, and until more schools provide students with behavioral supports that directly address misconduct, we will not be successful in creating learning environments that are both safe and productive for all of America's children.

We have demonstrated our commitment to improving climate and student supports in the Department's budget request and signature initiatives. For example, the sole competitive priority of the Race to the Top District Competition, a \$400 million investment, is designed to promote comprehensive, local reforms in our nation's schools and is devoted to integrating public and/or private resources to augment student and family supports that address the social, emotional, and behavioral needs.

As we continue forward, we are looking closely at multi-tiered behavioral frameworks, such as Positive Behavioral Interventions and Supports, to better inform our technical assistance as well as our financial supports. However we know that we must do more to ensure that school discipline practices improve for all of America's

children. We are alarmed by the large disparities in the rate of disciplinary sanctions, particularly for students of color, students with disabilities, and male students. When African American students are more than three and a half times as likely to be suspended or expelled as their white peers, or students with disabilities are twice as likely to receive out-of-school suspensions as their non-disabled peers, as they are today, it raises substantial concerns.

These concerns are reflected in our Department's enforcement efforts and in the stories we have heard from the field, which demonstrate too often that students face discipline actions on the basis of their race.

To give a specific example, an African American kindergartner was given a five-day suspension for setting off a fire alarm, while a white ninth grader in the very same district was suspended for one day for the same offense.

To ensure that all students are treated equitably, as a Nation we need a multi-pronged strategy that encourages educators to proactively monitor their discipline practices for disproportionality, assess for root causes where disproportionality exists, and engage in a broad-based community effort to develop an action plan to root out discrimination in the administration of discipline.

The Department's Office of Civil Rights has intensified its enforcement activities and data collection to ensure that students are not disciplined more severely or frequently because of their race, their color, or their national origin. From 2009 to 2012, OCR launched 20 proactive investigations in schools with significant racial disparities in discipline based on data from the most recent CRDC. In addition, OCR has dramatically expanded the Civil Rights Data Collection System, so that, for the 2011–12 data collection, the Department is currently collecting data from all school districts in the country—approximately 17,000 in all.

There is evidence indicating that school discipline practices have consequences beyond the school yard, as has been noted previously. According to the Breaking Schools' Rules study, nearly half of the students who were disciplined 11 or more times were in contact with the juvenile justice system. In contrast, only two percent of the students who had no school disciplinary actions were in contact with the juvenile justice system.

We also know that schools are critical partners for providing disconnected and vulnerable youth—such as homeless youth; children in foster care; trafficked youth; youth with mental, emotional, or behavioral disorders; children exposed to violence; and children of incarcerated parents—with the mental and behavioral supports that they need.

The Department convened a November 19th summit of 80 participants from all over the country, including Federal partners scholars, researchers and practitioners with specialized knowledge of education in criminal justice facilities, to review a draft correctional education strategy and provide feedback.

We are very pleased to work in partnership with our colleague, Melodee Hanes, and her incredible staff in the Department of Justice, and I look forward to her sharing the work in which we have been engaged as partners.

The challenge that lies before us is complex, as it requires careful consideration of seemingly competing factors. How do we keep our students safe while seeking school-based responses to misconduct? How do we transition school cultures into environments of support while addressing specialized needs often exhibited by our most challenged students? These are neither easy questions, nor are they simple to address. For sure, their answers lie in the best of our collective thinking and work and in the recognition that this is not a zero-sum game, because America's children deserve nothing less than our collective energies, our best thinking, and, most especially, our commitment to equity.

[The prepared statement of Ms. Delisle appears as a submission for the record.]

Chairman DURBIN. Thank you, Secretary Delisle.

Melodee Hanes serves as the Acting Administrator in the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention. She has worked as an assistant county attorney in both Montana and Iowa. As a prosecutor, Ms. Hanes handled countless child abuse cases. She has taught at Drake University Law School and the District Attorneys National Advocacy Center.

Ms. Hanes, please proceed.

STATEMENT OF MS. MELODEE HANES, ACTING ADMINISTRATOR, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Ms. HANES. Thank you, Chairman Durbin and distinguished Members of this Subcommittee. Thank you so much for this opportunity to talk to you today about this critically important issue.

The problem, to state it very succinctly, is the pervasive use of court referrals as a means of disciplining kids in school. I want to share with you the work that the Department of Justice is doing, along with our partners at the Department of Education, to address this very serious problem. But before I begin, I want to acknowledge a special guest that I brought with me today: Bob Listenbee, who is the co-chair of the Attorney General's Task Force on Children Exposed to Violence. We have just come from the meeting of the Coordinating Council, as you referenced, and the recommendations were made to the Attorney General by this very important task force to address the pervasive problem of children exposed to violence in the Nation. These recommendations are significant and will have a major impact, including on our topic we are discussing today. So in the coming days, we will be disseminating the report to Members of Congress.

As Assistant Secretary Delisle stated, a staggering number of children every year are suspended or expelled from public school. Millions of them. I do not know about you, but when I was in high school, that was the exception, and it was not the norm.

Most remarkably, as she referenced, the Texas study found that only three percent of those suspensions and expulsions were for serious violations, such as drug use or gun possession, and a vast majority were for discretionary or minor offenses, such as truancy, dress code violations, classroom disruptions. As Secretary Delisle pointed out, the Texas study indicated that 15 percent of those mil-

lion children were suspended 11 or more times, and what was important about the study, that 15 percent, those were children of color, and those were children with disabilities.

The other thing that the study did, interestingly, was compare the school records with juvenile justice records. Those 15 percent were the kids that ended up in the juvenile justice system.

So why is that correlation important, and why do I bring it your attention today—the issue of kids referred to the juvenile justice system from schools? It is important because in the research we have done and accumulated over the 40 years that OJJDP has been around, we have learned that the minute a child sets foot in the juvenile justice system, their chances of becoming an adult offender go up 50 percent. As soon as they enter the juvenile justice system, their chances of completing their education, their chances of getting a good job, their chances in life in general diminish significantly.

We have learned that finding successful alternatives to referring kids to court or locking them up leads to much better outcomes for these children at much less expense. On the average, it costs about \$10,000 a year to educate a child. The average cost to lock up a child in the United States is \$87,000 a year.

As soon as the Attorney General learned of this Texas study, he called for immediate action, and that was the beginning of the Department of Justice partnership with the Department of Education. And it was the birth of the Supportive School Discipline Initiative. The initiative has four primary goals:

First, to develop a consensus among the experts about what the best practices and policies are that we know of that can be implemented and what we do not know—what do we need to find out.

Second, to collaborate on research and data between the Department of Justice and the Department of Education.

Third, we need to work together to develop guidance for local school districts and states to help them engage in the best practices that do not violate the civil rights of these children.

And, fourth, our initiative emphasizes the need to educate the public about the necessity to have appropriate discipline procedures and alternatives to juvenile court referrals.

The Department of Justice and our Federal partners are working very diligently to support this initiative, but I would be remiss if I did not talk to you about one other important partner that came and knocked at our door, literally, when we began this initiative. Private philanthropic enterprises, specifically Atlantic Philanthropies, knocked at our door as soon as we announced the initiative and asked if they could participate. But, frankly, to my surprise, it was not just, “Can we participate and be at the table?” It was, “Can we contribute money?” That does not happen to the Federal Government very often.

[Laughter.]

Ms. HANES. And so we were glad to bring this new partner to the table and invest with them, and I have to tell you, it has created in our world a whole new paradigm of public-private partnerships to achieve the same outcomes.

So, like Education, we are very pleased that we have been able to accomplish a lot in 18 months. We are up and moving on the

consensus initiative, and that report will be final by December 2013. At OJJDP, we invested \$1.5 million last year in research to support looking at best practices and the correlation between discipline and juvenile court referrals.

We have also been working diligently with the Department of Education to develop the guidance for local school districts and States. And, finally, we have steered other resources that we have, like our formula dollars. We have tried to steer those to States that engage in programs that find alternatives to detention and specifically those that reduce disproportionate minority impact on children of color and children with disabilities. For example, the Memphis City Schools used our OJJDP formula funding to implement a program to divert kids from school-to-court referrals—instead of sending them to court, finding after-school programs. As a result, they have reduced the number of youth transported to juvenile court by 52 percent. And I need to tell you, 85 percent of those kids that had been referred were kids of color.

The State of Connecticut has made similar strides with their program aimed at reducing court referrals from schools and have reduced their referrals for African American youth by 60 percent. They have reduced their court referrals for Latin American youth by 64 percent.

OJJDP was created by Congress in 1974 to provide national leadership to the States on juvenile justice. So we feel it is our mission to ensure that when children come into contact with the juvenile justice system—first of all, it is rare that they do. But, second, when they do, it is fair; and, third, when they leave the system, they are better off for it. It is beneficial to them for having touched the system.

We have a vision at OJJDP of a nation of children that are healthy, that are educated, and that are free from violence. And it is our belief that this partnership and this Supportive School Discipline Initiative seeks to fulfill that mission and that vision.

Thank you so much for your time and attention.

[The prepared statement of Ms. Hanes appears as a submission for the record.]

Chairman DURBIN. Thanks for your testimony. As Senator Franken and Senator Blumenthal could probably tell you, as we go around, education is one of those issues that everyone claims some expertise. We have all been in classrooms, and we all have memories and experiences that we think are instructive and helpful. And so I am not going to dwell on what it was like in the good old days when I went to school other than to say I many times would have welcomed a police officer rather than a ruler-wielding nun in my class.

[Laughter.]

Chairman DURBIN. At least I think I would have.

But here is what I would like to ask and really get down to basics. How have things changed? Why have they changed? What is the difference? I mean, is it a difference in the students and parents and family relationships with teachers? Is it a difference in the threat to safety and order in schools which now includes the possibility of firearms, bullying, a lot of things that were not happening at least to the degree that they seem to be happening now?

Is it a difference in the resources in schools where, stretched to the limit, the teachers say, "Listen, I can either make a call to the police department or just let this continue, because I do not have the resources to deal with this, a social worker or any program to refer this student to"?

What has changed here that has led to this dramatic change in the reported numbers of referrals of students from schools into the criminal justice system?

Ms. DELISLE. Senator Durbin, I think I probably went to the same school and remember the same ruler that you had, or, at least, I remember it being used too often. I think that ruler kind of demonstrates the big difference between then and now because that is not the type of classroom environment that is either supported or even tolerated, if you will, by parents and even by students. I think it is a really complex issue.

But one thing I want to really emphasize here is that we know so much more about students' social and emotional well-being. When I think back to my own educational trajectory, if you will, and I think about classrooms, I can think of very distinct individuals in my school who probably had some very severe social and emotional issues, and I don't remember clearly people dealing with those. So the students were put out. So I do not know if students were put out less than they are now or students were just not going to school.

But I do know that there is obviously a graver concern around the social and emotional well-being of students. But to that end, we have seen an increase certainly of students who come to school after witnessing or experiencing violence—and I think, you know, our meeting earlier today with the Department of Justice really brought to light the impact of violence on children and how they respond back, sometimes with violence themselves.

There are more laws surrounding the protection of children. There are more laws around what can be done in a classroom or in a school. In some instances, there are fewer resources in schools. So when I think about having been a building principal as well as a superintendent, there were times when I had to make some very unfortunate budget reductions, and sometimes a guidance counselor or a social worker would have been cut as opposed to cutting a math teacher, for example.

So I think it is a really complex issue, but I think it is one that we really need to address. I happen to be a big believer that what we offer to children tells them what it is that we value. So when we offer school climates that are conducive to being supportive of all students, that provide teachers with the tools necessary, such as positive behavior interventions and how to utilize those appropriately in schools, I think we are telling our children that we care enough about them to be proactive on the front end.

Now, I think the good news is that there are many, many schools across this country who are really focusing on school climates and the importance of school climate in terms of helping kids to feel successful and comfortable.

Chairman DURBIN. Ms. Hanes, I just recalled an instance where one of the schools in Joliet, Illinois, had a local policeman who was there every day. That is not uncommon in many schools, particular

in city schools. He was the best choice they could have had because he spent his weekends with the kids, taking them on field trips and really teaching them an attitude toward law enforcement they might not have ever had. So there can be a positive interaction, clearly, between the justice system and education.

We know the abuses. Your group looks into them and reported on them today. But can you tell us how we can reconcile that and try to deal with these changes in circumstances that seem so stark?

Ms. HANES. They do seem quite stark. I think it might help to look back a little bit at history and how we have treated children in the criminal justice system over the decades. And one thing that I think is relevant to your past question as well as this is that in the 1990s, we saw a significant uptick in the number of arrests in juveniles in this country, and it was a combination of a lot of things, but primarily the belief that there was more violent crime and that there was a problem with youthful offenders, and “tough on crime” was the belief, the right answer. And we have learned since that time when there was a significant uptick and significant negative experiences with youthful offenders and law enforcement that those outcomes are not good. And I think we are learning cyclically again that that is not the answer to respond in schools.

We at OJJDP have, in fact, supported many mentoring programs, for example, combining law enforcement and youth, whether it is sporting programs or one-to-one mentoring programs specifically, to acclimate at-risk youth with the law enforcement world and demystify it and create a positive relationship and outcome. And I can tell you that we also have heard similarly good reports just like your Joliet police officer in many schools around the country. So we do not want to demonize school resource officers. We just want to see the best practices used and the best discipline practices.

Chairman DURBIN. Senator Franken.

Senator FRANKEN. I just want to thank you, Mr. Chairman, for holding this incredibly important hearing. You do this a lot.

[Laughter.]

Senator FRANKEN. You use this Committee to raise awareness about issues that otherwise might not get the attention they deserve, and this issue deserves a tremendous amount of attention. And I want to thank both Congressmen Scott and Davis for their testimony and both of you.

First, I want to share a story, if I could. There is a young man in Minnesota, from Wilmer, Minnesota, named Indiana—like Indiana Jones, but that is not his—to protect Indiana’s identity, that is not his last name, Jones.

[Laughter.]

Senator FRANKEN. I think Indiana is fine with this. He was kind of on the wrong path in life. He was expelled from school twice. He had run-ins with the law. He was on probation. He had a bunch of outstanding fines. Things were not looking good for him. But Indiana managed to turn his life around before it was too late. He just needed some support, and he got it from public and private organizations in Wilmer, in his community. Indiana participated in the Southwest Minnesota Private Industry Council’s Youth Program, which is a program for kids who are on probation. He got

his GED. He completed a job training program. And now he is not getting into trouble anymore. And not only that, but he is working at least 40 hours a week as a successful tire technician at Prairie Pride in Marshall, Minnesota. He is good at his job, and he is enjoying it. And not only that, he is getting more education. He has enrolled in school to learn auto mechanics.

We have a lot of problems, and I know this, in our educational and juvenile justice systems. We fail too many kids, kids who are expelled and suspended from school, and for every story like Indiana's, there are so many other tragic stories. But these stories do give me hope. A thousand kids in Minnesota participate in youth intervention programs every year, and I would ask unanimous consent to submit letters and testimony from some groups in my state who are working to stop this school-to-prison pipeline: the Minnesota Juvenile Justice Coalition, the Minnesota Juvenile Justice Advisory Committee, the city of Minneapolis, which has done a great job, the Southwest Minnesota Private Industry Council's Youth Program.

Chairman DURBIN. Without objection.

[The information appears as a submission for the record.]

Senator FRANKEN. A couple things here. Representative Scott talked about the cradle-to-prison, and, Assistant Secretary Delisle, you are advisor to the Secretary on early childhood. Am I right?

Ms. DELISLE. Yes.

Senator FRANKEN. Boy, it seems like we know that this is something to catch earlier, and that the investment in early childhood—and I commend the Secretary for focusing on early childhood in the new Race to the Top stuff and the Promise Neighborhoods.

What is the data on that? What is the data on kids who have a quality early childhood—education in terms of incarceration?

Ms. DELISLE. I do not really have that data available right here. We could certainly get that for you, Senator. I think the one thing that we are really grappling with right now is to accurately define the context of quality, and most especially defining high quality for early learning.

But one of the things we do know is that students who are engaged as four-year-olds in high-quality preschool programs are far more likely to be successful in school. So I know one of the Secretary's deep priorities is to expand early learning across this country and have more available access to high-quality programs for all four-year-olds. And, in fact, we have been working on a proposal for that on that very issue.

One of the things that we are learning out of our early childhood Race to the Top grants, as you indicated, is how communities can be best organized to provide a wide array of services to students and their families, not just a straight academic program but a multi-tiered system to reach our most vulnerable children. So we could certainly get you the data on how many——

Senator FRANKEN. I would love that, because my understanding is that kids who come out of a quality early childhood program have a far lower rate of incarceration.

Ms. DELISLE. Yes.

Senator FRANKEN. And significantly so.

[The information appears as a submission for the record.]

Ms. DELISLE. May I add one comment to that which I think is really critical? That is the importance of preparing all students to be successful in school. So many of those programs in which those children are engaged really focus on language acquisition, for example, and literacy skills. When students come into school and they feel like they can be ready to read, if they are not reading already, and they can count, they are far less likely to be behind their age mix or their counterparts, which also leads to students' dropping out of school or getting into trouble when they, in fact, can engage in the content in that classroom.

Senator FRANKEN. I want to follow that up a little bit in terms of, Ms. Hanes, you have talked violence and exposure to violence.

Ms. HANES. Yes.

Senator FRANKEN. Some of that exposure to violence is at home, and what I understand is that exposure to trauma—Assistant Secretary Delisle is talking about sort of cognitive skills, but I am thinking about emotional skills and emotional trauma and what that does. And, you know, kids' witnessing violence, not necessarily directly being abused but witnessing their mom, and how much are we maybe so focused on academic and cognitive achievement that we are not focused enough on the emotional skills and emotional development that children need to be successful in school and in life. And, you know, what role—and the Assistant Secretary can weigh in on this. What extent does not having mental health professionals, not having social workers, not having counselors in the school to address this—because in Minnesota we have a ratio of 771 students per counselor, and the recommended ratio is about 250:1. Speak to that, if you might, and I would like to hear from both of you.

Ms. HANES. I can speak to the issue of children's exposure to violence, and that was precisely what the task force findings were today. Research has clearly indicated children exposed to violence, whether in the home, whether they are victims or they just witness it, whether it is in school or it is in the community, those children suffer trauma, and the evidence is conclusive that those children do not do as well. Physically, they tend to have more health care problems and medical maladies, but we also know that those children are significantly at risk for compromising their education ability, for mental health issues, and that they are at greater risk to enter the juvenile justice system.

And what we heard this morning from this task force was we have to pay attention to that, not only to the early childhood development but to what trauma, if any, children have sustained and without intervention that begets violence. And so it clearly needs to be addressed simultaneously. We cannot look at these issues in a vacuum.

Senator FRANKEN. Before the Assistant Secretary gets to counselors and social workers, I just want to address that response, which is the Chairman talked about specific legislation. We have a piece called VAWA, the *Violence Against Women Act*, that I wish we would get passed in the House, because when you talk about exposure, children's exposure to violence, you know, it is really important to have transitional housing for women who are being abused, physically abused, so they can get out of the house and

have a place, because sometimes they stay with their abuser because they have nowhere to go. So we have specific legislation that is desperately waiting to be passed in the House.

Assistant Secretary.

Ms. DELISLE. Thank you, Senator. One of the things I really want to emphasize as well is that when we are talking about high-quality early school programs, preschool programs, we are also talking about developing the whole child, including the social and emotional components. And one of the things we have been working on really quite deeply with many States, particularly those in the Race to the Top Early Learning Challenge Grant States, is the development of kindergarten readiness assessments. So we will have far more knowledge about students who enter kindergarten and where they are at developmentally, not just from numeracy and literacy, for example, but where they are in their social and emotional well-being as well. So I really want to emphasize that.

You know, when I look at the numbers and the ratio, for example, of school counselors, as you mentioned, it is really determined by every single State. And I was always concerned as a district superintendent when I would look and think about the resources so vital to supporting that classroom teacher, because classroom teachers work really, really hard to meet the needs of their students. But, with increasing numbers of students in classrooms, they also do not always have the skills necessary such as counselors or social workers have.

So it is very concerning to me to have one student to every 800 or 900 counselors, and many, many schools do not have social workers as well.

Senator FRANKEN. If we had one student to every 800 counselors, we would be in great shape.

[Laughter.]

Senator FRANKEN. But my worry is the 800 kids to every counselor.

Ms. DELISLE. I am sorry.

Senator FRANKEN. I am sorry. That was kind of—I used to be in comedy.

[Laughter.]

Ms. DELISLE. I remember. I apologize for that.

Senator FRANKEN. I apologize, too.

Ms. DELISLE. So 900 students to a single counselor. Nine hundred students to a single counselor is cause for concern. I apologize. I am not in comedy. But one of the things——

Senator FRANKEN. I know.

[Laughter.]

Senator FRANKEN. Sorry. I could not resist.

Ms. DELISLE. Do you want me to keep my day job?

Senator FRANKEN. Keep your day job.

Ms. DELISLE. Keep my day job, OK.

One of the things that we really have to work hard through our agency, especially with the Office of Safe and Healthy Students, is to get more schools understanding this multi-level, community-based approach so that they are not just looking at what the resources are available in a school, but they are also looking at what

resources are available in a community, so it becomes a community partnership with that school district.

For example, in a school district in which I worked, there were often times when classroom teachers did not know what community supports were even possible for a family, so they did not have an idea of how to connect somebody to them. And so we have got to be better at doing that across our country in every single State and working with State departments of education, who work then with the local school districts to bring about what those supports are.

In many of our grant programs, that is one of the things that we are really emphasizing, that it is a community-based approach; it just cannot happen in the classroom, and it just cannot happen within that school.

Senator FRANKEN. And that is what the Promise Neighborhoods do.

Ms. DELISLE. Yes.

Senator FRANKEN. So spectacularly.

Ms. DELISLE. Yes.

Senator FRANKEN. Thank you, Mr. Chairman. Sorry to go over my time.

Chairman DURBIN. Thanks, Senator Franken.

I would say to both witnesses, there was a discussion about the Supportive School Discipline Initiative, and there is a report with guidance on school discipline practices that your Departments are developing. Will this guidance take the form of policy recommendations and guidelines to local jurisdictions? And can you give us an idea when this is going to be available?

Ms. HANES. The answer is yes, it will take the form of policy recommendations and guidelines. And I do not want to promise a date. I can tell you that we are working diligently with the two agencies, and hopefully in the next couple of months that will be available.

Chairman DURBIN. Great. Thank you both for your testimony. We appreciate it very much.

Ms. HANES. Thank you so much.

Ms. DELISLE. I appreciate the career counseling, too.

Chairman DURBIN. I would ask the second panel to please come to the table and join us. And I would like to report that our overflow room is standing room only. We thank you all for your patience in following this hearing. There are 260 people in this hearing room and over 150 in the overflow room. This is clearly a topic of great interest, and we thank you all for being here.

If you would each remain standing, we will dispense with the first part. I have seen Senator DeWine administer the oath so often, and now he can be part of receiving one. If you would all please raise your right hand? Do you affirm the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DEWINE. I do.

Ms. DIANIS. I do.

Mr. WARD. I do.

Mr. COULSON. I do.

Judge TESKE. I do.

Chairman DURBIN. Thank you all very much.

It is great to see my friend and former U.S. Senator from Ohio, Mike DeWine, back before the Judiciary Committee. We came to the House of Representatives together a few years back, and many times over the years we have worked on a bipartisan basis on issues of human rights, from global AIDS to the humanitarian effort in Haiti. There is no Senator—there is no Senator—who has spent more time and dedicated more effort toward Haiti than Mike DeWine, and I appreciate it and thank you for your continuing interest.

Former Senator DeWine has been serving as Ohio's 50th Attorney General since January 2011. He previously served 12 years in the Senate, four terms in the U.S. House, and as Lieutenant Governor of Ohio.

Attorney General DeWine, welcome back. The floor is yours.

STATEMENT OF THE HONORABLE MICHAEL DEWINE, ATTORNEY GENERAL FOR THE STATE OF OHIO, COLUMBUS, OHIO

Mr. DEWINE. Mr. Chairman, Members of the Committee, thank you very much. It is great to be back, great to see you and Senator Franken. I must tell you, being on this side of the room is a little different than being on your side. It makes me a little more nervous, I think. It should. I understand that. I understand that. I noticed. Thank you, Senator, for reminding me of that.

Mr. Chairman, I have listened to the testimony of the other witnesses so far, and I think I can probably have the most value added to this to go back when I was Lieutenant Governor under George Voinovich, and my job was to be in charge of the entire criminal justice agenda of the Voinovich administration. And when we took office—this was in 1991—we found that our Department of Youth Services, which is the State system where we sent the most problematic kids, was kind of in disarray and that, frankly, our whole juvenile system in Ohio was having real problems.

Our State system, we had about 2,500 young people in it. We were at anywhere between 160 and 200 percent overcrowding. We did not have much programming, and part of the reason we did not have much programming is we were so overcrowded, we were just trying to deal with a number of people there.

At the county level, in Ohio, we have really 88 systems. We have 88 counties, we have 88 juvenile judges, and each one runs their own court. At the county level, the juvenile judges did not really have the resources to deal with these young people. And many times they faced difficult choices, no good choice at all, and that is, a kid would get in trouble and they would put him on probation; then he would come back, put him on probation. At some point, they said, "Well, what else are we going to do?" And too often the local juvenile judge had no variations of options. Basically it was either send that kid to the State to be incarcerated and let the State worry about him or her, or put him back on probation. And, frankly, there was not a whole lot in between.

The economic incentives were also all in one way. If they kept the kid at the local level and tried to deal with him or her, total cost was at the county level. If they sent him to the State, that total cost was for the State. So what do you think we got? We got 160 percent overcrowding, and it was a system that not only was

a costly system, it was not a system that was really working very well. And so what we did is we came up with a solution. We got everybody together, and the other problem we had is our judges were mad at DYS and DYS was not happy with the judges, and no one was happy. And so we started putting meetings together. We put judges and the officials from DYS, and in essence, the judges said: You give us the money and we will handle most of these kids. We know how to deal with it. We know their families. We know them. They have been in our court before. But we do not have the resources to do the right programming.

Long story short, we did it. The end result was that we had the money follow the child. Today we have about 550 kids in our State system, and I must tell you, those are the most problematic kids, and those are kids who probably in most cases clearly should not be at the local level. Very, very tough.

But for the rest of them, they are being dealt with at the local level, and what that means is that the local judge can come up with what is appropriate. We like to think, Mr. Chairman, Members of the Committee, that our 50 States are the laboratories of democracy. We talk a lot about that. Even a book was written on that that I read a few years ago. We like to think in Ohio that our 88 counties are sort of the laboratories of experimentation as well and that one county can learn from another county.

And what we found—and it should not have been a shock, because I started as an assistant prosecutor and dealt with a very, very good probate general court judge, Judge Hegler, a very innovative man. It should not have been a surprise to us, but what we found is when we let the money stay at the local level, sent that money actually back with that kid, these judges came up with some amazing programs. And it was programs that were tailored for that particular child. Some were residential, some were not residential. Some were intensive probation. A lot of them had significant educational components with them. We had Saturday schools, did all kinds of innovative things, and it worked very, very well.

[The prepared statement of Mr. DeWine appears as a submission for the record.]

Chairman DURBIN. Thanks, Senator DeWine. I appreciate your testimony.

Judith Browne Dianis is the co-director of the Advancement Project, a national civil rights organization that worked for years to end the school-to-prison pipeline. Previously, Ms. Browne Dianis was the managing attorney at the Washington, DC, offices of the NAACP Legal Defense and Educational Fund. I thought you looked familiar. She is a graduate of Columbia University School of Law. She testified before our Subcommittee last year at our first hearing on restrictive state voting laws.

Ms. Browne Dianis, thank you for joining us, and please proceed.

**STATEMENT OF JUDITH A. BROWNE DIANIS, CO-DIRECTOR,
ADVANCEMENT PROJECT, WASHINGTON, DC**

Ms. DIANIS. Thank you, Chairman Durbin and Members of the Committee. Thanks for the opportunity to be here today. And thank you, Chairman. Having testified before you on voting rights,

I want to especially thank you for your commitment to civil rights issues.

My name is Judith Browne Dianis. I am co-director of Advancement Project, a multi-racial civil rights organization. Since its inception in 1999, Advancement Project has been part of a movement to dismantle the school-to-prison pipeline. Youth, parents, and local groups have been at the forefront of this movement. They are here today in numbers. They come from Chicago. They are here from Mississippi, Philadelphia, New York City, Buffalo, Ohio, Michigan, Louisiana, DC, Georgia, Massachusetts, New Jersey, North Carolina. They are in the overflow room, and it is packed, from what I understand. They represent national coalitions called the Dignity in Schools Campaign and the Alliance for Educational Justice, and there are others here in support. Because of the work that they have been doing, the tide is starting to turn away from ineffective, exclusionary discipline and toward common-sense policies that work.

In all the years that I have done this work, there is one particular case that stands out. Ja'eisha Scott was a five-year-old kindergarten girl in Pinellas County, Florida. When her teacher ended a jelly bean-counting game, Ja'eisha did not want to stop the game. She threw a temper tantrum. When the teachers could not control her, they decided to call in police. They took her into a room where Ja'eisha sat quietly, finally. When three police officers entered into the room, they pulled the five-year-old girl out of her seat, pushed her against a desk, put her arms behind her back, put handcuffs on her. They took her out to a police cruiser and shackled her at her ankles where she was left for hours, crying, until her mommy came to pick her up.

Ja'eisha is seared in my memory. We all want high-quality schools that care about youth and give them real opportunities to succeed. Keeping students safe sometimes requires schools to take appropriate disciplinary action. However, across the country, students are being suspended, expelled, or even arrested for minor misbehavior, like being late to school or violating a dress code policy. These zero-tolerance policies lead to high dropout rates, low academic achievement, and too many young people pushed on a pathway to prison.

We have a discipline crisis in this country that must be ended. Suspension rates nearly doubled in the past 30 years. Police are arresting students for behaviors like talking back. That is now disorderly conduct. Or writing on desks. That is called vandalism.

In Florida, during the 2010–11 school year, two-thirds of school-based referrals to law enforcement were for misdemeanors, including disruption of a school function, disorderly conduct, or minor schoolyard scuffles.

In May, an honors student in Houston, Texas, spent the night in jail because she missed class because she had to go to work to support her family.

In 2007, a 13-year-old from North Carolina was handcuffed and removed from school for writing the word "Okay" on her desk.

Treating students like criminals does not make sense. Zero-tolerance policies do not make our schools safer, and schools with high-

er rates of suspension and expulsion appear to have less satisfactory ratings of school climate.

Zero-tolerance policies are also expensive. Every dollar that goes into police, metal detectors, drug-sniffing dogs, and surveillance cameras is a dollar that could have been used for teachers, guidance counselors, psychologists, and programs that support young people. Suspensions, expulsions, and arrests are disproportionately borne by young people of color, students with disabilities, and lesbian, gay, bisexual, transgender, and queer youth.

Racial disparities are stark. These disparities are not the result of students of color acting out more. That is important. Students of color are actually far more likely than white students to be suspended for discretionary offenses like disrespect or disruption. These offenses, which are mainly in the eye of the beholder, leave room for implicit and explicit racial biases.

This issue is not solely about misbehavior. Adults are often overreacting to young people, treating them like criminals. Let me be clear. I in no way want to contribute to the current culture of blaming teachers for all the ills of our schools. Many teachers use harsh discipline because they lack the needed tools and training. Additionally, the pressures of high-stakes testing often leave teachers with little time and few alternatives to exclusionary discipline.

But we can end this school-to-prison pipeline and put young people on a track to success by focusing on preventing misbehavior and providing non-punitive, supportive, and effective interventions when misbehavior occurs. Through the ground-breaking advocacy of student groups like Padres y Jovenes Unidos in Denver, Youth United for Change in Philadelphia, VOYCE in Chicago, and others, school districts have started to limit unnecessary exclusionary discipline and address racial disparities. As a result, in Denver, from 2003 to 2009, out-of-school suspensions dropped by 38 percent, and referrals to law enforcement dropped by 52 percent.

In Baltimore, similar reforms have cut suspensions by 63 percent, resulting in a 12.4 percent increase in graduation rates for black students.

Common-sense discipline that keeps young people on an academic track leads to improved educational outcomes and maintains safe environments. My written testimony provides detailed recommendations for congressional action. Through funding incentives, data collection and analysis, and redefining what makes a school high performing, Congress can encourage the use of best practices and data-driven reform to dismantle the school-to-prison pipeline.

Chairman Durbin, thank you for the opportunity to testify today on this critical civil rights issue. Students flourish when they are in school, when their schools are healthy, nurturing places where they can be safe and where they can learn. Thank you for ensuring that every student has the opportunity to stay on the pathway to success and not become caught in the school-to-prison pipeline.

Thank you.

[The prepared statement of Ms. Dianis appears as a submission for the record.]

Chairman DURBIN. Thank you for your testimony.

Edward Ward is a sophomore honors student at DePaul University in Chicago. He majors in political science and works at the DePaul Christian Ministries. Edward Ward graduated in 2011 from Orr Academy in Chicago, and he was the high school salutatorian. He was raised on the West Side of Chicago, has been an active volunteer with Blocks Together, a community organization in West Humboldt Park. He is also a licensed minister at the Word of Life Christian Ministries.

Edward Ward, thank you for joining us today, and please proceed with your testimony.

STATEMENT OF EDWARD WARD, BLOCKS TOGETHER, DIGNITY IN SCHOOLS CAMPAIGN, CHICAGO, ILLINOIS

Mr. WARD. Thank you, Senator Durbin. Again, my name is Edward Ward. I am 20 years old, from Chicago, Illinois. I am an Honor Roll student at DePaul University.

I grew up on the West Side of Chicago. Poverty and violence are prevalent in my community. When I was 18, I witnessed a complete stranger's killing mere feet from me in a neighborhood restaurant.

A few years back, I was stopped by police on the streets, and I saw them train their guns on me until I could show them that the item in my hand was simply a cell phone.

Many of us come from families where it is a constant struggle to pay bills. I have seen how my fellow students did all they could to focus on getting an education, despite the economic hardships they experienced at home, many of them while also taking care of their siblings and themselves.

When I got to high school, I began to see that my fellow classmates were being constantly suspended from school. When my classmates were suspended, they would disappear for days, and when they were kicked out they would disappear even for weeks. What was most shocking to me was discovering that they were being suspended for minor infractions, the kind of infractions that should not merit more than a stern warning or reminder.

Unreasonable punishments like these were not rare at my school. My classmates and I saw many other students served with two-day suspensions because, for example, they were not carrying the proper identification around their necks. Some of my friends would come to school late, sometimes by no fault of their own. I remember one of my peers coming to me saying that she was held in detention and could not be permitted to go to class because she came late, but it was because she could not leave her little brother at home alone until her parents came home from work. Other students were homeless and had trouble getting bus cards to come from far-off places where they stayed.

My school's environment was very tense. The halls were full of school security officers whose only purpose seemed to be to serve students with detentions or suspensions. This was nerve-wracking to me, because although I was an honor student, I felt constantly in a state of alert, afraid to make even the smallest mistake or create a noise that could enable the security officers to serve me with a detention. Instead of feeling like I could trust them, I felt like I

could not go to them for general security issues because I would first be interrogated before anything would get done.

Our school even had a police processing center so police could book students then and there. The officers do not get any special training to be in the school so they do not treat us like we are misbehaving; they treat us like criminals. Every time there was a fight, the police would step in and handcuff students even when there was no weapon involved. Some would be sent to the police station in the school; a few or some never came back to school after that.

I could slowly see the determination to get an education fade from the faces of my peers because they were convinced that they no longer mattered. Until recently, I had a cousin who was attending Orr. However, he never finished because he was suspended with so much frequency that he eventually dropped out. He had a problem at home. You see, my cousin's mother is a drug addict, and as a young person he did not quite know how to deal with that, so he started acting out in class. He was what you would consider to be a "class clown." The school believed that by suspending him, it would allow him more time to think about his misbehavior. Instead, it gave him more time alone on the streets and made it easier for him to simply turn to selling drugs and make easy money. Eventually, my cousin was arrested.

Where many young people, like my cousin, feel unwelcome and under siege in their own schools, they end up on the streets, in the criminal justice system, or worse.

Because I believed I needed to take part in improving my school, I got involved with Blocks Together, a nonprofit organization in the West Humboldt Park community, and a member of the National Dignity in Schools Campaign. At Blocks Together, we work to implement restorative justice practices in Chicago Public Schools. Restorative justice is grounded in the idea that we become safer when we hold each other accountable in ways that build a more tight-knit community. Restorative justice enables us to create an environment in which we listened to the voices of students who were facing disciplinary action and work together to resolve conflict.

I think that schools need to throw out the assumption that young people are all dangerous or a threat. They must work to understand the issues that students face every day, whether it is at home, learning difficulties, language barriers, or experiencing bullying and discrimination. We need solutions, not suspensions.

A number of my colleagues here today have worked with Chicago to revise its school discipline code to limit suspensions, and we look forward to working with CPS to build on these positive steps. I hope you understand that my experience at Orr was not an anomaly, but it is what is happening in schools across the country, particularly in communities of color.

I would hope in the near future that we will have undone this mistake, that my children will never have to feel anything but welcome in their schools. But a problem that my generation did not cause cannot be solved by my generation alone.

Thank you.

[The prepared statement of Mr. Ward appears as a submission for the record.]

Chairman DURBIN. Thank you, Mr. Ward. That was excellent.

I would like to note that we have a number of members of other youth organizations with us today. Twenty members of the Voices of Youth in Chicago Education, VOYCE, have traveled here from Illinois. Over 100 members of the Dignity in Schools Campaign and other organizations have traveled from all across the country. You are certainly welcome, and we thank you very much for being here.

Andrew Coulson is our next witness. He is the director of the Cato Institute Center for Educational Freedom. Previously, he was a senior fellow in education policy at the Mackinac Center for Public Policy in Michigan. Mr. Coulson has written extensively about education, including a book entitled "Market Education: The Unknown History." A graduate of McGill University in Canada, he began his career as a software engineer at Microsoft. I was glad to accommodate Senator Graham's request for Mr. Coulson to join us today. We welcome his testimony.

Please proceed.

STATEMENT OF ANDREW J. COULSON, DIRECTOR, CATO INSTITUTE CENTER FOR EDUCATIONAL FREEDOM, WASHINGTON, DC

Mr. COULSON. Chairman Durbin, distinguished Members of the Committee, thank you very much for having me here today. You have already heard the harm done by out-of-school suspensions, so I would like to begin by describing an alternative.

Imagine a school that does not expel students and does not use out-of-school suspensions. Instead, it enforced very vigorously a code of conduct for all students. Minor transgressions are greeted with detentions, more serious transgressions with in-school suspensions. The suspended students must write an essay explaining why their behavior was inappropriate, and they must write an apology to their fellow classmates and their teachers. They must attend Saturday morning classes to help them catch up academically, and they are temporarily assigned to a lower grade level during the period of their suspension.

These are the policies of the American Indian Model Schools in Oakland, California, often abbreviated as AIM schools. Oakland, as you probably know, is one of the most crime-ridden cities in America. It is extremely dangerous. The school district is very often suspending students. There are fatalities of students, gunshot fatalities every year, sometimes by the school district's own armed police force.

The American Indian schools are different. I visited them on numerous occasions. They are studious and orderly. There are no metal detectors. There are no school police. There is virtually no violence—something like three fights a year across all three campuses of this charter school network on average over the past eight years.

They achieve this not by kicking out students, but by focusing, as I said, on discipline and on keeping students in school. Though they are a typical inner-city school as far as demographic make-up, predominantly Southeast Asian, Hispanic, and African American, their low-income Hispanic and African American students outperform California's statewide average for wealthier whites and

Asians. It is one of the top schools—their charter schools, their middle schools, are among the top schools in the entire State and the top-performing charter school network in the State.

But the American Indian Model Schools are an exception. If we discontinue or drastically curtail the use of out-of-school suspensions tomorrow, that is not what students will get in their place. So we have to ask what will happen in the system as it exists today if we substantially curtail out-of-school suspensions.

Well, this was a question investigated by Professor Joshua Kinsler in a forthcoming issue of the journal *International Economic Review*, and what Professor Kinsler discovered is that cutting out-of-school suspensions within the system as it exists now actually lowers overall student achievement and widens the black-white achievement gap, because keeping disruptive students in class makes it harder for the typical school to be able to teach and because lengthy suspensions, he found, did, in fact, encourage good behavior, or discourage misbehavior.

In thinking about these findings, I was reminded of an essay that Judge Teske wrote last year. He argued that school officials and the justice system have a duty to protect innocent students from bullies, and he makes a compelling argument. And that same argument applies as much to children's education as to their physical safety. It is unjust to punish innocent students educationally for the actions of a disruptive few.

Given that simply curtailing out-of-school suspensions by itself within the current system can make matters worse in some cases, according to Kinsler's research, we need to find a way of promoting the use of superior practices like those of the AIM model. In my written testimony, I offer two observations for how we might do that.

First, if we want better policies, we need to ensure that it is in administrators' own interests not just to implement them, but implement them faithfully. Administrators should be recognized and rewarded for keeping more students in school, for maintaining better discipline, and for maximizing graduation rates. And as it happens, these are the incentives that we already see in the private sector in education.

Second, effective school discipline requires consistency across grades and across teachers. Kids have to know that misbehavior that they cannot get away with in one class they will, again, not be able to get away with in another class. That consistency is essential.

Well, sociological research done by Harvard researchers and others finds that independent schools tend to be better at creating this consistency and this shared sense of culture among the staff than public schools. And it is generally concluded that this is because private school administrators have greater freedom to create and maintain a staff committed to common values.

I am not suggesting that Congress enact Nationwide private-sector choice legislation. The Constitution does not empower it to do so. But Congress could facilitate the doption of such programs at the State level. It could expand the existing Washington, DC, Opportunity Scholarship Program as an example of what is possible. It could curtail existing Federal programs that have failed to show

significant benefits and that reduce the educational resources available to States. And it could reject any new programs or regulations that would impede States' efforts to bring safe, responsive independent schools within reach of all children.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Coulson appears as a submission for the record.]

Chairman DURBIN. Thank you, sir.

Judge Steven Teske was appointed to the bench in 1999. He is Chief Judge of the Juvenile Court of Clayton County, Georgia. Formerly, he served as Chief Parole Officer in Atlanta and as the Deputy Director of Field Services for the Board of Pardons and Paroles, Special Assistant Attorney General prosecuting child abuse and neglect cases. He is a leading expert on juvenile justice reform. He has been appointed by two Republican Governors to several criminal justice commissions. Judge Teske is a graduate of Georgia State University, where he received his master's and juris doctor degrees. Judge Teske, please proceed.

STATEMENT OF HON. STEVEN C. TESKE, CHIEF JUDGE, JUVENILE COURT OF CLAYTON COUNTY, GEORGIA, JONESBORO, GEORGIA

Judge TESKE. Good afternoon, Chairman Durbin, Senator Franken.

When I took the bench in 1999, I was shocked to find that approximately one-third of the cases in my courtroom were school related. The year before campus police, the court received only 49 school referrals. By 2004, the referrals increased over 2,000 percent, of which 92 percent were misdemeanors, mostly involving school fights, disorderly conduct, and disrupting public school.

Despite the many arrests, school safety did not improve. Guns, knives, box-cutter knives, and straight-edge razors continued to come on campus. The graduation rates decreased during this same period, reaching an all-time low in 2003 of 58 percent. The more students we arrested, suspended, and expelled, the more juvenile crime rate significantly increased. These kids lost one of the greatest protective buffers against delinquency: school connectedness.

By 2004, over 80 percent of all school referrals were African American students. The racial disparity in school arrests was appalling, and I felt I was contributing to this system of racial bias by not doing something.

It was also frustrating for me as a judge to see the effectiveness of the prosecutor and probation officer weakened by my court system being inundated with low-risk cases that consumed the court docket and pushed kids toward probation—kids who made adults mad versus those who scared us.

The prosecutor's attention was taken from the most serious and, therefore, difficult cases to prove—burglary, robberies, car thefts, aggravated assaults with weapons—to prosecuting minor cases. This craziness trickled over into probation cases, causing caseloads to increase six times their size, diverting attention from the serious to the minor cases. Consequently, our recidivist rate increased to over 70 percent. Zero tolerance was negatively impacting the entire community, and something had to be done.

I turned to the Juvenile Detention Alternatives Initiative, JDAI, an initiative of the Annie E. Casey Foundation. In 2003, using the JDAI model, I exercised my convening role as a juvenile judge and convened all the stakeholders to discuss other ways to handle school offenses. We agreed on two written agreements necessary to address the interests of all stakeholders: one, reduce school arrests; two, develop alternatives to suspension and arrests, including assessment and treatment of chronically disruptive students.

The first agreement prohibited the filing of certain misdemeanor offenses, and the second agreement created a multidisciplinary panel to assess the needs of disruptive students and treat them through our system of care that connected all of the community providers. The panel linked the child and family to services in the community that were not available to the school system.

Since the introduction of the protocol in 2004, school referrals have fallen 83 percent. This reduction created a greater police presence on campus. They were not transporting kids anymore. They were not handcuffing as many kids anymore. But instead of arresting them, the police engaged students in positive ways, leading to positive results.

By replacing these handcuffs with positive interaction, the students shared information with police about weapons, fights, and other disruptive events about to occur. As police intel increased, school disruptions decreased, including serious weapons on campus, by 73 percent. The school police have become the single most important tool for detectives to solve crimes, including murder, because of the style of school policing promoted by this protocol.

The number of youth of color referred to the court on school offenses decreased by 43 percent. By reducing arrests and suspension rates and replacing these zero-tolerance practices with evidence-based programs, the overall graduation rates increased 24 percent. The protocol has dismantled our pipeline to prison by decreasing our probation cases from 150 to 25 now per officer, allowing for intensive supervision of the high-risk kids with serious offenses and reducing the recidivist rates from over 70 percent down to 24 percent.

Other results of the dismantling include a 70-percent decrease in the average daily population, that is, the kids in jail; a 64-percent reduction in the average daily jail population of minority youth; a 43-percent reduction in the average length of stay of these kids in jail who had to be placed in there, the more serious kids; 43 percent fewer commitments to State custody; 40 percent fewer commitments of minority youth, and—get this—a 67-percent decrease in the number of delinquent petitions filed in my court.

The Clayton experience is not a novel idea. It is grounded in research that supports common-sense notions that keeping kids in school will increase graduation rates, that in turn will positively impact community safety and improve our economy.

Clayton County may have been a pioneer in dismantling of this pipeline locally, but we are not alone. Many judges across our Nation have exercised leadership to convene stakeholders and have replicated results similar to Clayton.

Chairman Durbin, Senator Franken, this issue is not going away. It is here to stay until the pipeline is completely dismantled. Just

look around. Overflow. Look at all the kids. With the help of this Subcommittee, I know we can get there sooner or later. Thank you.

[The prepared statement of Judge Teske appears as a submission for the record.]

Chairman DURBIN. Thanks, Judge Teske. Very powerful.

Edward Ward, I visited Austin High School. I bet you know what that was, located on the West Side. It is closed down now, I think. But when I went there, they had decided that the Cook County Sheriff's Office would put an office there in the school so there would be plenty of squad cars always there on school property. When they let the school out at 2:30, they closed the surrounding streets so the drive-by gangs could not shoot at the kids as they were trying to get home. It was a pretty sad and violent situation there, and everybody, I think, was doing their very best, with metal detectors and everybody present, to really make sure that kids were not hurt or killed, literally, in the school or on their way home.

I think they were doing the right thing. They may not have come to that strategy thinking through, as Judge Teske said, a different relationship with the students. But balance, if you will, the excesses that you saw where the student who stayed home to protect their little sister or brother ends up being brought into the criminal justice system with the reality of violence in the community that you also testified to. Tell me how to strike that balance.

Mr. WARD. With the violence in the community, I think it outweighs a lot, nonetheless. When you suspend students or you put them out of school, whether it be expulsion or suspension, then you expose them to these violent crimes, or you expose them to this idea of being shot, being killed, being hurt, or being harmed. I have seen it all too many times where some of my family members were actually gunned down in front of my own house.

Just before I got here, before I flew in from Chicago a few days ago—it was widespread on the news—a few friends of my brother, they were shot, one 16 years old, he was shot and killed. One was 17 years old, and the other was 19 years old. Those two, they were in critical condition.

I think that we have to be able to tell the differences between troubled youth, not bad youth but troubled youth, because when you label them as threats, then you get consequences and not results. If we want to see action, if we want to see improvement in our schools, suspension just does not work. I have seen too many of my peers being suspended, and they have gotten to the point where, when they become afraid to get suspended, they decide that the best thing for them to do is leave, considering the fact that the schools label them as bad students and label them as mistakes. So we have to change the label on these students, and we have to give them an opportunity and a chance to express themselves, look into their history, look into where they come from, because a lot of youth from where I come from face huge struggles, huge difficulties. They go through a lot. And they have, like, where their basic necessities are not being met.

For example, there were times with me where I did not have food in my house, and I was hungry, so the only place I could find a meal is in school. So when I get to school, that is all I am thinking

about, my next meal. Other times I did not have heat in my house, so when I get to school, I am thinking about the cold house I have to go home to.

So it is like we have to take into account the situations that students face outside of school to understand their actions while they are in school.

Chairman DURBIN. Senator DeWine, you talked about the Ohio experience you went through, and you talked about the prosecutors' court system and corrections system solution. A lot of testimony today talks about taking it down to the school level and trying to solve the problems in the school before it reaches that level. Was that part of the Ohio experience?

Mr. DEWINE. It was, Mr. Chairman, and I think as I listened to the very eloquent members of this panel and as I kind of reflect on my 30 years of dealing with law enforcement and judicial problems, I think the one thing we have learned is that whatever the punishment, it has to be appropriate and it has to fit. And it worked with our RECLAIM Ohio where sending a kid off and severing the relationship with the community, severing the relationship with family, sending them off to the State system for however long was not appropriate for all of these kids. It might have been appropriate and was appropriate for some of them, but certainly not all of them. I think the same way in schools. Clearly, the best thing we can do is try to keep kids in school if you can.

Now, how you do that, we have heard different points of view about that and some innovative ideas of how we do that. But I just think that it has to be—whoever is making the decision, whether it is a judge or a principal or a teacher or whoever it is who has authority, we have to give them more tools and more options. And I think that what we look at as bad decisions, overreacting sometimes, comes from a lack of options. And so you have two bad options, and maybe you got the most severe, but maybe you want to do something that was, frankly, much more appropriate for that individual child. I just think that is what we have learned as we look at this whole thing.

Chairman DURBIN. So, Judge Teske, what you are talking about is a policeman in a school in a much different role, viewed differently by students at the end of the day. I am going to kind of challenge you and say, wouldn't the best outcome be no policeman in that school?

Judge TESKE. You know, I had that presented to me about three years ago. The only thing is that I do not believe that we would have achieved the 73-percent reduction necessarily, and as quick as we did, you know, with the serious weapons, guns and knives, coming on campus.

But there is another asset here that I think needs to be mentioned. Our school resource officers are trained every year the week before——

Chairman DURBIN. This is the police officers?

Judge TESKE. Yes. The week before school starts, they are all required to be certified in crisis intervention. And at the end of the day, they are told in advance to come with testimony about things that have happened this past year as it relates to what we now call

in Clayton County the positive student engagement model for school policing.

Here is the asset, Mr. Chairman, and it is just real brief. Deputy Pauls at Forest Park High School gets up and says that she was called down to a classroom. A young lady was violent, throwing chairs at the teacher, threatening to kill the teacher. No doubt she had to be removed from the classroom. Before our protocol, she would have been handcuffed, no questions asked, placed in the patrol car, and brought down to my court. Now, instead, Deputy Pauls under this protocol takes the child down to her office, calms her down. It took about two hours working with her. She finally broke down and confessed that her mom's live-in boyfriend has been raping her every week. Instead, the girl was taken into protective custody, and the boyfriend was arrested for child molestation. I wonder who is really tough on crime. It may look soft, but we are tougher. We got a child molester, and we saved a girl.

Chairman DURBIN. That is a great story.

Senator Franken.

Senator FRANKEN. Thank you, Judge, for that.

Mr. Ward, you are a pretty impressive young man, and I think something you spoke to was very interesting to me. You said that because the atmosphere in the school was so tense and because of the way the police were in the school, you did not feel comfortable approaching them when you had something to report. So, Judge Teske, you are talking about this positive atmosphere, which actually helps address the crime that Chairman Durbin asked Mr. Ward about in his first question. So I think that this approach obviously works, and I just want to commend you, Mr. Ward, for your testimony and you, Judge.

Senator DeWine, thank you for being here. You have been a leader on criminal justice reform both as a Senator, now as Attorney General, before as Lieutenant Governor. I think that RECLAIM, that initiative of saying that county judges are more in tune with the kids that are there and having the money follow the kid obviously was very successful and, I think, informs a lot of this.

One of your biggest contributions when you were in the Senate was and has been to focus national attention on a crisis we have in this certainly, which is that people with mental health disorders, both kids and adults, disproportionately end up in the criminal justice system. By one account, about two-thirds of kids in the juvenile justice system have diagnosable mental health disorders. We are basically using our criminal justice system as a substitute for a public health system and an educational system. So you have been a champion for mental health courts and other initiatives that address the problem.

Can you talk a bit about why you consider this issue—the relationship between criminal justice and the mental health system—so important?

Mr. DEWINE. Mr. Chairman, Senator Franken, let me first of all congratulate you, Senator Franken, and the other Members of the House and the Senate who are working on legislation to follow up on that and to go further, and I congratulate you and I certainly wholeheartedly endorse your bill, and I hope you can get it passed.

Senator FRANKEN. It is reauthorizing your bill.

Mr. DEWINE. Yes. I appreciate that.

[Laughter.]

Senator FRANKEN. I just wanted to clarify it for everyone.

Mr. DEWINE. That is why I think it is so good.

Senator FRANKEN. And I am very happy that I have Senator Johanns—this is a bipartisan issue. There is no question about that.

Mr. DEWINE. Senator, I first became interested in this issue when I was a young, 25-year-old assistant prosecuting attorney and was taking charge from police officers, and that was my job or one of my jobs, was trying cases. I would see time and time again people being brought back in or the file would reflect a guy who I thought we had dealt with six months before. And the police officer would say, “Yes, it is the same guy.” I would say, “Well, what happened?” “Well, we put him in our jail for a while, and he served his time, but now he is back.” He said, “But, you know, the real problem is this guy has a mental problem.”

Now, I heard that time and time again, and we did not have—you know, our local jail had good people, a great sheriff, but did not really have the resources to deal with this guy with his mental problems. And that was just my first introduction to how much mental problems weigh in on our judicial system and our criminal justice system. And it is something that I worked on, I worked on it while I was Lieutenant Governor; we tried to get some resources not only into our prisons but into our jails. We made some progress. But that is what got me interested in it, and it is something that police do not usually have the resources and many times courts do not have the resources. We have seen a great expansion.

I partnered with Ted Strickland, who later became Governor of the State of Ohio. Ted and I partnered on a previous bill to that on mental health courts. I have worked very closely with Justice Stratton on the Ohio Supreme Court who has been a real champion for this. We have gotten into veterans courts. We have gotten into specialized courts to deal with people’s real problems.

And so you have to deal with them in prison, you have to deal with them in jails, and you have to deal with them in the courts, once again trying to give the resources and make those resources—once again, as we talked about a moment ago, the tools need to be there so that that person can be dealt with appropriately.

Senator FRANKEN. Well, thank you again for your contribution on mental health and justice issues.

Mr. DEWINE. Senator, if I could just add one additional thing, which I saw on your bill, and I think is very important, something we are right now working on in Ohio, and that is to continue training for police officers to give them the understanding, the in-depth understanding to deal with people with all kinds of problems, even people with autism, people with mental health problems. I think some of the saddest cases we have seen is parents who have a 25-year-old who clearly has a mental problem, and they have been struggling with that, and he or she has been struggling with that. And then one day the kid does not take his meds, whatever happens, and he goes off, the parents cannot control him. He is in the house, they call the police, and the police respond, and we end up with a police officer killed or we end up with this young man killed,

and it is a horrible, horrible thing. And it is no one's fault. But what we have to do, I think, is make training available for police officers so they can deal with a very difficult situation. And I am not saying we can eliminate every bad outcome, but I think if the police officer has more and more training——

Senator FRANKEN. That training has been shown to be very helpful.

Mr. DEWINE. It just is very helpful, and I appreciate the time to say that. Thank you.

Senator FRANKEN. Well, thank you.

Thank you, Mr. Chairman.

Chairman DURBIN. So, Ms. Browne Dianis, you heard Judge Teske talk about his experience in the courtroom there. You have done a lot of research in this area. Is this a model that we need to look to?

Ms. DIANIS. Yes, definitely. There are a number of things that I think that we should be looking at. One is the model that Judge Teske has used because it brings in stakeholders across sector, and part of the problem that we have found across the country is that we are not talking to each other. We cannot arrest our way out of this issue. We cannot suspend our way out of this issue. Young people have to be part of the conversation. Schools have to be part of it. And so what has been done with Judge Teske and the model that he is putting forth really is about getting everyone at the table to have that discussion and work toward solutions.

In the work that we have supported, also, what we have done is that young people and parent groups have actually been sitting down with school districts, reforming discipline codes. They have taken the lead on understanding here are the things that need to be changed and here are the kinds of programs that we need, pushing restorative justice in particular places, but really having the people who are impacted in the discussion makes a world of difference. And that is why I think it is great that you have had this hearing, that you have young people here, because people like Edward who know the stories and know that we—for example, your question about police being around schools where there is violence. Part of the problem is that often when we have that situation, the police who are there to protect young people turn on those young people. They often look at them as the ones who are the criminals instead of just being there to make sure that they are getting home safely. And so part of this is that we have to have that discussion, we have to have the stakeholders at the table so that we can make the reforms that actually make sense from all perspectives.

Chairman DURBIN. Mr. Coulson, you heard Judge Teske's model, somewhat different than the author that you quoted. Do you disagree with his approach, or do you think we need to try your approach? Tell me where you come down on this.

Mr. COULSON. I think Judge Teske's approach has definitely been effective. I have looked at the numbers on it, and there is just no arguing with them. In many cases, they have brought back down in just a few years numbers from spikes prior to his program's introduction that were absolutely astronomical. So it has really been an impressive improvement.

The system that I think will get us what we want is one in which we allow a lot of different options to compete with one another for people's choices. In Oakland, the schools that I described, the American Indian Model Schools, are chosen schools. They are charter schools. Everyone in the district knows that these schools are incredibly strict and do not tolerate even the slightest kind of misbehavior in the classroom that interrupts learning. And as a result, families that do not think such a strict environment would be good for their kid are not compelled to send their children to them. And, indeed, some parents choose the school because they know it is the highest-achieving school in the district, if not the State, depending on the year, and because it is also known to be the safest set of schools in Oakland, but find that it is not right for their kids. In fact, I have had students at these American Indian Model Schools tell me, no, it is not right for every child. I mean, some kids just cannot thrive under the level of strictness that we have here. But if you can, you can excel here better than anywhere.

So even that model that I have described is not what I—it should not be imposed on every school, but rather, we need a system in which schools are encouraged and their administrators are reinforced with every day of their working lives to find better ways to help kids. I think you really do need incentives more than mandates to make this work because we can mandate almost anything we want. Zero tolerance, all its faults, all its flaws, is a reaction to lawsuits and criticisms of bias from the 1980s and 1990s. You can read stories. I cite one in my testimony of an Associated Press story from 2001 where a school superintendent from San Diego is saying the reason we adopted these zero-tolerance policies is because everyone was suing us because they said our discipline policies were not uniform, and so we mandated these across the board, zero-tolerance policies in all our schools in our districts. So they mandated these policies, and they were badly implemented in many cases, and we have all the horrible results we see today. But if it were in the interest of those administrators to keep kids in school, to have them achieving at high levels, to have them graduating at high levels, they would do so.

Chairman DURBIN. Thanks.

Judge Teske, address the parent side of this issue for a moment. As Mr. Coulson said, in the charter school, the parents have chosen the school. And I might have missed it when you gave your explanation of your program and how it worked. Tell me the involvement of parents in the solutions.

Judge TESKE. Well, I had mentioned that we have a system of care, and, you know, let me point out that—I mean, it is like six, a half dozen ways, or the other. I mean, in a charter school like, you know, he has described, you know, you are replacing suspensions with positive behavioral-support type of interventions, okay? At the same time, for us in the public school system, we have to keep in mind that it is a public school system. You know, all kids are allowed in the school. The door is open. It is a big net.

Once they get in, well, who do we have coming in? Because, you know, these kids are coming from different households with different issues. The Task Force on Violence, look, Governor Deal has me as a commissioner on the Family Violence Commission in the

State of Georgia. I just finished a two-year term and started another one. The point is that we have to keep in mind that 60 percent of the kids in the juvenile justice system at least have experienced childhood trauma, including family violence, sexual abuse, physical abuse, accumulation of stressors. The public school system does not have a choice to shut them out. They are coming in. And, man, that is a trauma on the system itself. The schools need help. And the only way to get help is to bring everyone together and connect the school system—let us look at this in terms of a systems model. Connect the school system with all the other systems that service children, and we call that a system of care. We care about kids enough, we want to connect everyone together. And we feel—you know, I empathize with the school systems who are out there isolated by themselves. No wonder punishment becomes a default. We ask too much of them all by themselves to treat trauma, traumatized kids and—I mean, they have enough problems as it is with just trying to put the federally mandated kids with an IEP. Well, you know, there is a larger population of kids who will never be diagnosed under the IDEA who are chronically disruptive and need help because they are coming from homes, for one, with family violence or other childhood traumas, or they have other mental health types of disorders.

So what do we do? We bring parents in the system of care, and we let the parents own it. We let the parents help develop the treatment plan. And you know what? Some of these parents, they need help, too. And we help them help themselves. And by the system of care, we are able to bring in family functional therapy, multi-systemic therapy, IFI services, wrap-around services, family counseling. And we are able to do it because we can pool our resources. And, by the way, I want you to know something, Senator. Tomorrow is the final meeting for our Georgia Criminal Justice Reform Council. The Governor put me on that, and we are going to be adopting recommendations, of which one of those I am voting for is to adopt a RECLAIM Ohio model for Georgia.

Chairman DURBIN. Thank you.

I want to tell you, this has been an extraordinary hearing because of the witnesses and the people who have attended it and the nature of this issue and how much it means to all of us who are here today. This is just an indication of the statements that are being submitted by organizations that want to be part of this and could not bring a witness or could not attend. But it is an indication of the level of interest all across the United States. And without objection, I am going to place these in the record.

[The information appears as a submission for the record.]

Chairman DURBIN. The hearing record is going to be open for a week for additional statements, and written questions may be sent to the witnesses. We ask you if you could respond to them in a prompt way.

I understood Senator Blumenthal was returning, but it looks like I am going to gavel this to a close and thank all the witnesses on this panel and everyone who has been here today.

This meeting stands adjourned.

[Whereupon, at 4:10 p.m., the Subcommittee was adjourned.]

[Questions and answers and submissions for the record follow.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

UPDATED Witness List

Hearing before the
Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights

On

“Ending the School-to-Prison Pipeline”

Wednesday, December 12, 2012
Hart Senate Office Building, Room 216
2:00 p.m.

Panel I

The Honorable Bobby Scott
United States Congressman
State of Virginia

The Honorable Danny Davis
United States Congressman
State of Illinois

Panel II

The Honorable Deborah Delisle
Assistant Secretary for Elementary and Secondary Education
U.S. Department of Education
Washington, DC

Melodee Hanes
Acting Administrator
Office of Juvenile Justice and Delinquency Prevention
U.S. Department of Justice
Washington, DC

Panel III

The Honorable Mike DeWine
Attorney General for the State of Ohio
Columbus, OH

The Honorable Steven Teske
Chief Judge
Juvenile Court of Clayton County, GA
Jonesboro, GA

Judith Browne Dianis
Co-Director

Advancement Project
Washington, DC

Andrew Coulson
Director of the Center for Educational Freedom
Cato Institute
Washington, DC

Edward Ward
Blocks Together
Dignity in Schools Campaign
Chicago, IL

PREPARED STATEMENTS OF WITNESSES AND COMMITTEE AND SUBCOMMITTEE
CHAIRMEN

Statement
By
Robert C. “Bobby” Scott
Ranking Member
House Judiciary Subcommittee on Crime, Terrorism and Homeland Security
For the
Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
hearing on
The School-to-Prison Pipeline
216 Hart Senate Office Building
December 12, 2012
2:00PM

Mr. Chairman, Ranking Member Graham, and other Members of the Subcommittee: I want to thank you for developing this hearing and providing me with the opportunity to testify. I have had the opportunity and pleasure of working with Senator Durbin over the years on several of his human and civil rights initiatives. Included are his efforts to prevent and address genocide, the use of child soldiers, hate crimes, solitary confinement, and the unfairness of the 100-to-1 sentencing ratio between crack and powder cocaine which culminated in the enactment of his Fair Sentencing Act. So I am pleased to join you in your efforts on the issue of today’s hearing – the “school to prison pipeline.”

I am also happy to see that my good friend and House colleague, Danny Davis, the gentleman from Illinois, is testifying here today, Mr. Chairman. He and I have been working on a bi-partisan basis in the House with our colleagues, to address the school to prison pipeline.

The school to prison pipeline arises when overly harsh, nondiscretionary school discipline practices such as “zero tolerance” policies are applied to address even minor misbehavior through suspension, expulsion, law enforcement referral, arrest and other harsh disciplinary actions that are both ineffective and counterproductive. Research shows that these types of “get tough” approaches to discipline not only reinforce bad behavior, but also set up a progression from disciplinary proceedings to suspensions, expulsions, arrests, juvenile or

criminal proceedings, jail and prison. And minority students are much more likely to be subject to the pipeline than White students who commit similar infractions. Black students are three and a half times more likely to be suspended or expelled than their White peers, and over 70% of students involved in school-related arrests or referred to law enforcement are Hispanic or Black. And students with disabilities are more than twice as likely to receive one or more out-of-school suspensions as those without disabilities.

So, not surprisingly, there is a high correlation between harsh school discipline and school dropout. If a student is not doing well in school, and is acting out, the last thing the student needs is to be put out of school and end up at home or hanging out on the streets with no supervision and nothing constructive to do. Such students are not only more likely to dropout, but also to engage in delinquent activity, and become involved in the juvenile or criminal justice system which sets up the school to prison pipeline. And there is also a high correlation between lack of education and crime. About 2/3 of all prisoners are high school dropouts.

For many children, the prison pipeline starts even before they reach school. The Children's Defense Fund has coined the term "Cradle to Prison Pipeline" based on studies that show that a third of Black boys born during the study period will end up in prison in their lifetimes if there is no effective intervening force to turn them around. For these children, we would hope that school would be such an intervening force. Instead, in all too many instances, with the help of harsh, zero-tolerance disciplinary policies, many of our schools are funnels for the school to prison pipeline.

So it is a small wonder that the U.S. leads the world in the incarceration of its children. [*Refer to Chart showing juvenile incarceration rates*]. And though not reflected here, the national minority juvenile incarceration rate is off the charts compared to the White juvenile

incarceration rate as reflected by jurisdictions such as Washington, D.C. where 98% of its incarcerated juveniles are minorities.

The school to prison pipeline is thus a feeder system for the juvenile system which, in turn, is a feeder system for adult incarceration where the U.S. leads the world also, by far. [*Refer to Chart that shows U.S. incarceration rate versus the rest of the world and much higher Black incarceration rates.*] Research by the PEW Center shows that incarcerations have diminishing returns and by 500 per 100,000, they become *counterproductive*, meaning they contribute to *more* crime rather than to reducing crime. And we can easily see how this plays out. [*Refer to Charts on 1970 versus 2000 for numbers employed and in jail.*] In communities with high percentages of people with low education and job skills, high imprisonment rates exacerbate these problems. And look at the lifetime earnings impact for those who drop out of school. [*Refer to Chart on earnings based on education levels.*]

So it is clear that now, more than ever, that we need our schools to be change agents for children that are born on, or that fall upon, the cradle or school to prison pipeline. The approach must be comprehensive and evidence-based, starting with teen pregnancy prevention to reduce the number of babies born into dysfunctional families, prenatal care to reduce the number of birth defects and developmental disabilities, parental training to reduce child abuse and neglect, and pre-school so that children start school ready to learn. Teachers tell me that up to 3rd grade you learn to read and from 4th grade on, you read to learn, so if you can't read at grade level by 4th grade you can't learn and are on your way to school dropout and the school to prison pipeline. In addition, school discipline policies must be positive and administered appropriately and fairly with school-wide positive behavior supports.

We already have the funding needed for such programs. The "get tough" disciplinary approach and its school to prison aftermath are not only ineffective, but are also very costly. According to a Center for Economic and Policy Research (CEPR) report, we spend over \$75 Billion a year on corrections cost in the U.S., with most of that going to incarceration costs. Given the PEW study showing that incarceration beyond 500 per 100,000 is counterproductive, if we reduced the average incarceration level in the U.S. to that level, we would have more than enough savings from that to fund any support program we want. *[Refer to Charts on savings from reduced incarceration levels for Blacks.]*

What the research and the evidence show are that Frederick Douglass was right in his famous quote: "It is easier to build strong children than to repair broken men." And I would add -- a lot less costly!

Thank you for holding this hearing, Mr. Chairman, and for the opportunity to testify.

TESTIMONY OF DEBORAH DELISLE, ASSISTANT SECRETARY

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION, U.S. DEPARTMENT OF EDUCATION

U.S. Senate

Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights

December 12, 2012

I. Introduction

Thank you for inviting me to participate in this hearing. On behalf of Secretary Duncan: thank you, Senator Durbin, and Members of the Subcommittee, for convening a discussion on an issue that affects the educational and life outcomes of millions of youth across our Nation. I appreciate the opportunity to share with you the Department's efforts to support all of America's children by keeping them in school, engaged in learning, and, most especially, out of the judicial system and prison.

Over the past 18 months, the Department's efforts have been galvanized by the results of the 2011 Breaking Schools' Rules study, a longitudinal study covering more than one million public school students in the State of Texas, by the Council of State Governments (CSG), and the Department of Education's own 2012 Civil Rights Data Collection (CRDC), both of which suggest three disturbing trends: first, an overreliance on suspensions, expulsions, and referrals to law enforcement as means of managing student behavior; second, the disproportionate impact of such practices on students of color, students with disabilities, and other subgroups; and, last, the increased risk of juvenile justice involvement for students who are suspended or expelled.

While many schools and school districts have begun to implement evidence-based strategies for managing student behavior, and many educators demonstrate effective practices in their classrooms, it is clear that too many schools are overly reliant on discipline practices that remove students from school. Based on data from the 72,000 schools that participated in the last CRDC, which we released last spring, we estimate that over 3 million students were suspended out of school during the 2009 – 2010 school year. During that same time frame, 108,000 students were expelled, and over 240,000 students were referred to law enforcement.

However, one research study suggests that many of these disciplinary actions are not related to student safety. In one study of a large urban school district, most suspensions were for minor infractions of school rules (such as attendance issues, disobedience, classroom

disruption, or insubordination) rather than for dangerous or violent acts, with fighting and bullying making up 19 percent of suspensions.

In one case study of a midwestern State, only 5 percent of all out-of-school suspensions in 2006 were for weapons or drugs, while 95 percent of all out-of-school suspensions were for “disruptive behaviors.” In California, more than 40 percent of the 700,000 suspensions handed out statewide in 2010-11 were for “willful defiance” which is defined as any behavior that disrupts a classroom or other school setting.

School discipline practices that unnecessarily remove students from their classrooms directly conflict with our goal of ensuring that schools provide students with the tools to achieve college and career readiness. Simply stated, students have access to the best education services we have to offer when they are in their classrooms and fully engaged in learning.

Overreliance on exclusionary discipline results when a school does not address the important role of school climate in the teaching and learning process and, in the absence of a strong, positive climate, struggles to find ways to keep students safe and on task. Until more schools: (1) emphasize the essential relationships interconnecting social, emotional, and behavioral skills and student achievement; (2) play an active role in addressing the underlying causes of student misbehavior, like substance abuse, mental illness, and social and emotional disorders; (3) provide students with behavioral supports that directly address or prevent misconduct; and (4) build the capacity of teachers and leaders to implement prevention-based strategies while adhering to appropriate discipline policies; we will not be successful in creating learning environments that are both safe and productive for all of America’s children.

And we do mean *all* of America’s children. Studies indicate alarmingly large disparities in the rate of disciplinary sanctions, particularly for students of color, students with disabilities, and male students. When African-American students are more than 3 ½ times as likely to be suspended or expelled as their White peers, or students with disabilities are more than twice as likely to receive out-of-school suspensions as their non-disabled peers, as they are today – it raises concerns that some of our schools are not providing equitable access to education, in potential violation of civil rights laws.

To ensure that all students are treated equitably, we need a multi-pronged and multi-disciplinary comprehensive strategy that encourages educators to proactively monitor their discipline practices for disproportionality, assess for root causes where disproportionality exists, and engage in a broad-based community and school effort to develop an action plan to root out discrimination in the administration of discipline. This strategy is based on the

recognition that schools must be deliberate and proactive to ensure that students are equitably treated. To demonstrate the Department's commitment to this approach, we have included this strategy as a program requirement in our Race to the Top-District competition, a \$400 million investment designed to promote comprehensive, local reforms in our nation's schools through grants to school districts. This inclusion signals the importance of student disciplinary processes and their impact on student achievement.

Beyond implications for educational achievement and equity, there is evidence to suggest that school discipline practices have consequences beyond the school yard, and may substantially increase the likelihood of future correctional involvement. According to the Breaking Schools' Rules study, nearly half of the students who were disciplined 11 or more times were in contact with the juvenile justice system. In contrast, only 2 percent of the students who had no school disciplinary actions were in contact with the juvenile justice system. CSG's study also revealed data that a student who was suspended or expelled for a discretionary violation was nearly three times as likely to be in contact with the juvenile justice system the following year, after controlling for campus and individual student characteristics.

While this linkage deserves further exploration, the importance of this particular finding cannot be underestimated. The vast majority of educators work hard to provide their students with the tools they need to succeed and, in assigning suspensions and expulsions, are doing their best to keep their school community, and even the disciplined student, safe from harm and disruption. This finding, however, paints a more complex picture about what suspension or expulsion may mean for the very students whom educators work so hard to support. We must provide teachers and principals with appropriate alternatives to suspensions and expulsions, and begin building the competencies and skills they need to maintain safe, engaging classrooms.

However, our efforts cannot end there. We know that schools are critical partners for providing disconnected and vulnerable youth – such as homeless youth, children in foster care, trafficked youth, youth with mental, emotional, behavioral or substance use disorders, children exposed to violence, and children of incarcerated parents – with the supports they need to avoid misconduct and contact with law enforcement. Additionally, for those youth placed in juvenile detention, educators play an essential role in reducing recidivism by providing pathways to college and career post-release. To provide such supports, cross-agency partnerships involving health, education, justice, and child welfare are critical, as no one system can adequately serve our students effectively.

II. Department of Education Efforts

In July 2011 – just after the release of the Breaking Schools’ Rules Study – Secretary Duncan and Attorney General Holder launched a partnership between their respective agencies to dismantle what has been named the “school to prison pipeline.” Since that time, the Supportive School Discipline Initiative (SSDI) has functioned as a major coordinating body, providing opportunities for collaboration among federal agencies, including the Departments of Health and Human Services (HHS), Labor, Education, and Justice; facilitating public-private partnerships and creating lines of communication between the field – including parents, students, advocates, practitioners, and other education officials – and the administration, so that we stay informed about the most current needs, approaches, and events as they arise.

From its inception, the SSDI has focused on four key strategies. First, we are working to build national consensus for action through coordination with the CSG and philanthropic colleagues. Second, we identify research and data collection needs and are working to coordinate research investments across agencies and with the field. Third, we are working to issue guidance for state and local educators, school resource officers, and law enforcement personnel and, lastly, we build awareness, knowledge, and skills among stakeholders regarding discipline practices with the priority of keeping students in schools, learning and safe.

In addition to the SSDI, we have worked to improve school climate and discipline across other initiatives focused on related issues – such as student safety, corrections, and student disengagement with school. For example, the Department is one of multiple federal partners supporting the National Forum on Youth Violence Prevention – an interagency initiative to help 10 cities across the Nation to elevate youth and gang violence as an issue of significance; enhance the capacity of participating localities, along with others across the country, to more effectively prevent youth and gang violence; and sustain progress and systems change through engagement, alignment, and assessment.

The Department has continued to partner with the Department of Justice and HHS’ Substance Abuse and Mental Health Services Administration (SAMHSA) since 1999 to address youth violence and social-emotional and behavioral needs of students and communities through the Safe Schools Healthy Students (SS/HS) initiative. Through SSDI and the National Forum on Youth Violence Prevention, the SS/HS initiative has partnered with other federal initiatives to share the important teachings from SS/HS grantee communities.

The Department also worked with a number of agencies to launch the Federal Interagency Forum on Disconnected Youth, which seeks to improve outcomes for young people ages 14-24 who are homeless, in foster care, involved in the juvenile justice system, or are

neither employed nor enrolled in an educational institution, by helping them to achieve success in meeting educational, employment, and other key lifelong goals.

We are also a member of the Re-entry Council, led by the Attorney General, and have worked to develop an internal Correctional Education and Re-entry Strategy to strengthen our contributions to the goals of the Council.

Through these efforts, over the past 18 months, the Department has accomplished the following: (1) convened leaders from multiple systems to develop consensus for action and encourage state action; (2) emphasized school climate and discipline in our signature grant initiatives; (3) vigorously enforced civil rights laws; (4) strengthened investment in data collection and research; and (5) begun analyzing the larger continuum of correctional education while working on a strategy to improve outcomes from prevention to re-entry.

1. Convening Leaders to Elevate and Collaborate on School Discipline Practices

At the core of the SSDI is an effort to develop a broad consensus on the steps that the education, judicial, and health communities must take to realize essential changes. As part of this effort, the Departments of Education and Justice have supported the efforts of the Council of State Governments Justice Center, in concert with members of the philanthropic community (including the Atlantic Philanthropies, the California Endowment, and Novo Foundation), to lead the development of consensus-based recommendations on how to keep school environments safe and students productively engaged in school. Over the course of the next year, this national consensus-building project will convene groups from multiple disciplines – including education, behavioral health, juvenile justice, social services, law enforcement, and child welfare—to first identify key issues related to academic success, juvenile justice concerns, and safe and engaging learning environments, and then recommend solutions that keep students engaged in school and out of the justice system. The strength of this work lies in its ability to bring together adults from different sectors that care about our most vulnerable children and to encourage collective action on behalf of these youth.

The Department also partnered with the New York Permanent Judicial Commission on Justice for Children last spring to bring together state-level education and judicial leaders to discuss ways to improve school discipline practices and reduce contact with the juvenile justice system. In all, forty-five state teams attended this critical summit. Many of these teams, which included state-level education and judicial leaders, have since begun their own initiatives, and have expressed their interest in launching taskforces dedicated to school discipline reform or hosting summits in their own states. To support these efforts, the Department has developed a

web-based community of practice to provide ongoing opportunities for the states to share their efforts and learn from one another.

2. Emphasizing School Climate and School Discipline in Grant-Making

Despite dramatic decreases in dedicated federal funding for school climate improvement and to promote preventative measures, the Department has continued to emphasize strategies for creating positive school climates through the Department's grant activities. From fiscal year (FY) 2011 until the present, the President's budget has called for a new Successful, Safe, and Healthy Students program, a consolidation of several existing, sometimes narrowly targeted, programs including Safe and Drug-Free Schools and Communities National Activities (Elementary and Secondary Education Act, as amended, Title IV, Part A, Subpart 2, Section 4121 and 4122, 20 U.S.C. 7131-7132). The Administration's proposal features a new approach to improve student health and safety through a focus on school climate and student supports. In FY 2013, the Administration requested \$196 million, including \$54 million for new grants that support states and districts in promoting positive school climates and student behavior.

Instead, reductions to the National Activities appropriation, without the new, consolidated program, have significantly impacted our capacity to offer financial support and technical assistance related to school climate, discipline and safety. In FY 2011, the National Activities appropriation was reduced by 38 percent to \$119 million. As a result, the Department was able to fund only continuation grants for programs dedicated to reducing drug use and improving student behavior and school safety, no funding was available for new grants as called for in the President's budget request. The FY 2012 appropriation for National Activities included another 46 percent reduction, which left only \$65 million available for such activities. As a result, we were similarly constrained this past fiscal year and only able to support continuation grants, but not provide new awards.

Aside from these limitations, and our continued belief that dedicated funding is critical, the Department has built activities related to school climate into leading programs – including our School Improvement Grants and Race to the Top programs – to help educators better integrate school climate considerations into their academic improvement efforts.

In this year's Race to the Top – District competition, a \$400 million investment to help school districts to implement comprehensive education reform, we included a program requirement that districts with students of color or students with disabilities overrepresented in the district's discipline rates must conduct a root cause analysis and develop a plan to address these root causes. Further, the sole competitive priority of the competition was

devoted to integrating public and/or private resources to augment school capacity to provide student and family supports that address the social, emotional, and behavioral areas of high-need populations.

Further, this is a critical time for school districts and states to rethink human capital management – how we select, support and evaluate educators. Given the feedback we’ve received from educators – that student misbehavior often interferes with instruction – school climate and student supports must be part of this conversation. This is why we have directed our new Effective Teachers and Leaders Center, one of our major technical assistance efforts to assist in building the capacity of state education departments, to help states integrate the competencies that create safe, supportive schools into comprehensive teacher and principal evaluation systems, professional development, and other essential activities for supporting and enhancing our educator workforce.

As we continue forward, we are seeking ways to provide schools and communities with a clear, evidence-based roadmap to safer school climates that support students. We are looking closely at multi-tiered behavioral frameworks – such as Positive Behavioral Interventions and Supports – to determine if such frameworks might help us to better organize and focus our technical assistance and financial support. In doing so, we will build upon the work and successes of the Office of Special Education and Rehabilitative Services, which has invested in behavioral research, demonstration, and technical assistance activities for more than 20 years.

As a starting point, we will work closely with the Departments of Justice and Health and Human Services to strengthen the use of behavioral frameworks in the National Forum for Youth Violence Prevention. As the ten cities¹ that comprise the National Forum have pledged to strengthen local capacity to prevent youth violence and gang violence, we see behavioral frameworks as a key strategy that their schools can use to boost capacity and better support their students.

3. Vigorous Enforcement of Civil Rights Law

Since the beginning of this Administration, the Department has been actively engaged in eliminating discriminatory discipline practices and other civil rights violations that represent

¹ The 10 cities that current comprise the National Forum for Youth Violence Prevention as, as of December 2012: New Orleans, LA; Philadelphia, PA; Minneapolis, MN; Camden, NJ; Boston, MA; Chicago, IL; Detroit, MI; Memphis, TN; Salinas, CA; and San Jose, CA.

barriers to educational equity in this country, such as inequitable access to resources and harassment.

Over the last four years (FY 2009 – 2012), the Department’s Office of Civil Rights (OCR) has intensified its enforcement activities to ensure that students are not disciplined more severely or frequently because of their race, color or national origin. During this time, OCR launched 20 proactive investigations in schools with significant racial disparities in discipline. Five of those were launched in the last six months based on the most recent data from the CRDC.

Additionally, during the last four years, OCR received more than 1,250 complaints from parents, students or other concerned individuals about possible civil rights violations involving school discipline systems. OCR also held two major conferences with the Department of Justice on issues relating to student discipline. Disparate discipline investigations have revealed incidents of harsher treatment of African-American students and other students of color than White students who commit similar infractions and who have similar discipline histories. These cases reveal school climates in which the expectations and consequences regarding typical juvenile behavior and misbehavior are significantly more severe for African-American and other students of color.

In resolving disparate discipline investigations, OCR works with school districts to design robust remedies appropriate to the facts and circumstances of each case. School districts and their stakeholders are critical partners in this effort, for they have the expertise to develop strategies that can lead to real institutional change. The goal is to ensure that all students are provided schools that are safe and conducive to learning.

4. Strengthened Data Collection and Research on School Discipline

In order to improve school discipline practices and decrease disproportionality, we have to know where the possible problems are and invest in research so that we have evidence-based solutions.

To that end, the Civil Rights Data Collection (CRDC) has been greatly expanded. The 2009-10 data collection, which was released in the spring of 2012, represented a sample of nearly 7,000 school districts, including all districts above 3,000 students and a sample of smaller districts. In all, the 2009-10 sample represented 72,000 schools and 85 percent of students in the nation. The data we released early this year now shows how different groups of students, such as boys and girls of color or students with disabilities, are treated across a range of discipline indicators. The database tracks the total number of students receiving in-school and

out-of-school suspensions and expulsions, the number of students referred to law enforcement, the number of students with school-related arrests, and the total number of students expelled under zero-tolerance policies.

OCR is currently collecting data regarding the 2011-12 school year from all school districts in the country (approximately 17,000 districts). Of course, statistics alone cannot replace the thorough investigation necessary to prove a violation of civil rights law. And while there may be a range of reasons why we find so many cases of disproportionate discipline in our schools, this much is clear: we have a serious problem that we must acknowledge and address if we are going to achieve equity and excellence for our children.

In addition to improved data collection, the Department has expanded research opportunities in this area. Our Institute of Education Sciences supports research on school climate and discipline. For example, a FY 2012 project uses cross-sectional data from two large national surveys to identify how security measures are used in schools and their relationship to middle- and high-school students' perceived school safety and academic and behavioral outcomes. A FY 2009 project explored variation in the impact of School-wide Positive Behavioral Interventions and Supports (SWPBIS) to identify for whom, how, and under what conditions SWPBIS is most effective. In the FY 2013 call for applications to the Education Research grants program, the Social and Behavioral Context for Academic Learning topic made explicit that applications would be accepted to investigate school discipline and its relationship to academic achievement. We intend to utilize this approach again in FY 2014 so that we continue to inform the field about the disciplinary policies and practices that work, those that do not, and why.

5. Raising the Profile on Correctional Education and Re-entry

It is important to remember that school discipline and school-based supports are prevention strategies that form one piece of the much larger and more complex issue of correctional education. As educators, we have a unique opportunity to serve as a key partner to prevent involvement with corrections and law enforcement, as I've just discussed, and also to improve the quality of education for students in detention, and to provide all justice-involved youth with pathways to successfully reconnect with their communities and increase access to college and career training post-release.

Under the leadership of the Office of Vocational and Adult Education (OVAE), we are developing a comprehensive strategy spanning from prevention to reentry, including, but not limited to, the following goals for juvenile populations: to implement efforts that improve the quality and availability of educational opportunities for youth residing in secure facilities; to

support effective policies and practices to accomplish reentry into education programs for youth returning to our communities from secure facilities; and to optimize the use of technology to increase access to high-quality educational opportunities available to youth residing in secure facilities. We are carrying this strategy into our reauthorization proposals, such as our Workforce Investment Act proposal that promotes re-entry in specific ways, in our national activities investments, in our interagency work, and in our communications strategies.

To raise the profile of correctional education and provide the public with an opportunity to review the outlines of the Department's strategy and inform its development, we convened a summit of experts on November 19th to inform our thinking. Over 80 participants from all over the country – including scholars, researchers, and practitioners with specialized knowledge of education in criminal justice facilities and educational re-entry programs – participated in a day-long facilitated discussion. The group outlined ways the Department could incentivize enhanced educational services and supports for youth and adults in custody. Participants offered recommendations and identified barriers in the field.

Even as we seek public input, we have started to invest in new programs and technical assistance focused on the issue of reentry. In 2012, the Office of Special Education Programs funded three Model Demonstration Projects on Reentry of Students with Disabilities from Juvenile Justice Facilities into Education, Employment, and Community Programs. The purpose of the demonstration projects is to develop, adapt, refine, and evaluate models for facilitating the successful reentry of youth with disabilities from juvenile justice facilities into effective education, employment, and community programs. The demonstration projects are designed to reduce recidivism and to support the successful transition of these youth with disabilities back into their communities.

In FY 2013, OVAE will launch a new discretionary grant program for model reentry education projects linking incarcerated students with education and training opportunities post release – one that will use funding transferred from the Department of Justice that was authorized by the "Second Chance Act." These projects will use a practical reentry education model developed by the Department, with assistance from leading experts, which was published last month.²

We are also pleased to note a closely-related initiative funded by several foundations (including the Ford, Gates and Open Society Foundations) at the post-secondary level – helping incarcerated persons start a college career behind bars and continue on this post-secondary

² Reentry Model available at <http://www2.ed.gov/about/offices/list/ovae/pi/AdultEd/reentry-model.pdf>

track after release when they return to their community. The foundation-funded project will have a rigorous technical assistance and national evaluation component, and OVAE expects to collaborate with these efforts in order to test and improve models for reentry education programs.

III. Key Areas for Future Activity

I hope it is clear that improving school discipline and juvenile corrections, and reducing disproportionality and youth contact with the juvenile justice system, will require multiple strategies and strong partnerships spanning multiple disciplines. At the same time, I'd like to highlight two prevention-based strategies that will be critical levers to help educators keep our students in school. First, we must build school capacity to maintain a positive school climate and support students by drawing from evidence-based practices. Second, we must encourage States, schools, and communities to rethink school discipline policies and develop equitable and appropriate codes of conduct. I want to describe each of these in greater detail.

1. Investing in Evidence-Based Practice

To illustrate the importance of climate and multi-tiered supports, I would like to introduce the Committee to Garfield Elementary – a public, comprehensive community school that serves students in the northeast community of Kansas City, Missouri. The school serves a very diverse community with students from more than 12 countries representing a variety of cultures. Over 300 students receive specialized assistance through the English Language Learners program, 96 percent receive free or reduced lunch, and over 80 percent are students of color.

Garfield Elementary encourages positive behavior through the Missouri Positive Behavior Intervention Support (PBIS) initiative. From research, and from the experience of our Office of Special Education and Rehabilitative Services, we at the Department know that schools that implement PBIS with fidelity benefit in the following ways: (1) more than 80 percent of their students and staff can indicate the desired positive behavioral expectations for a given school setting; (2) more than 70-80 percent of their students have not experienced an office discipline referral for a disciplinary rule infraction; (3) they have a good idea about which students require more intensive behavior supports; and (4) these school have systems for regular review of their discipline data to guide their action planning and implementation decision making.

The purpose of Garfield's PBIS initiative is to create a safe and empowering community for diverse students to achieve and excel in school, and to teach students to use these positive behaviors with their families and in their communities. Garfield uses the acronym SOAR to help

remind students how they are to act in different areas of the school: (1) Show Respect; (2) Own Your Community; (3) Always Safe; and (4) Ready to Learn. From focusing on individual student behaviors, to recognition of whole-class behaviors, to the engagement of the entire staff in acknowledging appropriate behaviors, the entire community is included in the initiative. Students receive awards which can be combined for a class celebration. The framework supports educators by helping them to match the best services they have to offer with the students whose complex and intensive needs demand their best expertise.

Both Missouri's PBIS network and Garfield Elementary serve as examples of how a behavioral framework can improve school climate and discipline. They should be commended for their efforts to sustain implementation of an evidence-based framework, to dedicate resources and expertise at the regional and district levels, and to sustain their work even when budgets are reduced. These efforts have been effective for Garfield by eliminating or improving the behaviors that impact a student's ability to engage in and benefit from instruction.

2. Rethinking School Discipline Policy

To illustrate the importance of rethinking school discipline policies, I encourage the Committee to look to states like Colorado. Colorado began its reform effort by convening the Legislative Task Force to Study School Discipline, a body comprised of legislators, educators, law enforcement personnel, restorative justice experts, parents, schools, and advocates. After reviewing zero tolerance policies, the use of law enforcement in schools, and the interaction between schools' discipline policies and referrals to the juvenile justice system, the task force developed new legislation that requires schools to utilize preventative, constructive disciplinary approaches, determine which violations require a referral to law enforcement, and provide students with opportunities to learn from their misbehavior.

The drafting of this legislation represented a community effort to engage in deep discussions about how we keep students safe and in school. In the end, this effort paid off – on May 9, 2012, the Smart School Discipline Bill was signed into law.

The new law discourages the use of law enforcement for minor misbehavior, provides flexibility and discretion to school administrators and local school boards by eliminating mandatory suspensions and expulsions for all offenses except carrying a firearm, and requires schools to apply their discipline policies equally to all students. School districts must create and enforce discipline codes in compliance with the new law by August 1, 2013.

The State of Colorado is to be commended for taking these critical first steps, and, potentially, for providing a road map to common-sense, community-supported school discipline policy.

3. Conclusion

The challenge that lies before us is complex, as it requires careful consideration of seemingly competing factors. How do we keep our students safe, while seeking school-based responses to misconduct? How do we provide educators with flexibility and encouragement to pilot alternatives to suspension, while retaining the support of communities and parents? How do we transition school cultures into environments of support while addressing specialized needs often exhibited by our most challenged students? These are not easy questions. For sure, their answers lie in the best of our collective thinking and work, and in the recognition that this is not a zero-sum game. America's children deserve nothing less than our collective energies, best thinking and commitment to equity.



Department of Justice

STATEMENT FOR THE RECORD
OF
MELODEE HANES
ACTING ADMINISTRATOR
OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION
OFFICE OF JUSTICE PROGRAMS

BEFORE THE
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND
HUMAN RIGHTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ENTITLED
"ENDING THE SCHOOL-TO-PRISON PIPELINE"

DECEMBER 12, 2012

**Melodee Hanes
Acting Administrator
Office of Juvenile Justice and Delinquency Prevention
Office of Justice Programs
U.S. Department Of Justice**

**Subcommittee on the Constitution, Civil Rights and Human Rights
Committee on the Judiciary
United States Senate**

**“Ending the School-to-Prison Pipeline”
December 12, 2012**

Introduction

Chairman Durbin, Ranking Member Graham, and distinguished Members of this Subcommittee, thank you for the opportunity to testify about the Department’s work on school discipline and related efforts to keep our children and teens in school and out of the juvenile justice system. Studies show that children removed from school as a result of exclusionary disciplinary actions – that is, suspension, expulsion, or arrest – are more likely to repeat a grade, drop out, or become involved in the juvenile justice system. Yet, these studies document that removal is an all-too-common phenomenon.

My name is Melodee Hanes and I serve as the Acting Administrator for the Office of Juvenile Justice and Delinquency Prevention (OJJDP) at the Department of Justice (the Department), Office of Justice Programs (OJP). OJJDP provides the national leadership, coordination, and resources to respond to the needs of our youth who are in contact with the justice system, victims and offenders alike.

OJJDP advances this mission by collaborating with professionals from diverse disciplines to improve juvenile justice policies and practices. As a prosecutor with 30-plus years of public service, including experience as an assistant county attorney general in Yellowstone County, Montana and assistant county attorney in Polk County, Iowa, I have dedicated myself to protecting and seeking justice for our most vulnerable population – our nation’s children. So, I greatly appreciate the opportunity to tell you more about the great work being done by the Department in this area and related juvenile justice programs that support our youth.

As you know, protecting children and ensuring they are put on a path to success has been a priority for Attorney General Holder. To improve the well-being of children, youth and families and promote public safety, the Attorney General has established seminal programs like the Supportive School Discipline Initiative, the Defending Childhood Initiative, the National Forum on Youth Violence Prevention, and Federal Interagency Reentry Council (Reentry Council) to identify and advance effective public safety and reentry strategies.

Supportive School Discipline Initiative

On July 21, 2011, Attorney General Holder and Secretary of Education Arne Duncan jointly announced the launch of the Supportive School Discipline Initiative at a meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention. This initiative encourages effective disciplinary practices that ensure safe, supportive, and productive learning environments and promote evidence-based practices that keep students in schools and out of the courts.

Each academic year, millions of public school students in grades K–12 are suspended or expelled, particularly in the middle and high school grades. One study in Texas, *Breaking Schools' Rules*, tracked nearly one million seventh graders for six years¹. It found that 60% of these public school students were removed from class at least once and 15 percent had 11 or more suspensions or expulsions between seventh and twelfth grade. What is important to understand is that only a very small percentage of these disciplinary actions were in response to conduct for which suspension or expulsion is mandated by state law – in fact, only three percent. Overwhelmingly, exclusionary disciplinary actions were made at the discretion of school officials.

The study also showed that minority students and students with disabilities are disproportionately disciplined for discretionary (non-mandatory) conduct. The study found that African-American students were 31 percent more likely to receive discretionary discipline actions as compared to white and Hispanic students. Students with educational disabilities were also disciplined at a higher rate than other students. But among the most disturbing findings is that suspension or expulsion of a student for a discretionary violation nearly tripled the likelihood of juvenile justice contact within the subsequent academic year.

In addition, research suggests that arrests, detention and juvenile court appearances have profound negative short-term and long-term consequences for children's mental and physical health, educational success, and future employment opportunities. Even one court appearance during high school increases a child's likelihood of dropping out of school, and court appearances are especially detrimental to children with no or minimal prior history of delinquency.² Research links incarceration of juveniles to significantly higher school dropout rates, which translate to higher unemployment, poorer health, substance abuse, shorter lifespan, lower earnings, and increased future contacts with the criminal justice system.³

Moreover, the overuse of juvenile courts and police for student misconduct has negative implications for court systems and law enforcement. Juvenile courts and juvenile detention facilities are more appropriately used to address serious delinquency, rather than school-based

¹ Tony Fabelo, Michael D. Thompson, Martha Plotkin, Dottie Carmichael, Miner P. Marchbanks, III, and Eric A. Booth, *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement* (New York: Council of State Governments Justice Center, 2011);

² Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, *Justice Quarterly*, Vol. 23, No. 4 (December 2006).

³ See, e.g., Barry Holman & Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Justice Policy Institute, 2006, at 9-10.

misconduct. In addition, referrals to police may result in the use of law enforcement resources for behavior that is more appropriately dealt with in the context of school discipline.

The Attorney General has charged us to develop solutions to these systemic issues. As a result the Departments of Justice and Education came together to discuss our mutual interests in supporting student success and brought together our constituents and resources to jointly attack the issue. Thereafter, the Supportive School Discipline Initiative was born.

The goals of the Supportive School Discipline Initiative are to:

- Build consensus for action among federal, state and local education and justice stakeholders.
- Collaborate on research and data collection that may be needed to inform this work, such as evaluations of alternative disciplinary policies and interventions.
- Develop guidance to ensure that school discipline policies and practices comply with the nation's civil rights laws and to promote positive disciplinary options to both keep kids in school and improve the climate for learning; and
- Promote awareness and knowledge about evidence-based and promising policies and practices among educators and justice stakeholders.

Some of the Department's efforts include:

- Award of nearly \$1.5 million through the 2012 Field Initiated Research and Evaluation (FIRE) Program which focuses on research and evaluation studies of school-based practices that relate to reducing student victimization and the risk of delinquency. As one of the grant recipients, Texas A & M received funding to explore the potential of the school discipline system as an intervention to reduce juvenile justice contact among all youth, but particularly youth of color.
- Award of \$640,000 to the Council of State Governments (CSG), with matching funds provided by philanthropic organizations, for the School Consensus Project, through which the CSG has convened experts from education, law enforcement, school health and the courts to work with advocates, students, family members, state legislators and others to develop consensus recommendations. The recommendations will identify creative program and policy solutions to effectively and positively manage student behavior, support student engagement and learning, improve academic outcomes and reduce youth contact with the juvenile justice system.
- Assistance to the New York Permanent Judicial Commission on Justice for Children to host the March 2012 National Leadership Summit, for teams of top state education and judicial officials. Forty-five states, territories and the District of Columbia sent teams to begin the work of improving policy and practice related to school discipline. The Summit brought together expert practitioners, researchers and innovators from education, justice and school health to help kick off planning and action by the attending leaders in partnership with their local counterparts.
- Assistance to the National Council of Juvenile and Family Court Judges (NCJFCJ) in the replication of successful school-court partnerships working to reduce referrals to court of students for non-serious behavior. NCJFCJ manages the project along with an expert advisory committee and its public and private funders. NCJFCJ is developing a curriculum

to train a cadre of judges who will guide and support other judges to convene problem-solving teams as well as fund the evaluation of demonstration sites.

- Enforcement of federal civil rights laws, policy development and other activities to combat the discriminatory exclusion of students from classrooms and the shuttling of students to the juvenile justice system.
- Support to educators and justice practitioners through technical assistance including a webinar series that will be launched in mid-January, 2013.

The Department is also looking at what more we can do, for example, coordinating efforts across components to infuse youth development strategies in law enforcement training and working with Education to encourage application of multi-tiered behavioral frameworks in youth correctional education programs.

Protecting Student Rights Through Civil Rights Enforcement

As noted above, the Department's Civil Rights Division is combating the school-to-prison pipeline through important law enforcement and policy work. The Civil Rights Division is protecting the rights of children in schools, in juvenile court systems, and in juvenile detention facilities.

In schools, the Department combats racially discriminatory student discipline through enforcement of Title IV of the Civil Rights Act of 1964, which prohibits discrimination against students in the public schools based on race and national origin, among other bases. The Department is addressing allegations of racially discriminatory discipline, including discriminatory referrals to law enforcement agencies, as part of its enforcement of existing school desegregation orders, as well as new investigations under Title IV.

The Department is also working to address discriminatory discipline of students with disabilities under Title II of the Americans with Disabilities Act of 1990 ("ADA"), which requires public entities like school districts to provide services in the most integrated setting appropriate to the needs of students with disabilities. In addition, the Department is investigating school districts to determine whether they are meeting their federal obligations to English Language Learner students in their administration of discipline. Under the Equal Educational Opportunities Act of 1974, or the EEOA, school districts must take appropriate action to overcome language barriers that impede equal participation by all students in instructional programs. This responsibility includes ensuring that English Language Learner students are able to comprehend school rules and discipline policies.

In addition, using its authority under a section of the Violent Crime Control and Law Enforcement Act of 1994, the Department has investigated the conduct of police in arresting children for school-based offenses, and has examined whether entities involved in the administration of juvenile justice, including police, juvenile courts and juvenile probation systems, comply with children's procedural due process rights, with the constitutional guarantee of Equal Protection and with federal laws prohibiting racial discrimination.

Finally, the Department continues its long tradition, under the Civil Rights of Institutionalized Persons Act and the Violent Crime Control and Law Enforcement Act, of ensuring that conditions of confinement in juvenile detention facilities comply with the Constitution and federal laws, including through the provision of adequate special education services.

All of this work, including the protection of the rights of children of color and children with disabilities, is consistent with the objectives of SSDI. OJJDP works with our partners in the Civil Rights Division as appropriate, and strongly supports the Division's activities.

Reducing Disparity through Federal Programming and Training and Technical Assistance

For almost two decades, OJJDP has been a leader in efforts to reduce the over representation of minority youth in the juvenile justice system. The *Breaking School Rules* study show that school-based arrests and referrals to court have a disparate impact on minority youth as schools continue to implement and enforce policies such as zero tolerance. Additionally, data from 2006-2007 show that over 1,000 students in Memphis, Tennessee who were eligible for supportive school discipline practices were transported to juvenile court. African-American youth comprised 82 percent of all youth transports in Memphis and almost 90 percent of all youth placed in secure detention, according to OJJDP's Disproportionate Minority Contact (DMC) Web-Based Data Entry System.

To address this phenomenon, Memphis received OJJDP's Title II Formula Grant funds in 2007 from the Tennessee Commission on Children and Youth to implement the School House Adjustment Program Enterprise (SHAPE), as an alternative to juvenile court for students attending Memphis City Schools. The SHAPE Project is designed to reduce the number of minority students that are referred to the Juvenile Courts for minor offenses committed on school property, including assault (non-serious injury), disorderly conduct, and criminal trespass. The goal is to divert students from ever appearing on any paperwork in the juvenile court system.

Participation in the SHAPE program is voluntary. Students accepted into the program attend afterschool classes, must complete at least 12 sessions of the "Too Good for Drugs and Violence After-School Activities" curriculum and generally stay in the program for 45 days. Students participate in activities such as homework assistance, tutoring, mentoring, counseling, and social and life skills training.

The SHAPE program is credited with reducing the number of transports to juvenile court by over 52 percent from 1,000 in the 2006-2007 school year to 400 in the 2010-2011 school year based on the outcome evaluation conducted by the University of Memphis. There are currently 22 middle and high schools in the SHAPE program in Memphis. The SHAPE Program was recently added to OJJDP's DMC Best Practices Database and highlighted in our most recent Annual Report to Congress.

In addition to addressing school referrals to reduce DMC, OJJDP has developed a DMC Reduction Model. It provides a framework and structure to guide states through five phases: identification of the extent to which DMC exists; assessment to examine the factors that lead to

DMC; intervention to put in place proven strategies and approaches to reducing DMC based on the assessment results; evaluation of the chosen interventions; and monitoring to track changes over time. It is a rigorous framework for system improvement based on legislative authority, OJJDP regulations, research and the public health approach to problem resolution.

A number of states have made significant progress by applying this framework with fidelity and institutionalizing their efforts, incorporating the processes of the Model into everyday practice. When implementing the DMC model, we encourage states to learn from each other and share what works. For example, Connecticut, Pennsylvania, and Wisconsin have implemented policies, procedures, and activities to reduce DMC by homing in on the decision point of arrest and referrals to court. Referrals to court in Connecticut have been reduced by 60 percent for African-American youth and 64 percent for youth of Latino origin between 2006 and 2011, according to OJJDP's DMC Field Initiated Research and Evaluation (FIRE) Project.

We view the reduction of overrepresentation of minority youth as a significant lever for improving our nation's juvenile justice systems. However, many states and jurisdictions continue to struggle with DMC.

Four areas that present challenges and impede widespread progress are: 1) data collection and analysis by states and jurisdictions lacking the expertise, resources, and often the authority to undertake statewide data collection; 2) implementing intervention phase before conducting effective data collection and/or assessment; 3) lack of state-level leadership, support and commitment to improve their juvenile justice system; and 4) declining incentives to participate in the Juvenile Justice and Delinquency Prevention (JJDP) Act.

OJJDP is working with the states to overcome these challenges. We are sponsoring a webinar series, conducting trainings, and creating tools that allow states to apply the DMC Reduction Model with ease and at relatively low cost.

While we look at how school discipline policies affect our children, it is equally important to understand how deeply entwined the issue of student discipline is with other key issues.

Defending Childhood

During today's meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention, Attorney General Holder received testimony from his Task Force on Children Exposed to Violence – a component of the Defending Childhood initiative launched in 2010. Task Force members presented the Attorney General with a report compiling their findings and comprehensive policy recommendations to address the pervasive issue of children's exposure to violence at home, at school or in the community. The report was based on public testimony, comprehensive research, and input from experts, advocates, and impacted families and communities nationwide and represents a signal accomplishment of our Department's work to protect children.

The National Survey of Children's Exposure to Violence (NatSCEV), a national survey sponsored by OJJDP, found that over 60% of children surveyed were exposed to violence, crime, or abuse in the prior year – either directly or indirectly. Nearly one-half of youth were assaulted at least once; more than 1 in 4 witnessed a violent act; and nearly 1 in 10 saw a family member assault another. Multiple victimizations were common. Children exposed to violence, as victims and witnesses, are often traumatized. A lack of effective and appropriate identification, response and intervention can result in children who are unfocused and disruptive and frequently truant, behavior which often plays out in classrooms nationwide.

Another critical issue in the health, engagement, and academic progress of students is the alcohol and drug use among our nation's youth. Youth substance use is often an underlying cause in behavior problems exhibited by students. In 2011, we estimate that 3.1 million persons over the age of 12 used an illicit drug for the first time, most of whom (67.5 percent) said that marijuana was their first drug. There were more than 1.5 million new teen drug users ages 12-17⁴.

According to the Task Force report, this is a national crisis which requires a national response in defending our children from exposure to and consequences of violence and psychological trauma. Among the Task Force's recommendations is the call to develop better policies to keep children in school. The Task Force explains that "successful school-based programs that help students develop better ways of handling emotional distress, peer pressures, and problems in family and peer relationships and that integrate recovery from trauma should be expanded and then embedded into existing school curricula and activities to increase students' abilities to have positive experiences with education, recreation, peer relationships, and the larger community."

The Department views the release of the Task Force Report as a defining moment. With the release of the report, we begin to explore the recommendations with our colleagues at the Departments of Health and Human Services, Education, Labor, Defense, Interior, and the other member agencies of the Council. We have enlisted the aid of the field to publicize and disseminate the findings of this report and are planning selected regional events to highlight its findings.

Our partnership with the Department of Education is critical and, as my colleague has testified, schools are an essential source of supports for our most vulnerable students, including those exposed to violence. To keep such students in school, and safe from further victimization, or worse, perpetration, we must consider the mental and behavioral supports they need.

⁴ Citation: Substance Abuse and Mental Health Services Administration, *Results from the 2011 National Survey on Drug Use and Health: Summary of National Findings*, NSDUH Series H-44, HHS Publication No. (SMA) 12-4713. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2012. Specific Data table at <http://www.samhsa.gov/data/NSDUH/2011SummNatFindDetTables/NSDUH-DetTabsPDFHTML2011/2k11DetailedTabs/Web/PDF/NSDUH-DetTabsSect4peTabs5to8-2011.pdf>

Federal Reentry Efforts

Equally important to keeping students in school, is helping those youth involved in the juvenile justice system reenter their community and return to school. Approximately 100,000 youth are released each year from some type of detention facility⁵ to school systems that lack a comprehensive mechanism to assess and address the learning needs of youth reentering the system. According to the latest OJJDP Survey of Youth in Residential Placement (December 2010), more than two-thirds of youth in custody report that they have aspirations of higher education and research consistently shows that school attendance is a strong protective factor against delinquency; youth who are engaged in school are much less likely to commit crimes in the short and long-terms. However, some schools place obstacles to reenrollment for formerly incarcerated youth because these youth are considered difficult to manage. In fact, some states have enacted laws that create obstacles for youth attempting to re-enroll in school upon reentry.

To address some of the issues associated with reentry, the Attorney General established the Federal Interagency Reentry Council, comprised of 20 federal agencies, to coordinate reentry initiatives. The Reentry Council aims to reduce nation-wide recidivism, keep our communities safer, assist those returning from prison and jail in becoming productive, tax-paying citizens, and decrease the billions of dollars spent annually on incarceration. The Reentry Council maintains a focus on juvenile reentry issues, which carry their own unique opportunities and challenges.

Conclusion

The Department of Justice and our partners at the federal, state, and local levels are at the forefront of these issues. Although there is much work still to be done, I am very pleased with what we have accomplished in a very short time. This is a testament to the effort put forth by all of us – Congress, federal agencies, the philanthropic community, advocates, educators, law enforcement, judicial leaders, and most of all, the families and students deeply impacted by the continuation of punitive disciplinary practices.

We, at OJJDP, envision a nation where all of our children are healthy, educated and free from violence. Should they come in contact with the juvenile justice system, we want the experience to be rare, fair and beneficial to them. This vision is one shared by the 56 juvenile justice systems and hopefully by this Congress. We look forward to continuing to work with the members on this subcommittee and your staff on this substantive and important issue.

⁵ Barton, William H. 2006. Incorporating the Strengths Perspective Into Intensive Juvenile Aftercare. *Western Criminology Review* 7 (2):48–61.

**“Ending the School to Prison Pipeline”
 Testimony for the Record
 U.S. Senate Judiciary Committee
 Subcommittee on Constitution, Civil Rights, and Human Rights
 Ohio Attorney General Mike DeWine
 December 12, 2012**

Chairman Durbin, Ranking Member Graham, and members of the Subcommittee, I am pleased to appear before you to talk about how Ohio is managing our youth in today’s justice system. I also applaud the focus on issues relating to school discipline and strategies that can end the school to prison pipeline. We know that positive school discipline methods can prevent juveniles from entering our correctional system in the first place. And we know that keeping children in school is vital, as research shows us the indisputable link between illiteracy and delinquency.

When I was Ohio’s Lieutenant Governor (1991-1995) under Governor George Voinovich, one of my jobs was to oversee the juvenile justice system. At that time, the system was in disarray:

- State facilities were bursting at the seams, sometimes crammed to as much as 175 percent capacity;
- There was often a lack of appropriate programming;
- The use of state funds for youth incarceration was inefficient or ineffective;
- Many young people caught up in the juvenile justice system were simply learning how to sharpen their criminal skills; and
- The relationship between the Ohio Department of Youth Services and the local juvenile courts at the time was described most charitably as “combative.”

My first goal was to enhance public safety by:

- Reducing violence in our facilities;
- Placing youth in the most appropriate setting to address their needs; and
- Keeping children as close as possible to their families, schools, and other community support systems.

By focusing on these strategies, I felt we could ultimately reduce recidivism and improve the lives of and the outcomes for these young people. Local jurisdictions had few options and even fewer financial resources. And frankly, they didn’t have much incentive to do things differently. Ohio’s 88 counties could send an unlimited number of juveniles to state institutions with no financial consequences. The state, rather than the counties, bore all the costs of incarceration.

And so, when I took office, we set out to make Ohio’s juvenile justice system better. I traveled around the state, talked with juvenile judges, and heard first-hand their pleas for reform. Geno Natalucci-Persichetti, then the director of the Ohio Department of Youth Services (DYS), and I convened a meeting of juvenile judges with the Governor in the Statehouse.

We wanted to improve the Department of Youth Service's ability to treat juvenile offenders; empower juvenile court judges with more community based options; and whenever possible, keep the kids close to home, in school, and out of incarceration. We understood that judges know the kids and their communities better than anyone else in the state. We wanted a commonsense approach that also kept our concern for public safety front-and-center.

Our preliminary reform efforts led to the creation of RECLAIM Ohio (*"Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors"*). This program reduced the number of commitments to DYS state institutions and expanded the community-based options available by providing a financial incentive where essentially, the money started to follow the juvenile. If he or she stayed in the community; so did the funding.

After a nine-county pilot project delivered positive results, RECLAIM Ohio was implemented statewide. Its early successes earned it a 1996 Harvard Kennedy School of Government designation as a leading, innovative governmental program. A subsequent Ford Foundation grant helped establish a RECLAIM Academy in Ohio, where juvenile correctional leaders from around the country could come to learn about the program's principles and possible applications to their states.

In 2005, long after I had left state government, DYS leadership further built upon the RECLAIM Ohio foundation and developed the Ohio Youth Assessment System (OYAS). This system provides a research-based tool to assess the needs of youth from arrest all the way through discharge from parole. By evaluating each juvenile's level of risk, Ohio has been better able to match young people with effective programs and services that target their needs, oftentimes outside of a locked-down facility. Having an effective assessment process in place has enabled DYS to exceed its goals in reducing DYS admissions and to reinvest those dollars into the "Targeted RECLAIM" initiative, aimed at youth with serious behavioral health issues.

Juvenile justice reform is an arduous, painstaking process complicated by difficult and often conflicting factors:

- Professionals in the field deal with dysfunctional and sometimes dangerous youth;
- Opinions about how best to manage juvenile systems are frequently polarized;
- Everyone's interests must be balanced in an environment where budget shortfalls are all too common.

The juvenile justice system is increasingly litigious, as well. Ohio's system faced several major lawsuits in recent years, but ultimately the manner in which the suits were settled supported the overarching goals of our reform efforts.

Despite the challenges and obstacles, RECLAIM Ohio is a reform that works. According to Judge James Kirsch, a long-time juvenile court judge in Ohio's Scioto County:

“RECLAIM Ohio has allowed the courts to develop some good programming with accountability. And, as RECLAIM Ohio has evolved, it has enabled communities to take care of juveniles locally rather than send them off to DYS.”

Judge Kirsch’s “Saturday School” -- an alternative to detention -- is one such example of good programming. “Saturday School” is a 10-week program conducted three times a year by the court’s probation department. Three teachers provide remedial instruction in math, spelling, reading, and writing, and have often been able to bring the young people back to their academic grade level. And, according to Judge Kirsch, the kids who attend “Saturday School” don’t come back! They’re entering the school system again and avoiding the pipeline to prison.

Judge Kirsch also noted that before RECLAIM Ohio, he typically placed between 22 and 25 youths per year in DYS. Today, his DYS placements average about two per year.

By any measure, RECLAIM Ohio has delivered results:

- The DYS population has declined from a high of more than 2,600 in May 1992 to 551 in October 2012;
- Felony commitments to DYS facilities decreased from 2,215 in fiscal year 2000 to 836 in fiscal year 2010. That’s a 62 percent reduction;
- Research shows that, for all but the highest risk youth, RECLAIM programs are cost-effective alternatives to DYS and community corrections facilities, and they produce lower recidivism rates;
- Ohio saved over \$57 million in operating costs previously spent on incarceration by closing four juvenile facilities; and
- In the long-run, every dollar spent on keeping youth in the community through the RECLAIM program saves between \$11.00 and \$45.00, as opposed to locking them down in a DYS or community corrections facility.

RECLAIM Ohio has functioned as it was designed. It works because it avoids institutionalizing low risk youth, instead keeping them with their families and peers, in their school and community. In a supportive setting, families and educators are best able to work together to use discipline to correct behavior rather than reporting to prison, which is best suited to punish behavior. RECLAIM Ohio has realized its goals of better serving the juveniles involved with Ohio’s Department of Youth Services and of enabling local courts to develop or purchase less restrictive, more appropriate community-based resources for juveniles in their systems. Just as significantly, RECLAIM Ohio established a flexible framework that can easily accept future adjustments and improvements to the juvenile justice system in Ohio.

We also believe the core features of RECLAIM Ohio and the successes it has produced can be replicated in other states. In fact, Judge Teske will no doubt elaborate on this, but I was pleased to learn that Georgia is the latest state to consider implementing juvenile justice reform based on RECLAIM Ohio.

Again, I am pleased to be back here in the Senate Judiciary Committee hearing room, and thank you for the opportunity to present testimony on this very timely issue. The importance of continuing to bring together our justice system, our schools, and our communities cannot be overstated.

**The Honorable Steven C. Teske
Chief Judge, Clayton County Juvenile Court, Georgia**

**Testimony before the Senate Subcommittee on The Constitution, Civil Rights, and Human Rights
Subcommittee Hearing on “Ending the School to Prison Pipeline”**

December 12, 2012

Good Morning Chairman Durbin, Ranking Member Graham, and members of the Senate Subcommittee on the Constitution, Civil Rights and Human Rights. Thank you for having me here to testify today about the School-to-Prison Pipeline, the negative effects of zero tolerance policies in our schools, and how we transformed our systems in Clayton County, Georgia to reduce school arrests while simultaneously improving graduation rates and school and community safety.

My name is Steven Teske and I currently serve as chief judge at the Clayton County Juvenile Court in Georgia. In addition to the thirteen years I have spent on the court, I have been involved in the juvenile justice system in many other capacities. The Governor has appointed me to represent the 13th Congressional District on the Board of the Georgia Children and Youth Coordinating Council (and served as the Chair of the Board), to serve as vice-chair of the Governor’s Office for Children and Families, to serve on the Georgia Commission on Family Violence, and to serve on the Judicial Advisory Council to the Board of the Department of Juvenile Justice. I have also served as a representative for Georgia on the Federal Advisory Committee on Juvenile Justice for the United States Department of Justice’s Office of Juvenile Justice and Delinquency Prevention. My Governor, Nathan Deal, recently appointed me to the Georgia Council on Criminal Justice Reform to provide recommendations to improve juvenile justice in Georgia. In 2008, I served as the President of the Georgia Council of Juvenile Court Judges.

In my testimony today, I would like to define zero tolerance and how it is used in school systems to push kids out of school and into the juvenile and adult justice systems, creating a “School-to-Prison Pipeline.” Using my home county of Clayton as a case study of zero tolerance and its negative impact on graduation rates and school safety, I will discuss how our community worked collaboratively to reduce school arrests and develop a system of care to assess and treat chronically disruptive students and to improve graduation rates and school and community safety.

The Clayton County Model: A Collaborative Approach

When I took the bench in 1999, I was shocked to find that approximately one-third of the cases in my courtroom were school-related, of which most were low risk misdemeanor offenses. Upon reviewing our data, the increase in school arrests did not begin until after police were placed on our middle and high school campuses in 1996—well before the horrific shootings at Columbine High School. The year before campus police, my court received only 49 school referrals. By 2004, the referrals increased over 1,000 percent to 1,400 referrals, of which 92% were misdemeanors mostly involving school fights, disorderly conduct, and disrupting public school.

Despite the many arrests, school safety did not improve. The number of serious weapons brought to campus increased during this period of police arrests including guns, knives, box cutter knives, and straight edge razors. Of equal concern was the decrease in the graduation rates during this same period—it reached an all-time low in 2003 of 58%. It should come to no one's surprise that the more students we arrested, suspended, and expelled from our school system, the juvenile crime rate in the community significantly increased. These kids lost one of the greatest protective buffers against delinquency—school connectedness.

I also witnessed an increase in kids of color referred to my court. By 2004, over 80% of all school referrals involved African-American students. The racial disparity in school arrests was appalling and I felt I was contributing to this system of racial bias by not doing something.

It was also frustrating for me as a judge to see the effectiveness of the prosecutor and probation officer weakened by my court system being inundated with low risk cases that consumed the court docket and pushed kids toward probation—kids who made adults mad versus those that scare us.

The prosecutor required more time for the most serious cases that, if proven beyond a reasonable doubt, the child would require intensive supervision for the protection of the community. Instead, the prosecutor's attention was taken from the more difficult evidentiary and "scary" cases—burglary, robberies, car thefts, aggravated assaults with weapons-- to prosecuting kids that are not "scary," but made an adult mad. This craziness trickled over into probation cases in which probation officers were spending most of their time watching over low risk cases, which now made up two-thirds of their caseload. By 2004, the average caseload size grew to 150 per officer. The recidivism rate increased to over 70% by 2004 because the high risk kids were receiving less supervision—all a direct result of our zero tolerance policies in the schools. Zero tolerance was negatively impacting the entire community and something had to be done.

I turned to the Juvenile Detention Alternatives Initiative (JDAI)—an initiative of the Annie E. Casey Foundation, which was established over 60 years ago in 1948 to help build better futures for disadvantaged children in the United States. To further this mission, the Annie E. Casey Foundation funds initiatives aimed at strengthening those public systems established to respond to the challenges faced by fragile and disadvantaged children and families.

One of these initiatives is JDAI, which began over 20 years ago as an effort to strengthen the nation's juvenile justice systems and improve the odds that delinquent youth would become productive adults. JDAI focuses on the detention component of juvenile justice - a worthy ambition in its own right - but was based on the notion that the policies, practices and skills that would be required to change detention would have a transformative effect on other components of the system as well.

Since its inception in the 1990s, JDAI has grown exponentially from a handful of sites to more than 200 local jurisdictions in 39 states, including Clayton County.

In 2003, using the eight core strategies of the JDAI Model, I exercised my convening role as a juvenile judge and invited the School Superintendent and Chief of Police to meet and discuss the overwhelming increase of school referrals to the juvenile court and how this may be handled in other ways. Our meetings generated more questions as a result of each stakeholder's self-interest. What are school administrators to do with these disruptive students no longer referred to the court? When should police intervene in school disruption matters? How do we identify the underlying problems causing the disruption? What do we do to address those problems given the limited capacity and resources of the schools? How do we ensure the safety of the schools? The collaborative process generated new and difficult questions that extended the time to develop a system to meet the goal. It also required more stakeholders at the table, including mental health, social services, and private providers; parents; youth; and the NAACP. With the consent of the stakeholders, I appointed a neutral person to facilitate the meetings. I participated in the discussions but limited my role to convenor.

I convened the meetings twice a month. The facilitator assigned tasks to stakeholders between each meeting. The "interactive process" took nine (9) months. The stakeholders agreed that two written agreements or Memoranda of Understanding (MOU) were necessary to address the interests of all stakeholders: 1) reduce suspensions, expulsions, and arrests and 2) develop alternatives to suspension and arrests, including assessment and treatment measures for chronically disruptive students.

The first MOU, titled "School Referral Reduction Protocol," identified misdemeanor offenses no longer eligible for referral to the juvenile court unless the student had exhausted a two-tier process that includes: 1) Warning on the first offense to student and parent; 2) referral to a conflict skills workshop on the second offense; and 3) referral to the court on the third offense.

The second MOU created a multidisciplinary panel to serve as a single point of entry for all child service agencies, including schools, when referring children, youth, and families at risk for petition to the court. The panel, called the Clayton County Collaborative Child Study Team (Quad C-ST), meets regularly to assess the needs of students at risk for court referral and recommends an integrated services action plan to address the student's disruptive behavior. The panel consists of a mental health professional, the student's school social worker and counselor, a social services professional, juvenile court officer, and approved child service providers, and it is moderated by a trained facilitator provided by the court. The panel links the child and family to services in the community not available to the school system. The panel developed an array of evidence based treatment programs such as functional family therapy, multi-systemic therapy, cognitive behavioral programming, wrap-around services, and more.

Outcomes

Immediately following the School Referral Reduction Protocol, referrals to the court were reduced by 67.4%. The school police, who had spent most of their time arresting students for low-level offenses, were now on campus most of the day and engaging students using a positive approach versus the use of handcuffs and a transport in the back of a patrol car.

The implementation of the protocol produced a residual effect in the felony referral rate, with a decrease of 30.8%. According to school police, the warning system was used for some felony offenses involving typical adolescent behavior. The decision by school police over time to extend their discretion to use the warning for certain offenses outside the scope of the protocol indicates a shift in cognition. When prohibited from making arrests, school police began to engage students and developed an understanding that discipline should be applied on a case-by-case basis. This resulted in greater reductions in referrals.

By the end of the 2011-12 school term, the number of students referred to the juvenile court for school offenses was reduced by 83%. The number of youth of color referred to the court for school offenses was reduced by 43%.

Another byproduct of the protocol was a reduction in serious weapons on campus by 73%. These involve weapons outside the discretion of police and must be referred to the court by law. These results appear to refute the belief among school administrators that zero tolerance promotes school safety. A survey of school police show that the cessation of school arrests increased police presence on campus because they were no longer leaving campus to transport and file referrals. This in turn increased their knowledge of the student body. Their increased presence promoted friendly engagement of students.

This positive engagement coupled with the students' perception that the police were there to help (because arrests drastically declined) produced sharing of information by students to police about concerns on campus. Consequently, students now share information that leads to solving crimes in the community, as well as crimes about to occur on campus. "Schools are a microcosm of the community," as stated by the supervisor of the school police unit (Richards, 2009). If one wants to know what is going on in the community, talk to the students. However, the students must want to talk to you. Therefore, the aim of school policing is to gather intelligence on student activity through positive student engagement.

At the same time, the School Referral Reduction Protocol went into effect; the Quad C-ST began work to develop alternatives to OSS and connect the school system with other community providers. These alternatives resulted in an 8% decrease in middle school OSS (Clayton County Public School System, 2010).

After implementing these integrated systems, the school system observed an increase in graduation rates, resulting in a 24% increase by the end of the 2010 school year, which surpassed the statewide average. Although Clayton County has improved the overall rate of graduation, we continue to struggle with on-time graduation rates. Although they have improved over this same time period, much more can be done to graduate kids on time, including a prohibition on out-of-school suspensions for many infractions and the development of alternatives to suspension similar to alternatives to detention promoted by the JDAI Model. Baltimore City Schools, under the leadership of Dr. Alonso, is a good example of this approach.

Clayton County is now employing a System of Care (SOC), managed by a full-time administrator, incorporating the QUAD C-ST previously mentioned to a greater number of chronically disruptive students for assessments and treatment in lieu of suspension, expulsion, and arrest. By reducing suspension rates in addition to arrest rates, Clayton County can significantly improve its on-time rates as it has the overall rates of graduation.

Regardless of overall or on-time graduation rates, the more students that graduate, the less juvenile crime in the community. For example, before the introduction of the protocol to reduce school arrests in 2004, the juvenile felony rate in Clayton County reached an all-time high, but declined 51% after the protocol, reducing school arrests and improving graduation rates.

The implementation of this protocol has reduced the average probation caseload size to 25, which includes the kids that scare us—not the ones that make us mad. Consequently, the increase in surveillance and the intensive interventions employed with our probationers has resulted in a reduction in recidivism of 24%—down from over 70%. This decline represents greater success among these troubled youth and fewer victims.

Finally, the protocol coupled with our JDAI practices was instrumental in achieving other results that have reduced recidivism and turned cost savings into local re-investments to serve our youth. These results include:

- 70% decrease in average daily detention population (ADP)
- 64% reduction in average daily detention population of minority youth
- 43% reduction in average length of stay
- Felony re-arrest (prior to adjudication) of less than 1%
- 43% fewer commitments to state custody
- 40% fewer commitments of minority youth
- 67% reduction in formal petitions

The Clayton experience is not a novel idea. It is grounded in research that supports common-sense notions—that keeping kids in school will increase graduation rates that in turn will positively impact community safety and improve our economy.

Some of these results have been replicated in other jurisdictions including Birmingham, Alabama and Wichita, Kansas. The family court judge in Birmingham, Brian Huff, was the first to replicate this collaborative approach. During the 2007-08 school years, school police in Birmingham referred 513 students to court, of which 99% were African American and 96% were petty misdemeanor offenses. The judge also brought stakeholders together and developed a written protocol similar to that of Clayton County. The referrals declined by 75% and detention rates fell by 72%. Recently, the juvenile judge in Wichita convened stakeholders meetings and established a protocol resulting in a 50% decrease in school arrests. Judge Patricia Koch, District Court Judge of Rapides Parrish, LA, is another example of

judicial leadership to bring about collaborative reform to end the school-to-prison pipeline. By using her convening power, the stakeholders in her Parrish have developed a system similar in concept to Clayton County that has reduced school referrals from 1,148 in 2006 to only 58 in 2011. Other jurisdictions have followed suit to change their systems to reduce school arrests including Columbus, OH; Sioux City, IA; Broward County, FL; Bibb County, GA; Middlesex County, MA; Los Angeles County, CA; and several jurisdictions in Connecticut.

The National Scope: It's Not Just Clayton County

We are a nation in crisis when it comes to educating our children. On one hand we promulgate laws to promote the education and welfare of children and on the other we implement policies that effectively push them out of school, creating what has been coined the "School-to-Prison Pipeline." These competing approaches create a dysfunctional paradox that harms children and the community.

In an effort to address school discipline, educators have adopted a zero tolerance approach resulting in a dramatic increase in out-of-school suspensions (OSS) and expulsions. The introduction of police on school campuses exacerbated the problem by using arrest and incarceration as another disciplinary tool.

The widespread use of zero tolerance policies is probative of educators' belief that such "get tough" strategies have value in correcting behavior and/or to remove disruptive students. No matter the reason, zero tolerance policies deny recent research on adolescent brain development that "mischief is a foreseeable derivative of adolescence" (Teske, 2011). Other studies show that zero tolerance strategies in general are ineffective, harmful to students, and fails to improve school safety.

Zero Tolerance Defined:

During the early 1990s, school systems began adopting this "get tough" approach for minor school infractions, using out-of-school suspension (OSS) for up to ten days and expulsions. By widening the net of infractions, the use of OSS nearly doubled annually from 1.7 million in 1974 to 3.1 million in 2001 (Poe-Yamagata & Jones, 2000). The most contradictory application of OSS involves truant students. Suspending a truant student is indicative of the inherent problems with zero tolerance policies in a school setting. It confounds the mind that professionals trained and certified to teach our children are duped into believing that suspending a student who doesn't want to be in school is an effective tool. It is not surprising that some have referred to zero tolerance as "zero intelligence" (Richardson, 2002).

Zero tolerance can be defined as a "philosophy or policy that mandates the application of predetermined consequences, most often severe and punitive in nature, that are intended to be applied regardless of the seriousness of behavior, mitigating circumstances, or situational context" (Skiba et al., 2006). The punitive nature of zero tolerance practices increased with the introduction of police on school campuses. What was typically handled in the principal's office now involved a police officer with the power to arrest. In addition to suspension, students were handcuffed and transported to juvenile

intake locations. The net for incarceration widened. Studies have referred to this phenomenon as the "School-to-Prison Pipeline" (Wald & Losen, 2003).

School administrators administer zero tolerance practices believing that the removal of disruptive students will deter others from similar conduct, creating a safer classroom environment. This belief fails to take into consideration the growing body of research that zero tolerance is contrary to adolescent cognition and the role school plays as a protective buffer against delinquency.

The Surgeon General's report on youth violence revealed that a child's connection to school was a protective factor against risk factors for violence (U.S. Department of Health and Human Services, 2001). Other studies found that students' belief that adults and peers in school care about them is related to lower levels of substance abuse, violence, suicide attempts, pregnancy, and emotional distress (McNeely, Nonnemaker, & Blum, 2002). Studies also reveal that this belief, referred to as school connectedness, is linked to school attendance, graduation rates, and improved academics (Rosenfield, Richman, & Bowman, 1998; Battin-Pearson et al., 2000).

Despite efforts by many juvenile judges to stop these minor school offenses from reaching their courtroom using informal intake diversion mechanisms, more must be done. Research shows a strong link between school arrests and drop-out rates. One study found that a student arrested in school is twice as likely to drop out and four times as likely to drop out if the student appears in court. (Sweeten, 2006). Juvenile judges should consider what steps can be taken to prevent any unnecessary referral to the court.

Removing students from school which serves as a buffer against delinquency is counterproductive to the goals of education, the best practices in juvenile justice, and community safety. Take for instance what we know about the importance of assessing the risk of juvenile offenders to determine the level of services needed to prevent re-offending. Studies show that recidivism is reduced among high risk youth if they are provided with intensive interventions. Conversely, these same studies show that intensive interventions applied to low risk youth increase the risk of re-offending (Andrews, Bonta, & Hoge, 1990). Applying these findings to zero tolerance strategies, the harsh treatment of students committing minor infractions increases the risk of anti-social and delinquent behaviors. Studies show that the use of OSS and arrests without consideration of the risk level of the student exacerbates the problem by making students' behavior worse (Andrews & Bonta, 1998; Mendez, 2003). Another study on the use of OSS of elementary and middle school students found that OSS is a predictor of future suspensions (Mendez, 2003). The study also found that OSS contributes to poor academic performance and failure to graduate. It should be common sense that keeping kids in school will increase graduation rates.

Zero tolerance as a philosophy and approach is contrary to the nature of adolescent cognition and disregards the research in adolescent brain research. The research using magnetic resonance imaging ((MRI) found that the frontal lobe of the brain, which filters emotion into logical response, is not fully developed until about age 21 (Giedd et al, 1999). Adolescents are "biologically wired to exhibit risk-taking behaviors, impulsive responses, and exercise poor judgment" (Teske, 2011).

The implications of these studies within the context of zero tolerance approaches are important to show the negative impact on adolescents. The use of OSS and arrests for behavior that is neurologically normative for adolescents aggravates the existing challenges confronting youth. Neurologically speaking, youth are still under construction and require positive surroundings, including school (Giedd et al, 1999). Removing youth from school settings that serve as a protective buffer increases the probability of negative outcomes for the student, school, and the community.

This hearing cannot be timelier given the increasing involvement of national organizations and private philanthropies with initiatives designed to dismantle the School-to-Prison pipeline. I have already mentioned the Annie E. Casey Foundation JDAI Model that inspired the Clayton County School Referral Reduction Protocol. The National Council of Juvenile and Family Court Judges (NCJFCJ), of which I am a member, passed a resolution against zero tolerance policies in school settings. NCJFCJ spearheads an effort with the support of a number of organizations including the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and Atlantic Philanthropies, a Schools Pathways to Delinquency Committee, which I co-chair, to develop curriculum to train judges across the country to deliver technical assistance to local jurisdictions on how to develop a protocol to reduce school arrests. The Council of State Governments has created a Discipline Juvenile Justice Focus Group, also with the support of Atlantic Philanthropies and others to develop policy recommendations that promote effective strategies to improve student conduct and reduce school arrests, suspensions, and expulsions.

Recommendations

As the Committee looks for ways to end the School-to-Prison Pipeline, I ask the Committee consider the following recommendations:

- Amend the No Child Left Behind (NCLB) Act to encourage schools to seek alternatives when dealing with disruptive students other than referring them to the juvenile justice system.
- Amend the NCLB Act and the Individuals with Disabilities Education Act (IDEA) to provide for Title I funding to develop alternatives to out-of-school suspensions, expulsions, and referrals to the juvenile court, including training for law enforcement and school administrators on best practices for handling school-related offenses.
- Amend the NCLB Act and IDEA to mandate collaboration between schools, law enforcement, juvenile justice, prosecutors, and other relevant stakeholders to reduce the unnecessary referral of students to the juvenile justice system while simultaneously developing programs to improve retention, safety, and graduation rates.
- Reconsider the 1994 Gun Free Schools Act only as it relates to the automatic, one-year suspension of elementary age and some younger middle school students to allow local school districts to exempt those students where the evidence is clear and convincing that the student had no intent to use a weapon in an assault or to cause physical injury. From time to time, school systems are

reluctant to suspend a child of tender years whose only intent was to show off a weapon that was negligently placed in his or her hands by an adult parent or guardian.

- Reauthorize the Juvenile Justice Delinquency Prevention Act (JJDP) and incentivize the reinvestment of detention dollars into effective community-based programs similar to the programs in Ohio, Illinois, and Texas to include school and justice system programs to reduce school arrests.
- Strengthen the disproportionate minority contact core protection of the JJDP to expressly require efforts, initiatives, and programs similar to Clayton County's model to reduce and eliminate racial and ethnic disparities in the referral of students to the juvenile court.

Thank you again for having me here to testify and I look forward to any questions you have for me.



**Testimony of Judith A. Browne Dianis
Co-Director, Advancement Project**

**Hearing on Ending the School-to-Prison Pipeline
Before the Subcommittee on the Constitution, Civil Rights, and Human Rights, Senate
Committee on the Judiciary
Washington, DC
Wednesday, December 12, 2012**

Chairman Durbin, Ranking Member Graham and Members of the Subcommittee on the Constitution, Civil Rights and Human Rights, thank you for the opportunity to testify today about the School-to-Prison Pipeline, the process by which students are forced out of our educational system and into the criminal justice system by overly harsh disciplinary policies and practices, and to share with you the Pipeline's devastating effect on young people's opportunity to succeed. Mr. Chairman, having testified before you in 2011 on voting rights issues, I wanted to recognize your leadership on a vast array of civil rights and racial justice issues including ensuring educational opportunity, protecting voting rights, and protecting the rights of immigrants.

My name is Judith Browne Dianis. I serve as Co-Director of Advancement Project—a national, civil rights organization that advances universal opportunity and a just democracy. For almost 20 years, I have been a civil rights litigator and racial justice advocate in the areas of voting, education, housing, and immigrants' rights.

Advancement Project is a next generation, multi-racial civil rights organization, founded in 1999 by a team of veteran civil rights lawyers. With offices in California and a national office in Washington, DC, we exist to fulfill America's promise of a caring, inclusive, and just democracy, rooted in the great human rights struggles for equality and justice. We use innovative tools and strategies to strengthen

social movements and achieve high-impact policy change. Locally, we provide strategic policy, legal, and communications support to grassroots organizations, increasing their capacity to identify and address racial injustices in their communities. On the national level, we extend and replicate lessons learned on the ground, through the use of trainings, networking, media outreach, and public education.

We all want safe, high-quality schools that care about our youth and give them real opportunities to succeed, and, no one would dispute that keeping kids safe sometimes requires schools to take appropriate disciplinary action. However, across the country, students are being suspended, expelled, or even arrested for minor misbehavior like being late or violating a dress code. Students who should be sent to the guidance counselor to find out what is really wrong end up at the police station. We are facing a discipline crisis, one that is pushing students of color out of school, by either kicking them out of school or causing them to drop out, and one that is disproportionately impacting lesbian, gay, bisexual, transgender, and queer (LGBTQ) students and students with disabilities.

In recent years, we have seen increased rates of suspension, expulsion, and arrest because adult – and not student – behavior has changed. Adults are treating young people like criminals, and are responding to typical student behavior that has no bearing on safety with discipline that defies common sense. Schools have redefined developmentally appropriate behaviors as crimes. Pushing and shoving in the schoolyard is now a battery, and talking back is now disorderly conduct.

In all the years I have done this work, one case in particular stands out. Ja'eisha Scott was a five-year-old kindergarten student in Pinellas County, Florida. When her teacher ended a jelly bean counting game, Ja'eisha didn't want to stop the game. Like many five-year old children would have done, Ja'eisha, got upset and started acting out. Soon, this turned into a full blown temper tantrum. When the school staff couldn't get her to calm down, they decided that their next best option was to call in law enforcement. When the three police officers entered the room, they found Ja'eisha sitting quietly in a chair. Two of them pulled her up, pushed her against a table and put little Ja'eisha under arrest, as if she were a hardened criminal. Her wrists were too tiny for the handcuffs to fit, so they handcuffed her arms instead. They took her to a police cruiser, where they shackled her ankles and left her crying until her

mother came to the school. The images of Ja'eisha that day, and of her family and her community's pain, are seared in my memory.

These overly punitive disciplinary policies and practices, often called "zero tolerance policies" lead to high dropout rates, low academic achievement, and too many young people pushed onto a pathway to prison. This is the School-to-Prison Pipeline. The Pipeline is the result of various practices including zero tolerance policies, high-stakes testing, suspensions, expulsions, and school-based arrests.

The School-to-Prison Pipeline is a product of the War on Drugs, as "get-tough" law enforcement strategies made their way from the streets to the schools. Although school violence was actually in decline, a handful of highly publicized juvenile crimes led to new laws and policies intended to punish youth offenders more severely.¹ In 1994, Congress passed the Gun Free Schools Act, requiring states to enact laws mandating expulsion of students found with firearms on school grounds. School districts went further, embracing the strategies of the War on Drugs, and coming up with their own versions of "three strikes" laws (automatically expelling students for their third offense) and instituting mandatory sentencing laws (policies requiring a minimum suspension for some behaviors regardless of circumstances, even for something as minor as insubordination).² At the onset of these changes, Advancement Project saw the potential for discrimination. We tracked it, documented it, and, with our community partners, began to address it. We have supported the growing national movement to dismantle the School-to-Prison Pipeline for over thirteen years.

Youth, parents, local groups and their organizers, other community leaders, and coalitions have been at the forefront of this movement since its inception. Through their tireless work, and the support of national research, education, juvenile justice organizations, and civil rights advocacy organizations, many of whom have also submitted testimony for this hearing, the tide is starting to turn away from ineffective, exclusionary discipline and towards common sense policies that actually work. As part of this movement,

¹Test, Punish, and Push Out: How "Zero Tolerance" and High-stakes Testing Funnel Youth into the School-to-Prison Pipeline 9-12. (January 2010) [hereinafter Test, Punish, Push Out], available at http://b3cdn.net/advancement/d05cb2181a4545db07_r2im6cage.pdf.

² Id. at 10.

we and our partners and allies have collaborated with juvenile court judges, public defenders, and the U.S. Departments of Justice and Education. With our community partners, we have also successfully advocated for statewide legislative reform of zero tolerance policies and practices, and worked closely with school districts to implement common sense discipline, rewriting their discipline codes and developing alternatives to suspensions and criminalization practices.

I am honored to have the opportunity to inform this committee about what is happening on the ground across the county and to highlight ways of reversing the School-to-Prison Pipeline. In this testimony, I will discuss why harsh disciplinary practices do not work: they are ineffective, inefficient, and discriminatory. I will then discuss common sense discipline policies and practices that are proven alternatives to zero tolerance that keep schools safe, engage students in the learning process, and reduce racial disparities. Finally, I will recommend how the federal government – and this subcommittee in particular – can end the School-to-Prison Pipeline and get students on the track to success.

I. Suspension, Expulsion, and Arrest Lead to Less Safe Schools and Less Successful Students

Millions of students throughout the country are routinely facing excessive, overly punitive school discipline. This includes out-of-school suspension, expulsion, arrests, and referrals to law enforcement agencies – collectively, what I will refer to as “exclusionary discipline.” According to the most recent data from the United States Department of Education’s Office for Civil Rights (OCR), each year over three million students are suspended and over 100,000 students are expelled.³ This rate has nearly doubled in the past thirty years.⁴ School disciplinary matters are also increasingly handled by law enforcement, and today, students are more likely to be arrested for minor in-school offenses.⁵ This zero tolerance approach where adults often over-react to youthful behavior by removing them from the classroom, kicking them out of school, and referring them to the police is having a devastating effect on

³Department of Education, Office for Civil Rights, Civil Rights Data Collection, available at <http://ocrdata.ed.gov/>.

⁴Id.

⁵ Federal Advisory Committee on Juvenile Justice, 2010 Annual Report 9 (2010), available at <http://www.facjj.org/annualreports/00-FACJJ%20Annual%20Report-FINAL%20508.pdf>.

our youth. Students lose valuable education time, disengage from school, and are pushed into the criminal justice system. These negative results are not necessary: we know that exclusionary discipline does not work. It has not made our schools safer; it has not improved the quality of schools; and it is a significant contributor to the dropout crisis and student achievement gap.⁶

The overuse of zero tolerance discipline policies is fueled by the high-stakes testing world of education today.⁷ Because of the focus on test scores and the severe consequences (or incentives) attached to them, including termination of school staff, it is no longer in educators' interest to address a student who acts up in class by assessing the student's unmet needs or treating the incident as a "teachable moment."⁸ It is much easier to simply remove the child from class through punitive disciplinary measures.⁹

Many schools have also abdicated their responsibility to correct minor misbehavior to law enforcement and the courts. This criminalization of young people has led to dramatically larger security and school police forces, increased use of metal detectors, surveillance cameras, pat-downs, drug-sniffing dogs, and tasers, and a significant jump in the number of school-based arrests and citations.¹⁰ The prison-like atmosphere created in schools significantly affects students. As students in Philadelphia explained, "It creates a hostile environment. It makes it seem as though they expect us to be negative. I feel violated. I shouldn't have to go through a metal detector . . . and upon entering [a particular school for the first time] I had to take off my shoes and they searched me like I was a real criminal. . . [after that] I was making up every excuse not to go to school."¹¹ Around the country, we see rampant use of law enforcement to respond to typical childhood behavior. In May of 2012, an honors student in Houston, Texas was forced to spend a night in jail when she missed class to go to work to support her family. In

⁶ See generally Test, Punish, Push Out, *supra* note 1.

⁷ *Id.*

⁸ *Id.* at 28-29.

⁹ *Id.*

¹⁰ See, e.g. Advancement Project. Derailed! The Schoolhouse to Jailhouse Track. (May 2003), available at http://b3cdn.net/advancement/c509d077028b4d0544_mlbq3seg.pdf.

¹¹ Youth United for Change & Advancement Project. Zero Tolerance in Philadelphia: Denying Educational Opportunities and Creating a Pathway to Prison 14 (January 2011) [hereinafter Zero Tolerance in Philadelphia], available at http://b3cdn.net/advancement/68a6ec942d603a5d27_rim6ynnir.pdf.

April, a kindergartener from Milledgeville, GA was handcuffed and arrested for throwing a tantrum. In 2007, a thirteen-year old from New York was handcuffed and removed from school for writing the word “okay” on her school desk. Data from Florida shows that during the 2010-2011 school year, 16,377 referrals were made of students directly to the juvenile justice system – an incredible average of 45 students per day.¹² Statewide, two-thirds of the school-based referrals were for misdemeanors.¹³ This means that two-thirds of the arrests were totally unnecessary, and in response to things like disruption of a school function, disorderly conduct, or minor school-yard fights.¹⁴ Our experience, which is confirmed by our data, tells us that schools are routinely using removal from school and arrest to respond to minor misbehaviors.

These stories show how overly harsh discipline hurts our youth. This should not obscure that the responsibility for this problem lies with adults. When school officials choose to make schools into prison-like atmospheres, they are making decisions that have lasting consequences for students. Every dollar that goes into police, metal detectors, and surveillance cameras is a dollar that could have been used for teachers, guidance counselors, school psychologists, and program supports for young people. Adults need to accept responsibility for creating school climates where young people are treated as dropouts and criminals.¹⁵

Let me be clear that in putting the focus on adults, I, in no way, want to contribute to the current culture in which teachers are unfairly blamed for all of the ills of our educational systems. Many teachers are faced with using harsh school discipline because they are neither being given the tools and training they need to appropriately respond to student behavior, including training in classroom management and cultural competency, nor do their schools provide the appropriate resources and programs for teachers

¹² Florida Department of Juvenile Justice, *Delinquency in Florida's Schools: A Seven Year Study 3* (November 2011) [hereinafter *Delinquency in Florida's Schools*], available at <http://www.djj.state.fl.us/docs/research2/2010-11-delinquency-in-schools-analysis.pdf?sfvrsn=0>.

¹³ *Id.* at 8-9.

¹⁴ ACLU of Florida, *Advancement Project*, and Florida State Conference of the NAACP, *Still Haven't Shut Down the School-to-Prison Pipeline 6-8* (March 2011), available at http://b3cdn.net/advancement/be89ef01bcb350c7fc_z5m6btbgo.pdf.

¹⁵ *Zero-Tolerance in Philadelphia*, *supra* note 11, at 3.

who want to do right by their students. Schools often lack resources for positive student interventions and supports to address the behavioral challenges teachers face in their classrooms. Moreover, teachers are just as much victims of high-stakes testing as their students. Teachers are often in a tough spot, turning to exclusionary discipline as a way to monitor student behavior because there are few alternatives available.

A. Zero Tolerance Discipline Is Not Common Sense Discipline

Responding to minor misbehaviors with exclusionary discipline defies common sense. Students who are struggling behaviorally need more supports, interventions, and structure – not less. Not surprisingly, the research shows that removing youth from their learning environment for extended periods of time is not an effective way to manage student behavior. The American Psychological Association (APA) Zero Tolerance Task Force, after evaluating school disciplinary policies for ten years, concluded that zero tolerance policies fail to do what they were designed to do. They do not make schools safer. In fact, the APA found that zero tolerance policies may make schools less safe, because schools with higher rates of suspension and expulsion “appear to have less satisfactory ratings of school climate, to have less satisfactory school governance structures, and to spend a disproportionate amount of time on disciplinary matters (internal citations omitted).”¹⁶ Zero tolerance hurts the relationship between teachers and students and doesn’t help students address their issues. Individual students, and the overall classroom, wind up worse off than before.

Schools with high rates of suspension and expulsion tend to have lower test scores and lower graduation rates.¹⁷ This evidence disproves the most common justification for these harmful discipline practices: that there are good kids and bad kids, and that the good kids can only learn if the bad kids are

¹⁶American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools?: An Evidentiary Review and Recommendations*, *American Psychologist*, 63 at 854 (Dec. 2008), available at <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>.

¹⁷Daniel Losen and Jonathan Gillespie, *Opportunity Suspended: The Disparate Impact of Disciplinary Exclusion from School 42* (August 2012), available at <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-ccrr-research/losen-gillespie-opportunity-suspended-ccrr-2012.pdf>

removed from the classroom. In fact, the use of school suspensions and expulsions is associated with lower school-wide academic achievement.¹⁸

Instead of creating safer schools, zero tolerance policies have created hostile and unhealthy school environments, damaging relationships between students, parents, teachers, administrators, and law enforcement. Students succeed, and behavior improves, when young people are in challenging and engaging classrooms and welcoming, nurturing schools.

B. Every Student Should Have an Opportunity to Succeed

Suspensions and expulsions are not just ineffective and inefficient – they have real and documented harmful effects on students.¹⁹ Suspensions and expulsions are associated with a higher risk of school drop-out, and suspended and expelled students are more likely to become involved with the juvenile or adult criminal systems.²⁰ Students who are pushed out of school may have decreased life opportunities, finding their way into criminal justice system and into a life in poverty. The Council for State Governments, in a 2011 report, documented the risk factors associated with suspension and expulsion when it tracked three cohorts of seventh graders in Texas. Students who were suspended from school had a significantly greater chance of being held back, dropping out of school, and coming into contact with the juvenile justice system.²¹ The study found that students who were suspended were *two times* more likely to repeat a grade and *three times* more likely to be involved with the juvenile justice system.²²

When students are brought into contact with the juvenile justice system, there can be severe and long-lasting effects. Students face serious consequences not only in the justice system, but also when

¹⁸ American Psychological Association Zero Tolerance Task Force, supra note 16 at 854.

¹⁹ Advancement Project and the Civil Rights Project, Harvard University. Opportunities Suspended: The Devastating Consequences of Zero Tolerance School Discipline 13 (July 2002) available at http://b3cdn.net/advancement/8d91c72205a1b9d955_ujm6bhguv.pdf.

²⁰ American Psychological Association Zero Tolerance Task Force, supra note 16

²¹ Justice Center – The Council of State Governments and Public Policy Research Institute, Breaking Schools' Rules, A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement [hereinafter Breaking Schools' Rules] (July 2011), available at <http://justicecenter.csg.org/resources/juveniles>.

²² Breaking Schools' Rules, supra note 21, at 54-72.

applying for college, the military, or a job. One Maryland student was arguing with a classmate in the cafeteria. The student was suspended from school and arrested for assault, although the argument never came to blows. The student took a plea agreement on the delinquency matter, and was sentenced to 364 days. As a result of this unnecessary arrest, the student landed, and remains in, Immigration and Customs Enforcement proceedings, because he is an undocumented immigrant.

In Chicago, a middle school student was arrested just for walking past a fight that broke out after school. She reported, “the day after the fight, we were in lunch and six police officers came into the lunchroom. They came and grabbed us and handcuffed us and said whatever we said could be used against us. No matter how I cried and pleaded and told them I didn’t have anything to do with it, they wouldn’t listen. I was charged with third-degree battery.”²³ The student also recognizes that the arrest changed her entire school experience. “Even though I had good grades, my teachers treated me differently after that. They saw me as someone who got into fights and got arrested. They didn’t want to let me graduate, eat lunch with my class, or go on our class trip even though I hadn’t done anything. It showed me that the world wasn’t fair.”²⁴

The evidence from multiple national studies shows that when adults choose to use exclusionary discipline practices instead of common sense discipline, they are increasing the likelihood that students will disengage with school, drop-out all together, and become involved with the juvenile justice system.

C. Exclusionary Discipline is Unfair: The Rules are Different for Some Students

The harmful impact of school discipline is not distributed equally: suspensions and expulsions are borne disproportionately by students of color, students with disabilities, and LGBTQ youth. Nationally, Black students are three times more likely to be suspended and four times more likely to be expelled than

²³Voices of Youth in Chicago Education. The Time for Justice is Always Now: VOYCE Annual Report 2011-2012 [hereinafter VOYCE Annual Report] 5, available at [http://library.constantcontact.com/download/get/file/1104628315334-75/VOYCE+2012+report2+\(1\)+\(1\).pdf](http://library.constantcontact.com/download/get/file/1104628315334-75/VOYCE+2012+report2+(1)+(1).pdf).

²⁴Id.

their White peers.²⁵ Students with disabilities are suspended at twice the rate as students without disabilities.²⁶ LGBTQ youth are more likely to be disciplined and arrested than peers.²⁷

The racial disparities in the national data reflect what is happening in the states. For example, according to OCR's Civil Rights Data Collection, in Charleston, South Carolina over 80% of suspensions in the 2009-2010 school year were given to Black students, despite the fact that they make up less than half of the student body. In Texas, the Council for State Governments found that, when isolating the effect of race on disciplinary actions by controlling for 83 different variables, Black students had a 31% higher likelihood of being suspended for a behavior for which suspension was not mandatory than statistically identical White students.²⁸

Historical racial disparities in school discipline continue today but have worsened. Between 1973 and 2006, data from OCR shows that the rate of suspensions for Black students has always been the highest, and that the rate of suspension for those students has increased exponentially. The racial gap between Blacks and Whites has grown from fewer than three percentage points to more than ten.²⁹ From 2003-2007, out-of-school suspensions for Black students increased by 8% and for Latino students by 14%, while out-of-school suspensions for White students decreased by 3%.³⁰ For Black students, the disparity increase for expulsions is even more shocking. Between 2003 and 2007, Black student expulsions went up by 33%, compared with a 6% increase for Latino students and a 2% decrease for White students.³¹

Significantly, these disparities are not the result of students of color acting out more. Instead, adults are making the decision to characterize behaviors by students of color as punishable – often as a result of explicit or implicit bias. The research on student behavior has found no evidence that the over-

²⁵ Department of Education, Office for Civil Rights, Civil Rights Data Collection, available at <http://ocrdata.ed.gov/>.

²⁶ Id. See also Losen and Gillespie, supra note 17 at 16-18.

²⁷ Kathryn E. W. Himmelstein and Hannah Brückner. *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*. (2010).

²⁸ Breaking Schools' Rules, supra note 21 at 45.

²⁹ Losen and Gillespie, supra note 17 at 37.

³⁰ Department of Education, Office for Civil Rights, Civil Rights Data Collection, available at <http://ocrdata.ed.gov/>.

³¹ Id.

representation of Black students in school discipline is due to more misbehavior,³² and, even when controlling for socioeconomic status, students of color are being disproportionately impacted.³³ The Texas study, for example, found that Black students were far more likely than White students to be suspended for discretionary offenses, like disrespect or disruption.³⁴ As the Florida State Conference of the NAACP has reported, in Florida schools Black male students were most likely to be arrested for misdemeanor disorderly conduct, while their White male peers were subjected to arrest for objective offenses like drug or alcohol offenses.³⁵ Black students in Texas were also more likely to receive exclusionary discipline than White students for their first disciplinary violation.³⁶ Broad, discretionary offense categories like “disorderly conduct,” “disrespect of authority,” or “disobedience” – are mainly in the eye of the beholder – leave significant room for implicit and explicit racial biases to creep into the discipline process and exacerbate disparities.

These studies echo our partners’ lived experiences on the ground. Students of color are being disciplined more frequently and more harshly due to adult decisions, not student behavior. We see the same patterns in schools that we see in criminal justice – Blacks are imprisoned at higher rates and given more severe sentences than Whites for the same offenses. In schools, codes of conduct with discretionary offenses allow implicit racial bias to influence the decision of when to call a behavior an offense, and when to use punitive discipline instead of more instructive techniques.

LGBTQ youth are also disproportionately impacted by the School-to-Prison Pipeline and, despite engaging in less serious misbehavior, are more likely to experience school or criminal justice sanctions than their peers.³⁷ School policies, like dress codes that don’t provide protections for gender expression or for gender non-conforming students, and a lack of training for school staff both contribute to alienation

³² Russell Skiba, *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment* 6, (June 2000), available at <http://www.indiana.edu/~safeschl/cod.pdf>; Losen and Gillespie, *supra* note 17 at 41.

³³ Skiba, *supra* note 33 at 6.

³⁴ *Breaking Schools’ Rules*, *supra* note 21 at 40-46.

³⁵ *Delinquency in Florida’s Schools*, *supra* note 12 at 12. See also *Still Haven’t Shut Down the School-to-Prison Pipeline*, *supra* note 14.

³⁶ *Breaking Schools’ Rules*, *supra* note 21 at 42.

³⁷ Himmelstein, Kathryn E. W., Brückner, Hannah, *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*, 2010, available at <http://pediatrics.aappublications.org/content/early/2010/12/06/peds.2009-2306.full.pdf+html>.

and students being kicked out or dropping out of school. Unrelenting harassment from peers and adults in their schools forces many LGBTQ youth to use self-defense and other survival techniques to protect themselves, which, in turn, causes them to be suspended, expelled, or arrested under strict zero tolerance policies.³⁸ When LGBTQ youth protest against bullying or dress code violations and are then disciplined for it, they can be inadvertently “outed” to their parents or peers when the reasons why they are protesting certain policies come to light. This can be both traumatic and dangerous for these young people. Student leaders have fought back against these trends by forming Gay Straight Alliance chapters and other such organizations to advocate for LGBTQ youth and speaking out on how their schools can create safe, inclusive school climates, but much more work remains to be done.

II. Spotlight on Chicago

What is happening in Chicago, Illinois exemplifies how zero tolerance policies and harsh school discipline are pushing students – particularly students of color – out of schools and into jails. Historically, Chicago has been an unfortunate leader in the School-to-Prison Pipeline, and Advancement Project has exposed Chicago Public School’s overuse of harsh discipline policy and shined a spotlight on the thousands of students who have suspended, expelled, and arrested.³⁹ For example, in 2005, Advancement Project issued a report detailing that 8,539 youth were arrested in Chicago public schools in 2003.⁴⁰

³⁸ Gay, Lesbian, and Straight Education Network (GLSEN). 2009 School Climate Survey 37 (2010), available at http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1675-2.pdf. (11.7% of students reported handling incidents of harassment and assault themselves); A.G. Carney, & K.W. Merrell, *Bullying in Schools: Perspectives on Understanding and Preventing an International Problem*, *School Psychology International* 22, 2001 at 368 (“Victims of bullying are far more likely to bring weapons to school to protect themselves”); Advancement Project, Alliance for Educational Justice and Gay-Straight Alliance Network, *Two Wrongs Don’t Make A Right: Why Zero Tolerance is not the Solution to Bullying*, June 2012, available at http://b.3cdn.net/advancement/73b640051a1066d43d_yzm6rkffb.pdf (June 2012).

³⁹ Advancement Project. *Education on Lockdown: The Schoolhouse to Jailhouse Track 9* (March 2005), available at http://b.3cdn.net/advancement/5351180e24cb166d02_m1brqgx1h.pdf.

⁴⁰ *Id.* at 32.

Despite this attention, the School-to-Prison Pipeline persists in Chicago. In the 2010-2011 school year, police arrested almost 5,000 students on Chicago Public School (CPS) properties.⁴¹ Because the Chicago Police Department and CPS do not keep (or make publically available)⁴² comprehensive data, it is impossible to know whether all of these arrests are for school-based offenses. The situation is similarly grim when it comes to out-of-school suspensions. On average, CPS suspends 364 students every day.⁴³

Like we are seeing around the country, the arrests and out-of-school suspensions in Chicago are largely for minor misbehaviors that shouldn't be characterized as crimes. In 2010-2011, over 80% of the arrests were for misdemeanors.⁴⁴ In one absurd case in November 2009, twenty-five middle school students were rounded up, arrested, and put into jail for participating in a cafeteria food fight.⁴⁵ Students are routinely arrested for things like disorderly conduct, vandalism, or fighting – incidents that don't threaten school safety and for which there are common sense responses.⁴⁶

There is also a clear racial impact. In Chicago, Black students are over four times more likely to be arrested at school than their White peers.⁴⁷ Black and Latino students in CPS are suspended three times more often than White students. Across all fifty states, Illinois has the highest rate of disparity between White and Black students suspended.⁴⁸

Students enrolled at charter schools in Chicago are also reportedly pushed into the School-to-Prison Pipeline. Despite their reputation for high academic performance, the Noble Street Charter Network is allegedly one of the worst offenders for applying extreme discipline practices. In addition to being suspended, students are reportedly fined for a wide array of minor disciplinary incidents such as

⁴¹ The arrest data from Chicago was acquired through VOYCE/Advancement Project FOIA requests to the Chicago Police Department and from CPS.

⁴² CPS reported zero arrests and only 165 referrals to law enforcement in OCR's CRDC, despite the evidence that thousands of arrests occur on CPS properties every year.

⁴³ The data was acquired through an Advancement Project FOIA request to the Illinois State Board of Education.

⁴⁴ The arrest data was acquired through VOYCE/Advancement Project FOIA requests to the Chicago Police Department.

⁴⁵ Test, Punish, Push Out, *supra* note 1 at 14.

⁴⁶ Voices of Youth in Chicago Education. Failed Policies, Broken Futures: The True Cost of Zero Tolerance Policies in Chicago 8 (July 2011), available at <http://voyceproject.org/sites/default/files/VOYCE%20report%202011.pdf>.

⁴⁷ The arrest data from Chicago was acquired through VOYCE/Advancement Project FOIA requests to the Chicago Police Department.

⁴⁸ Department of Education, Office for Civil Rights, Civil Rights Data Collection, available at <http://ocrdata.ed.gov/>.

having an untied shoe, having “flaming hot chips” (spicy Cheetos or other snacks) or violating the school’s “SMART” policy. This policy requires that students: Sit up straight; Make eye contact; Articulate in standard English, Respond appropriately; and Track the speaker with your eyes.⁴⁹ As a result of their elaborate system of fines and mandatory, prohibitively expensive behavior classes, the Noble network reportedly collected nearly \$400,000 over the last three years from mostly low-income families. Students have allegedly been left back or pushed out of the Noble network schools for failing to pay their fines or to pay for behavior class.⁵⁰ This practice is growing: Noble is reportedly being permitted to expand its schools and other charter networks in Chicago have started charging students for disciplinary infractions.

Chicago is in crisis, and stopping excessive arrests, limiting out-of-school suspensions, and abolishing fees for public education is critical to the success of Chicago’s young people. Voices of Youth in Chicago Education (VOYCE), which is a collaborative of six community-based organizations from around the city, has consistently advanced solutions to hold all schools in Illinois accountable for providing youth with a fair and free education. For example, in June of 2012, VOYCE pushed the Chicago Board of Education to approve a new Student Code of Conduct that reduces the maximum suspension time for all offenses. However, CPS officials consistently rejected additional research-based, community-driven reforms proposed by VOYCE that would have required robust, transparent reporting on the use of these practices and stronger limits on harmful measures like fines and arrests for all public schools, including charters. This local lack of public accountability clearly illustrates the need for Congressional reporting, incentives, and oversight.

⁴⁹Rosalind Rossi, Flaming hot’ chips, gum, other ‘infractions’ costly at some schools, Chicago Sun Times, February 13, 2012, <http://www.suntimes.com/news/education/10626363-418/flaming-hot-chips-gum-other-infractions-costly-at-some-schools.html>.

⁵⁰ In response to public criticism, Noble has changed its policy for this school year, at least on paper, to say that promotion or graduation will not be denied on the basis of inability to pay. However, the impact of this policy change is not yet clear, as the consequences for a student not paying or not being able to pay fines under this new policy is not specified.

III. Accountability For All Public Schools

As we have seen in Chicago with Noble charter schools, charter schools can employ the same harsh and nonsensical discipline policies as traditional public schools. Increasingly, public charter schools – schools that are funded with public money but exempt from many state and local education regulations – are educating our young people. When discipline policies are created outside the bounds of state or local law, they are created with little guidance and few limits. Like all public schools, charter schools should be accountable to the young people, parents, and the communities they serve. In this arena, accountability means that charter schools should report data on school discipline and school climate, cease using zero tolerance policies that don't work, address racial and other disparities in discipline, and support all students on a path to success, not prison.

IV. Successful and Safe Schools: Best Practices for Handling Student Discipline

The best way to stop the School-to-Prison Pipeline is to stop the supply – that is, to limit the ability of schools to exclude students from school for minor misbehaviors. Districts and states that have begun to dismantle the School-to-Prison Pipeline have done so by limiting the use of out-of-school suspensions and referrals to law enforcement. A key element to ending the School-to-Prison Pipeline is a school discipline system that uses a non-punitive approach focused on preventing misbehavior and providing supportive and effective interventions when misbehavior occurs. Through the advocacy and leadership of student-led groups like Padres y Jóvenes Unidos in Denver, Youth United for Change in Philadelphia, and many others, school districts have started to use common sense discipline. These schools use a graduated approach to assigning consequences; place caps on the duration of suspensions, particularly for low-level infractions; limit suspensions for conduct that occurs away from school; and use in-school instead of out-of-school suspension. Baltimore Public Schools, which reformed their school discipline code to address the overuse of exclusionary discipline, divides inappropriate behaviors into four levels and ensures that many low-level offenses can never result in out-of-school suspension.

Revised school discipline codes narrowly define offenses, place an emphasis on handling minor misbehaviors in school, and limit school employee discretion to use the most serious consequences. Instead of removing students from school for misbehaving, schools can employ a host of other responses, including student/teacher conferences, restitution, or community service, referral to support staff, detention, and parental outreach. Districts can also adopt evidence-based programs that are designed to engage students and reduce reliance on suspension and expulsion, such as restorative justice, school-wide positive behavior interventions and supports, and social-emotional learning.

School districts can – and should – intentionally address racial disparities with systemic policies and practices. First, schools must comprehensively and systematically track their use of office referrals, suspensions, expulsions, and arrests. Second, schools must pledge to eliminate unfair disparities. Denver Public Schools and the Maryland State Board of Education have pioneered innovative ways of highlighting and addressing racial disparities. For example, in Denver Public Schools, at the insistence of grassroots advocates, the school discipline policy now requires the elimination of racial disparities and institutional racism and requires the building of cultural competence.⁵¹ Recently proposed regulations in Maryland would require schools to examine racial disparities in discipline, and address them head-on.⁵²

School districts that have worked with community groups to revise their school discipline codes have seen great results. Denver created a school code that matched low-level behaviors with low-level interventions and eliminated arrests as a response to minor misbehavior. As a result, from 2003-2009, out-of-school suspensions dropped by 38% and referrals to law enforcement dropped by 52%.⁵³ The Denver Superintendent cites discipline reform as the cause of higher attendance and a 30% higher graduation rate. In Baltimore, where the school district adopted similar reforms, suspension went down

⁵¹ Denver Public Schools. Parent/Student Policy Handbook Policy JK/JKR, available at http://www.dpsk12.org/parent_handbook/.

⁵² 39 MD Reg. 1456-1458 (November 2, 2012), available at <http://www.dsd.state.md.us/MDRegister/3922.pdf>. See also Maryland State Board of Education. A Safe School, Successful Students, and A Fair and Equitable Disciplinary Process Go Hand in Hand: A Study of School Discipline Practices and Proposed Regulatory Changes. (February 2012), available at http://msde.state.md.us/School_Discipline_Report02272012.pdf

⁵³ Publically available data from Denver Public Schools.

by 63%. In addition, from 2006 – 2010, in the years following the reforms, Baltimore had a 12.4% increase in graduation rates for Black students, and a 10% increase overall.⁵⁴

Beyond working with students and parents to reform codes of conduct, there are also opportunities to bring community stakeholders together to fight the School-to-Prison Pipeline. As we expect the Honorable Steven Teske will share with us during the hearing, multi-agency collaborative agreements tailored to an individual community's needs and challenges can be one of the most effective tools in this movement for change. By working together, community-based organizations, school districts, law enforcement and other stakeholders have limited the use of arrests for school misbehavior and seen huge improvements in their school communities. Judge Teske's successes in reducing arrests, improving school and public safety outcomes and increasing graduation rates in Clayton County, Georgia are spreading across the country. School districts in places like Broward County, Florida, with support from across the ideological and professional spectrum, are creating policies that give all students a chance to succeed.

V. Congressional Action Can Help Dismantle the School-to-Prison Pipeline.

Zero tolerance policies, exclusionary discipline, and the criminalization of minor, developmentally appropriate behaviors have led to students –and particularly students of color – being pushed out of school and into the juvenile and criminal justice systems. That said, OCR data showed that many school districts around the country are not funneling students into the School-to-Prison Pipeline, and are suspending fewer than 3% of their students.⁵⁵ The good news, therefore, is that the School-to-Prison Pipeline is not inevitable: there are best practices and evidence-based programs that guide adults to use common sense discipline and support and engage students.

⁵⁴ Dakarai I. Aarons, Fewer Black Males Drop Out in Baltimore Schools, Education Week, November 3, 2010, <http://www.edweek.org/ew/articles/2010/11/03/10baltimore.h30.html?print=1>.

⁵⁵ Losen and Gillespie, supra note 17 at 38.

Congress can encourage the use of best practices including data-driven reform to dismantle the School-to-Prison Pipeline. Therefore, we recommend that Congress take the following steps:

- Require the annual collection and reporting of discipline and school climate data for all public schools, including public charter schools, and increase oversight and accountability. The law should require that all schools report on in-school suspensions, out-of-school suspensions, expulsions, school-based arrests, referrals to law enforcement agencies, and referrals to alternative schools. The data should be disaggregated by race, gender, special education status, socioeconomic status, and English language proficiency.
- Include school discipline and arrest rates, rates of disparity in school discipline, and school climate data (such as teacher, parent, and student surveys, attendance rates, graduation rates, etc.), as part of the measure of a school's performance.
- Use unusually high school discipline rates, data indicating a negative school culture, and/or pronounced disparity rates to trigger assistance and support for schools that are struggling. The law's current accountability framework places punitive sanctions on schools who fail to meet benchmarks. Instead, the law should provide assistance – both financial and technical – to schools who are struggling with high rates of suspension, expulsion, and school-based arrest.
- Facilitate the re-enrollment, and proper education of students returning to school from suspension, expulsion, alternative placements, or juvenile justice system involvement.
- Provide incentives and funding for school districts and states that limit the use of out-of-school suspensions, expulsions, and arrests. For example, in the Race to the Top – District grant competition the Department of Education required that recipients of these funds develop a plan to address race and disability disparities in school discipline. This program – or others like it – can be expanded and strengthened to require recipients to report all data to the Department of Education, implement plans to reduce overall suspension and arrests rates, and use alternatives to exclusionary discipline policies.
- Provide incentives and funding for the implementation of evidence-based programs and curriculum that eliminate racial disparities in school discipline and reduce the rates of suspensions, expulsions, and arrests for all students.
- Increase the availability of federal funding for school staff that can address the root causes of low student engagement, such as school-based social workers, psychologists, nurses, and counselors.
- Provide greater support for research on interventions that appropriately respond to student behavior without excluding them from school.

Chairman Durbin, thank you for the opportunity to testify today on this critical civil rights issue. Students flourish when they are in school, and when their schools are healthy, nurturing places where they can be safe and where they can learn. Thank you for ensuring that every student has the opportunity to stay on the pathway to success, and not become caught in the School-to-Prison Pipeline.

“Zero Tolerance.” Causes, Consequences, and Alternatives

By Andrew J. Coulson
 Director, Cato Institute Center for Educational Freedom

Testimony to be delivered December 12th, 2012

Chairman Durbin, members of the Committee, thank you for inviting me to speak with you today. My name is Andrew Coulson and I direct the Center for Educational Freedom at the Cato Institute, a nonprofit, non-partisan public policy research organization. My comments are my own, and do not represent any position of the Institute.

Zero Tolerance policies, as practiced in school districts around the country, are now widely ridiculed and condemned. Rightfully so. Thoughtless and indiscriminate application of such policies has led to members of high school baseball teams being expelled for having baseball bats in their trunks, and to five-year-olds being expelled from Kindergarten for making hand-gestures in the shape of guns.¹

As disciplinary referrals to the principal’s office have increased, so has the frequency of out-of-school suspensions. You will hear from other speakers today the harm that these can do to the suspended student. Fortunately, there are much better discipline policies available to us, and I would like to begin my testimony by describing one such hypothetical alternative:

Imagine a school district that resolved not to expel students or use out-of-school suspensions. Instead, let’s say it vigorously and consistently enforced a clear code of conduct, giving detentions for small violations and *in-school*-suspensions for more serious transgressions like starting fights.

These in-school-suspensions would assign a host of duties intended to discourage repeat offenses and encourage civilized behavior. Suspended students might write reflective essays about their behavior and why it was inappropriate. They could be assigned clean-up duties around the school. They could also be required to write a letter of apology to their fellow classmates, teacher, and principal, and this letter could be read out to the class or even at a school assembly.

Since disruptive students are often behind academically, they could be required to attend Saturday morning classes to help them catch up. And as a way of illustrating that their behavior was beneath the standards expected of students of their age, they might be assigned to a different class at a lower grade level during the period of their in-school suspension, and required to do all the work assigned in that class.

The interesting thing about this hypothetical school district is that it is not hypothetical and it is not a school district. The policies I’ve just described are those that have been in place for a decade at the American Indian Model charter schools, often abbreviated as “AIM” schools. The name of this small network of three charter schools is vestigial: the student body today is primarily, South-East Asian, Hispanic, and black. Virtually all the students qualify for free or

reduced price lunches, and the schools are all located in the heart of Oakland, California, one of the most violent and crime-ridden cities in America.

Oakland's Public School district has its own armed police force, one of its *elementary* schools suspended 97 students for acts of violence in a single recent year,² and that isn't the district's worst school. It's typical for multiple students to be shot each year, with several fatalities. Bullying and fights on school grounds are a daily occurrence in the district.

But the American Indian Charter Schools are different. I've visited them, interviewed their students, teachers, and administrators, and studied their academic achievement.³ This is what I've found:

The atmosphere at these schools is orderly and studious. Attendance rates are around 98 percent. There are no metal detectors and no on-campus police. Violence is almost unheard of. The average number of fights across all three schools combined is about 3 per year. Sixth grade teachers—those teaching students experiencing the American Indian Model for the first time—hand out detentions for any behavior that disrupts the class. Talking with those younger middle-school students, it's obvious that many of them chafe at the relentlessness of the schools' discipline policy. They're kids. It's natural for them to push the boundaries of what's acceptable. But those same students who roll their eyes at all the detentions their middle school hands out, are quick to report how different their school is from the district schools they recently left behind, and which many of their friends still attend. They tell stories, in shocked and dismayed voices, of the bullying, fighting, and drug-dealing that routinely go on in the district schools, and they are very happy that these things are incredibly rare at their AIM school.

By the time they reach high school, AIM students not only behave with great maturity, they have excellent study habits and skills. Teachers at the high school level spend virtually no time on discipline. Because they don't have to. They spend all their time teaching. The students are self-motivated, and proud of their academic success. And they are very academically successful. When I studied the performance of all of California's 68 charter school networks last year, I found that AIM schools were the highest performing by a wide margin. AIM students are just as far ahead of students at the well-respected KIPP charter schools as KIPP students are ahead of students at regular public schools. That is after controlling for the race and socio-economic status of the students, as well as peer effects. In fact, low-income Hispanic and African American students at AIM schools outperform the state wide average for wealthier white and Asian students.

Their entire graduating classes are generally accepted to multiple 4 year colleges, often quite prestigious ones. I've interviewed AIM school alumni currently attending or having graduated from colleges like Berkeley and Dartmouth, I know a number of others are currently enrolled at Stanford. That is hardly typical for poor minority kids from inner-city Oakland.

Clearly, the AIM model shows that it is possible to design discipline policies vastly better for students than the cavalier use of expulsions and out-of-school suspensions. What's more, there are ways of systematically encouraging the adoption of similarly effective discipline practices. And I will discuss those in a moment.

But it is also painfully clear that we are not there yet. Today, policies like the ones in use at the AIM schools are rare exceptions. So if of out-of-school suspensions were curtailed tomorrow in districts like Oakland, they would not be instantly replaced with highly effective alternatives.

Knowing that, it is crucial to ask: what would they be replaced with? What would happen if principals facing extensive discipline problems in conventional public schools suddenly curtailed their use of out-of-school suspensions?

That's not a rhetorical question. It could actually be answered with the right empirical data and analytical methods. In fact, it has already been answered in a forthcoming study in the journal *International Economics Review*.⁴ In that study, Rochester University professor Joshua Kinsler discovered that cutting out-of-school suspensions in schools with many disruptive students *lowers* overall student achievement.

Why is that? As we know, out of school suspensions do no good for the suspended student academically, but Kinsler found that they do appear to benefit the rest of the school, presumably by making it easier for teachers to teach the non-disruptive children.

Professor Kinsler's findings reminded me of an essay I came across recently, dealing with school violence. It reflects on bullying suffered by the author when he was a boy, and how it was dealt with by his school. I'd like to share a brief quote with you:

It was hard that school year.... I look back at those fights and how the principals... separated us and wanted to know who started it.... They wanted to know if someone was a bully.... And...*The bully* was disciplined.

Zero Tolerance policies as applied in most schools today punish both kids for fighting, and oftentimes there are no inquiries into whether it was mutual combat or a primary aggressor situation.... A Zero Tolerance attitude among school administrators runs the risk of punishing the victim as well as the bully. It runs the risk of becoming blind to the evils of bullying."

Zero Tolerance policies are contrary to our fundamental right to self-defense.... many kids are assaulted in schools every day and punished for fighting back, or in fear of being punished do not fight back and are beaten.⁵

These reflections were written by Judge Teske. He makes an eloquent case that adults in our school and justice systems must defend innocent children from bullies. His argument is compelling, and it applies just as much to children's education as to their physical safety.

Yes, out-of-school suspensions are far from the ideal disciplinary strategy. But until superior strategies, like those of the AIM model, have been widely adopted, curtailing out-of-school suspensions will likely have the perverse result of compromising the education of millions of innocent children.

There is a bitter irony here. A key concern with Zero Tolerance policies is the harm they do to African American children, because African American students are more likely to be referred to the principal's office and, as a result, more likely to be suspended. But only a small fraction of black students are actually suspended. The vast majority are not disruptive. They are simply trying to get an education. They are, like the victims of bullying described by Judge Teske, innocent. What Kinsler's research shows, is that in public schools with discipline problems, it hurts those innocent African American children academically to keep disruptive students in the classroom. According to Kinsler's findings, significantly cutting out-of-school suspensions in those schools *widens* the black-white academic achievement gap.

Clearly we must find a better solution. The existence of highly successful disciplinary and academic models like the American Indian charter schools in Oakland proves that we *can* do

better. The challenge is to figure out why such successful models are so rare today, and how we can replicate them.

Those are tough questions, and there isn't the time or space in this testimony to do them justice, but let me share two points that I think help to point the way forward. First, ask yourselves why the nation's public schools have so widely adopted such badly-designed Zero Tolerance policies? An especially clear answer to that question comes from an Associated Press story from 2001, back when public school officials still vividly remembered the years before Zero Tolerance became widespread. Let me quote to you briefly from that article:

The policies came about partly because schools faced lawsuits charging that principals disciplined unequally based on race or other factors, [school superintendent Tony] Arasi said.

Having a universal policy on paper protects schools from lawsuits by eliminating a lot of the arbitrary nature of school discipline, he said.

"Those people saying Zero Tolerance leads to unfairness in serious discipline may want to go back 10 or 15 years to before most districts had Zero Tolerance," Arasi said. "They were saying there was unfairness then. It's come full circle."

Once in place, the policies also help protect against lawsuits from parents charging the school did not do enough to keep students safe, or from complaints that individual punishments did not fit the offense.⁶

Today, Zero Tolerance policies are faulted for applying discipline rules blindly and mechanically, with no consideration for extenuating circumstances. But that is precisely why those policies were adopted in the first place. Prior to their adoption, education officials at every level of government were inundated with lawsuits and complaints of disciplinary bias. Elected officials were pressured to do something. Officials sought to reduce this flood of lawsuits and complaints by automatically ejecting students for violating the letter of a Zero Tolerance policy.

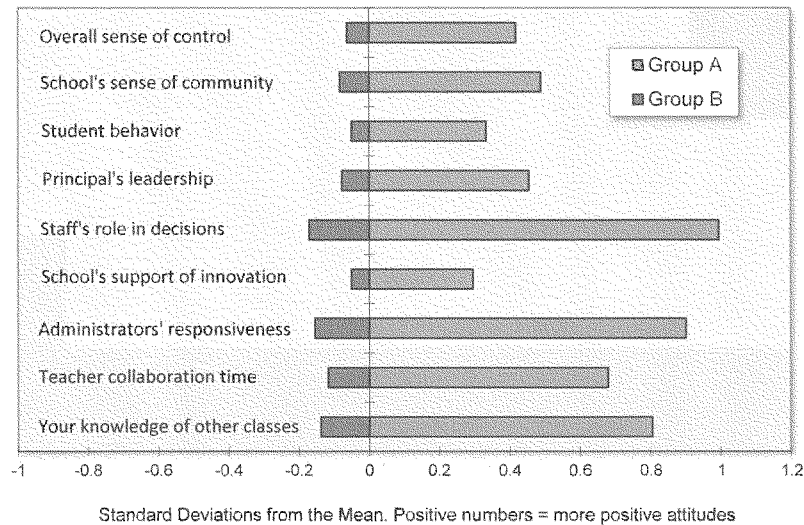
In short, they adopted these policies because it seemed in their own interests to do so—not because they thought it was in the interests of students. I don't say that to fault these officials. They were people just like the rest of us, and they were influenced by the incentives of their workplace, just as we all are. It would be unrealistic to expect otherwise. If we want better policies to be adopted, we have to change the incentives in the system. For instance, consider a system in which administrators who keep more students in school, maintain orderly classrooms, and achieve higher graduation rates are recognized and rewarded for their achievements. What if administrators' and teachers' job security and pay were tied to these desirable outcomes?

My second observation on the way forward begins with a question. What kind of school is most likely to implement a successful discipline policy? As you can imagine, a lot of factors are involved, but there's good evidence that a cornerstone of these successful schools is consistency. When students understand that the expectations for their behavior are the same from grade to grade and from classroom to classroom, that everyone in the school is on the same page, it has been shown to lead to more studious, orderly schools.⁷ Consistency is a hallmark of discipline policy at the American Indian Model schools.

Wonderful as it is to know that, it begs the further question: how do you cultivate such consistency and build a strong sense of shared mission and understanding among school staff. There's actually good evidence on this question as well, reaching back decades. One study, published in the journal *Sociology of Education*, compared the attitudes of teachers in two

different groups of schools.⁸ Their results are reported in Figure 1, and reveal that teachers in Group A schools were substantially more positive about their school's atmosphere in every one of the nine areas measured.

Figure 1: Two Groups of Teachers' Attitudes On School-Related Issues



Essentially identical results were found by Harvard sociologist Susan Moore Johnson, who studied a different set of schools, but also ones falling into either Group A or Group B.⁹ Professor Johnson reported that teachers in Group A schools consistently “expressed clearer notions of their schools’ goals and purposes; they identified the values that they shared with others in the schools, they explained how these understandings were grounded in their schools’ histories and were reinforced and expressed in their traditions.” Group B teachers, she found, were “often perplexed” by the same questions about their schools’ culture and values. A typical Group B teacher responded that his school “probably does have some unifying culture and I’m just not aware of it.” Apparently not seeing the irony in that statement.

Here’s how professor Johnson summed up her findings:

The prominence of cultural bonds in [Group A] schools and their virtual absence in most [Group B] schools can be explained by differences in their organizations. Because [Group A] schools are typically independent, small, stable, and homogeneous, those who work in them can better agree on goals, champion hardy values, celebrate successes, [and] find direction in their history.... [Group B] schools, by comparison, are... embedded in... bureaucracies... [and] are subject to frequent and wholesale changes in membership.

Neither of the sociological studies I’ve mentioned attributed the differences between Group A and Group B schools to the students they served. Instead, they attributed them to the

organizational structure of those schools. As some of you have no doubt already guessed, what I've called Group A and Group B are in fact private and public schools.

For decades, education economists have reported findings consistent with those of their sociologist colleagues. Controlling for student and family background, graduation and college acceptance rates are higher in independent schools than in public schools, whereas crime rates are lower—especially for urban African American students.¹⁰ The District of Columbia's own school voucher program, overseen by Congress, has a significantly higher graduation rate than the district's vastly-higher-spending public schools.

From a policy standpoint, these findings are problematic. Under our present system, the people with the least access to independent schools are low-income families—precisely those who are more likely to live in higher crime neighborhoods with troubled public schools; the very people most desperately in need of better, safer alternatives.

I do not present this evidence to encourage Congress to enact nation-wide private school choice legislation. Even if the Constitution permitted such a program, which it does not, evidence from other nations suggests it would be more effective to implement such policies at the state level. But Congress can encourage the adoption of such state-level programs by virtue of the public prominence of its Senators and Representatives. Congress can also nurture and expand the DC Opportunity Scholarship program, as an example to states of what is possible. And above all, Congress can avoid instituting new regulations and programs that would to impede state's efforts to bring safe, responsive independent schools within reach of all children, and can discontinue federal programs that have proven themselves ineffective and that consume funds that could more effectively be spent by the states and the people.

¹ <http://www.kndu.com/global/story.asp?s=11979866>

² <http://www.sfgate.com/bayarea/article/Oakland-When-school-bullies-get-out-of-hand-3216578.php>

³ Andrew J. Coulson, "The Other Lottery: Are Philanthropists Backing the Best Charter Schools?" Cato Institute Policy Analysis no. 677, June 6, 2011. <http://www.cato.org/pubs/pas/PA677.pdf>

⁴ Joshua Kinsler, "School Discipline: A Source or Salve for the Racial Achievement Gap?," *International Economic Review*, forthcoming. Draft: http://www.econ.rochester.edu/people/Kinsler/jkinsler_suspensions.pdf. "A rule based discipline code that requires all schools to use the same suspension policies closes the discipline gap but results in a significant widening of the achievement gap. Schools serving predominantly black students shorten suspension lengths, which reduces the deterrent effect of discipline, increases misbehavior, and decreases achievement" (p. 7). See also: Joshua Kinsler, "Understanding the black-white school discipline gap," *Economics of Education Review*, vol. 30 (2011), no. 6, p. 1370-1383.

⁵ Steven Teske, "In Defense of Self-Defense – Are Schools Safer with Zero Tolerance?" Juvenile Justice Information Exchange, JJIE.org, February 10, 2011. <http://jjie.org/judge-steve-teske-defense-of-selfdefense-schools-safer-zero-tolerance/9692>

⁶ Anne Gearan, "ABA may oppose 'Zero Tolerance'," *Sun Journal*, Lewiston Maine, February 15, 2001. Text in square brackets added.

⁷ <http://news.google.com/newspapers?nid=1914&dat=20010215&id=7fHAAAAIAJ&sjid=6PMMAAAIAJ&pg=1329.2369349>

⁸ See this overview by the U.S. Department of Education: <http://www2.ed.gov/pubs/ToolsforSchools/cmcd.html>, and also: H. Jerome Freiberg, Chris A. Huzinec, and Stacey M. Templeton, "Classroom Management—a Pathway to Student Achievement: A Study of Fourteen Inner-City Elementary Schools," *The Elementary School Journal*, vol. 110, no. 1 (September 2009), pp. 63-80.

⁹ Valerie E. Lee, Robert F. Dedrick, and Julia B. Smith, "The Effect of the Social Organization of Schools on Teachers' Efficacy and Satisfaction," *Sociology of Education*, vol. 64 (1991), no. 3, p. 190-208.

¹⁰ Susan Moore Johnson, *Teachers at Work: Achieving Success in Our Schools* (New York: Basic Books, 1990).

¹⁰ Several of the graduation rate, college acceptance rate, and college graduation rate comparison studies are collected and tabulated in: Andrew J. Coulson, "Comparing Public, Private, and Market Schools: The International Evidence," *Journal of School Choice*, vol. 3 (2009), vol. 1, p. 31-54.
http://www.cato.org/pubs/articles/coulson_comparing_public_private_market_schools_jsc.pdf . An interesting comparative study of criminal behavior is: David N. Figlio and Jens Ludwig, "Sex, Drugs, and Catholic Schools: Private Schooling and Non-Market Adolescent Behaviors," *German Economic Review*, 2012, vol. 13 (2012), issue 4, p. 385-415.

**Hearing before the
Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights
On
“Ending the School-to-Prison Pipeline”**

Written Testimony of Edward Ward

December 12, 2012

Chairman Durbin, Ranking Member Graham, and members of the Subcommittee – thank you for the opportunity to speak at today’s hearing.

My name is Edward Ward, I am 20 years old, from Chicago, Illinois, and I am an Honor Roll student in my sophomore year at DePaul University.

In addition to my academic responsibilities, I volunteer with Blocks Together, which is located in the West Humboldt Park community on Chicago’s Westside. Blocks Together is a member of the Dignity in Schools Campaign, a national coalition of parents, students, educators and advocates working to promote positive approaches to discipline and to protect students’ human rights to an education and to be treated with dignity. I work with Blocks Together to help prevent students who are currently enrolled in Chicago Public Schools from being unnecessarily suspended and put out on the streets by promoting positive alternatives to suspensions and expulsions like restorative justice practices, peer mediation and positive behavior intervention and supports (PBIS). I am also a youth pastor of the Word of Life Christian Ministries.

I grew up on the West Side of Chicago, where I attended and graduated from Orr Academy High School. My high school seemed like its own personal prison. From the moment we stepped through the doors in the morning, we were faced with metal detectors, x-ray machines and uniformed security. Upon entering the school, it was like we stepped into a prison. Violence is prevalent in my community. When I was eighteen, I witnessed a complete stranger’s killing, mere feet from me, in a neighborhood restaurant. That same year, I found my cousin – who had moved out of our neighborhood to get married and start a better life – slain by gun violence outside my home. A few years back, I was stopped by police on the street and saw them train their guns on me until I could quickly show that the item in my pocket was simply a cell phone. I have seen, and stopped, kids from jumping older residents in the community. And I know of the abuse – be it physical, emotional, or sexual – and abandonment that some of my peers have faced in their families.

Poverty was and still remains prevalent in my community as well; some experience it at home and others experience it in their own communities. Many of us come from families where it’s a constant struggle to pay bills; there are some instances where we have had to choose between

paying the gas bill and having food in the house. After that decision, we suffered one extremely cold winter. I saw how my fellow students, who faced similar struggles did all they could to focus on getting an education despite the economic hardships they experienced at home, many of them while also taking care of their siblings and themselves.

In elementary and middle school I was often picked on and talked about by students. It was very hard for me to be accepted by my peers; I wasn't "cool enough," according to them. I was a quiet student and I mostly kept to myself, but when I got to high school, I began to see that my fellow classmates were being constantly suspended from school. My high school was taken over by a management agency through school turnaround four years ago, but continues to have one of the worst graduation rates in the state. In 2008, the graduation rate from Orr was 27.7%. Orr is 90% low income and 100% Black and Latino. About a third of the youth within the attendance boundaries of Orr are wards of the state and more than a fourth of the students at Orr are in special education.

When my classmates were suspended from Orr, they would disappear for days and when they were kicked out they would disappear sometimes for weeks. What was most shocking to me was discovering that they were being suspended for minor infractions, the kind of infractions that shouldn't merit more than a stern warning or reminder. I clearly remember a classmate who was climbing up the stairs from the weight room in the basement of our school, and on his way up he tripped and landed on his knee. His reflex was to yell "Damn!" from the pain. He was served with a two-day out-of-school suspension. This was disheartening, and it made me question what kind of reasoning was behind these policies that led my school to dish out suspensions and expulsions that led to young people missing valuable class time and being abandoned by our schools. CPS records that Orr's suspension rate in 2011 was well above the district average; the percentage of student misconduct handled by the school which resulted in suspensions was 66.7%, and the district average was 39.3%.

Unreasonable punishments like these were not rare at my school. My classmates and I saw many other students served with two-day suspensions because, for example, they weren't carrying proper identification around their necks. Some of my friends would sometimes come to school late, sometimes by no fault of their own. I remember one of my peers coming to me saying that she was held in detention and could not be permitted to go to class because she came late, but it was because she couldn't leave her little brother at home alone because her parents did not arrive home on time. Many were forced to miss class and stay in the detention room for the rest of the period. Because our school works on a "block schedule" with longer class periods, students would miss 90 minutes of class time just for arriving late to first period. These detentions negatively impacted their attendance and their performance in the class, since they were not allowed to turn in their homework and missed entire lessons. Being in detention was like being in solitary confinement; you were to sit there quietly with no work to do and if you made noise while in detention you would get suspended. If you put in headphones you would get suspended. If your phone rang and it was heard, it was to be confiscated for seven days and you would get

suspended. And when you were suspended you were immediately sent home, without your parents being contacted. You were escorted from the school and anything could have happened, but that didn't seem like it was much of a concern.

The way my school handled discipline, students were never given the chance to explain their side of the story, and if they attempted to speak and try to explain, they were threatened with further punishment.

My school's environment was very tense; the halls were full with school security officers whose only purpose seemed to be to serve students with detentions or suspensions. Many of the school security officers were very disrespectful to students; some of them spoke to us as if we were animals. They were constantly yelling and antagonizing us from the moment we stepped into the halls until we reached our destination. This was nerve-racking for me, because although I was an honor student, I felt constantly in a state of alert, afraid to make even the smallest mistake or create a noise that could enable the security officers to serve me with a detention. Instead of feeling like I could trust them, I felt I couldn't go to them for general security issues because I would first be interrogated before anything would get done.

A survey done by one of my school's advisory classes revealed that many students were experiencing physical and verbal abuse and sexual harassment from security guards at the school. It was so normalized that students said they didn't think to make formal complaints and didn't trust that they would be listened to anyway. I can remember a specific moment where the senior class arrived back at the school after a college tour, and I was told to go to the main office to send a message; while on my way there I was stopped by one of the security guards who proceeded to yell at me before I was even allowed to explain myself.

While the security guards constantly threatened to discipline students, the police officers stationed at my school were even more aggressive. Most Chicago public high schools have 2 on-duty police officers present. Our school even had a police processing center so police could book students then and there. The officers don't get any special training to be in the school so they don't treat us like we are misbehaving; they treat us like we are committing crimes. I remember when a fight broke out between two young women and the police were called. While trying to break up the fight, the police grabbed one of the young women and slammed her to the ground numerous times although there were no weapons involved in the altercation. Every time there was a fight the police would step in and handcuff students even in cases where there was no weapon. Some would be sent to the police station in the school, a few or some never came back to school after that.

These policies and actions disheartened me. I could slowly see the determination to get an education fade from the faces of my peers because they were convinced that they no longer mattered, that their voices would continue to be completely ignored. Students were not given a chance to explain themselves or defend their actions. They were in need of someone who

understands them, someone they could confide in; the last thing that would work is to place them in institutions of confinement and control. They needed to feel like there was hope for a better future quite different from their current situations, so it would be antithetical to convince them that they were criminals deserving of severe punishment.

The discipline policies seemed to overlook ways to help students succeed. They needed proper mentors, people who could understand them. They needed a place to grow, to learn, to escape everything in our worlds that was making us grow up too quickly otherwise. Instead the school seemed to focus more on how to make its numbers look good. Periodically, dozens of students were dropped from the school's enrollment. According to the school, they missed too many days. But after you get two tardies in a day, it counts as an absence. So a lot of these "chronically truant" students were coming to school every day. Others were homeless and had trouble getting bus cards to come from far off places where they stayed. If students actually came back to the school with a parent to try to get back in, they had to sign a contract saying that if they had two infractions they would be kicked out of the school permanently. Where was the support? Students felt as if it was too much. Some decided to drop out. The dropout rate at Orr is now three times the district average. CPS records that the one-year dropout rate in 2011 was 20.1%, in 2012, 21.4%, while the District average is 7.6%.

I had a friend who was diagnosed with Leukemia that the school tried to dis-enroll because she was missing so many days of school. Thankfully, her mother fought and succeeded in keeping her enrolled at my school – a fight she should have never had to have.

Until recently, I had a cousin who was attending Orr. However, he never finished because he was suspended with so much frequency that he eventually dropped out of the school.

He had problems at home that most people at school never really understood. You see, my cousin's mother is a drug addict, and as a young person he didn't quite know how to deal with that, so he started acting out in class. He was what you would consider to be the class clown. The school believed that by suspending him, it would allow him time to think about his misbehavior. Instead, it just gave him more time alone out on the streets and made it easier for him to simply turn to selling drugs and make easy money. After all, his mother was on drugs and he had no other way to make ends meet. Eventually, my cousin was arrested and then one day I got the call saying he had been shot twice. I thank God that he is alive today.

I grew up with my cousin. He was not a bad kid. But in the one place that he should have counted as his second home, he was abandoned. In the one place where he could have learned life lessons and learned from his mistakes, his mistakes were used against him. These are the type of situations that feed our nation's school-to-prison pipeline. Where many young people, like my cousin, feel unwelcome and under siege in their own schools, they end up on the street, in the criminal justice system, or worse.

Because I believed I needed to take part in improving my school, I got involved with Blocks Together and joined their effort to introduce and implement restorative justice practices in Chicago Public Schools as an alternative to suspensions and expulsions. Restorative justice is grounded in the idea that we become safer when we hold each other accountable in ways that build more tight-knit community, get to the root of problems, restore relationships between people, and give people the skills and support they need to prevent future problems. Through our organized pressure we were able to get some disciplinary incidents in our school referred from the dean for discipline to the restorative justice-based peer jury. I served as a restorative justice facilitator at my school and helped train other students to be restorative justice facilitators as well.

Restorative justice enabled us to create an environment in which we listened to the voices of students who were facing disciplinary action, and instead of automatically suspending them, the school and student facilitators convened hearings during which the student's actions were explored and the student had an opportunity to explain why she/he took the action in question.

I was moved by what I saw in these hearings. Students were actually understanding each other; they were working together to restore the relationships that were almost destroyed between them. This effort has provided a safer school environment in which students and staff can work together as a unified body. A suspension could never do that. Students didn't need to be silenced or put out, they needed to be heard and welcomed with open arms.

When Orr's administrators bought into our restorative justice peer juries, we were able to interrupt the trend of automatic suspensions so that the voices of students who were facing disciplinary action could be heard, the underlying needs explored, the harms repaired and the student put back on the right track. However, we went through 15 different administrators in 4 years and we found ourselves starting over with each new dean or principal. We tried going to the higher ups at the management agency that runs my school but it is hard to hold accountable because it does not have the usual community governance structure that a regular public school in Chicago has.

I think that schools need to throw out the assumption that young people are all dangerous or a threat. They must work to understand the issues that students face every day whether it's problems at home, learning difficulties, language barriers, experiencing bullying and discrimination. To accomplish this shift, both my high school and Chicago Public Schools need to prioritize training for teachers, students, staff, administration and parents ahead of this overemphasis on "zero tolerance" and school policing. Suspension and expulsion for non-violent offenses really do dismantle a student's future.

I hope you understand that my experience at Orr was not an anomaly, but is what is happening in schools across the country, particularly in communities of color. I would hope in the near future, we will have undone this mistake – that my children will never have to feel anything but

welcome in their schools. But a problem my generation did not cause cannot be solved by my generation alone.

**Statement of Senator Patrick Leahy,
Chairman, Senate Judiciary Committee,
On “Ending the School-to-Prison Pipeline”
December 12, 2012**

Today the Subcommittee on the Constitution, Civil Rights and Human Rights considers the important issue of whether we are creating a school-to-prison pipeline. This is a timely hearing on an issue of pressing national importance.

I am concerned that too many young people are being funneled into the criminal justice system, where their problems only multiply. I have long supported a strong commitment to prevent youth violence. As a former prosecutor, I know the importance of holding criminals accountable for their crimes. But when we are talking about young people, we must also think about how best to teach them to become responsible, contributing members of society as adults and to rehabilitate them away from lives of crime. Doing so will help us keep our communities safer.

I am disturbed that young people from minority communities continue to be overrepresented in the juvenile justice and our criminal justice systems. I have been fighting for decades because of my concern that too many runaway and homeless youth are still locked up for status offenses without having committed any crime.

I have consistently fought for new and effective juvenile justice legislation. I introduced the Juvenile Justice and Delinquency Prevention Reauthorization Act and intend to reintroduce it in the next Congress. The bill aims to refocus attention on prevention programs intended to keep children from ever entering the criminal justice system. It seeks to encourage states to move away from keeping children in adult prisons. It makes use of community-based services to address the needs of at-risk youth, particularly those with mental health and drug treatment needs.

I also sponsored the Reconnecting Homeless Youth Act, which reauthorized a critical Federal grant program established to help states and local communities address the needs of runaway and homeless youth in both urban and rural areas so they can establish stable, positive lives. This bipartisan bill was signed into law by President Bush in October 2008. I also worked hard to pass the Second Chance Act, which, among many other positive programs, authorized grants and support for programs that help young people who have gotten enmeshed in the juvenile justice system to learn the skills and receive the services they need to return to their education and become contributing members of society, rather than continuing down a path toward the criminal justice system.

More recently, in August of this year, I chaired a hearing examining rising prison costs. The hearing highlighted the fact that more and more people are being incarcerated for longer and longer, which has resulted in increased costs and has placed an enormous strain on Federal, state, and local budgets. We should be doing everything we can to keep people, particularly our children, out of the criminal justice system, not finding ways to funnel them into it.

The goals that my legislation has sought to achieve in the juvenile justice system are the same as those motivating efforts to reform our school discipline system: keeping our communities safe by reducing juvenile crime, advancing programs and policies that keep children out of the criminal justice system, and encouraging states to implement policies designed to steer those children who do enter the juvenile justice system back on track to become contributing members of society.

We owe it to our young people, our families and our communities to end the school-to-prison pipeline and to reform the juvenile justice system. I hope we can join together in the next Congress to do so.

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United States Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Senator Richard J. Durbin, Chairman
“Ending the School-to-Prison Pipeline”
December 12, 2012

This is the first-ever congressional hearing on what is called the “school-to-prison pipeline.” In the past, this Subcommittee has examined other troubling aspects of our criminal justice system, like solitary confinement and racial profiling. Today, we will discuss another disturbing trend: For many young people, our schools are increasingly a gateway to the criminal justice system. What is especially concerning about this phenomenon is that it deprives our children of their fundamental right to an education.

Beginning in the 1990’s, concerns about school violence and a growing awareness of bullying led many schools to hire police and institute “zero-tolerance” policies. This resulted in a dramatic increase in suspensions, expulsions, and even in-school arrests for misbehavior that is normal for school children.

This school-to-prison pipeline has moved scores of young people from the classroom to the courthouse. A schoolyard fight that used to warrant a visit to the principal’s office can now lead to a trip to the booking station and a judge.

Sadly, there are schools that look more like prisons than places for children to learn and grow. Students have to pass through metal detectors, and police roam the halls.

Suspensions, expulsions, and in-school arrests lead to kids being out of the classroom, and a troubling increase in the number of young people sent to the juvenile justice system. According to one leading study, students who were suspended were two times more likely to repeat a grade and three times more likely to be involved with the juvenile justice system.

Once kids enter the justice system, they are more likely to fail in school, which in turn increases their chances of being arrested in the future. This is a cycle with increased public safety risks for everyone in the community. And the pipeline is expensive. The costs of policing schools and unnecessarily housing juveniles in detention are enormous.

The racial disparities are stark:

- Nationally, African-American students are three times more likely to be suspended and four times more likely to be expelled than their white peers.
- And more than 70 percent of students arrested in school are African-American or Latino.

What’s more, the disparities extend beyond race. Nationally, students with disabilities are suspended at more than twice the rate of students without disabilities. And gay, lesbian, bisexual, and transgender youth are more likely to be disciplined and arrested than their peers.

Let me be clear. We cannot blame teachers and school administrators for the school-to-prison pipeline. Teachers have one of the hardest – and least appreciated – jobs in America, and we have to give them the tools, training, and resources to deal with this problem. With ever-shrinking resources, many public schools are overwhelmed.

I remember when Derrion Albert was killed near his high school on the south side of Chicago in 2009. It was a tragedy for his community and the entire city. In the aftermath of tragedies like that, our first instinct is to protect children, and our number one priority has to be keeping them safe. The challenge is how to accomplish that without over-disciplining students into failure.

Today, our witnesses will explain how we can meet this challenge. Around the country, students, judges, educators, and police have instituted creative reforms. They have made our schools and communities safer, saving millions of dollars in reduced incarceration costs and investing in better futures for our youth.

My home state of Illinois is part of this movement. Redeploy Illinois, a bipartisan initiative, helps counties provide comprehensive services to at-risk youth in their home communities. For an annual cost of \$2.4 million, participating counties have reduced juvenile detention rates by more than 50%, saving the state approximately \$40 million.

And Chicago Public Schools are also taking steps to address the pipeline, like reducing the length of automatic suspensions and encouraging what is known as “restorative justice,” which involves fellow students in mediating conflicts. Just this summer, CPS announced a brand new student code of conduct to promote positive learning environments and limit unnecessary disciplinary actions. Yesterday, I spoke with new Chicago Public Schools CEO Barbara Byrd-Bennet, and I am committed to working with her to build on these positive steps.

I look forward to hearing more about solutions to this pressing national problem from our witnesses today.

QUESTIONS FROM SENATOR AL FRANKEN

**Questions for the Record
Submitted by Senator Al Franken
Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Human Rights
Hearing on “Ending the School-to-Prison Pipeline”**

1. ASSISTANT SECRETARY DELISLE and ACTING ADMINISTRATOR HANES, kids with learning disabilities are more likely than their peers to end up in the juvenile justice system. This suggests that students with disabilities are not receiving the support they need to be successful in school. And, for me, this is an argument in favor of full funding for the Individuals with Disabilities Education Act – or IDEA. But, aside from additional funding, what can the federal government do to help address this disparity?
2. ASSISTANT SECRETARY DELISLE and ACTING ADMINISTRATOR HANES, following up on a question that I asked during the hearing, please provide data showing the relationship between early education programming and involvement in the juvenile justice system? In particular, please provide evidence showing whether children who receive such programming are more or less likely to be involved in the criminal justice system later in life.
3. ASSISTANT SECRETARY DELISLE, several witnesses have submitted testimony indicating that students of color disproportionately are affected by the school-to-prison pipeline. Does the Department have recommendations for schools and communities to address these disparate impacts?

**Questions for the Record
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Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Human Rights
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2. ASSISTANT SECRETARY DELISLE and ACTING ADMINISTRATOR HANES, following up on a question that I asked during the hearing, please provide data showing the relationship between early education programming and involvement in the juvenile justice system? In particular, please provide evidence showing whether children who receive such programming are more or less likely to be involved in the criminal justice system later in life.
3. ACTING ADMINISTRATOR HANES, this is a moral issue – we have a moral responsibility to make sure kids get an education and have a real chance to succeed in life. But this is an important economics issue, too. I’ve seen data in Minnesota which show that we save about \$3 to \$5 for every one dollar spent on Justice Department programs for youth mentoring and youth interventions. How much money do we save or generate relative to what we spend on counseling, mentorship, and other youth programs administered or funded by the Justice Department?

Questions for the Record
Submitted by Senator Al Franken
Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Human Rights
Hearing on “Ending the School-to-Prison Pipeline”

1. JUDGE TESKE, you noted in your written testimony that about one-third of your cases involved school-related, low-risk misdemeanors when you took the bench. Did you find that the law gave judges adequate discretion to fashion appropriate sentences in these cases? And, as a follow up to that: what factors should judges consider when they're hearing these cases?
2. JUDGE TESKE, in your written testimony, you said that your court has seen an 83% reduction in the number of kids referred to your court for school-based offenses. What effect has this had on the court system's ability to handle more serious cases? Have you found that the prosecutors and probation officers now have more time to focus on more dangerous defendants?

QUESTIONS AND ANSWERS

**Questions for the Record
Submitted by Senator Al Franken
Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Human Rights
Hearing on “Ending the School-to-Prison Pipeline”**

1. JUDGE TESKE, you noted in your written testimony that about one-third of your cases involved school-related, low-risk misdemeanors when you took the bench. Did you find that the law gave judges adequate discretion to fashion appropriate sentences in these cases? And, as a follow up to that: what factors should judges consider when they're hearing these cases?

ANSWER: Part A—Most, if not all states, have fashioned a juvenile code that provides judges with adequate discretion to fashion appropriate sentences. For example, unlike adult court judges where the focus is on punishment over treatment, juvenile judges may dismiss a case if the child is not delinquent. It is often overlooked in policy development related to school discipline that any referral to the juvenile court must undergo a “least restrictive means” assessment. In other words, if the child admits at the intake process, most states allow for a court officer to divert the case and handle it using informal (non-court) responses from admonishment and counsel to a contract whereupon the child agrees to do certain things (i.e. conflict resolution, counseling, pay supervision fee, pay restitution, etc.) and upon completion the case is dismissed and the record in most states sealed. This function of the juvenile code takes into consideration the difference in development between adolescents and adults. Kids are neurologically wired to do stupid things and therefore should be provided relaxed and less stringent responses than should adults—and also to include educational and instructional responses over punishment because in adolescent development the focus should be cognitive structuring or restructuring.

What is also overlooked in policy formulation is that unlike the adult system, the juvenile justice sentencing phase asks the question “Is the child delinquent?” In the adult system, you do the time if you do the crime. In the juvenile justice system we accept, grounded in the behavioral and medical sciences, that just because a kid commits a delinquent act does not necessarily equate to a delinquent child. I query how many of us (Judges, prosecutors, Congressional leaders, law enforcement, and so on) committed delinquent act(s) in our adolescence? I am sure most if not all at least once have done something that violates the criminal code—no matter how minor.

Understanding this juvenile justice process is very important to policy development because it begs the question: Why refer so many kids for misdemeanor infractions on school campus knowing that most will be handled informally? What does that say about the policy development at the local level? Is there a lack of communication between agencies when deciding policy? Does the right hand know what the left hand is doing?

When I explained the role of the juvenile court to law enforcement and school leaders in my community when I decided to take this issue on and told them that most of the cases they sent me never saw the light of day in the courtroom—they were shocked. When I shared the law and revealed the role of the juvenile court they understood why—their shock dissipated. They were then able to grasp the concept of negotiating a better referral system. Why—because they saw it a waste of police resources to expend the time, energy, and money to arrest, transport, and complete paperwork with the intent to prosecute cases that would never go to court—especially low risk students who are not delinquent. They simply make adults mad, which many kids are prone to do by their neurological wiring. They are under neurological construction and require positive surroundings—not handcuffs, the back of a patrol car, detention cell, or a courtroom.

Part B: Is the kid truly delinquent? Again, as stated in response to Part A, the commission of a delinquent act does not always equate to a delinquent child. As a judicial officer, I cannot afford to spend the resources of the court responding to non-delinquent youth who, by the black letter of the criminal code, committed a delinquent act. I look for the following:

- a. Mental health concerns;
- b. Special needs—does the student have an individual education plan (IEP)?;
- c. If not, should the student be evaluated for an IEP?
- d. Age of child;
- e. Nature of act;
- f. How did the school respond?
- g. Does the student have prior delinquent history in the community (outside of the school)?
- h. Is the child remorseful?
- i. Did the parents take corrective action?

These factors are not exhaustive, but they help a judge to determine if the child is delinquent. For example, if a student has no prior delinquent acts outside the school and is before the court for a school fight, why should the court address it if the school and the parent have taken corrective action? The role of the court, in part, is to be a gate-keeper and prevent the government from intruding upon that which should be handled by the parents. I know I would resent the government stepping in to punish my child for a school fight if 1) the school (standing in loco parentis) had disciplined him and 2) I had the wherewithal and ability to take corrective action.

For example, our Georgia Court of Appeals has concluded that parents possess “a prima facie prerogative of training and supervision . . .” of their child and that such prerogative should not be deprived unless it can be shown that the child is “in need of supervision beyond the control of the parents and is in need of correction and training which the parents cannot provide.” *Young v. State*, 120 Ga. App. 605, 171 S.E. 2d 756 (1969). The Court further concluded that delinquent acts of the type that is “usually the subject of disciplinary action by school officials without the necessity of

invoking the aid of the courts . . .” should be handled by admonishment, counsel, advice, or diversion to avoid the “taking advantage of the real purpose of and necessity for the Juvenile Court Act . . .” and the burdens placed on the juvenile courts “. . . which rightfully belong to parents and school officials.” *Young v. State*, 120 Ga. App. 605, 171 S.E. 2d 756 (1969). See also *M.S.K.*, 131 Ga. App. 1, 205 S.E. 2d 59 (1974).

2. JUDGE TESKE, in your written testimony, you said that your court has seen an 83% reduction in the number of kids referred to your court for school-based offenses. What effect has this had on the court system’s ability to handle more serious cases? Have you found that the prosecutors and probation officers now have more time to focus on more dangerous defendants?

ANSWER: Yes—the role of the juvenile court beyond the due process requirements attached to whether a child is guilty of an allegation is to determine whether a child is delinquent as mentioned in the Part A answer to question 1 above. I do not know of any jurisdiction that is not afflicted with lack of resources of which many could be solved if the resources were re-directed to solely higher risk youth. The answer is not always more resources through additional funding but more resources through reconfiguring existing resources. This will not happen unless systemic changes are made to how we handle students who commit misdemeanor offenses. As long as we flood the court system with low level school related cases we widen the net to increase detention rates, court dockets, prosecutor and probation officer caseloads, and racial and ethnic disparities.

Take for example the testimony of former Senator Mike DeWine from Ohio who testified about his role in the development of Reclaim Ohio—a great re-investment program grounded in systemic change that re-directed lower risk youth from state custody that in turn re-directed money saved back into the community to supervise and treat those youth. His sister state of Illinois, the home of Chairman Durbin, has followed suit with Re-deploy Illinois. Texas has done the same and all have experienced a reduction in juvenile crime. I just concluded service on the Georgia Council of Criminal Justice reform established by Executive order of my Governor, Nathan Deal, to evaluate our current system of juvenile justice and recommend changes in our system. The recommendations of been forwarded to the Governor and like Ohio, Illinois, and Texas, we too made recommendations that restrict the commitment of low risk youth to state custody while simultaneously re-investing the cost savings into the local communities to supervise and treat low to medium risk youth in need of services and programs for which the absence of these programs created a default to commit.

This concept holds true to system change between schools and the courts and how we should respond to student misconduct that arises to misdemeanor conduct. Just as Ohio, Illinois, Texas, and I hope soon Georgia has changed their system by restricting commitments and realizing a cost savings, school systems should be restricted from referring low risk students to juvenile court and unnecessarily wasting taxpayer

money to transport, detain, and prosecute these mostly non-delinquent youth who pose no threat to the community at large. The more we tax our prosecutor and probation officers with low risk youth, the more we deprive our communities of the protection they deserve from those fewer youth who require intensive surveillance and treatment. The research is adamant that higher risk youth require intensive supervision and treatment to reduce recidivism. This cannot occur if we continue to add low risk youth to the caseloads of probation expecting officers to keep up with them that in turn dilutes their supervision of the dangerous youth—this is not smart probation supervision!

I want to conclude pointing out those two days after the hearing, a deranged gunman entered Sandy Hook Elementary School in Newtown CT killing 20 children and 6 adults. While I am not commenting on whether it is good policy to place police on every school campus, I am stating that in schools with police we must be diligent to guard against improper use of police that result in the arrest of minor offenses that takes them off campus when safer and more appropriate alternatives are available. Schools with police will experience a high death toll if they are used as disciplinarians and taken from their primary objective—to protect the students and staff from life threatening situations should they occur. It would not look good for local school superintendents and chiefs of police if someone comes on campus to do harm and no officer was present to respond because he or she was at the juvenile court intake booking a student for a school fight. We should reflect on why police were initially placed on campus—to protect students and staff from serious assaults and drugs. Zero tolerance policies have changed this focus and we are the worse for it.

Let police do what they were intended—to protect from serious harm. Likewise, let probation officers and prosecutors do what they're intended—prosecute and supervise the high risk youth to reduce the chance of serious injury to community members. This cannot occur if we tie their time and hands with low risk and minor offenses.

“Ending the School-to-Prison Pipeline” Hearing

QUESTIONS SUBMITTED BY SENATOR FRANKEN
To Assistant Secretary Delisle

Question 1: ASSISTANT SECRETARY DELISLE and ACTING ADMINISTRATOR HANES, kids with learning disabilities are more likely than their peers to end up in the juvenile justice system. This suggests that students with disabilities are not receiving the support they need to be successful in school. And, for me, this is an argument in favor of full funding for the Individuals with Disabilities Education Act – or IDEA. But, aside from additional funding, what can the federal government do to help address this disparity?

Answer: Some have asserted that the juvenile justice system is a “default system” for youth who can’t read or write well, who have mental health conditions, and who drop out or are forced out of school.ⁱ Data on the actual numbers of students with disabilities in correction facilities are variable, although there is broad consensus that children with disabilities are overrepresented in the justice system. In 2005, a national survey found an average prevalence rate of youth with disabilities in corrections of 33.4 percent with a range of 9.1 percent to 77.5 percent. Of those youth with disabilities in corrections, approximately 47.7 percent were diagnosed as emotionally disturbed and 38.6 percent were diagnosed with a learning disabilityⁱⁱ (Quinn, 2011).

The attached chart is based on the most recent data collected by the Department of Education (ED or the Department) under section 618 of the Individuals with Disabilities Education Act (IDEA) and the Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP). The chart provides a breakdown of each of the disability categories including: the number of students ages 6-21 in correctional facilities, the percentage of students with disabilities in corrections, the percentage of each category served in correctional facilities, the percentage of all students in residential facilities, and a ratio of disproportionality. Students with disabilities ages 6-21 represent approximately 8.43 percent of the overall student population, but 24.45 percent of the population served in correctional facilities, indicating that students with disabilities are almost three times more likely to be served in correctional facilities than would be expected. Unfortunately, students with emotional disturbance are over 17 times more likely to be served in correctional facilities. Other significantly overrepresented disability categories include: Specific Learning Disabilities (2.95 times more likely), Other Health Impairments (2.43 times more likely), and Intellectual Disabilities (2.26 times more likely).

We think the best way to overcome the current overrepresentation of students with disabilities in the juvenile justice system is through good instruction, starting from early

ⁱ Nelson, C. M., Jolivet, K., Leone, P. E., & Mathur, S. R. (2010). Meeting the needs of at-risk and adjudicated youth with behavioral challenges: The promise of juvenile justice. *Behavioral Disorders*, 36(1), 70-80.

ⁱⁱ Quinn, M. M., Rutherford, R. B., Leone, P. E., Osher, D. M., & Poirier, J. M. (2005). Youth with disabilities in juvenile corrections: A national survey. *Exceptional Children*, 71(3), 339-345.

childhood. All children, including students with disabilities, should be in school and engaged in learning. The implementation of multi-tiered prevention and intervention frameworks – providing differing levels of behavioral or instructional supports and interventions based on assessment of the needs of individual students – provides a structure for preventing academic failures and problem behaviors from occurring, identifying and addressing deficits that do occur early and effectively, and providing the long-term supports all children need to meet the desired educational and life outcomes. The Office of Special Education Programs (OSEP) at the Department of Education, through Part D of IDEA, provides assistance to States, districts, and schools to support and improve outcomes for children with disabilities and their families through investments in professional development, technical assistance, technology and media, and parent training.

In addition, students with disabilities should receive, based on their individual needs, wrap-around supports, including counseling and mental health services that are provided in a coordinated and comprehensive manner. Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 et seq., Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and the Early and Periodic Screening, Diagnostic and Treatment (“EPSDT”) provisions of Title XIX of the Social Security Act (“Medicaid Act”) prevent the segregation, isolation, and unnecessary institutionalization of students with disabilities. Students should remain in and receive support within their communities, rather than being moved to residential institutions, including juvenile detention facilities and jails. Essential mental health services can be critical to student success in school. As necessary, States and school districts should create teams of local coordinated providers of mental health, counseling and support services through EPSDT funding, and in compliance with Title II and Section 504.

Two national technical assistance centers and a group of model demonstration programs are highlighted below. These investments show the efforts underway to assist states and districts in improving outcomes for children with disabilities, such as increasing school completion and expanding postsecondary education and career options.

For example, in fiscal year 2012, OSEP made an award to launch the Center on School-wide Integrated Framework for Transformation (SWIFT), which brings together special and general education in a comprehensive continuum of supports and services for all students. The SWIFT center will provide intensive, on-site technical assistance to schools and districts to implement a multi-tiered system of support of increasing intensity of instruction and behavioral support for all students. The project will also assist State education agencies to implement statewide school reform. The Center will work with schools to facilitate collaborative teaching between special and general education teachers; involve all school staff, including security guards, paraprofessionals, and support staff, in the teaching and learning process; and assist schools in making data-driven decisions and monitor interventions.

OSEP also has funded the National Technical Assistance Center on Positive Behavioral Interventions and Supports (PBIS) for the past 14 years. This Center has assisted in shaping the PBIS framework and providing direct professional development and technical assistance to more than 17,000 schools. Other Center activities include: (a) web-based collection and dissemination of evidence-based behavior practices and systems and self-assessment tools

(www.pbis.org); (b) a national leadership and trainers forum; (c) three best-practices and systems “blueprints” (Implementation, Evaluation, and Professional Development); (d) numerous publications and professional presentations; and (e) school, district, and State implementation demonstrations. PBIS is a framework for enhancing the adoption and implementation of a continuum of evidence-based interventions to achieve academically and behaviorally important outcomes for all students.ⁱⁱⁱ (Sugai et al., 2000). As a “framework,” the emphasis is on a process or approach, rather than a curriculum, intervention, or practice. Evidence-based behavioral practices are organized within a multi-tiered system of support for all students^{iv} (Sugai & Horner, 2009). The important supportive relationship between positive school climate and individual student success is emphasized as is the relationship between behavior and academic success.

A number of experimental studies have documented the effectiveness of the PBIS framework at the school-wide level. This body of research supports improvements in problem disciplinary behavior (office discipline referrals, suspension, expulsion), school climate, perceptions of safety, organizational health, student bullying behavior, and academic achievement (Horner et al., 2009; ^vHorner, Sugai, & Anderson, 2010; ^{vi}Waasdorp, Bradshaw, & Leaf, 2012).

It is also important to note that the Administration has incorporated lessons learned from PBIS implementation into the President’s plan, *Now is the Time*, to protect our children and communities by reducing gun violence. We proposed \$50 million for a new initiative to help 8,000 schools create safer and more nurturing school climates. These grants will assist schools to use evidence-based strategies to prevent and positively intervene to address problem behaviors such as bullying, drug abuse, and poor attendance, and help school staff put into place sound alternatives to suspensions, expulsions, and referrals to law enforcement.

ⁱⁱⁱ Sugai, G., Horner, R. H., Dunlap, G., Hieneman, M., Lewis, T. J., Nelson, C. M., Scott, T., Liaupsin, C., Sailor, W., Turnbull, A. P., Turnbull, H. R., III, Wickham, D. Reuf, M., & Wilcox, B. (2000). Applying positive behavioral support and functional behavioral assessment in schools. *Journal of Positive Behavioral Interventions*, 2, 131-143.

^{iv} Horner, R., Sugai, G., Smolkowski, K., Eber, L., Nakasato, J., Todd, A., & Esperanza, J. (2009). A randomized, wait-list controlled effectiveness trial assessing school-wide positive behavior support in elementary schools. *Journal of Positive Behavior Interventions*, 11, 133-145.

^v Horner, R. H., Sugai, G., & Anderson, C. M. (2010). Examining the evidence base for school-wide positive behavior support. *Focus on Exceptionality*, 42(8), 1-14. Sugai, G., & Horner, R. H. (2010). School-wide positive behavior support: Establishing a continuum of evidence based practices. *Journal of Evidence-based Practices for Schools*, 11(1), 62-83.

^{vi} Waasdorp, T. E., Bradshaw, C. P., & Leaf, P. J. (in press). The impact of school-wide positive behavioral interventions and supports (SWPBIS) on bullying and peer rejection: A randomized controlled effectiveness trial. *Archives of Pediatrics and Adolescent Medicine*.
Bradshaw, C. P., Waasdorp, T. E., & Leaf, P. J. (in press). Effects of school-wide positive behavioral interventions and supports on child behavior problems. *Pediatrics*.

In FY 2012, OSEP funded three Model Demonstration Projects on Reentry of Students with Disabilities from Juvenile Justice Facilities into Education, Employment, and Community Programs. Their purpose is to support the establishment and operation of three model demonstration projects that will develop, adapt, refine, and evaluate models for facilitating the successful reentry of youth with disabilities from juvenile justice facilities into education, jobs, and the community. Each model demonstration project includes the following elements: intensive educational interventions; multidisciplinary assessments and planning; integrated transition services; individualized aftercare; interagency collaboration; research-based interventions implemented with fidelity; and evaluation of services, processes, and outcomes. The projects are designed to reduce recidivism and to support the successful transition of these youth with disabilities back into their communities. Successful transition must be measured, in part, using data on high school completion, postsecondary education, and employment.

Question 2: ASSISTANT SECRETARY DELISLE and ACTING ADMINISTRATOR HANES, following up on a question that I asked during the hearing, please provide data showing the relationship between early education programming and involvement in the juvenile justice system? In particular, please provide evidence showing whether children who receive such programming are more or less likely to be involved in the criminal justice system later in life.

Answer: Few investments have a bigger return to society than high-quality early childhood programs. There is strong research demonstrating that children who attend high-quality preschool are better prepared for school, score higher on reading and math assessments in the elementary grades, are less likely to need special education services, are less likely to be held back in school, and are more likely to graduate from high school than children who do not attend such programs.^{vii} High-quality programs do more than just improve academic achievement—they increase employment and earnings and they reduce crime, delinquency, and teen parenthood later in life. This is why early childhood programs are so important to maintaining our international competitiveness.

The President's FY 2014 budget proposes \$75 billion to provide high-quality preschool for all four-year olds. Funding would be provided to states and distributed to local school districts, or local school districts in partnership with other early learning providers, to offer high-quality preschool programs. An additional \$750 million would provide for competitive grants to states to strengthen their early learning systems. The goal for early learning is improve the health, social-emotional, and cognitive outcomes for all children from birth through 3rd grade, so that all children, particularly those with high needs, are on track for graduating from high school college- and career-ready. To enhance the quality of programs and services and improve outcomes for children from birth through 3rd grade, including children with disabilities and those who are English Learners, the Department will promote initiatives that increase access to high-quality programs, improve the early learning workforce, build the capacity of states and

^{vii} Center for Public Education, *The Research on Pre-K*, 2008.

programs to develop and implement comprehensive early learning assessment systems, and ensure program effectiveness and accountability.

Among the studies that draw this linkage, the Perry Preschool Project study is the most relevant. The other studies listed below also show a link between preschool education and other successful indicators.

Perry Preschool Project (2005): This program was evaluated in one randomized controlled trial of 128 children — 64 in the intervention group that received the preschool program, and 64 in the control group that did not. The data showed that there were significant differences in the groups with regard to their involvement in the criminal justice system. By age 40, students in the intervention group were approximately 46 percent less likely to have served time in jail or prison and 33 percent less likely to have been arrested for a violent crime.

The longitudinal study found that not only was the program effective as an educational intervention, it also demonstrated other positive outcomes, including a significantly lower rate of crime and delinquency and a lower incidence of teenage pregnancy and welfare dependency. Data collected showed that by the age of 27, program participants were nearly three times more likely to own their own homes than the control group and less than half as likely to be receiving public assistance.

The data also showed that there were significant differences in the groups with regard to their involvement in the criminal justice system. The control group underwent more than twice as many arrests as the program group. Thirty-five percent of the control group were considered frequent offenders (defined as five or more arrests), compared with only seven percent of the program group. In addition, approximately 25 percent of the control group had been arrested for drug related offenses versus seven percent of the program participants. The control group also averaged more months on probation (6.6 versus 3.2 months) and had more than twice as many of its members placed on probation or parole for longer than 18 months (20 percent versus 9). A distinctive feature of this study has been its economic cost-benefit analysis which “indicates a savings to the public of more than seven times the initial investment per child, with a return of \$7.16 for every dollar spent” resulting from tax payer returns based on savings in welfare assistance, special education, prosecution of crime, assistance to crime victims, and increased tax revenue from higher earnings.

Other studies with related data sets include the:

Abecedarian Program (Economics of Education Review 2007): This project was a randomized controlled trial of early childhood education for children from low-income families. Of the original 111 infants enrolled, 101 took part in the age 30 follow-up. Students in the intervention group showed:

- Increased achievement test scores,
- Decreased special education participation and grade repetition,
- Increased employment and earnings, and less welfare dependency,

- Decreased smoking, drug use, and depression, and
- Decreased social services and health care costs.

Chicago Child-Parent Centers (Reynolds, 2007): Established in 1967, the CPC program is currently federally funded through Title I of the Elementary and Secondary Education Act and is still operating in Chicago. Additionally, a partnership of 11 education and nonprofit agencies in Illinois, Minnesota, and Wisconsin have been awarded an Investing in Innovation or “i3” grant of \$15 million over five years from the U.S. Department of Education to scale up this integrated school-based early childhood intervention. The program—which provides intensive instruction in reading and math from pre-kindergarten through third grade, combined with frequent educational field trips—is implemented by certified teachers, has a low child-to-teacher ratio, and provides intensive parent involvement. Based on a quasi-experimental follow-up of 1539 low-income participants who enrolled in either the Child Parent Center program or an alternative intervention, participants who attended the Child-Parent Center beginning in preschool had a better range of positive outcomes at age 24 as compared to the matched-group cohort. Findings provide evidence that high-quality early learning programs can have enduring effects on general well-being into adulthood.

Relative to the comparison group and adjusted for many covariates, Child-Parent Center preschool participants had lower rates of:

- felony arrests and convictions,
- incarceration,
- depressive symptoms, and
- out-of-home placement in foster care.

Participation in both preschool and school-age intervention relative to the comparison group was associated with:

- higher rates of full-time employment,
- higher levels of educational attainment,
- lower rates of arrests for violent offenses, and
- lower rates of disability.

Question 3: ASSISTANT SECRETARY DELISLE, several witnesses have submitted testimony indicating that students of color disproportionately are affected by the school-to-prison pipeline. Does the Department have recommendations for schools and communities to address these disparate impacts?

Answer: As proposed in the President’s plan, Now is the Time, the Department is currently developing a set of specific recommendations to schools and communities on how to improve school discipline practice. This includes joint guidance with the Department of Justice to help schools comply with their federal civil rights obligations in the administration of student discipline. Further, as part of the Supportive School Discipline Initiative, we are working closely

with the Department of Justice, the Council of State Governments, and philanthropic organizations to develop a set of consensus recommendations to improve discipline practice, reduce disproportionality, and dismantle the “school to prison pipeline.”

At a minimum, we know that schools and communities should implement a multi-pronged, multi-disciplinary and comprehensive strategy to improve discipline practices that includes a deliberate and proactive effort to ensure that students are equitably treated. School discipline policies and practices, including those that govern school-based arrests and referrals to law enforcement, must also comply with federal civil rights laws prohibiting discrimination, including on the basis of race, color, national origin, disability, sex and religion.

The pieces of this strategy would encourage schools and communities to:

- Proactively monitor their discipline practices for disproportionality. This can mean instituting steps such as the following:
 - Collect and evaluate data regarding all referrals for student discipline, including those that did not result in disciplinary sanctions or referrals to law enforcement, consistent with the Family Educational Rights and Privacy Act’s protections. Such a recordkeeping system should include demographic information for all students involved (race, sex, disability, age, and English-learner status), as well as a description of the misconduct, grade level of each student referred for discipline, description of attempts to address the behavior prior to referral for discipline, witnesses to the incident, prior history of the student, referring staff member, law enforcement involvement and discipline imposed.
- Assess for root causes where disproportionality exists. This can mean instituting steps such as the following:
 - Work with a consultant or other expert to review and modify disciplinary policies to ensure that rules are clearly defined and that students, staff and parents share a common understanding of the rules. School authorities should strive to reinforce positive student behavior and consider alternatives to expulsion and suspension that manage student misbehavior while keeping students in the classroom.
 - Establish a discipline review team to examine how discipline referrals and sanctions imposed at the school compare to those at other schools. Such a team can, for example, randomly review a percentage of the disciplinary actions taken at each school on an on-going basis to ensure the actions taken were non-discriminatory and consistent with the school’s discipline practices.
 - Implement school climate surveys for students, parents, and school staff to measure their perceptions of school safety and fairness in discipline, as well as their understanding of disciplinary rules and behavioral expectations.
- Engage in a broad-based community and school effort to develop an action plan to root out discrimination in the administration of discipline. This can mean steps such as the following:

- Provide training to staff that emphasizes ensuring fair treatment of students, strategies for managing student behavior and promoting student development outside the disciplinary system, explanation of the discipline code, and information concerning the role of School Resource Officers (police officers posted in schools).
- Ensure that all actions taken by School Resource Officers are reported, and implement training programs for them. Training needs for School Resource Officers should include training in bias-free policing, including implicit racial bias and cultural competence; child and adolescent development and age-appropriate responses; practices proven to improve school climate; restorative justice techniques; working with a diverse student population, including students with limited English proficiency and lesbian, gay, bisexual and transgender students; and data gathering and analysis.
- Provide ongoing information to families and students to explain behavior expectations, present discipline data, and advise them of the availability of a discipline coordinator. In addition, invite feedback on the process, inform parents of the right of students to due process, and offer parents an opportunity to provide input regarding the school's policies.

Students with Disabilities Ages 6-12 in Correctional Facilities 50 States and D.C. and Puerto Rico (including BIE schools)						
A) Disability Category	B) Total Students in Correctional Facilities	C) Percentage of all Students with Disabilities in Correctional Facilities	D) Percentage of Total Disability Category Served in Correctional Facilities	E) Percentage of Total Population Served in Juvenile Justice Residential Facilities	F) Percentage of the Overall Student Population	G) Disproportionality (Actual Correctional Facility Population Expected Population)
Emotional Disturbance	6,607	38.16%	1.78%	9.33%	0.54%	17.28
Specific Learning Disabilities	7,174	41.44%	0.30%	10.13%	3.43%	2.95
Other Health Impairments	1,841	10.63%	0.23%	2.60%	1.07%	2.43
Intellectual Disabilities/Mental Retardation	1,008	5.82%	0.23%	1.42%	0.63%	2.26
Multiple Disabilities	178	1.03%	0.14%	0.25%	0.18%	1.40
Traumatic Brain Injury	33	0.19%	0.13%	0.05%	0.04%	1.17
Hearing Impairments	44	0.25%	0.06%	0.06%	0.10%	0.62
Orthopedic Impairments	31	0.18%	0.06%	0.04%	0.08%	0.55
Speech or Language Impairments	329	1.90%	0.03%	0.46%	1.56%	0.30
Visual Impairments	5	0.03%	0.02%	0.01%	0.04%	0.18
Autism	58	0.34%	0.01%	0.08%	0.59%	0.14
Developmental Delay	4	0.02%	0.00%	0.01%	0.17%	0.03
Deaf-Blindness	0	0.00%	0.00%	0.00%	0.00%	0.00
Total	17,231		3.30%	24.43%	8.49%	2.90
Column A	Includes all reported disability categories under the Individuals with Disabilities Education Act (IDEA), Part B.					
Column B	For each disability category, the number of students who are served in correctional facilities is listed. Correctional facilities data are intended to be a count of all children receiving special education in either short-term detention facilities (community-based or residential) or correctional facilities. These data were generated using IDEA Data Explorer on January 4, 2013 at the following link: https://www.ideadata.org/					
Column C	Includes the percentage that each particular disability category makes up of the overall student with disability population being served in correctional facilities. The calculation was made by dividing Column B by the total number of students with disabilities being served in correctional facilities (17,312).					
Column D	Includes the percentage of each particular disability category that is served in correctional facilities (as opposed to other educational environments). The calculation was made by dividing Column B by the total number of students for each disability category, which can be found in Table B1-3 at the following link: https://www.ideadata.org/arc_toc13.asp#partBCC					
Column E	Includes the percentage that each disability category makes up of the entire juvenile justice system population being served in residential facilities. The total population in juvenile justice residential facilities in 2010 was 70,792 according to the National Center for Juvenile Justice (http://www.ojjn.gov/systems/ncjcrj/ncjcrj.asp?Age_Sex.asp). The calculation was made by dividing Column B by 70,792. Residential facilities include the following placements: 1) Detention Center: a short-term facility that provides temporary care in a physically restricting environment for juveniles in custody pending court disposition and, often, for juveniles who are adjudicated delinquent and awaiting disposition or placement elsewhere, or are awaiting transfer to another jurisdiction; 2) Shelter: a short-term facility that provides temporary care similar to that of a detention center, but in a physically unrestricting environment. Includes runaway/homeless shelters and other types of shelters; 3) Reception/Diagnostic Center: a short-term facility that screens persons committed by the courts and assigns them to appropriate correctional facilities; 4) Long-term secure facility: a specialized type of facility that provides strict confinement for its residents. Includes training schools, reformatories, and juvenile correctional facilities; 5) Ranch/Wilderness Camp: a long-term residential facility for persons whose behavior does not necessitate the strict confinement of a long-term secure facility, often allowing them greater contact with the community. Includes ranches, forestry camps, wilderness or marine programs, or farms; 6) Group Home: a long-term facility in which residents are allowed extensive contact with the community, such as attending school or holding a job. Includes halfway houses; 7) Boot Camp: a secure facility that operates like military basic training. There is emphasis on physical activity, drills, and manual labor. Strict rules and drill instructor tactics are designed to break down youth's resistance. Length of stay is generally longer than detention but shorter than most long-term commitments; and 8) Other: includes facilities such as alternative schools and independent living, etc. These data do not include juveniles who are placed in adult prisons.					
Column F	Includes the percentage of the overall public school population for each disability category. These data were found in Table B1-17 at the following link: https://www.ideadata.org/arc_toc13.asp#partBCC					
Column G	The final column calculates the disproportionate representation of each disability category in correctional facilities. The calculation was made by dividing Column E by Column F. The numerical value is a multiplier that indicates how much more or less likely a child within a particular disability category is to be placed in a correctional facility as compared to chance. For example, students with Emotional Disturbance (ED) represent 9.33% of the correctional facility population, but represent only 0.54% of the overall student population. This means that students with ED are 17.28 times more likely to be placed in a correctional facility than would be expected by their representation in the general student population.					

Questions for the Record
Melodee Hanes
Former Acting Administrator
Office of Juvenile Justice and Delinquency Prevention
Office of Justice Programs
U.S. Department of Justice

Committee on the Judiciary
United States Senate

“Ending the School-to-Prison Pipeline”
December 12, 2012

Questions Posed by Senator Franken

1. **ASSISTANT SECRETARY DELISLE and ACTING ADMINISTRATOR HANES, kids with learning disabilities are more likely than their peers to end up in the juvenile justice system. This suggests that students with disabilities are not receiving the support they need to be successful in school. And, for me, this is an argument in favor of full funding for the Individuals with Disabilities Education Act – or IDEA. But, aside from additional funding, what can the federal government do to help address this disparity?**

The federal government can assist states and localities in employing a number of proven strategies beginning with a continued or expanded investment in high quality early childhood education programs. This benefits special education programs by laying strong educational foundations and intervening early and effectively when weaknesses first present. Research studies, including studies of the High/Scope Perry Preschool¹ and Chicago Child-Parent Center² programs, have shown that high quality early education not only deters crime and saves taxpayers money, but can reduce special education placements. The Office of Justice Program’s (OJP) CrimeSolutions.gov has rated these programs as “Effective” and “Promising,” respectively.

The High/Scope Perry Preschool Study, conducted in the Ypsilanti, Michigan school system, focused on 3- and 4-year-olds living in poverty and at risk for school failure. From 1962–1967, the subjects of the study were randomly divided into a program group that received a high-quality preschool program based on High/Scope’s cognitive and socio-emotional development through active learning approach and a comparison group that received no preschool program. By age 10, early findings showed that 17 percent of the students enrolled in the program were

¹ David P. Weikart, James T. Bond, and J. T. McNeil, *Ypsilanti Perry Preschool Project: Preschool Years and Longitudinal Results Through Fourth Grade* (Ypsilanti, Mich.: HighScope Press, 1978).

² Conyers, L. M., Reynolds, A. J., & Ou, S.-ruu. (2003). The Effect of Early Childhood Intervention and Subsequent Special Education Services: Findings from the Chicago Child-Parent Centers. *Educational Evaluation & Policy Analysis*, 25(1), 75-95. Retrieved from <http://www.jstor.org/stable/3699518>

held back or placed in special education as compared to 38 percent of those not enrolled in the program.

Similarly, children who participated in the Chicago Child-Parent Center program had a significantly lower rate of special education placement at 12.5 percent as compared to the comparison group with 18.4 percent. The Chicago Child-Parent Center is a center-based early intervention program that provides comprehensive educational and family-support services to economically disadvantaged children from preschool to third grade. The program was established through funding from Title I of the landmark Elementary and Secondary Education Act of 1965. It is the second oldest federally funded preschool program in the U.S. (after Head Start) and the oldest extended early childhood intervention program. The program is designed to promote children's academic success and to facilitate parent involvement in children's education.

These studies have been cited by law enforcement leaders and crime survivors who are fighting to protect and strengthen early care and education. They understand that promoting quality early education programs are critical to ensure that children are "directed to a better path in life that leads to success and away from crime."

School should be a safe place for all children to learn and develop. Working with the Department of Education, the Department of Justice's Office of Community Oriented Policing Services (COPS Office) has recently awarded a grant to develop a model for, as well as training curriculum on, the effective use of School Resource Officers (SRO) in school safety programs. In their three-part role as law enforcer, informal counselor, and educator, SROs can be an important component and partner in school safety efforts.

The COPS Office recently awarded a \$500,000 grant to develop a model that will present guidelines, tools, resources, and promising practices from around the country (in jurisdictions of varying size) on the SRO's role in school safety and security efforts. These tools will expand the knowledge base for SROs and those that select, hire, train, and manage them, setting a national standard for their role in school safety. The model and training curriculum will increase the ability of law enforcement agencies, educators, school administrators, and necessary stakeholders (including mental health and other service providers, parents, and students) to work together under integrated and individually tailored school safety and security plans.

The model will provide specific outcome and output based assessments of SRO activities, address best practices regarding discipline issues (i.e., an SRO who observes a violation of the student code of conduct takes the student(s) to the school officials to determine school discipline rather than treating school discipline as a law enforcement issue), address the importance of protecting students' rights by assuring SRO familiarity with the laws regarding arrests according to applicable legal standards, provide best practices on alternatives to arrest—such as restorative justice models and the role of the SRO in restorative justice techniques—and include safeguards to prevent SROs from becoming a conduit in a "school to prison pipeline" and the disciplinary policies and practices that can push students out of school and into the justice system.

Additionally, the President's budget for 2014 provides \$75 billion over ten years for the Administration's preschool initiative and another \$17 billion for other early childhood programs and cites similar research that shows the long term benefits of high quality early education.

Further, federal agencies can support or promote the following additional strategies:

- Enhancing and expanding training for educators and school-related personnel to include school nurses, bus drivers, and other non-academic school staff, as well as law enforcement (such as School Resource Officers) to assist in the early identification of children with special education, social/emotional, and/or behavioral issues.
- Expanding application of multi-tiered behavioral intervention frameworks, which provide differentiated levels of behavioral or instructional supports and interventions, based on the needs of individual students. Such programs, including the Positive Behavioral Interventions and Supports program, can provide a framework for training and support to help school staff put into place developmentally sound and research-based alternatives to punitive discipline practices.
- Enhancing the education of law enforcement and judicial officers and promoting problem-solving approaches to reducing inappropriate referrals of students with learning disabilities to court and law enforcement. One demonstrably effective problem-solving approach initiated in Georgia and Alabama is the basis for a replication project by the National Council of Juvenile and Family Court Judges, which is developing a training curriculum for judicial personnel and a "training of trainers" pilot program to build a cadre of judicial leaders who can help disseminate and replicate this approach.

Federal government activity consistent with these efforts includes law enforcement and policy work to ensure compliance with the civil rights of youths with disabilities. The strategies above are significant in and of themselves; however, direct financial support and technical assistance from federal agencies should be leveraged to assist students with disabilities.

- 2. ASSISTANT SECRETARY DELISLE and ACTING ADMINISTRATOR HANES, following up on a question that I asked during the hearing, please provide data showing the relationship between early education programming and involvement in the juvenile justice system? In particular, please provide evidence showing whether children who receive such programming are more or less likely to be involved in the criminal justice system later in life.**

Few investments have a bigger return to society than high-quality early childhood programs. There is strong research demonstrating that children who attend high-quality preschools are better prepared for school, score higher on reading and math assessments in the elementary grades, are less likely to need special education services and be held back in school, and are more likely to graduate from high school than children who do not attend such programs.³ There

³ Center for Public Education, *The Research on Pre-K*, 2008.

is also considerable evidence that early intervention including educational programming can reduce children's involvement in the criminal justice system later on in life. OJP's Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Fact Sheet, titled "*Costs and Benefits of Early Childhood Intervention*,"⁴ examined the benefits of early childhood intervention in the prevention of later delinquency citing, among others, outcomes of the High/Scope Perry Preschool study.⁵ OJJDP's bulletin, "*The High/Scope Perry Preschool Project*,"⁶ explains in greater detail how and why the High/Scope Perry Preschool program, as one example, was successful and provides a positive cost benefit analysis.

The longitudinal study found that not only was the program effective as an educational intervention, but it also demonstrated other positive outcomes, including a significantly lower rate of crime and delinquency and a lower incidence of teenage pregnancy and welfare dependency. Data collected showed that by the age of 27, program participants were nearly three times more likely to own their own homes than the control group and less than half as likely to be receiving public assistance.

The data also showed that there were significant differences in the groups with regard to their involvement in the criminal justice system. The control group underwent more than twice as many arrests as the program group (averages of 4.0 versus 1.8 arrests per person). Thirty-six percent of the control group accounted for 98 felony arrests between ages 19 and 27, while 27 percent of the program group accounted for 40 felony arrests during the same period. Thirty-five percent of the control group were considered frequent offenders (defined as five or more arrests), compared with only 7 percent of the program group. In addition, 25 percent of the control group had been arrested for drug related offenses versus 7 percent of the program participants. The control group also averaged more months on probation (6.6 versus 3.2 months) and had more than twice as many of its members placed on probation or parole for longer than 18 months (20 versus 9 percent).

A distinctive feature of this study is its economic cost-benefit analysis which "indicates a savings to the public of more than seven times the initial investment per child, with a return of \$7.16 for every dollar spent" resulting from taxpayer returns based on savings in welfare assistance, special education, prosecution of crime, assistance to crime victims, and increased tax revenue from higher earnings.

3. ACTING ADMINISTRATOR HANES, this is a moral issue – we have a moral responsibility to make sure kids get an education and have a real chance to succeed in life. But this is an important economics issue, too. I've seen data in Minnesota which show that we save about \$3 to \$5 for every one dollar spent on Justice Department

⁴ Greenwood, P.W. 1999. Costs and Benefits of Early Childhood Intervention. Fact Sheet #94. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. <https://www.ncjrs.gov/pdffiles1/jfs9994.pdf>

⁵ Barnett, W. S. (1996). Lives in the balance: Age-27 benefit-cost analysis of the HighScope Perry Preschool Program (Monographs of the HighScope Educational Research Foundation, 11). Ypsilanti, MI: HighScope Press.

⁶ Parks, Greg. 2000. High/Scope Perry Preschool Project. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. https://www.ncjrs.gov/html/ojjdp/2000_10_1/contents.html

programs for youth mentoring and youth interventions. How much money do we save or generate relative to what we spend on counseling, mentorship, and other youth programs administered or funded by the Justice Department?

States that have conducted cost-benefit analysis and cost assessments of programs designed to reduce juvenile delinquency and crime found that implementing evidence-based prevention programs resulted in cost savings or avoidance and successfully diverted children from a criminal path.

For example, the Washington State Institute for Public Policy (WSIPP), created in 1983 by the Washington Legislature to carry out non-partisan research on public policy issues, was directed to review “evidence-based” policy strategies in juvenile justice and adult corrections beginning in 1997. WSIPP developed a highly regarded economic model to assess the benefits and costs of prevention programs and calculated a monetary estimate of benefit per participant.

Subsequently, WSIPP published the *Return on Investment: Evidence-Based Options to Improve Statewide Outcomes*,⁷ providing an independent assessment of the many delinquency prevention programs in operation, similar to those funded by the Department. The findings showed that many of the programs provide a significant return on investment. Specifically, the total benefits of youth mentoring were \$7,207 per participant (in 2011 dollars) with average program costs to be \$1,479 per participant, resulting in a net value of \$5,728 per participant; for juvenile drug courts, the net value is \$10,576 per participant; and for intensive counseling services, such as multi-systemic therapy and family functional therapy, the net value per participant is \$24,751 and \$30,706, respectively.

OJP continues to support innovative, evidence-based approaches that help state, local, and tribal jurisdictions maximize resources and improve public safety results. In fiscal year 2012, OJJDP awarded over \$60 million through their National and Multi-State Mentoring programs and over \$6 million to drug courts, with approximately \$2.2 million to the Family Drug Courts and nearly \$4 million to Juvenile Drug Courts/Reclaiming Futures programs. Research indicates that, when well-implemented, mentoring can be a useful strategy in working with at-risk youth and those who experience multiple risk factors for delinquency, school failure and other negative outcomes. Research has also shown that drug courts, when correctly used, can both reduce recidivism and increase public savings. OJP is working to educate the field on the value of evidence-based programs by promoting OJJDP’s Model Programs Guide database and the CrimeSolutions.gov website, where multi-systemic therapy and family functional therapy programs are featured.

⁷ Lee, S., Aos, S., Drake, E., Pennucci, A., Miller, M., & Anderson, L. (2012). Return on investment: Evidence-based options to improve statewide outcomes, April 2012 (Document No. 12-04-1201). Olympia: Washington State Institute for Public Policy. Retrieved on January 11, 2013 from http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/WSIPP_Return_on_Investment_April_2012.pdf

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December 4, 2012

U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510
Stephanie_Trifone@Judiciary-dem.Senate.gov

Re: Hearing on Ending the School-to-Prison Pipeline

Dear Chairman Durbin, Ranking Minority Member Graham and members of the committee:

Thank you for the opportunity to submit testimony for the hearing on ending the school-to-prison pipeline before the subcommittee on the Constitution, Civil Rights, and Human Rights, Senate Committee on the Judiciary.

Advocates for Children and Youth (ACY) was founded in 1987 by a group of prominent child advocates in Maryland who saw the need for an independent organization to advocate for the needs of the state's children and families in the community, the media, and the public policy arena. ACY's mission is to identify problems, promote policies and programs that improve results for Maryland's children in measurable and meaningful ways, and evaluate the effectiveness of programs and policies for the state's children and youth.

The School to Prison Pipeline in Maryland

Maryland is not exempt from the problem of the school-to-prison pipeline that is plaguing school districts and juvenile justice systems across the country. Due to an over-reliance on harsh discipline policies with severe consequences, high numbers of students—particularly students of color and students with disabilities—are being suspended, expelled and arrested for often minor offenses that were once handled in school. As a result, these students are spending less time in school, are becoming increasingly disengaged with their coursework and are more likely to dropout, experience unemployment and become involved with the juvenile justice system.

During the 2010-2011 school year, over 6.8% of Maryland students were suspended or expelled and non-violent, less serious behavior amounted to 48% of the total offenses.¹ Furthermore, students with disabilities and students of color are consistently and disproportionately represented in the suspensions

¹ Maryland State Department of Education, "Maryland Public School Suspensions By School and By Major Offense Category: Out of School Suspensions and Expulsions 2010-2011" (Baltimore, MD: 2012).



and expulsions data. For example, over 22% of suspended or expelled students in Maryland during 2010-2011 have a disability, even though they represent only 12% of the overall student population.² Additionally, 63% of all suspensions and 100% of all expulsions in Wicomico County Public Schools were African American students, even though African Americans make up only 37% of the school population.³

These trends are also seen in school-based juvenile arrests across the state. During the 2008-2009 school year, 14% of juvenile arrests occurred in schools and nearly 60% of these arrests were for less serious offenses.⁴ Consistent with the disproportionality of suspensions and expulsions, African American students were 3.6 times more likely to be arrested than white students.⁵ When the data is looked at more closely, the rate of school-based arrests is even more alarming. Of the 14 Maryland school districts reporting school-based arrests in 2010-2011, one third reported that over 30% of all juvenile arrests in the county occurred in schools.⁶

Efforts to End the School to Prison Pipeline in Maryland

In light of the disturbing rates of youth being suspended, expelled and arrested, the state of Maryland and Advocates for Children and Youth are working hard to reduce the number of school-based arrests and dismantle the school to prison pipeline.

Revisions to State School Discipline Policy

To minimize the number of students being suspended, expelled and referred to the juvenile justice system, Maryland is in the process of revising the state regulations on school discipline and the state code of conduct. These revisions reflect a more preventative, student-centered and equitable approach to school discipline and require reporting of disproportionate impact, school-based arrests and interactions with the juvenile justice system. Committed to ending the school to prison pipeline, Advocates for Children and Youth is working to keep students in school by participating in the Maryland School Discipline Best Practices and Student Code of Conduct Workgroups to ensure the development of fair and effective discipline policies and practices.

Cultural Competency Training for School-Based Law Enforcement

In 2010, Maryland enacted House Bill 983 / Senate Bill 1007 with the goal of reducing school-based arrests and increasing positive interactions between students and school-based law enforcement. This legislation requires the development of a cultural competency training curriculum for school-based law enforcement that promotes arresting students only when necessary to protect school safety. Advocates for Children and Youth has taken the lead on working with the Maryland Police Training Commission to develop and implement this curriculum that teaches police officers about: the availability and effectiveness of alternatives to arrest, the use of objective risk assessments and arrest protocols, and

² Ibid.

³ U.S. Department of Education, Office of Civil Rights, "Civil Rights Data Collection Database" (2012).

⁴ Advocates for Children and Youth, "Police Can Reduce Student Misbehavior Without Arrest: Three-Prong Strategy Has Reduce Racial Disparities", Vol. 7, Issue 19, (February 2010).

⁵ Ibid.

⁶ Advocates for Children and Youth, "County by County Data in Maryland", <http://www.acy.org/articlenav.php?id=918> (6 December 2012).

most importantly, how to communicate with and understand youth, particularly those from different cultures and ethnicities.

Juvenile Court and School Safety Workgroups

At the local level, Advocates for Children and Youth continues to promote efforts to reduce racial disparities in juvenile arrests by participating in, and supporting the formation of, Juvenile Court and School Safety Workgroups. In Baltimore City, ACY and a wide array of stakeholders are engaging in discussions to identify ways of minimizing juvenile justice and court involvement in schools. The resulting dialogue has led to fewer referrals from schools to juvenile services in addition to better data collection on referrals and the sharing of best practices for prevention and behavioral modification strategies for students. Due to the success of the Baltimore City Juvenile Court and School Safety Workgroup, ACY is actively advocating for the creation of a workgroup in Prince George's County in order to expand local collaboration to end the school to prison pipeline.

Additional Efforts

Advocates for Children and Youth continues to work to keep youth in school and out of the juvenile justice system by investigating and advocating for: effective early interventions and warning systems in schools, alternative education programs, and the expansion of student support services and referral systems. Additionally, the state of Maryland established a Task Force to Study the Creation of a Maryland Center for School Safety in June 2011. The Task Force is currently in the process of considering issues of school safety and the role a Maryland Center for School Safety could play in addressing them.

Given the deleterious impact of harsh discipline policies and excessive juvenile justice involvement on students' educational and life opportunities, Advocates for Children and Youth urges the federal government to support state and local efforts to dismantle the school-to-prison pipeline. ACY encourages the government to work to reduce racial disparities in discipline, promote smart alternatives to harsh punishment, and ensure that all young people have the opportunity to succeed.

If you would like more information, please contact the ACY Juvenile Justice Director, Angela Johnese at ajohnese@acy.org or the Education Policy Director, David Beard, at dbeard@acy.org. Thank you.

Legal Aid of North Carolina, Inc.
Advocates for Children's Services

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STATEMENT FOR THE RECORD

To: U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights (via Stephanie_Trifone@Judiciary-dem.Senate.gov)

From: Advocates for Children's Services, a project of Legal Aid of North Carolina¹

Re: Hearing on the School-to-Prison Pipeline; December 12, 2012 at 2:00 p.m.

Date: December 10, 2012

I. About Advocates for Children's Services

Advocates for Children's Services (ACS) is a project of Legal Aid of North Carolina (LANC). LANC is a statewide, nonprofit law firm that provides free legal services in civil matters to low-income people in order to ensure equal access to justice and to remove legal barriers to economic opportunity. ACS staff strive to ensure that all North Carolina children and youth have access to a fair, just, and equitable public education. The focus of ACS' work is providing legal advice and representation to children and youth from low-income families in education matters, such as enrollment, academic failure, special education, suspension and expulsion, and discrimination. ACS staff also educate the community about education justice issues and students' and parents' rights through trainings and presentations, publications, and media outreach. Finally, ACS staff collaborate with other advocacy organizations and service providers throughout the state. This Statement is informed by over ten years of working directly with low-income families that have been impacted by the school-to-prison pipeline.

II. About the School-to-Prison Pipeline

The school-to-prison pipeline is a system of laws, policies, and practices that pushes students – particularly economically disadvantaged students, students of color, and students with disabilities – out of schools and into the juvenile and criminal systems. It is caused by systemic factors, such as racism, classism, sexism, ableism, homophobia, and xenophobia. Additionally, it is the result of social and economic factors, such as poverty, a lack of parental involvement,

¹ Please direct questions or requests for sources or additional information to Jason Langberg, Staff Attorney and Director of the Push Out Prevention Project, 919-226-0051 ext. 438, JasonL@LegalAidNC.org.

"The test of the morality of a society is what it does for its children." -Dietrich Bonhoeffer



LSC

and violence. Finally, the pipeline is caused by misguided education laws, policies, and practices, such as budget cuts and resource starvation, overcrowding, unmet academic and special education needs, a lack of support staff (e.g., counselors, social workers, nurses, psychologists, and mentors) and positive alternatives to suspension, zero tolerance policies and excessive use of suspension, school policing, and high-stakes, standardized testing. The pipeline is also situated in the context of mass incarceration, a culture of fear and control, privatization, and pervasive racial and socio-economic segregation.

Students who are pushed out of school are not only at an increased risk of academic failure, mental health problems, and delinquent and criminal activity, but also they are hindered in their ability to become economically self-sufficient and engaged, courageous, creative, critical thinkers in a self-governing democracy. The pipeline is – and has been for over two decades – a moral outrage, as well as a civil and human rights crisis. Young people across the nation desperately need policymakers to act urgently – *with* students, parents, educators, and advocates – to take swift, corrective action.

ACS staff thank the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights for holding a much-needed hearing on the school-to-prison pipeline, and hope that the information contained herein is informative and helpful.²

III. About the School-to-Prison Pipeline in North Carolina

As demonstrated by the information and data below, North Carolina has a massive, destructive, discriminatory school-to-prison pipeline. Year after year, poverty, austerity, academic failure, suspension, and policing funnel tens of thousands of students out of classrooms, onto the streets, and ultimately into the prison industrial complex.

A. **Poverty**

In North Carolina, one in four children lives below the poverty level (approximately \$23,000 per year for a family of four). In 2011, eleven percent of children (260,000) lived in extreme poverty (i.e., below fifty percent of the federal poverty level), thirty-nine percent (880,000) lived below 150 percent of the federal poverty level, and fifty percent (1,123,000) lived below 200 percent of the federal poverty level. The percentage of North Carolina children living in poverty is above the national average. Worse yet, the poverty rate is growing. Finally, children of color are disproportionately poor (see Chart One below).

Children living in poverty are at an increased risk of: poor nutrition, hunger, and food insecurity; inadequate access to quality physical and mental health care; substandard and unstable housing; exposure to unsafe neighborhoods, violence, and criminal activity; having overworked, overstressed caretakers; carrying the burden of caring for relatives; less participation in positive after-school and summer activities; less cognitive stimulation; poor home circumstances for learning; being unable to perceive the benefits of education; abuse and neglect; chronic stress; behavioral, emotional, physical health, and mental health problems; and social marginalization. These effects of poverty, which teachers and other school staff are

² This Statement uses the most recent, publicly available data.

expected to handle with dwindling resources, have substantial negative impacts on educational outcomes.

B. Austerity and Resource Starvation

North Carolina consistently ranks among the seven worst states for public education funding. In 2009, North Carolina's average per pupil expenditure, adjusted for regional cost differences, was \$9,024; the eighth worst in the nation. In 2011, the North Carolina General Assembly cut, over the following two years, nearly a billion dollars from the state budget for public education.

In addition to being inadequate, state funding of public education in North Carolina is inequitable. Special needs allotments are capped for intellectually gifted students, students with disabilities, and students with limited English proficiency. These additional funds are capped at a percentage of average daily membership (ADM). In other words, districts receive a percentage increase in funding up to the cap, regardless of the actual numbers of special needs students who reside in the district. This leads to inequitable funding for the schools with the highest numbers of special needs students.

As a result of draconian budget cuts to public education over the last four years, North Carolina public schools have lost over 17,000 positions (including teachers, teacher assistants, clerical staff, custodians, and nurses), increased class sizes, decreased course selections and programming, had fewer textbooks and equipment, postponed needed school repairs and construction, and added significant time to bus routes. With fewer resources, less support, and larger classes, teachers and principals struggle to prevent and manage misbehavior.

C. Academic Failure

Students who are failing academically are more likely to disengage from the educational process, be retained and drop out, lose incentive and motivation to follow school rules and norms, and misbehave and be subjected to suspension, expulsion, arrest, and adjudication. North Carolina has too many students who experience academic failure. During 2011-12, nearly one-third of students in grades three through eight (225,710) were below grade level in reading and/or math as measured by the end-of-grade (EOG) exams. Fewer than half of Black students were proficient in reading and math on the EOGs (see Chart Two below). Latino students, economically disadvantaged students, students with limited English proficiency, and students with disabilities were also on the lower end of massive achievement gaps (see Table One below). In 2011, the National Assessment of Education Progress (NAEP), which is a more accurate and reliable measure of student achievement, revealed an even grimmer snapshot of academic failure in North Carolina (see Table Two below).

State law requires Personal Education Plans (PEPs) for students who are at risk of academic failure, and state and federal laws require Individualized Education Programs (IEPs) for students with disabilities. PEPs and IEPs should provide meaningful, individualized interventions; however, in reality, they typically are not provided, not individualized, or not implemented.

Eventually, many students drop out or otherwise fail to graduate. Twenty percent of students who started high school in 2008-09 did not graduate within four years, and nineteen percent did not graduate within five years (for disparity data, see Chart Three and Chart Four below). During 2010-11, 15,342 students formally dropped out of school.

D. Suspension and Expulsion

North Carolina is one of the worst states in the nation when it comes to suspending students. During 2010-11 (the most recent year for which data is publicly available), public schools gave out 277,206 short-term suspensions (i.e., suspensions lasting one to ten school days), 2,621 long-term suspensions (i.e., suspensions lasting eleven school days or more), and sixty-six expulsions (i.e., indefinite removal). Approximately one of ten North Carolina students receives at least one short-term suspension each year. When looking at high school students only, this ratio rises to one of seven students. The average length of short-term suspensions was 2.78 school days and the average length of long-term suspensions was 51.4 school days. Over 17,000 students received multiple suspensions that accumulated to more than ten school days. In total, students missed over 900,000 school days as a result of suspension. What is worse, these shocking numbers do not even include in-school suspensions, bus suspensions, 365-day suspensions, and placement in alternatives programs and schools. Most of the young people in the state's youth prisons (called "youth development centers") have experienced time away from school. During 2011, eighty percent of committed juveniles had histories of serious problems in school (e.g., truancy, suspensions, and expulsions), and an average of thirty-six days of suspension in the year prior to their commitment.

Students are suspended for very minor offenses, including for untucked shirts, hugging a teacher, and having a nose ring. For example, in the Wake County Public School System during 2010-11, twenty-nine percent of short-term suspensions were given for "disrespect of staff." In Guilford County Schools, twenty-four percent of short-term suspensions were given for "inappropriate language." In Charlotte-Mecklenburg Schools, sixteen percent of short-term suspensions were given for "disruptive behavior."

North Carolina's exorbitant suspension rates disproportionately impact male students, Black students, and students with disabilities. During 2010-11, male students received seventy-two percent of short-term suspensions, seventy-seven percent of long-term suspensions, and ninety percent of expulsions. As demonstrated by Chart Five and Chart Six below, American-Indian students, Hispanic students, and especially Black students were disproportionately suspended. The short-term rate for Black students was four times greater than the short-term suspension rate for White students, and the long-term suspension rate was three and a half times greater. Black students were also punished more harshly than similarly-situated White students. For example, in the Wake County Public School System in 2010-11, among first time "offenders" who committed "cell phone use," seventy-two percent of the Black students were suspended compared to thirty percent of the White students. Students with disabilities represented approximately fourteen percent of the total student population, but received twenty-six percent of short-term suspensions.

E. School Policing

North Carolina schools are also heavily policed. During 2008-09, there were 849 law enforcement officers assigned to patrol public schools on a full-time basis (called “school resource officers” or “SROs”). This was a 249 percent increase since the first recorded baseline in 1995-96. Three hundred and thirty of the 375 high schools and 315 of the 450 middle schools had exclusive SRO coverage (i.e., their own, full-time SRO). Twenty percent of elementary schools received some form of service from SROs. Nearly half of SROs carried a TASER. While the presence of SROs expanded rapidly – with no research to support their effectiveness in improving school safety – they still lacked meaningful limitations, oversight, training, and accountability. The educational environment has further been criminalized by the prevalence of metal detectors and surveillance cameras. Students are treated as potential criminals. Recently, Gaston County school officials forced Latino students to sign a contract indicating that they are gang members and allowing schools to monitor and suspend them. A new, arguably unconstitutional, state law criminalizes students who use a computer to “intimidate or torment” a school employee. Penalties can be as much as sixty days in jail or a \$1,000 fine for students as young as sixteen, who are treated as adults under state law.

The over-policing of North Carolina public schools contributes to excessive numbers of students being funneled directly from schools to the juvenile system. During 2011, forty-three percent of all juvenile delinquency complaints were school-based. As demonstrated by Table Three below, thousands of the school-based complaints were for minor offenses – such as communicating threats, disorderly conduct, and being ungovernable or truant – that should have been handled using alternatives that are more productive than court involvement. Black students were disproportionately subject to complaints. During 2010-11, they represented twenty-six percent of the student population but received forty-five percent of school-based delinquency complaints. Over the last five years (2007 to 2011), non-school-based delinquency complaints decreased by twenty-five percent, whereas school-based delinquency complaints decreased by only twelve percent. To make matters worse, North Carolina is one of two states in the nation that *automatically* charges, prosecutes, and sentences all sixteen- and seventeen-year-olds as adults.

IV. Recommendations for the Federal Government

The federal government can help dismantle the school-to-prison pipeline in North Carolina by taking the following measures.

- A. Provide adequate funding for poverty reduction programs, such as early childhood education, housing assistance, nutrition assistance, unemployment assistance, Medicaid, Medicare, Social Security, Supplemental Security Income, and Temporary Assistance for Needy Families;
- B. Protect and expand the Earned Income Tax Credit and the Child Tax Credit;
- C. Create a federally-mandated living wage;

- D. Provide funding for state and local initiatives aimed at improving school safety and creating fair discipline practices, such as reducing school and class size, implementing Positive Behavior Interventions and Supports (PBIS), using restorative justice practices, enhancing parent involvement, and improving teacher training in behavior management;
- E. Improve collection of school discipline data (for specific recommendations see DANIEL J. LOSEN, THE CIVIL RIGHTS PROJECT AT UCLA, GOOD DISCIPLINE: LEGISLATION FOR EDUCATION REFORM (2011), http://www.greatlakescenter.org/docs/Policy_Briefs/Losen_Discipline_LB.pdf);
- F. Improve and expand the timely enforcement of civil rights laws and regulations by the Department of Justice and the Office for Civil Rights of the U.S. Department of Education;
- G. Provide guidance to states and districts seeking to make progressive school discipline reforms using research-based best practices (Note: In July 2011, the U.S. Department of Education and U.S. Department of Justice announced the launch of the Supportive School Discipline Initiative to “address the school-to-prison pipeline” and “support good discipline practices to foster safe and productive learning environments in every classroom;” however, after nearly a year and a half, the Initiative has not amounted to much.);
- H. Improve the U.S. Department of Education, Office of Special Education and Rehabilitative Services’ oversight of state compliance with special education laws; and
- I. Stop forcing cash-strapped states and school districts – through legislation like “No Child Left Behind” and programs like “Race to the Top” – to adopt market-based reforms (e.g., performance pay and high-stakes, standardized testing) that contribute to the pipeline by diverting valuable resources, weakening and narrowing the curriculum, promoting unhealthy competition, and creating perverse incentives to push out lower-performing students.

Charts and Tables

Chart 1: Percent of students in poverty by race (2011)

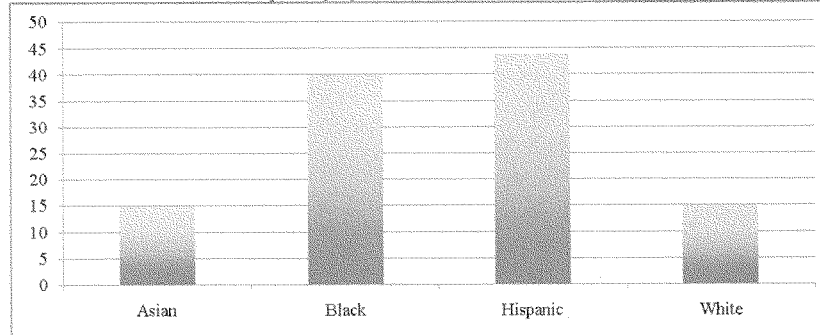


Chart 2: Percent of students proficient in reading and math on the EOGs by race (2011-12)

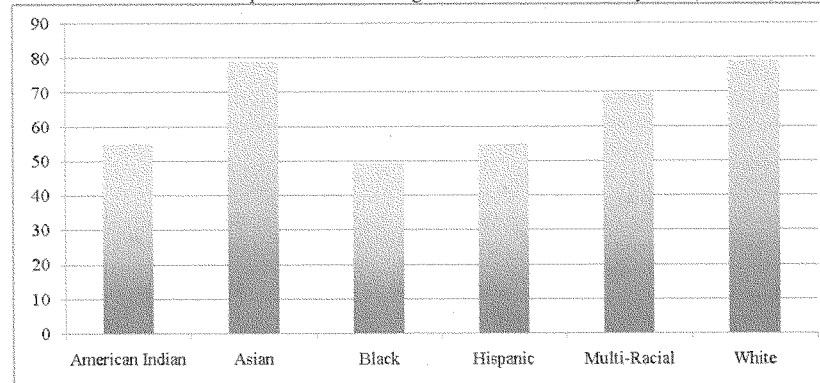


Table 1: Proficiency on EOGs and EOCs (2011-12)

Subgroup	% Proficient on all EOGs
Economically disadvantaged	54.2
Not economically disadvantaged	84.1
Limited English proficient	31.7
Not limited English proficient	70.0
Students with disabilities	32.8
Non-disabled students	72.5

Table 2: National Assessment of Educational Progress (2011)

Test	% Below Basic	% Below Proficient
4 th grade reading	32	66
4 th grade math	12	56
8 th grade reading	26	69
8 th grade math	25	63

Chart 3: Four-year cohort graduation rates by race (2011-12)

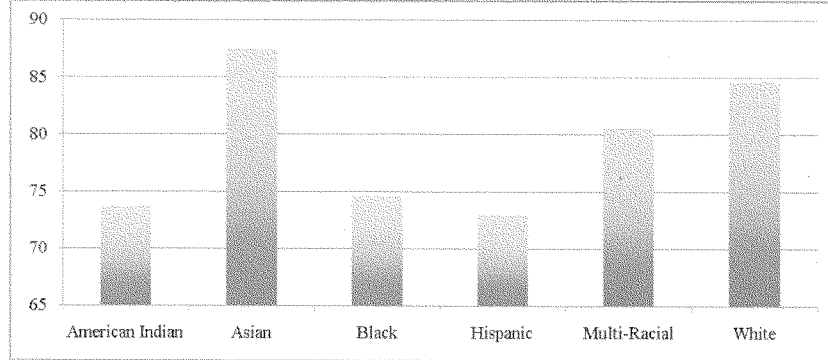


Chart 4: Four-year cohort graduation rates (2011-12)

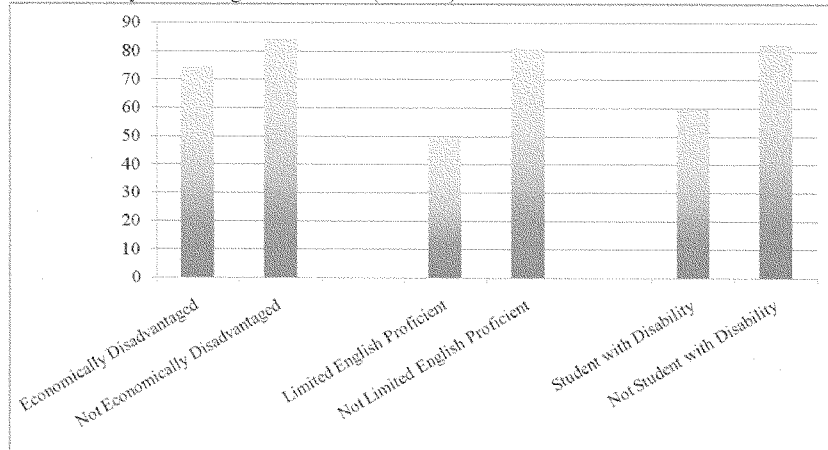


Chart 5: Short-term suspension rates (per 10 enrolled) by race (2010-11)

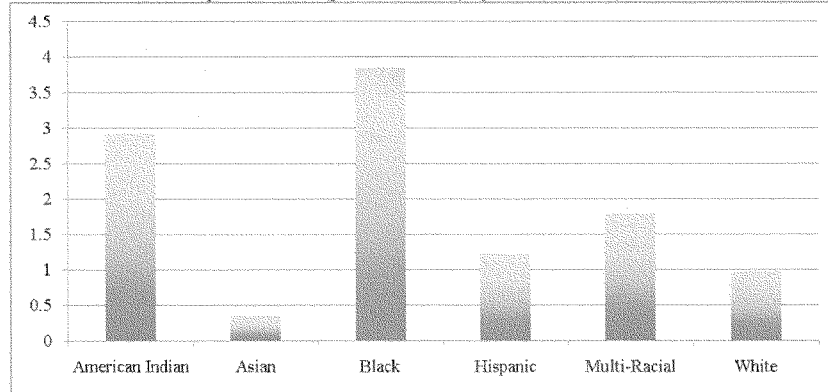


Chart 6: Long-term suspension rates (per 100,000 enrolled) by race (2010-11)

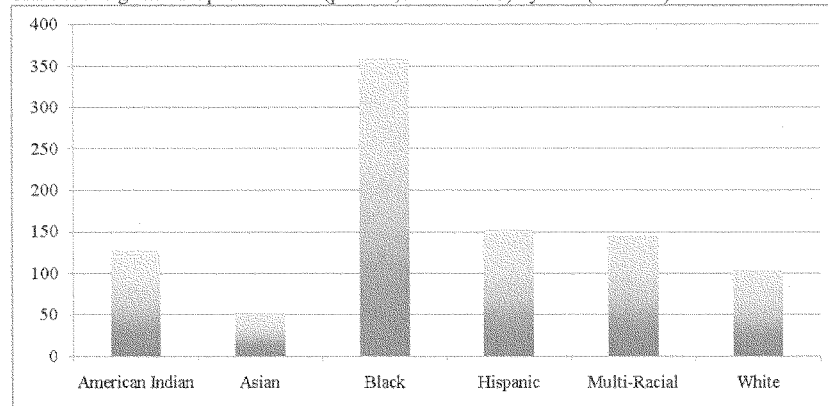


Table 3: School-based delinquency complaints for minor offenses (2010-11)

Offense	Complaints	Offense	Complaints
Communicating threats	716	Simple affray	1,589
Disorderly conduct	2,190	Simple assault	2,266
Misdemeanor larceny	798	Ungovernable or truant	1,202



Advocates for Justice and Education, Inc.

The Parent Training and Information Center for the District of Columbia

U.S. Senate
Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin, Ranking Member Graham, and Committee Members,

I would like to sincerely thank you for bringing attention to this pernicious issue that is in fact causing great harm to students and their families all over this country. At Advocates for Justice and Education (AJE) our mission is to educate parents, youth and the community about the laws governing public education, and to empower parents and students to self-advocate. We also provide direct services to parents and students in special education and school discipline cases.

We have seen directly how schools legally and illegally remove students from instructional time through suspension. We receive a significant number of cases in our work regarding students who have been suspended from school for questionable reasons and often with disregard to due process. Students with disabilities rarely receive legally protected related services while they are out on these suspensions.

Studies show that suspensions and expulsion are applied disproportionately. Students of color, students with disabilities and students from low-income families are more likely to be excluded from school than their peers. Students who are suspended or expelled are more likely to fail to graduate on time, drop out of school, and become involved in the juvenile justice system.

We know that exclusion from school is a weapon of choice used by administrators in order to respond to behaviors deemed inappropriate. While no studies have ever shown that suspension changes these inappropriate behaviors (and the multiple suspensions students report for similar behaviors is a key indicator that it did not work) suspensions

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Skills!**

do insure a loss of instructional time. Suspensions concern us greatly as they serve as a gateway for students to exit out of schools and education.

We have a hybrid educational system in the District of Columbia. We have traditional public schools that educate roughly 55% of the student population and ever growing number of public charter schools that educate the other 45 %. Each charter schools in the District is allowed to define their own discipline rules and the there is no uniform system of oversight for parents and students. The traditional public schools have legal processes but they are not always adhered to and very difficult to asses from the outside.

The majority of suspensions in the traditional public school (over 10,000 last year for a total student body of 46,048 students) are for less than 10 days. They are by definition for situations that are not egregious or where no actual harm has occurred and they are not appropriate – they should be replaced by evidence based programs that specifically address the problem and provide students with the necessary supports to develop appropriate behaviors.

The public charter schools on the other hand have a very high number of school expulsions - 210 official expulsions last year – but many more students are threatened with expulsion so that they will voluntarily withdraw from school. Both systems rely on student removal (temporary or permanent) that does nothing to address the problematic behavior but instead adds to the disengagement of students from school and their education.

Here is a snap shot of the data on traditional public schools in the District last year.

- There were 3,485 suspensions given to 4,476 students, in the 13 middle schools in the city.
- The vast majority of those suspensions, 3,377, were for behaviors that were considered not dangerous.
- Of those students suspended 826 had more than one suspension.
- Eight percent of middle school students lost more than 5% of instructional days last year because of suspension.

These numbers are staggering and directly affect the educational outcomes of our students. There are better ways to address problems. We had a case from one of these middle schools last year. A student was horse-playing with another student over a book bag. After school, the student tried to return the other student's book bag. The mother was informed that her student was suspended not for horse-playing but for being in the school building after school hours; the suspension was for 8 days.

This week the local public radio station aired a story on the positive effects of family engagement including reduced absences, better test scores and higher graduation rates. In the story a principal of one of the public middle schools was quoted as saying she has **already** seeing the benefits of what she calls the "exhausting but awesome" effort to have teachers visit students in their homes. Last year her school had 250 suspensions. This year, she says they're on track to cut that rate in half. "There are students that are surprised that teachers are coming into their homes, so they check their behavior a little bit more in the school building because they think, 'oh my god, my teacher might come back!'. Clearly a home visit has a better chance of reducing suspensions than do more suspension.

The Maryland State Board of Education approved revisions to its rules regarding suspension, including banning zero tolerance and automatic consequences. The goal is to keep students in school and to address the problems students face. We believe that approach would greatly improve the prospects for students as they navigate the turbulent and tricky adolescent years to become successful members of the community. We believe the federal government could support the work we are doing on the ground if they would:

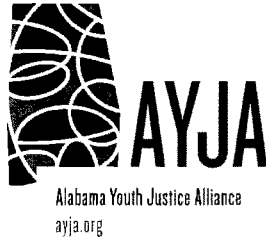
- Require all schools to annually report in- and out-of-school suspensions, students receiving multiple suspensions, expulsions, instances of corporal punishment, school-based arrests and referrals to law enforcement agencies, and referrals to disciplinary alternative schools. The data collected should be disaggregated by race, gender, special educational status, socioeconomic status, and English proficiency, and cross-tabulated to allow for more insightful review.
- Connect federal funding opportunities to schools demonstrated proposal to address the disparity in suspension data amongst the various disaggregated groups.
- Provide support for evidence based programs that effectively address behavior in schools for communities to adopt and change the way in which they respond to behavior challenges.

Advocates for Justice and Education, Inc.

We must turn this trend around and use our schools to support students and their families with alternatives to suspension and programs that will help students to be successful. If we continue to use criminal responses to student behavior we will in fact create more criminals – what we need to do is create healthy educated young people and to do that we need to change the way we approach discipline in schools.

Sincerely,

Kim Y. Jones
Executive Director



December 10, 2012

U.S. Senate Committee on the Judiciary
 Subcommittee on the Constitution, Civil Rights and Human Rights
 224 Dirksen Senate Office Building
 Washington, D.C. 20510
Stephanie_Trifone@Judiciary-dem.Senate.gov

Re: Hearing on Ending the School-to-Prison Pipeline

Dear Chairman Durbin, Ranking Minority Member Graham, and Members of the Subcommittee on the Constitution, Civil Rights, and Human Rights:

Thank you for the opportunity to submit testimony for the hearing on ending the school-to-prison pipeline before the subcommittee on the Constitution, Civil Rights, and Human Rights Senate Committee on the Judiciary. My name is Ebony Howard and I am writing on behalf of the Alabama Youth Justice Alliance (AYJA) – an organization of youth-interested advocates, organizations, groups, coalitions, and families who are dedicated to ensuring that Alabama's youth have the tools and opportunities necessary to grow into healthy, responsible, productive, and happy adults.

AYJA members run the gambit of organizations and individual advocates, ranging from juvenile defense attorneys, parent advocates, and impact litigation organizations. Accordingly, the membership has witnessed the negative impact of the school-to-prison pipeline in various forms. A common thread amongst the many examples that we have seen are that the affected youth are almost always youth of color and from the lower ends of the socioeconomic ladder. As a result, an entire generation of youth will be hugely impacted by governmental decisions to institute policies and practices that serve to criminalize them and reinforce negative stereotypes about disadvantaged youth of color.

Indeed, children in Alabama contend with harsh discipline policies and practices that push them out of schools and into the juvenile and criminal justice system. Students in some Alabama school districts are often suspended or expelled for minor infractions, such as dress code violations, and relegated to alternative schools with little effective educational instruction or forced to drop out of school completely. Moreover, these policies and practices often result in subjecting students to traumatic punishment that will leave a permanent in-print on their lives.

The Birmingham City School System, for example, has for more than 15 years permitted officers from the Birmingham Police Department to occupy their schools with little to no training on adolescent development or working with youth. The result has been arrests of students for normal adolescent misbehavior, such as talking back or school yard fights, and also the use of harmful tactics against students, like pepper spray and excessive physical force.

The actions of educators and law enforcement in schools have a direct and causal connection to the filtering of children into the juvenile justice system and, ultimately, the criminal justice system. Studies are clear that the arrest of a youngster increases the likelihood that he or she will drop out of high school and most likely enter the juvenile justice system. Research also evidences that youth held in secure facilities learn negative social behavior that increase the likelihood of adult criminality.

Many youth find themselves funneled directly into the adult justice system at a young age, where they are susceptible to physical and sexual assaults, along with an increased likelihood of succumbing to mental illnesses. These youth are far more likely to commit suicide than youth held in juvenile facilities. Also, youth incarcerated in adult facilities have been shown to be 34% more likely to reoffend upon release compared to youth held in juvenile facilities. Researchers surmise that these youth are unable to focus their incarceration towards rehabilitation because they spend the majority of their time surviving the harsh realities of adult incarceration. In light of this reality, the more than 1,000 children tried as adults in Alabama each year is, at a minimum, alarming.

AYJA strongly encourages you to work with our community and communities across the nation to end policies and practices that fuel the school-to-prison pipeline. Our children deserve better. We must work to ensure that every child – regardless of race or class – receives a fair opportunity for a bright future. Children are among the most vulnerable in our society. Their inability to act for themselves, along with their unique propensity towards change and rehabilitation mandate that we refrain from instituting obstacles in their lives that harm them.

Sincerely,



Ebony Howard
Alabama Youth Justice Alliance
Alabama District 2
Alabama

Bob Wise
Governor of West Virginia, 2001–2005



December 11, 2012

The Honorable Dick Durbin
Chairman
U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights,
and Human Rights
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Lindsey Graham
Ranking Member
U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights,
and Human Rights
290 Russell Senate Office Building
Washington, DC 20510

Re: School-to-prison pipeline hearing

Dear Chairman Durbin and Ranking Member Graham:

The Alliance for Excellent Education would like to thank you for your leadership in convening the hearing on the school-to-prison pipeline. As students of color and diverse ethnicities rapidly become the leading populations of public school systems in numerous states, increasing high school graduation rates, closing educational achievement gaps, and providing a quality education that ensures that all students are prepared for college and a career, are not only moral imperatives, they are economic imperatives as well. This hearing is an opportunity to learn more about the negative policies and practices that continue to disproportionately impact students of color and ways to most effectively respond.

The U.S. Census Bureau projects that by the year 2050, more than 50 percent of the U.S. population will be made up of people of color. Given this steep demographic shift, the academic performance of students of color and Native students and the characteristics of the schools they attend are important factors that must concern all Americans. In 2008, only 57 percent of all black students graduated from high school on time with a regular diploma, compared to 78 percent of white students.

According to the U.S. Department of Education's Office for Civil Rights Data Collection, African American students are more than three and a half times more likely to be suspended or expelled than are their white peers. Out of forty-six states, Illinois has the widest gap in school suspension rates between black and white students. The suspension rate for African American students was more than 30 percent during the 2009–10 school year, compared to 6 percent of white students. In New York City, there are more than 5,100 police personnel in public schools, compared to approximately 1,500 social workers and 3,000 guidance counselors. Furthermore, in high schools where at least 75 percent of the students are low-income, there are three times as many uncertified or out-of-field teachers teaching both English and science than those teaching in schools with wealthier populations.

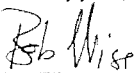
The consequences of these conditions on individual students and society as a whole are devastating:¹

- In 2010, dropouts earned, on average, about \$9 per hour, compared to high school graduates and those with a bachelor's degree, who earned \$13 and \$25 per hour, respectively.
- In 2010, high school dropouts posted an unemployment rate of nearly 15 percent, which was 5 percentage points higher than that of high school graduates and almost 10 points higher than those with a bachelor's degree.
- In 2011, the national four-year graduation rate for African Americans was 38 percent; for white students, it was almost 60 percent.
- Nearly half of the nation's African American students attend high schools in which graduation is not the norm, compared to 11 percent of white students.
- On average, African American and Hispanic twelfth-grade students read at approximately the same level as white eighth graders.
- More than 60 percent of black students attend schools where more than 50 percent of the school population is identified as living in poverty, compared to 18 percent of white students.
- If just half the nation's dropouts had graduated in 2011, the nation would likely see as much as \$18 billion more in home sales and 36,000 new jobs by the midpoint of these new graduates' careers; annual gains of \$659 million more in auto sales; \$7 billion in increased earnings; \$659 more in state and local tax revenues; and savings of as much as \$5.6 billion in college remediation costs and lost earnings.

Hopefully this hearing will mark the beginning of a concerted effort to pass legislative reforms targeting these conditions and that continue to invest in the nation's youth and their potential.

These students are not at risk of dropping out as a *result* of their racial, ethnic, English proficiency, disability, or housing or economic status. However, these characteristics drive the moral imperative to ensure that they each receive a high-quality education. The absence of a college- and career-ready education for all students is a civil rights and social justice issue that the federal government cannot ignore. Failing to address this issue will continue a cycle of poverty and disenfranchisement that the education system itself is intended to disrupt.

Sincerely yours,



Bob Wise
President

¹Alliance for Excellent Education, *Inseparable Imperatives: Equity in Education and the Future of the American Economy* (Washington, DC: Author, 2012).





Statement of

LAUREL G. BELLOWS

President

on behalf of the

AMERICAN BAR ASSOCIATION

Submitted for the record of the hearing on

ENDING THE SCHOOL-TO-PRISON PIPELINE

before the

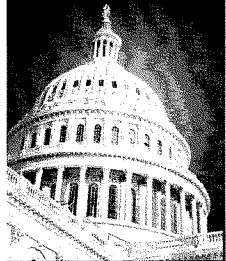
Committee on the Judiciary

Subcommittee on the Constitution, Civil Rights and Human Rights

of the

U.S. SENATE

December 12, 2012



Governmental Affairs
Office

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December 12, 2012

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Chairman Durbin, Ranking Member Graham, and Members of the Subcommittee:

I am Laurel Bellows, President of the American Bar Association (ABA), and I am submitting this statement on behalf of the ABA for the Subcommittee's consideration for its December 12, 2012 hearing on "Ending the School-to-Prison Pipeline."

The ABA, with nearly 400,000 members, commends the Subcommittee for holding this hearing. There is growing evidence that our public schools overly rely upon suspensions, expulsions, and referrals to law enforcement in managing student behavior. These practices have a disproportionate impact on students of color, students with disabilities and other subgroups and result in increased juvenile justice system involvement for suspended or expelled students. Student involvement with the juvenile justice system in turn substantially increases the likelihood that these students will later serve time in our Nation's prisons and face life-long collateral consequences creating barriers to adult success and productivity. The ABA believes that our educational and criminal justice policies should be reformed and strengthened to replace these practices and that these reforms will substantially reduce the numbers of young persons entering or having contact with the juvenile justice system.

Since the mid-1990s, "zero tolerance" policies have made public schools a major feeder of youth into the juvenile courts. These policies, which typically require disciplinary exclusion for first-time problem behavior, have reduced the discretion of school officials to fashion appropriate discipline. Although zero tolerance policies initially related solely to serious misconduct such as possession of firearms, they have been widely expanded to apply to behavior that used to be addressed by in-school punishment or counseling referrals. These policies have become commonplace throughout the country and currently result in millions of suspensions or expulsions each year, despite that only a small percentage of these policies are required by state law. Consequently, in 2001 the ABA adopted a resolution opposing zero tolerance policies in schools. The resolution states that "the ABA opposes, in principle, 'zero tolerance' policies that have a discriminatory effect, or mandate either expulsion or referral of students to juvenile or criminal court, without regard to the circumstances or nature of the offense or the student's history."

Disciplinary exclusion from school operates as an indirect route to involvement with the justice system by preventing youth from progressing in and completing school, and thus impairing their chances of succeeding in life. "Prior suspension is more likely to cause a child to drop out of high school than any other factor, including low socioeconomic status, not living with both biological parents, a high number of school changes, and having sex before age 15."¹ Children who do not finish high school are 3.5 times more likely to be arrested as adults. Additionally, approximately 82 percent of the adult prison population consists of high school dropouts.²

¹ Suhyun Suh, Jingyo Suh, & Irene Houston, "Predictors of Categorical At-Risk High School Dropouts," 85 *Journal of Counseling and Development* 196, 196-203 (Spring 2007).

² Coalition for Juvenile Justice, *Abandoned in the Back Row: New Lessons in Education and Delinquency Prevention* (2001). See also *School Expulsion: A Life Sentence?* By Sarah Biehl, *Children's Rights*, March 15, 2011 <http://apps.americanbar.org/litigation/committees/childrights/content/articles/spring2011-expulsion-suspension-zero-tolerance.html>

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The second, more direct route from school-to-prison is when school personnel call police to arrest children for school-based behavior, often involving minor offenses. An increase of police on school campuses has also contributed to the increase in arrests of students for minor infractions.³ Children, even those as young as five years-old, are being arrested, handcuffed and led out of the school for offenses such as throwing a temper tantrum, truancy, being late to school or breaking a pencil. These children do not belong in jail and these offenses should be handled at school rather than by the criminal justice system. Children with a delinquency or criminal record face many barriers to re-entry into traditional schools. The severe collateral consequences of even a relatively minor juvenile or adult record can include denial of student loans for post-secondary or vocational education, a prohibition on living in public housing and barriers to obtaining employment, including enlisting in the military.

Moreover, the school-to-prison pipeline has a well-documented disproportionate impact on minority and special needs students. Black students are 3.5 times more likely to be suspended than their white peers.⁴ Students with disabilities are suspended and expelled at disproportionate rates.⁵ The U. S. Secretary of Education Arne Duncan recently asserted that school discipline has become “the civil rights [issue] of our generation.”⁶ Civil rights laws protect students against disparate outcomes, but those laws cannot be enforced in court. Without an enforcement mechanism, school districts have no incentive to implement policies and practices that prevent disproportionate exclusions of students of color, students with disabilities and other minority groups. The ABA in 2009 approved policy that urges federal agencies to assure accountability and to ensure that no group of students is disparately subjected to school discipline or exclusion. We believe that significant improvement is needed in the U.S. Department of Education for enforcing these provisions and enabling students and their parents to pursue remedies when they are denied and what is required.

In addition to these obvious aspects of the school to prison pipeline based on disciplinary responses, other school issues also contribute to the problem. The high dropout and low graduation rates for many of our students, particularly those of color, reflect a broader failure of the school system to engage those students in meaningful education opportunities.

Research has begun to cast doubt on the effectiveness of harsh discipline policies. As the Report that accompanied the ABA policy on the right of youth to remain in school (August 2009) noted, “Research suggests that using exclusion as a means of punishment is ineffective in helping students change problematic behavior or in making schools safer.”⁷ In fact, the majority of

³ N.Y. CIVIL LIBERTIES UNION, CRIMINALIZING THE CLASSROOM: THE OVER-POLICING OF NEW YORK CITY SCHOOLS 16-18 (2007) <http://www.aclu.org/pdfs/racialjustice/overpolicingschools_20070318.pdf> (last visited Apr. 9, 2009).

⁴ Daniel J. Losen & Russell Skiba, *Suspended Education: Urban Middle Schools in Crisis*, Southern Poverty Law Center (2011). See also Tamar Levin, *Black Students Face More Discipline, Data Suggests*, NY Times, March 6, 2012.

⁵ Donna St. George, *Maryland Moves to Limit Student Suspension*, Washington Post B1, Feb. 29, 2012.

⁶ See Levin, *supra* note 4.

⁷ Russell J. Skiba & M. Karega Rausch, *Zero Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness*, in HANDBOOK OF CLASSROOM MANAGEMENT: RESEARCH, PRACTICE, AND CONTEMPORARY ISSUES 1063, 1071-72 (Carolyn M. Evertson & Carol S. Weinstein, eds., 2006).

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incidents for which students are excluded from school are related to nonviolent disciplinary offenses such as tardiness, absenteeism, disrespect and altercations between students.⁸

For all these reasons, the ABA promotes the following policies:

End Harsh Discipline Policies That Do Not Make Schools Safer But Instead Push Youth Out

Our educational system should not mandate one sentence -- exclusion from school -- for misbehavior ranging from such minor offenses as school uniform violations to such significant safety threats as bringing a gun to school. Given the devastating impact of these policies as well as the fact that research has shown them to be ineffective, zero tolerance policies should be eliminated. Exclusion from school should be reserved only for those very serious safety related offenses that cannot be addressed without a child's removal from the regular educational setting.

Removing a student from their courses of instruction through suspension or expulsion, when behavior does not cause, or is not likely to cause, injury to self or others, runs counter to important school goals of ensuring *all students* a high-quality education aligned with national, state and local standards. Suspensions or exclusions that push youth out of school have been associated with poor academic achievement and grade retention.⁹ Frequent and lengthy suspensions, or expulsion, lead to alienated and disengaged students who may even feel "rewarded" by a personal desire not to attend school. Exclusion can also contribute to a youth's involvement in delinquency and gang involvement, as it provides substantial time alone without adult supervision.¹⁰

With respect to students with special needs, the ABA recommends that the federal government closely monitor schools to ensure that they follow the mandates of federal special education law that require schools to determine whether behavior is a manifestation of a student's disability before the student may be removed from school for ten days or more.¹¹ In addition, under the Individuals with Disabilities Education Improvement Act, students have a right to alternative education when suspended or expelled from school.¹²

Provide Full Procedural Protections and Counsel to Youth in Disciplinary Hearings

The ABA calls for consistent application of full procedural protections and due process for expulsion hearings across the country, including the right to counsel. In *Goss v. Lopez*,¹³ the Supreme Court stated that a child who is facing a long exclusion from school may require more

⁸ Skiba & Peterson, *supra* note 2, at 373.

⁹ See Linda M. Raffaele Mendez, Predictors of Suspension and Negative School Outcomes: A Longitudinal Investigation, in *DECONSTRUCTING THE SCHOOL-TO-PRISON PIPELINE* 26 (Johanna Wald & Daniel J. Losen, eds. 2003) (internal citations omitted). See also Lawrence M. DeRidder, How Suspension and Expulsion Contribute to Dropping Out, 56 *EDUC. DIGEST* 44-47 (Feb. 1991).

¹⁰ Russell Skiba & Reece Peterson, The Dark Side of Zero Tolerance: Can Punishment Lead to Safe Schools?, 80 *PHI DELTA KAPPAN* 372, 376 (1999).

¹¹ 20 U.S.C. 1415(k)(1)(E); 34 C.F.R. 104.35.

¹² 20 U.S.C. 1415(k)(1)(D).

¹³ 419 U.S. 565 (1975).

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formal procedures. Federal and state courts have enforced some of those protections.¹⁴ These provisions are inconsistently applied throughout the country, and many jurisdictions fail to provide adequate procedural protections.

Representation for children at disciplinary hearings where they risk exclusion from their regular educational program is a key way to help reverse the pipeline. Without an attorney, a child and his/her family will not know or be able to exercise the child's due process rights under *Goss v. Lopez*,¹⁵ including the right to: written notice of the allegations; a hearing prior to imposing the exclusion; an impartial hearing officer; cross examine the school's witnesses; and presentation of witnesses and other evidence in the hearing.¹⁶ An attorney will also be able to ensure that the school district is abiding by the mandates of special education law. In 2009, the ABA adopted a resolution that called for "full procedural protections, including the opportunity to have representation by counsel in proceedings . . . [and] the appropriate provisions of due process in other school disciplinary processes."

End the Criminalization of Truancy, Disability-related Behavior and other School Related Conduct

In 2009 the ABA policy on a youth's right to remain in school also called for reducing the criminalization of truancy, disability-related behavior and other school-related conduct. We urge that in place of the criminalization of school-related conduct, schools should treat student behavior as an education issue and provide training to school personnel on a variety of topics, including child and adolescent emotional and cognitive development and culturally responsive discipline.

Ensure a Path for Return to School

Students who have been removed from school either through discipline policies or as a result of incarceration must have a path to resume and continue their education and obtain a high school diploma. The ABA urges enactment and implementation of statutes and policies that support the right of youth who have left school to return to school to complete their education in high-quality, age appropriate programs.

Implement Strong Civil Rights Monitoring and Enforcement of School District Practices

The ABA urges federal agencies to assure accountability and to ensure that no group of students is disparately subjected to school discipline or exclusion. This includes developing policy and legal definitions for determining disparities using data and using those legal definitions for monitoring and enforcement. We support strong monitoring and enforcement Department of Education Office of Civil Rights (OCR) within the Federal Department of Education and by the Department of Justice of discriminatory practices by school districts that contribute to the pipeline, including rigorous enforcement of title 34 of the Code of Federal Regulations, section

¹⁴ Brent Pattison, QUESTIONING SCHOOL DISCIPLINE: DUE PROCESS, CONFRONTATION, AND SCHOOL

DISCIPLINE HEARINGS, 18 *Temp. Pol. & Civ. Rts. L. Rev.* 49 [citing cases in footnotes 23-28]

¹⁵ 419 U.S. 565 (1975).

¹⁶ Brent Pattison, *Questioning School Discipline: Due Process, Confrontation, and School Discipline Hearings*, 18 *Temp. Pol. & Civ. Rts. L. Rev.* 49 (52) (2008).

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100.3, subdivision (b)(2), that prohibits the recipient of federal funds from “utilize[ing] criteria or methods of administration which have *the effect of* subjecting individuals to discrimination” (emphasis added). We urge federal agencies to enforce civil rights laws by applying the “disparate impact” analysis.

Support the Implementation of Evidence-Based Disciplinary Practices

The ABA urges the federal government to devote resources to identifying programs that minimize disciplinary exclusion and referrals while promoting school safety and incentivize school districts to adopt improved practices to these ends.

Congress should take legislative action to support to reduce referrals and over-reliance on the criminal justice system for school and school-related youth behavior problems, as follows:

Congress should act to reauthorize and amend the Juvenile Justice and Delinquency Prevention Act (JJDP)

The JJDP Act plays perhaps the most important federal role in developing and implementing practices to provide prevention strategies for problem youth behavior and support for alternative to resort to the criminal justice system and to ameliorate the results of juvenile justice system involvement.

The JJDP provides for a federal-state partnership for delinquency prevention and improvements in state and local juvenile justice programs and practice and supports operation of the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP), dedicated to training, technical assistance, model programs and research and evaluation, to support state and local efforts.

We support amending the Act to strengthen its current Disproportionate Minority Contact core protection by requiring states to take concrete steps to reduce racial and ethnic disparities in the juvenile justice system. The OJJDP should receive strong support through increased funding for the Title II Formula Grant program that supports OJJDP’s role in promoting state implementation of reforms aimed at reducing disproportionate minority contact and involvement with the juvenile justice system.

The Act should be amended further to strengthen its deinstitutionalization of Status Offenders core protection, which prohibits the locked detention of status offenders, by removing the Valid Court Order exception. In establishing that status offenders (truants, curfew violators, runaways, youth who disobey their parents) should not be detained in the original 1974 JJDP, Congress recognized that status offenses are nondelinquent and noncriminal and, therefore, detention was not appropriate. However, the Valid Court Order (VCO) exception enacted in 1980 allows status offenders to be locked up for their second and subsequent status offense, that is, for violating the court’s order not to commit another status offense. Although only a minority of states resort to the VCO exception, hundreds of thousands of youth nationwide are locked up in criminal facilities each year for status offenses.

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Juvenile status offenders are at high risk to enter the juvenile and criminal justice systems and research has clearly linked involvement in the juvenile status offense system with later delinquency.¹⁷ Many of these youth are faced with a myriad of complex problems: abuse, neglect, high family conflict and domestic violence; desperately poor and violent neighborhoods; serious mental health needs, learning disabilities, emotional or behavioral problems; gangs; bad peer group choices; and poor educational and employment options.

Congress should amend the JJDP to articulate minimum guidelines by which states must comply to implement early intervention and diversion programs for alleged juvenile status offenders. These recommendations intend to promote the development of laws, policies and programs that decrease the number of status offenders who fall deeper into the criminal and juvenile justice systems by providing them with proven pre-court diversion services that remedy their noncriminal misbehaviors and are tailored towards their needs and the needs of their families.

Congress should further amend the JJDP to require states to enact laws and support policies and programs that divert alleged juvenile status offenders from court jurisdiction by requiring the development and implementation of evidence-based programs¹⁸ that provide family-focused and strength-based pre-court interventions to alleged status offenders.

Finally, JJDP should be amended to establish an advisory panel to assist OJJDP on implementing evidence-based reforms to reduce youth contact and entry into the criminal justice system. Representative Bobby Scott (D-VA) has introduced legislation (H.R. 2721, the Youth Promise Act) offering this proposed amendment to the JJDP. The advisory panel proposed in the Youth Promise Act would perform a critical role aimed at ending the progression from minor behavior problems to disciplinary action and criminal justice involvement by focusing on programs and practices that can demonstrate that they work. It would operate within OJJDP to: assess and develop standards for evidence-based practices to prevent juvenile delinquency; make grants to local governments and Indian tribes to plan and assess evidence-based and promising practices for juvenile delinquency prevention and intervention, especially for high-risk youth; and implement plans by local coordinating councils for supporting the delivery of juvenile delinquency prevention and intervention.

* * * * *

Thank you for the opportunity to share the views of the American Bar Association. We look forward to working with the Subcommittee as it moves forward on legislation to bring an end to the school-to-prison pipeline.

¹⁷ See, e.g., Henry, K. and Huizinga, D. "Effect of Truancy on Onset of Drug Use and Delinquency." Presented at Annual Meeting of American Society of Criminology, November, 2005.

¹⁸ "Evidence-based" prevention, intervention, and treatment programs for youth and their families are resources that have been carefully evaluated to determine their long-term positive outcomes.



President
 Diann Woodard
Executive Vice President
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December 10, 2012

Senator Dick Durbin, Chairman
 Senate Judiciary Committee on the Constitution, Civil Rights, and Human Rights
 226 Dirksen Senate Office Building
 Washington, DC 20510

Dear Senator Durbin,

As President of the American Federation of School Administrators (AFSA), AFL-CIO, I commend you for your leadership efforts toward ending the School-to-Prison Pipeline.

As principals, assistant principals and other school leaders, AFSA members care deeply about this issue. There are far too many youth that are sent to the juvenile delinquency system and are unable to succeed at school. This leads to increased crime and incarceration, which disproportionately impacts minorities.

As school leaders, we understand that creating a safe and secure learning environment is a top priority. A positive school culture and climate is essential and helps to naturally reduce incidents of school discipline and crime.

AFSA has long supported policies that aim to improve school climate and disciplinary practices that are grounded in research and evidence. There must also be direct input and involvement from principals, representatives of the school system, local law enforcement, court services, social services, health and mental health providers, foster care providers, and other community and faith based organizations.

School leaders also need ongoing training and support in these areas. Through collaboration of all stakeholders, it is our belief that we can champion successful initiatives to end the School-to-Prison Pipeline.

Thank you for your support of improving public education for all children.

Sincerely,

Diann Woodard
 AFSA National President

DW/ns
 afsa/afl-cio



A Union of Professionals

**Statement of the American Federation of Teachers
Before the Senate Committee on the Judiciary
December 12, 2012**

The American Federation of Teachers appreciates that Sen. Durbin and the Judiciary Committee are shining a light on a problem ignored too often and discussed too little: the increase in the number of young people who are suspended from school and end up in the juvenile delinquency system.

AFT members—classroom teachers, paraprofessionals, social workers, mental health professionals and school nurses—are unwilling to turn our backs on millions of children. Children cannot learn if they are not in the classroom. Nor can they or their peers learn, or teachers teach, in a school environment that is not safe, stable and engaging. Too often both these situations occur as a result of inadequate resources, lack of training and the insufficient implementation of safe and responsive plans and procedures to address and respond to violent and disruptive behaviors.

This is a serious issue that demands a serious national response. Our failure to collectively address the issue of school safety, out-of-school suspensions and the lack of high-quality alternative placements not only hurts the students who are suspended, but also has a direct impact on our entire community. School boards, building and district administrators, parents, teachers and elected officials all have a collective responsibility to address this issue.

If we are to break the school-to-prison cycle that affects too many of our children, the AFT recommends increasing the availability of proven and effective programs for the students and schools that need them most. Strategies that might be made available include:

- In-school disciplinary alternatives such as Saturday school or in-school suspension programs that keep students in school while being disciplined. Components of effective in-school suspension programs include appropriate student supervision by well-trained and highly qualified staff, designated space and a cohesive plan for reintegration.
- Co-curricular activity suspension from clubs or activities until students have adequately addressed the behavior that resulted in the suspension.
- Anger management classes or programs designed to help students who have demonstrated a lack of self-control or distorted perceptions of others. These classes may help students with aggressive behavior change their perceptions and learn alternative behaviors in conflict situations.
- Alternative settings to address severe behavioral challenges while providing continued access to educational programming.
- Individual behavior plans may provide a useful tool for addressing problematic behavior for nondisabled and disabled students alike.
- Alternative disciplinary methods such as peer court and restorative justice shift the burden of discipline from administrators and other adult designees to student peers. Peer courts use a panel of students to hear disciplinary infractions and assign consequences. In restorative justice, students who have harmed other students are forced to face their victims and confront their actions, with the goal being to actively engage in actions that restore a sense of justice.
- Integrated Community Response by education, mental health, welfare and law-enforcement agencies that develop a wraparound, cohesive plan of support spreading across the student's school, family and community. Chronically disruptive youth are often wards of one or more service

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agency; therefore, coordinating an interagency response on behalf of the student is more likely to improve his or her chances of a positive outcome.

The AFT strongly believes that developing an array of options for responding to disruptive or violent behavior may reduce over-reliance on suspension and expulsion. This is clearly an example where we cannot be penny-wise and pound-foolish. Investing earlier in proven and effective programs and comprehensive, community-based wraparound services increases the likelihood that children will stay in school and out of jail and, perhaps most important, will gain the skills and knowledge needed to succeed in life and become productive members of society.

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December 19, 2012

The Honorable Richard Durbin
United States Senate
Chair
Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
711 Hart Senate Building
Washington, D.C. 20510

Dear Senator Durbin:

We are writing to provide the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights with the views of the Anti-Defamation League (ADL) as part of the Subcommittee's December 12 hearing, *Ending the School-to-Prison Pipeline*. We would ask that this statement be included as part of the briefing record.

ADL is a leading civil rights organization that has been working to secure justice and fair treatment for all since its founding in 1913. As part of that mission, ADL has a long and proud history of supporting quality public education for all. ADL believes that harsh disciplinary policies in schools that lead to out-of-school suspensions and expulsions for even minor infractions of school conduct codes undermine the goal of quality public education for all.

When schools suspend or expel students, those students are more likely to drop out of school and ultimately become incarcerated. A student who has been suspended from school is more than three times more likely to drop out in the first two years of high school than a student who has never been suspended.¹ Students who drop out of school have more difficulty finding gainful employment and ultimately are more likely to become involved with the criminal justice system. One study found that rates of incarceration for young adults who dropped out of high school were more than 63 times higher than rates of incarceration for young adults with college degrees.²

Even when students do not drop out of school, school disciplinary procedures that remove students from classrooms and take them away from valuable learning time impede academic success. In a study about how time out of school affects students' academic performance, researchers found that third graders' reading and math state exam scores were three percent lower when students missed five academic school days because of snow-related school closings than when the school had no closings during the academic year.³ It is unsurprising, then, that when students spend days out of the classroom due to out-of-school suspensions or expulsions their academic performance suffers. A comprehensive study in Texas found that nearly one third of students who were suspended one or more times had to repeat a grade at least once.⁴ Research has shown that schools that have high rates of suspensions and expulsions perform less well academically than schools that use those discipline methods less, even when controlling for socioeconomic status and demographics.⁵

¹ Schott Foundation for Public Education, *The Urgency of Now: The Schott 50 State Report on Public Education and Black Males 2012*, 32 (2012), available at <http://blackboysreport.org/urgency-of-now.pdf>.

² Andrew Sum, et. al., *The Consequences of Dropping Out of High School: Joblessness and Jail for High School Dropouts and the High Cost for Taxpayers* (Oct. 2009), available at http://www.northeastern.edu/clms/wp-content/uploads/The_Consequences_of_Dropping_Out_of_High_School.pdf.

³ *The Urgency of Now* at 31.

⁴ In contrast, only one in 20 students who were not disciplined had to repeat a grade. Tony Fabelo, et. al., *Breaking School Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement*, Justice Center of the Council of State Governments, 56 (July 2011).

⁵ See, e.g., American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, 854 (Dec. 2008), available at <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>.

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Harsh school discipline policies disproportionately impact students of color, students with disabilities, and students who identify as lesbian, gay, bisexual or transgender (LGBT). During the 2009-10 school year, nationally nearly one in every six black students received at least one out-of-school suspension, compared with one in twenty white students.⁶ Students with disabilities are almost twice as likely to be suspended from school as nondisabled students.⁷ For black male students with disabilities the statistics are astounding. In one county in Virginia, almost 92 percent of black male students with disabilities were suspended from school at least once during the 2009-10 academic year.⁸ Additionally, studies have found that LGBT youth are much more likely than their heterosexual peers to be suspended or expelled.⁹

To be sure, schools have a duty to maintain a safe environment and a right to discipline students whose actions impede others' ability to learn. Many of the out-of-school suspensions and expulsions, however, are for minor school conduct code infractions. One student, for example, was suspended because her school uniform shirt became untucked.¹⁰ Another was suspended for violating the school's no cell phone policy to talk to his mother who was stationed in Iraq.¹¹ Zero tolerance policies that suspend or expel students for minor infractions and take them away from valuable time in the classroom do not lead to better learning environments. To the contrary, they harm millions of students each year and exacerbate educational inequities in public schooling.

Some alternatives to zero tolerance policies have been very successful in reducing students' contact with the criminal justice system, decreasing crime in schools, and improving graduation rates. In Clayton County, Georgia, juvenile court Judge Steven Teske pioneered a program that, instead of immediately sending students to court for minor misdemeanors, gave students warnings for first minor offenses, referrals to mediation or workshops for second offenses, and referrals to the juvenile court system only after the third offense. The program resulted not only in a drastic reduction in the number of school referrals to the juvenile court system, but also an 80 percent drop in serious weapons offenses on school campuses and a more than twenty percent increase in graduation rates over a period of seven years.¹² Programs seeking to replicate Clayton County's program in other jurisdictions have met with similar success.

We urge Congress to provide funding for programs like the one in Clayton County that use alternatives to zero tolerance policies and to study whether those programs could be replicated nationally. We further ask that Congress encourage the Department of Education to highlight Clayton County's program as a model program for other schools.

⁶ The Urgency of Now at 32.

⁷ Motoko Rich, Suspensions Are Higher For Disabled Students, Federal Data Indicate, The New York Times, A10 (Aug. 7, 2012).

⁸ Id.

⁹ Katherine E.W. Himmelstein & Hannah Bruckner, Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study, Official Journal of the American Academy of Pediatrics (Dec. 6, 2010), available at <http://pediatrics.aappublications.org/content/early/2010/12/06/peds.2009-2306>.

¹⁰ Texas Kids Suspended for Untucked Shirts, ABC News (Oct. 4, 2012), <http://abcnews.go.com/GMA/story?id=124717&page=1#.UMtN2G9IV2A>.

¹¹ Cell-Phone Student Back At School After Suspension, CNN (May 9, 2005), http://articles.cnn.com/2005-05-09/us/student.cellphone_1_cell-phone-ban-phone-on-school-grounds-cell-phone?_s=PM:US.

¹² Donna St. George, Judge Steven Teske Seeks to Keep Kids With Minor Problems Out of Court, The Washington Post (Oct. 17, 2011), http://articles.washingtonpost.com/2011-10-17/lifestyle/35280676_1_school-discipline-student-discipline-russell-skiba.

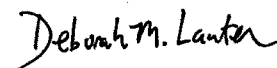
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The Department of Education's Office for Civil Rights (OCR) recently enhanced the capability of the Civil Rights Data Collection instrument to include statistics, broken down by race and ethnicity, regarding disciplinary methods for both students with disabilities and nondisabled students.¹³ Congress should ask the Department of Education to ensure that this data collection includes information not only about students' race and ethnicity, but also students' religion, national origin and sexual orientation. Furthermore, Congress should ask that the Department of Education make the results of the Civil Rights Data Collection readily available to the public.

Finally, OCR's mission is to "ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights."¹⁴ To that end, OCR conducts compliance reviews of schools and provides technical assistance to help schools comply with civil rights laws. OCR's website, however, fails to provide guidance to schools regarding suspensions, expulsions, or school discipline in general. It also fails to provide easily accessible information about its specific compliance reviews of schools and the outcomes of those reviews. We urge Congress to request that OCR alter its website to make that information easily accessible to schools and other interested viewers.

We commend the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights for holding the first hearing of its kind to address the school-to-prison pipeline. The extensive use of out-of-school suspensions and expulsions, which too often target students of color, those with disabilities, and LGBT youth harm not only those students directly affected but also undermine the goals of justice and fair treatment for all of society.

Sincerely,



Deborah M. Lauer
Director, Civil Rights

¹³ See Office For Civil Rights: Civil Rights Data Collection, <http://www2.ed.gov/about/offices/list/ocr/data.html>.

¹⁴ Office for Civil Rights: Overview of the Agency, <http://www2.ed.gov/about/offices/list/ocr/index.html>.



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Boston Chinatown Neighborhood Center.

Boston Children Thrive.

City-Wide Parents Council.

Dudley Street Neighborhood Initiative.

East Boston Ecumenical Community Council.

Freedom House.

Hyde Square Task Force.

Massachusetts Advocates for Children.

Project Right.

Sociedad Latina.

Young People's Project.

Testimony from the Boston Parent Organizing Network On the School to Prison Pipeline

December 10, 2012

We, the Boston Parent Organizing Network (BPON) staff, parents, students, and constituents support the dismantling of the school to prison pipeline. We, (BPON) support the need for this hearing about the school to prison to pipeline as it affects youth nationally, statewide, and citywide in the educational learning institutions of this country.

We support the high numbers of men and women who in the past, present and with the high probability in the future, have been sent to prison without a high school or alternative means of a diploma or the equivalence thereof which leads to that person/s with less chances of having a good paying job or a continuation in higher learning.

Over the last few years, BPON has collected the testimonies of parents, and students/non-students on zero-tolerance practices against students with special education needs, non-special education students, and students with limited language proficiency. We have seen over and over again the suspensions, expulsions and inadequate discipline procedures and practices and even administrators completing a misconduct form inaccurately. This not only demonstrates the lack of understanding of many teachers and school officials on school policy on disciplinary practices, but it also jeopardizes the proper implementation of fairer procedures and alternatives measures that already exist within the district as they are constantly ignored and not adhered to by some administrators.

BPON is a non-profit 501c3 in Boston, which supports having alternative programs to suspensions/expulsions that will engage the student/s in in-house learning practices that will keep them in school, support their MCAS proficiency, and that contribute to a positive school climate.

We know first hand that there is a lack of teacher cultural competence, classroom management, teachers of color, and state of the art educational resources in communities of color.

We (BPON) feel the Federal Government needs to take a scrutinizing approach to the policies of discipline and school practices that are used in displaying zero-tolerance practices that does not help the student but have contributed effectively to student drop-outs. We are looking for mechanisms that will keep students in school and not adding youth to the prison pipeline costing taxpayers millions of dollars to house a youth in prison. Instead those taxpayer dollars should be used to increase resources in America's national education system. We have to do better.

The BPON

"Organizing a diverse constituency of parents, students and families and other community members to support and advocate for the improvement of Boston Public Schools."

Statement of Roger Dickinson
Assemblymember, California State Assembly, 7th District

Presented to:

The Senate Judiciary Subcommittee on the Constitution, Civil rights,
and Human Rights
12/10/2012

Mr. Chairman and members of the Subcommittee, my name is Roger Dickinson, and I am a member of the California State Assembly, representing the 7th Assembly District, which encompasses the City of Sacramento and much of the urbanized County of Sacramento surrounding the City, as well as the City of West Sacramento, in Yolo County, California.

I appreciate the opportunity to submit this statement to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, regarding "Ending the School-to-Prison Pipeline." Over the past two years, I have chaired the Assembly Select Committee on Delinquency Prevention and Youth Development. I am also a member of the School Discipline Consensus Project's School Climate Advisory Group, being conducted by the Justice Center of The Council of State Governments. From these two bases, I have developed some perspective on issues concerning school disciplinary practices in my state and our nation that I would like to share with your Subcommittee.

In 2011, the Select Committee investigated issues surrounding youth development, effective and positive prevention and interventions in the lives of vulnerable youth, juvenile justice funding and reforms, and strategies for both promoting safer communities and enabling youth at risk to avoid the all too common path into the justice system. The Committee's work reflects a growing recognition in California that school discipline issues need to be better understood and problems addressed, as other branches of state government, particularly the State Judicial Council, headed by the Chief Justice of the California Supreme Court, have also begun work to end the school-to-prison pipeline.

To date, my Select Committee has held four hearings seeking to develop an understanding of youth involved in our state's many "systems", identifying proven and effective intervention and prevention strategies, discussing successful state and local programs, clarifying funding streams supporting these programs, and trying to comprehend the myriad state agencies and organizations that deliver intervention and prevention services, as well as promote youth development.

The Select Committee focused a great deal of its attention on school-based development and discipline issues. The purpose of this attention was to better understand what disciplinary policies and practices are currently being administered in California schools, and nationwide, and what kind of positive and negative impacts they have on youth development. Ultimately, the Committee formulated several recommendations on what the state Legislature can do to ensure California schools adhere to policies and programs that result in positive outcomes for school safety, academic growth, and reducing the number of vulnerable children who are at risk of entering the juvenile, and ultimately the criminal justice systems. Some of those recommendations were incorporated in several pieces of legislation which I will discuss later on in this statement. During the Select Committee's investigations, we remained mindful of how we could enhance the effective use of existing funding streams, encouraging collaborative leadership between educators and public safety practitioners, as well as filling information gaps and breaking down information-sharing barriers.

Testimony presented to the Committee revealed that current practices of addressing student disciplinary problems in many schools may have an adverse effect; contributing to, rather than ameliorating aberrant student academic and behavioral outcomes. In fact, these strategies often have the opposite effect, exacerbating the problem and further alienating the child from the school environment, and pushing them out of school. For example, in California schools, there are more than 750,000 instances of school suspensions, involving 500,000 students annually, plus an additional 21,000 student expulsions. A recent study by the Council of State Governments demonstrated that California's suspension rate exceeds the national average. This fact seems demonstrate a growing trend of school officials administering swift and punitive responses to a wide variety of student misbehavior, whether or not a student's violation of school rules was severe in nature.

The Select Committee solicited expert perspectives on data that indicated schools with higher suspension and expulsion rates have poorer outcomes on standardized achievement tests, regardless of the economic level or demographics of their students. Witnesses testified that when controlling for campus and individual student characteristics, the data revealed that a student who was suspended or expelled for a discretionary violation was nearly three times as likely to be in contact with the juvenile justice system the following year.

The Select Committee heard testimony that, in the wake of the Columbine high school tragedy more than a decade ago, a majority of schools in California adopted a "zero tolerance" policy to deal with a greater and greater number of student acts, hoping that unwavering strict punishment, such as school suspensions and expulsions, would deter future violations and illegal behavior. The Committee gained an understanding about the negative effects on students when zero tolerance policies are applied to less serious misbehavior (e.g. wearing banned types of clothing, talking back to the teacher, or failing to turn in homework).

As Chair of the Select Committee, I am completely aware that teachers and school administrators often struggle under difficult circumstances to maintain a positive learning environment in the classroom, even when students misbehave. However, a number of

Committee witnesses expressed concern that the common approach reflects a “one size fits all” to disciplinary problems, which worsens children’s attitudes toward school and increase the odds that they will enter the juvenile justice system. Rather than enhancing school safety, zero tolerance policies may be having the opposite effect. The Committee explored the phenomenon of expulsions and suspensions reinforcing negative behavior by denying students opportunities for positive socialization in school, and nurturing a distrust of adults. In short, the Committee found that school disciplinary procedures may inhibit, rather than promote positive youth development. This results in a gradual process of academic and social disengagement that increases the probability of additional disciplinary exclusions, academic failure, and eventually, dropping out.

The Select Committee became concerned with research showing that school discipline is inequitably administered across the ethnic and gender spectrums of students. Witnesses presented evidence showing that disproportionate percentages of African American, Latino, disabled, and poorer students are suspended and expelled under zero tolerance policies. As one pair of researchers put it, policymakers should be concerned about the harms that overuse of suspension and expulsions can cause to students and their academic careers. Certain racial and gender groups may be at far greater risk of being disciplined in this manner, which may ultimately become a civil rights issue as well as a predictor of future student behavior.

The Committee studied information showing the more punitive discipline sanctions are disproportionately applied to students of color and students with disabilities at unconscionable rates. The United States Department of Education has released data showing how school discipline is disproportionately applied in California. Some examples are:

- The out-of-school suspension rate for blacks in Los Angeles Unified School District is nearly 6 times the rate for whites (17.3% vs. 2.9%). This Hispanic rate is 5.2%
- In San Francisco Unified, black suspension rates are more than six times the rate for whites (14.4% vs. 2.2%). The Hispanic rate is 5%.
- For Sacramento City USD, the black suspension rates are 3.5 times that of whites (21.2% vs. 6%). The Hispanic rate is 9.3%.

The Committee heard that in addition to the astounding number of suspensions and expulsions that take place in California schools annually, 42% of the suspensions were for an act of “willful defiance.” Willful defiance is one of 24 reasons enumerated in California’s Education Code for which students can be disciplined by removing them from school.

Unfortunately, the term “willful defiance” is barely defined, yet it accounts for the single largest reason for suspensions in many school districts. In fact, data loosely collected by the California Department of Education revealed that in some school districts, more than 70% of the student suspensions were for willful defiance. According to California law, willful defiance is simply “disrupting school activities or otherwise willfully defying the valid authority of school staff.”

In effect, “willful defiance” has been a catch-all for all student misbehavior that does not easily fall into one of the other 23 categories for which students can be suspended. The high number of student suspensions that have been administered for this reason has led policy makers, like me, to conclude that it has become, all too often, a means of removing misbehaving students on the theory of “out-of-sight, out-of-mind.” If a teacher thinks a student is failing to turn in homework, wearing prohibited clothing, or talking back disrupts the class, the student warrants removal based on their being willfully defiant.

A number of my colleagues joined me in authoring two pieces of state legislation to address what we considered to be a detrimental overuse of “willful defiance” to discipline students and removing them from classroom instruction. The first piece of California legislation was Assembly Bill 2145 (Alejo, Dickinson), which would have directed the California Department of Education to disaggregate disciplinary data from schools for the purpose of identifying how school disciplinary practices were being applied to different racial groups and other categories of students.

The second bill, AB 2242 (Dickinson, Alejo), focused on the overuse of “willful defiance” suspensions and expulsions. The original version of the legislation would have prohibited out-of-school suspensions for students cited as being willfully defiant. It still would have permitted student discipline for willful defiance, but would have required school administrators to use alternative forms of correction such as Restorative Justice or Positive Behavioral Intervention and Support in lieu of removing the student from class.

Unfortunately both bills failed to be enacted. There were cost concerns, at a time when the state was trying to deal with a \$9 billion budget deficit. That hurt both bills. Sadly, suspending students from school, and removing them from the classroom also reflects the fact that our education system is underfunded. Schools are short staffed, and they often do not have resources sufficient to train the staff they do have in alternative means of discipline. Thus, they are often left with little alternative to taking the easy way out.

Perhaps the bigger obstacle to enacting statutory changes to California’s school discipline practices was the concern by the California School Boards Association and the Association of California School Administrators who objected to the limit AB 2242 would have placed on teachers and administrators to use disciplinary practices as they saw fit. This concern was echoed by the Governor when he vetoed the legislation.

Notwithstanding the Governor’s veto and his reasoning, I still intend to push forward with legislation to reform the way students can be disciplined for relatively minor offenses. The data and research referenced herein and in many other reports clearly shows that granting unfettered disciplinary discretion to local school officials has resulted in more harm than good. Further, the cost argument is undermined by state law requirements that schools must extensively document each and every school suspension and expulsion. The cost of this documentation is nearly equal to the cost of administering alternative forms of correction.

Before making my concluding remarks, I want to briefly address one other issue that the Select Committee discovered regarding students who have been subject to out-of-school detention resulting from *serious* misbehavior. That issue concerns students who are transitioning out of detention and need to reintegrate into the mainstream educational environment.

Many contributors and witnesses told the Select Committee that California's juvenile justice population is disproportionately youth of color, low-income and academically "at risk" of failure. Many juvenile justice youth have experienced repeated interruptions in their education before they entered the juvenile justice system and had already dropped out of school or were at high risk of doing so. Many of these youth also have a history of truancy and school discipline. While detained, these youth are supposed to be enrolled in a juvenile court school, where they should be given an opportunity to re-engage in education. Once released, continued engagement in school can have a profound positive impact on reducing recidivism.

Although state law requires that they do so, many schools will not accept or calculate partial credits for work done while enrolled in a juvenile court school, pushing these youth even further behind in their efforts to secure sufficient credits to graduate. Often times no effort is made to secure their educational records from prior placements to assess where they stand in terms of credits necessary to graduate. These youth are often released mid-term, making integration or reenrollment into a regular school even more challenging. Not surprisingly, California's juvenile court schools have the highest dropout rates of all schools in the state.

In light of this problem, I introduced Assembly Bill 2241 to begin changing the way schools work with delinquent youth transitioning back into the school system. This bill would have ensured that juvenile justice youth make a successful transition from detention to further education or employment by providing them with a comprehensive transition plan and supportive services. As a condition of receiving federal No Child Left Behind funding (Part D, Title 1, Subpart 2), school districts would be required to appoint a transition coordinator who would be charged with developing and coordinating individualized transition plans for eligible youth and helping ensure the seamless continuum of services for youth once they are released. The coordinator will also serve as an advocate for these youth to help them overcome barriers to reenrollment in a regular comprehensive public school and to ensure that all subsequent educational placements provide stability and the opportunity to be educated in the least restrictive educational setting necessary to achieve academic progress.

I would encourage the Senate Subcommittee to take a careful look at the issue of our youth who may have already run afoul of the criminal justice system. Addressing the needs of young people who need to integrate back into the mainstream educational system from out-of-school detention may be as important to reducing the proportion of school age youth who eventually become adult offenders as is addressing school discipline practices applied to students who have not yet come in contact with law enforcement.

In conclusion, Mr. Chairman and members of the Subcommittee, I want to commend you on undertaking this investigation into ending the school to prison pipeline. I shudder to think that

if other state's proportionately reflect California, where we remove over 500,000 students from instruction each year through suspensions and expulsions, many of them for minor acts of misbehavior, we are sadly condemning a significant number of our youth to unproductive, problem-filled lives that not only threaten their own well-being, but the well-being of the communities within which they reside. I, for one, and many of my state legislative colleagues, will continue to work on this issue, and it is my hope that our federal government supports the efforts of California and other states in this important task. Federal efforts to help states improve data collection about school disciplinary practices, and their positive and negative effects would be constructive, as would support for improved school and administrator training in alternative forms disciplinary correction.

Once again, thank you for allowing me to submit this stamen, and I look forward to working with this Subcommittee on this most pressing problem.



Supreme Court of California

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December 10, 2012

Honorable Dick Durbin
Chairman, Subcommittee on the Constitution, Civil Rights and Human Rights
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Senator Durbin

I would like to commend you for your decision to conduct a hearing December 12, 2012 dealing with the topic of "Ending the School-to-Prison Pipeline."

As Chief Justice of California, I am deeply concerned about the well-known connection between school suspensions and our criminal justice system. One Texas study shows that one suspension triples the likelihood of a juvenile justice contact within that year. And that one suspension doubles the likelihood of repeating the grade. And nationally, the studies show that suspensions have a racially disparate effect: African-Americans, Latinos, American-Indians appear to have a far greater risk of suspension.

In California, according to our state's Department of Education, more than 400,000 California students were suspended in 2010-11—some more than once—for a total of 750,000 suspensions.

School suspensions are one of the leading indicators of whether a child will drop out of school, and dropping out of school increases the risk of incarceration. The pipeline your hearing focuses on is a long and costly one: For children it extends from school, to the juvenile justice system, to the adult justice system, to the prison system.

The problems presented by the school-to-prison pipeline are compounded by the budget cuts in recent years to many state court systems. California's justice system, the largest in the nation, is also among the hardest hit by budget cuts. In the last four years, the state's general fund support for California courts is down by more than 30 percent—and this in a time when the judicial branch must serve as the safety net for a democratic and civil society.

A society that cares about its children, that cares about its ability to provide and maintain justice, cannot afford to ignore the pipeline you are addressing with your committee hearing. I hope your attention to this problem—and the ways to address it— will help us change our metaphor

from “pipeline to prison” to “stairway to success.” Right now, these stairways exist as pilot projects throughout the country. In California, new laws reveal a growing consensus among state leaders for alternative approaches that address underlying causes for dropping out of school.

Our California Judicial Branch, in partnership with our sister branches of government, and court systems nationwide have been willing to adopt creative solutions to compliment our standard juvenile justice courts—youth courts are an example of one such creative solution. These court programs allow teens to hold each other accountable for their illegal actions and reduce the likelihood that teens will engage in delinquent behavior.

The first youth court programs grew out of efforts by the American Bar Association and other national and community organizations to hold youth accountable for their actions before they develop a pattern of law-breaking behavior. Youth courts began in Texas, in the early 1980s and now according to the U.S. Office of Juvenile Justice and Delinquency Prevention, there are now over 1,400 nationwide.

Youth court programs offer our courts and our society many benefits, including fiscal in these harsh economic times, youth courts:

- Can be a cost-effective alternative to traditional juvenile court because youth court workers are volunteers and because the programs reduce recidivism;
- Hold juvenile offenders accountable for their illegal behavior;
- Move juvenile offenders from arrest to sanctions within a few days rather than the months that may pass with traditional juvenile courts;
- Increase public appreciation of the legal system, enhance community-court relationships, encourage respect for the law among youth, and promote community volunteerism;
- Offer a forum of pro-social peers rather than adult authority figures; and
- Prevent further delinquent acts by empowering and educating youth.

The Judicial Council of California, which I chair, has a Collaborative Justice Courts Advisory Committee that supports the annual Youth Court Summit that is co-sponsored by the California Association of Youth Courts, Inc. (CAYC). This year the CAYC included a Student Advisory Committee made up of six student members for the first time and during its seventh annual California Youth Court Summit one of the key topics for discussion was “Suspension Diversion: Methods to Break the Link between School Suspension and Prison.”

There are numerous dedicated judges, social workers, and volunteers supporting programs throughout our state, but I want to highlight just two:

- A program in the Los Angeles Unified School District focuses on positive reinforcement. In its “School-wide Positive Behavior Support” program students learn about expectations for appropriate behavior and are given strategies to deal with frustration and

resolve disputes. The school district's policy provides 10 alternatives to suspension, including tutoring, counseling, and community service.

- An Oakland Unified School District program concentrates on "restorative justice," which can help students build better relationships and deal constructively with offenses. The program includes strategies for students to make amends to others. When the program was initiated at one middle school the number of suspensions was reduced by 75 percent.

Your committee will hear examples throughout the country of programs that keep children in school and out of court. Many of these programs rely on grants from non-profit organizations and the federal government. Yes, these programs need funding. But in addressing these problems now, we are investing in our social, economic, and moral infrastructure. We are investing in our future. And we are taking care of our own.

As Co-chair of the California State-Federal Judicial Council, I have had first-hand experience of the benefits to both judicial systems and the public we serve of fostering closer cooperation on the assessment and resolution of joint problems and issues. I would therefore respectfully suggest two items for your subcommittee to consider for further review:

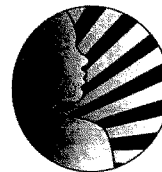
1. Collaborative and Restorative Justice Programs—ways to encourage positive, restorative, and prevention-oriented approaches to juvenile justice, such as, the Youth Court programs I mentioned above.
2. Data and Knowledge Sharing Protocols and Tools—enhance and facilitate meaningful data tracking between jurisdictions and agencies to enable leaders and workers in our courts, schools, and justice systems to make informed and enlightened decisions.

Thank you again for focusing attention on this crucial issue.

Very truly yours,

Tani G. Cantil-Sakauye
Chief Justice of California

the CAMPAIGN *for the* FAIR SENTENCING *of* YOUTH



Hearing on Ending the School-to-Prison Pipeline
 Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
 December 14, 2012

Statement submitted by
The Campaign for the Fair Sentencing of Youth

Thank you for the opportunity to submit testimony for the hearing on Ending the School-to-Prison Pipeline. The Campaign for the Fair Sentencing of Youth (CFSY) applauds the Committee's attention to this critically important issue. As a national coalition and clearinghouse that coordinates, develops and supports efforts to implement fair and age-appropriate alternatives to life-without-parole sentences for youth, we write with first-hand knowledge of the immense fiscal and human costs associated with policies that excessively push youth from schools into the juvenile and criminal justice systems.

At the CFSY, we work alongside advocates in courtrooms and state legislatures across the country on the abolition of juvenile life without parole prison sentences. Additionally, we correspond with hundreds of individuals each year who have been condemned to die in prison for crimes that occurred before their 18th birthdays. These letters describe the distress, as well as the hopes, of the men and women serving extreme sentences in prisons throughout the United States.

The stories that we hear from the inside of America's prisons and jails—and our direct advocacy on behalf of those serving juvenile life without parole prison sentences—reinforce the importance of policies that keep kids in school and out of the justice system. All too often, youth serving lengthy sentences in adult facilities were exposed to violence, abuse, and neglect in their home and community. We have seen these same children pushed out of their schools—sometimes the only stable, structured environment in their lives—due to increasingly punitive policies that treat normal child behavior as criminal instead. In many school districts, School Resource Officers often respond to minor fights, for example, with referrals to court for affray or battery. Running in the hallways or talking back to teachers is considered disorderly conduct and can lead to arrest. And in some jurisdictions, writing on desks or lockers may also result in police enforcement of some kind.¹ Instead of learning in the healthy, nurturing environments that

¹ Justice Policy Institute. "Education Under Arrest: The Case Against Police in Schools." November 2011. Available at: http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf

encourage children to fulfill their potential, too often their education is disrupted by zero tolerance policies that allow school systems to give up on these children and funnel them from classrooms to courtrooms for minor teenage misbehavior.

It should come as no surprise that as we increase the role of law enforcement in our nation's schools, and banish students from classrooms for acts of minor misbehavior, we increase risk factors among youth and set them on a path that could lead to long-term incarceration. Established research demonstrates the devastating consequences of harsh school discipline policies. According to a recent study, youth are twice as likely not to graduate if arrested at school, and four times as likely if he or she appears in court.² A similar study by the Centers for Disease Control and Prevention found that when youth are taken out of the classroom, they are significantly more likely to become involved with criminal activity—including physical altercations and weapon possession.³ These alarming statistics ring particularly true for those at the farthest end of the school-to-prison pipeline. A recent survey of over 1,500 “juvenile lifers” found that the vast majority—85%—had been suspended or expelled at some point during their academic career. Fewer than half of those interviewed were enrolled in school at the time of their arrest.⁴

Strict zero-tolerance policies run contrary to our obligations as parents and educators to ensure that youth are engaged in the learning process, and that all schoolchildren have an opportunity to succeed. These policies also fail to create the safe, high quality learning environments that we would all want for our own children. Significantly, they too often derail our nation's most vulnerable youth from the opportunity to fulfill their potential in a constructive and supportive academic setting and channel them in to the juvenile and criminal justice systems instead. We recognize that keeping schoolchildren safe sometimes requires appropriate disciplinary measures, and in developing these approaches, we should implement practices that focus on the unique potential of youth to better themselves, particularly with encouragement and support. Our nation's future relies upon our ability to uphold the dignity of our children, challenge them to excel academically, and provide them the support they need to achieve their goals and contribute to society.

Thank you for the opportunity to be heard, and for your attention to this important matter.

² Sweeten, G. (December 2006). Who will graduate? Disruption of high school education by arrests and court involvement, *Justice Quarterly*, 24(4), 262-480.

³ Centers for Disease Control, *Health Risk Behaviors among Adolescents Who Do and Do Not Attend School – United States, 1992*, 43. *Morbidity and Mortality Weekly Report*. Mar. 4, 1994 at 129.

⁴ Nellis, Ashley, and Zafft, Katie. "The Lives of Juvenile Lifers". The Sentencing Project. March 2012. Available at: http://sentencingproject.org/doc/publications/tj_The_Lives_of_Juvenile_Lifers.pdf.

December 06, 2012

The Honorable Dick Durbin
United States Senator
711 Hart Senate Building
Washington, DC 20510

Re: Testimony for the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights on "Ending the School-to-Prison Pipeline" hearing scheduled for Wednesday, December 12, 2012

Dear Senator Durbin,

The Campbell County School District #1, Gillette, Wyoming covers 5,000 square miles of northeastern Wyoming and serves about 8,400 students in 20 schools. The Governing Board recognized the need for administrative tools that allowed district administrators an alternative to student expulsions and suspensions which were mandated by its "zero tolerance" policies.

The Specialized Treatment and Rehabilitation (S.T.A.R.) Program is under the direction of the Campbell County School District #1 Student Support Services. Student Support Services administers and manages the districts Safe and Drug Free School; Healthy School; and School Crisis Programs in addition to consulting on discipline, suspension, and expulsion. The S.T.A.R. Program is an alternative to suspension and expulsion that is available to district administrators, the parents of students, community agencies and the courts. This alternative program allows these students to continue their education in the regular school setting and to receive additional services (counseling, drug and alcohol services, etc.) while remaining in their communities and with their families.

The S.T.A.R. Program is offered through the school district at no cost or low cost to the students and families referred. This is a district wide voluntary program that requires the student, the family, the administrator, and the program staff to agree to established expectations and conditions. The program is designed to serve students from 11 years of age to 18 years of age. Using a non punitive and holistic approach in an extended school day format, the student is not isolated from regular socialization with peers, there is virtually no interruption in the regular classroom instructional time, and the student's academic performance and behavior is monitored. The program uses physical conditioning, nutritional education, community service, small group instruction, and tutoring to help the student meet the program requirements.

The data compiled over the last 12 years (1999-2010) shows an 82.7% completion rate with a recidivism rate of 8.6 %. The program referrals were 39.5% high school age; 45.2 % junior high age with 8.4% elementary age. There were 603 referrals during this time. The program referrals came from district administrators, parents, and the courts. The student's legal involvement, gathered through self disclosure, indicates 12.3% were on probation; 3.1% on diversion; and 51% were not currently involved in the legal system.

The offenses / infractions which resulted in student referrals were 45.8% for major infractions of district policies (drugs, alcohol, weapons, etc.) and 29.6% behavior. Moderate infractions of school policies accounted for the remaining 14.6% of the referrals.

With the educational, social, and legal difficulties confronting many of the students and families we serve in our community, the S.T.A.R. Program provides these students the opportunity to accept responsibility for their actions, to have a positive educational experience, and to learn positive ways to deal with life's difficulties.

Thank you for recognizing and addressing the strong link between school suspension, expulsion and the negative outcomes and increased court involvement of these students. If you or your staff would like any additional information regarding the Campbell County School District #1, S.T.A.R. Program, please contact.

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December 10, 2012

VIA E-MAIL

The Honorable Dick Durbin
 711 Hart Senate Building
 United States Senate
 Washington, DC 20510

Re: Ending the School-to-Prison Pipeline Hearing Before the Senate Judiciary Subcommittee

Dear Senator Durbin:

We are a group of educational researchers, policy analysts, lawyers, and professors of special education who have come together to promote improvements in the educational programming provided to youth *inside* detention and juvenile corrections facilities. The education provided at this late stage of the pipeline is often the last opportunity for delinquent youth to reconnect with learning and is a critical component of their subsequent reintegration into school and the community.

Our comments are based on the essay, "Applying Universal Design for Learning to the Education of Youth in Detention and Juvenile Corrections Facilities" (Karger, Rose, & Boundy), which appears in the forthcoming Harvard Educational Review book, *Disrupting the School-to-Prison Pipeline* (forthcoming, 2012). The Center for Applied Special Technology (CAST) has pioneered the field of Universal Design for Learning (UDL) from its inception and has compiled the research and developed the structure and guidelines that are foundational to its practices. We believe that *all* school age youth, including those confined in detention and juvenile corrections facilities, have the right to a high-quality education and that UDL can serve as a powerful educational framework to actualize this right.

The right to a high-quality education for all school-aged incarcerated youth is predicated on Title I of the Elementary and Secondary Education Act (20 U.S.C. § 6301 *et seq.*) and the Individuals with Disabilities Education Act (20 U.S.C. § 1400 *et seq.*). The mandates of these two statutes—when interpreted together with the antidiscrimination provisions of the federal civil rights laws focused on race (Title VI), national origin/language (Equal Educational Opportunities Act of 1974), gender (Title IX), and disability (Section 504 of the Rehabilitation Act of 1973 and the Americans with

Disabilities Act of 1990—create strong legal handles to implement and enforce the right of incarcerated youth to a high-quality education (Boundy & Karger, 2011).

Although incarcerated youth have the right to a high-quality education, in reality the education provided to youth in detention and juvenile corrections facilities is significantly lacking, further contributing to the school-to-prison pipeline. For example, the curriculum is often not aligned with grade-level standards and assessments (Gagnon, Barber, Van Loan, & Leone, 2009), and instruction typically focuses on low-level skills rather than higher-order thinking and comprehension skills (Howell & Wolford, 2002; Leone & Cutting, 2004). There is a lack of differentiated instruction, compounded by the fact that these youth represent a range of ages and academic levels (Houchins, Puckett-Patterson, Crosby, Shippen, & Jolivet, 2009). Youth who enter the juvenile justice system are also likely to be functioning below grade level, with deficits in reading and math (Baltodano, Harris, & Rutherford, 2005; Foley, 2001; Krezmien, Mulcahy, & Leone, 2008). Further, students with disabilities, who are overrepresented in this population, often receive inadequate special education services (Leone, Meisel, & Drakeford, 2002). Moreover, vocational education (Moody, Kruse, Nagel, & Conlon, 2008) and the use of computers (McIntyre, Tong, & Perez, 2001) are limited, although the benefits of these services for delinquent youth have been documented.

At the same time, research has also demonstrated a positive relationship between academic achievement and a reduction in recidivism rates (Katsiyannis & Archwamety, 1997; Katsiyannis, Ryan, Zhang, & Spann, 2008). Addressing the educational needs of youth in detention and juvenile corrections facilities can help prevent the subsequent criminalization and re-incarceration of these youth. Yet, because the learning environments in juvenile justice facilities are not engaging or appropriately challenging, it is likely that many of these youth will continue to feel disconnected from learning and be more likely to recidivate and ultimately drop out of school. In fact, research has shown that large percentages of incarcerated youth do not return to school when they exit these facilities (Brock & Keegan, 2007; Cusick, George, & Bell, 2008).

We believe that UDL has the potential to transform the education provided to youth inside detention and juvenile corrections facilities by addressing barriers that serve to impede the actualization of their right to a high-quality education. The UDL framework emphasizes three principles related to three brain networks that are involved in learning: (1) multiple means of representation; (2) multiple means of student action and expression; and (3) multiple means of student engagement. Rather than focusing on deficits perceived to be present in individual students, UDL allows educators to design flexible learning environments that plan, from the beginning, for anticipated learner variability among students. UDL helps educators craft learning experiences that leverage variability as a strength in learning, thereby reducing barriers in curriculum and instruction that impede the active and successful participation of students in the learning process.

Emerging from the concept of “universal design” in architecture, UDL applies information about the brain and the science of learning to the design of educational curricula and instructional strategies. UDL is based on the premise that transformative changes to systems often begin “in the margins,” where the system is working least well and change is most desired. Such change typically results in benefits to a broader population of individuals. Although technology is not required for the implementation of UDL, technology can help facilitate the development of flexible curricula and instructional strategies. Moreover, new digital media offer the promise of creating dynamic learning opportunities for students and teachers (Meyers & Rose, 2005).

UDL has been receiving greater attention at the federal, state, and local levels, due in part to the work of the National UDL Task Force, a coalition of over 40 national organizations representing both general and special education. In 2008, with the passage of the Higher Education Opportunity Act, Congress defined UDL as “a scientifically valid framework for guiding educational practices that: (a) provides flexibility in the ways information is presented, in the ways learners respond or demonstrate knowledge and skills, and in the ways learners are engaged; and (b) reduces barriers to instruction, provides appropriate accommodations, supports and challenges, and maintains high achievement expectations for all learners including students with disabilities and students who are limited English proficient” (20 U.S.C. § 1003(24)). The HEOA also referred to UDL in the context of teacher preparation programs (20 U.S.C. § 1022d(b)(1)(K)).

In 2010, the U.S. Department of Education’s *National Education Technology Plan* emphasized UDL as a framework that can benefit all learners, in particular those that have been underserved (U.S. Department of Education, 2010b). UDL was also identified as an innovative practice in guidance on the use of Race to the Top funds and in the U.S. Department of Education’s *Blueprint for Reform: Reauthorization of the Elementary and Secondary Education Act* (U.S. Department of Education, 2010a). In addition, UDL was discussed in the appendix to the Common Core Standards (CCS) with respect to the application of the CCS to students with disabilities (National Governors Association Center for Best Practices, Council of Chief State School Officers, 2010).

In October, 2011, the U.S. Senate Committee on Health, Education, Labor, and Pensions (HELP) approved a reauthorization bill for the ESEA that included a definition of UDL consistent with that in the HEOA and referred to the use of UDL in relation to a number of important areas, including the development of local educational agency plans and the implementation of effective instruction in literacy and Science, Technology, Engineering, and Mathematics (STEM). In addition to these provisions, the National UDL Task Force has called for the development of assessments and provision of professional development that is consistent with the principles of UDL.

We urge you to consider the importance of the application of UDL to the education of youth inside detention and juvenile corrections facilities. For example, UDL can address the widespread variability in learning among incarcerated students. Curricular materials with built-in supports based on the three UDL principles have the potential to assist with targeted literacy and mathematics instruction as well as instruction in the content areas by presenting information in multiple ways and helping with difficulties in the areas of decoding and vocabulary. Additional scaffolding can help with challenges in the area of comprehension through supports such as clear headings and advance organizers, models that supply background knowledge, and reading prompts that guide students by highlighting key concepts and ideas. Similarly, UDL calls for the use of multiple options for students to demonstrate what they have learned—for example, using different methods of response, such as writing, drawing, audio, or video.

UDL also has the potential to promote greater student engagement among a population that has likely experienced many years of frustrating learning experiences. When curricula and instructional strategies offer students the opportunity to balance the demands of the environment with their personal strengths, they feel appropriately challenged and are able to become more engaged in their learning. UDL thus creates a responsive educational system in which students' strengths, rather than their weaknesses, are recognized. Educational policies and practices that model UDL can counteract the toxicity that delinquent youth often associate with traditional learning that takes place in static classrooms heavily reliant on printed material.

Ultimately, UDL can help raise expectations for incarcerated youth, while also helping to change the image and expectations about learning that these youth have for themselves. It is extremely difficult for youth who become entrapped in the school-to-prison pipeline to extricate themselves. UDL offers a promising approach to attack the school-to-prison pipeline in its later stages by transforming the education provided to youth in detention and juvenile corrections facilities.

Thank you for the opportunity to comment. We appreciate your consideration.

Sincerely,

/s/

Joanne Karger, J.D., Ed.D., CAST

Rachel Currie-Rubin, Ed.D., CAST

David Rose, Ed.D., CAST

Kathleen Boundy, J.D., Center for Law and Education

Peter Leone, Ph.D., College of Education, University of Maryland

Michael Krezmien, Ph.D., School of Education, University of Massachusetts, Amherst

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Center for Children's Advocacy

65 Elizabeth Street, Hartford, CT 06105

**STATEMENT TO THE
U.S. SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ABOUT THE SCHOOL-TO-PRISON PIPELINE**

**BY THE
CENTER FOR CHILDREN'S ADVOCACY**

**IN SUPPORT OF
PUTTING AN END TO THE SCHOOL-TO-PRISON PIPELINE**

December 12, 2012

This statement is submitted on behalf of the Center for Children's Advocacy, a non-profit organization based at the University of Connecticut School of Law in Hartford, Connecticut. The Center fights for the legal rights of Connecticut's poorest and most vulnerable children and youth through individual representation and systemic advocacy.

Through our TeamChild Juvenile Justice Project, the Center collaborates with the local Public Defender and Probation offices to represent children involved in the juvenile justice system. Our attorneys work to improve the child's juvenile justice outcome by securing needed services through community agencies or the school system. The Center's attorneys represent the child on educational issues and access to mental health treatment, which may be at the root of the child's court involvement. Through our Disproportionate Minority Contact (DMC) Reduction Projects, the Center partners with local stake holders including the Local Interagency Service Teams (LISTs) in Hartford and Bridgeport, as well as our national partner, the Center for Children's Law and Policy, to develop strategies to reduce the disproportionate representation of children and youth of color in the juvenile justice system.

As a result of our work on these projects, we are a frequent witness to how the school-to-prison pipeline impacts Connecticut's most vulnerable youth. We see how children with disabilities are arrested in school for non-violent offenses that are manifestations of their disabilities or could be handled within the regular disciplinary system. One of our clients, diagnosed with bipolar disorder, was arrested at school for yelling at a security guard while disobeying the guard's order to stay within the school campus. Another client, a child with ADHD, was arrested for running down a hallway and screaming at school staff. Our office also represented Andre,¹ a nine-year old who was arrested at school for an argument with another student. Although Andre's charges were eventually dismissed, he was processed through the juvenile court and spent a weekend in detention due to this arrest.

For many of these clients, a school-based arrest is their first interaction with the juvenile justice system. Many of our clients report being traumatized by these school-based arrests and fearing going to school because they do not want to be arrested again. **Arrests of this nature need to be stopped and diversionary efforts need to be used by schools and police consistently and with vigilance.**

¹ This child's name has been changed to protect his privacy.

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Here in Connecticut, from our work, we know the following:

- On a statewide basis, children and youth are regularly being arrested in school for **low-level, non-violent offenses** including breach of peace (representing 34 % of all school based arrests) and disorderly conduct or threatening (12 % of all school based arrests);²
- A majority of these youth are in fact youth of color: **31 percent** of these youth arrested in school were **African American** and **19 percent** were **Latino**;³
- **In Hartford specifically, 43% of all youth being referred to the juvenile court were arrested in school.** Nearly all of these youth were African American or Latino;⁴
- Historically across our state, **both African-American students and Hispanic students are arrested at school at twice the rate that would be expected from enrollment data.**⁵

Arresting children at school harms children and communities. Keeping children in school is crucial to improving their long-term opportunities. Students who feel connected to school are less likely to use illegal substances, become pregnant, attempt suicide or engage in violent behavior.⁶ A 2010 study found that the very act of being labeled as a delinquent made it more likely that a child would have a criminal history as an adult.⁷ A 2009 study found that boys who had been involved in juvenile court were seven times more likely to have adult criminal records than boys with the same backgrounds and self-reported delinquent behavior but no juvenile court record.⁸

Through our partnerships and collaborations with local stakeholders, particularly through our DMC Reduction Projects, we have seen how communities can reduce school-based arrests through collaboration among key stakeholders, through the sharing and reporting of accurate school based arrest data and through growth and training of diversionary tactics including referrals to Emergency Mobile Psychiatric Services (EMPS).

² These figures are based on data collected by the Connecticut Judicial Branch Court Support Services Division and represent the entire 2011-12 school year (September through June). The Connecticut Judicial Branch defines “school-based arrest” as an arrest that occurs on school property during the school day, so this number does not include arrests on school buses or at school-sponsored activities. This number also does not include arrests that resulted in referral to juvenile review boards, since those cases are not referred to court.

³ *Id.*

⁴ This data, collected through the Hartford DMC Project and published by the Center for Children’s Law and Policy was taken from October – December of 2011 and represents 52 of a total of 122 juvenile arrests.

⁵ State Department of Education data for the 2009-2010 school year showed that African-American students were 14% of total statewide public school enrollment, but were 28% of students arrested at school; Hispanic students were 17% of total statewide enrollment, but were 35% of students arrested at school. State Department of Education data only includes arrests that resulted also in a suspension or expulsion.

⁶ Kathryn C. Monahan et al., *Predictors and Consequences of School Connectedness: The Case for Prevention*, 17 THE PREVENTION RESEARCHER 3, 3-6 (September 2010).

⁷ Anthony Petrosino et al., *Formal System Processing of Juveniles: Effects on Delinquency*, CAMPBELL SYSTEMATIC REVIEWS 2010:1, 36-37.

⁸ Uberto Gatti et al., *Iatrogenic Effect of Juvenile Justice*, 50 J. of Child Psychology and Psychiatry 991, 995 (2009).

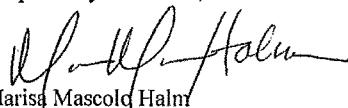
In Hartford for example, as a result of: establishing an effective police school collaborative, the establishment of regular police training on the use of EMPS, the signing of a memoranda of understanding between the police and public school system and the development and use of a template to share and interpret relevant arrest related data, **school-based arrests are down 78 %** when compared with last year.⁹ Similarly, EMPS referrals are up.

As a result of our collaborative efforts, the school-to-prison-pipeline here in Connecticut is being diverted, particularly in the communities of Hartford and Bridgeport. However, there is much more work to be done on behalf of the vulnerable youth in our schools.

Legislation should be passed requiring systematic and consistent reporting of school based arrests and memoranda of agreements between schools and police departments with a presence in them. Specific protocols based upon successful models like that used in Clayton County should become nationally accepted practice for schools. Diversionary practices such as Emergency Mobile Psychiatric Services should be made more readily available to communities.

For the foregoing reasons, the Center endorses a national effort of collaboration to end the school-to-prison pipeline.

Respectfully submitted,


Marisa Mascolo Hahn
Attorney & Director
TeamChild Juvenile Justice Project

⁹ These figures are based on data collected by the Connecticut Judicial Branch Court Support Services Division comparing March – June 2011 to March to June 2012 with total arrests falling to 24 from 113.



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December 10, 2012

Via Email: stephanie_trifone@judiciary-dem.Senate.gov

U.S. Senate

Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Ending the School to Prison Pipeline

Dear Chairman Durbin, Ranking Member Graham, and Committee Members,

The Center for Community Alternatives thanks Chairman Durbin, Ranking Member Graham, and the Subcommittee on the Constitution, Civil Rights and Human for holding this critical hearing on Ending the School to Prison Pipeline hearing before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights.

Introduction

The Center for Community Alternatives (CCA) is a non profit organization that promotes reintegrative justice and a reduced reliance on incarceration in pursuit of civil and human rights. Our mission is fostered through services, research and advocacy that enhances public safety, and reduces recidivism among youth and adults involved in the juvenile and criminal justice systems. CCA works in a number of jurisdictions in New York State: New York City, Syracuse and Rochester. We are a member of the Dignity in Schools Campaign. The examples that we provide in our testimony are drawn from our work with young people who attend CCA programs in Syracuse New York.

On March 6, 2012, the Department of Education (DOE) released its most recent Civil Rights Data Collection (CRDC) information drawn from a national survey of 72,000 schools that enroll 85% of the nations students. The data show disturbing, if not alarming, trends in school discipline, including a troubling increase in suspensions and significant racial disparities in school suspensions and school-based arrests. Nationally, African American students comprise 18 percent of school enrollment but are 35 – 39 percent of students suspended or expelled. Children of color are three times more likely to be suspended than white students. Students with disabilities are suspended at a rate twice that of students without disabilities. In addition, African American and Latino youth make up more than 70 percent of all students nationwide who are referred to law enforcement or involved in school-related arrests.

By the beginning of the 21st century, school suspensions became a precursor to imprisonment. Suspended students, even those who are not arrested, are more likely to drop out of school, and dropouts are at high risk of being incarcerated at some point in their lives. Research by Harvard University sociologist Bruce Western found the lack of a high school diploma has the most profound impact on the likelihood of incarceration, with high school dropouts 5 times more likely to go to prison than high school graduates regardless of race. An estimated that 1 in 10 young (age 22-30)

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White high school dropouts and 52 percent of African American male high school dropouts have been incarcerated by their early thirties. In short, the punitive disciplinary policies embraced by one of our most cherished institutions, public schools, have become a key mechanism in the phenomenon known as mass incarceration.

The willingness of the U.S. Department of Education to collect and analyze data on school discipline is an important step underscoring the urgency to address excessive and disparate application of harsh school disciplinary processes. This hearing makes another significant contribution. The statements made by the Secretary of Education upon the release of the data well captures what is at stake: *"The undeniable truth is that the everyday educational experience for many students of color violates the principle of equity at the heart of the American promise. It is our collective duty to change that."*

The balance of CCA's testimony is drawn from our experiences working every day with young people suspended from school, many of whom wind up in the juvenile justice system. We share with you what the young people pushed out of school have told us as well as promising outcomes from CCA programs that show that indeed we can dismantle the school-to-prison pipeline.

Voices from Students Pushed into the School-to-Prison Pipeline

CCA was introduced to school pushout issues through our work in the juvenile justice system. We work with courts to develop community-based program options that can be used as alternatives-to-incarceration. As regular and obedient attendance at school is typically a core condition of any alternative sentence imposed by family court, CCA soon came to learn that many of the young people in the juvenile justice system had been suspended from their mainstream school and placed in an alternative school. These alternative schools are characterized by shortened school hours (in some cases 2 hours a days), a lack of support services, and often ill-prepared teachers. Alternative school students in Syracuse City School District are banned from extracurricular activities, and so the youth most in need of adult supervision spent are left to the streets. It should come as no surprise that students seem to cycle between the alternative school and the juvenile justice system. Much like reentry from correctional facilities, there is considerable stigma and barriers that make it difficult for students to reestablish themselves back in mainstream school once they have been suspended to an alternative school.

These practical experiences led CCA, in collaboration with the Syracuse School District, to develop the *"Strategies for Success"* to reduce school pushout. The program and its outcomes are described at the close of this testimony.

First, however, we wish to share with you the comments made by students suspended from school. These statements are drawn from our research based on interviews with young people who spent time in an alternative school. The study involved lengthy interviews with 25 students (12 boys and 13 girls), most of whom were 14 years old: 76 percent were African American and 20 percent were Latino/a. The interviews provide poignant evidence that the use of harsh punishment in addressing student misbehavior fails to address underlying problems and erodes young people's sense of fairness and belief that adults in their lives care about them. The lessons that students take away from suspension are counter productive, sending young people messages that they are "bad" and are indeed slated to wind up in prison.

While almost all of the young people interviewed acknowledged and took responsibility for the behaviors that resulted in their suspension, they were troubled by a sense that their actions were blown out of proportion, or that they were not given opportunity to explain the context or circumstances underlying their behaviors.

One of the young men interviewed, Carlos*, when asked why he got in trouble in school, quietly shook his head and said simply: “*Bad decisions.*” He went on to describe the suspension incident: *I went with my friends....I followed them downstairs ... and the next thing I know I'm at the stairs and there's a fire alarm. So we pulled the fire alarm and the next thing I know they were like "Carlos run!" I went upstairs with them and they caught us on camera. So that's what I was suspended for.*

Carlos quickly admitted his involvement to the school police officer but receives a different response than he expected:

Officer Bovo [the school police officer] told me if I was to cooperate that I wouldn't get in trouble. And I was just thinking about that the whole time - he said I wouldn't get in trouble. ... So I thought about it when I was suspended, thinking about what happened to me. Why did I get kicked out? That messed me up right there. I didn't feel the same about school. I was thinking about dropping out and stuff.

Carlos spent a year wasting away in alternative school. His “back story” displays the qualities that are overlooked by harsh school discipline. Carlos and his parents were heartbroken that suspension to alternative school meant he could no longer play on his high school baseball team. His parents had dutifully and enthusiastically turned out for all his games. His father, he proudly told me, had a two-year college degree and his mom worked for the local agency that advocated and served city's small Latino population. They were hoping that Carlos might qualify for an athlete scholarship one day to help defray college tuition. The promise of his future, was not considered when Carlos was pushed out of school.

The experience of school suspension erodes students' sense of fairness as zero tolerance policies leave no room to consider mitigating factors. Sadly, the young people feel they are powerless to create a different outcome. They believe that deck is stacked against them - the opinions of professional adults are privileged over their voices or even the words of their parents who are equally disempowered. A sense of fatalism emerges from the comments of the young people.

Roland, for example, was suspended for possession of a knife. While this indeed sounds quite serious, a careful investigation of the incident revealed Roland had taken the knife from his younger brother, who wrongly brought the knife to school to defend himself against bullying by another student. Roland explained he took the knife from his brother as they exited the bus but was apprehended before he could turn it in to school authorities. Roland's description of his suspension incident and its aftermath is especially poignant showing a young man who took responsibility, was aware of school rules, yet was confused about why adults could not use any discretion to apply a less harsh punishment. Roland described his response when he was told that he was suspended for school for a year:

I know that they [Principal and Hearing Officer] literally had no choice but to send me to alternative school because it [the knife] was in my possession. They even said to me that they know I didn't do nothing wrong, but if my hand touches the knife then they have no choice but to send me out.

* The names of youth and others have been changed to protect confidentiality.

But when they said that they were gonna suspend me, that's what had got me upset. I started crying because I didn't understand the fact that me getting suspended just for taking the knife away from my brother, because if I didn't take it away from him, it could have been worse. So actually I thought that, ya' know, personally myself, I thought that I was doing the right thing by taking the knife away from him.

So I think that personally, I shouldn't really have gotten, ya know, really, be serving time in the alternative school or shouldn't really have gotten suspended for something that ya' know, I really was, I thought that I was doing the right thing. They told me that ya' know, they knew I was doing the right thing, but still it's the simple fact that the knife was in my hand.

It is easy to ignore, understate or dismiss the cruelty of suspension if we learn about this only through newspaper reports or even data documenting the extent of the problem. At almost 6 feet tall, Roland did not present an image of a child who would break down crying in school. Yet at the time of his suspension, Roland was only 13 and still clinging to the belief that adults can help solve problems, listen to and care about kids. He was still a child, just entering adolescence with many developmental hurdles to jump over. It has become too easy to forget that 13 year olds are still children and instead think of them as dangerous, disruptive or "super predators" and deserving of isolation and exclusion. Yet talking to the kids, hearing the catch in their voices as they ponder why so many adults think they are "bad" readily puts a human face on the destructive zero tolerance policies.

Most of the young women interviewed were suspended for fighting over seemingly trivial issues, "he said she said" or more accurately "she said, she said" arguments over boys, reputation, and social position. Fighting makes up the single most common reason that students are suspended or expelled from school. It is difficult to tell whether these behaviors are more serious than what was once thought of as school yard scraps or whether the increase in suspensions is another manifestation of moral panic about adolescent behavior. What is clear to the young people interviewed for our study, is that in meting out suspensions, school authorities often do not learn about what caused the fight, nor are restorative justice interventions that might quell gossip and fighting offered.

Kendra's story exemplifies another lost opportunity to intervene in ways that could prevent suspension and help young people gain skills to settle disputes without resorting to physical violence. Her suspension for fighting was preceded by harassment from other girls. Both she and her mother complained about the situation without any intervention and Kendra felt she had to fend for herself:

I was telling administrators. I was telling principals, the vice principals. I was telling the teachers and nobody believed me. I would come to school crying every morning because they [other girls] would beat me up and they [school authorities] thought it was just an act.

As a result of the fight, Kendra went through a Superintendent's Disciplinary Hearing where she felt she had no opportunity to explain the circumstances:

They [the hearing officers] said, "What happened?" But when you go to stuff [the hearing] like that, you got like tell them what they want to hear. Like you got to tell them that you really did it and you are guilty. Because they don't want to hear 'Oh, I didn't do it.' They want to hear that you did it and now you got to be punished for it.

Another young woman interviewed, Jena was also was suspended for fighting with another young woman and she too was sent to an alternative school for one-year. When asked about her suspension, she admitted she was fighting but could no longer even remember what set off the incident:

It was over something stupid. I think like she like kind of pushed me to the edge and I like I started the fight but there was a lot of stuff building up to it. I just snapped. I guess I was at the end of my rope.

As was learned later in the interview, Jena had recently gone through life experiences that might make even a mature adult “snap.” Her father had died the year before from a heart attack: in his 40s, this premature death underscores the myriad of ways that poverty, including lack of health care, is a major factor in the lives of young people pushed out of schools. Three months before her suspension, Jena’s brother was shot to death while he was attending a community “Stop the Violence Rally.” Jena described these events in a voice that was seemingly without emotion, yet with tears streaming unchecked down her cheeks:

My brother was at a Stop the Violence ceremony for his friend that had passed away and some guys came in and they were shooting and he got shot.

But when Jena was suspended for fighting because she was “at the end of her rope,” neither the teacher who broke up the fight, the principal who suspended her, nor the hearing officer who determined her year-long suspension considered whether the rope was frayed by the recent murder of her brother or premature death of her father. The story of Jena underscores the need for school-based resources that could support students through personal and family life crises.

Jena went on to describe her experience at the Disciplinary Hearing:

It was kind of scary. I’d never been to one before. It was just...it was just like I was in there. The lady [Hearing Officer] was nice and then they had like a recorder and they recorded everything and asked why everything happened, - why it happened and did I want to go to an alternative school? Of course I didn’t, but you know, I was scared to talk. I don’t remember much about the hearing. I know she asked me if I did want to go and finally I told her that I didn’t. And I’m not sure what happened next. I don’t remember too much but I was sent to [the alternative school]. I think they looked at my attendance and like it was my first year and I skipped a lot helping my mother deal who was stressing because of my father and brother. And so I think they looked at me and said, well she’s probably not a good kid.

As with many of the young people I interviewed, Jena concluded that her exclusion from mainstream school was a rejection of her as a person, her humanity, not just a response to a particular behavior. This underscores the harm that school push out does to the young people as explained by a young man named Rayquan who was given a one-year suspension for having a pen knife:

It makes people feel like they can’t do nothing with their life. They just drop out. ...I went to an alternative school, After I felt oin’t nobody gonna want to take me back. ...If you write alternative school on your papers, the schools you went, to they look up your record. You might not even get into college². People out hear that you been suspended to alternative school gonna doubt you.

²Rayquan’s assessment that colleges consider school disciplinary hearings is correct. The Common Application as well as an increasing number of colleges and universities ask applicants to disclose high school disciplinary records. See Weissman, M., et.al. 2010. The use of criminal history records in college admissions. .Center for Community Alternatives, Inc. website: <http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-recs-in-college-admissions.pdf>

Another young man interviewed, Kwame gave a particularly troubling answer to how he felt when he was suspended from school. He told me that he was suspended for “persistent disobedience,” adding, “They just got tired of me.” This was his reaction to his alternative school placement:

Alternatives school is for kids that don't know how to make the right choices and kids who don't know what they going to do with their lives and just be bad in school for no apparent reason and get in trouble all the time and all that stuff. I don't think that I belonged there. I want to go to regular school... I know that at a regular school I have more chances of either getting scholarship so I can go to college, or going to college instead of not going to college and not try to help my family to get out of a bad place.

Damian, suspended for attempting to leave the school building without permission, had a similar reaction:

It made me feel worthless ...Because teachers used to tell me that and junk. Like when you feel bad already and they tell you that you need to do this or you ain't going to be nothing. You going to be like a gang member. You going to be in jail or dead. That makes you feel worse. And I think that's what makes kids drop out of school faster and start gangs and stuff. That's why a lot of young kids like my age don't care. They just want to make money and all this other dumb things, just to prove a point that they aren't worthless. I think that's what they feel.

The interviews with students suspended from the Syracuse City School District leaves little doubt that school suspension is an iatrogenic solution to misdiagnosed problems. The call to end school pushout should not be interpreted as a lack of concern about ensuring that schools are safe places for both students and teacher. According such researchers as Russ Skiba and professional groups including the American Psychological Association, the American Academy of Pediatrics, the Council of State Governments and the American Bar Association, there is no empirical evidence that shows that the harsh discipline and punishment— is effective in improving school safety. Harsh discipline in fact seems to contribute to the further deterioration of educational outcomes regarding student achievement and drop out rates. In contrast, a growing body of research shows that schools that do not rely on law enforcement, metal detectors and harsh discipline, but instead use restorative justice practices and school-wide efforts to improve school relationships have better educational outcomes.

Finally, students interviewed were able to identify interventions and approaches that helped them. Most were grounded in adults who had time and patience to show they cared by providing both additional academic help and/or emotional support. Kwame's statement captures the essence of what makes a difference:

The principal, Ms. Lark, she mad nice. She was helping me out, like if I had a problem. I go to her and I would talk about the problem. She was just like, mad nice. She was just a nice person. [I would talk to her] Like if somebody was bothering me. I would talk to her about it. Like if I wanted to go the dance and I didn't have no money, she would pay my way to the dance. She would make sure that I would do good so that I could go to the dance. ... She cared about me. It made me feel good. Like at least somebody wanted to see me do good.

Reducing School Pushout: The Strategies for Success Program

Program Description

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After many years of working with young people sent to alternative schools, seeing them cycle in and out of these schools, and often drop out of school and end up in the justice system, CCA, in partnership with the Syracuse City School District, created the Strategies for Success Program (SfS or Strategies). The program was funded by the U.S. Department of Education from 2000 -2004 in an initiative explicitly directed to reducing school suspensions. The Strategies for Success program served middle school students subjected to one-year suspensions and placement in Syracuse City School District alternative schools.

Strategies used a multifaceted, integrated approach, embedding social supports into the school environment and extending these supports into the community and family. CCA staff worked in close collaboration with school principals, teachers and staff, fostered connections to families and involved youth in comprehensive, youth development services. The program enrolled students placed in alternative schools and continued after their return to a mainstream school. During their stay at alternative school, youth compiled portfolios that documented their achievements. These portfolios accompanied students when they were allowed to return to mainstream school in an effort to accentuate the student's accomplishments and mitigate the stigma of alternative school placement. Transitional support helped students cope with their placement in an alternative school and to successfully re-engage in mainstream school and reduce the very high resuspension rates common to young people returning from long term suspension.

SfS offered after school and other youth development activities to students with few such positive opportunities. Alternative schools have no extracurricular activities that are often the glue that cements student attachment to school. They have no sports teams, no clubs, and no school newspaper. SfS made an effort to fill this gap through a range of "youth-centered" activities, designed with input from the youth that gave them opportunities to be active leaders and creators. For example, students suggested that the availability of a sound studio where youth could record hip hop music would entice after school participation even for students who were reluctant to regularly attend school. In keeping with a youth leadership approach, students established the rules governing the use of the sound studio, including avoiding content that would promote or celebrate violence. To hone their skills as song writers, students participated in a poetry writing workshop. Youth produced a CD and poetry anthology that was premiered at the annual Youth Banquet attended by youth, teachers, and parents.

The SfS program also engaged parents by serving as a liaison between the youth, parent, alternative school, and mainstream school, and by providing support to parents and youth so they could identify and resolve barriers that stand in the way school success. Staff met with parents at locations most convenient to them - home, our offices, in school and the community. The program hosted monthly parent support groups and special events where parents could see their children in active, leadership roles.

Program Outcomes

CCA conducted an outcome evaluation that looked at pre- and post-program suspension rates, attendance rates, and grades for SfS participants and a comparison group of students. We compared the status of the youth at baseline (i.e., entry into alternative school) and two years after program participation. Students in both the program and the comparison group (students enrolled in the alternative school, but not the SfS program) were predominantly male and African American. They were poor, as measured by their eligibility for free lunch (97 percent program group; 93 percent comparison group). Seventy-three (73) percent of the program group had a grade point average below 70, compared to 68 percent of the comparison group.

Key outcomes examined were resuspension rates, attendance rates and justice-system involvement for both Strategies program participants and the comparison group:

- Resuspension: SfS participants showed a 64 percent reduction in resuspension to alternative school over the two-year period compared to an 18 percent increase in resuspension among the comparison group.
- Attendance: SfS participants saw a 6 percent improvement in attendance rates, while the attendance rates for the comparison group declined by 6 percent.
- Justice System Involvement: 91 percent of SfS completers vs. 86 percent of the comparison group were convicted of a delinquent or criminal offense during the two year evaluation period. Of those youth who were convicted of an offense, SfS participants were less likely to receive a custodial/incarceration sentence (1 percent of SfS completers compared to 5 percent of the comparison group).

Conclusion and Recommendations

The Strategies for Success is but one program that shows promise for reducing school suspensions and improving outcomes for youth who would be caught in the school-to-prison pipeline. Ending school push out is within our reach: there are models across the country that could be taken to scale and the young people interviewed indicate that they would welcome educational settings that give them opportunities to learn. Examples of programs, policies and practices include restorative justice such as practiced in Vanguard High School in Manhattan where the school's "Fairness Committee" comprised of teachers and students sort out the "she said/she said" disputes that were especially common among the girls whom I interviewed. Each party to the dispute gets a chance to tell his or her side of the story, with the facilitators asking clarifying questions and moving the discussion to solutions to the dispute. Positive Behavioral Interventions and Supports (PBIS) is an approach that has been introduced in more than 9,000 schools around the country. In 2007, pushed by a parent-led group, CADRE, the Los Angeles Unified School District passed a new district wide student discipline policy that is based on positive behavior support and developmentally appropriate discipline rather zero tolerance. In 2009, the Texas State Legislature passed a law that modifies zero tolerance policies requiring districts to take into account mitigating or extenuating circumstances when considering student misbehavior. We do not lack for models of programmatic approaches. Websites hosted by federal agencies including the U.S. Department Education (What Works Clearinghouse), and the U.S. Department of Justice Office of Juvenile Delinquency and Prevention (Model Programs Guide) have comprehensive lists and information about model programs and evidence-based practices. The Dignity in Schools Campaign has produced the Model Code on Education and Dignity that provides information and tools for schools to adapt and use to reduce school push out.

In conclusion, the Center for Community Alternatives supports recommendations to Congress put forth by the Dignity in Schools Campaign of which we are a member:

- **Annually collect and report school discipline and climate data for all schools** including the disaggregation by race, gender, special education status, socioeconomic status and English proficiency with cross tabulations for deeper analysis. The Successful, Safe, and Healthy Students Act (S. 919, Harkin) provides useful guidance on data collection under the Individuals with Disabilities Education Act, the Gun-Free Schools Act, and the Civil Rights Data Collection, Congress and the US Department of Education should be disaggregated by race, gender, special educational status, socioeconomic status, and English proficiency, and cross-tabulated to allow for more insightful review. .

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- **Use high disciplinary rates and disparities to trigger support – not punishment – from local and state educational agencies.** Examples of the ways to track and use data to constructively help schools improve are available in Representative George Miller's Amendment to the Student Success Act (H.R. 3989, Kline).
- **Provide increased support for best practices in improving school discipline and climate** through legislation such as The Restorative Justice in Schools Act (H.R. 415, Cohen) and the Positive Behavior for Safe and Effective Schools Act (H.R. 3165, Davis/Platts) (federal support for training schools and teachers in the best practices) and The Successful, Safe, and Healthy Students Act (S. 919, Harkin) (calling for the use of school data on bullying, harassment, and discipline to target support for implementing these best practices as well).
- **Support the development of comprehensive local or regional strategies to reduce the use of exclusionary discipline and the number of youth entering the justice system** by Congressional funding of community based solutions, such as Strategies for Success program that was introduced with federal support. The Youth Promise Act (H.R. 2721, Scott) would help support this purpose.
- **Conduct an annual, universal Civil Rights Data Collection with higher reporting fidelity** by requiring more frequent collections involving all schools, making school district data reporting a requirement included in federal education grants and funding.
- **Require state and district grant and waiver recipients to address high and/or disparate rates of discipline** by making this a requirement to all Department of Education grant and waiver programs, including ED's Elementary and Secondary Education Act Flexibility Waivers.
- **Promptly release guidance on school districts' civil rights obligations for school discipline** through legal and technical guidance for addressing disparities in school discipline provided by Department of Education and Department of Justice including standards of liability under Title VI of the Civil Rights Act of 1964.
- **Place meaningful restrictions on federal grants for school policing** including the DOJ-funded Community Oriented Policing Services that require training on adolescent development, the impact of suspension and arrest on future outcomes of children and the emphasis on social work and mental health supports in school that would make police officer intervention the action of last resort.

We again thank the Chair, the Ranking Member and all Committee Members for your attention to this critically important issue.

Sincerely,



Marsha Weissman, Ph.D.
Executive Director
Center for Community Alternatives

CENTER FOR LAW AND EDUCATION

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American Bar Association Calls for Action on Right to High-Quality Education

The American Bar Association – the primary organization of American lawyers, with over 400,000 members – is calling for action by school districts, states, and the federal government to secure the right of every child to a high-quality education. It also asks the nation's attorneys and bar associations to assist in securing that right through improving law and policy, through representation of students and their families, and through community legal education to foster better understanding of existing laws related to rights to quality education.

The Center for Law and Education played a major leadership role in this multi-year effort. Paul Weckstein, co-director of the Center for Law and Education and member of the ABA's Commission on Youth at Risk that sponsored the resolutions, was principal author of the recommendations approved by the ABA and of the submitted reports that accompany them. Weckstein said, "We are very excited about the ABA's push for changes in education law, policy, and implementation and by its call upon the lawyers of the nation to join the effort to fulfill the right to quality education."

At its annual meeting, the ABA adopted on August 3rd, 2009, three sets of recommendations on the right to high-quality education. In introducing them, Laura Farber, the Commission's chair, invoked the promise of equal educational opportunity in *Brown v. Board of Education* that remains to be fulfilled: "Children should have a right to a high quality education that will prepare them for productive work and for contributions to our communities and to our society. Many children still do not have that opportunity; many individuals, students, parents, and organizations ...do not understand the laws in place and their ability to participate in decisions that affect their right to education."

The first of the sets of recommendations and accompanying reports is aimed at ensuring *the right to a high-quality educational program*, provided to all, and calls for federal, state, and local action to spell out core elements of that right to quality education, to ensure that all schools provide those elements to every child, and to implement and enforce existing provisions of law targeted at enabling students and parents to effectuate their rights to quality education and to participate fully in decisions affecting them. Available at www.cleweb.org/sites/default/files/ABA.118A.RighttoHigh-QualityProgram.pdf

The second set is aimed at securing *the right to remain in school*. It seeks to change the policies and conditions which often lead children to drop out of school. It also seeks to reduce the removal of students from instruction as a result of disciplinary exclusion or police and court referral in response to school-related behavior. Available at www.cleweb.org/sites/default/files/ABA.118B.RighttoRemaininSchool.pdf

The third set seeks to secure for all youth who have left or been excluded from school or are incarcerated *the right to resume their education* in a high-quality, age-appropriate program that enables them to graduate and prepare for higher education. Available at <http://cleweb.org/sites/default/files/ABA.118C.RighttoResumeEducation%20%281%29.pdf>

Weckstein emphasized that "A rights-based approach to school reform – by focusing on what students, their families, and communities can actually count on from their schools in the way of a high-quality education, and on what we need to *do* in order to achieve the results we want for kids – is crucial to making reforms real." He noted: "In our ongoing work on these issues, including assistance with an educational quality bill of rights spelling out elements of a high-quality program, as called for by the ABA, in areas such as curriculum, instruction, and individual student attention, we at CLE are looking forward to collaborating with the ABA and others in our efforts to help educators, parents, students, communities and advocates make the right to high-quality education a reality."

About the Center for Law and Education:

CLE is a national organization with offices in Boston and Washington DC. It strives to make every child's right to high-quality public education a reality throughout the nation and to enable communities to improve their schools and address their own public education problems effectively. CLE works on school reform from a rights-based perspective through the development of federal law and policy and through implementation assistance to communities, schools, districts, and states.

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December 10, 2012

The Honorable Dick Durbin, Chairman
Subcommittee on the Constitution, Civil Rights and Human Rights
Committee on the Judiciary
United States Senate
Washington, DC 20515

Re: Ending the School-to-Prison Pipeline Hearing

Dear Senator Durbin,

Thank you for this opportunity to comment. For more than four decades, the Center for Law and Education (CLE) has strived to make the right of all students to quality education a reality throughout the nation and to help enable communities to address their own public education problems effectively, with an emphasis on assistance to low-income students and communities.

Much of our work over this time has been in two broad areas – (1) improving both policy and implementation to secure high-quality academic programming for students, including work on school reform at national, state, and local levels, and (2) representation of students (particularly low-income students, students of color, and students with disabilities) who are faced with exclusion from educational opportunities, including through disciplinary actions. In seeking to end the school-to-prison pipeline, we believe – based on both experience and research – that the interaction between these two areas is critical. Students who are vulnerable to being pushed out of school, including those who end up with police and court involvement, typically first have a long history of growing disengagement with the academic program. Providing engaging and rigorous high-quality education is one of the most important components of a strategy to end the pipeline.

We want to draw your attention to three interconnected policies on the right to quality education that were formally adopted by the American Bar Association (ABA) in 2009 -- one on the right to a high-quality academic program,¹ one of the right to remain in school,² and one on the right of those who are not in school to resume education in a high-quality program (including those who are or have been incarcerated).³ The three policies and related reports provide detailed strategies and roadmaps for addressing these issues, and they draw on relevant research. While calling for new policies, they also point to ways that existing laws – particularly Title I and the civil rights laws – could be much better utilized toward the goals. They also provide a call to bar associations and attorneys throughout the nation to work to advance the policies. We are attaching a one-page cover statement. The three ABA policies/reports themselves are available at the links below.

CLE staff (participating on the ABA Commission on Youth at Risk) served as primary author of the policies and reports that the ABA adopted. We urge you to make use of these documents. CLE would very much welcome the chance to work with you and your staff on that endeavor.

Sincerely,



Paul Weckstein and Kathleen B. Boundy, Co-Directors

¹ www.cleweb.org/sites/default/files/ABA.118A.RighttoHigh-QualityProgram.pdf

² www.cleweb.org/sites/default/files/ABA.118B.RighttoRemaininSchool.pdf

³ www.cleweb.org/sites/default/files/ABA.118C.RighttoResumeEducation%20%281%29.pdf



December 10, 2012

The Honorable Richard Durbin, Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin:

I write to you as the Director of Strategic Planning at the Charles Hamilton Houston Institute for Race and Justice (CHHIRJ) at Harvard Law School. I respectfully submit the following statement to the Senate Judiciary Committee concerning its hearing, scheduled for December 12, to *End the School to Prison Pipeline*. I applaud the Judiciary Committee for reaching out to stakeholders to learn more about this issue, and for seeking information about alternatives to harsh disciplinary policies in schools that are unnecessarily pushing our nation's most vulnerable students out of school and into the criminal justice system.

By way of a brief introduction, CHHIRJ was founded by Professor Charles J. Ogletree, Jr., Jesse Climenko Professor of Law, in 2005 to honor and continue the unfinished legacy of one of the great legal giants of the 20th century, Charles Hamilton Houston. The Institute conducts policy and legal analysis, and regularly convenes meetings, roundtables and conferences. We initiate partnerships with law firms, advocacy organizations, and other academic institutions around specific issues. Ultimately, the Houston Institute creates a bridge between knowledge and action. While adhering to the most rigorous standards of academic scholarship, we are equally committed to ensuring that such knowledge is accessible and useful to policy makers, practitioners and the general public.

Dismantling the school to prison pipeline has been central to the agenda and mission of the Charles Hamilton Houston Institute for Race and Justice since its inception. A summary of the work we have done related to this issue includes:

1. Hosting numerous community events which highlighted research, practice, policy and promising programs aimed at reducing exclusionary discipline in public schools
2. Forging an award-winning partnership with the Center for Law and Education and Choate, Hall and Stewart, a Boston-based law firm, to create a pro bono project in which lawyers are trained to represent low-income students at suspension and expulsion hearings.
3. Publishing several policy briefs that offer research and policy synthesis on aspects of the pipeline. "First, Do No Harm" focuses on the role and impact of school resource

officers in educational environments. “A Seamless Web” identifies alternatives to zero tolerance and “A Better Balance Wheel” examines how we can create more inclusive schools by ameliorating impoverished neighborhood conditions and addressing racial bias.¹

4. Organizing and co-sponsoring, with the Children’s Defense Fund and other organizations, a Cradle to Prison Pipeline meeting aimed at creating coalitions in Massachusetts to dismantle the pipeline.
5. Co-sponsoring and hosting a conference on restorative justice with other organizations based in Massachusetts.
6. Working with a national team of researchers to design interventions aimed at reducing implicit racial bias among officials working in schools with large proportions of students of color.

Defining the School to Prison Pipeline

Before I outline several broad policy recommendations, I first define our understanding of the term “the school to prison pipeline.” At the Houston Institute, we associate the term with two related phenomenon: (1) the increasing use of “zero tolerance” discipline policies in public schools that establish mandatory or predetermined punishments for certain behaviors; and (2) the increasing practice of arresting or criminally citing students for school-based behaviors. Both are described below.

1. Increasing use of zero tolerance policies: High visibility shootings in schools, most notably Columbine in 1999, created a wave of fear about violence in schools throughout the country. This fear was exacerbated by aggressive “tough on crime” rhetoric about juveniles nationally, including the infamous use of the term “superpredator,” and the passage of new laws stiffening penalties against them in every state. In response, the use of “zero tolerance” and other exclusionary discipline practices skyrocketed in public schools across the country during the 1990s and first decade of the 21st century.

According to statistics from the U.S. Department of Education, more than 3 million children in grades K-12 were suspended at least once during the 2009-2010 school year.² This represents a 7.4 percent increase in suspensions since 2000, and a doubling of the rate of suspensions since 1974. As overall numbers of students excluded from school increased, so have the racial disparities, with black males the group most harshly punished. Nationally, in 2009, black students were 3.5 times more likely to be suspended as white students. In some states, black suspension rates are as high as 25 percent³. Moreover, African Americans made up 46 percent of those students who were suspended more than once. During the 2009-2010 school year, 39 percent of all expulsions were of black students even though they represented only 18 percent of enrolled students at sampled schools.⁴ The vast majority of these punishments were for relatively minor misbehaviors, including dress code violations,

¹ Much of the research and analysis cited in this statement is derived from information contained in these publications. Full briefs are available at: www.charleshamiltonhouston.org.

² “Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion From School.” August 2012, Civil Rights Project, p. 14. Available online at: <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-crrr-research>

³ Ibid.

⁴ “Researchers Sound Alarm Over Black Student Suspensions,” August 2012, *Education Week*

truancy, tardiness, disrespect, and insubordination.⁵ Suspension rates are highest in urban districts that enroll a disproportionate share of students of color.

These racial disparities become more disturbing when we examine the differences in punishments for similar offenses. In his study, *"The Color of Discipline: Understanding and Addressing Racial Inequity in School Punishment,"*⁶ Russell Skiba and colleagues at Indiana University reviewed disciplinary data from all middle school students (11,001) in a large Midwestern urban school district. They found that African American students are referred to the office for less serious and more subjective reasons than white students, and generally received harsher punishments than white students accused of similar offenses. The authors concluded that "these results argue that disproportionate representation of African Americans in office referrals, suspension and expulsion is evidence of a pervasive and systematic bias that may well be inherent in the use of exclusionary discipline."

These patterns are closely related to two other issues of deep concern to the African American community and to society as a whole: (1) the high rates of high school dropouts among black males and (2) disproportionately high rates of incarceration among black males. Suspensions are considered one of the top three predictors of dropping out of school. In turn, dropping out of school triples the likelihood of being incarcerated. According to Harvard sociologist Bruce Western, 60% of black male high school dropouts spend some time in prison.⁷

2. Increasing Use of Police and Referrals to Law Enforcement for School-Based Offenses:

The deployment of police in schools has increased dramatically during the past decade, from an estimated 9,446 in 1997⁸ to a current presence of approximately 17,000 nationally.⁹ Los Angeles, New York and many other cities have created their own school police agencies.¹⁰ As of August 2005, the U.S. Department of Justice's Office of Community Oriented Policing Services (COPS) provided \$753 million to more than 3,000 police departments to fund more than 6,500 school-based police officers.¹¹ According to the National Association of School Resource Officers, school-based policing is the "fastest growing area of law enforcement."¹²

Not surprisingly, juvenile judges and legal defenders across the country note a dramatic increase over the past 5-10 years in the numbers of court referrals for offenses committed by students while in school. In some jurisdictions, school-based referrals now comprise the majority of all juvenile justice cases. The most common school-based offense for which students are either arrested or summoned to court is "disturbing a school assembly" which

⁵ Fact Sheet on School Discipline and Pushout, Dignity in Schools. Available online at: http://www.dignityinschools.org/files/DSC_Pushout_Fact_Sheet.pdf

⁶ Available online at: <http://www.indiana.edu/~safeschl/cod.pdf>

⁷ Western, Bruce. *Punishment and Inequality in America*. August 2007. Russell Sage Foundation

⁸ See Randall Berger, "Expansion of Police Power in Public Schools and the Vanishing Rights of Students," 29 Social Justice No. 1-2, p. 122 (2002), based on a 2000 Bureau of Justice Statistics.

⁹ Estimate of NASRO—the National Association of School Resource Officers.

¹⁰ Ibid. See also (Advancement Project, et.al, 2005; Mukherjee, et. al., 2007; Balmer, et.al., 2006)

¹¹ U.S. Department of Justice, Office of Community Oriented Policing Services (2005).

¹² (NASRO, n.d.)

can be broadly interpreted by school officials and police to encompass behaviors that in the past would not have warranted law enforcement intervention.¹³

This national-level increase in punitive school policy does not appear to be a rational response to increased school violence. The most recent government data, in fact, indicates a decline in school violence. Rather, some experts who have studied the widespread adoption of zero tolerance policies in schools suggest that the appearance of metal detectors and school police are intended to send a symbolic message to the community and parents. For example, in a 1995 *Harvard Educational Review* article, New York University sociologist Pedro Noguera, posited that school zero tolerance policies rose concomitant with drug policies of the 1980s that enacted severe punishments for non-violent drug offenses. The same underlying, publicly touted logic—that getting “tough” will “send a message” to would-be perpetrators—underlies both policies. Noguera argues the real, unstated intention of these policies is to assure the public that schools are still in control and the “problem” is going to be solved.¹⁴

Fortunately, as the harmful impact of these punitive policies have become more well-known and documented, there has been, and continues to be, a growing body of research and practice dedicated to identifying and implementing alternative approaches to school discipline. The best and most promising of these strive to create climates of respect and caring in school environments, to address root causes of student misbehaviors, and to identify and reach out to help, rather than push out, students at risk of academic failure or dropping out. Below we offer a set of broad recommendations for how the federal government might play a role in dismantling this pipeline and in expanding opportunities for vulnerable children to succeed in school.

1. Fund research and evaluation of best practices for creating positive, caring and inclusive school climates that use suspensions and expulsions only as a last resort.

School climate influences behaviors of teachers, students, and parents alike. It is defined both by the physical environment and by daily human interactions that reflect the shared ideas that shape a particular school’s identity and standards for expected behaviors. These shared ideas include educational philosophy, assumptions, values, beliefs, and attitudes. By observing and understanding school climate, we can implicitly answer such vital questions as: Is diversity valued and respected? Do adults feel an obligation to create a caring environment? Do students have the right to be treated with respect and dignity? Are parents full partners in resolving behavioral problems? School climate reflects the “personality of the learning environment¹⁵” and is often defined and defended as just “the way we do things here.¹⁶” It determines whether discipline policies are punitive or pro-social. It also communicates to parents and students whether they are welcome and supported. It influences teacher morale and job satisfaction. It affects how students feel about coming to school, their motivation and openness to learning and intellectual risk-taking, and whether or not they feel physically and emotionally safe.

¹³ Arrested Futures, Spring 2012. Citizens for Juvenile Justice and the ACLU. Available online at: <http://www.cfjj.org/pdf/ArrestedFutures-Cfjj-ACLU.pdf>

¹⁴ Noguera, Pedro. “Preventing and Producing Violence.” *Harvard Educational Review*, 1995. Available online at: <http://her.hepg.org/content/e4615g5374044q28/?p=10f921e13b5a4962b275e76ca78d7305&pi=5>

¹⁵ (Perkins, 2008)

¹⁶ (Townley, 1999)

Few schools explicitly define and manage school climate. Yet a significant body of research shows that poor school climate negatively affects a child's ability to learn and increases the likelihood for truancy, misbehavior, and disciplinary challenges, while students in schools with healthy school climates do better academically and exhibit improved socio-emotional-behavioral health.¹⁷ We also know that students feel more "connected" to schools that have tolerant disciplinary policies and that schools with high suspension rates score lower on state accountability tests and rank lower in National Assessment of Educational Progress achievement scores in mathematics, writing and reading than schools with lower suspension rates.¹⁸

2. Create incentives for schools to replace zero tolerance and other exclusionary disciplinary measures with alternatives that foster more positive school climates.

Tested alternatives to suspension and expulsion include restorative justice¹⁹ in which the offender, the victim and the larger community discuss the crime and determine what type of retribution should be paid. (Notably, the American Psychological Association suggests this as an alternative to zero tolerance).²⁰ Also, trauma sensitive schools²¹ focus on addressing mental health needs of students and creating caring, safe environments for children, with a focus on those students who have suffered from trauma. The most widely used alternative to suspension and expulsion is school-wide positive behavior intervention support (PBIS).²² This program treats appropriate school behavior as a skill to be learned, much like an academic skill. Under this model, expectations are clearly communicated to students and misbehaviors trigger responses intended to teach students the underlying reasons for the expectation and to internalize that understanding. The Minneapolis-based Search Institute's Developmental Assets program brings together a range of people and organizations within a community to intentionally assess and build a particular set of resources associated with healthy child development.²³

3. Create incentives and mandates for school administrators, teachers, and school resource officers to receive training in adolescent psychology, the effects of exposure to trauma and violence, and implicit racial bias.

In the past decade, research has taught us a great deal about the differences between adolescent and adult brains, about the effects on children's behavior of exposure to violence and

¹⁷ Perkins, 2008; National School Climate Center, 2008; Tableman, 2004)

¹⁸ Fact Sheet on School Discipline and the Pushout Problem, Dignity in Schools. Available online at: <http://www.dignityinschools.org/content/dignity-schools-campaign-fact-sheets>

¹⁹ B. Borgen, Catherine. "Safe Schools: Strategies for Changing a Culture" Paper presented at the Sixth International Conference on Restorative Justice. Centre for Restorative Justice, Vancouver, British Columbia, June 1- 4, 2003.

Vancouver BC.; Braithwaite, Valerie, Brenda Morrison, Eliza Ahmed and Monika Reinhart, "Researching prospects for restorative justice practice in schools: The Life at School Survey 1996-1999" Paper presented at the Restorative Justice Conference, Research School of Social Sciences, Australian National University, Leuven, Australia. September, 2001.

²⁰ APA Zero Tolerance Task Force, 2008, "Are Zero Tolerance. . ."

²¹ Massachusetts Advocates for Children. *Helping Traumatized Children Learn: A Report and Policy Agenda*. Boston, Massachusetts: Massachusetts Advocates for Children. October, 2005.

²² Maryland and Illinois are leaders in implementing PBIS statewide and received funding from national and state level health and human services agencies. See, for example, www.pbismaryland.org By 2011, Illinois' PBIS Network hopes to have the program implemented in 1,200 schools. <http://www.pbisillinois.org/>

²³ <http://www.search-institute.org/>

trauma, and about how implicit, or unconscious, racial bias may affect actions and decisions. Yet, few teachers, administrators and school resource officers who interact with youths daily, and who make life-altering decisions about their futures, are provided with training about these scientific developments. Such knowledge is particularly critical as these adult decision-makers weigh the consequences for students of such subjective behaviors as “insubordination,” or “disobedience,” or “disruption of school assembly” where judgment, discretion and bias could well be in play.

For example, a teacher may say she does not think that her African American students are more prone to violence than her white students, and she may truly believe that she holds that view. However, because of images or conditioning from a variety of sources over many years, she may hold wholly unconscious negative feelings about African Americans that do indeed affect her actions and interpretations of incidents involving her students. Research from the field of cognitive science demonstrates that people tend to make unconscious associations between African Americans and crime, among other negative characteristics.²⁴ Helping educators understand their biases is the first step in helping them overcome them.

Project Implicit, an outgrowth of scientific work on implicit bias, offers educators and others tailor-made materials for courses. <http://www.projectimplicit.net/services.php> Through its program, Teaching Tolerance, the Atlanta-based Southern Poverty Law Center incorporates the use of the IAT test in its professional development materials. <http://www.tolerance.org/activity/test-yourself-hidden-bias> States and the federal government could offer incentives for local districts to pilot such programs in their schools.

3. Fund more school-based health clinics and full-service school models

An extensive body of research documents the impact of undetected and untreated socio-emotional-behavioral problems, basic health problems (i.e., vision, dental, and hearing), and parental engagement on school success. Researchers, practitioners, and advocates also highlight the continuing challenge of making quality basic health services affordable and accessible to all children and families in need—particularly children who live in areas of concentrated disadvantage. According to research compiled by the Center for Health and Health Care in Schools, 75 percent of children in need of mental health services do not get the help they need.²⁵ Children of color not only have less access to mental health services and are less likely to receive needed care, but they often receive a poorer quality of mental health care. Of those children fortunate enough to receive care, 70 to 80 percent receive it in a school setting. Yet, only about 60 percent of the nation’s 1,500 school-based health centers have mental health professionals on staff.

²⁴ See, e.g., Ted Chiricos, Kelly Welch & Marc Gertz, *Racial Typification of Crime and Support for Punitive Measures*, 42 CRIMINOLOGY 358-390 (2004). In this study, researchers examined the extent to which people associate crime with African Americans. The “racism” that the authors noted in this study “eschews overt expressions of racial superiority and hostility but instead sponsors a broad anti-African American effect that equates African Americans with a variety of negative traits of which crime is certainly one. This study demonstrates that the equation of race and crime is a significant sponsor of the punitive attitudes that are given material substance in the extraordinary rates of incarceration now found in the United States.”

²⁵ (Center for Health Care and Health Care in Schools, n.d)

Nearly ten years ago, researchers from the Urban Institute pointed to school-based health centers as a “sorely underutilized”²⁶ resource that should be the focal point for the delivery of prevention intervention services.²⁷ The researchers noted that despite the many strengths of the school-based health centers—including popularity with parents and students, ability to provide care for students without access to regular providers, and capacity to provide a wide range of services in a convenient setting—lack of a reliable funding base posed a significant obstacle to its ability to address the mental and physical health care needs of disadvantaged youth.

Another highly promising model of integrated, community-based service is the Full-Service School Model. These are defined as “community-based efforts to coordinate educational, developmental, family, health, and other comprehensive services through community-based organizations and public and private partnerships.”²⁸ The demand for coordinated and/or co-located services that integrate education, public health, mental health, social services, transportation, childcare, recreation, enrichment and other community based resources has been echoing in the U.S. for more than a decade since Joy Dryfoos’ seminal 1994 publication, *Full-Service Schools: A Revolution in Health and Social Services for Children, Youth, and Families*, but has still not been actualized to scale.

Conclusion: Adopt Public Health Models in Schools

In summation, the Houston Institute supports, when possible, the adoption in our public schools of approaches that use a public health, rather than law enforcement, orientation toward students, particularly in high poverty schools where students frequently present a host of emotional and physical challenges that make traditional learning in classrooms difficult. Such an orientation requires that adults working with youths—teachers, school resource officers, school administrators—receive training in adolescent psychology and development, in the impact of implicit racial and ethnic bias, and in more fully understanding behaviors of students who have experienced trauma or been exposed to violence. It also requires a commitment on the part of elected and school officials to prioritize investments in health and mental health services in schools over investments in metal detectors, surveillance equipment, and police deployment. All available research tells us that “front end” investments that expand opportunities and likelihood of success for vulnerable students are far more cost-effective than “back end” ones emphasizing punishment and exclusion.

Thank you for the opportunity to submit this statement on behalf of the Charles Hamilton Houston Institute for Race and Justice. Please do not hesitate to contact me at 617-495-8087 or at jwald@law.harvard.edu if you have any questions.

Sincerely,

Johanna M. Wald
Director of Strategic Planning

²⁶ (Eisen, M., Pallitto, C. & Bradner, C., 1999, online chapter 1, paragraph 10)

²⁷ Ibid.

²⁸ See Gov.track.us (<http://www.govtrack.us/congress/bill.xpd?bill=h110-2323>) for text.



**Chicago Lawyers' Committee
for Civil Rights Under Law, Inc.**

Chicago's Partnership for Equal Justice

December 10, 2012

U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510
Stephanie_Trifone@Judiciary-dem.Senate.gov

Re: Hearing on Ending the School-to-Prison Pipeline

Dear Chairman Durbin, Ranking Minority Member Graham, and Members of the Subcommittee on the Constitution, Civil Rights, and Human Rights:

Thank you for the opportunity to submit testimony for the hearing on ending the school-to-prison pipeline before the subcommittee on the Constitution, Civil Rights, and Human Rights, Senate Committee on the Judiciary. We are writing on behalf of the Chicago Lawyers' Committee for Civil Rights Under Law, the public interest law consortium of Chicago's leading firms. Our organization has first-hand experience with the school-to-prison pipeline and urges the committee to resolve to keep students in our schools, and not in prisons.

In *Brown v. Board of Education*, Earl Warren famously stated that "[i]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."¹ Yet today in Chicago, a black male student with a learning disability faces a 72.5% chance of receiving an out-of-school suspension in a given school year.² When the vast majority of a particular demographic is systematically denied access to the most fundamental of opportunities, something is seriously broken.

The Chicago Lawyers' Committee for Civil Rights Under Law's Educational Equity Project provides *pro bono* representation to students in Chicago facing expulsion from public schools. Although students have a right to representation when facing expulsion from school, very few students are able to take advantage of this opportunity. Our organization has seen first-hand how much an advocate can do to help keep a student in school. But we have also seen how

¹*Brown v. Board of Education of Topeka Kansas*, 347 U.S. 483, 493 (1954)

²Daniel J. Losen and Jonathan Gillespie. *Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School*. The Civil Rights Project at UCLA (August 2012), page 37. Available at <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-ccrr-research/losen-gillespie-opportunity-suspended-ccrr-2012.pdf>

easy it is for a student without representation to be expelled from school despite lack of witnesses or even despite clear evidence of innocence.

It is easy to gain personal experience with the school-to-prison pipeline in Chicago. Chicago runs one of the largest and most segregated public education systems in the country. The statistics are well-known and heartbreaking. Currently the dropout rate for black students is almost twice as high as the rate for white students, and this gap in achievement appears to be growing rather than shrinking. The University of Chicago Consortium on School Research reports that in the years since Secretary of Education William Bennett famously proclaimed Chicago public schools to be the worst in the nation, performance has improved across the board, but achievement gaps have only widened. Their report asserts that “racial gaps in achievement have steadily increased, with white and Asian students making more progress than Latino students, and African American students falling behind all other groups.”³

These disparities are further reflected in disciplinary systems – in the past year, students in the Chicago public school system cumulatively lost 306,000 class days due to suspensions, and this has affected predominantly low-income and minority students.⁴ Black students are more than 3.5 times as likely to be suspended as their white peers. African-American students represented 45% of CPS enrollment, but 76% of students receiving at least one out-of-school suspension were African-American. Chicago currently has the third highest black-white suspension ratio among major American cities.⁵ Research on the “school-to-prison pipeline” phenomenon suggests that disparities in discipline directly influence subsequent disparities in incarceration rates.

Our office has had the chance to meet some of the students that make up these statistics, and to see them as real people and not merely alarming numbers. We’ve seen how often students acting out in school is the result of problems that merit support, not discipline – difficult challenges at home, undiagnosed learning disabilities, absent parents. We’ve seen the way students’ grades drop after being out of school for even comparatively short suspensions. We’ve seen how this harsh discipline isolates and alienates children, leaving them disengaged from the school community and primed to drop out. At the very first sign of trouble, schools so often given up on precisely the children most in need of extra care and attention.

Our office worked with one memorable student who was always articulate in private meetings. He talked candidly about how hard it was to be a young black male and to feel

³ Stewart Luppescu, et. al. *Trends in Chicago’s Schools Across Three Eras of Reform*, Consortium on Chicago School Research (2011). Available at <http://ccsr.uchicago.edu/content/publications.php?pub_id=156>

⁴ *School Group Calls for Changes to CPS Disciplinary Policies*, CBS Chicago (March 5, 2012). Available at <<http://chicago.cbslocal.com/2012/03/05/student-group-calls-for-changes-to-cps-disciplinary-policies/>>

⁵ Rosalind Rossi & Art Golab, *Black Students face tougher discipline in Chicago and the U.S.*, Chicago Sun T. (March 6, 2012). Available at <<http://www.suntimes.com/news/education/11087696-418/black-students-face-tougher-discipline-in-chicago-and-nation-federal-analysis-finds.html>> (citing a report from the Department of Education, Office of Civil Rights, that was based on data submitted by the Chicago Public Schools for the 2009-2010 school year).

pressure from all sides to be tough. He explained how students were often bullied simply for choosing not to take drugs. He talked at length about making reflective, mindful life choices, and said that he had worked hard to find a small group of friends who were studious and responsible. Yet despite his eloquence at our meetings, when this student's expulsion hearing took place, all he could do was cry.

We have seen how families, not just students, are affected. Our organization worked with one student whose mother left her hourly job to attend his expulsion hearing, only for us to discover when we showed up that the District had cancelled the hearing with no notice. The hearing was rescheduled, and then cancelled again at the last minute after the mother had already taken off work a second time. We have worked with a student whose grandmother was willing to accompany her to an expulsion hearing despite needing to walk on a painful hip injury to get there. We have even worked with a mother who had to quit her job to provide full-time homeschooling to her son after his expulsion, leaving the rest of her children facing severe financial distress.

Although we are excited about many of the measures that the federal government has initiated to help fight the school-to-prison pipeline, we believe that there is much more to be done. The Office of Civil Rights has already begun tracking data on suspensions and expulsions, focusing on discrepancies in rates between students by race, gender, and disability status. While this is a commendable start, this data is woefully incomplete. We need a school-by-school breakdown, and we need a breakdown by offense. Gaps in data allow for excuse-making. The absence of a breakdown by individual offense and by prior disciplinary history allows individuals to persist in the erroneous belief that black and Hispanic students are punished more harshly solely because they are committing more serious offenses. More data is also needed on the involvement of police officers in public schools. Although some cities, like New York, mandate data collection on the number of arrests taking place at school, in Chicago and most other places data on in-school arrests is hard to come by. In order to have a rigorous discussion of the school-to-prison pipeline, we need data that shows how deep the inequity runs.

The Office of Civil Rights should also be doing more to respond to official complaints. Organizations have had mixed success filing complaints about discipline disparities with the OCR. The OCR during the Obama administration has already taken positive steps toward increasing the number of school compliance reviews, but more needs to be done. As Russlynn Ali, the assistant secretary for civil rights, has herself stated "[t]he civil rights laws are the most sorely underutilized tool in education reform and closing the achievement gap."⁶ This is real progress, but the number of compliance reviews could be even higher.

The federal government should also be doing more to increase funding to programs that provide alternatives to harsh discipline. Positive Behavioral Intervention Systems (PBIS) have been catching on in thousands of schools across America and have been remarkably successful.

⁶Nadra Kareem Nittle. *U.S. Department of Education Investigating Record Number of Civil Rights Complaints*. America's Wire. Available at <<http://americaswire.org/drupal7/?q=content/us-department-education-investigating-record-number-civil-rights-complaints>>.

PBIS provides a data-driven, holistic framework that enhances academic and behavioral outcomes for all students. PBIS programs rely heavily on constant data monitoring to ensure that all behavioral interventions are having demonstrable positive effects on the school community. When students are unresponsive to school-wide behavioral interventions, PBIS programs work to implement student-specific responses that pay careful attention to (1) why the behavioral problem is occurring; (2) strengthening more acceptable alternative behaviors; (3) removing antecedents and consequences that trigger the problem behavior; and (4) adding antecedents and consequences that help maintain acceptable alternative behaviors.⁷ Although PBIS programs receive some federal funding under the Individuals with Disabilities Education Act, increased federal involvement with PBIS programs could help expand the success of the programs to even more schools.

Funding should also be increased for programs that increase re-enrollment and decrease dropout rates. Evidence is clear that students who face harsh punishments like suspension and expulsion are much more likely to drop out than their peers.⁸ Students who drop out are more than three times as likely to face incarceration.⁹ In Chicago, 28.4% of Hispanic men and 24.4% of black men between the ages of 19 and 24 do not have a regular high school diploma. For white men this number is just 4.6%.¹⁰ Adjusting back into the routines of school life after months or even years out of class is tremendously difficult, and students benefit from increased supervision during this time. Congress needs to restore funding for the Truant Alternative Optional Education Program (TAOEP) to \$18 million. During the 2008-2009 school year, TAOEP funding was at \$20,078,000. For the current school year it is only at \$12,000,000, despite the fact that it provides much-needed resources that help prevent chronically truant students from dropping out. The federal government should also choose to fund the Illinois Hope and Opportunity Pathways through Education (IHOPE) program at \$25 million. IHOPE would provide resources for re-enrolling over 5,000 high school dropouts across the state.

Work is needed on the prison end of the school-to-prison pipeline as well. We need to fight for juvenile justice initiatives that focus on holistic, restorative responses. Students who are arrested are 50% more likely to drop out.¹¹ Combined with the high arrest rates in Chicago Public Schools, the school environment practically ushers students into the juvenile justice

⁷ George Sugai, et. al. *Applying Positive Behavioral Support and Functional Behavioral Assessment in Schools*. Journal of Positive Behavioral Interventions, vol. 2 no. 3. (2000).

⁸ M.E. Goertz, J.M. Pollack, and D.A. Rock. *Who Drops Out of High School and Why?; Findings from a national study*. Teachers College Record, 87, 357-73 (1986). Available at <<http://www.tcrecord.org/Content.asp?ContentId=688>>.

⁹ L. Lochner and E. Moretti. *The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self Reports*. The American Economic Review, 94 (1), 155-189 (2004).

¹⁰ Andrew Sum and Ishwar Khatriwada. *High School Dropouts in Chicago and Illinois and Their Persistent Labor Market Problems*. Center for Labor Market Studies at Northeastern University (November 2012).

¹¹ *Failed Policies, Broken Futures: The True Cost of Zero Tolerance in Chicago*, Voices of Youth In Chicago Education. Available at <<http://www.publicinterestprojects.org/wp-content/uploads/downloads/2011/08/VOYCE-report-2011.pdf>>.

system.¹² Rather than criminalize students for minor offenses, the juvenile justice system should focus more on restorative justice. Restorative justice programs help children understand the harm they may have inflicted, facilitate collaborative solutions, and promote awareness and understanding. Such programs may include peace circles, mediation, and implementing peer juries.

Finally, an increased set of public-private partnerships between the federal government and the public-interest organizations working on these issues would be both efficient and more likely to lead to the best outcomes. We are tremendously pleased to be a part of this hearing, and hope that this can serve as the start of long-term collaboration on the school-to-prison pipeline between the subcommittee on the Constitution, Civil Rights, and Human Rights and the many non-profit groups doing work in this area. Our involvement at one hearing matters, but it should be just the beginning.

Given this, we urge the federal government to support communities in their fight to end the school-to-prison pipeline. We encourage the government to work to reduce racial disparities in discipline, promote alternatives to harsh punishment, and ensure that all young people have the opportunity to succeed.

Sincerely,

Jay Readey
Eve Rips
*Chicago Lawyers' Committee for
Civil Rights Under Law*

¹²*The School to Prison Pipeline: A Fact Sheet*. Chicago Youth Justice Project. Available at <<http://chiyouthjustice.files.wordpress.com/2012/02/chicago-stpp-fact-sheet-2010-2011.pdf>> (stating that in 2010, there were 5,574 juvenile arrest of youth 17 and under on Chicago Public School (CPS) property).

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**Testimony to the Senate Judiciary Subcommittee on the Constitution, Civil
Rights and Human Rights
School Push Out and the School to Prison Pipeline**

Wednesday, December 12, 2012

The Child Care Association of Illinois thanks Senator Durbin and the members of the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights for the opportunity to present written testimony on school push out and the school to prison pipeline.

School Push Out and the School to Prison Pipeline: There is a clear connection between higher levels of educational attainment and lower levels of criminal justice involvement. However, school discipline policies and practices actually discourage educational success and push young people out of school. Zero tolerance policies and greater law enforcement presence on school campuses have led to practices that push students out of school and into the juvenile or criminal justice systems for behaviors that would not have led to court involvement in the past. (National Juvenile Justice Network). Student push out occurs through suspensions, expulsions, arrests and/or court referrals, drop-out or truancy.

Although research may not be available to detail the educational history of individual students who flow through the school to prison pipeline, anecdotally many students who are pushed out of school have long standing problems at school, including unaddressed or unidentified special education needs, longstanding underachievement that has not been addressed, and attendance problems beginning in the early grades. When schools fail to address the needs of their students, children become marginalized from their school communities. Students with less positive school relationships are at higher risk for delinquency.

Furthermore, school problems such as poor attendance, truancy, problem behaviors and underachievement can indicate family problems. Schools failure to acknowledge, intervene or refer kids and families for further reports allow problems to become more entrenched and for kids to fall further and further behind in school.

In addition to the risk of criminal justice involvement, students pushed out of school have lower levels of educational achievement, leading to a lifetime of decreased wages, higher rates of poverty and dependence on government benefits, and communities lose tax revenue related to more gainful employment. Keeping kids in school is a sound investment – generating savings in criminal justice spending and promoting public safety.

National Scope: At the national level, data shows that over three million children grades K-12 lost instructional time in 2009-2010 due to suspension. Suspended children may have no adult supervision during their suspensions. Although school may claim that kicking "bad" kids out of school promotes learning for other children, research actually suggests that lower use of out-of-school suspensions lead to high test scores. (Center for Civil Rights Remedies at The Civil Rights Project) National data shows the disparate impact of school discipline and the greater vulnerability of minority children and those with disabilities to school push out. For instance:

- One is six African American students are suspended compared to rates of 1:13 for Native Americans; 1:14 for Latinos; 1:20 for Whites; and 1:50 for Asian American students.
- More than 13% of students with disabilities were suspended – twice the rate of their non-disabled peers. This is despite the fact that special education students should not be suspended for behaviors that are a manifestation of their disabilities.
- One out of four African American students with disabilities was suspended at least once (and some multiple times) during the 2009-2010 school year.

Illinois Specifics: Illinois has the worst disproportionate suspension rate in the nation with African American students being suspended at a rate of more than 21:1 compared to their white counterparts.

- Cook County suspended over 18% of their student body in the 2009-2010 school year.
- Almost 42% of African American students with disabilities were suspended.

Illinois Efforts to Address the School to Prison Pipeline:

- *Efforts to Reduce Truancy:* Truancy is a major risk factor for delinquency in and of itself and young people are often referred to court for truancy even when they have not committed any other delinquent act pushing them further away from school and other "normal" or pro-social activities. Illinois passed the Truant Minors in Need of Supervision, which went into effect in 2006 to address growing numbers of young people in the delinquency system for truancy. This law requires schools to provide appropriate interventions to the child and family to reengage the student in school. If these services are not effective, additional community based youth services must be accessed prior to a petition being filed with the court.
 - Unfortunately, not all communities have embraced this graduated approach to addressing truancy
 - Those communities that have implemented a graduated approach to truancy have succeeded in reducing truancy. A series of reports in the Chicago Tribune highlight the success of a program in Galesburg, Illinois where they provide services such as simple concrete supports like alarm clocks and shoes to more intensive family services or mental health services.
 - Successful truancy programs use an array of tools to get students back in school including home visits and the assessment of the truancy issue.

When outreach workers can't solve problems then regional school authorities hold hearings for a more formal intervention.

- *Alternative Approaches:* Some school districts in Illinois utilize alternative approaches to arrest/court referral such as peer juries and other balanced and restorative justice practices that promote positive youth development.

Some schools have taken a longer view of improving student behavior and promoting their students' positive relationship with the school through such programs as Positive Behavioral Interventions and Supports (PBIS).

Recommendations:

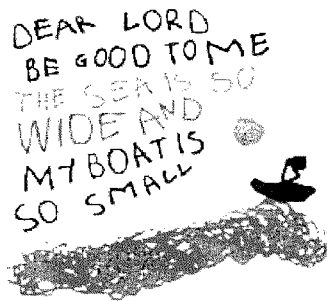
- School Districts must be required to use a graduated response to truancy that re-engages students with school;
- Individual schools, districts and states need strategic plans to reduce push out, drop out, and truancy. Such plans should include prevention, early intervention, and high level intervention;
- Young people already out of school or returning to school after a period of confinement need to be re-engaged in educational programming;
- Districts should be required to identify and address disparities in disciplinary practices and disproportionate impact;
- Alternative approaches to arrest, suspension and expulsion need to be researched to provide an evidence base to improve policy and practice;
- Promising practices that promote better school engagement and reduce push out, suspension and expulsion need to be supported;
- Zero tolerance policies need to be rethought to promote better outcomes for all children; and
- Data collection needs to reflect those students who drop out, who are truant, suspensions/expulsions, all disaggregated by race, poverty and disability – all such data should be made public.

About the Child Care Association of Illinois: The CCAI is an organization of 60 voluntary agencies that provide children's services throughout Illinois including child welfare, delinquency prevention, community based youth services, residential treatment, private special education, and child mental health services.

Respectfully submitted,

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**Written Statement
for the Record**



Children's Defense Fund

**Hearing on
Ending the School-to-Prison Pipeline
December 12, 2012**

**Before the
Subcommittee on the Constitution, Civil Rights and Human Rights
of the
Committee on the Judiciary
United States Senate**

**Submitted by:
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The Children's Defense Fund (CDF) appreciates the opportunity to submit a statement for the record for the hearing on Ending the School-to-Prison Pipeline before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights. We applaud the Subcommittee for bringing attention to the troubling increase across the country in children, frequently children of color, being pushed out of classrooms and into the courts for relatively minor nonviolent offenses.

The Children's Defense Fund's *Leave No Child Behind*[®] mission is to ensure every child a *Healthy Start*, a *Head Start*, a *Fair Start*, a *Safe Start* and a *Moral Start* in life and successful passage to adulthood with the help of caring families and communities. The Children's Defense Fund provides a strong, effective and independent voice for all children of America who cannot vote, lobby or speak for themselves. CDF pays particular attention to the needs of poor and minority children and those with disabilities. CDF is a private non-profit organization.

The Children's Defense Fund's top priority is to dismantle what we call America's Cradle to Prison Pipeline[®] crisis that leaves an African American boy born in 2001 with a one-in-three chance of going to prison in his lifetime, a Latino boy a one-in-six risk of the same fate, and a White boy a one-in-17 chance. An African American girl born in 2001 has a one-in-17 chance of going to prison in her lifetime, a Latina girl born that year a one-in-45 risk, and a White girl a one-in-111 chance of the same fate.

The *Cradle to Prison Pipeline* is a trajectory that leads to marginalized lives, imprisonment and often premature death. The United States of America does not provide a level playing field for all children and our nation does not value and protect all children's lives equally. The cradle-to-school-to-prison pipeline is fueled by racial disparities, pervasive poverty, inadequate health and mental health care, gaps in early childhood development, disparate educational opportunities, chronic abuse and neglect, and overburdened and ineffective juvenile justice systems. Failures of our child serving systems, especially when coupled with race and poverty, increase the likelihood of children entering the pipeline to prison.

Zero Tolerance School Discipline Policies Fuel the Pipeline to Prison.

Zero tolerance school discipline policies are a key feeder system into the pipeline to prison and play a significant role in fueling the dropout crisis, which adds to the odds already stacked against children. Zero tolerance policies establish a mandatory or predetermined punishment for certain behaviors without taking into consideration the situational context. They have increased the use of expulsion and suspension disciplinary practices for minor offenses such as tardiness. These policies assume that the immediate removal of disruptive students will deter others from similar behavior and improve classroom harmony.

The Children's Defense Fund recognizes that school leaders need to keep classrooms safe and that there may be a need for disciplinary actions, including suspensions and expulsions, when

students are violent or take actions that threaten their safety or the safety of others. However, too often suspensions and expulsions from school are for nonviolent offenses. Would you:

- Suspend a student from school for four months for sharpening his pencil without permission and giving the teacher a “threatening” look when asked to sit down?
- Expel a student from school for the rest of a school year for poking another student with a ballpoint pen during an exam?
- Expel a student from school permanently because her possession of an antibiotic violated your school’s zero tolerance drug policy?
- Call the police, handcuff, and then expel a student who started a snowball fight on school grounds?

All four of these are real examples of the impact of zero tolerance school discipline policies in Massachusetts—and there are thousands of stories like these across the country.

Research has shown that there is little evidence that zero tolerance improves school climate or discipline. To the contrary, there is evidence that this kind of punishment is inappropriate for youths whose brains and cognitive judgment are still developing. Zero tolerance increases expulsion and suspension rates, dropout rates, police presence on school campuses, the number of court referrals, juvenile crime rates and the entry of youth into the juvenile justice system. The zero tolerance school discipline policies disproportionately impact students of color—the very students disproportionately fed into the criminal justice system.

Zero tolerance is a compelling “flashpoint” that represents the deeper injustice of the *Cradle to Prison Pipeline*. Zero tolerance school discipline policies and the arrest and criminalization of children at younger and younger ages for behaviors once handled by schools and community institutions overwhelm and break apart already fragile young lives. The image of six-, seven- and eight-year-old children being arrested and handcuffed on school grounds for nonviolent offenses demands a response.

Every Second and a Half a Student is Suspended

The Children’s Defense Fund has a long history of fighting against school exclusion. Our first publication, *Children Out of School in America*, released almost 40 years ago, documented two million children not enrolled in school, including hundreds of thousands of children with disabilities. Our findings contributed to the passage of the Education for All Handicapped Children Act in 1975, creating the federal right to a free public education for children with disabilities. Today more than six million children with disabilities attend school. The report was the result of nine months of on-the-ground research in which CDF staff knocked on more than 8,500 doors in nine states and the District of Columbia to interview families about their children’s school experiences.

Children Out of School in America provoked a significant response from parents, educators and policymakers throughout the country, and a year later CDF released a follow-up report, *School Suspensions: Are They Helping Children?* to examine more closely the problems caused by exclusionary school discipline policies. Our study of school suspensions led us to the following broad findings:

- In the 1972-73 school year, school districts with a little over half of the student population in the country suspended over one million students.
- The vast majority of the suspensions in the survey were for non-dangerous, nonviolent offenses. By contrast, less than three percent were for destruction of property, the use of drugs or alcohol or other criminal activity.
- While the largest numbers of suspended children were White, proportionately suspensions hurt more children who were African American, poor, older and male. African American children were suspended at twice the rate of any other group.
- The use of suspensions, the grounds and procedures for them, and their length varied widely between school districts and schools.
- The severe sanction of deprivation of schooling was being imposed without a fair inquiry into the facts.
- The great majority of suspensions did not serve any demonstrated valid interests of children or schools. Suspensions pushed children and their problems into the street, causing more problems for them and for others.

Since that time, our own work and that of many advocates, school leaders, and researchers has led to significant reforms to improve access to public education for vulnerable children. We applaud the many initiatives you will hear or read about during the course of this hearing, including the joint efforts of the U.S. Departments of Justice and Education. Yet many challenges remain—some new, but too many of them the same. Children continue to be kept out, pushed out or functionally excluded from school. A public school student receives an out-of-school suspension every second-and-a-half during the school year. Suspensions and expulsions continue to pose major threats to some of our nation's most vulnerable children.

Every Eight Seconds a Student Drops Out of School

Too many schools are pushing children into the juvenile and criminal justice systems to make them someone else's problem. However, we should be worried not just about the teenager who ends up behind bars when suspended or expelled. Too often students who are pushed out feel disconnected and angry, they continue to act out, and consequences escalate. It should be of little surprise when many of the children who are punished by being pushed out of school become the same ones who drop out and stay away for good. A public high school student drops out of school every eight seconds during the school year. And it should be even less surprising when many of the young people who drop out are the same ones whose behavior we continue to complain about and fear and for whom we pay to house in costly prisons cells later. States are spending on average two-and-a-half times more per prisoner than per public school pupil.

Zero tolerance discipline policies are not helping the children who need intervention the most. Instead, they are excluding thousands of students from school every year—including many students who most need to be in class—and making those children even more likely to end up trapped in the destructive, expensive prison pipeline.

Discrimination by Numbers

The 2009-2012 Department of Education Civil Rights Data Collection Survey, released in March 2012, the most expansive of its kind, covered 85 percent of the nation's students and was the first release of this crucial federal data since 2006. The data showed that in the close to 7,000 school districts where data were collected, 6.9 percent of all students received at least one out-of-school suspension. The data documented that children of color face harsher discipline. African American children, for example, comprise 18 percent of the children in the sample but 38 percent of those suspended at least once. They have less access to rigorous course offerings and are more often taught by lower paid and less experienced teachers. American public education is serving as a portal to the cradle-to-prison pipeline for millions of poor children of color. In the districts that were part of this study, the facts are clear:

- African American students are over three-and-a-half times more likely to be suspended or expelled than their White peers.
- African American boys and girls have higher suspension rates than any of their peers. One in five African American boys and more than one in ten African American girls received an out-of-school suspension.
- Students with disabilities (under the Individuals with Disabilities Education Act) are over twice as likely to receive one or more out-of-school suspensions as their non-disabled peers. African American students with disabilities face the harshest punishments.
- In districts with populations of more than 50,000 students, over 70 percent of students involved in school-related arrests or referrals to law enforcement are Hispanic or African American.

And these are not just older students. The stories of six-year-old kindergartener Salecia Johnson, who was arrested and handcuffed at her Milledgeville, Georgia elementary school in April of this year and driven to the police station in a squad car for throwing a tantrum, and Desre'e Watson, who underwent the same ordeal several years ago as a six-year-old kindergartner in Avon Park, Florida, were horrifying reminders that even our youngest children are being criminalized. It is impossible to imagine that one, two or three adults cannot manage a six-year-old child during a temper tantrum without calling the police and arresting the child.

We must use these numbers and cases as a springboard for robust examination of and discussion about school discipline policies and practices and how they are contributing to school dropouts and the school-to-prison pipeline. As Education Secretary Arne Duncan correctly said about his department's findings on suspensions and expulsions: "The power of the data is not only in the numbers themselves, but in the impact it can have when married with the courage and the will to change. The undeniable truth is that everyday educational experience for many students of color

violates the principle of equity at the heart of the American promise. It is our collective duty to change that. ”

We urge members of this Subcommittee to work with the Health, Education, Labor and Pensions Committee and with your counterparts in the House of Representatives to help to replace the *Cradle to Prison Pipeline* with a pipeline to educational achievement, productive employment, and successful transition to adulthood for all our youth.

Changing Course

We must get to the root of these unfair practices. When African American and Latino students represent more than 70 percent of those involved in school-related arrests or referrals to law enforcement in large school districts, there must be a rigorous examination of the reasons why and what actions to take to change unfair racial practices in the application of school discipline.

In tackling the negative effects of zero tolerance discipline policies, it is important to keep front and center the practices that promote them and those with power to change them. All must be addressed. Action is required on multiple fronts.

- **The discretion given to principals and teachers in how zero tolerance policies are applied** and lack of training contributes to policies being applied unfairly.
- **The large presence of school police officers on school grounds** is leading to the criminalization of children at increasingly younger ages.
- **School boards** are ultimately responsible for setting school policies and procedures and need to understand the impact of zero tolerance school discipline policies in fueling the dropout crisis.
- **Parents lack information about how to challenge practices.** Parents often know that discipline policies are being administered unfairly but do not know what to do to tackle the injustice.
- **State school board associations** issue policy guidance that transmits zero tolerance policies without suggesting the training and support that principals and teachers need to implement them appropriately and **state legislatures** resist efforts to provide oversight for the implementation of these policies or to strengthen data collection to assess their impact.
- **Schools of education** often include very little training on classroom management, which leaves teachers poorly equipped to address children’s needs.
- **Judges** see increasing numbers of children coming to their attention for nonviolent offenses as zero tolerance policies are implemented and can be engaged in changing the practice.

- **Systemic racial and class biases** undergird the disproportionate impact of zero tolerance policies on children of color and poor children. These children are often treated differently under these policies.

Schools must be required to have school discipline policies that ensure students will not be unfairly punished and pushed out of school. Basic protections must be put in place to ensure strong, consistent and fair discipline policies in our schools and classrooms so learning can occur for all children, and they can remain in class rather than go to court. In considering appropriate approaches, it is important to recognize that there are more than 13,000 school districts across our 50 states. To help ensure equity and fairness across schools and districts guidance from both the state and federal levels is needed. At the same time we must keep important principles in mind about how to make those policies work for children of color and all children, rather than against them.

In assessing appropriate federal level actions to end abuses of zero tolerance discipline policies, we urge the Subcommittee to keep at least these basic principles in mind:

- **School-by-school and district-by-district data on in-school and out-of-school suspensions and expulsions, the reasons for these actions and their impact on students are key to developing an effective response to zero tolerance policies.** The data should reflect how the discipline policies are being applied and their impact on students. Data should be broken down by race, ethnicity, socioeconomic status and other student characteristics.
- **School discipline codes should end out-of-school suspensions and expulsions for nonviolent offenses.** Children should no longer be suspended or expelled for offenses that used to result in a trip to the principal's office.
- **Meaningful alternatives to suspensions and expulsions** for nonviolent offenses should be provided for teachers and other staff. Teachers need further training in classroom management and the support of their superiors when disciplinary decisions are to be made. Teachers need cultural competence training to understand and address the behavior of all children.
- **More time, attention and resources must be devoted individually and collectively to the causes of the disruptive student behaviors.** Evidence-based and promising practices should be implemented to improve the learning environment.
- **Principals and teachers currently have too much discretion in deciding who should be suspended or expelled.** Further guidance and support is needed to ensure these policies are applied appropriately and fairly.
- **Students and their parents must be notified of their rights and procedures in advance and when a child is suspended.** No child should be suspended or expelled and removed from the school without a parent first being notified.

- **A periodic external review of disciplinary policies and practices and their impact on children of different ages, races, ethnicities and with various disabilities can help to ensure they are applied appropriately and fairly.**

Building on Action in the States

The Children's Defense Fund recognizes that to introduce positive, preventive, supportive discipline systems in all schools and to successfully change school climates, all stakeholders must work together to reverse the trend toward zero tolerance policies that promote harsh discipline and funnel children into the school-to-prison pipeline.

CDF, through its own staff and state offices, has been working in states and school districts, often in collaboration with other organizations, to bring school leaders, judges, community members, parents and students together to work to dismantle the pipeline to prison.

Massachusetts

In Massachusetts, CDF first partnered with the Harvard Kennedy School to research the 60,000 school expulsions and suspensions during the 2009-2010 school year in that state. Of those, about 30,000 were "unassigned offenses"—nonviolent, noncriminal offenses which can include minor behavioral issues such as swearing, talking back to a teacher and truancy. Of the approximately 30,000 unassigned offenses, some two-thirds received out-of-school suspensions. And in reality, since schools are not currently required to report "unassigned offenses" resulting in exclusions of fewer than 10 days for regular education students, the estimated actual number of disciplinary exclusions is likely at least two to three times the number reported. These data had special implications because Massachusetts spends six times more per prisoner than per public school pupil—a greater disparity than in any other state.

In response to these data, CDF is promoting alternatives to zero tolerance discipline policies through a multi-pronged approach in the state. CDF joined Massachusetts Advocates for Children in launching a statewide coalition that successfully advocated for legislation that ensured for the first time that all students in Massachusetts excluded from public school for more than 10 consecutive days are entitled to education services. The coalition is now working with regional coordinators in six Massachusetts communities to implement that legislation, challenge implicit bias in schools and advance restorative justice approaches as alternatives to zero tolerance school discipline policies through hands on training on the alternatives. CDF has engaged parents and youths directly affected by school exclusion in efforts to promote solutions.

CDF also has been working to incorporate classroom management and restorative justice approaches into schools of education starting with the Harvard Graduate School of Education. Graduate students from all over the country have embraced restorative justice practices. They have heard moving testimonials from students about how participating in restorative justice circles helped with their social skills; helped them learn from other people's mistakes and practice leadership; and helped them to process and strategize about how to deal with unfair

school rules. CDF is also working to train school administrators on alternatives to zero tolerance policies.

Early last month, CDF joined the Massachusetts Restorative Justice Task Force and the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School to co-convene a day-long summit at the law school for 200 community and school leaders from across the state on how to implement restorative justice and transformative practices in schools as solutions to strengthen school climate and reduce the dropout crisis. Many were engaged to plan the summit including the Suffolk County District Attorney's Office, local judges who have forged school-court collaborations to divert youths from juvenile detention centers and representatives of Boston's workforce investment board which looks to restorative justice practices not only to reduce high school dropouts but also to strengthen the local workforce.

New York

CDF-New York, a member of the steering committee of the Dignity in Schools Campaign-NY, is working with allies to urge the New York City Department of Education to modify the school discipline code to end suspensions for minor behavioral infractions; require the use of guidance interventions before suspension is used; end long-term suspensions of more than 10 days; and prohibit students from being suspended for more than 10 total days in a school year. CDF-NY played a key role in the passage of the New York City School Safety Act in January 2011, which requires the New York City Department of Education and the New York Police Department to provide data regarding suspensions and arrests in schools. In addition to the more than 69,000 suspensions in New York City schools in 2010-11, the most recent School Safety Act data revealed that each day more than nine New York City public school children were arrested or received a summons on school grounds. The New York Police Department School Safety division includes more than 5,100 officers—a police force in New York City's schools that is larger than the entire police force of the city of Detroit.

CDF-NY is working to strengthen training for New York City school police officers to include crisis intervention and positive youth development. Currently, approximately 14 of the 15 weeks of training that New York City school police officers receive involve basic police tactics similar to those received by any new police recruit. In September 2012, CDF trained 141 new School Safety Officer recruits on the cradle-to-prison pipeline; facilitated a productive dialogue on common misunderstandings between students and officers; and explained the long-term consequences of a school arrest or summons. The response of officers to the training was extremely positive.

Mississippi and Louisiana

CDF's Southern Regional Office headquartered in Mississippi is teaching young leaders, including some who have been pushed out of school, to launch campaigns for change in their schools and communities. The CDF office has surveyed more than half of Mississippi's 152 school districts about suspensions and expulsions. African American students, who represent just half of public school students in the state, were cited for at least 72 percent of the more than

600,000 disciplinary dispositions reported over 10 years. A full report will be released in early February 2013. In its Louisiana office, CDF has focused on youth, many with mental health problems, who were arrested when they were out of school. CDF mobilized a group of psychiatrists, social workers, criminologists, parents, educational researchers, community and faith leaders to participate in a Child Watch visit to a local secure juvenile detention facility, Bridge City, as part of its fourth annual Louisiana *Cradle to Prison Pipeline* summit. The facility housed 114 youths ages 12-17 and 80 percent were out of school when they were arrested. Over 60 percent of these incarcerated youths were diagnosed with severe mental illness. The summit focused on the lack of access to preventive mental health services that can divert children from the prison pipeline.

California

Data from the U.S. Department of Education Office for Civil Rights Data Collection Survey revealed that in the school districts surveyed in California more than 400,000 students were suspended at least one time during the 2009-2010 school year. Nearly one in five African American students (18 percent), one in nine American Indian students (11 percent), and one in 14 Latino students (7 percent) in the state sample were suspended at least once compared to one in 17 White students (6 percent) and one in 33 Asian American students (3 percent). In March 2012, CDF-California *Beat the Odds* scholars, high school seniors awarded a CDF scholarship for college and leadership training, mobilized more than 160 high school students from the Los Angeles area and almost 30 of their adult mentors, teachers and parents for a day-long youth summit to focus attention on zero tolerance school discipline policies. Youth participants pledged to work within their schools and communities as change agents to educate youth and dismantle the school-to-prison pipeline. In collaboration with the Dignity in Schools-Los Angeles Chapter, CDF-CA is working with the Los Angeles School Police Department to reduce ticketing for truancy and strengthen school police data collection practices and transparency, as well as promote best practices that involve schools, families and communities. CDF-CA has launched a two-year research and analysis project on school exclusion in Long Beach, the third largest school district in the state, to identify the biggest factors fueling push outs, while making recommendations for how to reduce these zero tolerance policies and promote success for all students.

Ohio

CDF-Ohio, together with the Ohio Poverty Law Center, released in November 2012 an issue brief on zero tolerance and exclusionary school discipline policies that harm students and contribute to the *Cradle to Prison Pipeline* crisis. Ohio law requires all public schools to adopt and enforce a zero tolerance policy for “violent, disruptive, or inappropriate behavior.” According to the Ohio Department of Education, only six percent of out-of-school suspensions during the 2010-2011 school year involved weapons or drugs while 64 percent were for “disobedient or disruptive behavior,” “intimidation” or truancy. Students identified as economically disadvantaged were more than four times as likely to be suspended that school year as those not identified as economically disadvantaged. More than one in five (21.4 percent) of Ohio’s children live in poverty. African American students made up 16.5 percent of all children

enrolled in Ohio public schools, but 36.6 percent of all out of school suspensions. In Ohio's eight largest urban school districts, African American students were on average four times more likely to be given out of school suspensions than were White students. The report is a call to action for stakeholders in the state to work together to successfully change school climates and introduce positive, preventive supportive discipline systems in all schools.

Conclusion

We must act together to replace zero tolerance discipline policies with meaningful alternatives that keep students engaged and learning in safe schools and out of the juvenile and criminal justice systems. As the Subcommittee's hearing will highlight, there is much good work to draw upon. We can build on promising approaches and join forces for unified action strategies at the federal, state and local levels to end the school-to-prison pipeline. Federal direction and support are needed immediately to help states and school districts modify school discipline codes to end out-of-school suspensions and expulsions for nonviolent offenses and all suspensions for minor behavioral infractions, implement alternatives to zero tolerance school discipline policies and monitor suspensions, expulsions and their impact on children of color, children with special needs, and other special groups. Data are essential on in-school and out-of-school suspensions, expulsions, school-based arrests and referrals to alternative schools as well as the race, ethnicity, other special needs, socioeconomic status and English proficiency of the students involved in each school and school district. There is also a need for technical assistance and training of staff at all levels on alternatives to zero tolerance. CDF has long been a supporter of the Youth Promise Act (H.R. 2721), which shifts the paradigm toward prevention and early intervention for youths. It focuses resources on communities and youths most in need and recognizes the benefits of individualized approaches to services and treatment.

Children must be assured of fair and appropriate treatment. School districts must be reminded of their obligation to prohibit school discipline policies that disproportionately impact children of color and those with disabilities or other special needs. It is also important to link these data on disciplinary practices to the overall performance of these schools and school districts, assessing factors like academic performance and graduation rates. New protections and investments to replace the cradle-to-school-to prison pipeline with a pipeline to college and productive work will positively impact the futures of our children and the economic future of the nation. There is not a moment—or a child—to waste as we move forward.



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December 10, 2012

U.S. Senator Dick Durbin
Senate's Assistant Majority Leader and Chairman of the Senate Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights
Dirksen Senate Office Building Room 226

**RE: Statement for the Record for the December 12th 2012, Hearing Before the
Senate Judiciary Subcommittee on the Constitution, Civil Rights, and
Human Rights Addressing the School to Prison Pipeline**

Dear Senator Durbin,

As advocates for children in the Commonwealth of Kentucky, we applaud you for having a hearing on the School to Prison Pipeline and its deleterious impact on our children.

The Problem:

You know the problem. For the past fifteen years we have seen a trend in this country where harsh and exclusionary school disciplinary policies and in-school arrests push youth out of school and into the justice system. This process has come to be known as the school-to-prison pipeline.

The Council of State Governments (CSG) Justice Center released findings of a study on the impact of school disciplinary practices on students' academic success and juvenile justice involvement. The study determined that only 3 percent of disciplinary actions were for conduct for which state law mandates suspensions and expulsions; the rest of the disciplinary actions were made at the discretion of school officials, primarily in response to violations of local schools' conduct codes. Minority youth and children with disabilities were disciplined more harshly for similar or less serious infractions than were their peers. The researchers also found that when a student was suspended or expelled, his or her likelihood of being involved in the juvenile justice system the subsequent year increased significantly.

Recently, OJJDP Acting Administrator Melodee Hanes noted that "OJJDP does research to support best practices, and one of the things we've learned is that the minute a youth sets foot in detention or confinement, their prospects for success and having a job decrease dramatically and the likelihood that they will end up in the adult criminal system increases exponentially." http://www.ojjdp.gov/newsletter/238636/sf_1.html

Kentucky's Data As Evidence of The Problem:

Data from the Commonwealth paints a similar picture. In State Fiscal Year 2012, 10,175 cases were referred to court from Kentucky public schools. (Contact Children's Law Center, Inc. for Data). Kentucky has been number two in the nation in the incarceration of children on non-criminal status offenses for the past several years. Most of these status offenses arise out of the school setting. Juvenile jail is the default "treatment" option used for children in Kentucky. An in depth study of the misuse of incarceration for children charged with status offenses was conducted by the state's leading newspaper in 2011. See <http://www.courier-journal.com/article/20111211/NEWS01/312120002/Status-Offenders-Truancy-problem-affects-state-spending-damages-future-students>. Status offense charges and the reliance on incarceration as punishment for the failure of a child charged with a status offense to follow court orders are prosecuted in a racially disparate manner in Kentucky. African American youth comprise only 18.1% of all youth age 10 to 17 in Fayette County, Kentucky, yet comprise 53% of all children incarcerated for noncriminal, status offenses in that county. To the north, in Kenton County, Kentucky African American youth comprise only 6.0% of the population ages 10 to 17 yet comprise 23.1% of all youth incarcerated for noncriminal status offenses. In the far western Kentucky county of Christian, African American youth are 25.5 % of the population but comprise 55.6 % of youth who are incarcerated for noncriminal status offenses. (Contact Children's Law Center, Inc. for further data reports.)

Powerful School Lobby Opposes Efforts to Improve the System:

Despite clear evidence of the problem, school districts, with powerful lobbyists have opposed a reinvestment of state and county resources towards more treatment oriented legislative solutions. See <http://www.kentucky.com/2011/10/25/1933724/bill-filed-to-cut-down-on-number.html>

Likewise, those responsible for policy change in Kentucky have not accessed available federal government resources. In March 2012, a National Leadership Summit on School-Justice Partnerships took place in New York City. As a kick-off for the national Supportive School Discipline Initiative, the summit brought together juvenile court judges, school administrators, juvenile justice professionals, educators, and researchers from nearly every state and territory to focus attention on the importance of school-justice partnerships and evidence-based strategies that can help students stay in school and out of the juvenile justice system. Though federal funding was available to cover the cost of attendance, no school, court or state government officials from Kentucky attended. Only two advocates for children from Kentucky were present as a part of a separate meeting of the Legal Strategies Collaborative.

Kentucky is late in committing resources to address this significant issue. Yet, even today, when anyone considers poverty and children in this country, they often first think of Kentucky. See the recent editorial by Nicholas D. Kristof, as he visited poor families in the mountain community of Jackson, Kentucky and noted the high rate and intersection of poverty and illiteracy. http://www.nytimes.com/2012/12/09/opinion/sunday/kristof-profiting-from-a-childs-illiteracy.html?pagewanted=2&_r=0

The Need for Greater Leadership to Help At Risk Youth:

The Children's Law Center, Inc., a private non-profit law firm dedicated to the representation of children, has committed itself to litigating the rights of youth of color and youth with disabilities in Kentucky's schools and courts. We recognize that a sound education is foundational for the success of the economy and community in our State. Unfortunately, bureaucracies are often slow to change. Though we have filed systemic complaints at the state and federal level on behalf of youth who have been subject to unfair, exclusionary disciplinary practices, we have not secured large scale, systemic reform. See *Fayette Board of Education v. Holliday et al.*; U.S. DOE Complaint Number 03-11-1222.

We have met with success on behalf of individual youth but often only after they struggled mightily before accessing our services.

Josh, a child of 14 was brought to us in his freshman year of high school through referral from another family caught in the school to prison pipeline. At 14, Josh had been classified with Mild Mental Disability. He struggled academically but was never a behavior problem. For some unexplainable reason the school district where he was located skipped Josh from 7th to 9th grade. Moving from middle school – without finishing- to a large high school was too much for the child. He grew more and more intimidated in the larger school environment. He understood nothing in the classroom. His Mother worked full time at the deli in a grocery store, struggling with MS. His father was a janitor for the school system and suffered intellectual disabilities. Josh could not make himself get out of his parents' car and go into school in the morning, scared to ride the bus. His parents tried to secure mental health for him but their insurance required that they pay extra for the psychiatric appointments so they had to space them out. The school provided no assistance, and made no effort to connect Josh with low cost mental health services. At the time we met him, Josh was in court on truancy charges. The judge threatened to incarcerate Josh and remove him from home and place him in foster care. The case had stalled in court for a year with no services provided to the family and Mom and Dad were forced to miss work on a monthly basis to spend an afternoon and evening waiting for the case to be called. Once the family accessed our legal services, Josh was able to receive low cost mental health services, the school was forced to protect Josh's rights under the IDEIA and the charges against him were dismissed. With the appropriate diagnosis of school phobia, Josh was moved to a smaller, less intimidating and more supportive educational setting. He graduated in December 2011. Without legal advocacy, which is not routinely available to these children, Josh would have failed.

Brad, a child of 7 was in court on a charge of beyond control of school. The boy was identified under the IDEIA as having a Functional Mental Disability. His mother died from congestive heart failure shortly after he was arraigned in court. Brad was being raised by his grandmother, uncle and father in government assistant housing in a small Eastern Kentucky mountain town. The child did not understand what the courtroom was, who his lawyer was or what purpose either served. The school that brought the charges against Brad admitted to educational advocates that they sought prosecution of the child because they believed the child was being sexually abused as he exhibited strange behavior at school. Instead of pressing the state social services office to step up and investigate the home or even try to provide supports to the family, they lodged court charges against the most vulnerable, least morally responsible person. The school's justification: they could not make the state social services act but they could bring down the power of the law upon this child.

Children are also often in court because of the failure of our mental health system to meet their needs. Carole was a child of 14, diagnosed with bipolar and schizoid affective disorders. Her IQ tested in the extremely low to borderline range. After an episode at home, Carole was placed in a mental health hospital for number of weeks. Upon release, with medicine not yet stabilized, she was made to attend school. Carole needed to go to the restroom. A teacher physically blocked her and in the act of pushing her way past the teacher, Carole incurred a felony assault charge because Kentucky law elevates misdemeanor assault to a felony if it involves an assault on school personnel. Though the teacher was not injured, school law enforcement sought and secured Carole's incarceration in the juvenile jail. Days later at a special education meeting where it was established that Carole's behavior was a manifestation of her disability, Carole was falling asleep on her lawyer's shoulder. The appropriate dosage of her medicine had still not been stabilized.

Tracy is a child from the boundaries of Western Kentucky and Illinois. At age 13, in the seventh grade, the school district sought prosecution of Tracy for disorderly conduct and assault. Tracy was identified as a child with Multiple Disabilities, which included Mild Mental Disability and Emotional-Behavioral Disability. Tracy had a full scale IQ of 68, and according to the district did not qualify for a regular high school diploma. She was prescribed Abilify and Wellbutrin. Despite an extensive psychiatric history and an IQ that would render her incompetent as an adult, Tracy was prosecuted in court by the school, and institutionalized out of state for over a year. Only with the intervention of educational advocates was Tracy permitted to return to her community and the school district made to protect her rights under the IDEA.

Children across Kentucky are being funneled into the court system and out of schools. Following individual and systemic litigation, some school districts have committed themselves to approach school discipline differently and roll back their reliance upon the courts to discipline their students. Yet, there continues to be large resistance in significant areas of the state with significant racial implications. Most notably the largest school district in the state refuses to consider systemic change, yet that county's prosecutor requires that all school cases go to court for prosecution. We also recognize that some judges are assuming a greater leadership role but often community based efforts are fragmentary, where judges make the effort, the schools are resistant. In communities, where the schools are on board, the courts are resistant. There are reforms including the use of Positive Behavior Intervention and Supports and Restorative Justice, but without a commitment to quit charging students in court for a wide range of minor misbehavior, that would traditionally have been handled in the school system, the pipeline flows on.

We appreciate leadership on this issue at the federal level.

Sincerely,

Rebecca Ballard DiLoreto

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SCHOOL RELATED OFFENSES

December 10, 2012

Prepared for
Shelley Perdue

by
Erin Mosley (*Statistician*) and
Tammy Collins (*Data Analyst*)

The following report is in response to a request from Shelley Perdue with AOC Juvenile Services for an aggregate frequency of school related offenses by county. The data has been obtained from the Court Designated Worker Case Management System (CDWCMS) for cases filed during fiscal year (FY) 2012 and 2013. The data is current as of December 6, 2012.

The data is separated into two datasets, the first is broken down by county and UOR code of offense. The second is broken down by county and provides only an aggregate frequency of total offenses. Each data set provides a total count of referrals made during FY2012 and thus far in FY2013, along with the distinct count of juveniles. The number of referrals may exceed the number of juveniles as some juveniles may have multiple referrals. The juveniles are counted only once per their juvenile ID.

The offenses listed within the dataset are those that have been designated as a 'school related' offense within the CDWCMS. The offense data is provided per county in the attached PDF, 12_CDW3031. Not all offenses will occur in each fiscal year examined or in each county. Blanks within the data should not be considered missing data, but instances in which referrals did not occur.

The aggregate frequency data is provided in the attached PDF 12_CDW3030. This data provides only a total count of referrals and juveniles per county for each fiscal year examined.



ADMINISTRATIVE OFFICE OF THE COURTS
Research & Statistics
"School Related" Complaints Filed 7/1/2011 - 12/6/2012

12_CDW3030

		FY 2012	FY 2013	Total
ADAIR	Referrals	56	15	71
	Juveniles	49	14	61
ALLEN	Referrals	77	16	93
	Juveniles	66	16	81
ANDERSON	Referrals	77	12	89
	Juveniles	67	9	74
BALLARD	Referrals	18	7	25
	Juveniles	17	7	24
BARREN	Referrals	133	26	159
	Juveniles	118	22	137
BATH	Referrals	25	5	30
	Juveniles	23	5	28
BELL	Referrals	133	31	164
	Juveniles	121	28	141
BOONE	Referrals	207	87	294
	Juveniles	185	81	252
BOURBON	Referrals	105	9	114
	Juveniles	88	8	94
BOYD	Referrals	125	22	147
	Juveniles	117	22	138
BOYLE	Referrals	76	18	94
	Juveniles	63	18	77
BRACKEN	Referrals	6	1	7
	Juveniles	6	1	7
BREATHITT	Referrals	58	5	63
	Juveniles	57	5	60
BRECKINRIDGE	Referrals	18	3	21
	Juveniles	18	3	21
BULLITT	Referrals	87	49	136
	Juveniles	81	45	117
BUTLER	Referrals	30	33	63
	Juveniles	26	26	50
CALDWELL	Referrals	28	3	31
	Juveniles	27	2	29
CALLOWAY	Referrals	52	32	84
	Juveniles	46	23	62
CAMPBELL	Referrals	186	21	207
	Juveniles	167	21	186
CARLISLE	Referrals	4	1	5
	Juveniles	4	1	5
CARROLL	Referrals	39	11	50
	Juveniles	38	11	45
CARTER	Referrals	95	24	119
	Juveniles	85	23	105
CASEY	Referrals	86	24	110
	Juveniles	71	22	88
CHRISTIAN	Referrals	183	39	222
	Juveniles	138	34	165
CLARK	Referrals	168	18	186
	Juveniles	157	18	171
CLAY	Referrals	26	25	51
	Juveniles	24	23	46
CLINTON	Referrals	29	9	38
	Juveniles	28	9	35

RESEARCH AND STATISTICS DISCLAIMER:

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"School Related" Complaints Filed 7/1/2011 - 12/6/2012

12_CDW3030

		FY 2012	FY 2013	Total
CRITTENDEN	Referrals	10	4	14
	Juveniles	9	4	12
CUMBERLAND	Referrals	92	20	112
	Juveniles	87	18	98
DAVIESS	Referrals	254	122	376
	Juveniles	224	113	321
EDMONSON	Referrals	7	4	11
	Juveniles	7	4	11
ELLIOTT	Referrals	4	2	6
	Juveniles	4	2	6
ESTILL	Referrals	19	1	20
	Juveniles	18	1	19
FAYETTE	Referrals	352	52	404
	Juveniles	333	48	376
FLEMING	Referrals	25	3	28
	Juveniles	25	3	27
FLOYD	Referrals	143	61	204
	Juveniles	138	61	190
FRANKLIN	Referrals	154	48	202
	Juveniles	128	42	161
FULTON	Referrals	11	4	15
	Juveniles	10	4	14
GALLATIN	Referrals	53	17	70
	Juveniles	44	16	58
GARRARD	Referrals	132	21	153
	Juveniles	105	19	117
GRANT	Referrals	60	33	93
	Juveniles	55	32	85
GRAVES	Referrals	72	25	97
	Juveniles	66	24	85
GRAYSON	Referrals	119	27	146
	Juveniles	104	26	124
GREEN	Referrals	10	3	13
	Juveniles	9	3	12
GREENUP	Referrals	88	9	97
	Juveniles	88	9	96
HANCOCK	Referrals	14	5	19
	Juveniles	13	5	18
HARDIN	Referrals	222	34	256
	Juveniles	183	32	211
HARLAN	Referrals	107	47	154
	Juveniles	99	47	136
HARRISON	Referrals	47	11	58
	Juveniles	44	11	55
HART	Referrals	104	23	127
	Juveniles	92	22	112
HENDERSON	Referrals	213	84	297
	Juveniles	177	79	242
HENRY	Referrals	27	8	35
	Juveniles	27	8	34
HICKMAN	Referrals	1	5	6
	Juveniles	1	4	5
HOPKINS	Referrals	112	18	130
	Juveniles	99	18	113
JACKSON	Referrals	5	1	6
	Juveniles	5	1	6
JEFFERSON	Referrals	1,283	307	1,590
	Juveniles	1,162	295	1,403

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"School Related" Complaints Filed 7/1/2011 - 12/6/2012

12_CDW3030

		FY 2012	FY 2013	Total
JESSAMINE	Referrals	173	39	212
	Juveniles	157	35	186
JOHNSON	Referrals	62	14	76
	Juveniles	61	14	74
KENTON	Referrals	187	35	222
	Juveniles	170	32	201
KNOTT	Referrals	37	15	52
	Juveniles	35	14	47
KNOX	Referrals	102	29	131
	Juveniles	97	28	122
LARUE	Referrals	48	6	54
	Juveniles	44	6	50
LAUREL	Referrals	120	29	149
	Juveniles	106	27	132
LAWRENCE	Referrals	50	5	55
	Juveniles	47	5	52
LEE	Referrals	26	3	29
	Juveniles	23	3	25
LESLIE	Referrals	16	1	17
	Juveniles	15	1	16
LETCHER	Referrals	124	60	184
	Juveniles	106	51	148
LEWIS	Referrals	37	0	37
	Juveniles	37	0	37
LINCOLN	Referrals	101	50	151
	Juveniles	81	45	121
LIVINGSTON	Referrals	13	6	19
	Juveniles	12	6	18
LOGAN	Referrals	39	25	64
	Juveniles	36	23	57
LYON	Referrals	22	6	28
	Juveniles	18	6	23
MADISON	Referrals	146	51	197
	Juveniles	139	49	174
MAGOFFIN	Referrals	35	10	45
	Juveniles	34	10	44
MARION	Referrals	40	11	51
	Juveniles	38	10	46
MARSHALL	Referrals	79	20	99
	Juveniles	70	19	86
MARTIN	Referrals	34	16	50
	Juveniles	32	15	46
MASON	Referrals	26	5	31
	Juveniles	25	5	29
MCCRACKEN	Referrals	77	14	91
	Juveniles	71	13	84
MCCREARY	Referrals	178	42	220
	Juveniles	145	34	166
MCLEAN	Referrals	7	12	19
	Juveniles	7	12	18
MEADE	Referrals	47	13	60
	Juveniles	47	13	60
MENIFEE	Referrals	14	1	15
	Juveniles	13	1	14
MERCER	Referrals	71	20	91
	Juveniles	64	19	82
METCALFE	Referrals	58	15	73
	Juveniles	52	15	63

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"School Related" Complaints Filed 7/1/2011 - 12/6/2012

12_CDW3030

		FY 2012	FY 2013	Total
MONROE	Referrals	71	19	90
	Juveniles	68	19	84
MONTGOMERY	Referrals	92	48	140
	Juveniles	83	44	114
MORGAN	Referrals	18	9	27
	Juveniles	15	9	23
MUHLENBERG	Referrals	69	13	82
	Juveniles	69	13	80
NELSON	Referrals	84	15	99
	Juveniles	77	15	88
NICHOLAS	Referrals	17	1	18
	Juveniles	17	1	18
OHIO	Referrals	43	18	61
	Juveniles	39	18	55
OLDHAM	Referrals	47	10	57
	Juveniles	45	9	52
OWEN	Referrals	10	2	12
	Juveniles	10	2	12
OWSLEY	Referrals	21	10	31
	Juveniles	19	8	25
PENDLETON	Referrals	113	31	144
	Juveniles	82	29	102
PERRY	Referrals	70	22	92
	Juveniles	63	21	83
PIKE	Referrals	192	36	228
	Juveniles	178	35	208
POWELL	Referrals	38	12	50
	Juveniles	35	12	45
PULASKI	Referrals	232	75	307
	Juveniles	197	71	252
ROBERTSON	Referrals	16	0	16
	Juveniles	15	0	15
ROCKCASTLE	Referrals	18	0	18
	Juveniles	17	0	17
ROWAN	Referrals	51	54	105
	Juveniles	42	51	88
RUSSELL	Referrals	49	9	58
	Juveniles	43	9	51
SCOTT	Referrals	102	19	121
	Juveniles	102	18	118
SHELBY	Referrals	166	58	224
	Juveniles	130	52	169
SIMPSON	Referrals	74	19	93
	Juveniles	61	17	73
SPENCER	Referrals	27	4	31
	Juveniles	27	4	30
TAYLOR	Referrals	16	3	19
	Juveniles	16	3	19
TODD	Referrals	20	13	33
	Juveniles	19	13	31
TRIGG	Referrals	12	7	19
	Juveniles	12	7	19
TRIMBLE	Referrals	6	1	7
	Juveniles	6	1	7
UNION	Referrals	30	8	38
	Juveniles	28	7	34
WARREN	Referrals	280	117	397
	Juveniles	266	115	373

RESEARCH AND STATISTICS DISCLAIMER:

* The data from this report is provided from the Court Designated Worker program.

* Information received from the Court Designated Worker Program electronic case management system (CDW/CMS) is subject to changes(s), reprogramming, modification(s) of format and availability at the direction of the Administrative Office of the Courts (AOC), and may not at any particular moment reflect the true status of court cases due to ordinary limitation(s), delay(s) or error(s) in the system's operation.

"School Related" Complaints Filed 7/1/2011 - 12/6/2012

12_CDW3030

		FY 2012	FY 2013	Total
WASHINGTON	Referrals	8	5	13
	Juveniles	8	3	11
WAYNE	Referrals	59	28	87
	Juveniles	53	23	73
WEBSTER	Referrals	22	9	31
	Juveniles	21	8	27
WHITLEY	Referrals	191	39	230
	Juveniles	169	37	201
WOLFE	Referrals	15	0	15
	Juveniles	14	0	14
WOODFORD	Referrals	60	13	73
	Juveniles	58	12	68
Total	Referrals	10,175	2,825	13,000
	Juveniles	9,099	2,644	11,276

RESEARCH AND STATISTICS DISCLAIMER:

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Detentions for Status Offense Contempt of Court Charges Compared to Youth Population (age 10-17) by Race/Ethnicity, 2011								
	African-American		White		Hispanic		Other	
	% Afr-Am youth, of all youth detentions for contempt of court charges on underlying status offenses	% Afr-Am youth, of all youth age 10-17	% White youth, of all youth detentions for contempt of court charges on underlying status offenses	% White youth, of all youth age 10-17	% Hispanic youth, of all youth detentions for contempt of court charges on underlying status offenses	% Hispanic youth, of all youth age 10-17	% youth of other races, of all youth detentions for contempt of court charges on underlying status offenses	% youth of other races, of all youth age 10-17
Statewide	17.3%	9.4%	77.5%	82.5%	1.6%	3.9%	3.7%	4.2%
Christian	55.6%	25.5%	38.9%	61.5%	5.6%	7.7%	0.0%	5.3%
Fayette	53.0%	18.1%	33.0%	65.9%	7.0%	8.3%	7.0%	7.7%
Hardin	27.0%	14.5%	59.5%	71.0%	2.7%	7.0%	10.8%	7.5%
Kenton	23.1%	6.0%	72.0%	86.6%	0.0%	3.3%	4.9%	4.1%

Sources: Kentucky Department of Juvenile Justice data processed by Kentucky Youth Advocates.
2011 population estimates from the U.S. Census Bureau processed by Kentucky State Data Center and Kentucky Youth Advocates.

Name: Julie Waterstone

City and State: Los Angeles, California

Organization: Children's Rights Clinic, Southwestern Law School

Dear Chairman Durban and Members of the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights:

My name is Julie Waterstone, and I am the Director of the Children's Rights Clinic at Southwestern Law School. Before that, I worked for Public Counsel in Los Angeles, and also directed the Child Advocacy Clinic at the University of Mississippi Law School. I thank you for your attention to the important issue of Ending the School-to-Prison Pipeline and write to share my first-hand knowledge of the challenges faced by youth in the public school system, particularly youth from low income families and youth of color.

Over the last nine years, in both Mississippi and California, I have been representing youth on a variety of issues, including delinquency, dependency and education. The common thread throughout this experience has been watching the devastating impact that the harsh zero-tolerance policies have had on our youth, particularly those from low income families and youth of color. This has typically manifested itself in what is commonly referred to as the "school-to-prison pipeline." From my experience, this plays out in several ways. One is where a child does something contrary to the school rules and is then arrested by the police. That child then faces school expulsion and a delinquency charge. Or, a child has engaged in conduct after school, not on school grounds and the school finds out about the misbehavior. That child then faces school exclusion and a delinquency charge. Another scenario is a child acts out at school and is faces school exclusion and a delinquency charge. That child may be lucky enough to have an advocate who suggests that they be evaluated for special education. It turns out that child has special needs and acted out as a result of the disability. That child may no longer face school expulsion, but will still have a delinquency charge to contend with. All of these situations are very troubling. Rather than educating our youth, our schools have become very adept at exposing our children to the juvenile justice system.

And these are not children who are bringing guns to school or engaging in other similar criminal conduct. These are children who are engaging in behavior that admittedly is against school rules, but certainly does not justify the involvement of the police or school resource officers. Twenty years ago, these are all incidents that would have been handled on the campus. Police were hardly ever contacted, if at all. We are talking about issues like school yard fights, possession of small amounts of marijuana, possession of drug paraphernalia, vandalism of school property (which likely means writing on a school desk or in the school bathroom), or sexual misconduct (which has very different connotations than the actual facts as explained below).

Presently, I direct a Children's Rights Clinic at Southwestern Law School. We represent low-income and minority youth in Los Angeles County who are facing long-term exclusion from school and youth who have special needs. Over the last five years, we have represented at least 100 students who have been involved with some form of disciplinary issues. The cases that we receive typically are referred to us either by the minor's delinquency or dependency attorney. For the youth involved in the dependency

system, there are typically other issues at play that contribute to the child's behavior. For a number of these youth, they have witnessed some horrible incident, do not have a stable family unit, they have been bounced from foster home to group home to foster home, or have some undiagnosed mental health issue. For the youth in the delinquency system, most often they are court involved because of the incident that occurred on the school campus and are not "repeat offenders." After we accept representation, our first task is to request and review the child's school records. In more cases than not, we see children who have been failing classes for several years, are not performing at grade level, and have had repeated behavioral incidents. The next task is to request that the child be evaluated for special education. Two of every three children that are being recommended for expulsion that we encounter have some undiagnosed special need. We may be able to halt the expulsion and get the child the help s/he needs, but we are not always as successful with the delinquency proceedings.

It is worth highlighting some of the cases that we have had to illustrate how this plays out. We represented a 16 year old boy who was in the dependency system. He had lived in fourteen different placements and had been hospitalized 8 times for suicide attempts or suicidal ideations. He brought a pocket knife to a traditional public school. He did not threaten anyone with it. A girl in his class saw it in his pocket. When questioned, he told the principal that he had planned to commit suicide during fifth period. He chose that period because he did not have friends in that class that might notice him missing. He was not taken to the hospital. Instead, he was arrested. And, the school proceeded to expel him. We became involved and sought to overturn the expulsion. By that point, he was so distraught that he ran away from his placement and was subsequently arrested.

Another child we encountered was in third grade. At a traditional public school, a little boy was teasing him and said that if he didn't hold this girl's hand that he would beat him up. The child held the girl's hand. He was then being recommended for expulsion on the grounds of "sexual battery." We received the case from his delinquency attorney. After some investigation, this little boy has high functioning autism, which was never diagnosed. His disability lends him to be the subject of other children's taunts. Rather than provide him with assistance, our schools decide to punish him.

We represented another 13 year old boy who attended a traditional public school. He lived with his grandfather. He was very bright, but subject to routine teasing. His grandfather had complained to the school on multiple occasions. One day, this little boy was being teased and responded "if you don't leave me alone, I will slit your throat with a butter knife." He was arrested and faced both expulsion and delinquency charges. His dependency attorney referred him to us. Again, after investigation, we learned that he also has high functioning autism, which was never diagnosed.

While these cases illustrate some of the ways that children are funneled into the criminal justice system from traditional public schools, charter schools are even more troublesome. Charter schools are not required to follow the same state disciplinary code so children can be disciplined for even more minor offenses. This case is just one example of how troublesome this situation is: a 16 year old girl attended a charter high school, which was considered her school of residence. She was a college bound junior who had a 3.7 GPA. Her friends were goofing off during lunch. She saw one of her friends behaving suspiciously. She asked him what he was looking at. He was holding something. He placed it in her

hand without her having a chance to see what it was. She looked down and saw it was a small pocket knife. She handed it back to him and said, “you can’t have that here. You will get in a lot of trouble.” At that very moment, an adult on campus saw her give it back to him. She was then arrested and expelled. Fortunately, her delinquency case was dismissed. It took us appealing her case to have the expulsion dropped. But, she missed months of a proper education because of this incident.

We have worked with a few other youth have been expelled from charter schools for minor offenses such as writing on a desk and getting into a shoving match with another student while playing basketball. The results for these youth have been that they are precluded from attending any other school within the district. Their only educational options end up being alternative settings, which typically involve less instruction with children who have engaged in more problematic behavior.

While individual representation is important and helps disrupt the school-to-prison pipeline, many of these children are not aware of the need to have a lawyer in these school proceedings. Even if they are, they may not know how to go about obtaining a lawyer. And, there are not that many lawyers do this kind of work. There needs to be systemic reform. Specifically, there should be a call by the federal government to decrease the police presence on school campuses. Research does not show that school campuses have become safer as a result of increased police presence. If anything, research has shown that it has disenfranchised youth and made youth less interested in being on school campus. School administrators should use their authority to discipline children in an appropriate and meaningful way. If a child engages in vandalism, require that child to do community service or work to pay for broken or damaged goods. If a child is involved in a fight, there may be a punitive component, but the school should be required to try counseling for the child or anger management classes. Teach the child positive life skills. The culture of schools should return to a nurturing environment designed to help children grow and become productive adults – not further our incarcerated population. We should also have compulsory education in every state even when a child is expelled. If we want to ensure that our children contribute to society, we need to be sure to educate them even if/when they misbehave. Finally, charter schools should be required to adhere to a similar discipline code as traditional schools. It does our children a disservice when they are expelled from a charter school that has more stringent discipline codes, but these children are now precluded from attending any traditional school as a result. If there is going to be an impact on the child attending a traditional public school, then the standards need to be the same or substantially similar.

With local and national reform efforts aimed at ending the school-to-prison pipeline, we can return our schools to the high quality educational institutions that they once were and respect and protect the rights of children at the same time. Thank you for your time and attention to this matter.

Sincerely,

Julie K. Waterstone

Julie K. Waterstone
Clinical Professor of Law and Director, Children’s Rights Clinic
Southwestern Law School

December 5, 2012

To the Members of the Senate Judiciary Committee:

I write as an attorney who, upon graduation, accepted public defender appointments as I searched for my calling in life. I was stunned at the amount of cases I received that originated in public schools (at the time, Milwaukee County). The topic of school-to-prison pipeline was one never addressed in my Criminal Law courses in law school and I don't blame my professors for forgetting this issue, it is one that should not exist in this country. The thought of children getting arrested in an environment that is supposed to be their safest place on the planet is reprehensible. As a civil society, we should not tolerate it.

Not only is it an absolute waste and drain to the court system and, subsequently, tax payer dollars, to present such minor infractions, it is also a missed opportunity to teach a child. Schools are learning institutions, not just for subjects such as math or English but to learn the social skills necessary to be productive members of society. I have witnessed children getting arrested for putting gum in someone's hair, being in the cafeteria during a food fight (but not actually throwing food), and using foul language in the school hallway. If any of these situations had occurred on the street, none of these children would have been arrested. Rules in school should match those of the real world instead of just limiting a young person's freedom without teaching any core values.

As the state moves to close prisons and juvenile jails that are underutilized, it behooves us to make sure that we won't regret closing these facilities. Let's make sure that we are using actual scientific data when we make decisions about our children. For years, all research regarding the best ways to treat disciplining children points to the use of restorative practices. There is absolutely NO data that supports zero tolerance in school discipline.

It's as simple as returning back to the basics. When we were in school, there were no police officers, no metal detectors, no zero tolerance policies. The amount of money a Chicago Public School spends on keeping law enforcement in the building is far greater than the amount of money a school spends on providing counselors for college.

My short stint as a public defender led me to the world of restorative justice and I became a trainer for Chicago Public Schools. In one year, when principals were informed and former CEO (now Secretary of Education) Arne Duncan was behind the program, we went from training 20 schools to over 60 schools. The schools that adopted a restorative justice philosophy fared best as they reportedly saw their arrest rates decrease by 86%. Overall, students and staff were most satisfied in a restorative learning environment.

I close with this quote from Psychologist H. Vilaski, "A child draws from within us the inclination and instinct for kindness, gentleness, generosity, and love. Accordingly, there is nothing more revolting to our humanity than cruelty to children. These truths we knew at one time and, somehow, subsequently forgot." Taken from the Journal of Emotional and Behavioral Problems, 1993.

Thank you for your time and consideration,

Christine Agaiby, JD

Campaign Director/Restorative Justice Adjunct Professor

University of Northwestern Law School

[REDACTED]

[REDACTED]

¹ This statistic is not unusual. See, e.g., Michael P. Krezmien, Peter E. Leone, Mark S. Zablocki, and Craig S. Wells, *Juvenile Court Referrals and the Public Schools: Nature and Extent of the Practice in Five States*, Journal of Contemporary Criminal Justice, Volume 26, Number 3 (August 2010), 273-293 (finding schools as growing source

opposed to situations in which a student is arrested while being out-of-school due to a suspension or expulsion (other significant factors in feeding the “School-to-Prison Pipeline”²), these are cases in which a student is arrested in school, often by a police officer who is permanently stationed in the school building.

Why are so many schools sending kids to court? To answer that question, CfJJ, in partnership with the Racial Justice Program of the national American Civil Liberties Union and the American Civil Liberties Union of Massachusetts, conducted an in-depth review of three years of arrest data and incident reports from the three largest schools districts in Massachusetts: Boston, Springfield, and Worcester.³ The findings were deeply troubling. **Students in Massachusetts are handcuffed, booked, and sent to court for behavior once handled by schools and parents, including swearing, slamming doors or banging lockers, failing to follow directions, or being disruptive in hallways.** In all three districts, **arrests for disruptive but otherwise relatively minor misbehavior made up the majority or a substantial percentage of all school-based arrests.**

Our review also found the following:

- Arrest rates varied dramatically between districts and among schools within districts, suggesting that leadership/approach at both the school and district level has a significant impact on school arrests. For example, Springfield’s overall arrest rate was three times higher than Boston’s and more than four times higher than Worcester’s.
- Districts with permanently assigned police officers in their school buildings (as opposed to on-call officers) had higher arrest rates.
- African-American students and students with disabilities were more likely to be arrested and to be arrested for minor offenses (e.g., “disturbing a public assembly” and “disorderly conduct”) than other students. For example, although African-American students accounted for approximately one-third of Boston’s student body during the 2008-09 and 2009-10 school years, two-thirds of all Boston arrests during that period were of African-American students. Seventy percent of those arrested for public order offenses were African-American.⁴

of referral to juvenile courts in multiple jurisdictions across the country), available at <http://ccj.sagepub.com/content/26/3/273>.

² See, e.g., American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, AMERICAN PSYCHOLOGIST, Vol. 63, No. 9, at 852-62 (Dec. 2008), available at www.apa.org/pubs/info/reports/zero-tolerance.pdf.

³ A complete copy of the report, *Arrested Futures: The Criminalization of School Discipline in Massachusetts's Three Largest School Districts*, is submitted herewith and available at <http://www.cfjj.org/arrestedfutures.php>.

⁴ African-American students and students with learning disabilities are disproportionately affected by punitive school policing policies, not because they commit more serious crimes than Caucasian and Hispanic students, but because they are more frequently disciplined for minor public order offenses. See Russel J. Skiba & M. Karega Rausch, *Zero Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness*, HANDBOOK OF CLASSROOM MANAGEMENT: RESEARCH, PRACTICE, AND CONTEMPORARY ISSUES, ed. Carolyn M. Evertson & Carol S. Weinstein (Mahwah, NJ: Lawrence Erlbaum Associates, 2006): 1063-1089. Indeed, according to a University of

- In Boston and Springfield, the highest arrest rates (up to 10 times the district-wide rates) were in schools purportedly designed to deal with children who have behavioral or emotional problems, or learning disabilities.⁵
- In all three districts, children as young as 11 or 12 were subject to arrest, often as the result of childish outbursts. In one case, an upset 11-year old was charged with assault and battery on a public employee, disorderly conduct, and disturbing a lawful assembly after he left his classroom, ran outside the school building, and threw a snowball at a teacher.

Incidents like the following were representative of our findings:

A 14-year-old middle school student in Springfield, Massachusetts, was arrested after he refused to walk with a teacher to her office and instead returned to his classroom. According to the police report, he yelled at the teacher, bounced a basketball in a school hallway, failed to respond to a police officer's request to go with the teacher and slammed his classroom door shut. He was subsequently taken into police custody, handcuffed, transported to the police station and charged with "disturbing a lawful assembly."

A boy at a high school in Springfield was suspended after refusing to go to class. He cursed as he was leaving the building, but subsequently changed his mind about leaving and stated, "I ain't leaving it's too far to walk." He was arrested and charged with trespassing and disturbing school assembly.

In 2008, an officer was called to a Worcester school to assist with a 13-year-old student who had become uncooperative and disruptive. She had been asked to leave the school building but refused to do so, and threw a pencil at a staff member. She was charged with assault and battery, trespassing, disturbing school assembly, and threatening to commit a crime.

In 2007, an 11-year-old student at a middle school in Springfield, who apparently believed that he had been falsely accused of wrongdoing, walked through the school

Chicago analysis, African-American students actually were less likely to commit offenses that triggered a mandatory expulsion than their Caucasian and Hispanic counterparts. See, e.g., Matthew P. Steinberg, Elaine M. Allensworth & David W. Johnson, *Student and Teacher Safety in Chicago Public Schools, The Roles of Community Context and School Social Organization* (Consortium on Chicago School Research at the University of Chicago, Urban Education Institute, Chicago, Ill.), May 2011, at 46.

⁵ A report by the Justice Policy Institute outlines multiple factors contributing to the disproportionate arrests of youth with disabilities, including: late or inappropriately designed individualized education plans or other accommodations for students with disabilities, inadequately trained teachers and staff, under-funded special education programs, and a reliance on law enforcement to provide discipline in schools. See Justice Policy Institute, *Education Under Arrest: The Case Against Police in Schools* (Nov. 2011) available at http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_executivesummary.pdf.

building yelling "I did not do anything" and banging lockers. He was arrested after he was directed to calm down by a police officer, refused to do so, stated that he "didn't care," and threw his book bag.

Most of the public order offense arrests we reviewed occurred after students refused to follow the directive of a teacher, administrator or police officer in a verbally confrontational or an aggressive manner. In addition, between one-quarter and one-third of the events that led to arrests for "person offenses" (such as assault) began as public order offenses but escalated after an officer attempted to physically restrain the student. Several involved aggressive efforts by police officers to handcuff students who did not want to be handcuffed, often in a public hallway or stairway in full view of the students' peers. The following story is illustrative:

In 2010, in a hallway at a Springfield high school between classes, a police officer asked a student to stop, believing that an administrator was looking for her. She ignored him and started to walk up a flight of stairs. He pursued her, at which point she allegedly swore, refused to go with him, stated that she was going to her next class, and continued to walk away. The officer attempted to grab her by the arms so that he could handcuff her. She tried to pull away, striking him in the face. They continued to struggle and stumbled backwards down the stairs into a crowd of students. The student was charged with assault and battery on a police officer, disturbing a lawful assembly and resisting arrest.

It was clear from our study that a significant percentage of the arrests in these schools were not because of weapons, drugs, or serious violence -- issues we would expect police officers to respond to--but for behavior that most people would expect teachers and administrators to address without handcuffing kids or sending them to court. Other researchers have found similar patterns. Districts that employ or deploy more police officers per student have higher rates of arrest than do districts with fewer officers per student.⁶ Those arrests frequently are based on behavior that, if not for the police presence, would not normally result in an arrest. Large numbers (in some cases well over half) of those who are arrested in school are charged with public order offenses such as "disorderly conduct," "disturbing school assembly" and "violating codes of conduct," or assault-related charges stemming from school yard fights.⁷

⁶ During the 2008-09 school year, for example, Philadelphia's public schools had a security force that was three times larger than that of 19 other Pennsylvania school districts combined, despite the fact that it had a far lower student enrollment. It also had an arrest rate that was up to 25 times higher than that of some other large districts in the Pennsylvania. Advancement Project and Youth United for Change, *Zero Tolerance in Philadelphia: Denying Educational Opportunities and Creating a Pathway to Prison* (2011), at 15, available at <http://www.advancementproject.org/digital-library/publications/zero-tolerance-in-philadelphia-denying-educational-opportunities-and-creating-pathways-to-prison>.

⁷ A 2006 Florida study, for example, found that 76% of the roughly 30,000 students arrested for misbehaving at school had been charged with misdemeanor public order offenses or assault offenses stemming from school yard fights. Florida State Conference NAACP, Advancement Project & NAACP

Schools have every right to hold disruptive youth accountable for their actions. However, criminalizing those actions, and diverting kids away from school and into the juvenile or adult criminal justice system, is harmful to everyone. Students who are arrested at school are three times more likely to drop out than those who are not. Students who drop out are eight times more likely to end up in the criminal justice system than those who remain in school and graduate, and the cost of housing, feeding and caring for prison inmates is nearly three times that of educating students.

Using police officers to maintain order and address student behavior is also costly, and an imprudent use of taxpayer dollars in these difficult economic times. Evidence-based school disciplinary programs that are designed to improve overall school climate, and that can be implemented by teachers and administrators, are not only cheaper but more effective at keeping schools safe and orderly. Among other things, such programs train teachers on how best to manage their classrooms and permit schools to more accurately identify those students who may need additional supports and services or a different type of educational program to function in the classroom.

Based on our findings, our report made the following recommendations:

1. Schools and police should immediately discontinue the use of “public order” arrests to exclude students from school.
2. Schools should transition from using permanently assigned police officers in their school buildings to using on-call officers for true emergencies. Money now spent on in-school officers should be redirected to programs that support schools in addressing disciplinary issues proactively, such as evidence-based behavior management programs or improved student support services.
3. To the extent police are deployed in schools, police and school officials should develop formal agreements to clarify the roles of officers in schools, and officers should be

Legal Defense and Education Fund, Inc., *Arresting Development: Addressing the School Discipline Crisis in Florida* (Spring 2006), at 15, available at www.advancementproject.org/sites/default/files/full%20report.pdf. A 2009 South Carolina study concluded that the single most common charge against a student referred to juvenile court for misbehaving at school was “disturbing schools.” South Carolina Dep’t of Juvenile Justice, *Annual Statistical Report 2008-09*, at 13 (Oct. 2009), available at www.state.sc.us/djj/pdfs/2008-09-Annual-Statistical-Report.pdf. A 2005 study of policing in Denver’s schools found that 42% of law enforcement referrals during the 2003–2004 school year were for “other violations of code of conduct,” which included being a member of an “unauthorized organization,” destruction of non-school property, use of obscenities, use of slurs, bullying and minor fights. Advancement Project, Southwest Youth Collaborative, Children & Family Justice Center at Northwestern University School of Law, Padres and Jovenes Unidos, *Education on Lockdown: The Schoolhouse to Jailhouse Track* (2005), at 23–24, available at <http://www.advancementproject.org/digital-library/publications/education-on-lockdown-the-schoolhouse-to-jailhouse-track>. The same report found that of the over 8,000 Chicago public school children arrested in school, over 40% were arrested were for simple assaults and batteries which did not involve serious injuries or weapons and were often nothing more than threats or minor fights. *Id.* at 8.

required to receive training in conflict de-escalation and child and adolescent development.

4. Data on school-based arrests, including the underlying justification for all arrests, should be publicly available to parents and communities, and this data should be used to hold schools accountable for inappropriate and harmful policing practices.
5. Federal and state officials should investigate the disproportionate use of arrest against African-American students and students at therapeutic schools.

In addition to adopting policies that encourage the foregoing, there are numerous steps that this Committee can take to ensure that schools are held accountable for inappropriately arresting students and to encourage schools to adopt less discriminatory and more effective discipline policies. In particular, CfJJ urges this Committee to take the following immediate actions:

1. Instruct the federal Office of Civil Rights (OCR) at the U.S. Department of Education to collect data not just on the number of arrests in each school, but the justification for these arrests. It is critical to document the fact that many schools are arresting kids for non-violent, minor misbehavior or even minor violations of the school code of conduct (including failure to wear appropriate uniforms). Schools should be required to provide the justification for direct referrals to the court system as well. (Both types of referrals – arrest and direct court referrals – are currently tracked in the OCR data.)
2. Clarify that schools must report arrest data to the OCR even if they do not directly employ the police officers who work in their schools. School officials in Springfield, Massachusetts, for example, did not report many of the arrests we documented to the OCR because they asserted that the Springfield Police officers who worked in their schools (with whom they had an Memorandum of Understand) were not school employees.
3. Instruct and fund the OCR, in coordination with the Civil Rights Division of the Department of Justice, to fully investigate and take action against schools with disproportionately high rates of arrests among students of color or disabled students. Alternatively, establish a private cause of action for these students to ensure that they have a legal remedy to address discriminatory disciplinary practices in their schools.
4. Provide incentives to schools to adopt evidence-based discipline practices and to discontinue or severely limit the use of on-site school police officers.

In addition to these steps, I urge the federal government to support communities in their fight to end the school-to-prison pipeline. We encourage the government to work to reduce racial disparities in discipline, promote alternatives to harsh punishment, and ensure that all young people have the opportunity to succeed.

Respectfully submitted,

Lael E. H. Chester
Executive Director
Citizens for Juvenile Justice
101 Tremont Street, Suite 1000, Boston, MA 02108



Department of Community and Cultural Services
 1685 Main Street, Room 210
 PO BOX 2200
 Santa Monica, California 90407-2200

December 10, 2012

The Honorable Richard Durbin
 Chairman
 Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
 United States Senate
 815 Hart Senate Office Building
 Washington, DC 20510

Subject: December 12, 2012 Hearing on Ending the School-to-Prison Pipeline; Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights

Dear Chairman Durbin,

The Santa Monica Cradle to Career (smC2C) Initiative was born out of the community's desire to create the very best outcomes for all youth, families and communities. The entity's leadership committee, the smC2C Working Group, has taken a firm position on the need to eliminate fragmentation in services that often result in shuffling of youth from one system to another and too often results in the institutionalization of youth for minor offenses. We found that they could best be helped by integrating teams of providers so they can offer alternatives and resources to the otherwise expedient referral to the juvenile justice system.

The City's smC2C Initiative is a broad collaborative of policy makers and leaders from the City of Santa Monica, the Santa Monica-Malibu Unified School District, Santa Monica College, local nonprofits, neighborhood and parent organizations, and the business community, charged with developing policies and structures to communicate and accelerate community-wide efforts to decrease youth violence and ensure the successful and safe development of all youth.

The smC2C identifies the need for system development that includes:

- Shared data between institutions to track outcomes - in real time - across the development continuum;
- Shared policy to align and integrate human development work across institutions; and,
- Collective impact structures to bridge and get the very best from our strong programs and institutions.

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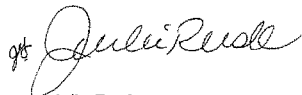
We have seen success thus far with shared data via the development of a Youth Wellbeing Report Card, which can be found on the smC2C website: santamonicayouth.net. This Report Card has been shared widely within our community and will help guide our future work.

Communities across the country need to establish and implement a "whatever it takes" approach to support youth including alternatives to incarceration as well as services that do not stop at the jail door. The infrastructure of this system calls for collaborative case management and the application of resources to increase prevention as well as mitigate the stressors in the lives of youth. Support to ensure re-entry services when they leave the juvenile justice system to lessen the chances for recidivism and other best practices is vital to this endeavor.

Creativity around the solutions may best be approached at a community-based level, as we hope we are demonstrating. Because of the complexity of the problems and the systemic levels of the challenges, we hope that the federal government can be a willing and robust partner. Community collaborators should be at the forefront of research, data collection, and collaborations. We would enthusiastically invite a broad scope of federal partners to this work. The federal government would make an excellent resource in identifying and providing material support for best practices. Such support will need an investment of time and energy from the Congress.

For these reasons, we applaud the leadership of the federal government and the work of the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights. Your hearing on the school-to-prison pipeline provides a forum to look at these important issues. We commit our community to contributing to the best practices and shared knowledge about policy considerations, program models that work and the resources called for to address and evaluate these important issues.

Sincerely,

A handwritten signature in cursive script, appearing to read "Julie Rusk". To the left of the signature is a small, stylized mark that looks like "grt".

Julie Rusk
Assistant Director,
Community & Cultural Services



**Hearing before the
Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights**

**on
"Ending the School to Prison Pipeline"
Wednesday, December 12, 2012
Dirksen Senate Office Building, Room 226
2:00 p.m.**

**Testimony from the Coalition for Juvenile Justice
Nancy Gannon Hornberger, Executive Director**

Thank you for the opportunity to submit testimony on ending policies and practices that cause students to be referred to law enforcement and the courts for non-delinquent school infractions, known collectively as "the school to prison pipeline." I am submitting this written testimony as executive director of the Coalition for Juvenile Justice. The Coalition has, for 28 years, served as the nonpartisan, national association representing state juvenile justice advisory groups in all states, territories and the District of Columbia, and our state/local allies. Since 1974, state advisory groups (or "SAGs") have been chartered under the federal Juvenile Justice and Delinquency Prevention Act (or JJDPa) and appointed by governors or chief executives to serve as citizen volunteers with the charge and legal duty to plan and implement the programs and requirements of the JJDPa, including supporting, monitoring and reporting on compliance with four core protections that are fairly well known in juvenile justice: the deinstitutionalization of status offenders (DSO); the timely removal of juvenile offenders from adult jails; the sight and sound separation of juveniles and adults in lock-ups, and the reduction of disproportionate minority contact (DMC). Our

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constituency embodies several thousand public and private sector juvenile court professionals, practitioners, community service providers, parents, youth and advocates. It is on their behalf that I submit this testimony today.

In recent years, we have witnessed an unprecedented conflation of school discipline policy and sanctions traditionally reserved for the juvenile justice system. In fact, the connection between school discipline and the juvenile court has become so close that it led to the coining of the phrase “school-to-prison pipeline.” The pervasive use of exclusionary discipline and zero-tolerance policies have created this pipeline effect, which funnels youth out of the school system and into the juvenile justice system. The pipeline impacts a broad swath of youth across lines of race, ethnicity, gender and sexual orientation, and leads to poor outcomes for the youth themselves, their families, schools and communities, ultimately denying educational and emotional support to those who may need it the most.

The Coalition joins many others in applauding the efforts of this Administration to address the school-to-prison pipeline through projects like the Supportive School Discipline Initiative jointly spearheaded by the Department of Education and Department of Justice. Yet, clearly, much more work remains to be done. For example, recent data from the U.S. Department of Education Office of Civil Rights (“OCR”) indicate that exclusionary discipline and zero tolerance policies are disproportionately applied to youth of color, an outcome that is directly at odds with the JJDPa mandate to reduce disproportionate minority contact with the juvenile justice system.

According to the latest data, collected from schools across the country during the 2009-2010 academic year, African American students were three and a half times more likely to be suspended or expelled than their white classmates and comprised 46 percent of those students who were suspended more than once. During the 2009-2010 school year 39 percent of all expulsions were of African American students even though they represented only 18 percent of enrolled students.

These disparities in suspension and expulsion rates were not accounted for by socioeconomic status or by higher rates of misbehavior among African American students. According to the OCR data, 96,000 students were arrested and 242,000

referred to law enforcement by schools during the 2009-2010 school year; 70 percent were African American or Hispanic.¹

Additionally, the American Academy of Pediatrics, Committee on School Health reports that suspension and expulsion can lead to, or worsen, academic problems, delinquency, crime and substance abuse, also noting that the children most likely to be suspended are those who most need the assistance and supervision of professionals.²

In recognition of the counterproductive nature of the policies that feed the pipeline, many jurisdictions have taken the initiative to implement reforms to address this problem with youth-, family- and community-focused approaches. In Clayton County, Georgia for example, Judge Steven Teske, a witness at this hearing and longstanding member of our Coalition, successfully led a collaborative that reduced school discipline referrals by 73 percent between 2003 and 2011.³ At the same time, community safety improved; Clayton County also saw a 51 percent reduction in juvenile felony rates during that period. The strategy employed in Clayton County, and increasingly around the country, involves a collaborative approach that diverts youth charged with in-school infractions away from the juvenile courts altogether and toward holistic, community-based solutions that focus on addressing root causes and unmet needs rather than imposing court sanctions. Judge Teske is one of nine judges profiled for their ground breaking work to support improved outcomes for children, youth, families and communities in a 2012 Coalition for Juvenile Justice publication, *Positive Power: Exercising Judicial Leadership to Prevent Court Involvement and Incarceration of Non-Delinquent Youth*.

In 2009, the Coalition for Juvenile Justice Council of State Advisory Groups (composed of state advisory group chairs, nationwide) unanimously approved a formal organizational position on *Ensuring School Engagement and Success vs. Exclusion for Youth at Risk of Delinquency*. The text follows:

¹ U.S. Department of Education, Office of Civil Rights, Civil Rights Data Collection (CRDC) accessed at: <http://www2.ed.gov/about/offices/list/ocr/data.html>.

² The Committee on School Health, 2003. "Out of School Suspension and Expulsion." *Pediatrics: Official Journal of the American Academy of Pediatrics*: 112(5), 1206-1209.

³ Coalition for Juvenile Justice, "Positive Power: Exercising Judicial Leadership to Prevent Court Involvement and Incarceration of Non-Delinquent Youth", Washington D.C. (2012)

The Coalition for Juvenile Justice envisions partnerships between educators, school resource officers and other law enforcement representatives, parents and students as essential to meet the varied needs of individual students. All share a common vision of ensuring school engagement and success for all children and youth, yet for some youth—particularly those vulnerable to involvement in the justice system—it may be challenging to achieve this vision.

The Coalition sees a primary goal of partnerships to ensure school engagement as emphasizing and supporting inclusion and effective responses to youth at risk, versus exclusion or responses that seek to remove rather than resolve problems generated by students who may disengage, become disruptive or experience academic and/or social failure in school.

Related to this goal, we would ask communities and schools to:

- ensure that all means are taken within a positive school environment to ensure that students experience high levels of school engagement and success;
- strive to keep students in school, to involve parents, families and other responsible adults in assisting in this effort;
- guard against any bias in school discipline or policy that may adversely and disproportionately affect students of color and students of linguistic, ethnic and racial minority backgrounds;
- provide school-based and family-connected services for students who are struggling to learn and those who have emotional and behavioral health needs and other disabilities.

The Coalition shares the goal of every school environment being safe, secure, welcoming to students and families, and designed for student success. With this in mind, we are concerned that some attempts to increase school safety, such as zero tolerance and other school disciplinary policies and practices have had negative results for students, especially students from racial/ethnic minority groups and those with special needs and other disabilities. In some cases, such policies exclude students from schools and push them into juvenile justice systems.

To effect real change in this area, it is important to understand problems that occur as a result of overly-broad application of zero tolerance and other school disciplinary practices, including:

- high rates of out of school suspensions and expulsions;
- school disengagement and failure among students subject to harsh policies;
- punishments too extreme to fit student infractions;
- over-representation of youth of color adversely affected by school discipline;
- over-representation of students with disabilities, particularly behavioral/emotional disabilities and special needs, adversely affected by school discipline.

Furthermore, the Coalition for Juvenile Justice supports approaches for ending the school to prison pipeline that integrate the following principles:

- **Demand for evidence-based approaches.** There is now ample evidence to support the position that policies that exclude youth from schools lead to detrimental outcomes for them, their families and communities. Any approach to stem the school to prison pipeline should take into account the best evidence we have of what works, including reducing referrals to the juvenile justice system, and for those youth referred, reduction in the use of out-of-home placement and an increase in community-based interventions that focus on addressing unmet needs. For instance in 2008, the Denver Public Schools revised the disciplinary policy to state that law enforcement should only be involved when there is a serious or immediate threat to individual or school safety, and to encourage alternatives to suspension, expulsion, and referral to law enforcement, such as family group conferencing, victim-offender mediation and classroom peace circles.
- **Balancing of interests.** The Coalition for Juvenile Justice supports the use of approaches that balance needs for the fair administration of justice, community safety and the health and well-being of youth who come into contact with the juvenile justice system. Our experience and the evidence shows that these interests are not at odds with one another. For instance, one key component of an improved approach is to eliminate school exclusion for disciplinary infractions – specifically long-term suspension and expulsion practices. In-school interventions and alternative services and support produce better outcomes and avert future problems. The National Coordinating Committee on School Health and Safety reported that suspension and expulsion lead to or worsen academic problems, delinquency and substance abuse. They also noted that children most likely to be

suspended are those who most need the assistance and supervision of professionals.⁴ Additionally, suspension or expulsion has been shown to be a primary reason for dropping out of school⁵ and high school drop-outs are 3.5 times more likely than high school graduates to be incarcerated.⁶

- **Reliance on partnerships.** The strategies that work best—examples from the field collected over our decades’ experience—are those that rely on a mix of public-private partnership and support, broad-based involvement from system actors and community stakeholders including families and youth. In the Coalition’s 2001 report to the President, the Congress and the Office of Juvenile Justice and Delinquency Prevention, *Abandoned in the Back Row: New Lessons in Education and Delinquency Prevention*, we pinpointed specific strategies and qualities of supportive school settings serving low income and at-risk populations. Such supportive schools and educational settings involve parents and family members, seek to develop children’s/youths’ strengths and personal assets, and create positive environments for communication and learning, including:
 - Beacon Schools/Centers: <http://www.sfbeacon.org/BeaconCenters/>
 - Families and Students Together (FAST): <http://www.familiesandschools.org/>
 - Communities in Schools: <http://www.communitiesinschools.org/>

Specific strategies to resolve disproportionate minority contact (“DMC”) and racial/ethnic disparities. Both the efficacy and integrity of the juvenile justice systems are threatened if school and juvenile justice sanctions are disproportionately applied to specific races and ethnic groups. In addition to the steps supported by our Coalition’s position paper (above), we support the following recommendations for improved policies and practices to safeguard the civil rights of students and create more effective and equitable learning environments:⁷

- Educators should routinely collect, reflect upon, and publicly report data on school disciplinary removal. Reports at the state, district, and school level (where permissible) should include data disaggregated by race/ethnicity, gender, and

⁴The Committee on School Health, 2003. *Out of School Suspension and Expulsion*. Pediatrics: 112(5), 1206-1209.

⁵ DeRidder, Lawrence M. *How Suspension and Expulsion Contribute to Dropping Out*, The Education Digest, February 1991.

⁶ Martin, N., & Halperin, S. *Whatever It Takes: How Twelve Communities are Reconnecting Out-of-School Youth*. Washington, DC: American Youth Policy Forum, 2006.

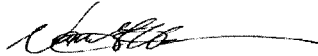
⁷ Daniel Losen, Civil Rights Project, National Education Policy Center, October 2011. Online at: <http://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/discipline-policies-successful-schools-and-racial-justice>

disability status in terms of numbers of each group disciplined. These reports should also include the percentage of each group that experiences suspension and expulsion, as well as disaggregated incidence data on the type of infraction and the number of days of missed instruction that results from such removals.

- Civil rights enforcement agents should use the disparate impact standard of legal review as grounds to pursue remedies for the unjust and unnecessary removal of children from school.
- Federal and state policy should specify the rate of out-of-school suspensions as one of several factors to be considered in assessments of school efficacy, especially for low-performing schools.
- Researchers should investigate connections between school discipline data and key outcomes such as achievement, graduation rates, teacher effectiveness, and college and career readiness.
- System-wide improvements should be pursued through better policies and practices at all levels—including an effort to improve teachers' skills in classroom and behavior management.

For more information, please feel free to contact us at the Coalition for Juvenile Justice: 202-467-0864 and on email info@juvjustice.org or on the Web: www.juvjustice.org. Many thanks for your consideration of this topic and exploration of changes that will re-emphasis student inclusion and school success for all.

Respectfully submitted,



Nancy Gannon Hornberger
Coalition for Juvenile Justice
December 10, 2012



Community Conferencing Center
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Statement for Hearing on School to Prison Pipeline

Submitted by:
 Lauren Abramson, Ph.D.
 Founding Director
 Community Conferencing Center
 Baltimore, MD 21211
 410-889-7400
labramso@jhmi.edu

U.S. Senator Dick Durbin (D-IL)
 Chairman
 Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Dear Senator Durbin,

I am writing on behalf of the Community Conferencing Center in Baltimore, a community justice program with 14 years of experience providing Restorative Practices in schools, to express what we feel is an urgent need to dismantle Zero Tolerance policies that fuel the School to Prison Pipeline, and to ***adopt more effective policies which embrace Restorative Practices.***

The Community Conferencing Center has included over 10,000 students, teachers, administrators and family members in successful School Community Conferences as an alternative to schools suspension and arrest, and has trained over 3,000 Baltimore teachers in facilitating "Daily Rap" dialogue circles in their classrooms.

Schools that use conferencing and Daily Rap have documented 60% reductions in suspensions, 50% reductions in the time teachers spend on classroom behavior management, reductions in bullying, and huge increases in satisfaction with the disciplinary process, and countless reports of remarkable new friendships and stronger engagement in learning.

I will keep this short, and simply share with you one example of a Community Conference that illustrates how this social technology can provide far better outcomes at less cost than do zero tolerance policies, arrest and suspension. We facilitated this conference in Baltimore City Schools as an alternative to expulsion. The outcome not only kept this student in school, but provide he and his (guardian) sister with much-needed support—which would have otherwise gone un-noticed.

A middle school boy was going to be expelled because his teacher saw him showing a box cutter to his classmate.

Nobody in the school wanted to exert the mandatory expulsion, because this was a really good kid. The Community Conference was attended by a suspension services worker, the principal, the school secretary (who really liked this boy), his teacher, his 26 year old sister (who was his guardian), and the 12 year old boy.

Everyone sat in a circle, and the boy told the story of what happened. The night before, his sister sent him to the corner convenience store to get something for dinner. It was dark, and his neighborhood is not safe, so she gave him a box cutter for protection. He forgot about it, and when he realized in school the next day that he had it, he showed it to his friend. When his teacher saw it, she realized that, because of the school system's zero tolerance policy for weapons, she had to report the incident for expulsion.

But nobody in the school—teachers or administrators—wanted this child expelled. They referred the case to the Community Conferencing Center, a community-based organization that partners with the school system to provide Community Conferencing as an alternative to suspension, expulsion, and arrest.

The boy was remorseful and apologized through his tears. He also told about how, since he had been put out of school, he had to sit home alone during the day because his sister—with whom he lived—worked. He had also not been receiving the home schooling services that were supposed to be provided to him.

His sister was crestfallen. She had sole responsibility for raising her brother, as her parents were lost to street life. She was trying her best to work, raise enough money to live on, and give her little brother an upbringing that would help him be successful in life. But it was hard; she had little support and they lived in a very tough neighborhood. She needed him to be in school.

Everyone was in tears. The principal, the teacher, and the school secretary all expressed their caring and concern for this student, and said they wanted him to stay in school. He was a good student, and they were willing to help him get into afterschool programs and weekend activities.

The suspension services worker agreed to the plan that everyone worked out to support this student and his sister. They were happy that they did not have to expel him for this mistake, which clearly had no intention of harm or maliciousness.

Community Conferencing and Daily Rap are only 2 of many forms of Restorative Practices.

Restorative Practices are evidence-based approaches to discipline that will truly help build 21st century learning environments. Restorative Practices promote the following vital capacities that have been proven to be indicators of successful learning and emotional development necessary for productive and healthy lives:

1. create schools where young people feel connected to each other
2. create schools where young people feel connected to the adults in their schools and in their lives
3. build responsibility for self and others
4. promote empathy
5. nurture positive self-concept
6. give young people and adults an experience of

- a. having a voice and being heard
- b. feeling like their actions affect and are important to others
- c. working collaboratively

And heck, I'll just say it: Restorative Practices would work for congress too.

Feel free to call us if you need any help with that.

Respectfully,

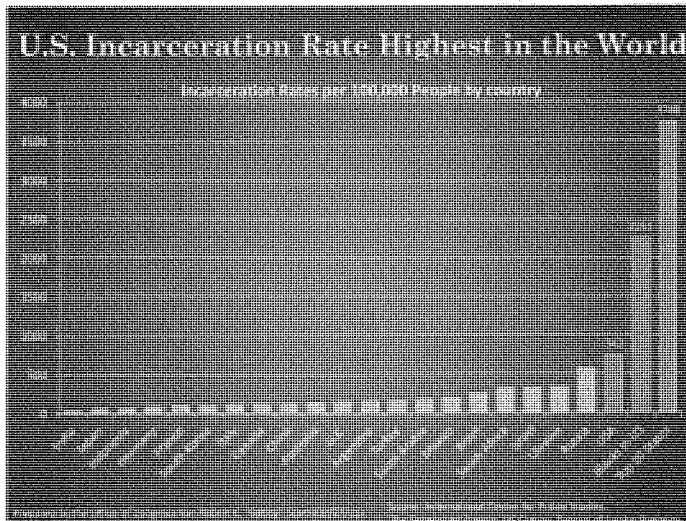


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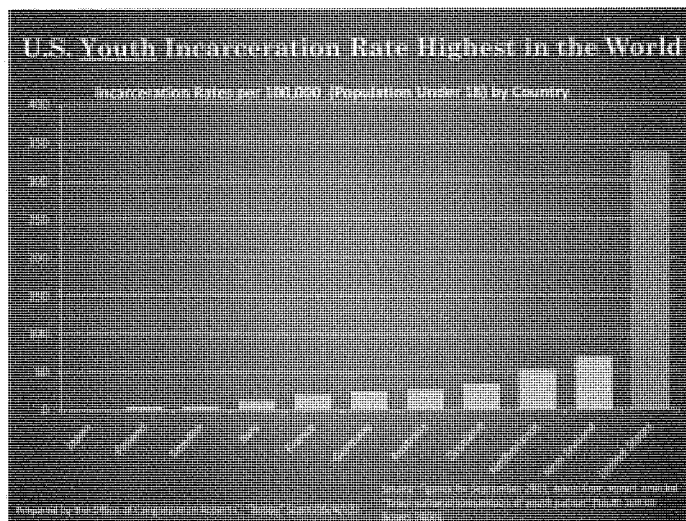

CONGRESSMAN ROBERT C. "BOBBY" SCOTT (VA-03)

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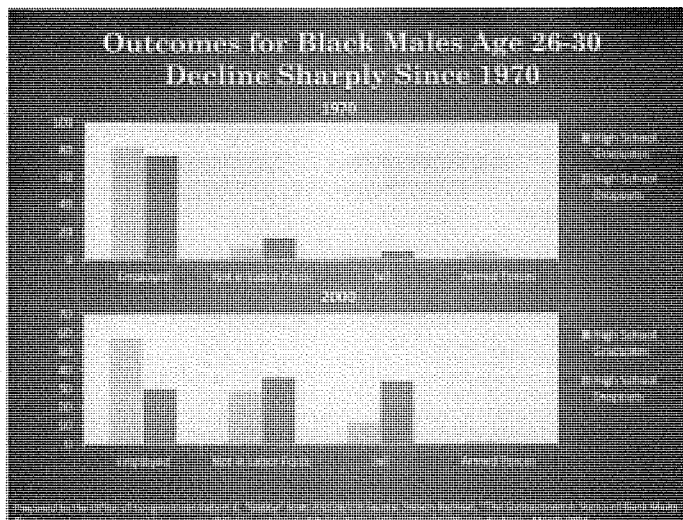
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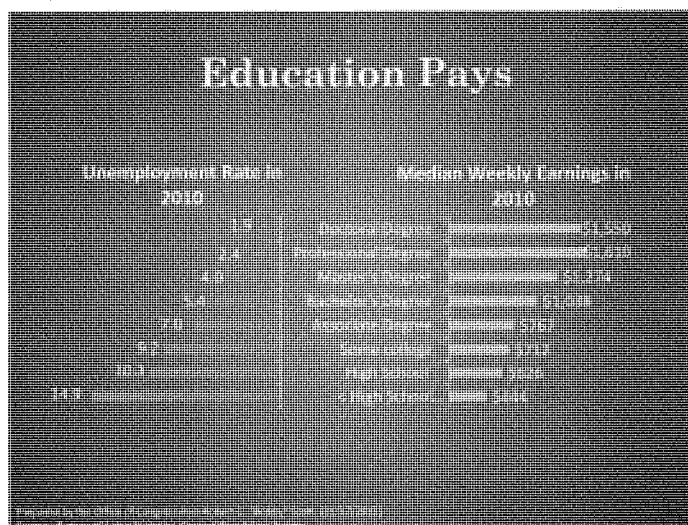
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Putting Money on the Table

What if we reduced the African-American incarceration rate to 500 per 100,000?²⁸

- Reduction from 2,252 per 100,000 to 500 per 100,000
- 1,752 fewer incarcerated x \$29,000/year = \$50,808,000
- Children per 100,000 = approx. 30,000
- \$50,808,000 / 30,000 children = \$1,694 /child/year
- \$50,808,000 targeted at 1/3 of our most vulnerable children = \$5,080 /child/year

28. African-American incarceration rates are 2.252 per 100,000, compared to 0.500 per 100,000 for the general population. Source: Bureau of the Census, U.S. Department of Justice, Bureau of Prisons, 2008.

Prepared by the Office of Congressman Robert C. "Bobby" Scott, D-Virginia. Source: Department of Corrections for Martin Luther King College. Data current as of 2012.

6.

Putting Money on the Table

What if we reduced the African-American incarceration rate in the worst ten states to 500 per 100,000?²⁹

- Reduction from 3,748 per 100,000 to 500 per 100,000
- 3,248 fewer incarcerated x \$29,000/year = \$94,192,000
- Children per 100,000 = approx. 30,000
- \$94,192,000 / 30,000 children = \$3,140 /child/year
- \$94,192,000 targeted at 1/3 of our most vulnerable children = \$9,419 /child/year

29. African-American incarceration rates in the worst ten states are 3,748 per 100,000, compared to 0.500 per 100,000 for the general population. Source: Bureau of the Census, U.S. Department of Justice, Bureau of Prisons, 2008.

Prepared by the Office of Congressman Robert C. "Bobby" Scott, D-Virginia. Source: Department of Corrections for Martin Luther King College. Data current as of 2012.

**Testimony of the Connecticut Juvenile Justice Alliance
Senate Judiciary Subcommittee on School-to-Prison Pipeline
December 12, 2012**

We would like to thank Senator Durbin and the Judiciary Committee for holding this hearing. While education reform receives a great deal of attention, the role that rational discipline must play in improving schools does not. We hope today is the beginning of a national conversation.

Part of the Connecticut Juvenile Justice Alliance's mission is to keep kids out of the juvenile justice system who can be served more effectively and safely in the community. Schools, unfortunately, are a major feeder to the juvenile justice system with some sending students to court for trivial matters.

This wastes public safety resources and lowers educational achievement. Most importantly, treating a kid like a criminal is the most effective way we know to turn him into one. That's why it is so disturbing to see children enter the system without good reason. Actual Connecticut cases include a high school student caught with cigarettes and one 5th grader giving another a wedgie on a school bus.

The rise in school arrests springs from this overreaction to normal misbehavior rather than from some increase in youth violence. In fact, juvenile crime is declining, and so is violent crime in schools.¹ Connecticut's Judicial Branch found that in the 2011-2012 academic year 19 percent of juvenile arrests that made it to court originated in schools. We tell kids to stay in school to keep out of trouble – but that's where a shockingly high number of arrests happen.

Arrest causes a child to miss school and is linked to lower graduation rates, reduced achievement and a general feeling of disconnection on the student's part.

Being arrested in school doubles the chances that a child will drop out, even when controlling for other factors like middle school grade point average, a 2006 study found.² The same research demonstrated that a court appearance quadruples the chances a child will not finish high school

The link between school arrest and dropping out is bad news for students – and for the rest of us. A 2011 Northeastern University study calculated the net economic contributions of 18- to 64-year-olds by comparing their tax payments with the money they withdrew from the economy through public programs like food

¹ Youth Violence Project. <http://youthviolence.edschool.virginia.edu/violence-in-schools/national-statistics.html> Accessed 7/27/2012.

² Sweeten, Gary, "Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement" 24.4, Justice Quarterly, (December 2006)

Testimony of the Connecticut Juvenile Justice Alliance 12/12/12

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stamps.³ The average annual net civic contribution was more than \$10,000 for all adults. High school dropouts, on the other hand, cost the public coffers \$1,500.

The emotional cost borne immediately and permanently by a child is even worse. As an Advancement Project report so eloquently puts it:

"Zero tolerance policies inherently conflict with prescriptions for healthy child development. They are designed primarily to punish and offer few opportunities for instruction or help for students. They frequently fall into the category of overly harsh punishment that, in the words of noted psychologists James Comer and Alvin Poussaint, 'either destroys a child's spirit, has no effect at all, worsens the problem, or makes it more difficult for you to work with the child in school – he or she no longer trusts you.'"⁴

Arrest is disproportionately visited upon boys, children of color, special education students and children from low-income communities. During the 2010-2011 school year in Connecticut, boys were twice as likely to be arrested as girls; black children were nearly four times more likely to be arrested in school as white children; Hispanic children were more than three times as likely to be arrested as white children; special education students were nearly three times as likely to be arrested as regular education students; and children in the state's poorest districts were more than nine times as likely to be arrested as those from the wealthiest districts.⁵

Around the country, adults who care about kids are stepping up to address this problem. But their efforts need to be scaled up considerably. Lawmakers could help by demanding transparency from school districts on their arrest practices and by funding innovative programs that decrease arrests, rather than offering aid to increase policing in schools.

I would like to call your attention to two Connecticut districts where schools, police, courts and the community worked together to reduce student arrests. Manchester decreased its student arrest rate 61 percent in a single year. Windham achieved a 34 percent decrease. These impressive numbers are the result of adults coming together in strong teams to help kids, take a hard look at discipline and examine how existing resources could be better used to help students become good citizens in the classroom and the community.

³ Sum, Andrew, et. al. "High School Dropouts in Chicago and Illinois The Growing Labor Market, Income, Civic, Social and Fiscal Costs of Dropping out of High School" Chicago Alternative Schools Network, November 2011.

⁴ Advancement Project "Opportunities Suspended: The Devastating Consequences of Zero-Tolerance and School Discipline" July, 2002.

⁵ Connecticut Voices for Children analysis of data provided by Connecticut Department of Education as cited in testimony of Sarah Esty to the Connecticut General Assembly, March 12, 2012.

Schools exist to teach a variety of academic subjects. They also exist to partner with families in teaching children how to be respectful and cooperative members of a community. Arrest rarely teaches kids anything, except perhaps that the adults in his or her life have given up.

We have seen what happens when communities refuse to give up on their kids, and it is truly inspiring. Personal stories from teachers and a student in districts that have reformed their discipline policies are attached to this testimony. They have a great deal to teach us all.

Silence Is Not the Answer

Has anyone ever solved a problem by not talking about it? In Manchester, Connecticut, middle and high school students who are given a detention can choose the traditional silent detention or they can opt for Play By the Rules, a program where they spend their detention time working on improving their behavior.

Kids talk with each other about their behavior, why it happened, and what they might do differently next time. "It's so much more powerful coming from another student," explained Brenda Lorange, who facilitates Play By the Rules. The program uses a curriculum created by the Alabama Center for Law & Civic Education, edited for Connecticut by Civics First, Inc. and Supervisory Juvenile Prosecutor Francis J. Carino and brought to Connecticut by Civics First, Inc.

That session is often just the beginning for kids as they look for adult support to succeed in school. "It's like a work in progress," said Lorange. "It doesn't end with the hour." She's a monitor, walking the halls of Manchester High School all day. After a Play By the Rules session, kids tend to see her as a resource. She tells them that they can approach anyone with a radio (monitors, school security or school resource officers) and get in touch with her immediately if they're in a situation they don't know how to handle. Lorange has been able to defuse conflicts between students this way.

As with many of Manchester's discipline reforms, Play By the Rules focuses on the root causes of behavior. "The baggage I hear about is so sad," said Lorange.

For example, she worked with a boy who emigrated from Africa. He's a native French speaker who didn't begin attending school until the age of 13. He began roaming in the school, a problem that Lorange also sees in kids with special education needs that aren't being met. They also frequently leave school altogether. "That's their way of taking charge of their lives – by leaving the building," she said. Lorange becomes an advocate for these kids and works with administrators to "cut through a bunch of red tape" and get them appropriate supports quickly.

Lorange is excited to offer a lunchtime art therapy option for students that is planned to kick off this academic year. "This is going to be absolutely wonderful," she said.

Student arrest reduction has been an energizing, inspiring project for Lorange. "I love it," she said. "It's very rewarding to actually feel like you're doing something."

"It's About The Kids"

Heather Sica, a music teacher at Illing Middle School in Manchester, Connecticut, does not just prepare kids to play on key at concerts but also to perform well in life. Sica is a Manchester Agencies, Police and Schools Collaborative (MAPS) mentor.

"It's not always about the music," said Sica. "It's about the kids."

Last year, the School Attendance Review Board linked Sica to a freshman who was in danger of not passing enough classes to become a sophomore and possibly of dropping out as a result. The board paired Sica with the boy because of his interest in music. Their relationship began through piano lessons, but she soon found herself working with him on homework for his biggest problem subject, science. "Give them what they need," Sica figured. The primary thing she did to guide her mentee was even more basic than homework help. She thinks her main contributions were to "listen, be there," she said.

His attendance improved over the course of his work with Sica, but he hit a snag and stopped coming to school again. Sica called him and said: "Dude, own up to it and move on!" He was back at school that afternoon.

Sica's classroom also serves as "home base" for a girl who has an "oil and water" relationship with a classroom teacher. The girl can come in whenever she feels in danger of losing control. If Sica is teaching a class, the student sits quietly. Eventually, the two will talk about the conflict. The girl returns to class when she's calm and ready to apologize. "She's spending a lot less time in the principal's office," said Sica.

Sica does not have a reduced teaching load, so her days can stretch out as a result of the time she spends with her mentees. "If you can make a difference, who cares?" she said. Sica gets something out of it, too: "It's just being able to make that connection and know you had that positive experience with that kid. You never know what that connection can do."

One Teacher, A World of Difference

"I was horrible. I was so, so, so bad," remembers Sacha Gomez, 18, of Windham Connecticut. Poverty was just one of the issues that confronted her at home. Gomez was angry, and that anger led her into trouble more than once.

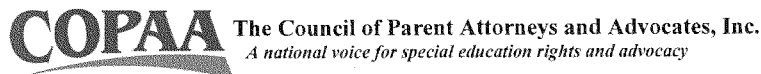
By 8th grade she would just leave school in the middle of the day. Why not? She was flunking out anyway. Police would come looking for her. In high school, she was arrested three times at school for fighting.

Sophomore year she was on the verge of getting expelled – fighting again – when she was sent to Lynn Frazier, a reading teacher at Willimantic High School who coaches The Young Poets, a group that empowers kids to be writers. (Willimantic is a small city within the larger town of Windham.) Gomez was told to read a book she'd already read and disliked. "Yo, I'm not doing this for you," she told Frazier, before letting loose with a torrent of expletives.

Frazier let her vent for a while, then asked, "Are you ready? Are you OK?" The teacher went on to say that she didn't much like the book either and encouraged Gomez to finish the reading quickly so they could move to more interesting work.

That night Gomez had a dream about doing a talent show at school. "In our school, they only focus on the bad stuff. They never focus on what's good, like the talents," she explained. The following morning she shared her idea with Frazier, who loved it. Gomez did host a talent show that year, and her junior and senior years as well. They were fundraisers, contributing to causes like supporting The Young Poets and purchasing an accessible van for a disabled student. Gomez, who is now a student at community college, also works as a counselor at the town's teen center. Dealing with kids at the center, she's adopted Frazier's approach. "You can't ask for respect," she said. "You've got to give them some respect."

Frazier's patient listening was something Gomez could have used much earlier in her education. "You want us to go to school and show you some respect, but you're not listening to us," Gomez said. Then she was quiet for a bit. "I don't know why every teacher can't be like Ms. Frazier," she said.



**Ending the School to Prison Pipeline
Hearing before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights
COPAA Comments for the Record
December 10, 2012**

The Council of Parent Attorneys and Advocates (COPAA) is a nonprofit organization of parents, attorneys, and advocates who work to protect the civil rights of children with disabilities and ensure that they receive appropriate educational services. Some members are in private practice; others work for public interest organizations that serve low-income parents and other nonprofit purposes. COPAA members see the successes and failures of our education system through thousands of eyes, in schools across this country every day of every week of every year. This lens brings into focus a profound inequity in schools nationwide.

This inequity is underscored in the recent Office of Civil Rights (OCR) Report to the President, *Helping to Ensure Equal Access to Education* (2012). Indeed, as the report states, the "data portray a disturbing picture for too many students across the nation." Examples from the report include:

- African-American students are over 3½ times more likely to be suspended or expelled compared to their white peers.
- One in five African-American boys receives at least one out-of-school suspension, more than any other group of students. And, while girls generally receive fewer punishments than boys, African-American girls are suspended at a rate higher than Asian/Pacific Islander, Hispanic or white boys.
- Students with disabilities who are covered under the IDEA are more than twice more likely to be suspended out-of-school than are students who do not receive services under the IDEA.
- Nearly 30,000 students were expelled under zero-tolerance policies in the CRDC sample. And in districts that reported expulsions under zero-tolerance policies, Hispanic and African-American students represent 45 percent of the student body but 56 percent of the students expelled under such policies.
- Never-before-seen data on restraint and seclusion show that while Hispanic students represent 24 percent of students without disabilities, they are a full 42 percent of students without disabilities who are subject to seclusion.

The OCR report is not the first to make such claims; in fact there is extensive research showing that students of color, particularly African-American male students, students with disabilities, and students in foster care are disproportionately disciplined and pushed out of school.

COPAA members unfortunately see daily examples of students being pushed out through unnecessary and counter-productive disciplinary actions. Children with disabilities are being ejected into alternative schools, denied access to an education with their peers and appropriate

educational services. Behavioral Intervention Plans are often ineffective; Functional Behavioral Assessments, poorly conducted. Increasingly, school districts are sending children to face criminal charges for relatively minor incidents.

Despite statutory requirements, school personnel routinely fail to:

- Uphold the IDEA requirement (20 U.S.C. sec. 1415(k)(6)(b)) that school personnel who refer a child with disabilities to the authorities (e.g., police, delinquency or criminal court) for a possible prosecution send educational records so that the court and the court's intake probation people can investigate and NOT accept cases (truancy, minor delinquency, etc.) that result, in a sense, from the failure by school personnel to identify children's needs and failure to appropriately serve those children.
- Comply with the IDEA's requirement to provide appropriate related services, including school-based social work services, family counseling, parent training, recreation and therapeutic recreation, etc.
- Provide, through the child's IEP Team, evidence-based services, including wraparound services that would keep them in school and learning.
- Use Early Intervening Services (EIS) correctly; often using to avoid finding children eligible under IDEA and providing services to them, thus children receive inadequate services and are not entitled to IDEA's discipline protections.
- Implement services in interim alternative educational setting. A child is entitled to receive programming and services necessary to enable him or her to receive a free appropriate public education consistent with section 612(a)(1) during the period in which he/she is in an interim alternative education setting. Too many students are incarcerated or moved into settings in which their IEP's are not implemented and services are not received.
- Properly complete a Manifestation Determination Review. Examples of highly problematic Manifestation Determinations Reviews (MDRs):
 - Parents are being given a time and place for an MDR and told that it will happen with or without them.
 - The decision is typically made by administrators who are not educated in special ed. Laws; are not trained on IDEA and have not had any training about specific disabilities. This results in over-disciplining of kids who have disabilities, especially psychiatric disabilities.
 - There is a trend in schools in California to use the 5150 process (this is the process in which a person who is posing a grave danger to himself or others may be involuntarily committed for up to 72 hours), or calling law enforcement in

cases where the behavior is a manifestation of the disability.

- A thirteen year old client has Oppositional Defiant Disorder. After a power struggle with an administrator at lunchtime (which his behavior plan specifically advised to avoid), the child went to class and was taking an exam. The administrator, knowing that she had already suspended the child for 10 days and would require a MDR before any further action could be taken, called the police. The police came to school and came into the child's classroom. The child ran out of the class and off school grounds and was arrested for resisting arrest and truancy. Although the child did not have any disciplinary measures against him at school for this incident, he ended up in the delinquency system.
- Fail to implement Functional behavioral assessments (FBA's) and behavior intervention plans (BIP's). Despite the fact that IDEA 2004, 20 U.S.C. § 1414(d)(3)(B)(I) requires that positive behavioral interventions be considered in developing the IEPs of all children, there is a pervasive and uniform failure to understand and to complete the cornerstones of positive behavioral intervention: appropriate functional behavioral assessments (FBA's) and behavior intervention plans (BIP's).
 - Many districts have no idea with an FBA or BIP should contain. The few FBA's and BIPs we do see are inadequate and do not use data base decision making to measure effectiveness.
 - Too often SD's "experiment" with BIP's with disastrous results for the student, including change in placement to a more restrictive setting when an effective BIP with proper implementation by trained staff could keep the student in the regular education classroom.
 - Students are traumatized, often developing worse behaviors or mental health issues such as school phobia – in one case to the point where the parent could not drive past the school without the child having a complete meltdown due to improper use of behavioral interventions - i.e. locking the student (5 yo) in the "quiet room" alone several times a day.
 - The lack of a universal definition of what an appropriate Functional Behavior Assessment is or should consist of is a serious problem. For example: many of the Texas school districts utilize an IEP form which they call a Functional Behavioral Assessment. It may be completed by anyone, not even necessarily a member of the IEP team or someone with personal knowledge of the child. Functions of behavior are at best guessed without any basis for making such decisions. There is little to no data collection to back up these "assessments."
 - There are many students who should have been offered an FBA several times and yet the schools failed to suggest this on each occasion. Parents must learn what an FBA is and advocate for it; often needing to hire attorney to enforce the request. One parent states: "My child is so bitter that she may never benefit from the very school services for which we advocated and went to due

process to receive.”

- Students are routinely suspended and sent home. For example, one student, 7 years old, suspended 7 times and the child sent home early for 3 month's before the parent was informed that there were other options. After ignoring the parents written request, the District only provided an FBA when forced by the parent attending a Board meeting and exposing the situation.
- Positive behavior plans, when developed, are not implemented as teachers and paraprofessionals/aides are not trained on the implementation of strategies. Districts want to limit the involvement of independent clinicians in the classroom yet their staffs lack the experience to ensure that implementation occurs.

Schools must implement the law faithfully and work hard to create positive and supportive school climates for all students. For students whose behavior challenges, an individualized, positive, proactive approach must be used.

Schools must be diligent about conducting FBAs, writing appropriate BIPs,, and implementing them with fidelity.

Everything that can be done to keep students in school must be done, and should be done equitably.

Thank you for the opportunity to submit comment.



Denise Stile Marshall, M.S.
Executive Director



Statement by

Michael Thompson

Director

Council of State Governments Justice Center

Hearing on Ending the School-to-Prison Pipeline

December 12, 2012

**U.S. Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights**

Chairman Durbin, Ranking Member Graham, and Members of the Subcommittee:

I appreciate the opportunity to submit testimony about the growing national concerns regarding the link between school's disciplinary actions and students' consequent involvement in the juvenile justice system. The Council of State Governments (CSG) Justice Center has completed a study in partnership with the Public Policy Institute at Texas A&M University that has helped provide new data about this issue that I am pleased to share with you today. The center also is currently engaged in a national project—supported through a federal agency/private partnership—to gain bipartisan consensus among a broad range of policymakers and practitioners from law enforcement, courts, education, health and many other disciplines on strategies for helping schools provide safe and engaging learning environments, improving student's academic outcomes, and preventing involvement with the juvenile justice system. I hope that the information we provide on this project is cause for optimism about potential policy options that can spur positive change in schools and districts across the country.

The Council of State Governments Justice Center

The CSG Justice Center is a national nonprofit organization that serves policymakers at the local, state, and federal levels from all branches of government. Staff provides practical, nonpartisan advice and research-based strategies to increase public safety and strengthen communities. The center serves all states to promote effective data-driven practices—particularly on complex problems found at the intersection of criminal justice policy and other disciplines or systems—and to provide practical solutions. The Justice Center’s focus on school discipline is part of a portfolio that includes such other work as guidance on improving responses to people with mental illnesses involved in the criminal justice system, addressing the needs of crime victims, promoting successful prisoner reentry, and implementing justice reinvestment (a data-driven approach to reduce corrections spending and to reinvest the savings in strategies that can decrease crime and strengthen neighborhoods).

The Justice Center’s leaders decided to examine school disciplinary issues because of growing and persistent concerns that large numbers of youth are finding their way into juvenile courtrooms for misbehavior in school that often resulted in suspensions or expulsions. We know that once involved with the juvenile justice system, the consequences for these students can be serious and lasting. After reviewing available research, it became apparent that there were no studies that matched statewide individual student data with justice system records to shed light on this relationship. Unlike the existing research that has used aggregate data, individual-level records make it possible to statistically distinguish the contributions of individual factors that could be related to school disciplinary actions, dropout rates, justice system contact, and other outcomes.

The Justice Center’s board of directors believed that, given the center’s past successes with directing large national consensus-based projects that span multiple systems, the organization was uniquely positioned to address the challenges that have historically made it difficult to generate findings and policy recommendations on student discipline and juvenile justice involvement.

With the bipartisan leadership of Texas legislators (including the chairs of the Senate and House Education Committee and the chairs of the Senate and House committees overseeing justice and corrections), the Justice Center was able to embark on the largest data-matching study

in a state to examine school discipline and its relationship to academic and juvenile justice outcomes. These leaders, through their legislative committees or by establishing a task force of local and state officials, helped guide the Texas research and continue to use its findings to inform new policy development.

Problem

Millions of U.S. public school students in grades K–12 are suspended or expelled in an academic school year,¹ particularly students in middle and high school.² Between 1974 and 2006, the percentage of K-12 students suspended each year has approximately doubled, from about 1.7 million (3.7 percent of all students) in 1974 to more than 3.3 million (6.8 percent of all students) in 2006.³ Research demonstrates that when students are removed from the classroom as a disciplinary measure, the odds increase dramatically that they will become involved in the juvenile justice system and will have poorer academic outcomes, which can affect their ability to obtain employment, earn higher wages, and be successful later in life. Additionally, these negative consequences disproportionately affect children of color as well as students with special needs.⁴

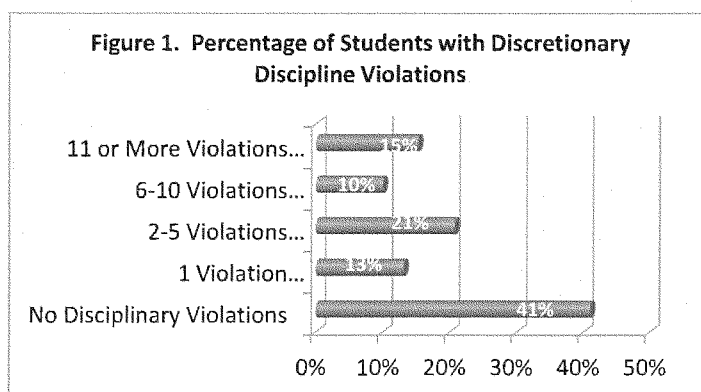
¹ U.S. Department of Education data do not include in-school suspensions. The data represents 61 percent of public schools and 43 percent of districts. An analysis of 2009 data is forthcoming.

² Russell Skiba and Daniel Losen, *Suspended Education: Urban Middle Schools in Crisis* (Los Angeles: The Civil Rights Project at UCLA, 2010); Russell Skiba and M. Karega Rausch, "Zero Tolerance, Suspension and Expulsion: Questions of Equity and Effectiveness," *Handbook of Classroom Management: Research, Practice, and Contemporary Issues*, edited by Carolyn M. Evertson and Carol S. Weinstein (Mahwah, NJ: Erlbaum, 2006): 1063–89.

³ Hanno Petras, Katherine Masyn, Jacquelyn A. Buckley, Nicholas S. Ialongo, and Sheppard Kellam, "Who is Most at Risk for School Removal? A Multilevel Discrete-Time Survival Analysis of Individual-and-Context-Level Influences," *Journal of Educational Psychology*, 103 (2011): 223–237; Kim Brooks, Vincent Schiraldi, and Jason Zidenberg, *School House Hype: Two Years Later*, NCJ 182894 (Washington, DC: Justice Policy Institute, Children's Law Center, 2000); "2006 National and State Projections," U.S. Department of Education, accessed May 31, 2011, http://ocrdata.ed.gov/Projections_2006.aspx.

⁴ Tony Fabelo, Michael D. Thompson, Martha Plotkin, Dottie Carmichael, Miner P. Marchbanks III, and Eric A. Booth. *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement*. (New York: Council of State Governments Justice Center, 2010). Hanno Petras, Katherine Masyn, Jacquelyn A. Buckley, Nicholas S. Ialongo, and Sheppard Kellam, "Who is Most at Risk for School Removal? A Multilevel Discrete-Time Survival Analysis of Individual-and-Context-Level Influences," *Journal of Educational Psychology*, 103 (2011): 223–37; Michael Krezmiem, Peter Leone, and Georgiana Achilles, "Suspension, Race and Disability: Analysis of Statewide Practices and Accounting," *Journal of Emotional and Behavioral Disorders*, 14 (2006): 217–26; Linda M. Raffaele Mendez and Howard Knoff, "Who Gets Suspended from School and Why: A Demographic Analysis of Schools and Disciplinary Infractions in a Large School District," *Education and Treatment of Children*, 26 (2003); Sid Cooley. *Suspension/Expulsion of Regular and Special Education Students in Kansas: A Report to the Kansas State Board of Education* (Topeka: Kansas State Board of Education, 1995).

In July 2011, the CSG Justice Center released the Texas study report, *Breaking Schools' Rules*, which followed nearly one million public school students in middle school and high school over a minimum six-year period.⁵ The study found that the majority of students had been suspended or expelled between 7th and 12th grade, and that only three percent of suspensions/expulsions were a result of misconduct for which the state mandates the removal of the student from the classroom; the rest were made at the discretion of school officials primarily in response to violations of local schools' conduct codes. Furthermore, African-American students and students with particular educational disabilities were found to be disproportionately disciplined for discretionary violations.

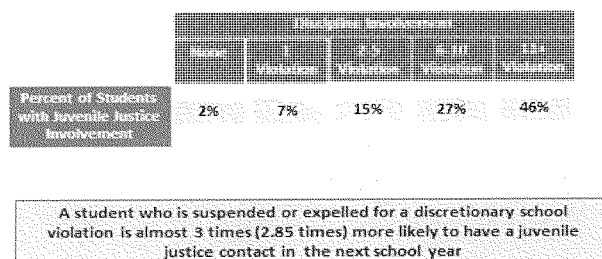


The *Breaking Schools' Rules* study confirms that school disciplinary actions can lead to negative outcomes for students, both in and out of school. Students that experienced suspensions and/or expulsions were more likely to drop out of school, repeat a grade, and fail to graduate from high school. Of particular concern to this subcommittee, students who experienced disciplinary actions were more likely to become involved with the juvenile justice system, particularly those students with repeat violations.

⁵ Support for the *Breaking Schools' Rules* study was provided by the Open Society Foundations and the Atlantic Philanthropies.

Figure 2.

More Discipline Actions, Higher Percentage of Juvenile Justice Contacts



As Figures 1 and 2 indicate, the report included these findings:

- More than one in seven students was in contact with the juvenile justice system (i.e., contact with a county's juvenile probation department) at least once between seventh and twelfth grade,
- Nearly half of those students who were disciplined 11 or more times were in contact with the juvenile justice system. In contrast, 2 percent of the students who had no school disciplinary actions were in contact with the juvenile justice system.

The report also indicated that strong school leadership and staff commitment can make a difference in disciplinary rates.

- When controlling for campus and individual student characteristics, the data revealed that a student who was suspended or expelled for a discretionary violation was nearly three times as likely to be in contact with the juvenile justice system the following year.

The findings on school disciplinary actions and the academic and juvenile justice outcomes from the *Breaking Schools' Rules* study are not unique to Texas. Similar conclusions have surfaced in jurisdictions across the country, and many studies have documented increases in suspension and expulsion rates as well as how these practices have disproportionately affected certain populations of students. The U.S. Department of Education's Office of Civil Rights

recently published data with consistent findings on the large numbers of suspensions and expulsions and the disproportionate impact on African-American students and students with special needs. The Office of Civil Rights' data collection process takes place every two years and surveys school districts on a number of school characteristics, including disciplinary actions. Data are disaggregated by race and gender for students with and without disabilities, and data on individual schools and districts are made available. The most recent data collection process (2009) included a survey of more than 7,000 school districts (nearly half of all U.S. districts). Some key findings from this survey, released in March 2012, include the following:⁶

- National suspension rates show that 1 out of every 6 (17%) Black school children enrolled in K–12 were suspended at least once. That is much higher than the 1 in 13 (8%) risk for Native Americans, 1 in 14 (7%) for Latinos, 1 in 20 (5%) for Whites, or the 1 in 50 (2%) for Asian Americans.
- For all racial groups combined, more than 13 percent of students with disabilities were suspended. This is approximately twice the rate of their non-disabled peers.
- One out of every four (25%) Black children with disabilities enrolled in grades K–12 was suspended at least once in 2009–2010.
- Students with disabilities and Black students were also more likely to be suspended repeatedly in a given year than to be suspended just once. The reverse was true for students without disabilities and for most other racial/ethnic groups.

The findings from *Breaking Schools' Rules* and other studies make a compelling case for changing the status quo and confirm that individual schools clearly have the potential to reduce their dependence on suspension and expulsion to manage student misbehavior. There are many schools and districts led by passionate and committed educators and school leaders that are doing very exciting and innovative things to create alternative options to suspensions and expulsions, and they are achieving very promising results. However, too often these strategies and results are not widely disseminated or implemented. Policymakers and practitioners have a growing need to not only identify strategies for effectively managing students' behavior and aligning schools' policies to support student engagement and learning, but to bring these promising strategies to scale through collaborative, multisystem efforts. It is evident from the promising practices that have emerged that schools alone cannot make widespread and lasting advancements without a

⁶ Losen, Daniel J. and Jonathan Gillespie. (2012). *Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School*. The Center for Civil Rights Remedies at The Civil Rights Project.

commitment from law enforcement, courts, probation, treatment professionals, and the many other disciplines that affect students' success.

School Discipline Consensus Project

Following the release of *Breaking Schools' Rules*, Attorney General Eric Holder and Secretary of Education Arne Duncan announced at the quarterly meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention in Washington, DC, the creation of the Supportive School Discipline Initiative (SSDI). The initiative is a collaboration between their two agencies that focuses on school disciplinary policies and in-school arrests to prevent students' inappropriate contact with the juvenile justice system. The focus is part of a larger effort to help students succeed by supporting school efforts to find alternative strategies for creating and managing safe learning environments.

As one of the four pillars of the SSDI, with additional support from the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Education, Atlantic Philanthropies, The California Endowment, and NoVo Foundation, the Justice Center is leading the national consensus-building project mentioned earlier to convene experts across multiple disciplines to determine what policies, programs and practices they agree would most likely improve outcomes for students who engage in misconduct in school. Youth, parents, and community partners are also playing a critical and active role in the project to develop creative solutions.

The consensus-building project officially launched in October 2012 with a national convening in Washington, DC, which brought together a number of critical stakeholders, including state legislators, police chiefs, juvenile and family court judges, advocates, school district superintendents, educators, parents, and youth. The four multi-disciplinary advisory groups focused on the key themes of health, juvenile justice, law enforcement, and school climate will work over the coming year to identify key issues related to academic success, juvenile justice concerns, and safe and engaging learning environments. Drawing on research, promising practices from across the country, and the expertise and experience of individuals affected by school disciplinary measures, these groups will reach agreement on recommended policies and practices that will make the most effective use of multiple systems' resources.

To achieve the goals of the consensus project, the Justice Center is also engaging a number of organizations with extensive expertise, experience, and a long-standing commitment

to advancing policies that will keep kids in schools and out of the justice system. Organizations such as the Dignity in Schools Campaign, the Advancement Project, and the NAACP Legal Defense and Educational Fund have played a significant leadership role in elevating this issue across the country, and are playing a critical advisory role in supporting the work of the project.

Staff is also engaging and partnering with a number of education associations and organizations to ensure the voices of educators, administrators, and other school support staff working with youth are heard. In addition to including these perspectives on each advisory group, the Justice Center is partnering with local advocacy and organizing groups at the local level to conduct listening sessions across the country with youth and parents who have first-hand experience with school disciplinary actions.

The project will yield a comprehensive and interactive report with policy and practice recommendations, guidance on implementation, and examples on promising practices and approaches in the field, for federal, state, and local policymakers and practitioners to improve school disciplinary systems, with the goal of improving student achievement and reducing interaction with the juvenile justice system.

Student Achievement and Juvenile Justice as Last Resort: A Priority for States and Districts

We all want the same outcomes: schools where educators, staff, and students can feel safe in an environment conducive to learning, and where students are connected and engaged in the classroom and are experiencing positive outcomes. While we recognize that there are some students who must be removed from the classroom for violent behavior and other mandatory violations, suspensions and expulsions should be reserved for the most serious offenses. In order to change the current system, educators and administrators need the support and resources to reduce the need for exclusionary measures and to find alternative strategies and interventions for students.

As a result of the commitment and hard work of local communities, advocacy groups, educators, and leading policymakers, a number of states, districts, and individual schools have begun to make the issue of school discipline a priority, and are employing promising strategies to alleviate the problem. Multiple states have initiated legislative and multi-stakeholder taskforces charged with making recommendations to change school discipline policies and practices. A

number of states have successfully passed legislation or regulations revising school discipline policies, and/or providing additional support to districts and schools around alternative strategies to suspensions and expulsions. Leading examples include the following:

- In April 2012, the Colorado General Assembly passed legislation amending grounds for suspensions and expulsions, requiring training for school resource officers, and requiring school boards and districts to revise codes of conduct and disciplinary codes to keep kids in school.
- In 2012, the Maryland State Board of Education approved regulations reforming school discipline policies, including using long-term suspensions as a last resort, requiring school districts to track disciplinary data, and revising definitions for what constitutes suspensions and expulsions.
- In 2012, the California legislature passed five bills reforming school disciplinary policies. The legislation provides additional flexibility to school administrators in decision-making, authorizes the use of alternatives to suspensions and expulsions, and prohibits schools from denying enrollment to students who have had contact with the juvenile system.

At the local level, many promising approaches and practices are emerging in which school districts and schools are revising policies and practices:

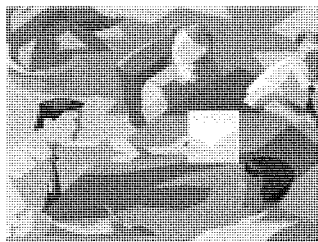
- Providing training and professional development to educators, school support staff, and school resource officers
- Reforming truancy policies and school policing protocols
- Developing school-based mental and behavioral health centers
- Implementing alternative strategies to suspensions and expulsions, such as restorative justice, peer mediation, youth courts, among others

Additionally, over the last several months many urban school districts, including Philadelphia, Chicago, New York City, and Los Angeles, revised their school codes of conduct to provide administrators more discretion in handling disciplinary cases, limiting the maximum length of time for suspensions, and preventing some infractions from being punished by out-of-school suspensions.

Although several states and many districts and schools have been pursuing promising approaches and strategies to reduce the number of suspensions and expulsions, millions of

students are still being removed from their classrooms and schools as a result of disciplinary practices, increasing their risk for dropping out of school and future interaction with the juvenile justice system. And, policymakers and practitioners in the majority of states and districts are still searching for solutions. With the help of our many partners on this project, we hope to fill these gaps.

Thank you for the opportunity to submit testimony before the subcommittee, your attention to these critical issues, and leadership in helping states, districts, schools, and communities address these challenges. We look forward to continuing to work with you on these matters.



COUNTYWIDE FAMILY DEVELOPMENT CENTER, INC
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December 10, 2012

To Whom It May Concern:

The Countywide Family Development Center was organized by two parents in 2007 as community organizers and youth advocates to serve families throughout Laurel and Jones County to address the different and harsher disciplinary punishments toward African American students. The emergence and development of the Countywide Family Development Center (CFDC) came as a result of our own "Jena 6" type situation in April, 2006 when two African American male middle school students were arrested, charged and detained because of their response to racial slurs and epithets directed at African American students by a Caucasian student. Our partnership with the Mississippi Youth Justice Project, Mississippi State Conference of NAACP, Mississippi Immigrants Rights Alliance; and the Mississippi Civil Liberties Union provides us with the tools: skills, legal assistance and support in an effort to dismantle this school to prison pipeline in Mississippi and in support of healthy schools.

MISSION:

The Countywide Family Development Center, Inc. (CFDC) is a non-profit community based YOUTH service organization (YSO) and our mission is to provide opportunities for disadvantaged and at-risk youth to obtain an education, develop leadership and employability skills that will reduce and prevent juvenile delinquency, lower teenage pregnancy and enhance academic achievement. We accomplish our mission through a comprehensive approach that utilizes advocacy tools, legal tools and legislative tools.

Here are some of our issues:

In April of 2006 two African American male middle school students were arrested, charged and detained because of their physical response to racial slurs and epithets directed at African American students by a Caucasian student. The two African American students were incarcerated for four and half days, suspended from school two weeks, arraigned in juvenile court and placed at the alternative school. The Caucasian student received no punishment. These injustices, along with eighteen other families lead to filing complaints with the Department of Justice and the Office of Civil Rights. The Office of Civil Rights came in and investigated the complaints by interviewing students and parents. One of the interviews consisted of talking with forty-five students where African American students reported that on a daily basis they are called racial derogatory names such as "porch monkey" "nigger" and "coons". They are called these names leaving the bus stop, in the cafeteria, classrooms and hallways. The Office of Civil of Rights ruling stated that because students are still able to learn it was not ruled as a hostile environment. The Department of Justice still has the case or complaints open. Nothing has

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changed: African American students receive different and harsher disciplinary punishments than whites for the same infractions in the Laurel and Jones County school district. We see more and more African American students' education disrupted by increasingly harsh discipline practices for increasingly minor infractions. African American students are handed draconian punishments for things like *uniform violation: schoolyard fights, and subjective violations, such as disrespect and insubordination*. Working as youth advocates in Jones County; we find that the overuse of detention is particularly harsh on youth of color. The fact is: the School Districts (Laurel and Jones County) send more youth to the Youth Court than any other request or referrals. To help you see and understand the need for our program of work look at the following statistics: The Jones County Youth Court statistical report reveals that in 2006, its caseload consisted of 1,257 intake offenses: 20% became repeat offenders and the majority incarcerated was African Americans. The 2007 statistical report was 1,277: 2008 was staggering with 1,626; and 2009 reflects a startling change with 1,099; yet 746 was African Americans. 2010 and 2011 statistics are not been released to me yet. Jones County population is a little over sixty-nine thousand people.

African American students are still being pushed out the educational system into the juvenile justice system. In the Laurel School District (predominately Black district); if a student engage in a fight or integrate a fight they automatically received forty-five days in the Alternative school. In the Jones County School District (predominately White district) African American students are sent to jail for very minor infractions; then suspended from school three to five days and arraigned in youth court. In March of 2012 eleven students were arrested and detained in the juvenile jail for twenty-three days. Later, they were given sixty to ninety days more. One of the cases took place at Northeast Jones High where an African American student attended a talent show; he was talking and was asked to stop talking, he did. Later, teacher return and said he was still talking and he need to leave. He was not talking, but did answer a question from another student. He asked the teacher if they would refund his fee. The teacher called for help (Principals and resource officer). They pulled this student from his seat, put his head in a head-lock and pepper sprayed him, arrested him and pepper sprayed him again. This student spent 113 days in jail; twenty-three before court hearing and ninety days after court hearing. He is now at the Alternative school for this school year. An honor student was arrested and sent to jail for trying to see what was happening to her brother. This student and brother spent twenty-three days in jail before court and sixty days after the court hearing. Their mother was one of the Jones County Youth Court Counselor and she was fired for being concerned and trying to help her children. We are working the Department of Justice and an attorney in the Hattiesburg area to help us deal with the many school discipline issues we are facing. Students are rarely release within that forty-eight hours period of detention hearing.



**Testimony of Eduardo Ferrer
Chief Operating Officer
DC Lawyers for Youth**

Ending the School to Prison Pipeline

**Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights**

December 12, 2012

My name is Eduardo Ferrer and I am the Chief Operating Officer of DC Lawyers for Youth¹ – a research, advocacy, and direct representation organization that works with and on behalf of court-involved youth.

Since our inception, one of our core principles has been that the best way to improve the juvenile justice system in the District of Columbia is to make sure that a young person does not end up in the system in the first place. It is for this reason that the issue of school discipline in the District is so important to our organization. Simply put, based on our experience representing youth in DC Superior Court, our schools – both public and charter – are too often a gateway to a young person's involvement in the juvenile justice system, not an antidote to it. Instead of being a source of support and resiliency for our youth, our schools rely too heavily on exclusionary school policies and practices that increase the likelihood that our youth will be retained,² drop out,³ or become involved with the juvenile justice system.⁴

Without getting too much in the details because of confidentiality concerns, I would like to share a short story about a young person with whom I work that I believe exemplifies the abuse of exclusionary school practices in the District. This young man – let's call him Joe – was a good student through elementary school and decent student in junior high, but began struggling mightily during his freshman year of high school. Like many other students, as a result of this struggling, Joe started cutting classes. So, he and I

¹ DC Lawyers for Youth (DCLY) seeks to improve the DC juvenile justice system by advocating for reforms that promote positive youth development, effective legal representation, and supportive relationships between the community and DC's youth. You can learn more about DC Lawyers for Youth at www.dclv.org.

² Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice System Involvement, Council of State Governments Justice Center, 54-60 (July 19, 2011).

³ See *id.*

⁴ Breaking School's Rules, *supra* note 1, at 61-72.

agreed that I would take him to school one day to make sure he got to school and to speak to school officials about extra help to get him back on track. I was shocked and appalled by what I saw and experienced. Immediately upon walking Joe into the front office, the staff was hostile and disrespectful to Joe. Before Joe even opened his mouth, the staff person told me: "I can already tell Joe is not here to learn today" and asked Joe for his school ID card. When Joe could not produce his school ID card, the staff person told Joe that he would have to go immediately to in-school suspension for the day for not having his ID card. When I asked what the process was for getting Joe a new ID card so he could attend his regular classes, I was informed that the process amounted solely to paying five dollars for the new card – five dollars that Joe did not have. So, after I paid the ID card fee and literally bought Joe's way out of in-school suspension – a fact that I think in of itself demonstrates the absurdity of the practice – Joe was allowed to go to his normal classes.

Now, after witnessing the school's contempt for Joe first hand, I knew it would only be a matter of time before they found some other way to push him out or discourage him from coming to school. Sure enough, the opportunity presented itself two months later. After learning that Joe had been living with an undiagnosed learning disability and petitioning the school for a special education determination and services – a request that the school promptly denied – Joe was accused of participating in a fight at school. Despite evidence that Joe actually went to alert the security guard of the situation, the school suspended Joe, then expelled Joe, and denied his appeal for reinstatement. The overall result – Joe now will be retaking the 9th grade, he lost the structure and support of the school, and he is still fighting to get adequate educational services and supports in place for

the fall of 2012. Oh, and he got jumped and robbed while on the bus after school during his first week at his new school placement.

I know that this case may seem ridiculous, but it is by no means out of the ordinary. It is not an outlier. Indeed, I have experienced very similar situations with other young people with whom I work. I chose this case because it exemplifies the underlying problem with the heavy reliance on exclusionary discipline practices – specifically that the use of such practices are most often based on false assumptions regarding the individual young person and the efficacy of suspension and expulsion. In this case, the false assumption was that Joe was a bad kid who did not want to learn. In fact, Joe was a smart kid who really wants to succeed in school like his older brother, but had an undiagnosed, unaddressed learning disability. The false assumption was that suspension and expulsion would get Joe back on track. Instead, it knocked him further off track.

At the end of the day, this is the root of the problem: exclusionary disciplinary practices used in this city are too often the result of false assumptions, not the result of sound pedagogical theory or safety concerns.

And what is the cost? On a micro level, the cost very well could be the life of a young person in our city. We may not be killing our youth in the literal sense, but these exclusionary practices are denying them an education, encouraging them to drop out, pushing them in the juvenile or criminal justice systems, and banishing them to a life of poverty.

On a macro level, each of these incidents that is handled poorly is a huge missed opportunity both to educate ourselves about the needs and struggles about the young people of our city and to TEACH our youth in a productive and effective manner that their

behavior is not appropriate or the right response to a struggle they are facing. At the end of the day, that is what our schools should be about – Educating. However, educating should not just happen one way – from the teacher to the student. There is a lot that administrators and teachers could learn from their students if they stopped making false assumptions and just started asking why. Additionally, educating should not just be about academics either. The Jesuits at Georgetown – my alma mater and the university that inspired my classmates and I to found DCLY – talk about “Cura Personalis” or “Care for the Entire Person.” That is what our schools should be about – educating students not just in terms of academics, but in terms of empathy, coping, self-advocacy, self-reflection, and citizenship.

The overuse of exclusionary school discipline policies and practices needs to stop and it needs to stop now.



DIGNITY IN SCHOOLS

DIGNITY IN SCHOOLS CAMPAIGN | INFO@DIGNITYINSCHOOLS.ORG | WWW.DIGNITYINSCHOOLS.ORG

December 12, 2012

U.S. Senate
 Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
 224 Dirksen Senate Office Building
 Washington, DC 20510

RE: Ending the School to Prison Pipeline

Dear Chairman Durbin, Ranking Member Graham, and Committee Members,

As a national coalition of parents, students, educators, and advocates, the Dignity in Schools Campaign (DSC) is proud to be represented by Edward Ward in the *Ending the School to Prison Pipeline* hearing. We thank Chairman Durbin, Ranking Member Graham, and the full Committee for holding this hearing.

There has never been a more important time for federal action on the School-to-Prison Pipeline. School discipline rates are at their all-time highs – double what they were in the 1970s.¹ This spike in suspension, expulsion, and arrest occurs in the face of significant research on the educational and social harms of these practices. The American Psychological Association, the Council of State Governments, and the Centers for Disease Control and Prevention, among others, have all identified the links between exclusionary discipline and increased grade retention, dropout, and involvement in the juvenile and criminal justice systems.

High discipline rates are occurring in traditional public schools and charter schools alike: 14 of the 15 highest suspending school districts in Massachusetts are charter schools, two of which are suspending over half their students annually.² And as our nation's discipline rates grow, the disparities for disenfranchised youth only continue to widen. Students of color, students with disabilities, foster youth, and LGBTQ youth are all far more likely than their peers to receive exclusionary discipline. These rates and disparities have led the Dignity in Schools Campaign to conclude that our nation faces, not a dropout, but a *pushout* crisis, and that we have no hope of resolving it or the so-called "achievement gap" without addressing school discipline.

¹ Johanna Wald and Daniel Losen, *Defining and Redirecting a School-to-Prison Pipeline*. In Wald & Losen (Eds.), *New Directions for Youth Development* (no. 99; Deconstructing the School-to-Prison Pipeline), 9-15 (2003).

² Massachusetts Department of Elementary & Secondary Education, District Analysis, Review & Assistance Tools Headlines, at <http://www.doe.mass.edu/apa/dart/>

Amidst these bleak statistics are signs of significant hope. In the last two years alone, thanks to the work of our members and allies, states like California, Colorado, Louisiana, Massachusetts and Michigan have passed bipartisan laws and policies that call attention to exclusionary discipline, limit its use, and/or provide support for educators in implementing practices that keep schools safe and engaging without relying on suspensions, expulsions, and arrests. Cities like Los Angeles, Chicago, Philadelphia, Denver, Baltimore, and New York have made significant positive revisions to their disciplinary policies and practices. We have released the *Model Code on Education and Dignity*,³ a set of evidence-based interventions/methods to reduce reliance on exclusionary discipline and improve academic performance and school climate. Furthermore, we have joined the Opportunity to Learn Campaign and other allies in launching *Solutions, Not Suspensions*, a national call for more constructive disciplinary policies and a moratorium on out-of-school suspensions. Finally, a much broader array of stakeholders, from local juvenile court judges to national teachers unions and fiscally conservative think tanks, have announced the need to reform disciplinary practices and keep students engaged in safe and productive schools.

These reforms would not have been possible without proven, replicable methods for improving the learning environment for all students:

After a multi-year campaign led by parents and students from Padres y Jovenes Unidos, Denver Public Schools revised its discipline code around the principles of restorative practices. To promote trust, reconciliation, and mutual responsibility, restorative practices engage all members of a school community affected by a conflict in addressing and resolving it. Since implementing the new code in 2008, Denver has cut its expulsion rate in half and its suspension rate by a third.

As Judge Steven Teske of Clayton County, Georgia, will testify, the Clayton County Juvenile Court experienced an alarming increase in misdemeanor referrals from schools. Judge Teske convened leaders from the school district, law enforcement, the mental-health profession, and the greater community to develop a “school offense protocol” in 2004. By drawing a line between *safety* matters, to be handled by law enforcement, and *discipline* matters, to be managed by the school, Clayton County reduced its court referrals by almost 70 percent and increased its graduation rate by 20 percent. With school resource officers responsible for safety, not discipline, students felt safer, too.

Discipline rates spiked when two Illinois schools were combined to form Alton Middle School in 2006. Alton now implements “positive behavior supports,” or PBS—a practice shown to reduce disciplinary referrals while supporting gains in achievement, attendance, and perceptions of safety. Schools that implement PBS teach and encourage positive student behavior, regularly monitor, and address trends in disciplinary data, and provide individualized behavioral supports to students who need them most. Alton blended its PBS effort with training to understand and address racial bias and inequality, reducing its suspensions by 25 percent—with the most significant drop for African-American students.

³ Dignity in Schools Campaign, *Model Code on Education and Dignity* (2012), available at <http://dignityinschools.org/our-work/model-school-code>.

There is much that can and must be done at the federal level to support these reforms and the parents, students, and educators who make them possible. We urge Congress to:

Annually collect and report school discipline and climate data for all schools.

To better support student achievement, educators, parents, and policymakers must be able to review information on the health of a school's climate. Through the Individuals with Disabilities Education Act, the Gun-Free Schools Act, and the Civil Rights Data Collection, Congress and the US Department of Education have put the proper mechanisms in place for improved disciplinary data collection. Unfortunately, the differences between these data collection instruments also lead to lapses in compliance. Congress should require all schools to annually report in- and out-of-school suspensions, students receiving multiple suspensions, expulsions, instances of corporal punishment, school-based arrests, referrals to law enforcement agencies, and referrals to disciplinary alternative schools. Congress should also require states to collect and report broader information on the health of a school's climate, such as information on truancy, attendance rates, bullying and harassment and proactive efforts to address them, as well as parent, student, and staff surveys on the health of a school's learning environment. The data collected should be disaggregated by race, gender, special educational status, socioeconomic status, and English proficiency, and cross-tabulated to allow for more insightful review. The data collection suggested in the **Successful, Safe, and Healthy Students Act (S. 919, Harkin)**, if applied to all schools, would serve this purpose well.

Use high disciplinary rates and disparities to trigger support – not punishment – from local and state educational agencies.

Discipline should serve as an indicator of a school's success or needs. Just as a *student's* academic record may signal the need for more intensive support, a *school's* disciplinary data may indicate the need for more support and training in best practices for maintaining order school-wide. Discipline should be monitored with attendance, achievement, and graduation rates. Representative George Miller's **Amendment to the Student Success Act (H.R. 3989, Kline)**, which would track school discipline rates as an indicator of school needs and improvement in persistently low-achieving schools, is a promising example.

Provide increased support for best practices in improving school discipline and climate.

Given the positive effect that efforts to improve school climate can have on academic success, Congress should encourage the implementation of evidence-based and promising practices to improve the learning environment. **The Restorative Justice in Schools Act (H.R. 415, Cohen)** and **the Positive Behavior for Safe and Effective Schools Act (H.R. 3165, Davis/Platts)** both direct federal support for training schools and teachers in the best practices described above. **The Successful, Safe, and Healthy Students Act (S. 919, Harkin)** would use school data on bullying, harassment, and discipline to target support for implementing these best practices as well.

Support the development of comprehensive local or regional strategies to reduce the use of exclusionary discipline and the number of youth entering the justice system.

The problems described above cannot be attributed solely to schools, or to law enforcement agencies, or to parents or students. Likewise, the solutions will also often require the efforts and input of all these stakeholders. Congress should promote expanded educational opportunities for our nation's youth by funding grant programs to support community-based solutions such as those implemented in Denver, CO and Clayton County, GA, described above. Funds should go toward the development and implementation of multi-year, comprehensive local or regional plans to reduce the use of exclusionary discipline and the number of youth entering the juvenile and criminal justice systems. **The Youth PROMISE Act (H.R. 2721, Scott)** would help support this purpose. Congress should also place meaningful requirements on the use of the U.S. Department of Justice's Community Oriented Policing Services (COPS) grants, the primary source of federal funding for staffing police in schools.

End corporal punishment in schools that serve students receiving federal services.

Corporal punishment is still legal in 19 states despite evidence of both its ineffectiveness in improving behavior and its academic and social harms.⁴ **The Ending Corporal Punishment in Schools Act (H.R. 3027, McCarthy)** would prohibit the use of physical punishment at school. We urge that companion legislation be introduced in the Senate.

The U.S. Departments of Education (ED) and Justice (DOJ) have taken promising steps to address the School-to-Prison Pipeline. We are encouraged by the expansion of the Civil Rights Data Collection and the creation of the Supportive School Discipline Initiative. With support from Congress, ED and DOJ should strengthen their efforts to address these issues and:

Conduct an annual, universal Civil Rights Data Collection with higher reporting fidelity.

We greatly appreciate the breadth and utility of the Civil Rights Data Collection. In an era of greater data-based decision-making in education, educators, families, and communities alike would benefit from more frequent collections involving all schools. Rather than conducting a semi-biennial collection sampling different school districts, the Civil Rights Data Collection should be conducted annually and include all schools. Where school districts fail to report all or part of their data, we urge ED to deny competitive preference for grants and withhold portions of federal funding.

⁴ American Academy of Pediatrics, Committee on School Health, *Corporal Punishment in Schools*, 106:2 PEDIATRICS 343 (2000), available at <http://aoppolicy.aappublications.org/cgi/content/full/pediatrics;106/2/343>.

Require state and district grant and waiver recipients to address high and/or disparate rates of discipline.

Race to the Top – District (RTT-D) requires grantees to address disciplinary disparities as a condition for receiving their grants. We strongly support this approach and urge that ED apply it to all grant and waiver programs, including ED’s waivers from provisions of the No Child Left Behind Act.

Promptly release guidance on school districts’ civil rights obligations for school discipline.

It is of paramount importance that students, parents, and educators know their rights and obligations when it comes to discipline. ED and DOJ should provide both legal and technical guidance for addressing disparities in school discipline. In the legal guidance, ED and DOJ should articulate both disparate impact and different treatment standards of liability under Title VI of the Civil Rights Act of 1964.

Place meaningful restrictions on federal grants for school policing.

As mentioned above, the DOJ-funded Community Oriented Policing Services is the primary source for federal funding of school police efforts. Sadly, school police are often the least trained and most inexperienced officers, and the academic and social harms of negative police/student contact are devastating for students (a first-time arrest doubles the odds of school dropout; a first court appearance quadruples the odds⁵). Requiring grantees to ensure training on developmentally appropriate tactics for school police, and requiring efforts to limit students’ contact with the juvenile justice system akin to the Clayton County, GA, example above, are simply essential modifications to these funds.

Sincerely,

The Dignity in Schools Campaign

Contact:

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⁵ Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 Justice Quarterly 462, 473-477 (2006).

**Ending the School-to-Prison Pipeline
Hearing Before the United States Senate Judiciary Subcommittee on
the Constitution, Civil Rights, and Human Rights**

**By Arlene B. Mayerson
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Arlene B. Mayerson, Directing Attorney
Disability Rights Education & Defense Fund (DREDF)
December 10, 2012

Thank you for the opportunity to present testimony on the critical connection between the failure of both general and special education and the school-to-prison pipeline.

DREDF was founded in 1979 as a unique alliance of adults with disabilities and parents of children with disabilities. We are nationally recognized for our disability rights expertise. One-third of our work aims to protect and advance the rights of students with disabilities, particularly special education rights under the federal Individuals with Disabilities Education Act (IDEA). With offices in Berkeley, CA and Washington, DC, DREDF advances the civil and human rights of people with disabilities through legal advocacy, training, education, and public policy and legislative development. We address employment, housing, access to government services and benefits, transportation, higher education, architectural access, public accommodations, and education.

DREDF focuses on civil rights issues that promote integration of people with disabilities into the mainstream of society. DREDF specializes in federal disability rights laws, including Section 504 of the Rehabilitation Act of 1973, prohibiting disability based discrimination by recipients of federal funds; the Individuals with Disabilities Education Act of 1975 (IDEA); guaranteeing appropriate education services in the "least restrictive environment" for children with disabilities; the Fair Housing Amendments Act of 1988 (FHAA); and the Americans with Disabilities Act of 1990 (ADA). We also work with state

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disability civil rights laws, including the California Fair Employment & Housing Act (FEHA), the Unruh Civil Rights Act, and California Government Code 11135.

DREDF operates a demonstrably successful federal Parent Training and Information Center (PTI) that has served three Bay Area counties for 24 years. DREDF has the expertise needed to support the role of parents in the education of children with disabilities and work with foster families and county agencies and local and state organizations focused on child welfare. DREDF's Education Advocates (who are also parents of children with disabilities) are in daily contact with California families in the disproportionately low-income and of-color communities in Alameda and Contra Costa counties. They work closely with DREDF's senior and litigation staffs, providing a marginalized community with much-needed access to skilled advocates and attorneys. DREDF's Board of Directors has a majority of parents of children with disabilities, including foster parents of youth with disabilities, aged 0 to 22, and more than half the board members are individuals with disabilities.

The Education Advocates at DREDF work with approximately 1,000 parents per year who are desperate to get help from the schools for their children. Among the most underserved are African American and Latino students, for whom the intervention of choice by school districts is suspension and expulsion. The failure to provide educational interventions cannot be ignored in an examination of the issue of the disproportionality in suspensions and expulsions of minority children.

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Disability Rights Education & Defense Fund (DREDF)
December 10, 2012

DREDF has a current case that presents an interesting twist on the disproportionality issue, while also highlighting general issues that are often left out of the disproportionality conversation. Our client is a 14-year-old African American student who had been recognized as learning disabled (SLD) in the lower grades but was "exited" from special education after three years. During the year that he was exited, the district had been found to have too many African American students classified as Specific Learning Disability. Whether the dis-proportionality finding was the cause of the exiting is hard to prove but there was no educational reason to exit our client who was far below basic proficiency in all subject areas, and was even retained in the very year the student was exited. The student's mother asked for a re-evaluation for special education by 6th grade, two years after the exiting, due to increasing concern over educational performance, but this request was denied. The district refused to re-evaluate the student unless the mother was able to provide them evidence of an additional disability. Lacking health care at this time, the student's school experience further disintegrated without evaluation until the mother could secure a position that offered access to health care and evaluation through her health plan.¹ The student received a diagnosis of ADHD from his health care provider and this was provided immediately to the school. By this time, the student's 7th grade year included 33 days of suspension and continued failure in every academic subject except for A's in P.E. The school district conducted an assessment and denied IDEA eligibility, discounting

¹ Lack of health insurance accounts for the under-representation and treatment of poor children for ADHD.

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the medical diagnosis of ADHD and SLD, and instead deciding that the student was only defiant and oppositional. Besides being inadequate by any professional standards, the assessment suggested racial bias. The ADHD diagnosis was disregarded because this failing student's lack of progress and impulsive behavior were considered par for the course, a conclusion that suggests implicit bias against African American boys. At that point, DREDF got involved and obtained an independent educational evaluation. The assessment found that our client had both severe learning disabilities and severe ADHD. Because he did not understand the instruction and has an attention span of only a few minutes, he had been repeatedly suspended for impulsive behavior, leading recently to a recommendation for expulsion. While we were able to address this specific case, we know from hundreds of parent calls that this scenario is not uncommon. When we went to the IDEA-mandated Individualized Education Program (IEP) meeting, I asked if getting all F's for several years wouldn't trigger a deeper look at this student. The reply was, "Oh, this is very common in 'urban' school districts."

DREDF is deeply committed to the use of disproportionality monitoring to address the historical mislabeling of African American and other students of color that has led to segregation, and the extremely shameful disproportionate suspension and expulsion of African American and Latino boys. Unfortunately, we have been told by teachers, counselors, and school psychologists, that they are instructed to not refer any African

Arlene B. Mayerson, Directing Attorney
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American students to special education because their quota is full.² This perversion of the purpose of disproportionality triggers raises thorny issues. Suffice it to say that the reduction or elimination of racially biased suspensions will do little to change the school-to-prison pipeline if we do not directly focus on improved outcomes for students who have experienced or are in peril of experiencing suspensions and expulsion. Schools that reduce suspension rates but do not improve educational outcomes leave students with little hope of success.

In the case I described above, the need for an intensive special education program with academic and positive behavioral supports was essential. Tutoring or counseling may be needed in other instances. This is particularly true for students who have been suspended so often that even the best of students would not be able to keep up academically. The administrators at the IEP meeting told me that they have to pick up the pieces of a bad general educational system. At some point, a student who has not gotten the academic help he or she needs is so far behind, so alienated, and has heard themselves described as a "bad student" so repeatedly that misbehavior becomes a self-fulfilling prophecy. One of our parent advocates always points out at parent trainings that the fear that a child will be labeled in special education ignores the fact that many of the kids that face repeated suspensions and sub-par academic performance already

² DREDF Education Advocates have heard from personnel in many districts that they have been instructed by school administrators to not refer minority students for IDEA eligibility evaluations if the district has a disproportionate number of that minority in the suspected category. Not surprisingly, school personnel are not willing to speak on the record.

Arlene B. Mayerson, Directing Attorney
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have labels at school : "bad," "lazy", "defiant". Their parents are also given similar labels.³

It seems that disproportionality efforts focus on reducing suspensions, restorative justice, racial bias training, alternative-to-suspension models, and other all-school efforts. All are vital. In addition to school-wide cultural changes, there needs to be a focus on the student's needs, both academic and emotional. In our case, the student needed services that, at this point in history, only special education provides. Other students may need similar services who are not learning disabled or do not have an ADHD diagnosis. We think that a focus on unbiased evaluation, services and remediation must be a central part of a successful effort to end the school-to-prison pipeline.

Currently, disproportionality monitoring requires the reduction of suspensions and expulsions as a numerical remedy. DREDF urges the Department of Education and the

³ Unfortunately, the situation of our 14-year-old African-American client reflects a larger problem. African-American and Latino children with ADHD are more likely to be undiagnosed, misdiagnosed or mistreated than white children. Studies have shown that white children have been diagnosed with ADHD at double or close to triple the rates for African-American and Latino children, though the underlying prevalence of ADHD does not vary by race. The result is two-fold. Schools classify minority students as having pure 'behavior problems' and refer those students for ineffective discipline rather than effective medical and psychological treatment. Second, as longitudinal studies have shown, untreated or poorly-treated ADHD leads to worse life outcomes decades later, including greater rates and longer periods of unemployment, greater difficulties in family and relationships, and more incarceration. Instead of diagnosing and treating minority children with ADHD, we convict and incarcerate them years or decades later. It is costly, it is ineffective, and it is tragic for the ADHD children and their families.

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Congress to look deeper when examining this issue. If a student is not being suspended but is continuing to fail, how much have we done to curb the school-to-prison pipeline? Reducing suspensions is only a first step. In districts with disproportionate suspensions and expulsions, student files should be reviewed to understand the causes of the underlying misbehavior. Also, an examination of policies, procedures and practices must be completed for the students who fell or are falling into the pipeline of suspension, expulsion, removals and failure with no help brought to them. While it cannot be disputed that racial minorities are more likely to be called out for the same behaviors that majority students are not, the fact remains that many of the suspended students of color are also being underserved by both general and special education.

Specifically, DREDF urges that a finding of disproportionality be accompanied by:

1. A thorough review of student files to identify students who are in need to additional academic and behavioral supports, including, but not limited to an IDEA referral.
2. An examination of the means used by the school district to come into compliance with the disproportionality factors. Currently, there is no examination of how a district reduced disproportionality. The idea of reducing suspensions is to increase educational interventions in the early years.

Given the systemic use of suspensions to incorrectly address educational malfeasance, it is virtually impossible to come into compliance in one or two years. Yet districts

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consistently “clean the books” on disproportionality in a year. Are the students in that district better off? Are the very students in peril receiving compensatory and/or remedial educational services? Are they being appropriately referred for IDEA assessments? Are they being appropriately assessed? Are they being served in special education or is special education being used as a dumping ground to remove students from the general education environment without regard to least restrictive environment requirements of IDEA? Are they being exited or kept from help to bring the numbers quickly in line? Without a deep examination into these questions, we will do little to address the school-to-prison pipeline.

Thank you for your consideration of this testimony and I look forward to continuing the dialogue on this critically important topic for all children.

Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing on "Ending the School-to-Prison Pipeline"
December 12, 2012 2:00 p.m.

Disability Rights Washington would like to thank Chairman Durbin, Ranking Member Graham, and the Constitution Subcommittee for holding this hearing and raising awareness of the School-to-Prison Pipeline. As more and more of our nation's youth end up in the juvenile justice system, the time for federal leadership on this problem is now, and we appreciate the opportunity to provide testimony.

Who Are Disability Rights Washington and the Protection and Advocacy Systems (P&As)?

The federally mandated Protection and Advocacy (P&A) systems were established by the United States Congress through eight separate statutes to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. P&As are in all 50 states, the District of Columbia, the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the US Virgin Islands), and there is a P&A affiliated with the Native American Consortium, which includes the Hopi, Navaho and Piute Nations in the Four Corners region of the Southwest. Disability Rights Washington's mission "is to advance the dignity, equality, and self-determination of people with disabilities. We work to pursue justice on matters related to human and legal rights."

Each P&A provides a full array of services for people with disabilities, and work with youth to provide assistance with education and services in a variety of settings, including juvenile justice facilities, public and non-public schools, and detention and correctional facilities. Collectively, the P&A Network is the largest provider of legally based advocacy services to people with disabilities in the United States.

The Nature of the Problem

Children with disabilities should not be punished for their disabilities. Instead, children should be provided the education to which they are legally entitled to and the supports necessary to obtain that education. Unfortunately, many of our public school students do not receive these basic rights.

Statistics show that a disparate number of youth with disabilities, and especially youth of color with disabilities, are involved with the juvenile justice system. As many as 80% of youth in the juvenile justice system have some form of disability.ⁱ Children of color are also disproportionately represented in the juvenile justice system.ⁱⁱ However, a data analysis released in August of 2012 shows there is far more to the story. "Applying [...] three lenses together – race, gender and disability—yields a more disturbing image than any one of the categories alone...The group that consistently had the highest rate of

suspension is African American male students with disabilities. In some of the largest districts in the U.S....suspension rates for this group reached more than 70% of their enrollment."ⁱⁱⁱ

This analysis shows that a specific sub group of children of color, those who are also children with disabilities, receive different treatment than their peers in public school. Within this sub group, children who reside in particular public school districts receive the worst treatment of all. Many of these youth face suspension or expulsion from school - a key entry point into the "School to Prison Pipeline." In order to successfully protect these children from a future in prison, it is necessary to thoroughly examine the problem and tear it out by its roots.

Disability Rights Washington Work on the School To Prison Pipeline (STPP)

Disability Rights Washington has been persistently working on preventing improper discipline of students with disabilities for many years, before the link between these cases and the likelihood of future incarceration was widely recognized. Preventing suspension and expulsion of students for the behavioral manifestations of their disabilities is and always has been an important part of the advocacy work that we do. Disability Rights Washington is engaged in both individual and systemic projects to address the school-to-prison pipeline for people with disabilities.

Disability Rights Washington provided advocacy for youth with mental health issues whose special education services and services obtained through the juvenile justice system were a substantial part of their mental health wrap around team. We attended Individual Education Plan ("IEP") meetings as well worked with probation officers and defense attorneys to ensure that all individuals and providers in the youth's life were aware of both their disabilities and abilities.

Disability Rights Washington is an integral member of the Positive Climate and Discipline Advisory Committee (PCDAC) advising the Superintendent of Schools, the Board of Directors of Seattle Public Schools, Assistant Superintendent of Operations, School Climate Program Director, and the Discipline and Truancy Program Manager on matters pertaining to positive school climate and discipline within Seattle Public Schools. Our purpose is to support the continued shifting of discipline as merely an intervention in the behavior of students with disabilities, to seeing discipline as part of a larger strategy to create positive, just environments where students can flourish and succeed. Our end goal is to eliminate racial and disability disproportionality in all aspects of education and its administration.

Disability Rights Washington, the University Center for Excellence in Developmental Disabilities, and the Washington State Developmental Disabilities Council (DDC) have recently committed to a long-term collaboration focused on youth with intellectual and developmental disabilities in the juvenile justice system. DRW has been conducting training and gathering information regarding the numbers of youth with intellectual and developmental disabilities currently incarcerated in the Washington State Juvenile

Rehabilitation Administration system and gathered information on the current assessments/evaluations that occur at intake. DDC and UCEDD provided support and staff from all network partners served on a statewide task force that has recently completed a report to the Washington State Legislature including recommendations for legislative reform.

Finally, Disability Rights Washington worked with local special education Parent Teacher Associations ("PTA") units to successfully incorporate the following onto the current state legislative platform: including special education data in the State Legislature's achievement gap oversight and accountability workgroup and adoption of social-emotional learning curriculum. DRW also worked with the state special education coalition, the state developmental disabilities council and other education advocates to evaluate potential legislation around parent notification when restraint and seclusion occurs in school. (There currently is no provision that parents are notified when this happens.) There has also been discussion around evaluation of aversive intervention regulations and working with the schools and others to promote appropriate training, appropriate implementation of positive behavior supports with documented behavior plans, and appropriate policy implementation and practice statewide around use of restraint or seclusion.

FEDERAL POLICY RECOMMENDATIONS

- **Effective enforcement of current federal protections is the most effective way to stem the STPP for children with disabilities.** Disability Rights Washington is very pleased with a recent complaint filed by the U. S. Department of Justice (DOJ) regarding racial injustice in Meridian Mississippi. There are similar problems currently with regard to students with disabilities that are also worthy of DOJ's attention. We encourage DOJ to continue to work with the P&A agencies to identify appropriate cases for enforcement action.
- **Congress should create and appropriate funds for a specific P&A program focused on children with disabilities in the juvenile justice system.** Funding the P&A network to do this work is an extremely cost-effective way to use the existing infrastructure of the P&A System. The P&A network is the largest cross-disability network of advocates in the United States, and P&As have extensive expertise successfully advocating on behalf of youth with disabilities in child-serving systems and advancing systems reforms. All P&As have an interest in and commitment to doing this work, but cite lack of funding and resources as the primary barrier to being more fully engaged while not diminishing the ability to do the other important work the P&As perform.
- **We recommend leadership by all relevant federal agencies, and especially OJJDP, in the area of prevention of school removal.** There is a need to promote and create incentives for the revision of local school codes, so as to eliminate the use of out of school expulsion and promote the development of

clear and specific Memoranda of Understanding regarding the use of School Resource Officers, in order to limit their role to matters of real school safety. Providing direct federal support for training schools and teachers in the best practices to prevent school removal.

- **The U.S. Department of Education, Office for Civil Rights (OCR) should continue recent efforts to publish Civil Rights Data Collection (CRDC) data.** This type of federal effort is desperately needed in order to help state and local governments uncover and resolve STPP problems.
- **Disability Rights Washington encourages OCR to consider specific enforcement actions (e.g. “compliance reviews”) for STPP violations that impact students with disabilities.** One example would be to address the worst offending districts in terms of racial/disability discipline statistics.
- **Disability Rights Washington recommends effective monitoring and enforcement of the IDEA and ESEA by Department of Education of suspension and expulsion rates and racial disproportionality at the state and local level.**
- **Disability Rights Washington encourages the better tracking of school discipline rates as an indicator of school needs and improvement in persistently low-achieving schools.** This data is a promising example of how publicly available data could be used to improve school climate.
- **Congress should fund grant programs to support community-based solutions.** The solutions to the causes of the STPP at the local level will often require the efforts and input of all stakeholders. Funds should go toward the development and implementation of multi-year, comprehensive local or regional plans to reduce the use of exclusionary discipline and the number of youth entering the juvenile and criminal justice systems.
- **Conclusion:** Thank you for holding this hearing on this important topic and allowing written testimony to be submitted. Disability Rights Washington is committed to continuing to be part of the solution to this serious social issue.

ⁱ (Shufelt, L. J., & Cocozza, J. J. (2006). Youth with Mental Health disorders in the Juvenile Justice system: Results from a multi-state prevalence study. Alexandria, VA: National Center for Mental Health and Juvenile Justice.).

ⁱⁱ “As states have undertaken efforts to reduce disproportionate minority confinement for youth, they have found evidence that disproportionality occurs at every contact point within the juvenile justice system, from arrest to cases transferred to criminal court and not just at detention and correction.” DMC Technical Assistance Manual, 4th Edition , https://www.ncjrs.gov/html/ojjdp/dmc_ta_manual/dmccintro.pdf (page Intro-1).

ⁱⁱⁱ Opportunities Suspended, August 2012, Civil Rights Project/Proyecto Derechos Civiles, at 36. Retrieved from <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-crrr-research/>

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DON QUICK
DISTRICT ATTORNEY
SEVENTEENTH JUDICIAL DISTRICT

Broomfield County
17 DesCombes Drive
Broomfield, CO 80020
Telephone (720) 887-2199
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December 10, 2012

Honorable Dick Durbin, Chairman of the Senate Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights
United States Senate
Dirksen Senate Office Building, Room 226
Washington, DC 20510

Dear Senator Durbin and Committee Members,

As a District Attorney, and a member of Colorado's Columbine Commission, I recognize the importance of keeping our kids safe while in school. However, after 25 years as a prosecutor, I also know the strategy of simply funneling youth in trouble out of schools and into the justice system does not make sense (or cents.) We need to be tough on crime, but also smart about crime. That is why in the spring of 2005, we formed a unique countywide partnership, the Adams County Youth Initiative (acyi.org). The three goals of ACYI are to:

- Decrease juvenile crime,
- Decrease substance use, and
- Increase our high school graduation rates.

ACYI now includes over 30 partners – including our early childhood partnership, the school districts, after school programs, prosecutors, law enforcement agencies, human services, mental health providers, the faith community, and other community stakeholders which serve children and their families in Adams County.

Reductions in Juvenile Crime

The purpose of this letter is to inform you that we have made tremendous progress in keeping kids out of the justice system over the last seven years. **Since 2005, we have reduced our juvenile criminal filings by 42%. We have experienced an even greater impact on direct filed cases with a reduction of 84%. (Direct files are the very violent and/or repeat juvenile felony offenders in which the cases are filed in adult court.)**

Below you will find my office's annual juvenile filing statistics since 2005 – the year ACYI began. As you can see, every year we have experienced reductions. In

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TRIAL SUPPORT CENTER**
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DIVERSION PROGRAM
12200 N. Pecos Street, Suite 300
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addition, I have attached two graphs demonstrating the significant decreases in juvenile crimes in the 17th Judicial District over the last seven years.

2005-2011 JUVENILE FILINGS IN JUVENILE COURT 17 TH JUDICIAL DISTRICT			2005-2011 DIRECT FILINGS IN ADULT COURT 17 TH JUDICIAL DISTRICT		
2005	1012		2005	25	
2006	967		2006	20	
2007	928	42%	2007	20	84%
2008	924	Decrease	2008	18	Decrease
2009	712		2009	10	
2010	747		2010	9	
2011	587		2011	4	

Our data to date for 2012 looks just as promising (533 juvenile filings and only 2 transfer hearings/direct files.)

Use of Data & Evidence Based Programs

A critical foundation to our juvenile crime reductions is that the ACYI partnership is resolute on using, (1) evidence based strategies and programs, and (2) relevant and valid data. ACYI has one of the best and most complete student surveys in the country. Over the last four years, we have conducted surveys of our middle and high school students. Last year alone, 27,000 (77%) of our 6th to 12th grade students responded and provided information concerning substance use, bullying, gang involvement and other behaviors that impede the success of our youth in school and beyond. ACYI partners (especially schools) used this detailed information to match the most appropriate evidence based prevention and intervention strategies to each school and community. For example, in some schools after school and summer programs have kept our kids out of trouble and helped them develop skills and abilities that will pave their roads to success. Other schools have focused on bullying or substance abuse prevention. Parents are also important ACYI partners. We provide a program that teaches parents to be effective leaders within their own schools and their communities.

Students and their parents deserve safe schools. But waiting until kids get in trouble and sending them into detention is not a sound strategy. Instead, ACYI promotes safe school climates where our youth can focus on learning.

Start Early for School Success

From validated research, we know improving high school graduation rates begins in early childhood. ACYI has supported evidence based programs to ensure our kids are supported from birth until they successfully transition to kindergarten. For example, ACYI has funded the Family Nurse Partnership Program. This program partners visiting nurses with young single moms and continues until the children enter quality pre-school

programs. Also, through the Incredible Years Program we've reached nearly all our preschoolers (2,700 kids) and significantly increased their overall social emotional competence and problem solving abilities. As a result of increased early childhood education funding, Adams County is closing the learning gap of our highest risk children when they start school. For a complete list of our evidence based programs, go to acyi.org. (Attached is a summary of ACYI's structure and programs.)

Federal Funding Made ACYI Possible

Our success would have been impossible without your assistance as ACYI was a recipient of a Safe School/Health Student grant. We used the funds for programs that kept our kids in school and out of the justice system. (ACYI has received national recognition as one of the top performing Safe Schools/Healthy Student grant sites in the country. Only 14 of the 365 grantees since 1999 have received this recognition.) While noting these successes, we still face significant challenges. 47% of the Adams County youth qualify for free or reduced lunches. In some areas the number is much higher. English is a second language for many of our students. Too many of our youth still have gang activity in their neighborhood. Finally, with the changes in Colorado marijuana laws, we are experiencing significant increases in adolescent marijuana use. (Data attached, or go to acyi.org.)

Addressing Minority Overrepresentation

The strategy of increased filings of juvenile cases has a significant impact on the overrepresentation of minorities in both the juvenile and adult criminal justice systems. As mentioned above, 47% of the kids in our county qualify for free or reduced lunch. Adams County has the second highest number of children living in poverty in the State of Colorado. In addition, 55% of our county's youth are identifying as minorities. When a community focuses primarily on the filing of juvenile charges – rather than proactive prevention efforts – it only adds to the existing overrepresentation problem. On the other hand, if you assist a child in graduating high school, you reduce his/her chances of entering the criminal justice system by 50%. In Colorado, our Latino graduation rate is 60%, the African American rate is 65% and the Anglo rate is 82%. Decreasing youth overrepresentation in the justice system is another reason the Adams County Youth Initiative has a goal of increasing our graduation rates. As the attached graph indicates, the years of hard work by our schools are paying off. Even with the challenges our kids face, graduation rates in Adams County are on the rise and our juvenile crime rates continue to fall.

In conclusion, as a career prosecutor, the safety of the children in my community is one of my highest priorities. In addition, I strongly support the Committee's concern and focus on the nation's increased pipeline of filing juvenile cases from schools into the criminal justice system. We can and must utilize better strategies. As the attached record of the Adams County Youth Initiative demonstrates, communities can help provide safe schools and safe neighborhoods by focusing on juvenile crime prevention. However, these prevention efforts must be strategic and cost effective. That is

accomplished by, (1) using valid data, and (2) implementing evidence based strategies and programs. Our county partnership has done both and the results speak for themselves.

Thank you for the opportunity to tender information about the Adams County Youth Initiative. If you have questions or need additional information, please contact me at 303-935-5609 or dquick@da17.state.co.us.

Sincerely,

A handwritten signature in cursive script, appearing to read "Don Quick".

Don Quick
District Attorney
17th Judicial District

cc: Senator Mark Udall
Senator Michael Bennet

ADAMS COUNTY YOUTH INITIATIVE CREATING A BETTER FUTURE

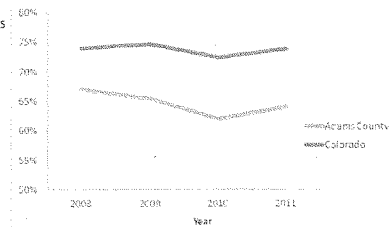
High School Graduation Rates

Adams County saw an increase in graduation rates for the class of 2011

- The number of seniors who graduated from high school in four years increased by 1.84 percent from 2010
- Adams County had an even larger increase than the state average (1.5 percent)
- This increase is equivalent to 100 additional Adams County seniors obtaining a high school diploma last year

(Note: In 2010, the CDE began using a new formula for calculating graduation rates, which only counts "on time" graduates - students who completed high school within four years after entering ninth grade. This new formula yields a rate that tends to be lower, and cannot be compared directly with prior years' data).

Graduation Rates by Year



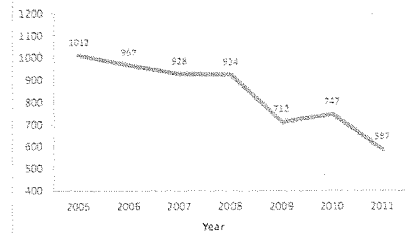
Juvenile Crime Filings

Since 2005 Adams County has seen a large reduction in juvenile crime

- 42% reduction in Juvenile Filings
- 84% reduction in Direct Filings (very violent and/or repeat juvenile offenders)

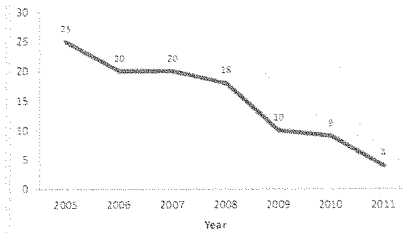
Juvenile Filings

(Juvenile Court - 17th Judicial District)



Direct Filings

(Adult Court - 17th Judicial District)



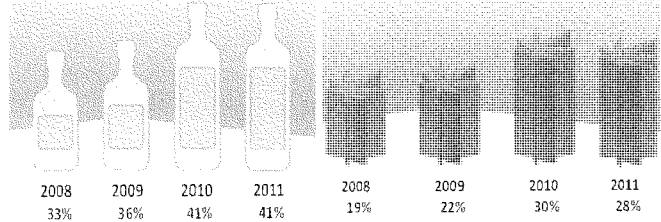
Substance Use Rates - 9th - 12th grade:

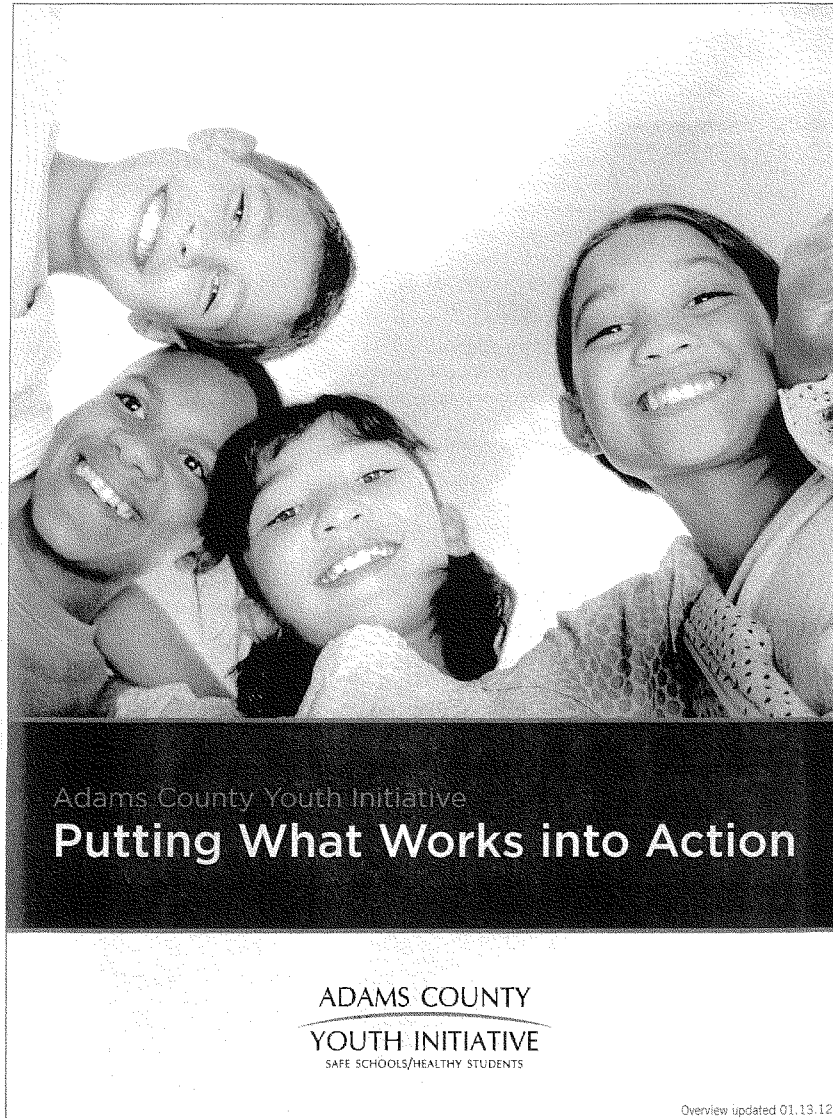
Substance use is a growing problem among Adams County youth

- Steady increase in 9th-12th graders' reported use of alcohol from 2008 to 2010, and remained high in 2011
- Increase in reported marijuana use from 19 percent to 30 percent between 2008 and 2010, with a slight decrease in 2011
- 60 percent of high school students think that it would be easy to get alcohol if they wanted it
- 65 percent believe it would be easy to get marijuana if they wanted it
- Note that high schools with larger increase in substance use had smaller increases in graduation rates

Alcohol

Marijuana





"Adams County has something unique. It is unlike anything I have seen in the 22 states I have visited in my year since taking office. Adams County is doing everything right by bringing everyone to the table – police chiefs, school superintendents, district attorney, community mental health. It has got to be a team effort."

*Kevin Jennings, Former Assistant
Deputy Secretary of Education,
U.S. Department of Education*

The Need

Located Northeast of Denver, Colorado, Adams County has a population of approximately 500,000 residents, including more than 105,000 youth. On average, only 65 percent of our students graduate high school, and one in five of our children live in poverty. These problems have enormous financial and social costs. One high school dropout can be expected to cost the public in excess of \$200,000 over the course of his or her life.

We Have a Solution

Research shows that consistent investments in young people, from early childhood through their teen years, greatly increase their odds of success. Here is what we know works:

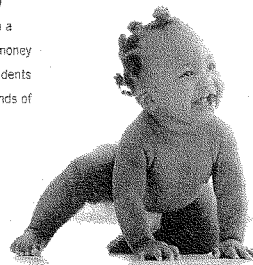
- » Invest early and don't stop
- » Focus on cradle to career developmental priorities using evidence based programs and strategies
- » Collaboration and partnership involving multiple sectors

The Adams County Youth Initiative (ACYI) puts what we know works into practice on a countywide scale. With the help of seed money provided by the Safe Schools/Healthy Students grant, we have invested in tens of thousands of youth across all ages, and their families.

We're Investing

Since 2007, ACYI has been awarded \$8.4 million in funding for child and youth prevention programs and helped leverage an additional \$13 million to enhance services countywide. More than 30 youth serving agencies are using these resources to create a comprehensive and integrated pipeline of high quality services and supports for our youth. These supports reach young people from early childhood through high school to:

- » Link nurses with first time, low-income mothers who need support.
- » Reduce learning loss of elementary and middle school students through after school programs and summer camp.
- » Help teachers and students foster safer and more productive classroom environments.
- » Teach high school students job etiquette and help them link with potential employers.
- » Put into practice a crisis plan that ensures all of our schools remain safe.



Consistent Investment + Collaboration = **Success for our Young People**

Our Investments Are Working

- Through our Incredible Years program, we've reached nearly all preschoolers (over 2,500) and **significantly increased their overall social competence** and problem solving, specifically with those who scored lowest on the program's pre-test.
- One high school reported that **60 percent of students** participating in the Discovery Program—a program that helps improve classroom environments—**showed higher grade point averages in just a few short months.**
- Adams County Camp** has been well-received by hundreds of parents and youth, with parents expressing their appreciation for a positive and structured place for their children to spend time during the summer.
- Students participating in a program that keeps high-risk teens in school showed a **34% improvement in their level of healthy functioning** as a result of the program.

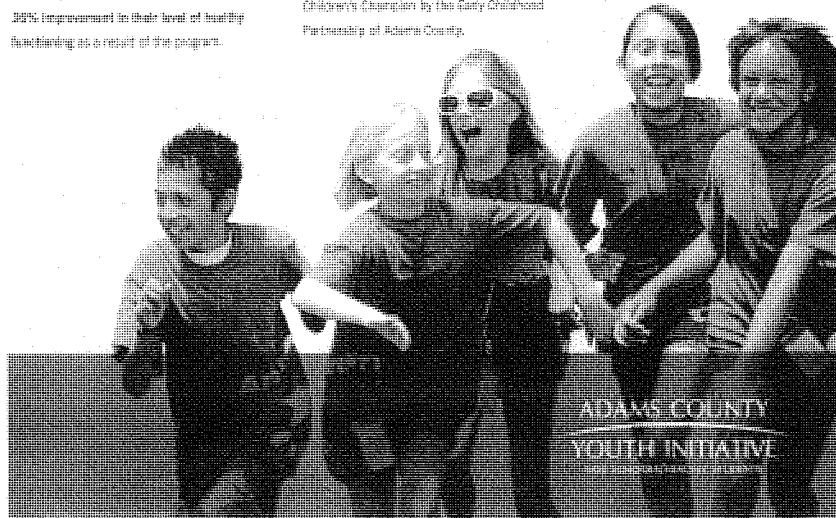
We're Collaborating

Since the job of supporting our youth and their families is too big for any single sector or agency alone, we're breaking down long-standing agency silos and working together in a way that's getting attention and building momentum.

- ACYI has been identified by the nationally renowned Strive Organization as 1 of 19 emerging Cradle to Career sites and is on track to be a designated Cradle to Career site.
- As one of the top performing Safe Schools/Healthy Students grant sites since 1999 (14 out of 365 grantees), ACYI was selected to share its story in a national publication as a model of success.
- Over 75 community and church organizations have mobilized to support student and family needs.
- ACYI was recognized as an Adams County Children's Champion by the Early Childhood Partnership of Adams County.

We Will Succeed

Data is how we make decisions. We leverage the reach of our partnerships to coordinate our data collection and analysis across 5 school districts and 8 law enforcement agencies. Decisions based on data are how we do business and will continue to succeed. For instance, our Adams County Student Survey, the largest review of student well-being in the state (27,000+ students), is helping us make truly informed decisions that respond to our communities needs and ensure we're setting county-wide priorities based on those needs. And that's how we'll work for our children and families to build a better tomorrow.



TO LEARN MORE OR TO GET INVOLVED PLEASE VISIT WWW.ACYI.ORG

About ACYI

Founded in 2005, by 17th Judicial District Attorney Don Quick, ACYI was developed out of a vision and belief that by working together, we can tackle the critical issues that are hindering our youth from being successful. ACYI serves as a catalyst for working together across sectors to achieve our collective cradle to career goals. Through partnerships, programs and systems, ACYI is promoting local investment in our children and young people and building the capacity of agencies, families and youth to work together toward achieving this vision.

To Learn More or Get Involved:

Becky Hoffman
ACYI Interim Executive Director
beckyhoffman@acyi.org
720.972.3876
www.acyi.org

Our Leadership

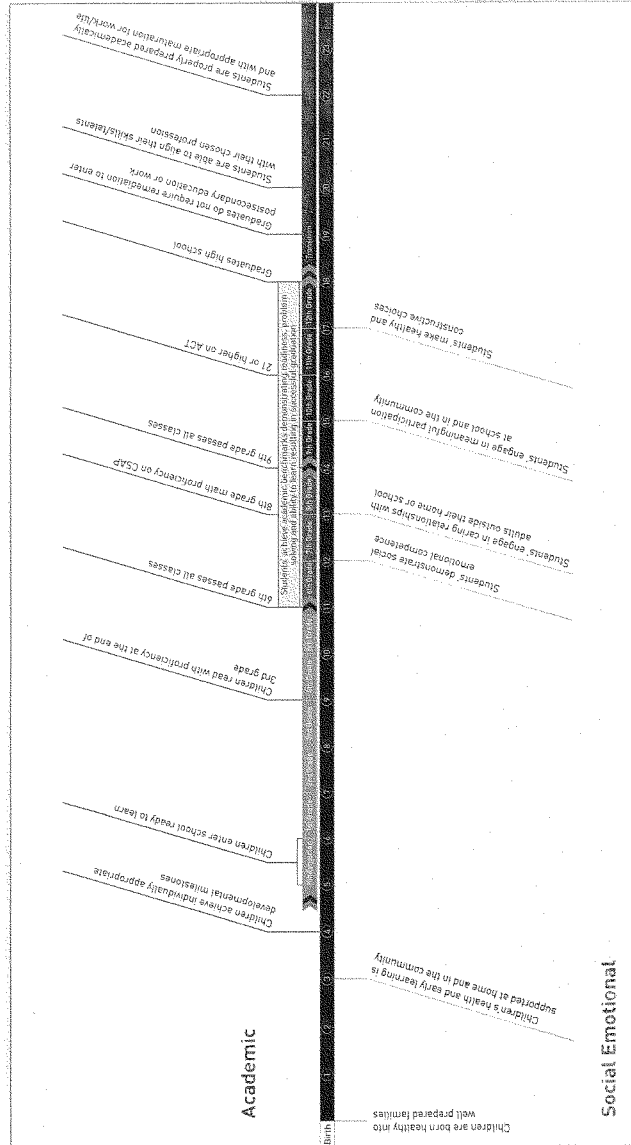
17th Judicial District Attorney
17th Judicial District Juvenile Court (Advisory)
17th Judicial District Juvenile Probation (Advisory)
Adams 12 Five Star Schools
Adams County Education Consortium
Adams County Human Services Department
Adams County School District 14
Adams County School District 27J
Adams County School District 50
Adams County Sheriff's Office
Bennett School District 29J
Brighton Police Department
Broomfield Police Department
Commerce City Police Department
Community Reach Center
Crossroads Church - At Large Member
Early Childhood Partnership of Adams County
Federal Heights Police Department
Front Range Community College
Mapleton Public Schools
Northglenn Police Department
Strasburg 31J School District
The Link - Juvenile Assessment Center
Thornton Police Department
Tri-County Health
Russ Van Houten - At Large Member
Westminster Police Department



Working together from cradle to career to build a better tomorrow.

ADAMS COUNTY
YOUTH INITIATIVE
SAFE SCHOOLS/HEALTHY STUDENTS

Cradle to Career: Roadmap of Developmental Priorities



Purpose: This 26 member board meets quarterly to advise and support the goals of ACYL and to ensure that high level decision-makers are actively involved in and informed about ACYL activities.

Purpose: To provide feedback, generate learning, ensure accountability, and demonstrate success towards the goals of ACYI

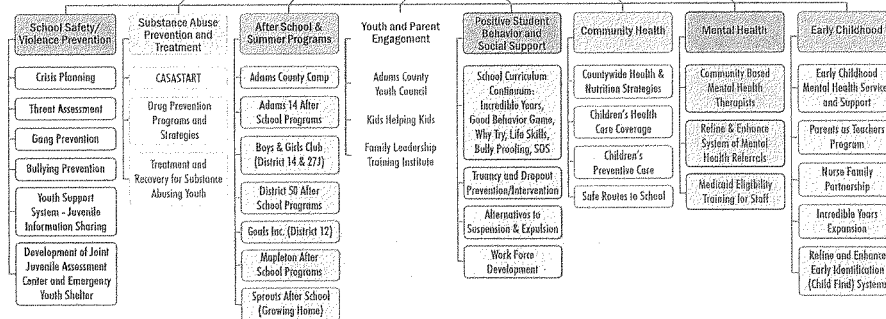
Purpose: This 26 member board appointed by the Policy Board (all other participants serve in an advisory role) meets monthly to implement ACYJ's long-term strategic plan by (1) providing project oversight, coordination and direction; and (2) identifying and securing funding to achieve ACYJ's goals and objectives.

Purpose: To develop a plan for including the needs, perspectives, contributions and involvement of the diverse Adams County Community into ACY's structure, decision-making and activities.

Cultural Competency Training

Purpose: To ensure the success of the projects identified in the logic model and strategic plans by: (1) supporting a partnership approach to problems and projects; (2) coordinating, aligning, and leveraging of activities and resources; and (3) ensuring accountability and high standards of excellence.

Purpose: Each strategic priority area represents an essential component of the work necessary to achieve the overarching goals of ACYL. Within each priority area, partners are working to use data to identify needs, resources and implement the appropriate service delivery strategies to bridge gaps.





Education Law Center

TO: The Honorable Members of the Senate Judiciary Committee
 FROM: Education Law Center
 DATE: December 10, 2012
 SUBJECT: Statement regarding School-to-Prison Pipeline for Senate hearing

We thank Senator Durbin and the Senate Judiciary Committee for taking time to listen to our concerns about the School-to-Prison Pipeline and how we can all work towards dismantling it. We are grateful for the opportunity to work on these issues with you. We applaud the Committee on its attention to this issue and its willingness to entertain public comment. We are pleased to submit these comments on behalf of the Education Law Center and would be pleased to submit more comprehensive materials on this topic at any time.

The Education Law Center of Pennsylvania (ELC) (www.elc-pa.org) is a non-profit legal advocacy and educational organization dedicated to ensuring that all of Pennsylvania's children have access to a quality public education. For more than thirty-five years, ELC has worked as a backbone organization for parents, advocates, community and advocacy organizations and others to help implement multiple strategies to accomplish our mission, including traditional legal assistance, administrative advocacy, and community collaboration, organization and education. ELC's work focuses on the most vulnerable children who have historically been at a disadvantage in the public education system.

Unfair and inappropriate disciplinary practices continue to be a barrier for these students, especially for low income and minority students as well as students with disabilities. In fact, students with disabilities are twice as likely to be excluded from school for disciplinary reasons as their non-disabled peers.¹ And across the country, African-American students are more than three and a half times more likely to be suspended by their peers who are white.² In parts of Pennsylvania, the numbers are even more shocking: African-American students in Allegheny County are more than 7 times more likely to be suspended than their peers who are white.³

The School-to-Prison Pipeline refers to the policies and practices that make the criminalization and incarceration of students more likely and the attainment of a high-quality

¹ Office for Civil Rights, Civil Rights Data Collection Data Summary (2012), <http://www2.ed.gov/about/offices/list/ocr/docs/crde-2012-data-summary.pdf>

² *Id.*

³ Daniel J. Losen, Jonathan Gillespie, Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School, National Data spreadsheet, available at <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-cerr-research>

education less likely. In practice, this often means an emphasis of punitive consequences, student exclusion, and justice-system intervention over students' right to an education.

The School-to-Prison Pipeline operates both directly and indirectly. By criminalizing student behavior, schools directly send students in the criminal justice system. We believe the School-to-Prison pipeline is fed not only by school based arrests or law enforcement referrals⁴, but also by the application of unnecessary exclusionary school discipline. This discipline includes suspensions, expulsions and transfers to alternative education programs for students of all ages, from pre-k to senior year. We encourage the Committee to consider reforms that will work to dismantle this pipeline by ensuring, when discipline is necessary, that for all students it is fair and appropriate and it maintains school stability and learning time to the maximum extent possible. Additionally, we encourage the Committee to reduce reliance on policies, such as high-stakes testing, which inadvertently lead to the push out of our most vulnerable and underserved students.⁵

Too often we witness the School-to-Prison pipeline in action through the experiences of the students and families who call our hotline seeking help. Too often these cases are absurd. The following are just a sampling of recent callers:

- Six year old Christian's kindergarten teacher complained that her legs were hurting as she sat down to read him a story. Christian reached out and patted her thighs, saying, "I wish I could make them feel better." For this Christian was permanently expelled for "inappropriate touching."
- 12 year old Damian was barred from enrollment because a school did not like what it read on his psychological evaluation, even though he had never violated any school rules.
- 15 year old Darian permanently expelled for a first offense of cutting class.
- 18 year old Alonzo suspended for 10 days for "possession of a controlled substance" when he asked his teacher for permission to take the two "Aleve" pills he brought from home, because of knee pain.
- 12 year old Christopher had never been in trouble when he threw on a dirty pair of pants in his hurry to get to school, forgetting that his Boy Scout pocket knife was in a pocket. When it fell out in gym class he volunteered that it was his. He was then arrested, handcuffed, and detained in jail for 12 hours.

There are solutions that do not lead to these harrowing consequences. For example, school districts should invest in behavioral health and prevention programs so that students do not need to be expelled or sent to alternative education for disruptive youth in such high numbers. For example, consider School-Wide Positive Behavior Support (SWPBS), an evidence-based, research driven approach to creating, teaching, and reinforcing students' social, emotional, and academic learning skills. Promoting SWPBS is a way to change the conversation about school climate. SWPBS focuses on prevention. A SWPBS school sets clear and simple rules that apply in all school settings (including the classroom, cafeteria, hallways and school bus), and consistently rewards good behavior. This continuum of supportive interventions helps all students succeed academically and behaviorally. Schools that have implemented SWPBS with

⁴ In Philadelphia, some 30% of the cases in the Juvenile Division of Philadelphia Family Court stem from school-based arrests.

⁵ Deborah Gordon Klehr, Addressing the Unintended Consequences of No Child Left Behind and Zero Tolerance: Better Strategies for Safe Schools and Successful Students, 16 Geo. J. on Poverty L. & Pol'y 585 (2009).

fidelity (i.e., school-wide with all of its components intact) have decreased office discipline referrals, decreased out-of-school suspensions, increased teacher retention rates, and increased academic success for all students. (And, we might add, SWPBS has its roots in Senator Durbin's home state of Illinois, where more than 800 schools now have implemented SWPBS!)⁶

Thus, we recommend that the Committee consider the following:

- Promote evidence-based positive discipline strategies, such as SWPBS, through funding, incentives and criteria for Federal grant making and accountability measures for Federal monies received by Local Education Agencies.
- Request the GAO to investigate the link between high-stakes testing and the push out of students into both exclusionary discipline and alternative placements.
- Support the Department of Education's Office for Civil Rights so that it can devote more resources to providing technical assistance guides, investigate the disparate impacts of exclusionary school discipline and school policing on vulnerable and under-served children, and collaborate with the Department of Justice to bring about the types of great education change we experienced in the 1960s & 1970s.

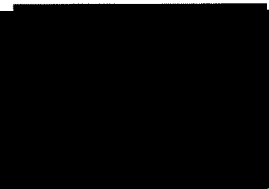
In addition, we write in support of the statement submitted by our colleagues at the Juvenile Law Center. While we seek to ensure that students are not pushed out of our schools, we must also be cognizant of the challenges faced by our Youth returning from juvenile correctional facilities.

Respectfully submitted by,

Education Law Center



Nancy E. Potter, Esq.
Staff Attorney
npotter@elc-pa.org



⁶ Scott A. Spaulding, et al., *Implementation of School-wide PBIS across the United States*, available at [http://www.pbis.org/evaluation/evaluation_briefs/nov_08_\(2\).aspx](http://www.pbis.org/evaluation/evaluation_briefs/nov_08_(2).aspx)



FAMILY COURT OF THE STATE OF DELAWARE

CHANDLEE JOHNSON KUHN
CHIEF JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 9445
WILMINGTON, DELAWARE 19801-3736

December 10, 2012

[REDACTED]

U.S. Senate
Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Delaware's Support of Ending School (Disruption) to Prison Pipeline

Dear Chairman Durbin, Ranking Member Graham, and Committee Members,

The State of Delaware seeks to end the school disruption to prison pipeline. This is an important issue on a national level, and Delaware supports the efforts of those organizations that have brought it to the national stage. Going forward, states and local jurisdictions will have to address the causes and consequences of the pipeline because it is a local issue. Delaware hopes to be a leader in this movement by building a collaborating, consensus building project statewide that will include a task force to set forth the factors that contribute to this trend, but also to implement solutions in different school districts. The collaborative is using the national framework and with a sense of urgency bringing that framework to Delaware.

As the Chief Judge of Family Court, I see how school disruption impacts youth in the juvenile justice system and in the child welfare system. In Delaware, Family Court has the juvenile delinquency jurisdiction and youth charged with a crime come before our court. Youth charged with crimes, whether school offenses or crimes alleged to have occurred outside of school, are often suspended or expelled from school and as a result, suffer additional consequences for this school disruption. Youth in foster care also come within the Family Court jurisdiction. The child welfare system recognizes that youth in foster care are often disproportionately arrested for school offenses. Research shows that youth in the juvenile justice system more often end up in the adult prison system.

I became involved in the national discussion on ending the school disruption to prison pipeline earlier this year in part due to the research of Kerrin Wolf, Ph.D. As part of his dissertation, Dr. Wolf compiled data on all school arrests in the State of Delaware for the 2010-2011 school year. As a result of Dr. Wolf's persuasive research, Delaware's Family Court was

asked to present at Judge Judith Kaye's National Leadership Summit on School-Justice Partnerships: Keeping Kids in School and Out of Court. The event was sponsored by the Permanent Judicial Commission on Justice for Children. By August of this year, we were asked to present at a School Discipline Institute of the U.S. Department of Education, Office of Safe and Healthy Students in the Office of Elementary and Secondary Education. Later, I participated as a member of the Law Enforcement Advisory Group in the Council of State Governments' Consensus Project. I am also a member of the School Pathways Committee on the National Council for Juvenile and Family Court Judges which is looking to identify several jurisdictions to work on school disruption to prison pipeline issues.

Learning from the frameworks established by these national organizations, Delaware has established a small group of committed partners from various agencies. Casey Family Programs is working with us in this endeavor. Improving school outcomes will require a multifaceted approach and Delaware's collaborative is looking at several evidence based programs to improve outcomes in one school district. One specific program is Transformative Life Skills program from the Niroga Institute that improves self-control. We hope to infiltrate school districts throughout the State with successful programming to improve outcomes.

From a national platform to bringing the issue home to Delaware, we are filled with optimism that our statewide partnerships will identify the issues and be able to address the problem of school disruption to prison pipeline. Delaware is here to support the national effort as well. We applaud the Senate's efforts at convening the experts who will be testifying at the Senate hearing on the school disruption to prison pipeline, and hope that their testimony and the written submissions of testimony will assist the Senate in addressing this critical issue. If I can be of further assistance to the Committee, please do not hesitate to contact me or any of my colleagues in the State of Delaware.

Respectfully submitted,

/s/

Chandlee Johnson Kuhn
Chief Judge

cc: Tom Carper, U.S. Senator
Chris Coons, U.S. Senator
Michael Thompson, Council of State Governments
Shawn Marsh, Ph.D., NCJFCJ
Bidyut K. Bose, Ph.D., Niroga Institute
Kerrin Wolf, Ph. D.

CJK/ebt



*5,000 Police Chiefs, Sheriffs,
Prosecutors, other Law Enforcement
Leaders, and Violence Survivors
Preventing Crime and Violence*

Committee on the Judiciary

Subcommittee on Constitution, Civil Rights and Human Rights

**Hearing on "Ending the School-to-Prison Pipeline"
December 12, 2012**

Written Testimony of:

*Daniel E. Johnson
Solicitor
Fifth Judicial Circuit of South Carolina*

**On Behalf of:
FIGHT CRIME: INVEST IN KIDS**

Mr. Chairman, Mr. Ranking Member, and Members of the Subcommittee on Constitution, Civil Rights, and Human Rights:

Thank you for the opportunity to submit this testimony. My name is Daniel E. Johnson and I am the Solicitor for the Fifth Judicial Circuit of South Carolina. I have been a prosecutor for 7 years. Through my work as a Deputy Sheriff, Prosecutor and Coach, I have seen first hand how crime impacts our children. I am also a member of Fight Crime: Invest in Kids, a national anti-crime organization of over 5,000 police chiefs, sheriffs, prosecutors, attorneys general, other law enforcement leaders, and victims of violence who have come together to take a hard-nosed look at the research about what really works to keep kids from becoming criminals.

Law enforcement leaders firmly believe that crime and violence have no place in our nation's schools. Every child should feel safe at school and not have their learning disrupted by classroom disorder or discipline problems. There are instances when suspension and/or expulsion are not only appropriate, but also necessary. However, school discipline is a delicate balance between the need to make the school environment safe and the importance of keeping kids in school and on the path to graduation and life success, rather than failure and crime.

Law enforcement leaders know that we must stop discipline problems before students end up on the streets. The consequences of student misbehavior that is improperly addressed do not stop at the schoolhouse door. Students can go on to commit more serious offenses unless successful interventions are provided. Simply suspending or expelling students does not solve students' behavior issues. Students expelled and sent to the streets face long odds of success. A Center for Disease Control and Prevention study found that out-of-school 12- to 19- year olds were more likely to be involved in a physical fight, carry a weapon and engage in risky behaviors like drug use.

If students drop out of or are removed from school, they are more likely to become involved in crime. Students who are suspended or expelled are almost three times more likely to have contact with the juvenile justice system. A study found that nearly 10 percent of those students with at least one disciplinary contact dropped out of school, compared to just 2 percent of students with no disciplinary action. Ultimately, high school dropouts are eight times more likely to be incarcerated. While staying in school even one year longer reduces the likelihood that a youngster will turn to crime, graduating from high school has a dramatic impact on life outcomes.

Our country needs to do more, to ensure kids feel safe at school and grow up to be productive members of our society. The best way to help students learn and to prevent later crime is to ensure students can remain in school and off the streets. Teachers need help managing classroom behavior and schools need new approaches for responding to students' misbehavior. Fortunately, there are proven and promising approaches that can help ensure that schools are safe and that troubled students are given more opportunities to learn.

Improve data collection

Schools should be required to collect and report publicly on accurate data (disaggregated by income, race, type of incident, etc.) on the use of school suspensions, expulsions and other discipline approaches, as well as on incidents of bullying, drug use and violence. The best way to address a problem is to understand it fully, and it's difficult to do that without data.

Implement evidence-based programs with fidelity

There are several effective evidence-based alternatives to reduce suspensions, expulsions and referrals to law enforcement. Effective school-based interventions can also help combat the alarming levels of bullying, drug use and violence among young people. These interventions must be implemented as designed, with the proper staffing, services and follow-through. If programs stray from the evidence-based model, they may not demonstrate any results. Local, state and federal initiatives must support programs with the strongest evidence and provide sufficient support for proper implementation.

Positive Behavioral Interventions and Supports (PBIS)

PBIS is a universal, school-wide prevention strategy for improving behavior and school climate. At the universal level, schools create three to five clear behavioral expectations and rules that all students and teachers know. Responses to inappropriate behavior are clearly defined, such as a teacher response – like a warning, time out, privilege loss or parent contact – versus sending a student to the principal's office of suspensions or expulsions. Disciplinary data is used to guide decision-making about the program implementation and student response. A study in Maryland found that the percentage of students suspended declined significantly over time in schools with PBIS but did not significantly decline in control schools.

Good Behavior Game

The Good Behavior Game is a relatively inexpensive, elementary school classroom-wide intervention in which a class is divided into groups and the groups compete for simple privileges, such as lining up first for lunch or recess. Children had a 37 percent higher risk of suspension, on average, in sixth grade if they were assigned to a classroom without the Good Behavior Game and enhanced curriculum, compared to children in classrooms with those elements. In eleventh grade, students left out had 2.5 times higher risk of suspension than those with the Good Behavior Game and enhanced curriculum, and the program also cuts conduct disorders (a behavioral disorder with high correlation to delinquency) and experimenting with illicit and hard drugs by more than half. Researchers found a return of \$96 dollars for every dollar spent on this elementary school intervention.

Bullying Prevention Program

Bullying and violence are serious problems facing our nation's schools. The National Center for Education Statistics reported that 32 percent of students age 12-18 reported being bullied at school in 2007. The most serious bullies are seven times more likely than other kids to carry a weapon to school, and one study

demonstrated that four out of every ten boys who bullied others as kids had three or more convictions by the time they turned 24. Victims of bullying may also be at risk for future crime. A study by the U.S. Secret Service, conducted in collaboration with the U.S. Department of Education, examined 37 school shootings in the U.S. since 1974 and found that nearly three-quarters of the school shooters had previously been bullied or injured by fellow students. Fortunately, evidence-based programs can effectively combat bullying and reduce later crime and violence. The Olweus Bullying Prevention Program, for example, produced a 50 percent reduction of bullying in Norway and a 20 percent reduction when it was replicated in South Carolina. This program enlists the entire school community, from the principal to the bus drivers, in an effort to communicate clearly to all students that bullying is not accepted, and works individually with both victims and perpetrators along with their parents to stop further bullying.

Life Skills Training (LST)

Life Skills Training is a three-year intervention that targets middle and junior high school students in the 6th or 7th grade (with booster sessions in the two subsequent years), is aimed at preventing use of gateway drugs. More than 15 years of research with the LST program have consistently shown that participation in the program can cut drug use in half. Researchers have found a return of \$42 for every dollar invested in this intervention.

Fund training for school staff on alternatives to suspension

Despite serving all students, not just those with discipline problems, many of these approaches are low-cost because they involve primarily policy changes and some training for teachers and administrators. The expense is particularly low compared to the amount of teaching time and resources currently dedicated to managing disruptive students in school, in juvenile facilities and in the courts. Up-front investments can be far more fiscally responsible and cost taxpayers far less in the end than removing students from school unnecessarily.

To conclude, the over 5,000 members of Fight Crime: Invest in Kids nationwide believe in punishment that fits the crime. Just like law enforcement authorities need to sanction criminal offenders, school leaders need the authority for serious cases, to suspend, expel, or take other school discipline actions including referral to the juvenile justice system. However, in most cases, students and schools are better served by alternative responses- and better yet, prevention approaches that reduce behavior and discipline problems before they happen. Several promising programs can improve school climate and reduce disciplinary problems. Local, state and federal officials should support these approaches and encourage schools to implement effective discipline approaches that can help students, improve the learning environment and prevent more children from entering the criminal justice system.

Thank you for this opportunity to present this testimony.



Fighting for Our Right to Children's Education

FORCE
P.O. BOX 1923
Mobile AL 36633

TESTIMONY OF

Fighting for Our Right to Children's Education (F.O.R.C.E.)

Mobile, Alabama

regarding

ENDING THE SCHOOL-TO-PRISON PIPELINE

Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

December 12, 2012



Fighting for Our Right to Children's Education

FORCE
P.O. BOX 1923
Mobile AL 36633

Dear Senators:

My name is Vanessa Byard. I am writing this statement as a parent and on behalf of F.O.R.C.E -- Fighting for Our Right to Children's Education-- a community organization in Mobile, Alabama.

F.O.R.C.E. was founded by parents, community leaders and students in the Mobile County Public Schools who were concerned that only 50 percent of students graduate. F.O.R.C.E. members organized several community meetings to determine the source of the dropout problem. At these meetings, parent after parent talked about the overuse of suspension in schools and how repeat suspensions pushed their children further and further out of school until they eventually dropped out.

In Mobile County, students can be suspended up to 10 days for uniform violations, being unprepared for class, and even talking in the cafeteria. We have heard of students being long-term suspended, which in Mobile can last anywhere between 11 days and the end of the semester, for eating a bag of chips in class. The problem in Mobile got so bad that the Southern Poverty Law Center filed a lawsuit against the schools for violating students' due process rights. Students are often long-term suspended without receiving any notice or an opportunity to defend themselves.

F.O.R.C.E. began to look at the problem not as "drop out" but "push out." Our children, through harsh discipline practices and a lack of oversight of school administrators, are being pushed out in record numbers. Once suspended from school,



Fighting for Our Right to Children's Education

FORCE
P.O. BOX 1923
Mobile AL 36633

students begin to form negative attitudes towards school and administrators. In Mobile County, you can lose all your credits after you miss 10 days of school in one semester.

Unfortunately, we see the reality of the school-to-prison pipeline in Mobile. Many Mobile children are funneled into the juvenile justice system through our schools. In Mobile, many students are arrested for criminal trespassing. This happens when a student comes on the school campus when they are supposed to be on suspension. But, because students don't receive notice, they don't know how long they are suspended or when they are allowed to return to campus. This is not right. These students clearly want to be in school. This is exactly why it was so important that F.O.R.C.E. be a voice in the community for parents, community members, and students to speak out about the injustices happening to our children.

From the start of our organization, F.O.R.C.E. members have advocated on behalf of Mobile students. We developed a petition that we presented to the Mobile School Board with over 300 signatures. In March 2012, we co-hosted a Stand Up for Our Children rally where over 100 people gathered to share stories of children who are constantly being pushed out of school through suspension, expulsion and a lack of services. Even with all of our efforts, the problems still continue in Mobile.

F.O.R.C.E.'s motto is: Bringing vale back to education. I know this problem is bigger than Mobile County, even bigger than Alabama. I am so glad that Congress is



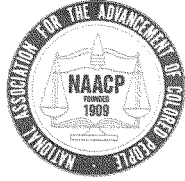
Fighting for Our Right to Children's Education

FORCE
P.O. BOX 1923
Mobile AL 36633

acknowledging this problem and urge Congress to make it mandatory for public schools to have alternatives to suspensions for minor offenses, get rid of zero tolerance policies and began to use proven research based methods that keep our children in school. Our children's success depends on what we do now! Thank You.

Sincerely,

Vanessa Byard



December 18, 2012

U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510
[REDACTED]

Re: Hearing on Ending the School-to-Prison Pipeline

Dear Chairman Durbin, Ranking Minority Member Graham, and Members of the Subcommittee on the Constitution, Civil Rights, and Human Rights:

On behalf of the Florida State Conference of the NAACP, I want to thank you for bringing attention to the crisis facing our communities by hosting the Dec. 12, 2012 hearing on Ending the School-to-Prison Pipeline before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights. Founded in 1909 by a multiracial group of activists, the NAACP was poised for a long, tumultuous, and rewarding history. From the ballot box to the classroom, the dedicated workers, organizers, and leaders fought long and hard to ensure that the voices of African Americans would be heard. The fundamental goal of the NAACP's education advocacy agenda is to provide all students access to quality education. The NAACP Education Department seeks to accomplish this goal through policy development, training, collaboration, negotiation, legislation, litigation, and agitation.

In 2005, a five-year-old African American girl was arrested and forcibly removed from her St. Petersburg, FL elementary school by local police for having a temper tantrum in class. In response to this arrest, and growing community discontent with harmful and racially disparate school discipline practices, the Florida State Conference NAACP, Advancement Project, and the NAACP Legal Defense and Educational Fund, Inc. convened public hearings throughout Florida.¹ Since that time, we have worked diligently to bring attention to this issue, demand policy changes that keep our young people in safe and effective learning environments, and end the disproportionate impact of zero tolerance on students of color.

Responding to normal childhood behavior or even minor misbehaviors with arrests, suspensions, and expulsions does not make sense. However, these zero-tolerance responses are the norm in

¹ FL State Conf. NAACP, Advancement Project, NAACP LDF, *Arresting Development: Addressing the School Discipline Crisis in Florida* (Spring 2006), <http://www.advancementproject.org/resources/entry/arresting-development-addressing-the-school-discipline-crisis-in-florida>.

Florida State Conference of the NAACP
397 West Church Street, Orlando, FL 32801
www.flanaacp.org

Florida. Data from the Department of Education's Office for Civil Rights showed that over 58,000 students in Florida were suspended or expelled from school in the 2009-2010 school year. Gadsden County, which had the highest rate of suspension in the state, suspended one of every five students. Moreover, these suspensions are disproportionately borne by students of color – Black students are more than twice as likely to be suspended and three times as likely to be expelled as White students.²

Florida also has the highest documented number of school-related arrests and referrals to law enforcement in the nation – 16,377 in 2010-11 alone. A shocking 68% of those arrests were for minor misdemeanors, most of which could and should be handled by a school's internal discipline system. Criminalization, like exclusionary school discipline, is disproportionately impacting students of color. Black students make up only 21% of the youth in Florida, but 46% of all school-related referrals to law enforcement. Black male students are most likely to be arrested for subjective, discretionary offenses like disrupting a school function or disorderly conduct, criminal charges that can be issued for behavior as simple as raising your voice in class.³

School-related arrests take up 15% of the Department of Juvenile Justice's caseload and cost the state approximately \$5,000 each time we label a young person a criminal for talking back in class or neglecting the dress code. We have made schools the entry point for a life behind bars for a whole generation, 58% of students arrested in school in 2010-11 had never been involved in the Juvenile Justice System before being arrested at school.⁴

Suspensions, expulsions, and arrests are not common sense responses to minor student misbehavior. In fact, national studies have shown that schools with high rates of suspension and expulsion have lower student achievement and lower ratings of school climate.⁵ Students who are suspended have an increased likelihood of dropping out of school, being left back, or entering the juvenile or criminal justice system.⁶

Despite these jarring statistics, there is good news. School-related offenses have declined 42% over the past seven years. In 2009, we worked with the Florida State Legislature and Governor Charlie Crist to pass legislation that urged all school districts to draw a line between the "petty acts of misconduct" unnecessarily being referred to law enforcement and the "serious act of misbehavior" that threatened school safety and required more intensive interventions. This step

² Department of Education, Office for Civil Rights, Civil Rights Data Collection, available at <http://ocrdata.ed.gov/>

³ FL Dept. of Juvenile Justice, *Delinquency in Florida's Schools: A Seven Year Study* (Nov. 2011), <http://www.djj.state.fl.us/docs/research2/2010-11-delinquency-in-schools-analysis.pdf>.

⁴ FL Dept. of Juvenile Justice, *Delinquency in Florida's Schools*.

⁵ American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools?: An Evidentiary Review and Recommendations*, *American Psychologist*, 63 at 854 (Dec. 2008), available at <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>; Daniel Losen and Jonathan Gillespie, *Opportunity Suspended: The Disparate Impact of Disciplinary Exclusion from School* 42 (August 2012), available at <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-ccrr-research/losen-gillespie-opportunity-suspended-ccrr-2012.pdf>.

⁶ Justice Center – The Council of State Governments and Public Policy Research Institute, *Breaking Schools' Rules, A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement* [hereinafter *Breaking Schools' Rules*] (July 2011), available at <http://justicecenter.csg.org/resources/juveniles>.

helped bring the rate of criminalization down, but there is still much work to be done. Far too many school districts have failed to implement these changes in their own codes of conduct or create meaningful change in the way discipline works in their schools. In 2011, we published a follow up report that explored the lack of implementation and gave further recommendations for successful policy change.⁷ Some districts, like Broward, Miami-Dade, and Duval are already working with community members towards creating common sense discipline policies. If we are serious about ending the School-to-Prison Pipeline in Florida, every school district must make a commitment and take real steps towards that goal.

In order to support local communities in dismantling the School-to-Prison Pipeline, we recommend:

- Providing funding incentives to support multi-stakeholder partnerships and collaborations charged with reducing school-based arrests, suspensions, and expulsions;
- Creating stronger accountability systems for schools, districts, law enforcement agencies, and states that rely on zero-tolerance school discipline;
- Collecting, analyzing, and disseminating data on school-based arrests, suspensions, and expulsions, and disaggregate that data by race, gender, special education status, socioeconomic status, and English language proficiency;
- Encouraging local districts to work with students, parents, and community advocates to explicitly address racial disparities in school-based arrests, suspensions, and expulsions; and
- Supporting revisions to local and state law that eliminate zero-tolerance policies in schools.

Thank you for the opportunity to submit testimony and for taking steps to ensure that students have the opportunity to be on a path to success, and not to prison.

Sincerely,

Dr. Shirley Johnson
Education Chair

⁷ ACLU of FL, Advancement Project, FL State Conference of the NAACP, *Still Haven't Shut Off the School-to-Prison Pipeline: Evaluating the Impact of Florida's New Zero Tolerance Law* (Mar. 2011)
<http://www.advancementproject.org/resources/entry/still-havent-shut-off-the-school-to-prison-pipeline-evaluating-the-impact-o>.

Hearing before the
Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights

"Ending the School-to-Prison Pipeline"
Wednesday, December 12, 2012
Dirksen Senate Office Building, Room 226
2:00 p.m.

Statement Submitted by:
GLSEN (Gay, Lesbian & Straight Education Network)
Gay-Straight Alliance Network
Family Equality Council
Human Rights Campaign
National Black Justice Coalition
National Center for Lesbian Rights
National Center for Transgender Equality
National Gay and Lesbian Task Force Action Fund
PFLAG National (Parents, Families & Friends of Lesbians and Gays)
The Trevor Project
SMYAL (Sexual Minority Youth Assistance League)

Thank you for the opportunity to submit a statement on ending the school to prison pipeline. The Gay, Lesbian & Straight Education Network (GLSEN) is the leading national education organization working to create safe schools for all students. Established in 1990, GLSEN works to ensure that every child learns to respect and accept all people, regardless of sexual orientation or gender identity/expression. We applaud our partners throughout the advocacy world who have spent considerable time and energy to study this problem and propose solutions, and we look forward to continuing to partner with them.

GLSEN is pleased to work with other lesbian, gay, bisexual and transgender (LGBT) organizations to submit a statement highlighting the impact that exclusionary discipline and zero tolerance policies have on LGBT youth. While our work has largely focused on bullying and harassment, GLSEN and our partner organizations have worked tirelessly to ensure fair treatment for LGBT youth within the school discipline and criminal justice systems. We know that many youth face excessive discipline practices that may result from their perceived sexual

orientation or gender identity. We believe such issues should be taken into consideration in any conversation examining the school to prison pipeline.

In recent years there has been an unprecedented conflation of school discipline policy and sanctions traditionally reserved for the juvenile justice system. In fact, the connection between school discipline and the juvenile courts has become so close that it led to the coining of the phrase “school-to-prison pipeline.” The pervasive use of exclusionary discipline and zero-tolerance policies that have the effect of funneling youth out of the school system and into the juvenile justice system impacts a broad swath of youth across lines of race, ethnicity, gender and sexual orientation and gender identity/expression; and at their core, these policies threaten our national aspiration to make schools safe and supportive environments for all young people.

GLSEN, along with our diverse coalition of LGBT advocacy organizations, share a concern for the well-being of *all* students, and applaud the many federal efforts—such as the U.S.

Department of Education and U.S. Department of Justice’s Supportive Schools Discipline Initiative—to understand and address this issue. Still recent data from the U.S. Department of Education’s Office of Civil Rights indicates that we have a long way to go, particularly where exclusionary discipline is applied to youth of color. For instance, although black students made up only 18 percent of those enrolled in the schools sampled, they accounted for 35 percent of those suspended once, 46 percent of those suspended more than once and 39 percent of all expulsions. Further, one in five black boys and more than one in 10 black girls received an out-of-school suspension. Overall, black students were three and a half times likely to be suspended or expelled than their white peers. And in districts that reported expulsions under zero-tolerance policies, Hispanic and black students represent 45 percent of the student body, but 56 percent of those expelled under such policies.

GLSEN and partner organizations have for some time been exploring intersections between the work of organizations seeking to dismantle the school-to-prison pipeline for reasons related to disproportionate impact on youth of color, and our own work focused primarily on LGBT youth. What we now know as a result of this exploration is that the interest in making schools

places where youth are valued regardless of sexual orientation or gender identity/expression is wholly consistent with those of other civil rights organizations that are seeking to stem the flow of youth of color from schools and into the juvenile justice system. In fact, many youth of color subjected to exclusionary discipline are also LGBT. Still, while many civil rights organizations have the benefit of ample data, collected by the U.S. Department of Education Office of Civil Rights, to support their contention that students of color are disproportionately affected by zero tolerance and other exclusionary discipline policies, there is a relative scarcity of data on how these policies may affect LGBT students.

Only one key study, published in the *Journal of the American Academy of Pediatrics*, exists that expresses what we believe anecdotally to be true, that “non-heterosexual youth suffer disproportionate educational and criminal-justice punishments that are not explained by greater engagement in illegal or transgressive behaviors.”¹ While we have ample support—from GLSEN’s widely-recognized National School Climate Survey, for instance—for the contention that many schools remain hostile climates for LGBT students, not only because of bullying and harassment from other students but because of mistreatment by school officials, there is a relative lack of scrutiny given to the question of whether, and to what extent, LGBT students are: 1) disproportionately subjected to exclusionary discipline, and 2) funneled into the juvenile justice system as a result.

This data gap has proven to be a significant impediment to our administrative advocacy efforts to protect the rights of LGBT students—as co-equal with all other students—in schools. While there are several interdepartmental working groups in the federal government focused on studying bullying of LGBT students (which we applaud) there is no serious effort to examine the extent to which *official* school discipline policy has similar effects on LGBT students as on students of color. Nor do we know whether a disproportionate number of students of color affected by exclusionary discipline may be LGBT. What we do know is that in juvenile justice systems across the country, there is a disproportionality of LGBT youth with some estimates as high as 30 percent of youth in locked confinement being identified as LGBT.

We firmly believe that the increasing use of exclusionary discipline and zero tolerance policies in our schools is the wrong approach and contributes to unhealthy school climates, strengthens, rather than dismantles the school-to-prison pipeline and may be a contributing factor to the disproportionately high numbers of LGBT youth in custody.

Relatedly, over the last several years, the issue of bullying and harassment in schools has garnered increased public attention and media coverage. Each story has generated new and increased public interest, leading to calls for Congress to pass anti-bullying and anti-harassment legislation and for the White House to take action. We recognize that there are currently a number of legislative approaches before Congress on how best to address bullying and harassment in our nation's schools, including the *Safe Schools Improvement Act*, the *Student Non-Discrimination Act*, and the *Successful, Safe, and Healthy Students Act*. Each bill addresses the problem of bullying and harassment in various ways, with the same overall goal: to ensure that America's schools are safe for all children and to create productive and effective spaces for learning. But our support for these pieces of legislation should not be understood to be a call for continued disproportionate application of punishment against those who engage in bullying behavior. Indeed, the goal of safe schools cannot be accomplished if some children are disproportionately subjected to exclusionary discipline and funneled toward the criminal justice system, whether because of their race, ethnicity sexual orientation, or gender identity/expression.

Moving forward, we respectfully request that in addition to supporting a balanced legislative approach, any proposed solutions will include measures that collect and examine data about the experiences of LGBT youth with exclusionary discipline and zero tolerance policies, and interpret current civil rights protections to include and protect LGBT students who also disproportionately experience bullying and harassment.

Examples of Disproportionate Discipline on LGBT Youth

- After a surveillance tape showed him and another male student kissing on school grounds, a 17-year old male student at Alice High School in Texas claims he was removed from the cheerleading squad and suspended from school for two days as punishment. Since public displays of affection are common occurrences in the school and rarely disciplined, the student claims his sexual orientation was targeted by the administration. Though the school has denied these accusations, they have refused to articulate a reason for his punishment and have stood by his suspension.
- Darnell “Dynasty” Young, an openly gay 17-year-old student, was suspended and subsequently expelled when he fired a stun gun into the air to ward off bullies. On April 16, 2012, Young found himself surrounded by six students who hurled homophobic insults as well as rocks and glass bottles at him. Young fired the stun gun into the air as a warning and was then handcuffed and disciplined by school administrators for breaking their ‘zero tolerance’ policy. Previous to this incident, the school administrators had blamed Young for his harassment, saying his dress and behavior was too ‘flamboyant’ and needed to be more stereotypically masculine.
- Asante Cotman, a 17-year-old openly gay junior at Charles City High School in Virginia, was suspended by school officials told him the pair of heels he was wearing was “disrupting the school.” Refusing to take the heels off, the school administration suspended him for three days. Asante believes his outfit was not bothering anyone nor was inappropriate for the school. After serving out his suspension, Asante hopes this incident sparks discussion and reflection within his community to prevent similar incidents from happening again.

¹ Criminal-justice and school sanctions against nonheterosexual youth: A national longitudinal study, KEW Himmelstein, H Brückner - Pediatrics, 2011 - Am Acad Pediatrics



December 10, 2012

Gay-Straight Alliance Network
1500 Bryant Street, Suite #800
San Francisco, CA 94103

U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Hearing on Ending the School-to-Prison Pipeline

Dear Chairman Durbin, Ranking Minority Member Graham, and Members of the Subcommittee on the Constitution, Civil Rights, and Human Rights:

Thank you for the opportunity to submit written testimony for the hearing on ending the school-to-prison pipeline before the subcommittee on the Constitution, Civil Rights, and Human Rights, Senate Committee on the Judiciary.

Gay-Straight Alliance Network (GSA Network) is a national youth leadership organization that empowers youth activists to fight homophobia and transphobia in schools by training student leaders and supporting student-led Gay-Straight Alliance clubs throughout the country. In California alone, GSA Network has brought GSA clubs to 56% of public high schools, impacting more than 1.1 million students at 890 schools. GSA Network's youth advocates have played a key role in changing laws and policies that impact youth at the local and state level. GSA Network operates the National Association of GSA Networks, which unites 37 statewide networks of GSA clubs throughout the country.

School discipline disproportionately impacts certain student populations and has devastating effects on students' ability to achieve and succeed. This is particularly true for youth who identify as lesbian, gay, bisexual, transgender, or questioning (LGBTQ). In the last decade we have seen a significant increase in students who openly identify as LGBTQ at school despite very high levels of harassment, bullying, ridicule, rejection and violence. As demonstrated in "Two Wrongs Don't Make a Right: Why Zero Tolerance is Not the Solution to Bullying," a report published by GSA Network, the Advancement Project, and the Alliance for Educational Justice, LGBTQ students are often doubly punished: they are harassed by their peers, and then blamed by their administrators for causing trouble by refusing to hide their identities or defending themselves when attacked.

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For example, San Francisco Unified School District reported 16% of middle school students and 11% of high school students identified as lesbian, gay, bisexual, or questioning in a 2011 Youth Risk Behavior Survey. We have anecdotal evidence to suggest that the increased visibility has also led to an increase in punishments for LGBTQ students.

LGBTQ youth continue to feel unsafe and underachieve

Data from the California Healthy Kids Survey found that students who are harassed based on actual or perceived sexual orientation are more likely to report low grades, more than three times as likely to carry a weapon to school, and more than three times as likely to report being truant in the last month because they felt unsafe. The experiences of bias based bullying and violence is thus compounded by harsh and punitive school discipline practices, which disproportionately punish and push young people of color and LGBTQ students out of the public education system and into the juvenile justice system.

Schools attempting to create safer schools by utilizing a "get tough on bullying" or "Zero Tolerance" approach to bullying often punish both the victim and the aggressor making an already unacceptable situation worse.

LGBTQ youth face bias from school administrators

The increased visibility of LGBTQ students has also led to an increase in the ways in which anti-LGBTQ bias may play out in school discipline policies. In 2011, the Journal of Pediatrics reported, based on data from the National Longitudinal Study of Adolescent Health (Add Health), that lesbian, gay, and bisexual youth were 1.4 times more likely to be expelled than their straight peers. This is the only national survey to examine disproportionate impacts of school discipline on LGBTQ youth. Beyond this, most of what we know is either anecdotal or data from community surveys.

One of the largest challenges and one unique to LGBTQ youth engaged in the school discipline process is the risk of being "outed" to their parents by school officials. When this happens LGBTQ students face the additional risk of family rejection. Fifty percent of youth who come out and/or are "outed" to their parents face initial rejection, and 30% are kicked out or leave home due to threats of violence from their parents.

LGBTQ youth often have stressful home lives, which adds to their school discipline issues

Up to 40 percent of homeless youth and up to 40 percent of youth in foster care are LGBTQ identified. According to a 2010 report by the Center for Juvenile Justice Reform, youth in foster care are 3 times more likely to be suspended or expelled than those living in the care of a guardian.

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empowering youth to fight homophobia and transphobia in schools

In California, youth of color comprise the majority of GSA club members. According to a 2012 Gallup survey and report by the UCLA School of Law Williams Institute, the LGBT population is less wealthy than the non-LGBT population. LGBTQ youth of color who are more likely to live in low-income communities and have limited access to educational opportunities, also face racism and existing socioeconomic and institutional challenges common to youth of color which intersect with challenges created by homophobia and transphobia. Thus, for LGBTQ youth of color in particular, the confluence of school discipline disparities, anti-LGBTQ bias, bullying, and harassment have left many LGBTQ youth struggling to succeed by nearly every health and academic achievement metric.

To help us better understand, document, and remedy these experiences, GSA Network believes that we need the Subcommittee on the Constitution, Civil Rights, and Human Rights and other federal and state agencies to collect data on sexual orientation and gender identity and school discipline.

We need state-funded and nationally-funded surveys including surveys collected by the Department of Education on school discipline and other surveys such as the CDC's Youth Risk Behavior Survey, to include demographic questions about sexual orientation and gender identity. As a result, our public education and school discipline systems will be able to adequately identify and then address educational needs as well as discipline disparities based on sexual orientation and gender identity that are compounded by the racial inequities in school discipline.

GSA Network has been a leader in interrupting the school-to-prison-pipeline for LGBTQ youth

Since publication of our report with the Alliance for Educational Justice and the Advancement Project titled, "Two Wrongs Don't Make a Right: Why Zero Tolerance is Not the Solution to Bullying," GSA Network along with its education rights partners successfully passed five discipline-related reform bills in California alone.

GSA Network gathered testimony from youth for the Office of Civil Rights Hearing on School Discipline held in Los Angeles, California on September 10, 2012. The following is testimony shared by Brandon Serpas, Racial and Economic Justice Program Intern at Gay-Straight Alliance Network.

My name is Brandon Serpas, and I'm a queer youth activist at GSA Network. I'd like to tell you about my own experience and the experience of other queer youth in schools. The current model of school discipline in dealing with queer youth in general and anti-LGBTQ bullying and bias in particular is failing queer youth.

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In my sophomore year a student I didn't know called me the 'f-word' in a classroom. A teacher heard the slur and didn't do anything. I left in fear shaken by the incident and emailed a GSA Network staff member asking for help. I learned that in CA I had the right to report the incident to school officials.

I reported the incident to the assistant principal and subsequently heard from the student's friends that he had been suspended for three days. Since this was the first time I'd reported harassment I made the assumption that this was the appropriate course of action.

Three days later the same student was in the hallway giving me dirty looks, and I found out that he was speaking ill about me. It was clear to me that he hadn't learned anything from his suspension, that the school's solution to "send the student home for a few days and hope he stops harassing people" didn't change his behavior. I stayed away from him the rest of the year, avoiding specific hallways and restrooms because I remembered seeing him there. I thought about reporting the continued harassment but I was afraid that the student would be suspended again and come back even angrier.

This experience helped me see the ineffectiveness of punitive discipline as a way to address bullying and harassment. If we don't educate youth who are engaging in bullying behavior by using restorative justice or social and emotional learning practices then students like me will continue to face bullying and harassment and be afraid to go to school.

My story is not unique; GSA Network solicited stories about school discipline from LGBTQ youth.

One student said she was disciplined for defending herself: "I was suspended after a girl was in my face teasing me about my sexuality and tried to block her hand from hitting me."

Another student explained:

"I was in 5th grade. I was accused of sexual harassment for coming out, for saying I was transgender. I went to the principal's office because I wore mascara and a feather extension in my hair. The school psychologist called my mom and told her that I could not say I was transgender. They wanted me to leave the school but I did not. I've been suspended many times mostly for wearing make up or saying I was transgender or wearing hair extensions."

Other LGBTQ students have reported:

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empowering youth to fight homophobia and transphobia in schools

"I was given detentions for any form of light physical touching with my significant other: hugging, holding hands, and sitting close. This was described as inappropriate behavior, while heterosexual couples doing the same thing were not disciplined."

"I got detention and my teacher said 'If I had my choice, all the queers in this school would be out of here in a second.'"

"I was outed by my school when...I wrote a note to my ex-girlfriend and the teacher took it. The counselor told my mom I was gay."

"I was instructed to enroll in another school and not return to campus--effectively kicked out--for organizing with other LGBT youth."

LGBTQ youth are incredibly resilient. Young people are coming out at younger ages (average age is now 13.5 years old) often without the support of their families. This leaves young people particularly vulnerable to punitive and excessive school discipline and institutionalized bias. While GSA clubs and organizations like Gay-Straight Alliance Network help keep LGBTQ youth in schools, it is not enough – and it shouldn't be the responsibility of young people to make schools safe, fair, and equal. All students have a right to a safe, quality education and to be supported at school for exactly who they are.

GSA Network and LGBTQ youth across the country are grateful for the opportunity to contribute written testimony to the Subcommittee on the Constitution, Civil Rights, and Human Rights. It is vital that we expand our understanding of school discipline disparities so that it includes all targeted students.

Given this, we urge the federal government to support communities in their fight to end the school-to-prison pipeline. We encourage the government to work to reduce racial disparities as well as sexual orientation and gender identity disparities in discipline, promote alternatives to harsh punishment, and ensure that all young people have the opportunity to succeed.

Sincerely,

Carolyn Laub
Executive Director

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December 10, 2012

Senator Dick Durbin, Chairman
U.S. Senate Committee on the Judiciary Subcommittee on the Constitution, Civil Rights, and
Human Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510


Re: Hearing on Ending the School-to-Prison Pipeline

Dear Chairman Durbin, Ranking Minority Member Graham, and Members of the
Subcommittee on the Constitution, Civil Rights, and Human Rights:

Thank you for the opportunity to submit testimony for the hearing on ending the
school- to-prison pipeline before the subcommittee on the Constitution, Civil Rights, and
Human Rights, Senate Committee on the Judiciary. My name is Geeta Kapur and I am a
lawyer committed to indigent defense. For the past ten years, I have represented children
before the trial and appellate courts of this state and I have witnessed the school-to-prison
pipeline first- hand and urge the committee to resolve to keep students in our schools, and not
in prisons.

I have documented several powerful testimonies of the danger of police in our schools
in the attached report that I have prepared for the Subcommittee on Constitution, Civil
Rights, and Human Rights. I urge the federal government to support communities in their
fight to end the school-to-prison pipeline by cutting federal funding for school resource
officers and investing that money into education.

I am honored to provide this report. I am deeply grateful for your commitment to this
issue. Please contact me if you need any additional information.

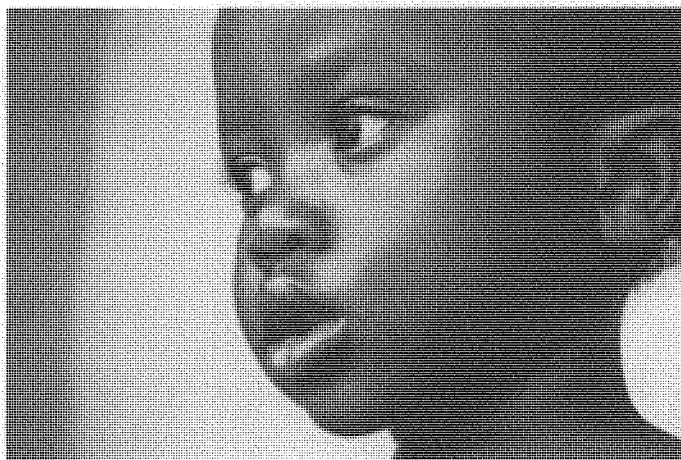
Sincerely,
/s/ Geeta N. Kapur

Geeta N. Kapur

Attachment: Report

**THE SCHOOL TO PRISON PIPELINE IN NORTH CAROLINA:
HISTORY, TESTIMONY, &
A CALL TO END POLICING IN OUR NATION'S SCHOOLS¹**

BY: MS. GEETA N. KAPUR, J.D.
NC CERTIFIED BOARD SPECIALIST IN JUVENILE DELINQUENCY CRIMINAL LAW



*"Woe to those who make unjust laws, to those who issue
oppressive decrees, to deprive the poor of their rights and
withhold justice from the oppressed of my people, making
widows their prey and robbing the fatherless. What will
you do on the day of reckoning, when disaster comes from
afar? To whom will you run for help? Where will you
leave your riches?" --- Isaiah 10:1-4.*

For Hearing Before the US Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights
December 12, 2012 2:00 p.m.
Dirksen Senate Office Building Room 226

 THE HISTORY OF SCHOOL RESOURCE OFFICERS IN NORTH CAROLINA SCHOOLS

In August of 1995, a six-member Committee of the North Carolina Governor's Crime Commission published a report entitled "Preventing School Violence by Helping Communities Help Children: School Resource Officers: An Analysis Overview."² In its report, the Commission exaggerated and sensationalized school violence as an epidemic in an effort to convince the public that placing police officers in North Carolina was necessary and the most effective way to combat school violence and to socialize young people who were from "diminished capacity" households.

The Commission opens its report with the following quantitative data to support its characterization that school violence is an epidemic and its recommendation for school resource officers.³ "More recently, the Annual Report on School Violence 1993-1994 Baseline Year published by the North Carolina Department of Public Instruction reports 6,683 incidents or criminal acts occurring on school property including two kidnappings, four armed robberies, and four rapes."⁴ This data is not clearly defined nor is it contextualized for meaning. An incident and a criminal act are given vastly different meanings under the law, and as a result, carry different consequences. Moreover, the fact that in 1993-1994 ten violent crimes of two kidnappings, four armed robberies, and four rapes occurred in North Carolina's schools does not necessarily lead to the conclusion that school violence is an epidemic nor does this data lead to the conclusion that school resource officers are the most effective program and method to address and prevent school violence.

After sensationalizing the ten violent crimes, the Commission presents racially biased arguments to support its conclusion that school resource officers. Without citing any evidence or data to support its conclusion, the Commission states, "in the past thirty five years a demographic shift from the nuclear family of the 1950s to an ever increasing proportion of single-parent families has taken place. The rate of illegitimacy has grown alarmingly. Many new families are headed by females who are at or just above the poverty line. Moreover, in those families where mother and father are present, the dual income family is becoming the norm, producing latchkey children who turn to peers and media for advice before family."⁵ Thus the Commission concludes that these demographic trends indicate a "diminished capacity" of many families to deal with adolescent development.⁶ Factors such as poverty, single parent homes and lack of adequate supervision are predictors and determinants of delinquent behavior and produce discipline problems in public school, the Commission finds.⁷ However, the Commission states that the causes of youth violence require a long-term approach but the consequences of youth violence must be dealt with immediately because "in the short run, we need to apply a tourniquet and stop the bleeding."⁸ The way to stop the hemorrhaging of school violence was to deploy law enforcement into the schools of North Carolina to prevent violence.⁹

The Commission defines three roles of school resource officers.¹⁰ First, the school resource officer is a peace officer and must maintain order on campus with the legal authority to arrest.¹¹ Second, the school resource officer is a resource to teachers in areas

of law enforcement in the classroom such as traffic and drug laws.¹² Finally, school resource officers are to be counselors and refer children to community resources to address their problems.¹³ After the publication of the Commission's report, the General Assembly allotted funding for school resource officers and the presence of school resource officers in schools across North Carolina grew by 220% from 234 officers deployed in 1995-1996 to 773 officers deployed in 2005-2006.¹⁴ This historical context is critical to understand that the deployment of police in the public schools has created the "School to Prison Pipeline" in North Carolina.

To assess the effectiveness of school resource officers, the Commission suggested surveying the experiences of students and teachers.¹⁵ While I am not a teacher, for the past seven years I have been privileged to represent scores of poor children before the trial and appellate courts of North Carolina and have witnessed the horrors of having police in our State's schools. The following testimonies are not anomalies or aberrations. They are the norm for racial and ethnic minorities and the poor. These testimonies demonstrate that school resource officers across the State of North Carolina are overzealous and racially-biased in their role as peace officers tasked with keeping order in the schools and ineffective in their roles as counselors. These stories show the danger of having police act as disciplinarians and administrators and the consequences that are dealt to racial and ethnic minority and poor children.

JOHN¹⁶

I began my dream job defending the poor as a Public Defender in 2005 in Orange County, NC. Soon thereafter, I told my boss that I wanted to work in juvenile court because I am deeply passionate about children, especially poor children. One of my first cases in juvenile court will remain in my memory as long as I am alive. As I looked at the petition in the manila folder on my desk, I could not believe the words I read. An eleven-year-old African-American boy was charged by the School Resource Officer for stealing (i.e., "larceny") because he picked up a piece of chewing gum from an open locker.

The most difficult part of the case was not litigating the case before a Juvenile Court Judge who ultimately found him delinquent or guilty. The Judge believed that juvenile court was a court to deliver social services to children. At the close of the trial, I had to explain to the child that he was convicted of the crime of stealing and would be placed on probation for one year. The collateral consequences of his conviction included missing school to attend court hearings, being labeled delinquent and a thief and him internalizing this label, and the possibility of more severe punishment, such as placement in the custody of the Department of Social Services or in a wilderness camp if he did not comply with any condition of probation. The look of disbelief and disappointment on his face began to break my trust in juvenile courts to regulate the conduct of School Resource Officers.

TRAYVON

In 2007, in Durham, North Carolina, a fifteen-year-old African American boy was charged with assaulting a substitute teacher at Hillside High School. The white male teacher turned his back to the class to write the day's lesson on the board. As he was writing on the board, a student in the class threw a piece of paper at this back. When he turned back to face the class, the students erupted into laughter but none of the students would admit throwing the paper. Trayvon had been suspended for minor school misbehavior before and had a reputation as a trouble-maker at the school. The School Resource Officer charged Trayvon with assaulting the teacher but he denied doing so repeatedly. Trayvon is the son of a 35-year-old, single mother of four children and the son of a man in prison whom he had never met before.

Despite my best efforts during a trial, Trayvon was found delinquent and placed on probation for six months for common adolescent behavior. As we walked out of the courtroom, he laughed at the substitute teacher, the judge, and the juvenile court probation officer. I had a very difficult time explaining to him why his misbehavior was criminal.

The delinquency label becomes a self-fulfilling prophecy for some children. In *Delinquent by Reason of Poverty*, Professor Tamar Birckhead explains the stigmatization and the consequences of labeling a child as delinquent:

"This concern draws on the sociological literature on 'labeling theory' or the concept that attaching a label to a behavior creates further 'deviance.' Once the label of 'juvenile delinquent' is formally imposed, it is readily accepted by both the child and the community, and the child is defined and perceived by others through the lens of this label. Community members, police officers, teachers, and potential employers then interact with and judge the child according to that description. In this way, children can be stigmatized through even the most minimal contact with the juvenile court system."¹⁷

Trayvon accepted and internalized the label that he was delinquent, guilty, bad and a criminal. A few months after the incident at school, while he was still on probation, he was charged with several crimes of breaking and entering around his neighborhood. When I asked him why his fingerprints were in some of the homes, he told me he needed money to buy clothes and shoes for school. I believed him because every time I met with him, I noticed the clothes and shoes he was wearing were old and outdated and he always had dirt under his nails. He decided to plead guilty to three incidents of breaking and entering. He was placed on the next highest disposition – Level 2. This meant if he violated any conditions of his probation, he would be brought back into court, placed on the next highest disposition and could be incarcerated in a youth development center, North Carolina's misleading term for a youth prison. He was one step away from incarceration.

If a child is found guilty of a felony, the Juvenile Court Counselor's Office reports the felony conviction to the child's school. Trayvon faced further stigmatization

at Hillside High after they learned he was a felon. One day he asked his teacher if he could use the bathroom. The teacher said he could, but he left without the hall pass. As he was leaving the bathroom, an assistant principal stopped him and asked him to show a hall pass. The School Resource Officer was called after Trayvon said he did not have a hall pass. Trayvon was suspended for a few days for not obeying school rules. Attending school was a condition of his probation; so, he was charged with violating probation. Luckily, Trayvon's teacher wrote a letter indicating she had given him permission to go to the bathroom. At the court hearing for the probation violation, Trayvon's mother told me that the school was targeting him again because he was charged in adult court the following week with pulling the fire alarm. He was removed from the community and sent to a wilderness camp by the Juvenile Court Judge. As a result, his education has been permanently disrupted and his distrust and sense of being treated unfairly by the criminal system will remain with him forever.

KHALIQ

On February 18, 2009, a teacher found marijuana on the classroom floor of a Wake County school. The teacher accused Khaaliq, a 12-year-old African-American boy, of possessing the marijuana and he was taken to the assistant principal's Office. The principal called the School Resource Officer and told him that he had "a kid in his custody." When the School Resource Officer arrived, he saw the principal questioning Khaaliq and began to participate. The School Resource Officer then left the questioning and went to the classroom to see if he could determine which student had the marijuana. The School Resource Officer returned and they decided to move Khaaliq to another building on school property.

Khaaliq was escorted by the School Resource Officer who was dressed in a uniform and armed with a gun to his patrol car, which was located in the school's parking lot. The School Resource Officer searched Khaaliq before putting him in the patrol car and drove him to another building. During the drive, the School Resource Officer questioned Khaaliq; however, Khaaliq remained silent.

Once they arrived at the building, Khaaliq was escorted out of the patrol car by the School Resource Officer and led into the principal's office. Khaaliq was alone with the School Resource Officer as they waited for the principal. For the next six hours, from 9:00 am to 3:00 pm, Khaaliq was confined and interrogated by the Principal and the School Resource Officer. Khaaliq was not read his *Miranda* rights, nor was Khaaliq told that because he was 12-years-old his parent or guardian must be present during the interrogation, pursuant to North Carolina law.

During the six hours, Khaaliq did not eat or drink, but he was allowed to use the bathroom. Khaaliq was told he was not free to leave or attend classes. At the end of the school day, at approximately 3:00 pm, Khaaliq's mother was finally contacted and informed that she needed to pick her son up.

After Khaaliq admitted that the marijuana was his, the School Resource Officer charged him with possession. The trial court denied his lawyer's motion to suppress the incriminating statement. The North Carolina Court of Appeals held that the trial court erred in denying the motion to suppress because the Officer's presence and conduct significantly increased the likelihood that Khaaliq would give an incriminating response.¹⁸ Because Khaaliq gave the incriminating statement while he was in custody and was not afforded his *Miranda* rights or his right to have his mother present during the interrogation, the Court of Appeals held that his incriminating statement was inadmissible.¹⁹ Most importantly the Court of Appeals noted that "police interrogation is inherently coercive for young people."²⁰ However, by the time the Court of Appeals issued its opinion, Khaaliq had already completed his term of probation and the collateral consequences of juvenile court could not be overturned by the Court of Appeals.

JACOB

On the morning of April 26, 2012, Jacob, a thirteen-year-old, African-American boy and a white classmate had an argument over candy, which ended when the classmate tore Jacob's shirt. Jacob then attempted to leave school. Rather than the teacher calling his mother or the designated teacher who was an advocate for Jacob at the school, she called the Carrboro police officer who was assigned to the school as a School Resource Officer. Jacob used his cell phone and called his mother. She told him to leave school immediately and come home on the city bus. As a single mother struggling in poverty, she could not afford a car. Jacob's father was serving a long sentence in federal prison and Jacob had only met him once or twice. The School Resource Officer ordered Jacob to go to the principal's office. Jacob attempted to leave the school.

As Jacob walked out of school toward the city bus stop to return home, as his mother had directed him to do, the School Resource Officer grabbed him to prevent him from leaving. Jacob pushed him back and the two shoved each other. As Jacob walked out of the school door and crossed the school parking lot, the school resource officer followed him and used his radio to call for additional officers to assist him. When Jacob reached the bus stop, three Carrboro police officers and the School Resource Officer grabbed Jacob and slammed him face down onto the ground. They cuffed his hands and feet. Jacob was not resisting; there was an ant pile near by and the ants were stinging Jacob on his legs. The immense stress created by the School Resource Officer caused Jacob to have a severe asthma attack. The attack was so bad that the police called for emergency medical services.

After his breathing was stabilized, the School Resource Officer threw Jacob into the patrol car and drove him to the Durham County juvenile detention center. Every child who enters a juvenile detention center is searched. Jacob was strip-searched and detained overnight. The school resource officer charged Jacob with the crimes of Assault on a Government Official, Resisting a Public Officer and Disorderly Conduct. The next day, Jacob, his mother, and a teacher went to court and argued that Jacob should be released. Thankfully, the Judge released him. Jacob was suspended from school for three days. His white classmate was not disciplined at all.

Jacob completed 40 hours of community service. His psychologist conducted an evaluation and found that Jacob had severe mental health issues and a learning disability. She further concluded that the police brutality had exacerbated his mental health issues and his adjustment to the school environment. The criminal charges against him were dismissed. Fearing retaliation from school officials and the School Resource Officer, Jacob's mother moved him to the alternative school. His life is forever changed and impacted by that one horrific day at school.

TRACY

On November 5, 2008, a fifteen-year white girl named Tracy and 133 other children arrived by bus to their school, Brunswick County Academy, located in Bolivia, N.C. Brunswick County Academy is an alternative school in Bolivia, N.C. A segment of the student body population was assigned to attend the Academy for committing behavior, substance, and weapons violations in traditional schools. However, other students are at Brunswick Academy for code of conduct or behavioral offenses, pregnancy, because they are parenting teens, high school dropouts or for administrative placements.

As they got off the school bus and walked to the doors of the school, all the children were expecting a regular school day. Consistent with the daily routine of entering the schoolhouse doors, the children passed through a metal detector search located at the back doors of the school. What occurred for the next few hours of their school day on November 5, 2008 was extraordinary and not routine for the children, especially for all the girl students at the Academy. After passing through the metal detectors, all the children were ordered to go directly into the lunchroom. Once they had all been herded into the cafeteria, it was secured as the "holding area". The children were then directed to remain in the lunchroom and they were told they could not leave until they were called. The students were informed that there would be a general school-wide search of each individual student's person and that they would be called one by one to be searched. All the teachers of the school stood monitoring the children in the lunchroom.

The children, including Tracy, were escorted into a classroom one by one where Captain White, the coordinator for the alternative to suspension program and the school resource officer, both men were present. As Tracy and other children were brought into the classroom they were told this was a search. Once in the classroom, each child was asked to remove their coats, turn their pockets inside out, and remove their shoes. School officials searched through the book bags, jackets, and shoes of the juvenile. During the next phase of the search, the socks and clothing of Tracy were patted down and felt by a man.

A more extensive, intrusive, and traumatic search was conducted on all of girls in the school. Without any individualized suspicion that Tracy was carrying contraband in her clothing or bra, Tracy was required to loosen and untuck her shirt, pull her shirt out, shake her shirt, and then using her hands, go underneath her shirt and pull her bra out

from against her body so that any contraband would fall out. This was called a “bra-lift”. The bra-lift created the possibility that she would expose some portion of her torso or breasts in the presence of a male administrator and male school resource officer who were observing the search of all of the girls. During the search of the Tracy, the male official found a half of pill and a half piece of a straw. She was charged with possession of controlled substance and drug paraphernalia. She was placed on probation because the trial court refused to rule that the strip search violated her 4th amendment rights.

CONCLUSION

In 2011, 43% of complaints to NC juvenile courts were from the schools. Common minor school offenses were 31% of the referrals to juvenile court.²¹ 12% percent of the minor complaints were for simple assault, 9% were for larceny, 5% were for simple affray (fighting or arguing), and 5% were for disorderly conduct at school.²² Referrals to juvenile court for serious school crimes only comprised 8%: 2% for Assaulting a Governmental Officer, 2% for Resisting a Public Officer, 2% for Possession of Marijuana and 2% for Weapons on educational property.²³ Thus, most of the complaints to juvenile court during the 2011 school year were for minor misbehavior and common adolescent behavior.

In 2011, 12,076 black youth were referred to juvenile court while only 9,650 white youth were referred to juvenile court for misdemeanor offenses such as simple assault, larceny, simple affray (fighting or arguing), disorderly conduct at school, assault on a governmental officer, resisting a public officer, and possession of marijuana.²⁴ Thus, black youth were 49% of the referrals to juvenile court while white youth were 38%.²⁵

Yet, in 2011, of the 2,277,967 children living in North Carolina, 548,973 were black and 1,311,809 were white.²⁶ Black children constitute 24% of the child population in NC yet 49% of those referred to juvenile court by school officials for misdemeanors. By comparison, white children are 58% of the child population in NC but they are referred to juvenile court at a rate of only 38% for misdemeanors. Since cases are referred to juvenile court at the discretion of school resource officers and school officials, it is clear that African American youth are disproportionately referred to juvenile court by school officials for misdemeanor offenses.

The consequences of walking into a juvenile court room for a child are severe and long-lasting. A child who is referred to juvenile court is more likely to become disengaged from school and drop out which is directly correlated to being incarcerated in prison. 80% of the prison population dropped out of school.²⁷ Incarceration at a minimum-security prison in North Carolina costs \$23,491 per inmate per year.²⁸ By stark comparison, educating a single student for through high school in North Carolina costs only \$142,027.²⁹ Thus it is more costly to incarcerate than it is to educate a child.

This is unique moment in the history of our nation. We are faced with a critical choice. We can remove police from our nation’s schools and use our limited resources to invest in prevention and intervention strategies that will reduce the school to prison

pipeline. Alternatively, we can continue to use our public education system as a gateway to incarcerate the poor and minority people among us. The prophet Isaiah warns us that the latter is an immoral, unjust, and dangerous path to follow:

“Woe to those who make unjust laws, to those who issue oppressive decrees, to deprive the poor of their rights and withhold justice from the oppressed of my people, making widows their prey and robbing the fatherless. What will you do on the day of reckoning, when disaster comes from afar? To whom will you run for help? Where will you leave your riches?”³⁰

¹ Protected by Common Law Copyright. All rights reserved by Author Geeta N. Kapur.

² Governor's Crime Commission, *Preventing School Violence by Helping Communities Help Children: School Resource Officers: An Analysis Overview*, 1995.

³ *Id.* at 3.

⁴ *Id.* at 3.

⁵ *Id.* at 3.

⁶ *Id.* at 4.

⁷ *Id.* at 4.

⁸ *Id.* at 4.

⁹ *Id.* at 5.

¹⁰ *Id.* at 9-11.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Attorney General Roy Cooper and Bryan Beatty, *A Report to Governor Mike Easley: Keeping North Carolina Schools Safe and Secure*, November 2006 at 10.

¹⁵ Governor's Crime Commission, *Preventing School Violence by Helping Communities Help Children: School Resource Officers: An Analysis Overview*, 1995 at 11. “The ultimate desired outcome of an SRO program is to maintain and improve the safety of the learning environment in our schools through the reduction and prevention of school violence. The best way to measure whether an SRO program is achieving this desired outcome is to ask those who are directly involved in such a program – the students and teachers in the schools. Thus, surveys of students and teachers are important tools to measure program effectiveness.”

¹⁶ To protect the identity of the children, a pseudonym will be used instead of their legal names.

¹⁷ Tamar Birkhead, *Delinquent by Reason of Poverty*, Washington University Journal of Law and Policy, Vol. 38, p. 38, 2012.

¹⁸ *In the Matter of K.D.L.*, 207 N.C. App. 453, 700 S.E.2d 766 (2010).

¹⁹ *Id.* at 461.

²⁰ *Id.* at 458.

²¹ North Carolina Division of Juvenile Justice, Annual Report 2011, p. 13.

²² *Id.* at 20.

²³ *Id.* at 20.

²⁴ *Id.* at 11.

²⁵ *Id.*

²⁶ Children's Defense Fund, *Children in North Carolina* at <http://www.childrensdefense.org/child-research-data-publications/data/state-data-repository/cits/2011/children-in-the-states-2011-north-carolina.pdf>

²⁷ Sam Dillon, *Study Finds High Rate of Incarceration Among Dropouts*, NY Times, October 8, 2009, <http://www.nytimes.com/2009/10/09/education/09dropout.html>

²⁸ North Carolina Department of Safety, Cost of Supervision for fiscal year ending June 30, 2011 located at <http://www.doc.state.nc.us/dop/cost/>

²⁹ John W. Pope Civitas Institute located at <http://www.nccivitas.org/2010/how-much-does-it-cost-educate-high-school-graduate/>

³⁰ *Isaiah* 10:1-3.

HEARING BEFORE THE
SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND
HUMAN RIGHTS
ON
“ENDING THE SCHOOL-TO-PRISON PIPELINE”

Statement
of
Georgia Appleseed Center for Law & Justice
Sharon N. Hill, Executive Director
Robert L. Rhodes, Jr., Director of Projects

December 12, 2012

Effective Student Discipline: Keeping Kids in Class
Creating a “School-to Success Pipeline”

The Georgia Appleseed Center for Law & Justice (“Georgia Appleseed”) appreciates the opportunity to present this statement to the Subcommittee on the Constitution, Civil Rights and Human Rights of the Senate Committee on the Judiciary. We commend Subcommittee Chair Durbin and Ranking Member Graham for their focus on this critical issue.

Georgia Appleseed is a non-partisan not-for-profit organization devoted to law that serves the public interest. Using the skills of hundreds of volunteers, mainly lawyers and other professionals, Georgia Appleseed focuses on achieving grassroots changes to laws and policies that unfairly impact children, the poor and marginalized people in our state. Our mission is to increase justice in Georgia through law and policy reform. Georgia Appleseed is an independent affiliate of the national Appleseed network.

Introduction

In 2009, Georgia Appleseed, ultimately with the assistance of over 100 volunteer lawyers and other professionals, began a comprehensive study of student discipline policies, practices and outcomes in Georgia’s K-12 public schools. The investigative phases of this project were completed and a detailed report of findings and recommendations was issued in June 2011.¹

Georgia Appleseed is now in the advocacy phase of this project: We have presented the findings of the Report to more than 1,000 public education stakeholders; we have advocated for policy changes at the state government level, and we are attempting to serve as a catalyst for local change initiatives at the district and school level throughout Georgia.

In this statement we (a) explain the reasons for our effort, (b) describe the scope of our analysis, (c) summarize key findings, and (d) recommend actions that the Congress and the U.S. Department of Education (“Department”) should take to help end the “School-to Prison Pipeline.”

Rationale

The importance of obtaining at least a high school diploma in the Twenty-First Century and the existence of the school to prison pipeline are facts beyond reasonable dispute.² Stakeholders have suggested several reasons for low high school graduation rates and for the high rate of incarceration of undereducated persons in this country.³

At Georgia Appleseed, we believed intuitively that one significant factor affecting these challenges could be the extent of exclusionary discipline being imposed in our public schools.

¹ GEORGIA APPLESEED CENTER FOR LAW & JUSTICE, EFFECTIVE STUDENT DISCIPLINE: KEEPING KIDS IN CLASS (2011) [hereinafter “Report”], available at <http://www.gaappleseed.org/publications/>.

² Report at 19-20.

³ Report at 21-22.

After all, to the extent that a child is removed from the class room, he or she will likely not be learning.⁴ In addition, we wondered whether expansive use of a discipline tool that denied access to instructional time made sense especially if there were reasonable alternatives available that would provide for school safety and a good learning environment.

Our concern was heightened by the issuance of multiple reports from other jurisdictions, including Florida, Texas, and Louisiana, as well as the cities of New Orleans and Philadelphia, raising very significant concerns about the use of exclusionary discipline especially with regard to potentially disparate impacts on poor students and students of color.⁵ In addition, we examined a review of statewide discipline data issued by the Georgia Department of Education (“GaDOE”) in 2005. The report called for further research in a number of areas including the potential for “... disproportional application of discipline to African-American students.”⁶

For these reasons, Georgia Appleseed committed to undertake a comprehensive assessment of the student discipline system in Georgia’s K-12 public school system.

Scope

Data Analysis – With the cooperation of GaDOE, Georgia Appleseed was given access to a comprehensive set of student discipline data covering seven years (School Years 2003-04 through 2009-10).⁷ With the assistance of professionals from the Atlanta office of a major national accounting firm, we have created a comprehensive student discipline data base. Key findings based upon an analysis of these data are discussed below.

Stakeholder Interviews – In the fall of 2010, Georgia Appleseed volunteers conducted over 200 interviews with public education stakeholders including district and school-level personnel from twelve school districts around Georgia. With the cooperation of the Georgia PTA, we also conducted an electronic survey designed to capture the views of parents and students. The views on student discipline and related issues expressed in the interviews and through the survey are compiled in the Report as “Voices from the Field.”⁸

Law & Policy Review – Georgia Appleseed reviewed and summarized the state law governing student discipline.⁹ In addition, our lead *pro bono* law firm carried out a review of the district-level codes of conduct in effect in 15 school districts.¹⁰

⁴ Our intuitive reaction has been bolstered by an internal study done by the Georgia Department of Education in 2011 which concluded that absences from class for any reason beyond five days can result in measurable adverse academic consequences. . See GA. DEP’T OF EDUC., STUDENT ATTENDANCE AND STUDENT ACHIEVEMENT (unpublished report)(2011) on file in the offices of Georgia Appleseed.

⁵ Report at 22-26.

⁶ Report at 22-26.

⁷ Report at 26, citing GA. DEP’T OF EDUC., POLICY DIVISION REPORT:2004-2005 ANALYSIS OF STATEWIDE DISCIPLINARY DATA (2005)

⁸ With GaDOE’s continuing cooperation, we have integrated an eighth year (2010-11) into our data base and, as of this writing, are working to add the 2011-12 data as well. Some of the information provided below is based upon the updated data.

⁹ Report at 61-78.

¹⁰ Report at 79-88 and Appendix E.

Key Findings

In our data analysis we focused primarily on the incidence rate for out of school suspensions (“OSS”) as a means of comparing school districts and individual schools. Thus, the OSS ratio discussed below refers to the percentage of students in the district or the school that received at least one out of school suspension in a particular school year.

It is encouraging to note that the overall statewide OSS ratio appears to be on a downward trend during the period of our review. In the years from 2004 through 2008, the ratio hovered between 9.3% and 9.5%. In 2010, the rate was 8.1%.¹¹ Our review of the 2011 data puts the ratio at 7.7%. On a statewide basis, in the latter years of the review timeframe, high school and middle school average OSS rates were in the 12-15% range while only four percent or less of elementary school students on the average were given an out of school suspension.¹²

Wide OSS Rate Variability Among and Within Districts - Georgia’s 159 counties plus 20 municipalities each operate an independent school district.¹³ The districts are widely variable in student population with four Metropolitan Atlanta school districts each having more than 100,000 students and eleven rural school districts each having less than 1,000 students. The districts reflect widely varying demographics and socio-economic settings.¹⁴

The student discipline data reviewed also reveal sharp differences among the school districts in the use of exclusionary discipline.¹⁵ In 2011, eight school districts reported overall OSS rates of less than one percent including one district with a student population in excess of 30,000. On the other hand, ten districts reported OSS rates in excess of 15%, i.e., about double the state average. Stakeholders must continue to identify and address the factors that would lead to such wide variability in discipline practices.

Disparity in the use of OSS also exists within individual school districts. For example, one large Metro Atlanta district had an average OSS rate in 2011 that fairly closely tracked the state-wide average. An examination of individual school data in that district, however, shows that high schools in the less affluent southern section of the county have OSS rates well above the state average including one high school that suspended in excess of 30 percent of the student body at least once in 2011. On the other hand, OSS rates in most of the high schools in the northern more affluent reaches of the county had OSS rates of less than five percent. Similarly, in a mid-sized urban school district, the “magnet” high school with a selective admission policy reported an OSS rate of 2.1 percent in 2011 while most other high schools has OSS rates in excess of 20% with one school reporting a rate of 36.3 percent.

¹⁰ Report at 29 and Appendix B.

¹¹ Report at 35.

¹² Report at 37.

¹³ Certain special state schools are also considered as separate districts for data reporting and other purposes.

¹⁴ For extensive information concerning student demographic information for each school district and each school in Georgia, see the “School Reports” section on the GaDOE website at <http://www.doe.k12.ga.us/Pages/Home.aspx>.

¹⁵ Report at 42-43.

OSS Ratios and Graduation Rates – In the Report,¹⁶ we compared the graduation rates reported for school years 2005 through 2010 by school districts with the highest historical use of OSS with the reported graduation rates for the same years for school districts that historically had the least reliance on OSS discipline. This analysis showed that the “low OSS” districts consistently out-performed the state average graduation rate and graduated students at rates substantially higher than the “high OSS” districts. For example, in 2011, the low OSS districts reported an average rate of 89.39% compared to the state average rate of 80.80%. In that year, districts that imposed OSS at the highest rates reported an average graduation rate of 74.84%.¹⁷

For 2011, a consistent methodology for calculating graduation rates was adopted nationally. Under the revised approach, Georgia’s four-year graduation rate was 67.5%.¹⁸ In this school year, school districts with relatively rare use of OSS reported graduation rates on the average of 77.2 percent as compared to a 64.4 percent average rate in high OSS districts. In three medium sized high OSS districts with relatively large urban populations, the reported graduation rates were only between 50 and 55 percent. In the high school mentioned above with the OSS rate exceeding 36 percent, less than one-half of the students graduated.¹⁹

Low graduation rates no doubt are the result of a number of factors, but there exists a clear negative correlation between extensive use of exclusionary discipline and educational attainment in Georgia’s public schools.

OSS Disproportionality - Our analysis demonstrated that African-American students in Georgia K-12 public schools were consistently the subject of OSS discipline at a rate on the average more than three times that of students of other racial or ethnic subgroups.²⁰

When analyzed on a district-level basis, the race/ethnic risk ratio data reflect some variability but not to the extremes reflected in the overall OSS incident rates For the period under review, in each year only 12 to 20 school districts had calculated risk ratios for African-American students of less than 1.5 and many of these districts had a very limited enrollment of African-American students. Put another way, approximately 90 percent of Georgia’s school districts consistently had OSS ratios for African-American students that exceeded the level that experts say require further assessment to evaluate potential racial disproportionality.

On the other end of the scale, each year 12 to 15 school districts reflected risk ratios for African-American students greater than 4.0. These were not always the same set of districts but some districts regularly were in this category.²¹

¹⁶ Report at 43-44.

¹⁷ Report at 44, Figure 4.

¹⁸ This rate ranks Georgia among the lowest performing states. See Jeff Martin, *Ga. high school graduation rate is 67 percent*, ATLANTA JOURNAL-CONSTITUTION (November 27, 2012), available at <http://www.ajc.com/ap/ap/education/ga-high-school-graduation-rate-is-67-percent/nTGT2/>.

¹⁹ The 2011 average rates were derived from information available on the GaDOE website referred to in Note 14 *supra*.

²⁰ Report at 54-55.

²¹ Report at 56. The “Risk Ratio” methodology is discussed at pages 53-54 of the Report.

Our analysis also showed that students eligible for the free or reduced cost meals program were between 2.25 and 2.56 more likely to receive an OSS than ineligible students.²² English language learners also were at elevated risks of exclusionary discipline ranging from 1.9 to 2.46 times that of their English proficient classmates.²³ Students with special needs received OSS at a rate a bit in excess of 1.5 times that of general education students.²⁴

Nature of OSS Discipline Incidents - In school year 2010, nearly 70 percent of OSS in Georgia were imposed for nonviolent behaviors.²⁵ While we recognize that certain nonviolent behaviors may arguably be serious enough to warrant an OSS, we believe that many of these behaviors could be better addressed through the use of non-exclusionary alternatives discussed below.

The GADOE discipline reporting program requires that the nature of the disciplinary event be identified with a code number. Twenty-seven specific code entries are provided for offenses such as arson, fighting, tobacco use, vandalism, etc. One of these code entries is “24 Other.” Our review demonstrated that for the period under review more than half of all OSS were imposed when the only description for the incident was “Other.” In 2009 and 2010 more than 61 percent of the OSS were based solely on an incident characterized as “Other.”²⁶ We are pleased to report that GaDOE has recently decided to issue guidance that would prohibit the use of this incident code when the proposed disciplinary action is an OSS greater than 10 days.

Alternatives to Exclusionary Discipline – In our Report we recognized that effective student discipline is vitally important to maintaining the safety of *all* school children and to assuring that *all* that all students are provided with an environment that is fully conducive to learning. We also believe that *each* child in our public school system, even one who is sometimes unruly, should have a reasonable opportunity to obtain a quality high school education. We recognize the very difficult “balancing act” that public school educators must perform every day to support these two vital interests.²⁷

It would, therefore, be unfair to the thousands of Georgia K-12 educators who are committed to the success of their students to criticize arguable overuse of exclusionary discipline in the absence of effective alternatives. The good news is that there are sound, evidence based practices that can maintain collective safety and order while nurturing individual students.²⁸ Such practices may include the implementation of school-wide climate enhancement efforts using the framework of positive behavioral intervention and support (“PBIS”). PBIS initiatives are now under way in many Georgia schools. Another approach may be more effective use of in school suspensions. While there is no “one size fits all” answer, there is growing evidence that

²² Report at 57.

²³ Report at 59.

²⁴ Report at 60.

²⁵ Report at 46-47.

²⁶ Report at 47-49.

²⁷ Report at 20-21.

²⁸ Report at 89-100.

effective alternatives to exclusionary discipline can be implemented given focused leadership and adequate resources.²⁹

Recommendations

Georgia Appleseed recommends that the Congress and the Department consider taking the following steps:

National Conversation on Zero Tolerance – In the Report, Georgia Appleseed calls for a “conversation” within school districts about the wisdom and efficacy of zero tolerance policies.³⁰ We urge districts to consider certain changes to such policies. The emergence of student discipline zero tolerance policies around the country arguably finds its genesis in the mandates imposed by the federal Gun Free Schools Act enacted in 1994.³¹ Accordingly, a national conversation sponsored by the Department could be a way to trigger effective dialogue on this issue.

Disclosure of Disciplinary Actions – Georgia Appleseed believes that schools and school districts should be required at least annually to disclose to parents the rate of use of exclusionary discipline and to compare those rates to state and district averages. The rates should be disclosed for all students and should also be disaggregated based on racial/ethnic subgroups, on eligibility for free and reduced cost meals, on English language learner status, and on special needs status. These data are collected by Georgia schools and districts currently under state law so that the requirement for transparent disclosure would not impose a significant burden on the school system. Ready access to this information should enhance effective parental involvement. In addition, the requirement for regular public dissemination of this information will likely serve to focus the attention of the school administration on this issue.

We urge the Department to consider whether this obligation could be implemented under existing statutory authority. If not, we urge Congress to consider establishing this requirement as part of the reauthorization process or as free standing legislation.

Resource Allocation – As noted above, effective alternatives to exclusionary discipline are available. In the long term, the implementation of such programs will save money by reducing the number of individuals who would otherwise be housed in the country’s prison system and by unlocking the economic potential of an increasing stream of high school graduates. In the short term, resources must be expended to support the professional development and other expenses always associated with change. State-level resources in Georgia (and throughout the country) are scarce. A key role of the federal government in supporting quality K-12 public education is through the provision of adequate federal funds to supplement state efforts. We urge the Department to clarify the extent to which existing federal

²⁹ For a compendium of recent academic articles on professional development in this area, see 35 TEACHER EDUCATION AND SPECIAL EDUCATION 265-344 (2012).

³⁰ Report at 100-104.

³¹ 20 U.S.C. Sec. 7151(b)(1). Many school districts in Georgia have adopted zero tolerance policies that go well beyond those mandated by federal or state law.

resources may be used to support student discipline change initiatives. We urge the Congress to assure that future appropriations and authorizations carefully consider the long term value of investing in programs designed to assure that all public school students are provided with a reasonable chance to be productive citizens.

Conclusion

Whether one views the issue from a moral/ethical perspective, from a legal/constitutional perspective, or from an economic development perspective, it is simply unacceptable that fully one-third of Georgia's public school children do not timely graduate; that in some school districts just over one-half of the students graduate, and that in some high schools less than 50 percent of the students can take that important walk at graduation to the cheers of their families and friends.

We do not doubt at all the personal commitment of our state's executive leadership to enhancing Georgia's K-12 public education system. We are profoundly aware of how hard the vast majority of district staff members, principals, teachers and guidance counselors work every day in the face of ever dwindling resources. We are, however, in a crisis. Business as usual will not solve this challenge. All of Georgia including government, nongovernmental organizations, parents, students, and those members of the public who may feel that they do not have a direct stake in the success of the public school system must play a role in initiatives for meaningful change.

There are many reasons for low graduation rates. We do not believe that addressing school discipline issues is a "silver bullet" solution to this challenge. We do believe, however, that the changes discussed above can be implemented at relatively low cost and will be a meaningful part of the necessary overall comprehensive strategy to lead to a time when most of Georgia's children will graduate from high school.

Georgia Appleseed is committed to working collaboratively with federal and state stakeholders in this effort.

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December 10, 2012

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U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510
[REDACTED]

Re: Hearing on Ending the School-to-Prison Pipeline

Dear Chairman Durbin, Ranking Minority Member Graham, and Members of the Subcommittee on the Constitution, Civil Rights, and Human Rights:

Thank you for the opportunity to submit testimony for the hearing on ending the school-to-prison pipeline before the subcommittee on the Constitution, Civil Rights, and Human Rights, Senate Committee on the Judiciary. My name is Em Elliott and I am a member of the Georgia Safe Schools Coalition. We have witnessed the school-to-prison pipeline firsthand in Georgia and as a coalition of parents, teachers, counselors and students, we urge the committee to resolve to keep students in our schools, and not in prisons.

We believe that all students deserve a safe, quality education free from bullying and harassment and we work hard to help Georgia school districts pass policies that are inclusive of LGBTQ youth. In fact, our coalition was formed in response to the suicides of several Georgia youth, all of whom were bullied due to their perceived sexual orientation and immigrant status. We understand the real cost of human suffering that comes from bullying and unsafe schools and we know how important strong policies are. However, in their zeal to address peer-to-peer bullying and harassment, policy makers and school officials have often adopted harsh, zero-tolerance discipline policies and practices – such as suspensions, expulsions and arrests – that exclude students from school. This unyielding approach to discipline results in students being pushed out of school and placed onto a path into the criminal justice system called the “school-to-prison pipeline.” The students primarily harmed by this approach are students of color, students with disabilities, and LGBTQ youth, the very youth we are working to protect.

Zero-tolerance disciplinary measures fail to address the root causes of bullying or end the cycle of bullying by teaching appropriate behavior. Responding to bullying with harsh discipline measures often hurts the very students they are designed to protect. To defend themselves, victims of bullying may carry weapons or employ other survival tactics that endanger the school community. As a result, those who have been bullied are more vulnerable to being suspended, expelled and arrested.

So-called “bullies” are typically youth struggling with their own insecurities (about intelligence, social skills, physical appearance, gender expression, etc.) and are just learning to understand themselves. Interventions that rely on exclusion and criminalization miss critical opportunities to respond students’ unique needs and teach misguided youth the social and emotional skills they will need to grow into healthy adults.

Zero tolerance practices and student-on-student bullying often affect students in the same way, resulting in lower academic scores, truancy, psychological trauma, diminished self-worth, acting out due to frustration or embarrassment, and dropping out of school altogether. Schools essentially become the bullies when they employ “get tough” tactics to address bullying.

Instead of criminalizing youth misbehavior, policymakers should implement common sense solutions that make schools safe environments for all students. Instead of pushing kids out of school, they should train teachers, administrators and security officers, invest more in guidance counselors and school psychologists, and facilitate the re-entry and re-enrollment of students returning from expulsions and long-term suspensions.

The Georgia Safe Schools Coalition in partnership with Georgia Equality work together to create a balance in Georgia schools by encouraging comprehensive anti-bullying policies that include LGBTQ youth, while simultaneously training teachers to properly and effectively respond to bullying in a way that does not re-victimize students and send them into the school-to-prison-pipeline. We have seen firsthand how effective a restorative justice approach is and we work hard to educate communities in Georgia about the school-to-prison pipeline and its consequences.

Given this, we urge the federal government to support communities in their fight to end the school-to-prison pipeline. We encourage the government to work to reduce racial disparities in discipline, promote alternatives to harsh punishment, and ensure that all young people have the opportunity to succeed.

Sincerely,
Em Elliott and members of the Georgia Safe Schools Coalition

**Testimony of Geoffrey Canada,
President/CEO, Harlem Children's Zone &
Harlem Children's Zone Promise Academy Charter Schools**

**Submitted to the Senate Committee on the Judiciary's Subcommittee on the
Constitution, Civil Rights, and Human Rights**

December 12, 2012

Chairman Durbin, Ranking Member Graham, and Members of the Committee:

Thank you for this opportunity to submit testimony to this committee regarding "Ending the School-to-Prison Pipeline". I am Geoffrey Canada, President/CEO of the Harlem Children's Zone®, and President of the Harlem Children's Zone Promise Academy® Charter Schools. My testimony is influenced by almost 30 years of work with children of color in Central Harlem, NY. I also serve as Chair of the Children's Defense Fund's Board of Directors. CDF's Cradle to Prison Pipeline® Campaign has been instrumental to the process of ending the well-worn path that leads large groups of our young people to incarceration.

Unfortunately, many of the solutions to increasingly dangerous and violent schools have relied on police presence, zero tolerance policies, metal detectors, and the juvenile justice system. I believe that the solution is to raise our children in a culture of excellence, with college and a career in their future, and that high expectations matter.

To that end, I am proud that the United States Department of Education modeled their Promise Neighborhood competitive grant program after our work at HCZ®. To date, 41 grants have been awarded to urban, suburban, rural and tribal communities around the country, including places like Berea, KY; St. Paul, MN; Buffalo, NY; San Antonio, TX; Charlottesville, VA; and Fresno, CA. These grants support communities as they build place-based, comprehensive initiatives that will transform the odds for entire neighborhoods, rather than just help a few kids overcome the odds. While high-achieving schools must be at the core of any Promise Neighborhood, the work is not only about creating successful schools. It is about a coordinated, integrated system of high quality programs for children of all ages, spanning from birth through college graduation and career. Promise Neighborhoods strive to break the cycle of poverty by improving academic, social and health outcomes.

The Cradle to Prison Pipeline®

The types of community challenges I have observed over several decades in Harlem are the same ones I now see in communities around the country whether they are Black or White; rural or urban; big or small cities; or Native American reservations.

Using Harlem as an example, a child faces nearly insurmountable risk in his formative years.

- He is likely born into povertyⁱ and born to a young woman without adequate insurance, employment, or familial support.ⁱⁱ In fact, 72.5% of all children born in Harlem are born into poverty. 64.4% of births are to single mothers.ⁱⁱⁱ

- If such a child follows the trajectory of the vast majority of his peers, he will fail to attend an early childhood education program and find himself developmentally behind before even entering school.^{iv}
- He then will enroll in a struggling, low-quality school.^v
- His family may need to be strengthened through social services. Central Harlem has the second highest rate reported child abuse in the city and the second highest number of children living in foster care in the city.^{vi}
- He will see his peers over-represented in grade retention, suspension, expulsion, and drop-out rates.^{vii}
- By eighth grade, he may be among the 86% of Black public school students who cannot read at grade level.^{viii}
- He may already be familiar with the criminal justice system. Black children are nearly nine times as likely as White children to have an incarcerated parent.^{ix}
- His neighborhood may be overwhelmed with drugs, crime, and violence. Central Harlem has the highest number of reported violent felonies in Manhattan^x, as well as the highest number of youth in detention.^{xi}
- Eventually, he may be one of the many Black teens in his community who never graduate with a high school diploma.^{xii} Nationwide, only 52% of Black students graduated from high school within four years.^{xiii}
- Lastly, he will enter a tough economy where unemployment is rampant.^{xiv} He will lack the education necessary to compete. In Central Harlem only 25% of adults 25 years and older are high school graduates and only 20% of adults 25 years and older are college graduates.

The point is, such a child has enormous odds to overcome to avoid prison. Nationally, 1 out of every 3 Black boys born in 2001 can expect to be imprisoned at some point during his lifetime.^{xv} These systematic disadvantages have led to what the Children's Defense Fund terms The Cradle to Prison Pipeline®.

This pipeline leaves us with more than one type of loss. First and foremost, there is the wasting of human potential and devastated lives. For moral reasons alone, this must end.

Then there is, of course, the literal and direct cost of incarcerating our population. In New York State, we spend \$265,000 per child on average each year to incarcerate youth in facilities run by the Office of Children and Family Services^{xvi}. Generally, not only are we spending upwards of \$52 billion a year nationally in correctional costs, but recidivism rates remain too high – 43% of prisoners nationally return in three years.^{xvii}

Next, there are the additional costs that arise as a result of incarceration. For example indirect costs like providing additional social services, child welfare, and education programs, generally born by other government agencies, non-profit groups, and private citizens alike.

Finally, when children are not able to reach their full potential and become successful, educated, citizens, this leads to major economic loss for our nation. And as today's poor children enter tomorrow's economy, under-educated and ill-prepared, the cost to America's future competitiveness in the world marketplace is incalculable. In America's inner cities, more than half of all black men do not finish high school.^{xviii} The impact of this is devastating communities: consider that, "by their mid-30's, 6 in 10 black men who had dropped out of school had spent time in prison."^{xix}

The Children's Zone® Strategy

In the mid-1990s it became clear to me that despite heroic efforts at saving poor children, success stories remained the exception. Few children beat the odds. My kids in Harlem faced not just one problem that could be tackled by any one specific program, but encountered obstacles everywhere that they turned. Our piecemeal approach was of limited value against a perfect storm of problems and challenges. Vast numbers of kids were still failing out of high school leading to unemployment, antisocial behavior, drug abuse, and of course, prison.

Instead of celebrating the few children who beat the odds, we needed to change the odds for the entire community by working with these kids and their families and their communities, enveloping them in healthy and encouraging environments at every stage of life, starting from birth all the way until they graduate from college, effectively ending the cycle of generational poverty. This is a long process, but today we are beginning to see big results in the form of a new generation of college graduates coming back to Harlem, not only to bring economic prosperity back to their neighborhood, but also to be the role models and eventually parents for the next generation of children growing up here.

We started the Children's Zone® in the late 1990s with 24 blocks and over the last decade have grown in three phases to a neighborhood encompassing 97 blocks and over 11,000 children. In FY12, HCZ, Inc. served 23,026 clients—11,746 youth and 11,280 adults.

In this testimony I've included images of two important maps.^{xx} Using rarely accessible data from the criminal justice system, Laura Kurgan at Columbia University's Spatial Information and Design Lab partnered with the Justice Mapping Center to create maps depicting a few neighborhoods in the country's biggest cities where a disproportionate number of those incarcerated come from. In many places, including in Harlem, the concentration is so dense that states are spending in excess of a million dollars a year to incarcerate the residents of single city blocks.

Image 1: Map of Manhattan

Created by Columbia University's Spatial Information and Design Lab. Boxed area in upper portion of the island is the Harlem Children's Zone. The redder the area, the higher the percentage of the population from that area in prison.



Image 2: Map of Harlem Children's Zone in Central Harlem, NY

In 2003 Columbia University's Spatial Information and Design Lab found that there were 7 "million dollar blocks" in the HCZ, with costs per block ranging from \$1,225,000 to \$3,040,000.



In 2003 this data indicated that the lifetime cost of imprisonment for residents living in the Harlem Children's Zone was approximately \$42 million. In turn, we at HCZ estimate that on average we are investing approximately \$5,000 per child per year. Our results^{xxi} speak for the return on this investment:

- **Parents are reading more to their children.** At The Baby College®, a program for parents of children aged 0-3, our pre and post surveys of parents showed that 88% of parents who read to their children fewer than 5 times per week at pre-test increased the amount of time they spent reading to the children.

- **Four year olds are school-ready.** After only a year in our early childhood programs, 99% of our children attained a “school readiness” classification of average or above compared to 89% at pre-test on the Bracken Basic Concept Scale. Also, at pre-test, 35.4% of children (57 of 161) had a school readiness classification of advanced or very advanced; at post-test, 73.3% (118 of 161) were in these categories.
- **Our families remained intact.** Only 0.6% of those families enrolled in our preventive program had children placed into foster care.
- **Poor minority youth are narrowing and closing the racial achievement gap, dramatically reducing incarceration and pregnancy rates, and increasing college acceptance.** Harvard economist Dr. Roland Fryer and his colleague Will Dobbie evaluated the outcomes of Harlem Children’s Zone Promise Academy’ Charter Schools and HCZ programs combined. According to Fryer, these charter schools closed the achievement gap in mathematics for elementary and middle school students and closed the gap in English for the elementary school students (Dobbie and Fryer, 2011). In more recent, unpublished results, Fryer has found that students who were juniors and seniors in the HCZ high school had higher New York State Regents scores, dramatically reduced incarceration and pregnancy rates, and high rates of college acceptance than a comparison group who did not win the lottery to enter the charter school.
- **Teenagers are graduating from high school and going to college in historic numbers.** 97% of our high school seniors were accepted into college in spring 2012. We continue to support 841 college-enrolled students through their quest for higher education.

In short, we have created a cradle-to-college pipeline for our children, instead of a Cradle to Prison Pipeline®. The theory of change for the Harlem Children’s Zone model is embodied in five key principles. Whenever policymakers and other communities ask us how we achieve our results, we point to our five principles, rather than to any specific programs. They are:

- **Serve an entire neighborhood comprehensively and at scale.** Engaging an entire neighborhood helps to achieve three goals: it reaches children in numbers significant enough to affect the culture of a community; it transforms the physical and social environments that impact the children’s development; and it creates programs at a scale large enough to meet the local need.
- **Create a pipeline of high-quality programs that starts from birth and continues to serve children until they graduate from college.** The continuum should include everything that children need to succeed: parenting education, early childhood programs, strong schools and after-school programs, health initiatives, social services; support before and during college. Programs must be: high quality, accessible and linked to one another so that they provide uninterrupted support for children’s healthy growth, starting with pre-natal programs for parents and finishing when young people graduate from college. The pipeline must be surrounded by additional programs that support families and the larger community such as family counseling, benefits counseling, legal services and assistance filing for taxes (i.e. EITC).
- **Build community** among residents, institutions, and stakeholders, who help to create the environment necessary for children’s healthy development.

- Evaluate program outcomes; create a feedback loop that cycles data back to management for use in improving and refining program offerings; and hold staff and partner organizations accountable.
- Cultivate a culture of success rooted in passion, accountability, leadership, and teamwork.

The Promise Neighborhoods Program

Today, poverty and its repercussions are no longer unique to places like Detroit, Harlem, and South Central Los Angeles. In 2010, the Census Bureau estimated that 7,879,000 children were living in areas with poverty rates of 30% or more. The chance that a child will live in an area of concentrated poverty has grown significantly over the last decade. We need to transform poor communities around the nation: in rural areas; on Indian reservations; in small and large towns; in Cincinnati, OH; New Haven, CT; Laredo, TX; Madison, WI; Richmond, VA; and Washington, D.C. In 2007 President Obama was inspired to build on the success of the Harlem Children's Zone by pledging to create a federal Promise Neighborhoods program.

The Promise Neighborhoods program incorporates the Harlem Children's Zone principles and a common set of outcomes while maintaining the flexibility for each community to adapt the program locally to fit their needs. Promise Neighborhoods wrap children in high-quality, coordinated health, social, community, and educational support from the cradle to college to career.

The vision of the program is that all children and youth growing up in Promise Neighborhoods have access to great schools and strong systems of family and community support that will prepare them to attain an excellent education and successfully transition to college and a career. The purpose of Promise Neighborhoods is to significantly improve the educational and developmental outcomes of children and youth in our most distressed communities, and to transform those communities by—

- Identifying and increasing the capacity of eligible entities that are focused on achieving results for children and youth throughout an entire neighborhood;
- Building a complete continuum of cradle-to-career solutions of both educational programs and family and community supports, with great schools at the center;
- Integrating programs and breaking down agency "silos" so that solutions are implemented effectively and efficiently across agencies;
- Developing the local infrastructure of systems and resources needed to sustain and scale up proven, effective solutions across the broader region beyond the initial neighborhood; and
- Learning about the overall impact of the Promise Neighborhoods program and about the relationship between particular strategies in Promise Neighborhoods and student outcomes, including through a rigorous evaluation of the program.^{xxii}

The number of communities applying for Promise Neighborhoods speaks to the need in communities all over the nation: in the last 3 years over 850 applications have come in from 48 states; Washington, DC, American Samoa, and Puerto Rico. The program began with 21 one-year "planning grants" of \$500,000

or less, to support the development of communities across the country. As of today, 41 grants have been awarded in total, some of which have been five-year “implementation grants” of up to \$5.9 million, for communities who have successfully demonstrated their ability to begin implementing this work.^{xviii} By the end of December, ED is expected to announce the names of a new group of planning and implementation grantees. Promise Neighborhood grantees currently exist in 18 states and the District of Columbia. Over two hundred communities who have applied for these limited funds each year, many communities have continued to commit to this work and this model without federal Promise Neighborhoods funding.

Promise Neighborhoods nationwide are creating continuums of programs from birth through college and career that include a range of other important federal programs such as Nurse Home Visiting programs, AmeriCorps, Community Schools, Head Start, Community Health Centers, and the Healthy Food Financing Initiative. Choice Neighborhoods in HUD is similar to Promise Neighborhoods in its holistic, neighborhood wide approach. These programs help to break down the traditional silos that exist between programs, departments, levels of government, and funding streams.

Conclusion

Economist and Nobel Laureate James Heckman writes that “about 50 percent of the variance in inequality in lifetime earnings is determined by age 18.”^{xix} My challenge to you is to consider what we might gain as a country by taking a fraction of the costs currently wasted imprisoning our population^{xx}, and in particular, our young men of color, and instead investing that money in excellent early childhood programming, education, and social service supports to create a cradle to college and career pipeline.

This other option has a far higher return on investment: for significantly less money than the Cradle to Prison Pipeline® costs us, we can educate our children, help them graduate from college, and bring them back to our communities ready to be successful, productive, contributing citizens. I believe the choice is obvious.

ⁱ Black children are nearly three-and-a-half times as likely as White children to live in extreme poverty. Extreme poverty is defined here as half of the poverty level or less (\$11,511 for a family of four in 2011). See U.S. Census Bureau. 2012. “Historical Poverty Tables – People,” Table 3: Poverty Status, by Age, Race and Hispanic Origin.

ⁱⁱ Fifty-one percent of Black children live with only their mother. Black children are more than three times as likely to live with their mother only as are White children. See U.S. Census Bureau. 2011. “America’s Families and Living Arrangements: 2011,” Table C9.

ⁱⁱⁱ See Citizen’s Committee for Children. Keeping Track of New York City’s Children. 2010.

^{iv} See Child Trends. 2009. “Disparities in Early Learning and Development: Lessons from the Early Childhood Longitudinal Study – Birth Cohort (ECLS-B).”

^v See http://www.all4ed.org/about_the_crisis/schools for data about the nation’s “drop-out factories.”

According to Aud, Fox and KewalRamani (2010), minority students are also significantly more likely than White students to have low-quality teachers. In high schools with 50% or greater Black student enrollment, 25% of the teachers have neither a college major nor standard certification in the subject that is their main teaching assignment. The percentage for schools with a majority of white students is 8%.

^{vi} See Citizen’s Committee for Children. Keeping Track of New York City’s Children. 2010.

^{vii} See Children’s Defense Fund analysis of U.S. Department of Education. Office of Civil Rights. 2012. “2009-10 Civil Rights Data Collection (CRDC): Suppressed Reported District-Level and School-Level Data.”

See also U.S. Department of Education. 2012. “Office for Civil Rights: The Transformed Civil Rights Data Collection (CRDC).” <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf>

^{viii} As measured by the NAEP, National Center for Education Statistics. Data from 2011.

^{ix} See America’s Cradle to Prison Pipeline Report. Children’s Defense Fund. 2007. <http://www.childrensdefense.org/child-research-data-publications/data/cradle-prison-pipeline-report-2007-full-highres.html>

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- ^x See Citizen's Committee for Children. Keeping Track of New York City's Children. 2010.
- ^{xi} See Community Snapshot 2010, http://www.nyc.gov/html/acs/html/statistics/statistics_cd_snapshot.shtml
- ^{xii} See Editorial Projects in Education Research Center, Diplomas Count: 2011
- ^{xiii} From The Urgency of Now: The Schott 50 State Report on Public Education and Black Males. See <http://Blackboysreport.org/>.
- ^{xiv} In 2010, Central Harlem's 18.2% unemployment rate was nearly double the City-wide rate at 9.6%. See Citizen's Committee for Children. Keeping Track of New York City's Children. 2010.
- ^{xv} See <http://www.childrensdefense.org/child-research-data-publications/data/cradle-prison-pipeline-summary-report.pdf>
- ^{xvi} See http://www.correctionalassociation.org/wp-content/uploads/2012/05/youth_in_confinement_2011.pdf
- ^{xvii} See <http://www.pewstates.org/research/reports/state-of-recidivism-85899377338>.
- ^{xviii} Eckholm, Eric. *Plight Deepens for Black Men*. New York Times. March 20th, 2006.
- ^{xix} Ibid.
- ^{xx} Created by the Spatial Information Design Lab, GSAPP, Columbia University and the Justice Mapping Center using 2003 Prisons Admissions data.
- ^{xxi} From HCZ's internal evaluation department. All results from FY 2012.
- ^{xxii} See <http://www2.ed.gov/programs/promiseneighborhoods/index.html>
- ^{xxiii} Ibid.
- ^{xxiv} See <http://www.heckmanequation.org/content/resource/schools-skills-synapses>
- ^{xxv} 1 in 104 American adults is behind bars. See <http://www.pewstates.org/research/data-visualizations/the-high-cost-of-corrections-in-america-infographic-85899397897>.

Ending the School to Prison Pipeline
Hearing before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

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1) Health & Disability Advocates has extensive experience with children with disabilities and the school-to-prison pipeline

Founded in 1992, Health & Disability Advocates is a national nonprofit based in Chicago, Illinois that uses multiple strategies to promote income security, enhance work and educational opportunities and improve healthcare access for children, low-income older adults and people with disabilities and special health care needs.

HDA pioneered one of the first medical legal collaborations in the country. Today, our award-winning Chicago Medical Legal Partnership for Children (CMLPC) helps hundreds of children and youth each year with a wide range of physical, mental, developmental and behavioral health challenges access Early Intervention (EI), Special Education and Medicaid-funded services. CMLPC then conducts systemic advocacy to expand our impact far beyond the number of clients we work with and improve overall access to quality health care, education and income supports. Partnership sites serve some of the most vulnerable children across Cook County, with locations on the south, west and north side of Chicago at La Rabida Children's Hospital, University of Chicago's Comer Children's Hospital, Friend Family Federally Qualified Health Center and Lurie Children's Hospital. CMLPC brings together doctors, lawyers and social workers to tackle difficulties — such as inadequate educational supports — that negatively impact child health and development.

Through our partnership with our medical sites, our organization assists more than 800 families of children with disabilities every year. We see time and again children with special needs in the school system who are undiagnosed, misdiagnosed, misunderstood. Instead of getting timely,

quality interventions, these children are denied a free and appropriate education. When the school system doesn't identify children with disabilities and provide them with the supports and services they need, the risk factors for involvement with the criminal justice system increase.

2) Vulnerable children with disabilities are disproportionately affected by inadequate disciplinary policies in schools, leading to a prison-to-school super-highway for these children.

A body of literature, notably the American Psychological Association's 2008 'Zero Tolerance Task Force,' a recent longitudinal study of Texas public school seventh graders and a Chicago youth-led report show harsh disciplinary measures occur disproportionately among children who are minority, male, low-income, have special needs, ELLs, and/or attend overcrowded schools. This, in turn, is directly tied to the burgeoning dropout rate, an educational achievement gap that is likened to "the economic equivalent of a permanent national recession," incarceration, recidivism and other devastating adverse outcomes.

The third largest public school district in the country, Chicago Public Schools officially ended "zero tolerance" discipline in 2007 and adopted a restorative justice framework. Yet CPS fails to implement this policy, and suspensions and expulsions remain high. As well, there is a lack of consistency and accountability in policy, practice and funding within and between the city's traditional public schools, contract (turnaround) schools, alternative schools, juvenile justice facilities and charter schools, particularly ones run by large Education Management Organizations (EMOs). In general, charters shape their student bodies by using "enrollment practices, discipline and expulsion" and other tactics that exclude and underserve children with special health needs. In Chicago, charter operators were found to be unwilling to fully comply with requests to share even basic budget information, with some going to great lengths to avoid transparency of public fund use altogether.

CMLPC works with many school district stakeholders and families of children with disabilities to address many of the types of system failures that undermine educational equity. Using our clients as a window, we see where current policy breaks down and delivers grim rather than superior outcomes. CMLPC has identified the following current system failures and suggestions improve the quality of educational services and supports for vulnerable students (see attached chart).

One such example involved a CPS high school student with a mild cognitive impairment and behavior problems with an IEP. During his transition from elementary school to high school, his placement was changed from a self-contained special education classroom to placement in regular education classes for more than 60% of the school day even though he was reading at a first grade level. Once he started high school, he was repeatedly suspended due to behavior problems. During one of his outbursts, the student was locked in a classroom and left unattended

to allow him to “cool down.” While in the locked room, he punched his arm through a glass window requiring medical care at the ER and stitches. After this incident, the school told the parents not to send him back to school until they could assure he would not have any other incidents during school hours, and threatened to call the police if the parents were unable to control their son, even while he was at school. Please see the attached list of Case Examples for a further description of system issues as identified by CMLPC attorneys. If children with behavioral and learning disabilities are provided with adequate interventions before their behaviors become serious enough to risk involvement with the criminal justice system, they can achieve positive outcomes and remain in school. Unfortunately, school districts are often reluctant to even identify children with disabilities or provide them with adequate services once they have been identified, instead choosing to blame the family and label the child as “bad”. See Chicago Tribune article, “1 Child Left Behind,” August 26, 2009 for a discussion of such a child represented by our organization.

CMLPC has identified a pattern of systemic issues through our individual clients and legal representation. There is evidence of a clear connection between a disproportionate use of harsh disciplinary policies, suspensions, expulsion and push out tactics by gender, class, ethnicity and school type. Furthermore, students with disabilities are often disciplined, expelled or sent home without regard for IDEA rights and protections. Through our work we have identified a complete lack of school-based supports for proven and promising school-based discipline frameworks, resulting in inappropriate and archaic responses to the needs of children with mental health issues or other diagnosed medical problems and disabilities.

The attached chart provides additional data regarding identified systemic issues with suggested objectives to support reform at the local, state and federal levels. At the federal level, there is a need for laws and policy mandating School-Wide Positive Behavior Supports, restorative justice practices and accountability. Additionally, schools should be required to provide uniform, consistent and fair discipline policies across all publicly funded schools. The standard for appropriate and positive-based behavior intervention plans for students with IEP’s, or for students any student suspected of having a disability must be uniform for all publicly funded schools. Schools should be required to conduct a functional behavior assessment and or IEP evaluation for any student who displays a pattern of misconduct, and in all cases before any student is expelled.

In closing, there is a critical need for laws and policy at the federal level addressing the systemic failure of school districts to adequately meet the behavioral needs of children before they become irrevocably involved in the criminal justice system.

Respectfully Submitted,

Elizabeth R. Walker, Project Attorney
Sarah M. O’Connor, Senior Attorney

www.chicagotribune.com/news/local/chi-cps-devon-26-aug2604803692.story

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TRIBUNE WATCHDOG

1 child left behind

Devon Mallard, 11, needs special education, but Chicago Public Schools isn't complying with a court order to help

By Rex W. Huppke

Tribune reporter

August 26, 2009

In March, an independent hearing officer made official what Shnette Tyler already knew: Her 11-year-old son, advertisement who has severe learning and behavioral disabilities, had not been receiving a proper education from Chicago Public Schools.

Detailing how the school system had repeatedly failed Devon Mallard, the hearing officer wrote: "Despite a history of disability as well as documented behavioral difficulties, it took two years of decreasing reading scores, increasingly aggressive behaviors, and the filing of a due process complaint for the district to take notice of this student and focus on his specific needs for special education services."

Within 45 days, the school district was ordered to set up a proper education plan for Devon -- who attends Ray Elementary School in Hyde Park -- and provide him with an array of weekly services including psychological counseling, occupational therapy and a reading tutor.

More than five months later, nearing the start of a new school year, Devon remains without services or an Individualized Education Plan that properly addresses his needs. Tyler's attorneys filed another due process complaint July 22 to compel the school district to meet its obligations.

But with a hearing at least a month away and school about to start, Devon's mother must decide whether to send him back into a school environment that has both failed and frustrated him or pull him out of school and let the legal system run its course.

"I'm just trying to get my son a good education, get him in a place where he can learn," Tyler said. "My son has a learning disability and somebody needs to recognize that. It just feels like we're at a dead end."

This is a common refrain among parents of schoolchildren with disabilities in Chicago. Rodney Estvan, the youth and education outreach coordinator for Access Living, a disability rights group, said Chicago Public Schools officials often "feel like they can push the limits and don't have to follow the letter of the law" in providing services for disabled youths.

"CPS is not being held accountable," Estvan said. "One of the problems is that really very few of the families that have special-education compliance problems ever take the step of filing an administrative complaint."

And even when they do take legal steps and prevail, Estvan said, it can still be difficult to get district officials to do what they're supposed to do.

Michael O'Connor, one of the attorneys representing Devon, said: "They fight a lot of cases that they lose, and then they keep fighting after they've lost."

School district spokeswoman Monique Bond said she could not discuss specific aspects of Devon's case.

"We are concerned any time the system has failed to meet the needs of a student," she said. "We're going to comply with the order."

Bond e-mailed a statement that said the district "would have preferred for the process to proceed more expeditiously, however,

the summer break created communications challenges."

But according to the court order, the district had to begin providing services within 45 days, or about the middle of April -- before summer break had begun.

The district's statement said its Office of Specialized Services "will be attempting to schedule a meeting before the school year officially begins for Ray School so that his needs are met."

But Devon's attorneys said they tried twice to hold such a meeting, only to be ignored by school district attorneys.

The first attempt at creating an Individualized Education Plan was scheduled for May 29. According to the new due process complaint, school attorneys were advised of the meeting by Devon's case manager at Ray School.

A draft education plan was created at that meeting but was not finalized. Devon's attorneys, in the new complaint, said the staff at Ray had not even seen a copy of the March order and were unaware of the additional services Devon was to receive. According to the new complaint, the school officials didn't want to proceed without district representation, so another meeting was scheduled for June 8. Devon's other attorney, Sarah O'Connor of Health & Disability Advocates, said she notified the school district's attorney who had been handling the case about the June 8 meeting and told the attorney that she and Michael O'Connor would be there.

Again, no school district attorney showed up.

Bond said in the e-mailed statement that the attorney was busy with other cases and that both of Devon's meetings "were scheduled without input from the due process attorney."

"It's just disingenuous of them to say they weren't aware of the meeting," Michael O'Connor said. "They were aware of it, they just didn't respond. They're doing this all the time, they're doing this in case after case after case."

He said the only part of the March court order that the district has heeded is to pay for several independent evaluations of Devon.

In a letter to Chicago Public Schools dated Aug. 24, Andrew Eulass, due process coordinator for the Illinois State Board of Education, wrote that the district has provided insufficient evidence to demonstrate that it has complied with the March order. "I remind you that CPS was required to submit satisfactory proof of compliance no later than April 16, 2009. Given that four months have now passed since proof of compliance was due, prompt attention to this matter is imperative."

When the ruling ordering Devon's services first came down in March, his mother was elated.

"I felt really good," she said. "I felt like my efforts all these years hadn't been in vain. I thought things were finally really going to change."

Tyler had always known Devon was different, but his academic struggles didn't surface until 2005 when he was in 2nd grade. By the end of that grade, a teacher's assessment showed Devon performing at a kindergarten level and he was identified as having a learning disability. But he was never fully evaluated and no special services were provided, according to court records.

He wasn't found eligible for special education classes until January 2007. An Individualized Education Plan was created, but Devon's emotional problems swiftly became worse. In September 2007, the boy's doctor diagnosed him with anxiety disorder, dyslexia and oppositional defiant disorder, which can cause temper tantrums and hostile behavior toward authority figures. From that point on, Devon's mother never felt she was able to get her son's educational plan amended to meet his developing needs.

"I tried and tried, but I couldn't get anywhere," she said. "It was like they wouldn't listen to what his doctors were saying and they tried to tell me he was fine. He's [11 years old] and he's still reading at a 1st-grade level. That's not fine."

Feeling she could no longer fight on her own, Tyler sought legal counsel and her first due process complaint was filed Aug. 5, 2008.

Thinking he would find himself in a better school situation in the fall, Devon has enjoyed the summer, spending his days at the Regal Theater on the South Side. Tyler's godparents own the theater and hired her so she could have a more flexible work schedule while caring for Devon, who has turned the cavernous hall into a personal playground.

Like many 11-year-olds, he loves video games, idolizes NBA star Kobe Bryant, likes riding bikes with his older brother and, perhaps most significantly, wants to be in a classroom where he's comfortable.

But now he's anxious about returning to Ray School. "I don't want to be in that classroom," he said.

Tyler said Devon is a confident little boy, and she believes he can do well if he's put in a situation where his unique needs are being met.

"In his mind, he can do it all," she said. "He just needs some guidance along the way."

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CASE EXAMPLES

1. Student expelled from charter school and neighborhood public school without due process: Student is a 13-year-old African American boy who attended sixth grade at a charter school authorized by the Chicago Public School's (CPS) board. Without providing proper notice or holding a hearing, the charter school expelled the boy for one semester because he allegedly brought a box of bullets to school. The charter school did not claim the Student also brought a firearm or threatened other students or staff. After the expulsion from the charter school, CPS sent Student a letter stating that he could not enroll in his neighborhood public school until the expulsion from the charter school was completed. CPS issued its expulsion even though the charter school did not comply with the due process procedures required by CPS Student Code of Conduct or the Illinois School Code. CMLPC is currently handling this matter.

2. Student with unidentified disability who was disciplined and not evaluated for special education: Student is an 11-year-old African American boy who attends sixth grade at a CPS neighborhood school. He was retained in the third grade and has a long history of disruptive behavior, including self-injury. In three years, Student's mother reports that he was suspended 15 to 20 times. Student was also admitted on five occasions to a psychiatric hospital. Nonetheless, the school has not evaluated Student for special education services. Instead, the school continues to discipline Student by suspending him from school, and Student's behavioral and emotional needs go unaddressed. CMLPC is currently handling this matter.

3. Student with disability where IEP fails to appropriately address behavioral/emotional needs: Student is an 18-year-old African American girl who attends a Chicago public high school. After suffering two strokes at age 9, she has severe cognitive and physical impairments. Her IEP places her in a separate classroom for students with disabilities. She uses a wheelchair and requires assistance for all activities of daily living. Her verbal abilities are limited and she does not communicate in complete sentences. The school has suspended Student on multiple occasions for shouting profanity when she is physically or socially uncomfortable. The teacher described Student as "unruly." The school has failed to perform a functional behavioral assessment that would help craft an appropriate and effective behavior intervention plan in her IEP. CMLPC is currently handling this matter.

4. Student with disability and established IEP, upon transition to high school her services are terminated: A 14-year-old African American Student with IEP eligibility based on learning disability and emotional disturbance and a history of psychiatric hospitalizations for a mood disorder and anxiety. Upon entering high school, all IEP services stopped, including academic and social work services. The mother requested meetings with the school and complained that her daughter was being bullied and not receiving services. School staff told mother they don't have special education in high school unless you are in a wheelchair. Student began to have behavior problems, developed school phobia, was involved in fights and was suspended numerous times. A due process case was filed. This student is now at a private therapeutic day school for students with emotional disturbance and learning disabilities.

5. Charter student with unidentified disability who was expelled and not evaluated for special education: A 6-year-old African American boy attended kindergarten and first grade at a charter school authorized by CPS. Beginning in kindergarten, Student was sent to the principal's office nearly every day for disruptive behavior in class. After multiple suspensions in kindergarten, Student's mother sought the treatment of a psychiatrist over the summer. The psychiatrist diagnosed Student with ADHD. Student began taking medication and attending weekly therapy sessions with a psychologist. When Student returned to school in the first grade, his behavior did not improve. Student's psychologist wrote a letter to the school stating that Student needed additional supports due to his ADHD diagnosis in order to regulate his behavior. The school did not evaluate Student for special education or provide additional supports. Based upon Student's five suspensions during the first semester of first grade, charter school referred Student for expulsion. Such an "offense" did not exist in CPS's Student Code of Conduct. As the result of advocacy efforts, Student was evaluated for special education and found eligible. He is now a second grader with an IEP and receives appropriate education services.

6. CPS ignores provisions of Student's IEP from another District: Student is a 14-year-old African American ward of the state. After she entered foster care, she was psychiatrically hospitalized and diagnosed with bipolar disorder. She was evaluated and found eligible for special education services. The IEP team determined that she should be placed at a therapeutic day school due to her behavioral and emotional needs. Several months later, Student was moved to a new group home and transferred school districts. When her caseworker attempted to enroll her in CPS and have her placed at a therapeutic day school, the caseworker was told that the Student must be placed at a neighborhood school, in violation of her IEP. As the result of advocacy efforts, the student is now attending a Therapeutic Day School.

Problems	Current state	Objectives
<i>Disproportionate use of harsh disciplinary policies, suspension, expulsion and push out tactics by gender, class, ethnicity and school type;</i>	<ul style="list-style-type: none"> ▪ Lack of reported data and accountability across all school types (traditional public, charter, contract, alternative, juvenile justice facilities); ▪ Inconsistent application of due process protections in expulsion proceedings, e.g. CPS can adopt expulsions made by charters which routinely lack due process (see attached case example 1); ▪ Children with IEPs routinely assigned in-school suspensions (instead of appropriate behavioral supports) up to 10 days total per year without triggering their IDEA rights; ▪ Children with behavior and/or social/emotional issues may be pushed out of a school, especially before key dates such as high stakes standardized testing and deadlines by which districts allocate funding per head to each school; ▪ Inconsistent, and in cases, inappropriate standards for schools to contact local law enforcement; ▪ Illinois General Assembly recently enacted S.B. 79, establishing a new independent charter school commission with statewide power to authorize and regulate charter schools; ▪ ESEA/NCLB up for reauthorization and currently does not include provisions supporting positive school discipline reform; 	<ol style="list-style-type: none"> 1. Require consistent and fair discipline policies across all publicly-funded schools; 2. Require charter schools to accurately report all suspensions, expulsions and push outs; 3. Require charter schools to route expulsion cases to CPS Office of Student Adjudication; 4. Require use of appropriate behavior intervention plans for students with IEPs instead of in-school suspensions; 5. Monitor accurate measurement and reporting of suspension¹ and expulsion rates; 6. Require proper use of BARJ before student can be expelled or counseled out of a school; 7. Disincent schools from pushing out students by tying funding to pupil school year completion; 8. Require consistent and appropriate policies for contacting local law enforcement across all publicly-funded schools; 9. Represent individual clients referred through partners;
<i>Lack of school-based supports and proven and promising school-based discipline frameworks;</i>	<ul style="list-style-type: none"> ▪ Lack of positive behavior intervention supports, social work services, meaningful social/emotional goals leading to inadequate or no behavior intervention plans that address and/or effectively manage and/or prevent disruptive behaviors for children with and without special education needs; ▪ Children not evaluated for special education when repeated behavior, social/emotional issues or other determinants occur; ▪ Lack of specialists to perform functional behavior assessments; ▪ Failure to perform appropriate MDRs (Manifestation Determination Reviews) for children with IEPs prior to disciplinary actions; ▪ Upon elementary graduation IEP service provision for social/emotional behavioral needs terminated; ▪ Children with behavior/emotional issues not placed in LRE (Least Restrictive Environment); ▪ Children transferring into CPS required to enroll in a neighborhood school when the previous district's IEP requires placement at a TDS (Therapeutic Day School); ▪ Schools inappropriately using RTI (Response to Intervention) to avoid special education obligations; 	<ol style="list-style-type: none"> 1. Improve Behavioral Intervention Assessments and Planning for children at all schools; 2. Work with OSEP as they monitor IDEA Part B compliance and request investigation of systemic deprivations; 3. Require (i.e., IEP evaluation, MDR, functional behavior assessment, "cooling off period,") prior to disciplinary actions; 4. Engage subject matter experts from Ceasefire Illinois to inform behavioral intervention assessments and planning for children and model "interventionist" service delivery² at pilot sites; 5. Advocate for local, state and federal law and policy to include School-Wide Positive Behavior Supports, restorative justice practices and accountability; 6. Represent individual clients referred through partners;

¹ Vevea, R., Chicago News Cooperative, "Putting School Suspensions on the Agenda," April 26, 2011: Jean-Claude Brizard (now CEO of CPS) lowered Rochester's suspension rate from 15 to 2 percent by switching most out-of-school punishments to in-school. In-school suspensions were not counted in the suspension rate, which lowered the outcomes measured but failed to address behavioral issues.

² Ceasefire's expertise and track record was not deployed as an asset during implementation of the \$16.6 million Culture of Calm program run by Youth Advocate Programs Inc. by former CPS CEO Ron Huberman. As well, CPS has a history of removing community-led efforts; at Fenger H.S., a nearby church started a volunteer program where parishioners were stationed on every block of the ward to make sure kids were getting to and from school safely. CPS decided to fund it, but removed the volunteers and awarded a contract to an outside entity instead.

Statement for the Record

Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing on the School-to-Prison Pipeline
Wednesday, December 12, 2012
2:00pm Dirksen Senate Bldg. Rm. 226

Chairman Durbin, Ranking Member Graham and Members of this Committee:

The United States Congress chartered Howard University, located here in the nation's capital, in 1867 to provide academic opportunities for promising African Americans who had long been denied access to educational opportunity. Howard University School of Law opened its doors in 1869 during Reconstruction. On the heels of the Civil War, the Reconstruction era highlighted the great need for trained legal professionals who displayed a strong commitment to ensuring Black Americans could secure and protect their newly established rights. Today, the School of Law remains committed to producing skilled professionals, capable of achieving positions of leadership in law, business, government, education, and public service. Howard University School of Law remains dedicated to producing advocates committed to solving the challenges facing our communities and eradicating conditions of inequality for all Americans. In fact, this core mission is shared throughout the Howard University community and is especially highlighted within the walls of its graduate and professional schools, places of intellectual cultivation and professional molding for those that do and will interface with this country's most vulnerable populations. Howard's future physicians, dentists, social workers, pharmacists, clergy, business executives, academicians, scientific researchers, and legal professionals submit this statement for the record to the hearing before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights to further our goal of ending the school-to-prison pipeline.

The school-to-prison pipeline refers to the national trend of criminalizing—rather than educating—our nation's children. The pipeline involves the growing use of zero-tolerance discipline, school-based arrests, disciplinary alternative schools, and juvenile detention referrals; often while simultaneously ignoring or bypassing important due process considerations. It is a system that views young people as a “problem” or “danger” that must be suppressed, rather than our country's most important and indispensable resource.

More students are being suspended and expelled than ever before for minor misbehaviors like disruption and insubordination. Most of these suspensions and expulsions disproportionately fall on our most vulnerable children—economically depressed students, students of color, students with disabilities, and English language learners. More and more police officers, not subject to school administration guidelines, are being placed in schools and engaging in a pattern of unlawful conduct through which they routinely and systematically arrest and incarcerate children, without even the most basic procedural safeguards. Students cycled into the juvenile or criminal justice system lose out on substantial classroom instruction and face serious and destructive life-long consequences.

We recognize that, as many of the students most impacted by the pipeline are students of color, our respective professions and our efforts to diversify those among our ranks suffer as a result. As our nation becomes more ethnically diverse, it becomes imperative that we act to eradicate systems in place that undermine our efforts to cultivate a workforce that reflects, at every level, the composition of our nation. The school-to-prison pipeline is such a system.

Research has consistently demonstrated that strict, zero tolerance policies and an increased use of police officers in schools have done little to improve school safety or deter the likelihood of disruption.¹ Schools with higher rates of suspension and expulsion have lower satisfactory ratings of overall school climate and safety. In fact, high suspension rates often lead to higher rates of future misbehavior and suspension; failure to graduate on time; and higher dropout rates. Research has also demonstrated that strict discipline policies do little to enhance discipline implementation integrity or produce uniform, color-blind systems of discipline.² Empirical evidence has consistently refuted the assumption that African-American students exhibit higher rates of disruption or violence, yet, they are more than three times as likely to receive at least one out-of-school suspension as White children.³ Additionally, research has found that zero-tolerance policies not only fail to make schools safer; they, in fact, work to push students away from school.⁴ The increased use of and reliance on security technology, security personnel, and student profiling blur the line between schools and the juvenile justice system and ultimately push students of color out of school, into the criminal justice system, and away from their educational futures. Strict, zero tolerance discipline policies—just one of many problematic elements of the school-to-prison pipeline—have become the “mandatory-minimums” of the school discipline world.

As U.S. Supreme Court Justice Brennan once noted, the “qualitative differences in the level and effects of discrimination in our [criminal justice system] are not the fanciful product of mere statistical artifice,” but rather, are the result of a dual system that reflects a race-conscious application of punishment.⁵ If we are ever to realize a system that ensures equal access to education, we must address the race-conscious application of punishment that is the foundation of zero tolerance policies and the school-to-prison pipeline.

We as future professionals are not interested in merely enjoying the symbolic legal victories that often provide the illusion of change but do little substantively to change our social climate. We are interested in immediate and constructive reform. There is no dispute that schools must do all that can be done to create safe learning environments. And while we recognize the challenges in altering current school discipline strategies, now must be the time for a convergence and galvanization of the moral, social, legal and economic interests that are common to us all and are at the core of realizing an equitable education system. All of us must commit to the hard work of transforming our society; eradicating the vicious cycle of students into the criminal justice system; and ensuring that every child has equal access to a just, safe, comprehensive, and enriching educational experience.

In accordance with these general comments, we would like to make several recommendations which we believe are essential in confronting the school-to-prison pipeline. They are as follows:

- Remove the largely unregulated and ineffective police presence currently placed in our nation’s public schools;
- Critically re-examine all school discipline and violence prevention strategies to assess whether they have a beneficial impact on student behavior and school safety;
- Improve disciplinary alternative education policies to ensure that suspended or expelled students have access to quality alternative education programs and have the opportunity to re-enter mainstream schools as soon as possible;
- Use evidence-based prevention strategies targeted at *all students* (such as early childhood programs, voluntary home visits, mentoring, **mental health support**, job training and school-based programs) that recognize the constitutional rights, human dignity, and capacity for achievement in all students;

¹ RUSSELL J. SKIBA, ZERO TOLERANCE, ZERO EVIDENCE, Indiana Education Policy Center 1-11 (2000).

² *Id.*

³ Children’s Defense Fund, *State of America’s Children, 2012*, available at <http://www.childrendefense.org/child-research-data-publications/data/soac-2012-handbook.pdf>.

⁴ AMERICAN PSYCHOLOGICAL ASSOCIATION, ARE ZERO TOLERANCE POLICIES EFFECTIVE IN THE SCHOOLS?: AN EVIDENTIARY REVIEW AND RECOMMENDATIONS 1-11, available at, <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>.

⁵ *McCleskey v. Kemp*, 481 U.S. 279 (1987) (Brennan, J., dissent).

- Refocus resources on improving student engagement and reinvest in effective teaching practices to minimize student disruption; and
- Educate teachers, administrators, and school staff on the dangers of implicit bias in school discipline implementation.

Thank you for the opportunity to submit this statement for the record. This hearing provides a unique opportunity to critically examine and proactively address the school-to-prison pipeline. We commend the Subcommittee's efforts and insistence on taking a solutions-based approach to the resolution of this most destructive mechanism. Furthermore, we urge you to take these recommendations under consideration. Please contact us if you have any remaining questions. We are committed to the breakdown of the school-to-prison pipeline as we recognize it robs each of our professions of students who could be the agents of progress we need to move our America forward. As such, we would welcome the opportunity to work with the Subcommittee on addressing the issues contained within this statement.

Sincerely In Service,

George L. Davis
Former New York City Educator
J.D. Candidate, Class of 2014
Howard University School of Law

Courtney B. Scrubbs
Graduate Student Trustee
D.O./J.D. Candidate, Class of 2013
Howard University School of Law
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Aaron Hamilton
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D'Angela Pitts
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Tai Smith
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Damion Myers
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Howard University College of Dentistry

Kelechi C. Anyanwu
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PhD Student, Class of 2015
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Porscha L. Johnson
Pharmacy Student Association President
Pharm.D. Candidate, Class of 2014
Howard University College of Pharmacy

Christian Johnson
Student Council President
MSW Candidate, Class of 2013
Howard University School of Social Work

**WRITTEN STATEMENT
OF THE
HUMAN RIGHTS DEFENSE CENTER**

FOR THE HEARING ON

Ending the School-to-Prison Pipeline

BEFORE THE

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

**SUBCOMMITTEE ON THE CONSTITUTION, CIVIL
RIGHTS AND HUMAN RIGHTS**

PRESENTED ON

December 12, 2012

**STATEMENT OF THE
HUMAN RIGHTS DEFENSE CENTER**

Chairman Durbin, Ranking Member Graham and Members of the Committee:

The Human Rights Defense Center (HRDC) is a 501(c)(3) non-profit organization dedicated to protecting the human rights of persons incarcerated in prisons, jails and other detention facilities. HRDC publishes *Prison Legal News* (PLN), a monthly print magazine that reports on corrections and criminal justice-related issues nationwide.

Although PLN's coverage primarily concerns the approximately 2.3 million people held in state and federal prisons and jails in the United States, PLN also reports extensively on issues related to the juvenile justice system.

Recently, PLN staff assisted in investigative reporting concerning a disturbing development in Arizona that Caroline Isaacs, program director for the Tucson office of the American Friends Service Committee, described as "the most direct expression of the 'schools-to-prison pipeline' I've ever seen."

The school-to-prison pipeline is generally defined as a process in which certain students – often minorities, those with social and financial disadvantages, and those with learning disabilities or mental health problems – are channeled into a path that leads to incarceration as part of a continuum that includes school disciplinary actions, alternative programs for "problem" students, involvement

of the juvenile justice system and, eventually, placement in adult prisons. Elements that contribute to the school-to-prison pipeline include zero-tolerance policies and high levels of law enforcement participation in the education system, with the latter involving school police resource officers, the use of metal detectors and school drug sweeps/searches.

In Arizona, several public schools in Casa Grande, the largest town in Pinal County, are using a private prison company – Corrections Corporation of America (CCA) – alongside police officers to conduct drug sweeps. PLN assisted in reporting on this issue, which was published by DBA Press (dbapress.com) and by The Center for Media and Democracy's PR Watch (www.prwatch.org) on November 27, 2012. A condensed version of the resulting report is included in the December 2012 issue of *Prison Legal News*, and is attached as Exhibit 1 to this Statement.

On October 31, 2012, the Casa Grande Police Department, Arizona Department of Public Safety, Gila River Indian Community Police Department and CCA – which operates six correctional facilities in Pinal County – conducted a joint drug sweep at the Vista Grande High School.

According to Principal Tim Hamilton the school was placed on “lockdown” status, in which “everybody is locked in the room they are in, and nobody leaves – nobody leaves the school, nobody comes into the school. Everybody is locked in, and then they bring the dogs in, and they are teamed with an administrator and go in and out of classrooms. They go to a classroom and they have the kids come out and line up against a wall. The dog goes in and they close the door behind, and then the dog does its thing, and if it gets a hit, it sits on a bag [e.g., student's backpack] and won't move.”

Although Arizona state law requires that persons engaging in the duties of a “peace officer” must be certified by the Arizona Peace Officer Standards and Training (POST) Board, according to POST executive director Lyle Mann, CCA employees are not POST certified.

Regardless, CCA provided two canine units, consisting of dogs and handlers, to participate in the October 31, 2012 Vista Grande High School drug raid. Previously, CCA canine units were used in a similar drug sweep at the Casa Grande Union High School in Pinal County in 2011. According to Casa Grande Police Department public information officer Thomas Anderson, the involvement of CCA employees in the drug sweeps was “pretty regular,” and he assumed the police department would continue partnering with CCA in future drug operations at public schools.

Three students were arrested on marijuana-related charges as a result of the Vista Grande High School drug sweep: two female students, ages 15 and 17, and a 15-year-old male student. Principal Hamilton stated the school was commencing expulsion proceedings against the three students, thus starting them on their journey through the school-to-prison pipeline.

The Human Rights Defense Center believes that involving employees from private prison companies – which directly profit from incarceration – in law enforcement operations at public schools is a disturbing addition to the existing practices that contribute to the school-to-prison pipeline.

The use of private prison employees in drug sweeps at public schools, which result in arrests and channeling students into the school-to-prison pipeline, ultimately leads to increased incarceration and thus greater profits for the multi-billion-dollar private prison industry.

HRDC believes that such involvement of for-profit prison companies constitutes a clear conflict of interest and should be prohibited. For example, legislation could be introduced on the federal level to prohibit schools which receive federal funds from allowing private prison companies or their employees to participate in drug sweeps or other law enforcement operations on school property.

This Statement is submitted on behalf of the
Human Rights Defense Center by:

Executive Director Paul Wright. Mr. Wright founded the Human Rights Defense Center and serves as editor of *Prison Legal News*. He was incarcerated for 17 years in the Washington State prison system.

Associate Director Alex Friedmann. Mr. Friedmann serves as the managing editor of *Prison Legal News* and president of the Private Corrections Institute. He was incarcerated for 10 years in Tennessee.

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America Eats its Young: Arizona Communities Embrace use of Private Prison Employees in Drug Raids at Public Schools

by Beau Hodai

In Arizona an unsettling trend appears to be underway: the use of private prison employees in law enforcement operations.

The state has graced headlines in recent years as the result of its cozy relationship with for-profit prison companies – for the role of the private prison industry in assisting in the dissemination of constitutionally-questionable immigration enforcement laws based on Arizona's controversial SB 1070, for a private prison escape that resulted in the death of an elderly couple and a nationwide manhunt, and for a failed attempt to privatize almost the entire state prison system.

And now, recent events in the central Arizona town of Casa Grande show the hand of private prison corporations reaching into the classroom, assisting local law enforcement agencies in drug raids at public schools.

Trick or Treat

At 9 a.m. on the morning of October 31, 2012, students at Vista Grande High School in Casa Grande were settling in to their daily routine when something unusual occurred.

Vista Grande High School Principal Tim Hamilton ordered the school – with a student population of 1,776 – on “lock down,” kicking off the first “drug sweep” in the school’s four-year history. According to Hamilton, “lock down” is a state in which, “everybody is locked in the room they are in, and nobody leaves – nobody leaves the school, nobody comes into the school.”

“Everybody is locked in, and then they bring the dogs in, and they are teamed with an administrator and go in and out of classrooms. They go to a classroom and they have the kids come out and line up against a wall. The dog goes in and they close the door behind, and then the dog does its thing, and if it gets a hit, it sits on a bag and won’t move.”

While such “drug sweeps” have become a routine matter in many of the nation’s schools, along with the use of metal detectors and zero-tolerance policies, one feature of this raid was unusual. According to Casa Grande Police Department (CGPD) Public Information Officer Thomas Anderson, four “law enforcement” agencies took part in the operation: CGPD (which served as the lead agency and operation coordinator), the Arizona Department of Public Safety, the Gila River Indian Community Police Department, and Corrections Corporation of America (CCA).

It is the involvement of CCA – a private, for-profit prison corporation – that causes this high school “drug sweep” to stand out; CCA is not, despite CGPD’s evident opinion to the contrary, a law enforcement agency.

“To invite for-profit prison guards to conduct law enforcement actions in a high school is perhaps the most direct expression of the ‘schools-to-prison pipeline’ I’ve ever seen,” said Caroline Isaacs, program director of the Tucson office of the American Friends Service Committee, a Quaker social justice organization that advocates for criminal justice reform.

Welcome to Prison Town, U.S.A.

CCA, the nation’s largest for-profit prison/immigrant detention center operator, with more than 92,000 prison and immigrant detention “beds” in 20 states and the District of Columbia, reported \$1.7 billion

in gross revenue last year. This revenue is derived almost exclusively from taxpayer-funded government (county, state and federal) contracts for the warehousing of prisoners and immigrant detainees.

CCA has a substantial presence in Casa Grande and throughout Arizona's Pinal County (Casa Grande is the largest town in the county). The corporation owns and operates a total of six correctional/detention facilities in Pinal County, distributed through the towns of Florence and Eloy.

In 2009, the Central Arizona Regional Economic Development Foundation listed CCA as the largest non-governmental employer in Pinal County. To boot, CCA is a "Board Level" member of the Arizona Chamber of Commerce and Industry, a powerful trade/lobby organization, and is active in the Eloy, Florence and Casa Grande chambers of commerce.

And in September 2012, CCA was awarded a contract with the Arizona Department of Corrections (ADC) to house 1,000 medium-security prisoners at the corporation's Red Rock Correctional Center in Eloy.

This strong CCA presence, coupled with the location of two correctional facilities operated by GEO Group (the nation's second largest for-profit prison/immigrant detention center contractor) in the county, as well as two ADC-run prison complexes, makes Pinal County – which once cited mining and agriculture as its economic bedrock – a *de facto* prison industry community.

Despite the obvious differences between CCA and actual law enforcement agencies, those involved in the Vista Grande High School drug sweep seem unable to differentiate between CCA employees and law enforcement officers.

"CCA is like a skip and a hop away from us – as far as the one in Florence," said Anderson. "We work pretty closely with all surrounding agencies, whatever kind of law enforcement they are – be they police, or immigration and naturalization, or the prison systems. So, yeah, this seems pretty regular to me."

Questions of Legality

But they are not the same. Aside from the fact that CCA is a private corporation that derives its profits from the incarceration of human beings, the Arizona Administrative Code provides that, in order for any individual to engage in the duties of a "peace officer," that individual must obtain certification from the Arizona Peace Officer Standards and Training (POST) Board.

And the Arizona Administrative Code is very clear on this point: "[A] person who is not certified by the Board or whose certified status is inactive shall not function as a peace officer or be assigned the duties of a peace officer by an agency...."

According to POST Executive Director Lyle Mann, POST provides two types of certification: standards and training certification for "peace officers," and standards and training certification for correctional officers. The Arizona Administrative Code mandates that ADC officers be POST certified. However, according to Mann, employees of private prison contractors are exempt from these standards and training requirements. As such, said Mann, no CCA employee is POST certified – as either a "peace officer" or a correctional officer.

It is important to note that the Arizona Administrative Code explicitly states that non-regular "peace officers" – secondary parties engaging in certain limited aspects of law enforcement under the command or supervision of regular peace officers – must also be POST certified.

According to the Code, a "limited-authority peace officer" is defined as "a peace officer who is certified to perform the duties of a peace officer only in the presence and under the supervision of a full-authority peace officer." The Code goes on to state that duties which may be performed by a "limited-authority peace officer" in the presence of a "full-authority peace officer" include: "investigative activities performed to detect, prevent, or suppress crime, or to enforce criminal or traffic laws of the state, county, or municipality."

This definition seems to fit the description of what occurred at Vista Grande High School on the morning of October 31, 2012 – with the exception that the CCA employees aiding CGPD “peace officers” are not POST certified.

According to Anderson, CCA provided two canine units consisting of handlers and dogs to aid in the high school “drug sweep.”

As to the general role canine units play in school drug raids, Anderson stated that the dogs and their handlers are typically utilized to detect the presence of illicit materials in classrooms and school parking lots.

The use of the CCA canine teams would seem to fall squarely under the Arizona Administrative Code description of duties performed by “limited-authority peace officers” – officers who may perform “investigative activities” for the purpose of detecting, preventing, or suppressing criminal activity, and who are only authorized to do so while in the presence of “full-authority peace officers,” such as CGPD. Such “limited-authority peace officers” are required to be POST certified.

According to Anderson, a similar “drug sweep” utilizing CCA canine units was conducted at Casa Grande’s Union High School in 2011. He was unable to provide further details related to that event.

CCA did not respond to multiple requests for comment regarding their involvement in law enforcement operations at public schools in Pinal County.

Conflict of Interest: From the Cradle to the Cell

According to Anderson, three students were arrested as a result of the October 31 Vista Grande raid: two female students, ages 15 and 17, as well as one 15-year-old male. He said the 15-year-old female was found in possession of .10 grams of marijuana; the 15-year-old male student was found in possession of .50 grams of marijuana; and the 17-year-old female was found in possession of 10 ounces of marijuana that was “individually packaged.”

Under Arizona law, individuals arrested for illicit activity/possession of illicit substances on or near school grounds may face “drug-free school zone” sentencing enhancements. Those convicted of drug offenses (including marijuana), and sentenced under “drug-free school zone” sentencing enhancements, lose the possibility of sentence suspension, parole or probation. The sentencing enhancement also adds a year to any prison term handed down by the court.

While the 1,000 Arizona prison beds recently contracted to CCA have yet to come online, it is exactly this kind of low-risk, minimum- to medium-security drug offender that corporations such as CCA derive much of their profit from.

Furthermore, according to Anderson, the Vista Grande High School marijuana arrests have sparked a broader, ongoing investigation. Given the fact that such high school raids may serve as the foundation for larger narcotics investigations which may net adult offenders, concerned citizens say that CCA’s involvement in such raids constitutes a clear conflict of interest.

“They’re [CCA] not the criminal justice system. They are benefactors of the criminal justice system,” said correctional specialist and prison reform advocate Carl Toersbijns.

Toersbijns, now retired, served as a deputy warden of operations at ADC-operated Arizona State Prison (ASP) Eyeman, deputy warden of operations at ASP Safford, deputy warden of operations at the New Mexico Department of Corrections-operated Western New Mexico Correctional Facility (in Grants, New Mexico), and associate warden at the Central New Mexico Correctional Facility (in Los Lunas, New Mexico). Collectively, Toersbijns’ career in corrections has spanned over 25 years in both Arizona and New Mexico. Such work, he said, has entailed everything from details with prison canine units to prison gang units.

“They [CCA] use the criminal justice system as a means of making income – for profit,” added Toersbijns. “So, their interest in the criminal justice system is totally opposite of the police officer. The

police officer is public safety. The primary interest for CCA and associated entities is profit. So, there most definitely is a conflict of interest.”

Introducing the “War on Drugs” to the Classroom

As some opponents of prison privatization attest, CCA embodies the worst pitfalls of public-private partnerships, in that the corporation has worked in the past to advance criminal justice legislation that has contributed to both a swell in U.S. prison/detention center populations and, consequently, CCA’s bottom line.

For example, CCA was active (both as a co-chair and member) in the American Legislative Exchange Council’s (ALEC) Public Safety and Elections Task Force, formerly the ALEC Criminal Justice Task Force, through the 1990s to the end of 2010.

ALEC is a public-private legislative partnership whose membership is overwhelmingly comprised of Republican state lawmakers, over 300 of the nation’s largest corporations and influential law/lobbying firms. ALEC’s primary objective is to adopt and disseminate “model legislation,” much of which is drafted entirely by its private sector members.

ALEC’s Public Safety and Elections Task Force was instrumental, during the years of CCA’s membership and leadership, in proliferating such tough-on-crime legislation as “three strikes,” “truth in sentencing” and “mandatory minimum” sentencing laws.

Largely as a result of such harsh sentencing laws advanced by ALEC, the U.S. experienced a boom in its prison and jail population – from just over 1.1 million people incarcerated in 1990 to nearly 2.3 million in 2010.

During the years of CCA’s Criminal Justice/Public Safety and Elections Task Force involvement, ALEC also advanced “model legislation” for greater law enforcement presence in public schools. ALEC’s “Drug-Free Schools Act,” for example, called for “enhanced apprehension, prevention and education efforts” in joint cooperation between law enforcement agencies and school districts.

In April 2012, following widespread criticism and loss of corporate sponsorship due to such pieces of “model legislation” disseminated by the Public Safety and Elections Task Force as the “Stand Your Ground Act,” “Voter ID Act” and “No More Sanctuary Cities for Illegal Immigrants Act,” ALEC announced that it would disband the task force.

And in the wake of reporting on CCA’s involvement with ALEC and the spread of immigration laws based on Arizona’s SB 1070, CCA told the *Arizona Republic* in September 2011 that the corporation left ALEC in 2010.

Unfortunately, as the October 31 Vista Grande High School drug raid illustrates, the purported discontinuation of the ALEC task force, and CCA’s exit from ALEC, came only after the damage of two decades of private prison industry influence has taken its toll.

Thanks to Alex Friedmann, associate editor of Prison Legal News, for his contribution to this article. Center for Media and Democracy staff researchers Rebekah Wilce and Alex Oberley also contributed to this article. A longer version of this article was originally published on dbapress.com and www.prwatch.org.

*Statement by Lisa S. Jacobs
Vice-Chair, Illinois Juvenile Justice Commission
Chicago, Illinois
December 12, 2012*

Dear Senator Durbin,

I am writing as Vice-Chairperson of the Illinois Juvenile Justice Commission to thank you for your leadership in convening this hearing on the so-called "School to Prison Pipeline" and for supporting strategies to keep young people in schools and out of the criminal justice system. As an attorney, I have worked for more than a decade to enhance our state's justice system and have seen great progress in improving the efficacy and fairness of the Illinois juvenile justice system. But a fundamental fact remains: pushing kids out of school and into the justice system unnecessarily is a deeply flawed approach. It produces negative outcomes for children, undermines the ability of the justice system to function effectively, wastes scarce resources and can actually increase risks to public safety. Simply put, kids belong in schools and communities, where they can learn, grow and become productive members of our communities.

In Illinois and across the country, punitive "zero tolerance" policies produce harsh and counter-productive sanctions for ordinary adolescent behavior that can be better addressed by teachers, administrators and families in the school setting. In other cases, these punitive approaches ignore serious underlying trauma, educational, mental health or other needs and cause irreparable harm to young people and families without any long-term benefits to public safety. Spending scarce dollars on punitive approaches which appear attractive in the short term not only fails to address the real needs of students, schools and teachers, but creates unnecessary obstacles to the kind of outcomes we want for young people. Criminal justice records can create insurmountable barriers to college, military service and employment and undermine long-term well-being for kids and communities across the nation. And lastly, relying on police to handle school discipline issues diverts much-needed resources from law enforcement efforts to prevent serious crime and protect public safety.

The evidence is clear: pushing kids out of schools and into the justice system is a failed approach. It doesn't work for kids. It doesn't work for communities. And it doesn't work for taxpayers, wasting precious resources which could be invested in kids, teachers, schools and communities. Instead, we need common-sense disciplinary approaches which empower teachers and administrators to deal effectively – and fairly – with disruptive behavior that would otherwise undermine the learning environment. We need to invest in school counselors and other community-based supportive services to bolster school safety, with the justice system as a last resort. And we need to redirect resources from ineffective punitive approaches which push young people into the justice system unnecessarily, to those strategies proven to produce positive outcomes for schools, young people and taxpayers.

It is my hope that this hearing will be the first of many to bring together concerned educators, policy-makers, juvenile justice practitioners, young people and parents to work together to address the challenges our communities face and to realize the potential our young people possess. Thank you for your leadership and commitment to these critical issues.

Very truly yours,



Lisa S. Jacobs
Illinois Juvenile Justice Commission

The Judge David L.
BAZELON CENTER
 for Mental Health Law
 www.bazon.org

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**TESTIMONY OF THE JUDGE DAVID L. BAZELON CENTER
 FOR MENTAL HEALTH LAW
 December 12, 2012**

The Judge David L. Bazelon Center for Mental Health Law submits the following testimony for the Senate Judiciary Committee's hearing on "Ending the School-to-Prison Pipeline." The Bazelon Center thanks the Committee for the opportunity to participate in this hearing.

The Bazelon Center's mission is to protect and advance the rights of adults and children who have mental disabilities. The Bazelon Center pursues a progressive mental health policy agenda, through litigation, legislative and regulatory advocacy, and research and analysis, to reform systems and programs to protect the rights of children and adults with mental disabilities to lead lives with dignity in the community. Among these initiatives, the Bazelon Center has developed innovative strategies to reshape how public school systems respond to children with behavior issues so that they avoid isolation, suspension, expulsion, and involuntary placements in juvenile correctional facilities, inferior residential schools, or other institutions.

The Bazelon Center agrees with Secretary of Education Arne Duncan that education, including the education of students with disabilities, is one of the most significant civil rights issues of our generation – a claim well supported by statistical data. Youth with disabilities are twice as likely to be suspended as their peers without disabilities, and among black students with disabilities the rate jumps to one in four. Students with disabilities are disproportionately affected by punitive school policing policies because they are more frequently disciplined for minor public order offences. They are disproportionately arrested – often for behaviors that are manifestations of their disability. Poor children of color are at greatest risk of this treatment.

Students with mental health disabilities, or emotional disorders, are disproportionately pushed out and into the School-to-Prison Pipeline. Expert studies indicate that as many as five percent of all school-age children have a functional impairment that may interfere with learning due to an emotional

disorder. Most children who exhibit behavior problems that interfere with their education qualify for and are entitled to positive and effective interventions under the Individuals with Disabilities Education Act (IDEA). They are also often entitled to effective interventions under the Medicaid Act's Early Periodic Screening, Diagnosis and Treatment (EPSDT) mandate, and to reasonable accommodations under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act to give them access to programs and services in the most integrated setting.

Currently, however, schools identify only a little over 0.5 percent of children as having an "Emotional Disturbance" (the term used in IDEA for most emotional disorders) and a little under one percent of children as having "Other Health Impairments," largely Attention Deficit/Hyperactivity Disorder (ADHD). Schools are therefore identifying just over one fourth of the students with serious emotional disorders that result in extreme functional impairments as needing special education services. In all likelihood, virtually all of these students have impairments that significantly affect their ability to learn (the basic standard for IDEA). This means that nearly three million potentially eligible students likely do not receive the educational supports and special services they need, and that are required under the IDEA, the ADA, and the Rehabilitation Act.

Instead of supporting these students, all too often schools push them out. Schools in the United States suspend approximately 3.3 million students annually and expel more than 100,000 – rates that have doubled since 1974. These rates have risen, in part due to adoption of "zero tolerance" policies, even as school violence generally has been stable or declining. In Massachusetts, for example, a newly enacted law permits school administrators to exclude children for up to 90 days – an entire semester – for school code violations that do not involve weapons, drugs, assaults on school personnel, felony charges or convictions. Students who are suspended or expelled lose valuable instructional time, fall further behind, and more likely to be retained in grade. Many will eventually drop out.

Students with emotional disorders are far more likely to be suspended or expelled. Three quarters of students with emotional disturbance have been suspended or expelled at least once by the time they reach high school. Although students with emotional disturbance make up less than 5 percent of all special education students, they account for 35 percent of special education students who are subjected to disciplinary action.

Moreover, schools now use suspension and expulsion for very minor infractions by students with mental health disorders.

- For example, an 11-year-old girl was arrested, handcuffed, and taken to jail for bringing a plastic butter knife to school.
- A high school junior who shot a paper clip with a rubber band at a classmate, missed, and broke the skin of a cafeteria worker was expelled, taken to jail, charged with misdemeanor battery and then advised by school officials to drop out.

Many schools shift responsibility for children with emotional disorders onto police and juvenile courts. More than a third of youths in juvenile corrections have a disability and need special education. Almost half are students with emotional disturbance. More than four times as many youths who have emotional disturbance and need special education are in juvenile facilities than in schools.

Judges who see these students in their courtrooms, however, increasingly reject these school "push out" practices, calling for these children's education, not punishment.

Unsurprisingly, after schools push out students with emotional disorders repeatedly and for long periods of time, these students have the highest drop-out rate of all groups of students. Ten percent of all students drop out before completing high school, but fully 44 percent of students with emotional disturbance drop out. Two thirds of youth in custody, many with serious emotional disorders, drop out after their release. Almost three fourths of school dropouts are arrested within the first few years of leaving school. Only one third are employed.

Another form of "push out" for students with emotional disorders is to remove them from the regular classroom and from their own neighborhood school. Children with serious emotional disorders are often placed in segregated settings: special classrooms, alternative schools for students with disciplinary problems (who are often predominantly students with disabilities), special schools, or residential placements. Over 13 percent of students with emotional disturbance are in completely separate schools for students with disabilities only, compared with three percent of all students with disabilities.

Research confirms that students with disabilities benefit from being included in regular classrooms with their non-disabled peers. Separate schools or programs are not more effective. But students with emotional disturbance spend only about a third of their time, on average, in a regular classroom with other non-disabled students.

Both "traditional" public schools and newer public charter schools too often push out students with disabilities. In May 2011 the Bazelon Center filed a disability discrimination complaint with the U.S. Department of Justice's Civil Rights Division against the District of

Columbia. District charter schools often require parents to disclose detailed information that reveals a student's disability, which the school then uses to screen out applicants with serious disabilities. Charter school officials frequently tell parents that the school cannot or will not meet a student's special education needs, despite legal obligations to meet those needs. District charters that do admit students with disabilities often then warehouse those students in restrictive and costly private schools at taxpayer expense.

As a result of the unlawful practices described in the Bazon Center's complaint, District charter schools have served a disproportionately low number of students with disabilities compared with the District's traditional school district, the District of Columbia Public Schools (DCPS). Within the District's charter school student population, students with the most significant disabilities are concentrated in just two highly segregated charter schools.

If we are to keep these students out of the "School-to-Prison Pipeline" – if America's schools are going to keep these students in school, learning, and achieving – we need a thoughtful, comprehensive, and systematic strategy for our schools to meet the needs of children with serious mental health disorders. These students must get the excellent education they deserve, guided by ambitious goals for their academic achievement and personal growth. They should be educated in classrooms with their non-disabled peers and participate fully in school life. They should receive needed behavioral and academic interventions regardless of whether they have been determined eligible for services under the IDEA.

Approaches with proven effectiveness exist and should be implemented. Unfortunately, such initiatives are scattered haphazardly. The problems – academic failure, overuse of suspension and expulsion, dropout, and juvenile and criminal justice involvement – are related, but the solutions are never linked.

We know what works to keep students with significant emotional disorders in school and learning. These students need:

- Timely, thorough assessments of their strengths and needs, and effective planning based on such assessments. Assessments of behaviors should be based on data, and should identify specific target behaviors, the triggers for those behaviors, and the consequences of the behaviors. Individual Education Program (IEP) plans and behavior plans should identify the interventions, based on the student's strengths and interests, that school staff will employ to promote positive behavior and prevent or de-escalate disruptive behaviors. They should identify how the school will assist the student and family with administration of medication. The plan should also identify strategies for

when the student has a crisis at school, so that school staff can respond appropriately and productively;

- Readily available and effective mental health interventions delivered by teachers, paraprofessionals, and other staff in classrooms and other parts of the school; by school medical personnel in school health clinics; or through school psychologists or social workers. The array of possible interventions should include: identifying adults at the school with whom the student may develop a mentoring relationship; teaching social skills or anger management techniques in small groups (and helping students practice those skills and techniques in classes or in extracurricular activities); group or individual counseling, including counseling on understanding and coping with trauma or other student concerns; and, for adolescents, work experiences, meaningful career exploration, and other planning and skill building for transition to adult life;
- Engaging, individualized instructional strategies that helps students who may be behind their grade-level peers catch up. Many students may need additional instructional time during the day to work on basic academic skills. Other students may need accommodations to lessons or tests, including alternative ways to demonstrate mastery of the curriculum;
- Engagement with families, and other natural supports for the student, to make use of their knowledge of the student in planning, and to ensure that what happens at home is consistent with the school's plan. The family should be a principal partner with the school as the school plans for and serves the student; the school should communicate frequently with the family about what is happening at school and at home (but should not continually call the student's parents to come pick up the student because of disruptive behavior);
- Someone at school to collaborate and coordinate with community providers that also serve these children. Non-school services and activities such as mentoring, tutoring, or summer employment can help advance the school's plan for the student – although the plan may need to adjust to take advantage of these opportunities. The school should also coordinate with outside medical providers, including by collecting data about behavior and, with the parent's consent, sharing that information with the doctor, to help determine the most effective medication regimen;

- A school climate conducive to learning. An approach such as positive behavior interventions and supports (PBIS) can reduce discipline problems; this approach offers simple strategies, including effective early interventions, for helping many children with mental health problems. A robust school wide PBIS program, including collection and analysis of trends in behavior data, can also help the school identify students who need more intensive interventions;
- Freedom from cruel and ineffective practices such as bullying and seclusion and restraint; and
- To be considered full participants in the school community and not be encouraged to drop out, subjected to harsh discipline, or referred to the police for minor behavioral lapses. Schools should reform their disciplinary policies to give staff the discretion to modify punishments based on individual student circumstances, including whether the student needs significant behavioral interventions. School disciplinary policies must also be implemented consistent with the procedural protections of the IDEA.

Not just schools need to change. Government at all levels, including other local and state agencies that serve children, also need to step up. This includes community mental health agencies and state and local mental health authorities, so that children have increased access to mental health services and teachers have support. These efforts can include:

- Consultation and education from mental health providers for general education teachers on how to recognize and work with students with emotional disorders;
- Services of local mental health agency personnel placed in the school building; and
- Collaboration between school and local mental health agencies around the intensive services needed by the small subset of children who have the most serious disorders.

The Bazelon Center welcomes the interest of the Committee in the "School-to-Prison Pipeline," and hopes this focus will result in statutory and regulatory changes that will assist schools and their community partners in successfully meeting these challenges in the future. Please feel free to contact Lewis Bossing, Senior Staff Attorney, by email at lewisb@bazelon.org or by phone at (202) 467-5730 x307 with any questions about this testimony.

Name: Judge Patricia Koch of the 9th Judicial District Court, located in Alexandria, Rapides Parish, Louisiana

I have submitted information to Judge Steve Teske concerning the success of programs within the public schools in Rapides Parish. I hope that he is able to share those items during his testimony. I write to give more background to my interest and role in this issue. My connection to schools began first as a PTA president of my oldest child's elementary school in 2000. (I am a parent to 3 boys – ages 17, 13 & 11) As a result of that involvement, I later pursued election to bench for the parish and with the support of many teachers, parents and friends I was elected in 2005. For six years I served as the local juvenile judge and further explored ways that children could remain in school and not be placed in any out-of-school or out-of-home placements. Our parish was selected as a one of the John D. and Catherine T. MacArthur Foundations *Models for Change* sites. I currently serve on the adult criminal bench and continue to strive to increase educational possibilities for defendants and victims.

Rapides Parish was blessed to have a forward thinking superintendent who immediately recognized the need for School Resource Officers to not chose arrest over resolution of in-school issues. As a result of that oversight, Rapides Parish, whose student population is 25,000 in 52 schools spread throughout the parish, rarely sees an on-campus arrest except for the most severe public safety crimes. All other matters, especially those that are "typical teenage behaviors" are handled within the school setting. Even students who have experimented with illegal substances are offered counseling services so that they can remain or return to their home school settings in a short period of time. The commitment of the superintendent, the school resource officer and the courts have shown that keeping kids in school benefits not only the child but the community. Rapides Parish has experienced higher graduation rates than the state's average.

This all began in 2006 when the superintendent was approached by a local ministerial alliance as well as myself as the newly elected judge. Exploration of the data indicated that too many minority youth were being pushed out, especially those who were identified as special ed. A partnership was created between the ministerial alliance that they would offer mentors within the schools for those at-risk youth, the parish school board invested not only financial support but also commitment to the positive behavior support program (PBIS) along with the support of the school resource officers that students would be offered alternatives to arrest when faced with typical teenage behavior (i.e. school fights, petty theft, alcohol, marijuana) and in addition the special education department developed a tiered behavioral approach based upon the PBIS to reduce the number of expulsions of special ed students. The data for the special ed students shows that expulsion went from in excess of 350 down to less than 30 within a 3 year period. They have done an amazing job not only with special ed students but regular ed as well since the behavioral approach is not just for special education students. As you can see zero tolerance is not the norm for the schools in the parish any longer EXCEPT if a danger to public safety is present.

So what can be done from the federal level – encourage the elimination of zero tolerance. Provide education and training opportunities for schools to explore alternatives within their schools. Offer technical assistance to schools for the purposes of exploring the data that is available. (by exploring the data we found that within schools that some just did a better job

than others which led to asking why – the result was the identification of personnel/skills/techniques that could reduce the level of anxiety in students and allowed for behavioral changes in a student population)

It is truly my belief that it is not always about the financial support but instead the opportunity to explore what does work and how to replicate that effort. Old dogs can be taught new tricks when the data supports that effort.

LEGAL AID JUSTICE CENTER

Angela Cioffi
Legal Director, JustChildren

December 10, 2012

Senator Dick Durbin, Chairman
Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

RE: Ending the School-to-Prison Pipeline

Dear Senator Durbin and Members of the Subcommittee:

Thank you for the opportunity to submit public comment for the record in advance of your hearing on "Ending the School-to-Prison Pipeline."

JustChildren is a program of the Legal Aid Justice Center that provides free legal services to low-income children in the areas of education, juvenile justice, and foster care. Through community organizing, policy advocacy, and impact litigation, JustChildren also works to improve the systems that serve the Commonwealth's most vulnerable children.

As the largest children's law program in Virginia, every year JustChildren represents countless youth who have been suspended, expelled, or placed in inferior educational settings as a result of their behavior. We also provide technical assistance to legal aid and pro bono counsel in similar cases across the Commonwealth. We see firsthand the devastating effect school exclusion has on young people, families, and communities.

Last year, JustChildren published a report, *Educate Every Child: Promoting Positive Solution to School Discipline in Virginia*, which found that over 90,500 individual students were suspended or expelled from a Virginia school in 2010-2011, many of them more than once. Most suspensions were for relatively minor misbehavior, such as disorderly conduct, minor insubordination, or misuse of electronics. The Report's other findings include:

- In 2010-11, Virginia schools administered over 159,000 suspensions and expulsions. This is a rate of 884 suspensions or expulsions per school day.
- Over 27,700 short-term suspensions were issued to *elementary* school students.
- Virginia's students with disabilities and students of color disproportionately suffer the effects of harsh discipline policies. In 2010-11, Virginia's students with disabilities received short-term suspensions at a rate that was 2.4 times as high as the rate for non-disabled students. In 2009-10, 16% of black students had received at least one suspension or expulsion, compared with 5% of white students.
- In Virginia, Positive Behavioral Interventions and Supports (formerly "Effective Schoolwide Discipline") has significantly reduced office disciplinary referrals, in-school suspensions, and out-of-school suspensions. Most significantly, it has reduced out-of-school suspensions by 75% for general education students and 85.6% for special

education students. PBIS has also saved 9.2 hours of administrative time and 4.6 hours of instructional time weekly. Despite its impressive results, ESD is in only 12% of Virginia's 1,838 schools.

School exclusion hurts everyone. Poor behavioral climates in schools are associated with low student achievement, high dropout rates, increased contact with the juvenile justice system, and higher teacher turnover. Most obviously, students who miss school often return to school with the same problem behaviors and fall behind academically. School discipline should be about teaching self-control, right from wrong, how to follow the rules, and that others have rights and feelings. School discipline should not be a short-term solution that ultimately does more harm than good.

We want safe, high quality schools that care about our children and give them the opportunity to succeed. By putting common sense and fair discipline policies in place, we could save taxpayer dollars and send young people to a college or career, not prison.

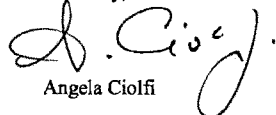
Policymakers can put our students on the track to success by:

- Investing in Positive Behavioral Interventions and Supports (PBIS), a proven program for improving school climate, reducing disciplinary referrals, and decreasing the use of out-of-school suspensions – all while increasing instructional time;
- Rolling back failed zero tolerance legislation and restoring discretion to school-based officials for making decisions about expulsion and reporting school-based misdemeanors to law enforcement;
- Developing and implementing plans to reduce discipline disparities based on race and disability; and
- Promoting strategies that increase learning time for everyone and emphasize more effective alternatives to suspending students out of school.

We know that it is possible to reduce the cost to society of high dropout rates, crime, and teacher attrition rates by adopting more effective approaches to managing challenging behavior in school. We also know that by breaking the school-to-prison pipeline, we will have a better opportunity to adequately educate and prepare all students to succeed in our communities.

We thank Senator Durbin for calling attention to this important matter, and look forward to working with you to improve school climate for our students, teachers, and communities across the country.

Sincerely,



Angela Ciolfi

Educate Every Child

State of the Commonwealth:

- In 2010-11, more than 90,500 Virginia students were suspended or expelled, many of them more than once.
- In 2010-11, Virginia schools issued 159,117 suspensions or expulsions:
 - 708 expulsions
 - 5,761 long-term suspensions
 - 152,648 short-term suspensions
- Suspension rates vary: In 2006-07, Virginia high schools suspended 2.9% to 58% of their student body *at least once*.

Who gets suspended?

- Students of all ages. In 2010-11, over 27,700 short-term suspensions were issued to *elementary school students*.
- Students with disabilities. In 2010-11, suspension risk for Virginia's students with disabilities was 2.4 times higher than for non-disabled students.
- Students of color. In 2010-11, suspension risk for black students was almost 4 times the risk for white students. In 2006-07, the average Virginia high school suspended 1 in 4 of its black students.

Why are students suspended?

- In 2009-10, approx. 75% of all short-term suspensions were for minor acts of misconduct, such as defiance/refuses request/disrespect/walking away, classroom/campus disruption, confrontation w/ no injury (not including fighting), electronic devices/cellular phones, or "other inappropriate behavior."
- In 2009-10, at least 1,544 students were suspended for *more than 10 days* for behavior that did not involve weapons, drugs, or injury or threat to another person.

Virginia can raise student achievement *and* prevent juvenile delinquency by replacing school exclusion with effective approaches to improving student behavior.

Educate Every Child

SUSPENSION AND EXPULSION HURTS EVERYONE:

1. Excluding students from school does not improve their behavior. There is little or no evidence that suspension improves student behavior in either the short or long-term.
2. Today's suspended and expelled youth are more likely to become tomorrow's dropouts. The University of Virginia's Curry School of Education found that Virginia high schools that use suspension most frequently tend to have high dropout rates, even after controlling for student demographics and attitudes. The Virginia Department of Education has reported that students who repeated grades, attended multiple schools, or were frequently absent were more likely to drop out of school.
3. Poor school climate leads to lower student achievement and increased teacher turnover. Research indicates that high suspension rates are related to lower student achievement scores, even after controlling for race and poverty. Many studies have found that teacher turnover is related to a school's behavioral climate.
4. Harsh penalties for minor misbehavior do not make communities safer. Failure to attend school is linked to delinquent behavior, including substance abuse, gang involvement, and daytime crime.

What can we do to maintain safe and orderly schools?

- Provide professional development to promote effective classroom management practices, which are linked with improved learning and behavior.
- Expand Virginia's Effective Schoolwide Discipline (ESD) program. From 2007 to 2011, ESD:
 - Reduced Office Disciplinary Referrals by 51% for SWD and 29% for non-SWD
 - Reduced In School Suspension by 65% for SWD and 45% for non-SWD
 - Reduced Out of School Suspension by 86% for SWD and 75% for non-SWD
 - Saved 9.2 hours of administrative time per week
 - Saved 4.6 hours of instructional time per week
 - But only 12% of Virginia's 1,838 schools are using ESD.
- Promote use of evidence-based responses to misbehavior, including restorative practices, peer mediation, individual counseling, threat assessment, and imposing creative consequences that minimize loss of instruction and unsupervised time at home.
- Recognize in the Standards of Quality the instructional value of support services and programs provided inside and outside the classroom to students whose academic, behavioral, and emotional challenges prevent them from accessing the curriculum successfully.



December 5, 2012

Senator Dick Durbin
Room 226
Dirksen Senate Office Building
Washington, D.C.
Re: Hearing on Ending the School-to-Prison Pipeline Congressional Testimony

To Whom It May Concern:

The following testimony is submitted on behalf of Justice for Families (J4F), a national alliance of local organizations working to end the nation's youth incarceration epidemic. In furtherance of its national report, *Families Unlocking Futures: Solutions to the Crisis in Juvenile Justice*, Justice for Families, its twelve local partners, and its research partner, the DataCenter, surveyed more than 1,000 parents and family members of system-involved youth from 20 cities spread across nine states and conducted 24 focus groups of 152 youth, parents, and family members from twelve cities across nine states, among other research.

In focus groups and surveys, families described how the rapid growth of the prison system, 'zero-tolerance' school discipline policies, and aggressive police tactics coupled with the decline of social services and public education have wreaked havoc on their predominantly low-income communities of color. In this context, rather than being a deterrent, school disciplinary systems and juvenile justice systems have functioned as a principal feeder into our nation's vast prison system.

The parents and families of court-involved and incarcerated youth love their children and are hardworking individuals with deep ties to, and concern for, their communities. Yet, more often than not, "tough-on-crime" rhetoric and

Justice for Families
900 Alice St. Suite 400
Oakland, CA 94607
www.justice4families.org

uninformed stereotypes about youth and their families have governed the policies of schools and juvenile justice systems. In *Families Unlocking Futures: Solutions to the Crisis in Juvenile Justice*, families challenge those misperceptions. J4F was founded and is run by parents and families who have experienced “the system” directly with our own children, and who are taking the lead to change it. The following reflects a brief summary of the findings of the *Families Unlocking Futures Report*. The full report is available at www.justice4families.org.

FAMILIES UNLOCKING FUTURES SUMMARY OF FINDINGS

The Present: The Problem

- Nearly one in three families surveyed reported that their child’s first arrest took place at school.
- Ninety-one percent of family respondents said that courts should involve families more in decisions on what happens to a child found delinquent/guilty.
- Yet, more than eight in ten family members surveyed reported that they were never asked by a judge what should happen to their child. Once cases were called, families described court hearings as proceeding quickly with no time to understand what was going on or provide input.
- Just 18 percent of families reported that professionals in the youth justice system (judges, probation officers, public defenders, facility staff, and others) were either “helpful” or “very helpful” during the court process.
- Eighty-six percent of family members surveyed said they would like to be more involved in their children’s treatment while they were confined in a youth prison or other residential placement.
- Three out of four survey participants reported facing serious impediments to visiting their children and over half said that it was difficult to contact staff at the facility to ask how their child was doing, or get information about their child’s progress and/or safety.
- Only 32 percent of parents and families surveyed reported discussing release plans with juvenile justice system personnel prior to their child’s release.
- Sixty-nine percent of families surveyed said it was either “difficult” or “very difficult” to get their child back in school post-release.
- Though measures of recidivism vary across states, roughly 70-80 percent of youth released from youth prisons are rearrested in two to three years.

The costs associated with a young person's involvement in the justice system weigh heavily on families of modest means.

- More than half of family members who took part in the Justice for Families survey reported that their households live on less than \$25,000 per year.
- One in three families said they have had to choose between paying for basic necessities like food and making court related payments.
- One in five families reported having to take out a loan to make court related payments.
- Two out of three parents surveyed reported that they have had to take time off from work without pay to support their family member as a result of their involvement with the system.
- More than one in three families indicated that the cost of phone calls was prohibitive, and kept them from having contact with their loved one.

The Future: Family-Driven Solutions

Families surveyed indicated ways youth justice system officials might be more responsive to families during the court process and while youth are in youth or adult prisons:

- Give families more timely notification of court dates (87 percent);
- Hold court appearances when it is easier for families to attend hearings (85 percent);
- Support families' transportation to court (84 percent) and residential placements (81 percent);
- Discontinue taking away visits for misconduct in the facility (76 percent);
- Eliminate burdensome fees and fines that hurt working families
- Maintain a staffed hotline or call center for families who have questions about visitation (92 percent);
- Notify families of expected release dates to allow them sufficient time to prepare (93 percent);
- Locate facilities/programs closer to family residences (91 percent);
- Have more visitation opportunities (91 percent) and fewer limits on who can visit (83 percent).

In addition to ending practices that exclude families, youth justice systems should proactively create opportunities for families to participate in the redesign of these systems.

- Schools and youth justice systems should work to ensure that parents and families play a central role in all decisions that impact their children.
- Schools and youth justice systems should work with community-based organizations to provide peer support to families.
- Across the country, school discipline and youth justice policy needs to be thoroughly reexamined and families must be involved. An overwhelming 92 percent of families surveyed stated that families should be engaged in local, state, and federal policy discussions regarding how juvenile justice systems work and the kinds of programs that are made available. Yet, just 27 percent reported they had ever been part of such discussions.

When asked how judges could assign better options for youth, surveyed families pointed to the need for

- job opportunities (91 percent)
- educational opportunities (86 percent)
- mentorship opportunities (84 percent)
- mental health programs (77 percent)
- community-based services that keep kids in the home (75 percent).

In addition to the recommendations above, J4F supports the recommendations outlined in the Dignity in Schools letter.

A rethinking of school discipline and youth justice systems based on the recognition of the deep strengths and reconciliatory values held by communities is desperately needed. Nearly half of families J4F surveyed have either personally survived a crime or have a family member who has. Nevertheless, surveyed families who have a crime survivor in their family were actually more likely to support alternatives to incarceration and detention. Families understand the need for community safety but also see the way youth are treated in school discipline and juvenile justice systems as part of the problem.

In these systems, when critical decisions are being made about how a young person is treated, families are outright excluded, disregarded, or not provided the information and tools necessary to actively participate in proceedings dominated by legalese and jargon. Most of the youth at-risk of becoming engaged in the school-to-prison pipeline come from families that face extreme financial vulnerability. While these families struggle to meet basic needs, they also find it increasingly difficult to access and afford positive recreational and educational opportunities for their children. If they have the misfortune of

encountering school disciplinary and juvenile justice systems, they'll face exclusionary policies that: (1) create and deepen economic instability; (2) discriminate against families that deviate from the nuclear family norm; and (3) reinforce the incorrect assumption that their families are apathetic or worse, that they are part of the problem.

Meanwhile, a vast research base shows that: (1) zero tolerance policies do not enhance school safety (2) locking children up in adult and adult-like prisons and jails puts them at grave risk, increases their chances of being violently abused and locked up again, and ultimately decreases the safety of communities; (3) families are crucial to youth success; and (4) family-centered youth programs work. Yet these solutions are too often ignored because families do not have a seat at the table and are too often assumed to be the problem.

The recommendations outlined above offer a path toward building youth and family leadership into the design of school discipline and youth justice systems. Ultimately, much of the vast trove of resources currently geared toward failing 'zero-tolerance' policy implementation in schools and in incarceration should be re-directed toward investment in social goods and opportunities within communities. Through justice reinvestment, tapping into the resiliency of communities harmed by decades of failed tough-on-crime policies, we can end the school-to-prison pipeline and enhance genuine public safety.

For citations, J4F's full suite of policy recommendations and descriptions of promising justice reinvestment approaches, please download *Families Unlocking Futures* available at www.justice4families.org.

With Appreciation,

/S/ GRACE BAUER ZACHARY NORRIS
Grace Bauer and Zachary Norris
Co-Directors, Justice for Families

**Written Testimony of Cheryl Kreager
Director Juvenile Justice Coalition of Minnesota**

**United States Senate Sub-Committee on the Constitution, Civil Rights and
Human Rights
Committee on the Judiciary**

“Ending the School-to-Prison Pipeline”

**December 12, 2012
Washington, D.C.**

Thank you Chairman Durbin, Ranking Member Graham, and distinguished members of the Committee for the opportunity to discuss the school-to-prison pipeline and the positive work in Minnesota to address this important issue.

I am submitting this testimony on behalf of our organization, the Juvenile Justice Coalition of Minnesota (JJC), a coalition of key stakeholders involved in Minnesota’s juvenile justice system. A 30 member Steering Committee with representation from Minnesota State agencies, professional associations, advocates and key community voices guides our efforts. Over 3,300 system professionals connect with our organization through our monthly newsletter, training events, crossover youth practice model project and statewide work groups.

Whether a young person is struggling with stressful life circumstances, mental health issues, drug or alcohol use, school challenges or engaging in dangerous and unacceptable behavior, they deserve a chance to become a successful adult. We advocate for a system we would want for our own family members. Our goals are to create a model juvenile justice system where only those youth who pose a high risk to public safety enter the formal court system and the vast majorities are served in their communities, treated as typical adolescents or youth in need of services, and not criminals.

Research indicates students’ time in class, present and participating, is the single best predictor of student achievement (Skiba and Sprague, 2008). However, school participation can be negatively impacted by school disciplinary policies and direct referrals from schools to the juvenile justice system for youth behaviors. These policies disproportionately impact youth of color and directly contribute to the large achievement gaps we see.

MINNESOTA DATA

The state of Minnesota is challenged by disproportionate minority representation in suspensions and expulsions as well as disproportionate minority contact in the juvenile justice system. The Minnesota Department of Education (MDE) 2010 report on suspensions and expulsions found the following:

- Black, Hispanic and American Indian students are overrepresented in suspensions and expulsions compared to White youth.
- African American students are 5.6 times more likely to be involved in a Discipline Incident Reporting System (DIRS) incident, 5.9 times more likely to be suspended, and 3.8 times more likely to be expelled than White students.
- Hispanic students are 2.2 times more likely to be involved in a DIRS incident, 2.5 times more likely to be suspended and 2.5 times more likely to be expelled than White students.
- American Indian students are 3.9 times more likely to be involved in a DIRS incident, 4.1 times more likely to be suspended and 6.2 times more likely to be expelled than White students. (*Disproportionate Minority Representation in Suspension and Expulsion in Minnesota Public Schools*
<http://education.state.mn.us/MDE/EdExc/SchSaf/SchClimate/index.html>.)

Overview of Disciplinary Incidents and Actions in Minnesota Public Schools

	2010-2011	2011-2012
Reported incidents	62,147	60,036
Actions resulting in and out-of-school suspension for at least one day or more	49,414	49,366
Actions resulting in an expulsion/exclusion	265	238
Students removed for one day or more	30,509	30,046
School days missed	126,791	123,997

Referrals to Law Enforcement

	2010-2011	2011-2012
School disciplinary actions referred to law enforcement	8,941	7,492
For behaviors such as disruptive/disorderly conduct/insubordination and fighting	44.6%	26%
For behaviors such as weapons, bomb threats, illegal drugs and assault.	13.1%	31.8%

In 2009-10, MDE conducted workshops and focus groups around the state regarding disproportionate minority representation in suspensions and expulsions to identify strategies the agency could enact to help districts address disproportionality in discipline. The report and recommendations can be found at: <http://education.state.mn.us/MDE/EdExc/SchSaf/SchClimate/index.html>. The impact of school staff's cultural competency or lack thereof was raised in this report and that issue is imbedded in programming at MDE. Health disparities also impacts student ability to stay in school.

CHALLENGES

Impact of Mental Health

Nearly 70% of youth in Minnesota's juvenile justice system have one or more diagnoses for mental illness, making this a critical issue in Minnesota. In 2007 the Minnesota Department of Corrections, in partnership with state and local agencies, established the Juvenile Justice and Mental Health Initiative to improve the outcomes for youth in the justice system with mental illness or co-occurring disorders. The group consensus was mental illness plays a huge part in why young people end up in the juvenile justice system and the juvenile justice system is not an appropriate system to serve as the last resort for mental health care. Some students are diverted from mental health services to the justice system because of lack of resources to pay for such services.

Data Limitations

There is missing data that would provide a more dynamic portrait of conditions in Minnesota. For instance, there are no required reporting procedures to any state agency for the following:

- What happens after the school referral to law enforcement?
- How are decision made regarding the youth's placement?
- Who are the youth under corrections supervision but not in a facility (i.e. Probation)?
- What happens to youth while in detention?

Collateral Consequences

A juvenile record can severely impact a youth's future. The trend of increasing barriers for people with criminal records is now impacting individuals with juvenile records, sometimes with the exact same result as those with adult convictions. For example, the Minnesota Department of Human Services (DHS) accesses private juvenile delinquency records for background studies for professional positions having any contact with children or vulnerable adults. Some juveniles may even be disqualified for life from many areas of employment, including foster care and adoption, based upon conduct as a juvenile that may not even result in a delinquency adjudication or finding of guilt. A juvenile's record may also limit acceptance into the U.S. military and higher education institutions, some housing opportunities and private employment, all potential barriers to transitioning successfully into adulthood.

Negative Impact on Youth and Families

For youth and their families, the experience in the juvenile justice system can be extremely frustrating, unhelpful and harmful to their child's present and future. Below are excerpts from a letter submitted by a parent of a youth describing their experience.

We have attempted to take a problem-solving approach from the beginning, but have discovered that there are gaps in the school, mental health and juvenile justice service system that don't address the needs of families and troubled youth. We continue to criminalize normal adolescent behavior or behavior that should be dealt with informally, outside of the formal juvenile justice system and we pay a huge price as a society. We know these systems can do better

and the solutions are already out there. We just need to find a way to implement them in our community.

We mistakenly believed that L.E.'s record would be extinguished or sealed when he turned 18. Unfortunately, we've had to learn the hard way that any charge against a child, misdemeanor or felony, is serious. We didn't realize that we needed to work to get in front of these charges from the beginning and that a juvenile record can be long lasting and will have a significant impact on his ability to go to college, find employment, join the military, rent an apartment or get a credit card. A juvenile record may also preclude an adult from working in the health care field, educational field or foster care.

We have been inadvertently tasked with trying to coordinate shared information and connection between the multiple interdependent systems, agencies and professionals that have been in and out of our life. Because of this, so much of our time and energy has been spent writing letters, appealing insurance decisions, setting up school meetings, attending court hearings, meeting with individuals from corrections, treatment professionals, physicians, school etc. that L.E.'s services have been extremely fragmented and inconsistent and a multi-disciplinary plan still has never occurred despite our best efforts. The time it takes to obtain all the information needed often leads to unnecessary referrals, duplicate services, inaccurate information, and service delays. It is the child who suffers the consequences of this highly inefficient system of information sharing

L.E. is a work in progress and not seeing his disorder as a true disability dismisses the problems, and instead, blames him for not taking control of them. Treatment for Oppositional Defiant Disorder is usually a long-term commitment. It may take a year or more of treatment to see any noticeable improvement.

We know we don't have control over L.E.'s choices or the outcome of his life but we do have a responsibility to guide him to a better place and the school, juvenile justice and mental health system has a responsibility to ensure that vulnerable kids are provided with protection and services they need to become happy, healthy and productive adults.

The order states that lesser consequences were not successful in restoring law abiding behavior however, due to the gaps in services we have not had an effective comprehensive treatment approach to address the needs of L.E. or our family.

Their son spent 3 weeks at a Minnesota corrections camp for a probation violation of a minor consumption. The family is required to pay a portion of the cost of this placement, even though they tried to work with the courts to keep him at home. He will soon be off probation and the family will now need to navigate Minnesota's confusing expungement process to attempt to secure their son a future.

MINNESOTA INITIATIVES

There is growing awareness in Minnesota and across the country on the role of education and youth involvement in the juvenile justice system. Multiple communities in Minnesota are working collaboratively across youth-serving systems to change policies and responses to youth's behaviors by reducing referrals to the juvenile justice system, reducing the use of suspensions and expulsions, and changing school environments, while still protecting public safety. Examples are described below.

Juvenile Justice Coalition of Minnesota Statewide Forum December 2012

JJC is co-sponsoring a forum, "Improving the Relationship between the Education and Juvenile Justice Systems," with the Minnesota Department of Education, Minnesota Department of Human Services, and Minnesota Judicial Branch's Children's Justice Initiative on December 17th to highlight Minnesota specific data and successful local initiatives. The purpose is to engage in a statewide conversation on this important issue, share successful models, provide networking opportunity across disciplines and dialog statewide solutions. Interest is high, with the limited available spaces filling up within two weeks of registration opening. If resources allow, JJC will continue similar advanced training and networking opportunities throughout 2013 to promote solutions.

MN Department of Education (MDE)

Primary Prevention

The Minnesota Department of Education recommends a comprehensive approach using aspects of the Public Health Model and a multi-tiered system of support (universal, selected and indicated). Programming should be informed by resilience-based Youth Development principles that provide developmentally appropriate supports and opportunities, ensuring basic needs are met, such as respect, safety, belonging, power, challenge, mastery, and meaning. Both prevention and intervention practices should include strengths-based strategies focused on assets, building competency in academic, social/emotional and behavioral skills.

Many students come to school with extra burdens making it difficult to perform well. School staff is encouraged to use trauma informed practices and MDE is developing programming informed by Adverse Childhood Experiences (ACEs) data and growing knowledge regarding brain development. MDE provides an array of preventative and focused intervention strategies:

- Addressing bullying and harassment
- Positive Behavior Interventions and Supports (PBIS)
- Restorative Justice Practices
- Alternatives-to-Suspension
- Reintegration Framework
- MDE's monitoring and compliance activities
- Physical activity in the classroom initiatives
- Coordinate School Health and school nutrition programming
- Out of School Time programming.

In addition, MDE developed a data system that provides district level discipline data for school districts and developed the Minnesota Early Indicator and Response System (MEIRS) to help identify students who may be in danger of dropping out of school. The Minnesota Student Survey, which on a three year basis garners participation from 90% of the state districts, provides data on student health, strengths, assets and protective factors as well as risk factors.

Alternative Interventions

- MDE has a standing workgroup reviewing data and issues regarding drop-out prevention, school to prison and traditional school discipline practices.
- Staff work with state agency and community partners on prevention and intervention, including the Office of Justice Programs at the Minnesota Department of Public Safety, Minnesota Department of Health, Minnesota Department of Human Services; the Greater Twin Cities United Way, the Minnesota Alliance for Youth, The Juvenile Justice Coalition of Minnesota, Prevent Child Abuse Minnesota, the Minnesota Sexual Assault Association and the University of Minnesota, among others.
- Share information regarding data privacy laws and practices across multiple settings, and dissemination and training using the Reintegration Framework: <http://education.state.mn.us/MDE/StuSuc/SpecEdProg/index.html>.
- Collaborates with the University of Minnesota's Institute on Community Integration (ICI) OSEP grant to support juvenile offenders to re-enter postsecondary education and employment opportunities.
- Looks to collaborate with care and treatment providers and settings to assure compliance with state and federal education laws and work with higher education training programs to teach essential knowledge and skills on prevention and intervention across agencies.

For further information, contact Karen Carlson, Supervisor, 651-5820398; karen.carlson@state.mn.us.

Hennepin County Collaborative Effort

All school learning environments should be orderly, safe, and secure for students, teachers, staff, guests and visitors. The juvenile justice system has a role in supporting schools in maintaining safe learning environments, but prosecutors and juvenile courts need to focus their resources on youth who are committing serious offenses or who continue to offend after school-based interventions have been tried and failed.

In 2007, the Hennepin County Attorney's Office re-examined the referrals from law enforcement for crimes committed in schools. In the 2006-2007 school years, almost twenty-five percent (25%) of all the juvenile delinquency referrals from law enforcement to the county attorney's office were for offenses committed in schools. Eighty-six percent (86%) of the referrals involved minor offenses, either misdemeanor or petty offenses; and the largest category of offenses were disorderly conduct, making up fifty percent (50%) of the referrals. These referrals included misbehavior that in the past may have been addressed through a call to the parents, after school detention, or other in-school interventions. Additionally, the juvenile justice system was not providing an immediate and meaningful response in addressing this type of misbehavior in schools.

Working with law enforcement and schools, by the most recent school year, Hennepin County cut school crime referrals to less than one-half of their level in the mid-2000s. In Minneapolis, the county's largest and most diverse city, school crime referrals have been reduced even more dramatically, with a seventy-two percent (72%) decrease from the 2006-2007 school years to the 2011-2012 school year. Over the same period of time, law enforcement referrals for disorderly conduct offenses were reduced by eighty percent (80%). These dramatic reductions were achieved by collaboration among juvenile prosecutors, schools, and law enforcement that included prosecutorial charging policies, school climate practices, and changing the focus of the school resource officers from primarily enforcement to building positive relationships with students. Most importantly, the partners developed a shared commitment to addressing minor misbehavior within the schools and only involving the juvenile justice system when necessary.

In-School Children's Mental Health Services

Many school suspensions and expulsions are rooted in social-emotional problems for children and youth. Minnesota has identified a need to systematically address the social-emotional needs of children and youth in schools directly through a School Linked Mental Health Grant to 20 mental health community based agencies that provide services in partnership with the school. Since the grant started in 2008, SLMH grantees have served 12,962 children from every grade in 420 schools and 63 counties. While suspension/expulsion rates for children participating in the SLMH program is unknown, the project has had an impact on students:

- *An increasing number of students utilize SLMH supports.* During the 2009/10 school year 51 out of every 10,000 children in the Minnesota counties served received SLMH services. In the first half of 2009, programs served 3,759 students compared to 4,891 students served in the first part of 2011.
- *SLMH children are experiencing a reduction in mental health systems and functioning.* An individual student may experience a significant change in functioning after a 1-3 months of treatment, others after longer length of services. Between 25-37% of children experience significant changes in functioning at each quarter of service.
- *Children with serious mental health needs are getting services for the first time because they are available in connection with their school.* Approximately 60% of the SLMH students who met the criteria for emotional disturbance and 45% of the students who met the criteria for serious emotional disturbance were getting mental health services for the very first time.
- *Insured and uninsured children are accessing services through the SLMH program.* 41% of children in the SLMH are enrolled in Minnesota Health Care Programs, and 33% have private insurance. Along with the first time mental health indicator, this data suggests access is not merely a function of insurance coverage. Providers bill insurance when feasible, to support program sustainability.

School-Based Diversion Model for Students with Co-Occurring Disorders

A cooperative project between the Minnesota Department of Human Services Children's Mental Health Division and Intermediate School District 287 is developing a front-end school-based diversion model for students with co-occurring disorders. The model intends to reduce the number of school-based arrests and juvenile justice referrals as well as emphasize the importance of access to mental health and substance abuse services. A key strategy is for schools and law enforcement to share responsibility for school safety by working together to ensure consistent response to behavioral incidents, clarify the role of law enforcement in school disciplinary matters, and reduce involvement of police and courts for misconduct at schools and school-related events. Parent and student involvement is encouraged at multiple stages. The goal is to develop the model by March 2013 and then become available for replication statewide and throughout the country.

wRight Choice- an Alternative to Suspension Program

Through a collaborative effort, fostered by Wright County's Safe School Initiative, the local education system and juvenile justice system combined efforts to address alternatives to out-of-school suspension. Wright County is located close to the Twin Cities Metropolitan area and is one of the fastest growing in Minnesota. Buffalo High School and Wright County Court Services introduced wRight Choice two years ago. This program is a unique combination of structured homework time, a restorative approach to "repairing the harm", community service, and daily workshops facilitated by probation officers, mental health workers, truancy specialists, chemical health providers, etc.

Recommendations by Kathryn Quaintance, Juvenile Court Presiding Judge, Fourth Judicial District

As the presiding juvenile court judge in Hennepin County, Minnesota's largest, the Honorable Kathryn Quaintance developed the following recommendations for Minnesota's judicial branch and education systems to work together to reduce the school to prison pipeline.

- Instill educational advocates in the court system to help with credit recovery and educational planning for Child Protection youth and others.
- Require representatives from the school to appear in court with students.
- Since many behaviors that result in suspension are trauma based, educate the systems on alternative responses to youth's behaviors attributed to their history of trauma.
- Special Education needs of youth should not be grounds for suspension.
- Schools need to partner with the juvenile justice system on delinquency and child protection cases since schools play a huge role in the health (mental and physical) and welfare of children.
- Inform disciplinary policies using adolescent brain development.
- Include disciplinary interventions as a part of school performance measures. Suspensions would be an indicator of dysfunction.

- Raise awareness about disparities by collecting and analyzing the data to see the impact of policies and decision on youth of color. Remove discretionary, subjective grounds for suspension and require a reason for any exceptions.

CONCLUSION

Minnesota is making progress to address the school to prison pipeline. However, too many youth are still becoming inappropriately involved in the juvenile justice system through the schools. We need all of our youth to successfully transition into adulthood with the skills and education they need to compete in our interconnected world. We ask the committee to continue to focus attention on the school to prison pipeline, encouraging the use of evidence based primary prevention practices, and restorative and formative interventions, to ensure all students have access to a safe and caring learning environments. Thank you for spending time on this important issue and learning about the positive work in Minnesota.

Information provided by the Juvenile Justice Coalition of Minnesota, Minnesota Department of Education, Minnesota Department of Human Services Children's Mental Health Division, Hennepin County Attorney's Office, Council on Crime and Justice, Minnesota Council of Child Caring Agencies and Wright County Corrections Department and the Honorable Kathryn Quaintance.

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Illinois – Stopping the School to Prison Pipeline

*Truancy Reduction Efforts focus on Individualized Community
Based Interventions*

*Youth Suspensions/Expulsions Successfully Redirected to
Appropriate Advocacy and Services in One Redeploy County
But*

Disparate Referrals to Law Enforcement in Another County

Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

Wednesday, Dec. 12, 2012

We are grateful to Senator Durbin and the fellow members of the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, for this opportunity to present written testimony on the impact of ending the school to prison pipeline in the United States, with specific information on efforts in Illinois.

Illinois statutory reform to address truancy prior to court involvement: Seven years ago, members of the Illinois State Advisory Group (SAG) grew alarmed over the increasing number of youth who were truant but ended up referred to court and held in detention for violation of a court order to attend school. The increasing number of truants in detention was threatening Illinois' compliance with the prohibition against confinement of status offenders under the Federal Juvenile Justice and Delinquency Prevention Act, thereby putting Illinois' receipt of federal delinquency prevention dollars at risk. The Illinois SAG Chair proposed a statutory reform to encourage the use of state prevention and intervention services prior to court referral of truant youth. The reform was called *Truant Minors in Need of Supervision*, and it was adopted by the Legislature and took effect in 2006.

Graduated Community Based approach - Truant Minors in Need of Supervision, 705 ILCS 405/3-33.5, clarifies that a minor who meets the statutory definition of a chronic truant can only be referred to juvenile court if prior to the filing of the petition the local school *"has provided appropriate truancy intervention services to the truant minor and his or her family."* Appropriate truancy intervention services are defined as services designed to help the minor return to an educational program and include, but are not limited to: *"assessments, counseling, mental health services, shelter, optional and alternative education programs, tutoring and educational advocacy."* If these services do not work, then the local community **must** refer the youth to a comprehensive community based youth service agency for truancy intervention services, assuming the agency is capable of providing intervention services. The agency must submit immediate and regular reports to the local school/school truancy review board within 20, 40 and 80 school days of the referral, documenting the extent of the minor's progress and participation in truancy intervention services.

If the local intervention services fail and the minor is ultimately referred to court, dispositional options do **not** include confinement. Rather, there is a range of options including a student assistance team staffing, requirement to comply with the local agency's plan, a fine, community service, and/or loss of driver's license.

In the areas in the state where this graduated approach to truancy reduction has been embraced, it has succeeded. The success was documented recently in a series of news articles. The news articles highlighted the individual nature of the challenges faced by youth who end up defined as truants. Outreach workers in Galesburg, Illinois, have saved the district \$234,000 in additional state money that is tied to attendance through individualized truancy intervention services.

The Chicago Tribune reported Monday (<http://trib.in/RxrJDH>) that a program in Galesburg is succeeding where Chicago has failed, reducing the number of chronically truant students. Truancy officers in Galesburg make home visits and can issue \$75 tickets to parents whose children have repeated absences.

Outreach workers sometimes give a child an alarm clock or a pair of shoes. Other cases are harder to solve when there's domestic violence or mental illness involved. Galesburg outreach workers have walked into meth houses and been threatened in their efforts to get kids to school. ... At one Galesburg elementary school, outreach worker Joe Pilger hands out alarm clocks to students who tell him they can't wake up in time to catch the school bus. He sometimes buys shoes for students, using the school's "miscellaneous funds" account. At the beginning of each school year, he said, "I'm looking down at the feet to see which shoes have dollar-size holes in them. It's alarming."

<http://www.saukvalley.com/2012/11/12/galesburg-finds-success-with-anti-truancy-push/avmmm6c/>

While Chicago has all but abandoned anti-truancy programs for elementary students, districts across Illinois — from Lake, Will and McHenry counties to Murphysboro, in southern Illinois, and Galesburg, near the Iowa border — are using an array of tools to get students back in school.

Outreach workers who make home visits and provide services can help reduce truancy, records and interviews show. With rising rates of child poverty and homelessness contributing to the problem, sometimes the fix is as simple as an alarm clock or winter boots.

Other cases can be dauntingly complex. Some children are kept out of school to serve as surrogate caretakers for younger siblings. Others come from families roiled by domestic violence, mental illness or homelessness, where the adults lack the will or wherewithal to get their kids to class.

For problems the outreach workers can't solve, regional school authorities convene truancy hearings with the student and his or her family to hammer out attendance strategies and contracts.

But – successful communities exhaust an extensive array of community-based services prior to turning to the courts:

And if need be, indifferent parents can be held accountable through tickets like the one issued to Lee — or, in the most extreme cases, through misdemeanor charges against the parents, or juvenile court actions that allow judges to order supportive services or impose sanctions.

http://articles.chicagotribune.com/2012-11-12/news/ct-met-truancy-galesburg-20121112_1_truancy-hearings-school-attendance-outreach-workers

This graduated approach to truancy intervention, requiring individualized treatment with the use of an array of school and community-based alternatives prior to referral to court has been successful in the communities that have embraced this holistic and individualized approach. The stories in the Chicago Tribune series documented the wide range of barriers to attendance faced by youth, ranging from issues rooted in poverty (loss of electricity so alarm clock did not go off) to issues faced by single parent families (needing child to babysit younger siblings so mom could go to work) to failure of the school system to address underlying learning disabilities. Such a range of challenges can only be successfully addressed with a comprehensive array of educational and community based services.

SUSPENSION/EXPULSION:

A problem - Cook County suspended over 18% of their student population in 2009-2010:

We know that school push out comes in many forms whether it's expulsion, entry into the juvenile or criminal justice system, or drop out from the school setting. We know that education's value across the lifetime and the lack of a quality education can severely impair life outcomes. Each student we lose costs the student a lifetime of decreased wages, but it costs the community in lost tax revenue and beneficial civil engagement, which can severely impact communities with a high number of students failing to complete their education. With this knowledge, every option to keep kids in school and learning would seem to be the logical investment for long-term public safety.

However, this is not the case delineated in the report released in August 2012 by The Center for Civil Rights Remedies at The Civil Rights Project, which explains:

Well over three million children, K-12, are estimated to have lost instructional "seat time" in 2009-2010 because they were suspended from school, often with no guarantee of adult supervision outside the school. That's about the number of children it would take to fill every seat in every major league baseball park and every NFL stadium in America, combined.

Chicago schools suspended over eighteen percent of their total student enrollment in 2009-2010.

The oft-repeated claim that it is necessary to kick out the bad kids so the good kids can learn is shown to be a myth. In fact, research suggests that a relatively lower use of out-of-school suspensions, after controlling for race and poverty, correlates with higher test scores, not lower.

<http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-ccrr-research/losen-gillespie-opportunity-suspended-ccrr-2012.pdf>

School push-out in Chicago has been documented to be racially disparate and primarily based on low level offenses such as simple battery, disorderly conduct and drug violations. Project Nia in Chicago documented the disparate application of the sweeping arrest of low level offenses in Chicago Public Schools in a report earlier this year – *Policing Chicago Public Schools: A Gateway to the School-to-Prison Pipeline*, <http://policeinschools.files.wordpress.com/2011/12/policing-chicago-public-schools-final2.pdf>

With the recent release of the Civil Rights Project's report on school disciplinary data across the nation, we learn about disparities in school discipline for children enrolled in K-12:

- One out of every six Black students were suspended at least once. That is much higher than the one in thirteen risk for Native Americans; one in fourteen for Latinos; one in twenty for Whites; or the one in fifty for Asian

Americans.

- For all racial groups combined, more than thirteen percent of students with disabilities were suspended. This is approximately twice the rate of their non-disabled peers.
- Most disturbing is the fact that one out of every four Black children with disabilities was suspended at least once in 2009-2010.
- Students with disabilities and Black students were also more likely to be suspended repeatedly in a given year than to be suspended just once. The reverse was true for students without disabilities and for most other racial/ethnic groups.

Unfortunately, the state of Illinois holds first place for the racial gap between Blacks and Whites in the rate for risk of being suspended at over twenty-one to one. More shocking may be that nearly forty-two percent of Black student with disabilities were suspended. <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-ccrr-research/losen-gillespie-opportunity-suspended-ccrr-2012.pdf>

One county's solution - St. Clair County utilized Redeploy Illinois services to provide individualized educational services and advocacy for youth facing suspension/expulsion:

There is one example in Illinois of a county, St. Clair, that has used a very small amount of state funds (Redeploy Illinois) to keep youth out of state juvenile prison, and has discovered the efficacy of including individualized educational advocacy as part of their intervention package.

Counties agreeing to participate in Redeploy Illinois agree to reduce commitments to state juvenile prison by 25 percent. In exchange, the state provides funding to develop or expand local alternatives designed by local officials to meet the needs of delinquent youth in their communities, who are screened and assessed by probation staff prior to admission to the program. Services include educational assistance. The Redeploy Illinois evaluator reports the educational assistance has been successful, with 70% of the youth successfully completing educational services including GED services and tutoring.

St. Clair County added an additional component – educational advocacy through the Land of Lincoln Legal Assistance Foundation. The staff attorney assigned to this advocacy program is an AmeriCorps VISTA Program volunteer. The legal advocate assists youth in three (3) educational areas. The attorney can advocate and assist

students attempting to enroll in a school setting. This includes assistance in the transfer of transcripts from one school district to a new school district. In addition, legal advocacy is available for applying for evaluations for special education programs. The legal advocate attends IEP meetings related to the youth once an IEP is established. Finally, the legal advocate can assist those students expelled from school districts. This assistance includes advocacy at expulsion hearings and advocating for alternative placement for the youth in an educational setting if expulsion is ordered. The attorney involved in the program estimated that between twenty-five (25) to thirty (30) youth have been served since mid January 2012 with legal services from the Land of Lincoln Program.

These are the kinds of individualized, community-based services that can successfully address the unique needs and issues of each youth facing suspension/expulsion.

CONCLUSION

The graduated, individualized response created through the Truancy Reduction Statute could be equally effective if broadened to address school suspensions and expulsions. This approach requires schools, school districts, and local communities to address discipline issues with a graduated and individualized approach, ensuring that any underlying issues including undiagnosed learning disabilities and developmental disabilities are identified and addressed with appropriate and individualized services.

Thank you for this opportunity to comment on your examination of the critical issue of stopping the school to prison pipeline in the United States. Please let us know if you need further information.

Respectfully submitted,

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Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Testimony

Rebuilding the educational landscape in post-Katrina New Orleans created the opportunity to think innovatively about school structure, governance and management relative to school and student performance. Following the devastation, the Recovery School District (RSD) took over failing schools and more charter schools were opened, ushering New Orleans into the school choice conversation. The nation has called it an “experiment,” an opportunity to right the wrongs of the past. After 7 years, public education in New Orleans is at an important crossroads; the debate continues about the efficacy of this course of reform with its focus on charter schools and now there is a city-wide conversation about the return of schools to the authority of the locally elected school board. These conversations open the door to a dialogue about the importance of considering all the available data to inform us of the reality of individual school and Charter Management Organization (CMO) performance.

Education reform has been largely based on analyzing academic data to improve instruction, and student and school performance and New Orleans has been a large part of that conversation. However, in order to provoke significant, sustainable reform that improves outcomes for all students and moves us toward a more equitable system of schools, the discourse must include the data that gives us insight into individual school climate. School climate, including school and classroom-level discipline are important to ensure a positive learning environment and we must look at the “discipline gap” as it relates to the “achievement gap.” Consequently, discipline data must play an explicit role when determining the expansion of charter management organizations. Neglecting to factor in discipline data constricts the narrative of school performance and provides the public with a narrowed view of the reform efforts.

It is timely and important to question the metrics that are used to determine which CMOs are invited to apply to take over schools, as well as those that ultimately get charter applications approved. It is an undeniable honor to be an educator; education is the cornerstone of our democracy. It defies logic that managers of schools with failing academic records, who are also failing in their duty of care, should remain unquestioned in their pursuit to educate our young people.

Across the country, education “reformers” have set forth a big, bold, audacious vision of school choice and high student performance. In New Orleans, we see a different picture; the recently released School Performance Scores not only flatten that fantasy, they make us question the core convictions of the reform itself - to transform failing schools into high-performing, quality learning environments. The data that is presented does not tell us the entire story, especially

when many students continue to be pushed out of schools because of exclusionary discipline practices. According to the 2011-2012 data, 69% of the Recovery School District direct-run and charter schools are failing and 34% of schools had an out-of-school suspension rate above 20%, well over the state average. Yet, year after year, failing schools and failing CMOs are given the opportunity to take over other schools. Low performing schools and high suspension rates do not serve our children or our city or any city.

There is a relationship between school discipline and student achievement; ineffective discipline policies, like the over-use of suspension, often push students out of school, increasing the likelihood that they will drop out and increasing the likelihood of becoming involved in the juvenile justice system. Independent charter schools, school districts and state boards of education must be transparent about all of the data and consider all of the available data to determine school and CMO performance, including the data on the impact of discipline practices on student learning, especially when the policies and practices often push young people to criminalization. instead of civic engagement and leadership.

**STATEMENT**

**Lauren Fine, Zubrow Fellow
Katherine Burdick, Equal Justice Works Fellow (sponsored by Greenberg Traurig, LLP)
Juvenile Law Center
Before the Senate Judiciary Subcommittee on
the Constitution, Civil Rights, and Human Rights
December 12, 2012**

We are pleased to submit these comments on behalf of Juvenile Law Center, as the Subcommittee addresses "the school-to-prison-pipeline." Juvenile Law Center has identified causes and symptoms of this phenomenon, both in the school and juvenile correctional settings, and provides recommendations for how Congress can best address the issue. Specifically, Juvenile Law Center urges the Subcommittee to consider reforms that will stem the tide of the school-to-prison-pipeline by (1) preventing unnecessary school referrals to the justice system; (2) providing a quality education to youth placed in juvenile correctional facilities; and (3) facilitating the transition of youth from delinquency placements back to their community schools. We wish to underscore that the pipeline does not end at the point a youth is adjudicated delinquent or convicted of a crime. We therefore encourage the Subcommittee to consider the needs of youth not only in their home schools, but also in the juvenile correctional system and upon re-entry to the community.

Juvenile Law Center, the oldest non-profit, public interest law firm for children in the United States. Founded in 1975 in Philadelphia, Juvenile Law Center is a national advocate for children's rights, working to enforce and promote the rights and well-being of children who come into contact with the justice, child welfare and other public systems. Juvenile Law Center has been working to end the school-to-prison-pipeline since the mid-1990s, shortly after the passage of the Gun Free Schools Act. Juvenile Law Center has litigated over the denial of education to youth who were in the juvenile or criminal justice systems or who were returning to community schools. We helped advance anti-zero tolerance policies through the American Bar Association. We have written extensively for professional and lay audiences on the dangers of zero tolerance policies and the school-to-prison pipeline. Most recently, Juvenile Law Center helped expose the "kids for cash" judicial corruption scandal that was fueled, in large measure, by schools' reliance on the Luzerne County juvenile court to serve as school disciplinarian.

We appreciate the opportunity to provide written testimony today, and would be pleased to submit more comprehensive materials on this topic at any time.

Background

The school to prison pipeline undermines America's promise of equality of education opportunity. The pipeline increases the number of students referred to the justice system, and it reduces educational opportunities for students returning to school after being in the justice system.

Equality of education opportunity has been a central and dramatic part of the civil rights narrative in this country. Yet, the dream underlying that narrative has not been realized in many ways. Today, children of color continue to be overrepresented in "underresourced schools." They are more likely to be involved with the juvenile and criminal justice systems than are their white peers,ⁱ and they are also more likely to be classified as requiring special education. African American male students are disciplined at far greater numbers than are their white classmates—in 2003, 18 percent of all African American males enrolled in public school were disciplined, as compared to only 7 percent of their white counterparts. Many commentators have described the link between the overrepresentation in both school discipline and the juvenile or criminal justice systems as a "school-to-prison-pipeline" (STPP). Generally, the "school-to-prison-pipeline" is the practice of criminalizing student misconduct, which sets off a chain of events that increases the chances that low-income students of color will end up involved in the juvenile or criminal justice system.ⁱⁱ

Increased referrals to the justice system

One cause of the STPP is the increased presence of School Resource Officers (SROs), or sworn employees of local police departments who are permanently assigned to patrol a school or multiple schools. Almost all are armed.ⁱⁱⁱ These officers intensify the linkage between schools and the juvenile and criminal justice systems and contribute to the criminalization of misbehavior in the school setting. SROs represent part of a larger trend toward integrating police tactics into the culture of American education: law enforcement techniques such as drug tests, sweeps at random, searches of students, and interrogations contribute to an atmosphere of police surveillance at public schools. The result is an increasing number of arrests and convictions for conduct that occurs on school grounds, with a disproportionate number affecting African American students.^{iv}

The routine presence of SROs—especially in urban schools—is illustrative of a two decade transformation of school responses to student misbehavior. Schools, even those without SROs—too often criminalize behavior that previously would have been handled by internal school disciplinary procedures. National studies have found that the numbers of arrests and referrals to the juvenile and criminal justice systems for minor crimes, such as disorderly conduct, rises in schools with full-time police officers.

Results of this transformation of school disciplinary practices include the following:

1. Increased referrals from schools means an increased number of youth who

- become involved with the adult criminal, and not just juvenile justice system.
- 2. Referrals to the juvenile or criminal justice systems impede students' ability to stay on track in school, where they are dually punished for whatever incident led to the juvenile or criminal referral.
- 3. Students who have been disciplined often are prohibited from participating in sports and other activities, which may be the only element of their experience at school that they perceive as positive.
 - o This increases the likelihood of the students dropping out and, even those who do come back to or stay in school often face stigmatization by teachers, administrators, and classmates, which isolates them further and makes them more likely to act out again.

Together, these circumstances make it more likely that a student will end up back in the criminal justice system—the “school-to-prison-pipeline” in practice.

Barriers to education for justice-involved youth

Importantly, the school-to-prison pipeline does not stop at the moment the youth is adjudicated delinquent or convicted of a crime. Youth adjudicated delinquent often fail to receive adequate educational services while in placement.⁹ According to the Survey of Youth in Residential Placements conducted by the Office of Juvenile Justice and Delinquency Prevention, 48% of youth in custody are functioning below the grade level appropriate for their age, compared to 28% of youth in the general population.

Causes of this problem include the following:

1. Schools onsite at juvenile correctional facilities typically are characterized by low academic expectations for students, an under-skilled and demoralized teaching staff, and a culture where security and discipline dominate over education.
2. Youth in juvenile correctional facilities often receive fewer hours of instruction per day than their peers in the community.
3. Many onsite schools do not provide eligible students with appropriate special education services as required by the federal Individuals with Disabilities Education Act.
4. State and local school districts do not properly monitor educational programs inside these institutions; these programs often fall far short of state academic standards.
5. Career and technical education in residential placements is often obsolete.

Even in the rare instance that a youth receives a quality education while in custody, the challenges of re-enrolling in a home school district may undermine the youth's ability to learn. Frequently, delays in transferring educational records from the facility to the student's home district cause delayed enrollment, or prevent the youth from receiving appropriate services or receiving credit for schoolwork done in the facility. Differing school policies governing the

awarding of credits also prevents many adjudicated youth from receiving academic credit for classes taken inside the facility, and makes it more likely that they will drop out of school. Finally, many school districts outright refuse to re-enroll youth returning from a delinquency placement, or funnel them directly to restrictive alternative education programs, despite the youths' ability to succeed in a traditional school setting.^{vi}

In light of the obstacles to educational success youth face before, during, and after being placed in a juvenile correctional facility, we urge the Subcommittee to consider these recommendations:

Recommendations

- Establish a federal standard for alternative education to handle students with behavioral issues in a more thoughtful manner.
 1. Schools must not simply warehouse students who have disciplinary issues in alternative schools; as currently constituted, most alternative education programs exacerbate rather than alleviate students' problems.
 2. Alternative schools concentrate the worst behaving students in an environment in which they have far fewer role models for positive behavior, and often offer far less rigorous curricula, which together makes it difficult for enrolled students to stay on track and transition back to their assigned schools.
 3. The concept of alternative education should comport with the federal standard that governs special education, which mandates that students who need extra support be placed in "the least restrictive environment."
- Examine and propose changes to federal law affecting youth in or returning from correctional facilities, specifically:
 1. Propose amendments to Title I, Part D of the Elementary and Secondary Education Act governing neglected and delinquent youth, to increase accountability of programs that receive funding under the Act, and improve planning for the transition between the facility and home school.
 2. Ensure that states include children in secure correctional facilities when measuring "Adequate Yearly Progress" as required by the No Child Left Behind Act.
- Work with our nation's governors and state legislators to provide incentives for state and local policies that:
 1. Minimize the role that School Resource Officers (SROs) play in the school setting, and to properly train them for the school environment.
 2. Promote evidence-based positive discipline strategies, such as School-wide Positive Behavioral Supports, trauma-informed education, and restorative

justice practices, and limit exclusionary discipline and school referrals to law enforcement.

3. Maintain youth in their community rather than in secure placements through diversion policies.
4. Ensure schools onsite at correctional facilities meet state academic standards, provide the same or more hours of education that students receive in community schools, and generate career and technical education certificates as well as academic credit that counts toward graduation requirements.
5. Require comprehensive multi-disciplinary after-care planning, facilitate the transfer of records from the institution to the home school district, and prevent school districts from refusing to enroll youth returning from delinquency placements.^{vii}

In addition, we write in support of the statement submitted by our colleagues at Education Law Center of Pennsylvania, which provides additional detail on the inappropriate and unfair discipline practices that push our youth out of schools and into the justice system, as well as effective policies to combat this trend.

Thank you for the opportunity to provide a statement on this important issue.

ⁱSee generally Catherine Y. Kim, Daniel J. Losen, and Damon T. Hewitt, *The School-to-Prison Pipeline: Structuring Legal Reform*, New York University Press (2010) [hereinafter *The School-to-Prison Pipeline*] at 2. In 2003, for example, African Americans accounted for 45 percent of all juvenile arrests, despite only representing 16 percent of the youth population in this country. *Id.*

ⁱⁱ*Id.* at 34 (citing Daniel J. Losen, *The Color of Inadequate School Resources: Challenging Racial Inequities that Contribute to Low Graduation Rates and High Risk for Incarceration*, 38 Clearinghouse re. J. of Poverty Law & Policy 616, 625 (2005)). See also Jane R. Wettach, Disproportionate Representation of Minority Children in School Discipline, 2010 Juvenile Justice & Children's Rights Section Annual Meeting (March 26, 2010), Daniel J. Losen & Russell Skiba, Southern Poverty Law Center, *Suspended Education: Urban Middle Schools in Crisis* (2010).

ⁱⁱⁱSome larger urban school districts, such as those in Houston and Los Angeles, employ their SROs directly. *The School-to-Prison Pipeline*, *supra* Note 1, at 113 (citing Houston Independent School District Police Department, <http://www.houstonisd.org/portal/site/Police>; Los Angeles Schools Police Department, <http://www.laspd.com/>). Some SROs are off-duty police officers who work in schools for additional compensation. See Jason Langberg, Barbara Fedders, and Drew Kukorowski, "Law Enforcement Officers in Wake County Schools: The Human, Educational, and Financial Costs," http://www.legalaidnc.org/public/learn/statewide%5Fprojects/acs/ACS_Publications/IssueBrief_Feb-11_LawEnforcementOfficersinWakCountySchools-Human-Educ-FinancialCosts.pdf, at 2. The majority of high school teachers surveyed in 2004 observed the presence of armed police at their schools. *Id.* This statistic serves as a proxy for the number of police officers in schools, as there have not been any studies that attempt to quantify their presence in schools nationwide. See Catherine Y. Kim and I. India Geronimo, *Policing in Schools: Developing a Governance Document for School Resource Officers in K-12 Schools* (2009) at 5, available at http://www.aclu.org/pdfs/racialjustice/whitepaper_policingschools.pdf.

^{iv}The Supreme Court has noted that, "[t]eachers and school administrators, it is said, act *in loco parentis* in their dealings with students: their authority is that of the parent, not the State." *New Jersey v. T.L.O.*, 469 U.S. 325, 336 (1985) (citing *R.C.M. v. State*, 660 S.W.2d 552 (Tex. App. 1983)). Notably, under the Fourth Amendment, school officials do not need probable cause to search and seize students' personal belongings; they need only reasonable suspicion. See, e.g. *New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985); U.S. Const. amend. IV. See also *The School-to-Prison Pipeline*, *supra* Note 1, at 3 (citing that, "One juvenile court judge in Massachusetts, for example, reported

(Continued...)

that he handles more school discipline in his courtroom today than in his former position, as a public school principal.” American Civil Liberties Union, *Race and Ethnicity in America: Turning a Blind Eye to Injustice* 149 (2007), available at http://www.aclu.org/pdfs/humanrights/cerd_full_report.pdf.

^v See, e.g., Peter E. Leone & Sheri Meisel, *Improving Education Services for Students in Detention and Confinement Facilities*, 17 Child. Legal Rts. J.2, 5–7 (1997); Peter E. Leone, A Review of Special Education Programming at Catalina Mountain Juvenile Institution (November 1988) (report submitted to U.S. District Court, District of Arizona, *Johnson v. Upchurch*, No. 86-195 (D. Ariz., filed August, 1986)); Peter E. Leone, Evaluation of Educational and Vocational Services at Cedar Knoll and Oak Hill Youth Centers (December 1990) (report submitted to the Office of the Monitor, *Jerry M. v. D.C.*, No. 1519-85 (D.C., filed April, 1985)); Peter E. Leone, *Education Services for Youth with Disabilities in a State-Operated Juvenile Correctional System: Case Study and Analysis*, 28 J. SPECIAL EDUC. 43, 48–54 (1994); Peter E. Leone, Ted Price & Richard K. Vitolo, *Appropriate Education for All Incarcerated Youth: Meeting the Spirit of P.L. 94-142 in Youth Detention Facilities*, 7 REMEDIAL AND SPECIAL EDUC. 9, 9–11 (1986).

^{vi} For more information on the educational challenges youth face in and returning from juvenile correctional facilities, see Katherine Burdick, et al., *Creating Positive Consequences: Improving Education Outcomes for Youth Adjudicated Delinquent*, 3 Duke F. Law & Soc. Change 6-13 (2011), available at <http://scholarship.law.duke.edu/dflsc/vol3/iss1/2/>.

^{vii} For more information on current promising policies around the country geared at stopping the school-to-prison pipeline, see Jessica Feierman, et al., *Stemming the Tide: Promising Legislation to Reduce School Referrals to the Courts*, 111-127, in *Keeping Kids in School and Out of Courts* (2012), available at http://www.school-justicesummit.org/pdfs/journal-web_paper_8.pdf.

**Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing on "Ending the School-to-Prison Pipeline"
December 12, 2012**

Submitted by:
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Kentucky Protection & Advocacy would like to thank Chairman Durbin, Ranking Member Graham, and the Constitution Subcommittee for holding this hearing and raising awareness of the School-to-Prison Pipeline. As more and more of our nation's youth end up in the juvenile justice system, the time for federal leadership on this problem is now, and we appreciate the opportunity to provide testimony.

Who Are Kentucky Protection & Advocacy and the Protection and Advocacy Systems (P&As)?

The federally mandated Protection and Advocacy (P&A) systems were established by the United States Congress through eight separate statutes to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. P&As are in all 50 states, the District of Columbia, the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the US Virgin Islands), and there is a P&A affiliated with the Native American Consortium, which includes the Hopi, Navaho and Piute Nations in the Four Corners region of the Southwest. The KY P&A has been established as an independent state agency that is administratively assigned to the Department of Public Advocacy.

Each P&A provides a full array of services for people with disabilities, and work with youth to provide assistance with education and services in a variety of settings, including juvenile justice facilities, public and non-public schools, and detention and correctional facilities. Collectively, the P&A Network is the largest provider of legally based advocacy services to people with disabilities in the United States.

The Nature of the Problem

Children with disabilities should not be punished for their disabilities. Instead, children should be provided the education to which they are legally entitled to and the supports necessary to obtain that education. Unfortunately, many of our public school students do not receive these basic rights.

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Statistics show that a disparate number of youth with disabilities, and especially youth of color with disabilities, are involved with the juvenile justice system. As many as 80% of youth in the juvenile justice system have some form of disability.ⁱ Children of color are also disproportionately represented in the juvenile justice system.ⁱⁱ However, a data analysis released in August of 2012 shows there is far more to the story. "Applying [...] three lenses together – race, gender and disability—yields a more disturbing image than any one of the categories alone....The group that consistently had the highest rate of suspension is African American male students with disabilities. In some of the largest districts in the U.S....suspension rates for this group reached more than 70% of their enrollment."ⁱⁱⁱ

This analysis shows that a specific sub group of children of color, those who are also children with disabilities, receive different treatment than their peers in public school. Within this sub group, children who reside in particular public school districts receive the worst treatment of all. Many of these youth face suspension or expulsion from school - a key entry point into the "School to Prison Pipeline." In order to successfully protect these children from a future in prison, it is necessary to thoroughly examine the problem and tear it out by its roots.

Kentucky Protection & Advocacy Work on the School To Prison Pipeline (STPP)

Kentucky P&A has been working on preventing improper discipline of students with disabilities for many years, before the link between these cases and the likelihood of future incarceration was widely recognized. Preventing suspension and expulsion of students for the behavioral manifestations of their disabilities is and always has been an important part of the advocacy work that we do. Kentucky P&A is engaged in both individual and systemic projects to address the school-to-prison pipeline for people with disabilities.

Recently, Kentucky P&A represented a male youth of color age 13 who had been charged with terroristic threatening in the second degree a Class D felony, subject to five years incarceration/detention. The youth had remarked, "If I don't get my jacket, I could hurt someone". The youth had never been in a physical altercation. The youth had never brought a weapon to school.

The youth had an Individual Education Plan under the Individuals with Disabilities Education Act (IDEA). Although under IDEA a manifestation determination had found that the youth actions were a result of his disability, the school refused to withdraw the terroristic threatening charge. A P&A attorney partnered with the public defender attorney to file a motion asking that the charge be dismissed.

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The P&A attorney in light of the determination through IDEA asked the school district to drop the charges asking the school district to withdraw the charge, the school district refused. The judge held oral arguments and dismissed the charge.

Kentucky P&A partners with several organizations, Department of Public Advocacy, Children's Law Center, Legal Aid Society, Access to Justice, KY Youth Advocates, Southern Poverty Law Center, and others to stop the school to prison pipeline and to make changes Kentucky's juvenile justice system. These are examples of systematic initiatives.

- Filed class action complaints with US Department of Education, Office of Civil Rights alleging disproportionality in discipline for students with disabilities, students of color and students of color with disabilities.
- Drafted legislation to require alternatives to detention ~~be~~ considered because a status offender youth is placed in detention.
- Held community forums to inform citizens about the STPP.
- Educated the Kentucky Department of Education of certain school district about their disproportionality in discipline for students with disabilities, students of color, and students of color with disabilities.
- Provided joint represent through KY P&A and PD for youth who have been charges with offenses by the school district or the security officer working in the school. Through this representation we education the judge and the county attorney about student rights under IDEA.

FEDERAL POLICY RECOMMENDATIONS

- **Effective enforcement of current federal protections is the most effective way to stem the STPP for children with disabilities.** KY P&A is very pleased with a recent complaint filed by the U. S. Department of Justice (DOJ) regarding racial injustice in Meridian Mississippi. There are similar problems currently with regard to students with disabilities that are also worthy of DOJ's attention. We encourage DOJ to continue to work with the P&A agencies to identify appropriate cases for enforcement action.
- **Congress should create and appropriate funds for a specific P&A program focused on children with disabilities in the juvenile justice system.** Funding the P&A network to do this work is an extremely cost-effective way to use the

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existing infrastructure of the P&A System. The P&A network is the largest cross-disability network of advocates in the United States, and P&As have extensive expertise successfully advocating on behalf of youth with disabilities in child-serving systems and advancing systems reforms. All P&As have an interest in and commitment to doing this work, but cite lack of funding and resources as the primary barrier to being more fully engaged while not diminishing the ability to do the other important work the P&As perform.

- **We recommend leadership by all relevant federal agencies, and especially OJJDP, in the area of prevention of school removal.** There is a need to promote and create incentives for the revision of local school codes, so as to eliminate the use of out of school expulsion and promote the development of clear and specific Memoranda of Understanding regarding the use of School Resource Officers, in order to limit their role to matters of real school safety. Providing direct federal support for training schools and teachers in the best practices to prevent school removal.
- **The U.S. Department of Education, Office for Civil Rights (OCR) should continue recent efforts to publish Civil Rights Data Collection (CRDC) data.** This type of federal effort is desperately needed in order to help state and local governments uncover and resolve STPP problems.
- **Kentucky P&A encourages OCR to consider specific enforcement actions (e.g. "compliance reviews") for STPP violations that impact students with disabilities.** One example would be to address the worst offending districts in terms of racial/disability discipline statistics.

Kentucky P&A recommends effective monitoring and enforcement of the IDEA and ESEA by Department of Education of suspension and expulsion rates and racial disproportionality at the state and local level.

- **Kentucky P&A encourages the better tracking of school discipline rates as an indicator of school needs and improvement in persistently low-achieving schools.** This data is a promising example of how publicly available data could be used to improve school climate.
- **Congress should fund grant programs to support community-based solutions.** The solutions to the causes of the STPP at the local level will often require the efforts and input of all stakeholders. Funds should go toward the development and implementation of multi-year, comprehensive local or regional

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plans to reduce the use of exclusionary discipline and the number of youth entering the juvenile and criminal justice systems.

Conclusion: Thank you for holding this hearing on this important topic and allowing written testimony to be submitted. Kentucky P&A is committed to continuing to be part of the solution to this serious social issue.

ⁱ (Shufelt, L. J., & Cocozza, J. J. (2006). Youth with Mental Health disorders in the Juvenile Justice system: Results from a multi-state prevalence study. Alexandria, VA: National Center for Mental Health and Juvenile Justice.).

ⁱⁱ "As states have undertaken efforts to reduce disproportionate minority confinement for youth, they have found evidence that disproportionality occurs at every contact point within the juvenile justice system, from arrest to cases transferred to criminal court and not just at detention and correction." DMC Technical Assistance Manual, 4th Edition , https://www.ncjrs.gov/html/ojdp/dmc_ta_manual/dmccintro.pdf (page Intro-1).

ⁱⁱⁱ Opportunities Suspended, August 2012, Civil Rights Project/Proyecto Derechos Civiles, at 36. Retrieved from <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-crrr-research/>



December 10, 2012

Senate Judiciary Subcommittee on the
Constitution, Civil Rights and Human Rights
C/O U.S. Senator Dick Durbin

Re: Ending the School-to-Prison Pipeline

Dear Chairman Durbin & Subcommittee Members:

We write to support this Subcommittee, on behalf of the students, parents and community members the Community Rights Campaign represents, to take action to protect and value the civil, human and educational rights of students and school community members by ending the school-to-prison pipeline.

Please find attached with this correspondence, several personal statements from the students themselves that speak directly to the impacts and a call for action to end the school-to-prison pipeline.

The Labor/Community Strategy Center's Community Rights Campaign works with students and families throughout Los Angeles County public schools to address the devastating impacts that excessively punitive policies and practices are having on students and families, and particularly on low-income communities of color. The Campaign specifically seeks to deter the criminalization of student conduct that occurs through the use of exclusionary forms of student discipline and the increased use of law enforcement in response to various educational issues.

The presence and extent of policing of our public school students is not limited to Los Angeles' schools. We are facing a crisis nationwide despite numerous accounts that the current practice of policing in our schools is creating rather than preventing a problem that is having lasting educational impacts for public school students.¹ In addition to the higher likelihood that students will enter the juvenile justice system simply as a result of the presence and manner of policing on their campus, the daily access of police to students compromises their educational and civil rights with the potential for unchecked searches, handcuffing, interrogations and restraints. The alienation and trauma that students can experience as a result of persistent policing may affect their attitudes toward school, their behavior and their overall mental health and well-being.

¹ See, i.e., Justice Policy Institute, *Education Under Arrest: The Case Against Police in Schools* (October 2011) available at <http://www.justicepolicy.org/research/3177>; and the Advancement Project, *Zero Tolerance in Philadelphia: Denying Educational opportunities and Creating a Pathway to Prison* (January 2011) available at <http://www.advancementproject.org/digital-library/publications/zero-tolerance-in-philadelphia-denying-educational-opportunities-and-cr>.

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We believe there is a great urgency to address the widespread practice of policing our students within the educational system. Students and families that rely on a public system of education cannot choose to avoid or prevent the daily presence of police in their lives. It is also apparent that race is a factor in the perception of what is disruptive and what necessitates law enforcement involvement. For many students, and particularly our Black students, the criminalization process begins at enrollment and increases with intensity when they transition to Middle School.

In Los Angeles, the LAUSD school police department ("LASPD") is the largest in the nation. While LASPD has been in existence since 1948, their role has changed dramatically over the years from patrolling school property after hours to regulating and penalizing student conduct through the juvenile court system. For examples, in addition to school-based arrests, citations are routinely issued to students primarily for behaviors that could have been handled administratively with school-based responses.

The Community Rights Campaign had the opportunity to analyze the citation data for the LASPD between 2009-2012. The following are some of the more troubling trends.

Students are cited with frequency at very young ages

- Students as young as seven years old have received citations;
- In 2012, to date, 47% of citations were issued to youth 14 and younger;
- Between 42% - 44% of citations issued to 11 -13 year-olds were for Disturbing the Peace

The majority of citations are for non-violent offenses and student conduct where effective alternatives exist that are less discriminatory, including implementation of school-wide positive behavior support interventions and restorative justice programs

- In 2012, to date, 93% of the citations were for truancy, disturbing the peace (a.k.a. fighting), defacing or damaging property, possessing tobacco and possessing marijuana;

An overrepresentation of Black students is present for the majority of offense categories and is particularly high for younger students and certain categories of offenses

- In 2012, to date, 20% of all citations were issued to African-American students despite their student enrollment of 10.2%
- African-American students are disproportionately represented at extreme rates for disturbing the peace, representing 36% of those citations

Males are significantly overrepresented in all categories

White students are significantly underrepresented in almost all categories

- Each year, White students are cited at rates much lower than their student enrollment of 9.5%

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- In 2012, to date, White students make-up only 3.5% of the citations

Latinos students receive the most citations and patterns of overrepresentation are present in certain categories of offenses

- In 2012, to date, 74% of the total citations for school age youth were issued to Latino students

We remain encouraged that with exceptional leadership and meaningful collaboration amongst all the stakeholders, change is achievable. In Los Angeles, for instance, the Community Rights Campaign and community allies successfully chipped away at the school-to-prison pipeline by challenging the practice of issuing citations for truancy and tardiness. Our efforts ultimately resulted in revisions to the underlying daytime curfew law that included important protections for students.² The campaign to reverse the widespread use of police and citations for truancy and tardiness was based on an in-depth survey of students that described these tickets and the police interactions as contributing to a hostile school environment that left them feeling alienated and often choosing not to go school. This progress required meaningful engagement with the community by leaders in City Council, the school district, law enforcement and the juvenile court to reassess a punitive practice that was harming rather than supporting student achievement and growth.

We are confident that your attention and leadership on this issue is of the utmost importance. We are grateful to the Subcommittee and hope that this hearing is a major step forward towards reversing the school-to-prison pipeline.

Sincerely,

Manuel Criollo
 Director of Organizing

Zoe Rawson
 Legal Advocate

² For a detailed discussion on the problem of the L.A. daytime curfew law please see Community Rights Campaign, *End the Tickets: Alternatives for Youth Campaign* (October 2009). Attached herein as Attachment 1 for your convenience.



December 10, 2012

U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Chairman Durbin, Ranking Member Graham, and Committee Members,

Lambda Legal appreciates this opportunity to submit testimony to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights in its hearing on *Ending the School-to-Prison Pipeline*. We seek to provide the committee with information, insight and examples regarding the negative impact of school disciplinary actions that inappropriately push students out of schools, into alternative schools, or into juvenile justice systems. These actions ravage some of the most marginalized and victimized students in schools: those who are or who are perceived to be lesbian, gay, bisexual, transgender or questioning (LGBTQ).

Our Background

As the oldest and largest national legal organization committed to achieving full recognition of the civil rights of LGBT people and people with HIV, Lambda Legal has focused for years on young peoples' rights both in public schools and in state custody. Our docket has included numerous cases on behalf of LGBTQ youth in schools and their allies,¹ a high priority because of the devastating impact discrimination in schools has on all members of the school community. We are committed to helping schools become welcoming environments for all students, including those young people who identify as, or are perceived as, LGBTQ.² Youth who are unsupported by families and schools often end up in foster care or juvenile facilities. Lambda Legal's work to support youth in out-of-home care³ reflects their needs—and informs us that LGBT students unsupported in schools and at home are at immense risk for juvenile detention and, later, incarceration.

Lambda Legal has also been involved in engaging students, educators and community members in convenings about the intersection of safe schools for LGBT youth and dismantling the school-to-prison pipeline. We have participated for two years in the southern regional conferences "South Star: Safe Schools Convening of the South," where more than forty organizations

¹ See <http://www.lambdalegal.org/issues/schools>.

² To this end, we provide online toolkits and resources for LGBTQ youth and their allies, including Out, Safe and Respected (<http://www.lambdalegal.org/publications/out-safe-respected>) and our interactive online tool located at <http://www.lambdalegal.org/kyt/youth>.

³ See <http://www.lambdalegal.org/issues/youth-in-out-of-home-care>.



collaborate on workshops and strategy sessions to address anti-LGBT bullying and harsh disciplinary policies.

THE PROBLEM

In our cases and in calls we receive, we note patterns that clearly feed into the disturbing scenario dubbed “the school-to-prison pipeline.” Students targeted for harassment are isolated or sent to inappropriate alternative schools, driven from their school placements rather than protected. Without appropriate official leadership and intervention to address school environments, students avoid school in attempts to keep themselves safe. They become truant, lose educational opportunities, and are more likely to be found on the street and in encounters with law enforcement that result in juvenile and criminal records. Those who are harassed and targeted and remain unsupported in schools may finally attempt to defend themselves and end up lashing back at tormenters—for which they are disciplined, often harshly.

A review of calls to our Legal Help Desk shows that in recent years Lambda Legal has received more than 50 reports of students having been unfairly and unequally punished, including students expelled because of their sexual orientation or gender expression; school officials pressuring parents to homeschool their children because of a student or parent’s sexual orientation; and children uprooted and sent to alternative schools simply because school officials were uncomfortable with their sexual orientation. Too often this blatant discrimination cannot be remedied through litigation. Students are a fairly transient population, while unhealthy school environments tend to take root and fester if unaddressed. And remedies after the fact can barely approximate justice for students previously damaged and deprived of their educational opportunities. But practically all students on whose behalf we advocate and litigate have had some experience with damaging dynamics that feed the pipeline.

While discipline, including expulsion or even criminal or quasi-criminal prosecutions directed at students who violate rules against harassing other students, may sometimes protect LGBT youth, too often disciplinary measures that push youth out of schools are also applied to the targets of harassment, or disproportionately meted out to students who are or are perceived to be LGBT and/or are students of color. Through our caseload we observe that hostile school environments and harassment escalate, as a rule. Well-executed and well-publicized educational policies, comprehensive curricula, high-quality staff training, and support for LGBT-affirming activities and clubs like gay-straight alliances contribute to environments that help prevent discrimination and foster an atmosphere where problems are addressed early, before they escalate to the point where severe discipline might be appropriately considered.

In short, we support measures to comprehensively address the school environment and foster an atmosphere where all students can learn peacefully and with mutual respect. And where disciplinary measures are needed, we support interventions that protect all students and endeavor where possible to avoid depriving young people of the opportunity to learn and fulfill their potential. We offer the following information and suggestions in support of sensible laws and policies to interrupt the school-to-prison pipeline.



I. LGBT students face harsher punishments for similar infractions than their heterosexual counterparts.

Research has finally emerged showing what LGBT advocates who work with youth have long known: our LGBT teens and young adults are more often punished by school and criminal authorities than are straight youth.⁴ Data from a nationally representative sample of more than 15,000 people interviewed both as teens in grades 7 through 12 and again when they were 18 to 26 years old show that LGBT⁵ adolescents are about 40 percent more likely than other teens to be punished by school authorities, police and the courts. As noted by the lead author, Kathryn E.W. Himmelstein,

We found that virtually all types of punishment — including school expulsions, arrests, juvenile convictions, adult convictions and especially police stops — were more frequently meted out to LGBT youth.⁶

According to the research, these disparities in punishments are not explained by differences in the rates of misbehavior. In fact, the study showed that adolescents who identified themselves as LGBT actually engaged in less violence than their peers. As Himmelstein reported,

Our numbers suggest that school officials, police and judges, who should be protecting LGBT youth, are instead singling them out for punishment based on their sexual orientation. LGBT teens can't thrive if adults single them out for punishment because of their sexual orientation.⁷

Students of color also experience disproportionate rates of discipline and expulsion from school. Data released by the U.S. Department of Education this year showed, for example, that African-American students are far more likely to be suspended or expelled from school. Black students made up 18 percent of those included in the government survey, yet comprised 39 percent of students who were expelled. For LGBT students of color, therefore, the risk of facing disproportionate punishment is compounded.⁸

II. Unchecked anti-LGBT bullying and harassment in school leads LGBT students and students perceived to be LGBT to take matters into their own hands, resulting in higher rates of school violence, discipline and incarceration.

⁴ Kathryn E. W. Himmelstein & Hannah Brückner, *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*, 127 *Pediatrics* 49, 49-57 (2010).

⁵ The study did not explore the experiences of transgender youth, but anecdotal reports suggest that they are similarly at risk for excessive punishment.

⁶ Karen N. Peart, *Lesbian, Gay and Bisexual Teens Singled Out for Punishment*, Yale News, Dec. 6, 2010, <http://news.yale.edu/2010/12/06/lesbian-gay-and-bisexual-teens-singled-out-punishment>.

⁷ *Id.*

⁸ U.S. Department of Education, *New Data from U.S. Department of Education Highlights Educational Inequities Around Teacher Experience, Discipline and High School Rigor*, March 6, 2012, <http://www.ed.gov/news/press-releases/new-data-us-department-education-highlights-educational-inequities-around-teache>.



A 2011 study found that 63.5% of LGBT students felt unsafe in their school because of their sexual orientation.⁹ Not surprisingly, the result is that 1 out of every 3 LGBT students reports skipping school based on safety concerns¹⁰, rendering them truant and pushing them closer to suspension and expulsion.

Such commonplace harassment and abuse also leads to a more dangerous environment for all students, and puts LGBT students at higher risk of being pushed out of school. Victims of such harassment and abuse “may turn to physically defending themselves against bullies, carrying weapons, and other survival tactics that endanger the school community.”¹¹ Common sense leads to the sad conclusion that unchecked harassment (84.5 percent of LGBT students in a 2011 survey reported that when anti-LGBT remarks were made, faculty or staff “never” or only intervened “some of the time”)¹² triggers increased fights with other youth. Because “zero-tolerance” policies generally disregard the circumstances leading to an altercation, the result is push-out discipline for the victim ensnared in the fighting. This result is especially likely where schools routinely refuse to protect the target from continued anti-LGBT harassment. (Note that 71.3 percent of LGBT students in a 2011 study reported hearing remarks such as “faggot” or “dyke” frequently or often at school).¹³

III. LGBT students who do not feel safe at school are more likely to be truant, to drop out, and to engage in other risky behaviors such as substance abuse and sexual exploitation.

Schools should provide a safe environment for all students; unfortunately, many schools fail to protect their LGBT students. The Centers for Disease Control and Prevention acknowledges the adverse health effects of an unsafe school environment, noting that “[n]egative attitudes toward gays, lesbians, bisexuals, and transgender people put LGBT youth at increased risk for experiences with violence, compared with other students.”¹⁴ The CDC notes that these stresses experienced by LGBT youth put them at greater risk for mental health problems, substance use, and physical health problems.

The cycle of harassment, violence, and discipline leads to students being pushed out or dropping out of school. One report found that, “[z]ero-tolerance discipline sends a clear message to

⁹ Joseph G. Kosciw, et al., Gay, Lesbian & Straight Education Network, *The 2011 National School Climate Survey* xiv (2011), available at http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/002/2105-1.pdf. See also Centers for Disease Control and Prevention, *Lesbian, Gay, Bisexual and Transgender Health*, <http://www.cdc.gov/lgbthealth/youth.htm> (last visited Dec. 10, 2012) (citation omitted).

¹⁰ Gay, Lesbian & Straight Education Network, *FAQs: Top 5 Frequently Asked Questions From the Media*, <http://www.glsen.org/cgi-bin/iowa/all/news/record/1970.html> (last visited Dec. 10, 2012).

¹¹ Advancement Project, Alliance for Educational Justice & GSA Network, *Two Wrongs Don't Make A Right: Why Zero Tolerance is Not the Solution to Bullying 4* (June 2012), available at http://gsanetwork.org/files/aboutus/API-005_DS5-FINALsmall.pdf.

¹² Joseph G. Kosciw, et al., *supra* note 9, at 17.

¹³ *Id.* at 14.

¹⁴ Centers for Disease Control and Prevention, *Lesbian, Gay, Bisexual and Transgender Health*, <http://www.cdc.gov/lgbthealth/youth.htm> (last visited Dec. 10, 2012) (citation omitted).



students that they are not valued; unfortunately that message has gotten through to far too many students who have been pushed out of school by unnecessarily severe disciplinary measures.”¹⁵ Given the tragic reality that many LGBT students are not welcome in their families, many of these LGBT youth end up on the streets. Indeed 20 to 40 percent of homeless youth identify as LGBT.¹⁶ Once homeless, LGBT youth are at higher risk for victimization (LGBT youth are roughly 7.4 times more likely to experience acts of sexual violence than heterosexual homeless youth), mental health problems, and unsafe sexual practices.¹⁷ The path to prison for young people pushed out of schools and into the streets is both predictable and avoidable.

IV. Potential solutions limit interventions that push students out of school, and provide accountability and clear guidance and support for LGBTQ youth.

Measures that help interrupt the school-to-prison pipeline may include but not be limited to the following:

1. Establish enumerated antibullying policies that include sexual orientation and gender identity and expression. Make these policies clearly accessible in student handbooks and online.
2. Incorporate comprehensive curricula regarding difference, tolerance, and respect for all.
3. Train administrators, educators, and school safety officers on effectively addressing anti-LGBT bullying, harassment, and name-calling.
4. Support LGBT-affirming clubs such as gay-straight alliances, and promote safe spaces for LGBTQ youth in schools.¹⁸
5. Limit the use of expulsions, disciplinary transfers, out-of-school suspensions, referrals to law enforcement, and school-based arrests to conduct that poses a serious threat to students and staff.
6. Comply with or create a public reporting system for school discipline data including expulsions, in- and out-of-school suspensions, school-based arrests, and referrals to law enforcement with data disaggregated by offense, age, grade, gender, gender identity, race/ethnicity, sexual orientation, disability, and school.
7. Consider alternative disciplinary programs when appropriate, including peer mediation, conflict resolution, guidance counseling, peer juries and courts, mentoring, character education, and parental and community involvement initiatives.

¹⁵ Advancement Project, et al., *supra* note 11, at 6.

¹⁶ Lambda Legal, *Know Your Rights: Homeless LGBTQ Youth*, <http://www.lambdalegal.org/know-your-rights/homeless-lgbtq-youth> (last visited Dec. 10, 2012).

¹⁷ National Coalition for the Homeless, *LGBT Homeless*, <http://www.nationalhomeless.org/factsheets/lgbtq.html> (last visited Dec. 10, 2012).

¹⁸ Advancement Project, et al., *supra* note 11, at 14.



On behalf of Lambda Legal, we thank you for this opportunity to provide information relevant to dismantling the school-to-prison pipeline. We would be pleased to address further inquiries.

Sincerely,

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December 10, 2012

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U.S. Senate

Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
 224 Dirksen Senate Office Building
 Washington, D.C. 20510

RE: Ending the School-to-Prison Pipeline

Dear Chairman Durban, Ranking Member Graham, and Committee Members:

Thank you for this opportunity to submit testimony for the December 12, 2012 hearing on "Ending the School-to-Prison Pipeline." The Lawyers' Committee for Civil Rights Under Law is a nonpartisan, nonprofit organization formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. Our principal mission is to secure equal justice under law by utilizing the skills and resources of the bar to address the factors that contribute to racial justice and economic opportunity. We seek to guarantee that all students receive equal educational opportunities in public schools and institutions of higher learning, and we believe that to do so, we must eliminate the opportunity gap between minority students and their non-minority peers. To that end, we share your commitment to ending the School-to-Prison Pipeline.

Public education is the cornerstone of our nation's deeply held belief that anyone can rise above his or her circumstances regardless of race or status. The U.S. Supreme Court attested to this in *Brown v. Board of Education*, acknowledging "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."¹ With the passage of the Civil Rights Act of 1964, Congress also recognized the importance of education in creating equal opportunity, specifically prohibiting discrimination in our schools and colleges.²

However, too many of our most vulnerable youth find themselves caught in the School-to-Prison Pipeline (STPP), which has transformed our schools into pathways to incarceration instead of places of learning.

¹ *Brown v. Bd of Education*, 347 U.S. 483, 493 (1954).

² 42 USC § 2000(c).



To combat these inequities, we advocate that federal education reform (1) permit the use of Elementary and Secondary Education Act (ESEA) Title I funds to implement school-wide positive behavior supports; (2) prohibit ESEA funding for exclusionary discipline measures; and (3) improve accountability by mandating inclusion of school discipline data in ESEA state Report Cards.

Within the past two decades, many schools have increased their reliance on law enforcement officers and exclusionary policies, such as out-of-school suspension and expulsion, as a means of reducing school disruption. As a result, more students are arrested or referred to juvenile court for what might be viewed as common misbehavior. While incarcerated, many children do not receive an adequate education. Moreover, juvenile delinquency can lead to long-term barriers to many life opportunities, such as access to public housing, military service, student financial aid, and professional licenses.

Exclusionary and punitive student discipline policies implicate a fundamental civil rights issue. As of 2011, over three million students were suspended at least once, and over 100,000 were expelled, causing them to lose valuable instructional time.³ Students of color and those with disabilities are disproportionately impacted by such policies. According to the US Department of Education's Office for Civil Rights, Black students across the country are over 3 ½ times more likely to be suspended or expelled than their White peers.⁴ Latino students also suffer under these policies and are 1.5 times more likely to be suspended and twice as likely to be expelled as their White peers.⁵ Additionally, students covered under IDEA are over twice as likely to receive one or more out-of-school suspensions.⁶

I. The Inequities of the School-to-Prison Pipeline

Of the many troubling aspects of STPP, there are three we highlight: (1) the racial disparities in exclusionary school discipline policies are unjustified; (2) exclusionary discipline is ineffective and harmful; and (3) exclusionary student discipline policies perpetuate the cycle of incarceration within communities of color.

A. Racial Disparities in Exclusionary School Discipline Policies Are Unjustified

Despite strong evidence of disparities in school exclusion for students of color, research confirms that these students violate school rules at a rate equal to their White peers. In a study analyzing national discipline data, it was noted "research on student behavior, race, and discipline has found no evidence that the over-representation of Blacks in out-of-school

³ Daniel J. Losen and Jonathan Gillespie, *Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School*, The Civil Rights Project, 6 (2012).

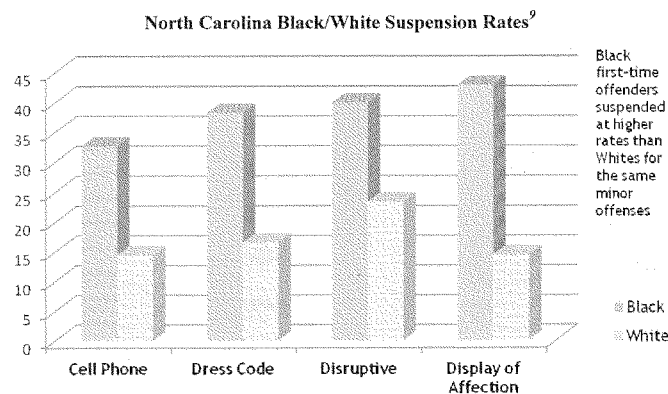
⁴ OFFICE FOR CIVIL RIGHTS (OCR), DEPT OF EDUC., *Civil Rights Data Collection, Data Summary*, 2 (2012), available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf> (based on self-reported data covering approximately 85% of the nation's public school students).

⁵ NATIONAL COUNCIL OF LA RAZA, *School-to-Prison Pipeline: Zero Tolerance for Latino Youth*, 1 (2011).

⁶ OCR, *supra* note 4, at 3.



suspension is due to higher rates of misbehavior.”⁷ This conclusion is bolstered by The Council of State Governments’ analysis of Texas school districts in *Breaking Schools’ Rules: A Statewide Study of How Discipline Relates to Student Success and Juvenile Justice Involvement*, which notes that Black students are “no more likely than students of other races to commit serious offenses that mandate that a student be removed from the campus.”⁸ A North Carolina study of first-time discipline violations further found that Black students were far more likely to be suspended for minor infractions than White students for the same offense:



These studies, and others like them, cast doubt on the theory that disparities in discipline are justified by differences in behavior between students of color and their White peers. Furthermore, the data from these studies highlight the harm suffered by students of color under vague discipline policies that allow immediate removal for violations such as being “disruptive” or engaging in a “display of affection.”

Exclusion should be permitted only for the most serious and dangerous offenses, where personal perceptions and cultural dissonance have no influence in the decision-making. Vagueness in school policies as to what triggers removals from the classroom, including under the zero-tolerance rubric, allow bias to infiltrate discipline decisions involving discretion.¹⁰ Research indicates that while White students are more likely to be excluded from school for violating mandatory policies, such as drug or weapon possession, the offenses at the root of the

⁷ Losen, *supra* note 3, at 40.

⁸ THE COUNCIL OF STATE GOVERNMENTS, *Breaking Schools’ Rules: A Statewide Study of How Discipline Relates to Student Success and Juvenile Justice Involvement*, 46 (2011).

⁹ Losen, *supra* note 3, at 41.

¹⁰ A zero tolerance policy refers to “a policy that assigns explicit, predetermined punishments to specific violations of school rules, regardless of the situation or context of the behavior.” THE COUNCIL OF STATE GOVERNMENTS *supra* note 8, at n.10.



majority of Black and Latino exclusions are subjective school code violations, such as defiance.¹¹

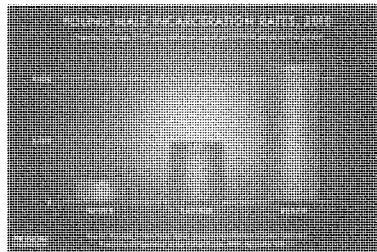
B. *Exclusionary Discipline Is Ineffective and Harmful*

Out-of-school suspensions, expulsions and arrests are not only ineffective at curbing school misbehavior; they may actually reinforce it. There is little evidence that school exclusion improves school climate, student behavior, or school safety. In fact, schools with law enforcement officers have disorderly conduct arrest rates at almost five times those of comparable schools without officers.¹² Instead, the “get tough” practices designed to ensure school safety often have the opposite effect of increasing feelings of school-wide rejection and isolation.

Exclusionary policies negatively impact the educational experience of all students. The Centers for Disease Control & Prevention revealed that suspension greatly increases the likelihood of retention, dropout, criminal involvement, and/or future incarceration. Furthermore, students at schools with high suspension rates tend to score worse on standardized tests because of missed instructional time.¹³ School-based arrests contribute to similar results.

C. *STPP Perpetuates Disproportionate Minority Contact with Justice System*

Exclusionary policies exacerbate the disproportionate incarceration of people of color. According to the Sentencing Project, more than 60% of the people in prison are racial and ethnic minorities.¹⁴ This mirrors juvenile incarcerations, where Blacks make up two-fifths and Latinos one-fifth of youth confined.¹⁵ School-based arrests increase the likelihood of adult arrests and incarceration.¹⁶ In fact, school suspension is a top predictor of those students who will be incarcerated by ninth grade.¹⁷



¹¹ See, e.g., Losen, *supra* note 3 at 40.

¹² JUSTICE POLICY INSTITUTE, *Education Under Arrest: The Case Against Police in School*, 14 (2011).

¹³ POVERTY & RACE RESEARCH ACTION COUNCIL, *Dismantling the School-to-Prison Pipeline: A Survey from the Field* (2011) available at http://www.prrac.org/full_text.php?text_id=1240&item_id=13096&newsletter_id=115&header=Race+%2F+Racism&ke=1.

¹⁴ THE SENTENCING PROJECT, *Racial Disparity*, <http://www.sentencingproject.org/template/page.cfm?id=122>.

¹⁵ Rachel Wilf, *Disparities in School Discipline Move Students Toward Prison*, THE CENTER FOR AMERICAN PROGRESS, <http://www.americanprogress.org/issues/race/news/2012/03/13/11350/disparities-in-school-discipline-move-students-of-color-toward-prison/>.

¹⁶ Dycus, *supra* note 12.

¹⁷ POVERTY & RACE RESEARCH ACTION COUNCIL, *supra* note 13.



II. Recommendations for Dismantling the School-to-Prison Pipeline

In order to combat the inequities of STPP and ensure equal educational opportunities for all children, the Lawyers' Committee advocates that federal education reform do the following: (1) permit the use of ESEA Title I funds to implement school-wide positive behavior supports; (2) prohibit ESEA funding for exclusionary discipline measures; and (3) improve accountability by mandating inclusion of school discipline data in ESEA state Report Cards.

A. Use ESEA Title I Funds to Implement School-Wide Positive Behavior Supports

We endorse proposed House Bill 2597 of the 111th Congress, and consistent with that bill, we recommend that the ESEA be amended to allow State educational agencies, local educational agencies, and schools to increase implementation of school-wide positive behavior supports.¹⁸ This should be done by permitting states to allocate school improvement funds under Title I of the ESEA for coordinated, early intervention services for all students and improve the school learning environment as described in the bill.¹⁹ Positive behavior supports utilize evidence-based practices that yield success in reducing student misbehavior. They include programs such as restorative justice (RJ) and Positive Behavior Interventions and Supports (PBIS).

RJ is guided by principles of accountability, community safety, and social competency development.²⁰ Under this framework, disciplinary incidents are used as an opportunity for students to recognize the impact of their behavior, take responsibility for their actions, and take steps towards making things right. This method not only prioritizes personal accountability, but also instills responsibility toward victims and the community.²¹ Schools with RJ have experienced reductions in exclusionary discipline. For example, Denver Public Schools' use of restorative justice practices resulted in a 40% reduction in out-of-school suspensions.²² In West Philadelphia High, RJ contributed to a 50% decrease in suspensions, along with a 52% reduction in violent and serious acts during the 2007-2008 school year.²³

PBIS is a framework to assist school personnel in adopting and organizing evidence-

¹⁸ H.R. 2597--111th Congress: Positive Behavior for Safe and Effective Schools Act, (2009) (last viewed December 4, 2012) <http://www.govtrack.us/congress/bills/111/hr2597>. We also support the proposal to amend the Department of Education Organization Act to establish, within the Department of Education, an Office of Specialized Instructional Support Services to oversee, implement, and ensure adequate evaluation of, the provision of specialized instructional support services in schools by school counselors, social workers, psychologists, and other qualified professionals.

¹⁹ *Id.* (requiring "improvements in school wide learning climates, including school wide positive behavior supports, to be a target of: (1) technical assistance provided by states to local educational agencies (LEAs) and schools, and by LEAs to schools identified as needing improvement; (2) school wide programs that allow LEAs to consolidate educational funds to upgrade the entire educational program of schools that serve a high proportion of low-income families; (3) professional development funding; (4) funding under the Safe and Drug-Free Schools and Communities program; and (5) elementary and secondary school counseling programs").

²⁰ ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY, *Implementing Restorative Justice, A Guide for Schools*, 6 available at www.icjia.state.il.us/_/SCHOOL%20BARJ%20GUIDEBOOK.pdf.

²¹ Mara Schiff & Gordon Bazemore, "Whose Kids Are These? Juvenile Justice And Education Partnerships Using Restorative Justice To End The 'School-To-Prison Pipeline,'" JUSTICE SUMMIT available at http://school-justicesummit.org/pdfs/journal-web_paper_5.pdf.

²² DIGNITY IN SCHOOLS, *Who's Getting Pushed Out?* available at www.dignityinschools.org/_/whos-getting-pushed-out-fact-sheet.

²³ INTERNATIONAL INSTITUTE FOR RESTORATIVE PRACTICES, *Improving School Climate: Findings from Schools Implementing Restorative Practices*, 7 (last viewed December 4, 2012), www.safersaferchools.org/pdf/IIRP-Improving-School-Climate.pdf.



based behavioral interventions into a tiered system of addressing behavior.²⁴ A team-based process is used for data review, data-based problem solving and intervention, ongoing planning, and monitoring of interventions.²⁵ This offers a range of interventions systematically applied to students based on a demonstrated level of need. PBIS is guided by four integrated elements: (1) data for decision making, (2) measurable outcomes supported and evaluated by data, (3) practices with evidence that these outcomes are achievable, and (4) systems that efficiently and effectively support implementation of these practices.²⁶ After applying school-wide PBIS, Jonesboro Middle School in Clayton County, Georgia decreased referrals from 1,252 office discipline referrals to 674 referrals.²⁷ Additionally, more than 6,000 schools that implemented PBIS nationwide reported reductions in behavior problems, improved perceptions of school safety, and improved academic outcomes.²⁸

Coordinated and sustained school-wide implementation of positive behavior supports requires targeted funding. Embedding these practices necessitates full-time employees to coordinate programs and shift school culture, ongoing training and technical assistance for staff, facilities to conduct programming, and consistent monitoring and data collection to track success.²⁹ Without such funding, it is difficult to provide adequate support to students and teachers.³⁰

Given that the schools most afflicted by STPP are more likely to be among the nation's under-resourced and under-performing "dropout factories," Title I funds are an appropriate means of supplying support for implementation of school-wide positive behavior supports.³¹ The purpose of Title I funds is:

to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments. This purpose can be accomplished by. . . meeting the educational needs of low-

²⁴ OSEP TECHNICAL ASSISTANCE CENTER ON POSITIVE BEHAVIOR INTERVENTIONS & SUPPORTS, <http://www.pbis.org/research/default.aspx>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Russell Skiba & Jeffrey Sprague, *Safety Without Suspensions*, 42, available at http://www.pbis.org/common/cms/documents/Coach_Trainer/Articles/Safety%20Without%20Suspensions.pdf.

²⁹ HIGH HOPES CAMPAIGN, *Restorative Justice in Chicago Public Schools*, 8 (2012) available at <http://www.suspensionstories.com/wp-content/uploads/2012/03/FramPolicyToStandardPractice.pdf>. See also, Heather Peshak George, Ph.D. & Stephanie A. Martinez, M.Ed., *How to Get PBS in Your School*, University of Florida, 4 PBIS Newsletter 3 (explaining that "[f]unding is needed for a variety of reasons and may include support for: (1) 'start-up' monies to kick-off school-wide activities (2) stipends for substitute teachers while team members are meeting or attending training, (3) printing materials (e.g. posters, minor forms), (4) purchasing school-wide incentives, including supplying a school store, and (5) paying for a data entry person, etc.") available at http://www.pbis.org/pbis_newsletter/volume_4/issue1.aspx.

³⁰ HIGH HOPES CAMPAIGN, *supra* note 29 at 10. See also, George, *supra* note 29 at 3-4.

³¹ See NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, LEGAL DEFENSE FUND, *School-to-Prison Pipeline* (explaining "racially isolated schools that primarily educate students of color are more likely to be among the nation's 'dropout factories' and also among those that utilize the harshest, most exclusionary means of discipline") available at <http://www.naacpldf.org/case/school-prison-pipeline>. See also Associated Press, *Dropout Factories* (explaining that a "'dropout factory' means the senior class is made up of 60% or fewer of the kids who entered as freshman. While some transferred, most dropped out. . . . The highest concentration of dropout factories is in large cities or high-poverty rural areas. Most of the schools have high minority populations") available at <http://hosted.ap.org/specials/interactives/wdc/dropout/index.html>.



achieving children in our Nation's highest-poverty schools, limited English proficient children, migratory children, children with disabilities, Indian children, neglected or delinquent children, and young children in need of reading assistance; . . . providing children an enriched and accelerated educational program, including the use of school-wide programs or additional services that increase the amount and quality of instructional time; . . . [and] significantly elevating the quality of instruction by providing staff in participating schools with substantial opportunities for professional development. . . .³²

To increase classroom time and academic performance, recipients of ESEA Title I funds should be permitted to allocate those school improvement funds for coordinated implementation of school-wide positive behavior supports and to improve the school learning environment through required additional services.

B. Prohibit Use of ESEA Funding for Exclusionary Discipline Measures

ESEA funds are in place to assist and improve public schools with a high percentage of students from low-income families. We recommend that states be precluded from using the federal dollars associated with the ESEA to fund exclusionary discipline policies. The ESEA and the funds attached to it are in place to *improve* academic achievement for our nation's most disadvantaged students and schools, not to facilitate the marginalization of our nation's most vulnerable youth. In line with this recommendation, we specifically suggest that no ESEA funds be used to pay for: (1) school resource officer or other security personnel salaries, metal detectors, security cameras, or other security-related salaries, equipment, or expenses; (2) drug testing programs; or (3) the development, establishment, implementation, or enforcement of zero-tolerance discipline policies, other than those required to prohibit possession of objectively dangerous weapons and illegal drugs. It is unconscionable that states be permitted to use these federal funds to employ discipline methods that are ineffective, discriminatory, and curtail the promise of equal educational opportunities for all students.

C. Include Disaggregated Discipline Data in ESEA State Report Cards

A state that receives assistance under ESEA must prepare and disseminate an annual ESEA state report card (Report Card) publicizing student achievement data and the progress of its schools in preparing students for college and career readiness.³³ We recommend that discipline data disaggregated by race be a required component of the Report Card. This public reporting will ensure that schools are held accountable for the systematic practice of excluding students from the learning environment and driving them into the justice system.³⁴

³² 20 USC § 6301.

³³ 20 USC § 6301.

³⁴ This is distinct from the Civil Rights Data Collection in that Report Cards are universal in the schools covered and annual in release.



Increased reliance on exclusionary discipline is linked to the high stakes testing attached to ESEA. To avoid the consequences associated with identification as a failing school, institutions in jeopardy of receiving that designation are incentivized to remove disruptive students from the classroom rather than discern the best way to teach them.³⁵ A consequence is that schools frequently push struggling students out of the classroom to increase test scores.³⁶ When drafting the most recent amendment to ESEA, Congress attempted to avoid such perverse incentives by requiring high schools to meet state-set graduation goals in order to attain gains sufficient to demonstrate adequate yearly progress (AYP).³⁷ Unfortunately, the measure for graduation rates has been neither consistent nor rigorous, and many pushed out students fall off the map.³⁸

A school should not be classified as making AYP if it drives difficult students out of the academic environment. As it stands currently, suspensions and expulsions are reported at the state's discretion, and there is no mention of reporting exclusion by arrest.³⁹ To hold states accountable for those students pushed out of school, disaggregated discipline data should be a mandatory component of the Report Card.

In closing, we urge the Committee to recognize the need for forceful action to end these policies and practices associated with STPP. The Lawyers' Committee welcomes the opportunity to consult with you further on reforms to make our school environments safe and conducive to learning for all. Please contact Tanya Clay House, Director of Public Policy, at (202) 662-8330 or tclayhouse@lawyerscommittee.org; or myself, Brenda Shum, Director of the Educational Opportunities Project, at (202) 662-8332 or bshum@lawyerscommittee.org with questions.

Respectfully,

Tanya Clay House, Director
Public Policy
Lawyers' Committee for Civil Rights Under Law

Brenda L. Shum, Director
Educational Opportunities Project
Lawyers' Committee for Civil Rights Under Law

³⁵ THE ADVANCEMENT PROJECT, *Test, Punish, Pushout: How "Zero Tolerance" and High Stakes Testing Funnel Youth into the School to Prison Pipeline* 28-29 (2010) available at b3cdn.net/advancement/d05cb2181a4545db07_r2imfcage.pdf.

³⁶ *Id.* See also, Linda Darling-Hammond, *No Child Left Behind and High School Reform*, 76 Harvard Educational Review 642, 668 (2008).

³⁷ ALLIANCE FOR EXCELLENT EDUCATION, *In Need of Improvement NCLB and High Schools*, 4 (2007) available at http://www.all4ed.org/files/NCLB_HighSchools.pdf.

³⁸ *Id.* at 5.

³⁹ 20 USC § 6301.



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December 10, 2012

The Honorable Richard Durbin, Chairman
The Honorable Lindsey Graham, Ranking Member
Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Human Rights
Washington, DC 20510

Re: Hearing on Ending the School-to-Prison Pipeline

Dear Chairman Durbin, Ranking Member Graham, and Subcommittee Members:

Thank you for the opportunity to submit comments on behalf of the Learning Disabilities Association of America (LDA) on the School-to-Prison Pipeline. The Learning Disabilities Association of America (LDA) is a national network, with 14,000 national state and local members including individuals with learning disabilities, their families, and the professionals who work with them. Organized in 1963, LDA has over 100 state and local affiliates, in 43 States and Puerto Rico.

Children with learning disabilities are more likely than other adolescents to experience low self-esteem, depression and poor peer relationships. Some children with learning disabilities may find it difficult to do well in school and may experience academic failure. They may express their frustrations through inappropriate behavior, which in turn increases their risk of being expelled or dropping out of school. Children with learning disabilities are arrested and enter the juvenile justice system at higher rates than their non-disabled peers.

How can we prevent the school pipeline to prison? Preventing the school pipeline to prison would include: early identification of learning disabilities, ADHD, and mental health conditions in the school system, appropriate education and specialized instructional support services, and strong family and community support systems.

When learning disabilities are identified and the school provides appropriate services, including appropriate interventions to address behavior issues, children have the opportunity to truly access and benefit from education. This leads to increased self esteem and a decreased likelihood of substance abuse and crime.

With the appropriate interventions, children with learning disabilities will be fully capable of accessing education and participating in their communities. The risk that some of these children may end up in the pipeline to prison will be greatly decreased. Providing needed services benefits these children and society overall by facilitating full participation in society.

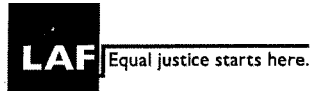
Thank you again for the opportunity to comment. If we can provide further information, please contact Mary Clare Reynolds, Executive Director, at 412-341-1515 , Ext. 206, mcreynolds@ldaamerica.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Latham'.

Patricia Latham, President

www.LDAAmerica.org



December 19, 2012

Senator Dick Durbin
 United States Senate
 711 Hart Senate Building
 Washington, D.C. 20510

Dear Senator Durbin:

Thank you for inviting the Legal Assistance Foundation (LAF) to submit written testimony to be included in the record of the "Ending the School-to-Prison Pipeline Hearing" held on December 12, 2012 in the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights. We appreciate the opportunity to provide commentary on this important topic.

As a Legal Services Corporation grant recipient, LAF provides free, civil legal services to low income residents of Cook County. LAF attorneys practice in a wide range of civil law, including domestic violence, wrongful evictions and consumer fraud. Among our many projects is an Education Law Team, which began in 1996, and whose primary goal is to assist students that cannot access the special education services to which they are entitled. LAF's Education Law Team also assists students who are being expelled from school or who suffer from bullying. Last year, our Education Law Team provided services to approximately 200 students. Many of these cases provide vivid examples of the trend known as the school-to-prison pipeline.

We have observed several disturbing practices among local public schools that have resulted in students being wrongly pushed out of school via expulsions, suspensions, and arrests. These practices include: 1) the failure of public schools to identify or evaluate students with disabilities; 2) even worse, the failure of public schools to provide special education services even after students have been evaluated and found to be disabled; 3) out-of-school suspensions and police notifications for minor discipline infractions; and 4) the failure to provide alternative education to students who are expelled.

1) Failure to Identify Students with Disabilities

Under the Individuals with Disabilities Education Act (IDEA), a school may be obligated to evaluate a child for special education services upon the parent's request and consent.¹ Moreover, when there is reason to suspect that a child has a disability that is interfering with his education then IDEA requires the school to initiate the evaluation process even without a parent request.² Accordingly, IDEA requires that each State have in effect policies and procedures to ensure that school districts identify, locate and evaluate all children with

¹ 34 CFR 300.301(b)

² *Id.*

disabilities residing in the State.³ Despite this federal mandate, many schools implement policies and practices that result in delaying or denying the evaluation of students.

For example, Response to Intervention (RTI) is a program designed to identify students at-risk for poor learning outcomes and to provide those students with intense interventions designed to bring the students academically up to speed. The use of RTI does not diminish the district's obligation under IDEA to evaluate a child. Too often, however, local public schools rely upon RTI systems as a basis for delaying or denying an evaluation under IDEA.⁴

We see many cases where the student's poor academic performance or ongoing behavior issues indicate a learning or emotional disability, yet the school simply fails to initiate the evaluation process. Some of our clients, for example, have had to repeat a grade twice and still the district did not evaluate the child for a learning or emotional disability. Common sense dictates that a child who fails twice is not making academic progress and probably suffers from a learning disability, cognitive disability or emotional disability that impairs his ability to learn. Under IDEA, the school should identify that child as needing an evaluation to at least determine whether special education services are needed.

Failing to identify a disability creates a host of problems for the child, his classmates and the school. More specifically, failing to identify a child's disability and put appropriate special education services in place can directly contribute to disciplinary problems. Students with emotional disabilities are especially vulnerable in this situation, as their diagnoses – Post Traumatic Stress Disorder, Oppositional Defiant Disorder, bipolar disorder, schizophrenia, anxiety, depression, etc. – often manifest themselves in inappropriate behavior. We have seen, over and over again, students with one or more of these diagnoses, repeatedly act out in school and labeled as “problem kids” or “difficult.” If the district were to evaluate such students for special education eligibility and then provide them with supportive services and an appropriate school environment, as IDEA requires them to do, they would discover that many of the behaviors that land “problem kids” with suspensions and expulsions could be avoided.

For some students the entire incident could have been avoided if they were in a proper school environment to begin with– such as a highly-structured therapeutic school - or in a school with a proper Behavior Intervention Plan (BIP) and social work services. Nationally, placements in therapeutic schools have gone up. But for CPS, the largest school district in Cook County, the therapeutic placement numbers have decreased and are typically much lower than that of other large urban school districts.⁵ One CEO of a private therapeutic school wonders “where are these children? . . . I think they are dropping out, on the street, in juvenile detention centers. I think they are being lost.”⁶ The need for therapeutic educational placements has not decreased, but CPS's willingness to provide it has decreased. The result of this trend is an increase in special education students being

³ 34 CFR 300.111(a)(1)

⁴ Memorandum to: State Directors of Special Education Office of Special Education Programs, 111 LRP 4677 (January 21, 2011).

⁵ Karp, Sarah, *No Place in Line*, Catalyst In Depth, Spring 2012, pages 6-7, found at: www.catalyst-chicago.org.

⁶ *Id.*

disciplined – suspended, expelled, arrested – for misconduct that could have been managed better or avoided entirely.

2) Failure to Provide Appropriate Special Education Plans

Once a child is evaluated and found eligible for special education services, IDEA requires the school to develop an Individualized Education Program, often referred to as the “IEP.”⁷ The IEP sets forth all the special education and related services to be provided to the student, as well as educational goals for the student each year.⁸ Once the IEP is in place, under Illinois law the school district must implement the plan within 10 days.⁹ Similarly, when a student transfers from one school district to another, the new district must either honor the existing IEP or re-evaluate the child in order to create a new plan.¹⁰ Routinely, we find that the receiving district fails to implement an IEP developed at the sending district. This illegal practice often leads to students facing serious discipline consequences, like expulsion and arrests, for behaviors that could have been avoided or at least minimized at a therapeutic school with staff trained and a program set up to handle students with high needs.

Nationally, students identified as special education eligible under IDEA are more than twice as likely to be suspended one or more times: 6% of non-IDEA students are suspended one or more times, versus 13% of IDEA students.¹¹ In Chicago, IDEA students are about 52 times more likely to be suspended repeatedly (more than one time) than non-IDEA students: 0.6% of non-IDEA students were suspended repeatedly, versus 31.6% of IDEA students.¹² If school districts were dealing with students’ disabilities appropriately, there should be no difference between these percentages.

Repeated suspensions and expulsion referrals send a message to the student that they are not wanted at school. Truancy increases. Grades decrease. The student gets behind in progress towards graduation requirements. Fewer than half of all students in special education, and fewer than 20% of those with emotional disabilities, graduate.¹³ Undoubtedly, many of those students are pushed-out via improper suspensions, expulsions, and arrests. Students who are arrested are 50 percent more likely to drop out.¹⁴

⁷ 20 U.S.C. §§ 1401(14), 1412(a)(4), 1414(a),(d)

⁸ 34 C.F.R. § 300.320(a)(4)

⁹ 23 ILAC 226.220

¹⁰ 23 ILAC 226.50

¹¹ U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, National Data Summary, updated March 2012, found online at: <http://ocrdata.ed.gov/Downloads/CMOCRTTheTransformedCRDCFINAL3-15-12Accessible-1.pdf>)

¹² U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, City of Chicago District 229, 2009 Survey, found online at: <http://ocrdata.ed.gov/Page?d&id=32906&syk=5&pid=119>)

¹³ Karp, Sarah, *No Place in Line*, Catalyst In Depth, Spring 2012, page 8, found at: www.catalyst-chicago.org.

¹⁴ Voices of Youth in Chicago Education, *Failed Policies, Broken Futures: The True Cost of Zero Tolerance in Chicago*, July 2011, page 15, found at: <http://www.voyceproject.org/sites/default/files/VOYCE%20report%202011.pdf>.

The U.S. Department of Education's Office for Civil Rights' Civil Rights Data Collection ("CRDC") collects data that is self-reported by school districts. In CPS's 2009 survey (the most recent available online), it reported zero school-related arrests. Zero for IDEA students and zero for non-IDEA students.¹⁵ This number is, of course, inaccurate. Records obtained in response to a Freedom of Information Act request sent to the Chicago Police Department showed that there were in fact 5,651 arrests of juveniles 17 and under at public school locations in 2009.¹⁶ Because CPS failed to report its data on arrests in the CRDC, it is impossible to know whether special education students are disproportionately represented in that number, the way they are in the numbers for suspensions.

3) Out-of- school suspensions and police notifications

More and more, student codes of conduct allow schools to discipline students with out-of-school suspensions for minor infractions. According to the Chicago Public Schools Student Code of Conduct, for example, students may receive out-of-school suspensions for possession of cellular telephones, failing to have proper ID, possession of tobacco, and vandalism under \$500 (which could include such minor offenses as writing on desks or bathroom stalls).¹⁷ While these infractions may certainly warrant intervention or discipline, denying a child an education for several days is extreme and counter-productive. In the same vein, the CPS Student Code of Conduct sets out when schools may call the police and when schools must call the police. What used to be an isolated fight among a group of students can now turn into a police and criminal matter. Often, we see cases where students caught up in a fight are suddenly arrested for "mob action." In CPS's Student Code of Conduct, "mob action" has the definition of "a large or disorderly group of students using force to cause injury to a person or property, or persisting in severe disruption after being directed to cease by school personnel or Police."¹⁸ Instead of sorting out who was primarily involved and responsible in a fight, the school may accuse all of the students of engaging in mob action. We have even seen students who did not participate directly in the fight, but rather were nearby or tangentially involved when it began, being referred for expulsion for "mob action." Under CPS's Student Code of Conduct, this is a mandatory police notification offense. These terms can be grossly misleading and can result in the most innocent of students being arrested or expelled.

A more appropriate reaction for students involved in these interactions would be a restorative justice strategy. Many schools, like CPS, incorporate into their code of conduct restorative justice strategies as alternatives to punitive measures, like expulsion and out-of-school suspension. These strategies may include community service, peace circles, mediation, accountability conferencing and peer juries. Unfortunately, these measures often lay dormant and, in our experience, are seldom utilized. While we are aware that some districts, including CPS, have used restorative justice strategies, we have yet to see a single client whose punishment for a school infraction resulted in community service, or other

¹⁵ U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, City of Chicago District 229, 2009 Survey, found online at: <http://ocrdata.ed.gov/Page?t=d&eid=32906&syk=5&pid=506>.

¹⁶ Kaba, Mariame & Edwards, Frank, *Policing Chicago Public Schools: A Gateway to the School-to-Prison Pipeline*, A Report by Project NIA, January 2012, page 19, found at: <http://policeincps.com>.

¹⁷ Chicago Public Schools, *Student Code of Conduct*, Effective August 13, 2012, Group 2 Behaviors, pages 24-25, found at: http://www.cps.edu/Documents/Resources/StudentCodeOfConduct/English_StudentCodeofConduct.pdf.

¹⁸ *Id.* at page 32.

restorative justice strategies. Yet physical altercations, especially those that arise spontaneously, are not premeditated, and do not result in any serious harm, are exactly the type of infractions that lend themselves to resolution through accountability conferencing. Accountability conferencing might result in positive outcomes, like students listening to each other's account of the altercation, listening to how their behavior affects others, admitting accountability for their actions, and making efforts to mend a hostile relationship. And even if only a few of those goals are achieved at a conferencing session, none of them is achieved by expulsion.

4) Failure to provide alternative education

Some districts offer alternative education schools that are available to expelled students. This opportunity varies from district to district and is not mandated by state law. Despite the Illinois Constitution, which states that "the educational development of all persons to the limits of their capacity" is a "fundamental goal,"¹⁹ many Illinois districts take the position that expelled students are exempted from these constitutional guarantees. As a result, children expelled from school are often denied access to any public education within the state. While this is a harsh outcome for most minor children, it is particularly harsh for elementary school children. Low income parents or guardians cannot always stay home with expelled children, leaving them unsupervised and unoccupied. Add to this mix a student who is already mentally ill or otherwise disabled and you have a recipe for trouble.

5) Solutions

Overall, some measures that would serve to reverse the school-to-prison pipeline include simple things, such as: 1) identifying disabled children under IDEA and evaluating them; 2) complying with the terms of IEP's for children already identified as disabled; 3) utilizing restorative justice strategies in lieu of expulsions, out-of-school suspensions and arrests; and 4) providing alternative education schools to children who are expelled. It must be noted that the focus on punitive measures, as opposed to restorative justice measures, comes at a cost. In 2011, for example, "CPS allocated just \$3.5 million towards school-based college and career coaches, and \$51.4 million towards school-based security guards."²⁰ Moreover, the "district has 310 special education positions that remain vacant."²¹ These statistics cannot begin to measure the costs of over-utilizing law enforcement and the legal system through overly punitive discipline, let alone the long-term costs of denying education to so many children nationwide.

¹⁹ ILCS Const. Art. X, § 1.

²⁰ Voices of Youth in Chicago Education, *Failed Policies, Broken Futures: The True Cost of Zero Tolerance in Chicago*, July 2011, page 19, found at: <http://www.voyceproject.org/sites/default/files/VOYCE%20report%202011.pdf>

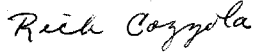
²¹ www.examiner.com/article/chicago-public-schools-budget-criticized-by-access-living-disability-group.

Again, we thank you for allowing us to provide commentary to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights. Ending the "school-to-prison pipeline" is no pipe dream, but a worthy and achievable goal.

Sincerely,


Ashley Fretthold
Staff Attorney


Jennifer Payne,
Supervisory Attorney


Rich Cozzola
Children and Family Law
Practice Group Director



Who we are:

The Mansfield Institute for Social Justice and Transformation (MISJT) at Roosevelt University provides innovative Social Justice Programming that raises consciousness while engaging in social justice and human rights work.

Our specific focus is working with our community partners to disrupt the cradle to prison pipeline and engage our students and faculty in scholar activism that promotes education and hope over incarceration. We bring together the strengths of the university and community in order to understand and address gaps in the system that perpetuate the prison pipeline. We engage in specific, long term, collaborative projects with our community partners we are both disrupting the pipeline and giving youth reason to hope while preparing them for productive adulthood. Through coursework, scholarships, fellowships and mentoring, we incorporate Roosevelt University students into the projects so that they gain experience, skills and insights needed to be leaders and agents of social change

What we know:

Funds are not being appropriated in ways that will help youth achieve success. The School to Prison pipeline crisis is most pervasive in the punitive zero tolerance policies that are prevalent in urban public schools that are highly populated with youth of color and youth below the poverty line. Through our experience and research in Chicago Public Schools, we've witnessed how minor issues are responded to with harsh discipline that leads to the de-education, marginalization and criminalization of the youth. Learning outcomes are disregarded, in favor of harsh and highly punitive measures. Black, Latino, poor and disabled youth are being pushed away from school and toward the criminal justice system in vastly disproportionate numbers. Before our eyes, we have watched these young people lose their youthful spirit and all hope for their future.

We know there are few places for these kids and their families to turn to for help and support. Not enough funding is provided in schools to create real, viable and lasting alternatives to zero tolerance policies and the criminal justice system. Communities lack the resources youth need.

We know that in order to succeed, funding needs to shift from supporting punitive institutional practices that have proven to fail, towards community based programs that are restorative and based in principals of humanity.

Background:

The Civil Rights Project recently released a report that shows suspensions and expulsions across the States. A couple of statistics are of particular importance to Chicago.

- One out of every six enrolled Black students was suspended, compared with about one in twenty White students.
- One in four Black youth with disabilities faced suspension or expulsion in the 2009-1010 school year.
- Illinois ranked the highest in racial disparities in suspensions and expulsions.
- Black youth with disabilities are 3x more likely than white youth with disabilities to be pushed out.

The link between school push out (suspension and expulsion) and involvement in the juvenile justice system has been strongly established and we feel strongly that Restorative Justice practices is a solution to reduce suspensions, expulsions and the ensuing repercussions on our youth.

Our efforts for reform: what we are doing as an organization, to combat the school to prison pipeline:

We continue to be appalled over the structures in our society and existing neoliberal order that perpetuate the systems that criminalize American youth. This has driven us to find ways to create change.

Roosevelt University's Mansfield Institute for Social Justice and Transformation is committed implementing Restorative Justice (RJ) Practices in as many elementary schools as we have the capacity to serve. We collaborate with community organizations in the vicinity of the school to ensure a holistic, school to community approach.

Our model:

- MISJT defines Restorative Justice (RJ) as a philosophy that is focused on the belief that those affected by harm can work together to repair it and that a collective effort leads to true accountability. Restorative Justice Practices are structured differently from systems we are used to in that they allow for a safe space for people to express their vulnerabilities, strengths, challenges and accomplishments. As a result, the process humanizes all those involved and promotes deeper bonds, a sense of responsibility and healing.
- We establish a peace room at the school that is used as the space to conduct conflict circles but is also a place that fosters a sense of belonging. This is a safe space for students to share in ways that leads to increased social emotional capacity, communication skills and a space where students can come and discuss challenges and accomplishments in their lives.
- Model uses a "whole school" approach to insure RJ practices are happening in the peace room but also in the hallways, on the playground, in the classroom, and in the school community. The school becomes the hub that demonstrates anti-violence, respect for others and restorative justice.
- MISJT's resources allow us to tap into Roosevelt University's Transformational Learning courses/students to work in the elementary schools and their surrounding community to implement restorative justice practices. RU students are trained in RJ practices as part of their coursework.

A Holistic Restorative Justice Model: the dual hub model approach

This approach is one that incorporates the Restorative Justice (RJ) philosophy at school and in the community. RJ practices will be woven into the life of the child in a pervasive way. We will ensure that all individuals who touch children's lives, including administration, teachers, counselors, parents and grandparents in the home, social service providers, mentors and faith based leaders in the community, police officers and judges and those at other institutions youth come in contact are trained in RJ practices.

In order to achieve this, we see school and the community as the two hubs (effective centers of activity from which RJ practices will reach out in a variety of directions) that are interconnected. We are attaching the community hub model and explain the school hub model below. Since the child spends equal amount of time in school and in the community, it is important that those they come into contact with in either, are "speaking the same Restorative Justice language." This will allow continuity and consistency in the lives of the youth and overall, will foster a more supportive, empathetic and safe environment. These hubs are geographically located.

The School Hub:

This model uses an early intervention philosophy and begins in elementary schools. Instead of surveillance cameras, security guards and punitive policy, the school will invest in the necessary elements to implement holistic Restorative Justice Model. The investment includes school-wide RJ training and the establishing of a full time, staffed, peace room. RJ practices will be used to address aggressive behavior, bullying and overall, to control the level of violence while increasing safety and learning outcomes in the school. To this end, an RJ approach will be incorporated into in the classroom, on the playground, in the lunchroom, hallways, and in the peace room with the goal of building a sense of belonging, increasing communication skills, providing a safe space to discuss life challenges and community barriers, all working towards cultivating strong social emotional capacity among youth at the school. Using RJ to manage disciplinary incidents AND to build social-emotional capacity will lead to the ultimate end goal of increased academic achievement and decreased violence.

A Collaborative Effort:

These goals of the school model will be met in a collaborative way using the best practices and resources of a collective of community organizations that surround the school. For example: Roosevelt University has numerous students who are trained in RJ practices who will provide interns to work in the peace room and/or provide youth mentoring and academic tutoring at the school. This allows our students to use scholar activism and apply theory to practice in their work in the community focused on dismantling this pipeline; there are RJ training specialists like the Community Justice for Youth Institute who will be involved in initial and ongoing RJ training at the school; organizations like Power Pack and SWOP that will be involved in parent training and empowerment programming; anti-violence life coaches will help with special

programming and mentoring at the school like the myriad of faith based leaders organizations like BUILD, Blocks Together and others depending on the geographic location of the school. Adler school of will provide workshops on trauma education for all RJ practitioners at the school. All will use RJ methods they learned in the greater RJ community from organizations like CJYI, Precious Blood Ministry.

Incorporation of the School Hub and the Community Hub:

Using an RJ practice leads to a deeper understanding of the root causes of low self esteem, fear and trauma that a child may be dealing with. These are successfully addressed in the varied RJ communications going on at the school. This is not enough. The challenge is ensuring that children's needs are met in a consistent way when they leave school. This is where the community hub (attach existing explanation of community hub vision) is integrated with the School hub. The same community organizations that contribute to the school model will be working with the youth in the community will be using RJ practices; be it afterschool programs, faith based organizations, mentorship and counseling programs, community centers that are alternatives to juvenile incarceration, parent support and education programs—any place that exists to serve the needs of young people in the community, even police, judges and other officials will use the RJ philosophy as a foundation for their work with youth. The same "language of restorative Justice" that is used in the school will be used in the community. Strong communication and integration of services and programming will transpire between the RJ representatives at the school and the hub representatives in the community. The school will inform the community hub representatives of youth and families identified at risk that require additional support and in reverse, the community will communicate with the RJ representative at the school.

The inexorable goal of the connection between these two hubs is this: Anyone who touches the lives of youth, in the school and in the community, will be speaking the same Restorative Justice Language. Using a philosophy of Restorative Justice, both the school and the community will be empowered to address crime and conflict and both will use RJ in other ways to create a positive, supportive neighborhood environment leading to less violence, healing and neighborhood transformation and a positive trajectory for youth.

Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing on "Ending the School-to-Prison Pipeline"
December 12, 2012 2:00 p.m.

Maryland Disability Law Center (MDLC) would like to thank Chairman Durbin, Ranking Member Graham, and the Constitution Subcommittee for holding this hearing and raising awareness of the School-to-Prison Pipeline. As more and more of our nation's youth end up in the juvenile justice system, the time for federal leadership on this problem is now, and we appreciate the opportunity to provide testimony.

Who Are MDLC and the Protection and Advocacy Systems (P&As)?

The federally mandated Protection and Advocacy (P&A) systems were established by the United States Congress through eight separate statutes to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. P&As are in all 50 states, the District of Columbia, the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the US Virgin Islands), and there is a P&A affiliated with the Native American Consortium, which includes the Hopi, Navaho and Piute Nations in the Four Corners region of the Southwest. MDLC is a nonprofit legal services organization aimed at creating a more integrated and just society by advancing the legal rights of people with disabilities and ensuring equal opportunities to participate in community life.

Each P&A provides a full array of services for people with disabilities, and work with youth to provide assistance with education and services in a variety of settings, including juvenile justice facilities, public and non-public schools, and detention and correctional facilities. Collectively, the P&A Network is the largest provider of legally based advocacy services to people with disabilities in the United States.

The Nature of the Problem

Children with disabilities should not be punished for their disabilities. Instead, children should be provided the education to which they are legally entitled to and the supports necessary to obtain that education. Unfortunately, many of our public school students do not receive these basic rights.

Statistics show that a disparate number of youth with disabilities, and especially youth of color with disabilities, are involved with the juvenile justice system. As many as 80% of youth in the juvenile justice system have some form of disability.ⁱ Children of color are also disproportionately represented in the juvenile justice system.ⁱⁱ However, a data analysis released in August of 2012 shows there is far more to the story. "Applying [...] three lenses together – race, gender and disability—yields a more disturbing image than any one of the categories alone...The group that consistently had the highest rate of suspension is African American male students with disabilities. In some of the largest

districts in the U.S....suspension rates for this group reached more than 70% of their enrollment."ⁱⁱⁱ

This analysis shows that a specific sub group of children of color, those who are also children with disabilities, receive different treatment than their peers in public school. Within this sub group, children who reside in particular public school districts receive the worst treatment of all. Many of these youth face suspension or expulsion from school - a key entry point into the "School to Prison Pipeline." In order to successfully protect these children from a future in prison, it is necessary to thoroughly examine the problem and tear it out by its roots.

MDLC's Work on the School To Prison Pipeline (STPP)

MDLC has been working on preventing improper discipline of students with disabilities for many years, before the link between these cases and the likelihood of future incarceration was widely recognized. Preventing suspension and expulsion of students for the behavioral manifestations of their disabilities is and always has been an important part of the advocacy work that we do. MDLC is engaged in both individual and systemic projects to address the school-to-prison pipeline for people with disabilities.

For example, MDLC is representing a young man who was arrested in school nine times for minor offenses such as disturbing school activities and fighting, and the school system failed to provide the instruction and services necessary to give him an appropriate education under state and federal special education law. On a systemic level, MDLC has worked with school systems and stakeholders statewide to revise school discipline procedures and end zero tolerance practices that disproportionately affect youth of color and youth with disabilities.

FEDERAL POLICY RECOMMENDATIONS

- **Effective enforcement of current federal protections is the most effective way to stem the STPP for children with disabilities.** MDLC is very pleased with a recent complaint filed by the U. S. Department of Justice (DOJ) regarding racial injustice in Meridian Mississippi. There are similar problems currently with regard to students with disabilities that are also worthy of DOJ's attention. We encourage DOJ to continue to work with the P&A agencies to identify appropriate cases for enforcement action.
- **Congress should create and appropriate funds for a specific P&A program focused on children with disabilities in the juvenile justice system.** Funding the P&A network to do this work is an extremely cost-effective way to use the existing infrastructure of the P&A System. The P&A network is the largest cross-disability network of advocates in the United States, and P&As have extensive expertise successfully advocating on behalf of youth with disabilities in child-

serving systems and advancing systems reforms. All P&As have an interest in and commitment to doing this work, but cite lack of funding and resources as the primary barrier to being more fully engaged while not diminishing the ability to do the other important work the P&As perform.

- **We recommend leadership by all relevant federal agencies, and especially OJJDP, in the area of prevention of school removal.** There is a need to promote and create incentives for the revision of local school codes, so as to eliminate the use of out of school expulsion and promote the development of clear and specific Memoranda of Understanding regarding the use of School Resource Officers, in order to limit their role to matters of real school safety. Providing direct federal support for training schools and teachers in the best practices to prevent school removal.
- **The U.S. Department of Education, Office for Civil Rights (OCR) should continue recent efforts to publish Civil Rights Data Collection (CRDC) data.** This type of federal effort is desperately needed in order to help state and local governments uncover and resolve STPP problems.
- **MDLC encourages OCR to consider specific enforcement actions (e.g. "compliance reviews") for STPP violations that impact students with disabilities.** One example would be to address the worst offending districts in terms of racial/disability discipline statistics.
- **MDLC recommends effective monitoring and enforcement of the IDEA and ESEA by Department of Education of suspension and expulsion rates and racial disproportionality at the state and local level.**
- **MDLC encourages the better tracking of school discipline rates as an indicator of school needs and improvement in persistently low-achieving schools.** This data is a promising example of how publicly available data could be used to improve school climate.
- **Congress should fund grant programs to support community-based solutions.** The solutions to the causes of the STPP at the local level will often require the efforts and input of all stakeholders. Funds should go toward the development and implementation of multi-year, comprehensive local or regional plans to reduce the use of exclusionary discipline and the number of youth entering the juvenile and criminal justice systems.
- **Conclusion:** Thank you for holding this hearing on this important topic and allowing written testimony to be submitted. **MDLC** is committed to continuing to be part of the solution to this serious social issue.

ⁱ (Shufelt, L. J., & Cocozza, J. J. (2006). Youth with Mental Health disorders in the Juvenile Justice system: Results from a multi-state prevalence study. Alexandria, VA: National Center for Mental Health and Juvenile Justice.).

ⁱⁱ "As states have undertaken efforts to reduce disproportionate minority confinement for youth, they have found evidence that disproportionality occurs at every contact point within the juvenile justice system, from arrest to cases transferred to criminal court and not just at detention and correction." DMC Technical Assistance Manual, 4th Edition , https://www.ncjrs.gov/html/ojdp/dmc_ta_manual/dmcintro.pdf (page Intro-1).

ⁱⁱⁱ Opportunities Suspended, August 2012, Civil Rights Project/Proyecto Derechos Civiles, at 36. Retrieved from <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-ccrr-research/>

MASSACHUSETTS ADVOCATES *for* CHILDREN

Ending the School to Prison Pipeline

Hearing before the Senate Judiciary Subcommittee on the Constitution,
Civil Rights, and Human Rights

A 9th grader and student of color was permanently expelled from school because, using a pencil, he poked a student's shoulder to cause him to discontinue disrupting him while taking a class quiz. The high school principal, noting that the code of conduct required zero tolerance for the use of a weapon, imposed the expulsion.

In the case described above, the student was fortunate that his parent was able to secure legal representation. As a result, the school superintendent agreed to make an exception to the zero tolerance policy, ending the student's month-long lack of access to public education. However, the superintendent was unwilling to change the zero tolerance policy set forth in the code of conduct.

A coalition of school advocates, after years of failure, this year persuaded the Massachusetts Legislature and Governor to reform the state school discipline laws to require school districts to provide alternative education services to students excluded from school for disciplinary reasons, and to require school districts to provide due process hearings and appeals to students facing exclusion from school.

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Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing on "Ending the School-to-Prison Pipeline"
December 12, 2012 2:00 p.m.

Michigan Protection and Advocacy Service, Inc. (MPAS) would like to thank Chairman Durbin, Ranking Member Graham, and the Constitution Subcommittee for holding this hearing and raising awareness of the School-to-Prison Pipeline. As more and more of our nation's youth end up in the juvenile justice system, the time for federal leadership on this problem is now, and we appreciate the opportunity to provide testimony.

Who Are Michigan Protection and Advocacy Service, Inc. (MPAS) and the Protection and Advocacy Systems (P&As)?

The federally mandated Protection and Advocacy (P&A) systems were established by the United States Congress through eight separate statutes to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. P&As are in all 50 states, the District of Columbia, the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the US Virgin Islands), and there is a P&A affiliated with the Native American Consortium, which includes the Hopi, Navaho and Piute Nations in the Four Corners region of the Southwest. Michigan Protection and Advocacy Service, Inc. (MPAS) is the independent, private, nonprofit organization designated by the governor of Michigan to advocate for and protect the rights of people with disabilities in Michigan.

Each P&A provides a full array of services for people with disabilities, and work with youth to provide assistance with education and services in a variety of settings, including juvenile justice facilities, public and non-public schools, and detention and correctional facilities. Collectively, the P&A Network is the largest provider of legally based advocacy services to people with disabilities in the United States.

The Nature of the Problem

Children with disabilities should not be punished for their disabilities. Instead, children should be provided the education to which they are legally entitled to and the supports necessary to obtain that education. Unfortunately, many of our public school students do not receive these basic rights.

Statistics show that a disparate number of youth with disabilities, and especially youth of color with disabilities, are involved with the juvenile justice system. As many as 80% of youth in the juvenile justice system have some form of disability.ⁱ Children of color are also disproportionately represented in the juvenile justice system.ⁱⁱ However, a data analysis released in August of 2012 shows there is far more to the story. "Applying [...] three lenses together – race, gender and disability—yields a more disturbing image than any one of the categories alone...The group that consistently had the highest rate of

suspension is African American male students with disabilities. In some of the largest districts in the U.S....suspension rates for this group reached more than 70% of their enrollment."ⁱⁱⁱ

This analysis shows that a specific sub group of children of color, those who are also children with disabilities, receive different treatment than their peers in public school. Within this sub group, children who reside in particular public school districts receive the worst treatment of all. Many of these youth face suspension or expulsion from school - a key entry point into the "School to Prison Pipeline." In order to successfully protect these children from a future in prison, it is necessary to thoroughly examine the problem and tear it out by its roots.

MPAS' Work on the School To Prison Pipeline (STPP)

MPAS has been working on preventing improper discipline of students with disabilities for many years, before the link between these cases and the likelihood of future incarceration was widely recognized. Preventing suspension and expulsion of students for the behavioral manifestations of their disabilities is and always has been an important part of the advocacy work that we do.

MPAS continued its systemic initiative to improve outcomes for children with disabilities who are excluded from school because of disability-related behavior. The questionnaire project has produced over 1,700 survey results to date and has helped MPAS identify systemic issues in three counties. MPAS is now collaborating with other community advocacy organizations to address the systemic issues. Meanwhile, the U.S. Department of Education cited to MPAS' input in its corrective action findings ordering the Michigan Department of Education to reform its complaint process and procedures to address substantive special education issues.

MPAS closed 128 individual cases involving students whose disability-related behavior led to discipline and entry into the school to prison pipeline. For example:

- An 8-year-old boy with autism was being disciplined on a regular basis by a charter school. MPAS investigated and filed a state complaint. The complaint was originally denied but then substantiated after MPAS appealed. The boy moved, but the charter school was required to provide assurances that it would evaluate him as required by law should he decide to re-enroll.
- A 15-year-old boy with ADHD was expelled from school without post-expulsion services. MPAS investigated and filed a state complaint. The district agreed to revoke the expulsion and allowed the boy to return to school.
- An 11-year-old boy with ADHD was "dismissed" from special education and then expelled the next day. MPAS investigated and filed a state complaint. The district agreed to return the boy to school with compensatory services.

- A 17-year-old young man with ADHD was sent home from school and told never to return because he was "disrespectful." MPAS investigated and filed a state complaint. The state found the district out of compliance and ordered reinstatement to school and compensatory education.
- A 14-year-old boy with a learning disability was suspended and denied appropriate services; school staff referred him to MPAS. MPAS investigated and filed a state complaint. The district agreed to participate in wraparound services, conduct new evaluations, and rewrite the boy's Individualized Education Program (IEP) to provide more appropriate services.
- MPAS' Marquette office filed a complaint on behalf of a 16-year-old woman with mental health and learning disabilities who had been expelled from school for a full year. The state substantiated all allegations in the complaint and ordered reviews of programs for all other students in the district, with ongoing corrective action until the district achieves 100% compliance with the law.

FEDERAL POLICY RECOMMENDATIONS

- **Effective enforcement of current federal protections is the most effective way to stem the STPP for children with disabilities.** MPAS is very pleased with a recent complaint filed by the U. S. Department of Justice (DOJ) regarding racial injustice in Meridian Mississippi. There are similar problems currently with regard to students with disabilities that are also worthy of DOJ's attention. We encourage DOJ to continue to work with the P&A agencies to identify appropriate cases for enforcement action.
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- **The U.S. Department of Education, Office for Civil Rights (OCR) should continue recent efforts to publish Civil Rights Data Collection (CRDC) data.** This type of federal effort is desperately needed in order to help state and local governments uncover and resolve STPP problems.
- **MPAS encourages OCR to consider specific enforcement actions (e.g. “compliance reviews”) for STPP violations that impact students with disabilities.** One example would be to address the worst offending districts in terms of racial/disability discipline statistics.
- **MPAS recommends effective monitoring and enforcement of the IDEA and ESEA by Department of Education of suspension and expulsion rates and racial disproportionality at the state and local level.** The recent “verification visit” by OSEP to Michigan helped the state improve its monitoring and complaint investigation strategies to focus on outcomes for children with disabilities, especially children who are pushed out for disability-related behavior.
- **NDRN encourages the better tracking of school discipline rates as an indicator of school needs and improvement in persistently low-achieving schools.** This data is a promising example of how publicly available data could be used to improve school climate.
- **Congress should fund grant programs to support community-based solutions.** The solutions to the causes of the STPP at the local level will often require the efforts and input of all stakeholders. Funds should go toward the development and implementation of multi-year, comprehensive local or regional plans to reduce the use of exclusionary discipline and the number of youth entering the juvenile and criminal justice systems.

Thank you for holding this hearing on this important topic and allowing written testimony to be submitted. MPAS is committed to continuing to be part of the solution to this serious social issue. For more information, please contact Chris Rodriguez or Mark McWilliams, (517) 487-1755, www.mpas.org.

ⁱ (Shufelt, L. J., & Cocozza, J. J. (2006). Youth with Mental Health disorders in the Juvenile Justice system: Results from a multi-state prevalence study. Alexandria, VA: National Center for Mental Health and Juvenile Justice.).

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**Statement of the
Honorable R.T. Rybak
Mayor, City of Minneapolis**

**Hearing before the Senate Judiciary Committee
Subcommittee on Constitution, Civil Rights and Human Rights**

“Ending the School-to-Prison Pipeline”

December 12, 2012

Mr. Chairman, thank you for holding this very important hearing and for the opportunity to submit my statement for the record.

Six years ago, my city faced a serious rise in crime that was fueled mainly by violent crime involving young people. The City Council and I convened a steering committee which included community leaders and public safety experts to look at the problem and recommend a strategy for moving forward. They developed the *Blueprint for Action to Prevent Youth Violence*. The significance of this multi-year plan was that it chose to address the problem by considering youth violence as a public health issue best treated by prevention rather than by treating the disease after the fact. The Blueprint outlined a multi-faceted strategy which aimed at achieving four goals:

1. Connect youth to trusted adults—at the core of any prevention effort is the role of caring, trusted adults in the life of every young person. The goal is to create positive and nurturing relationships with adults.
2. Intervene at the first sign that youth are at risk for violence—intervene early when a young person or family first exhibits signs that they are at risk or involved in violence.
3. Restore youth who have gone down the wrong path—hold young people accountable while providing opportunities for healthy young development.

4. Unlearn the culture of violence in our community—well-designed public education campaigns can make a positive impact on public opinion and be a cost-effective way of providing critical information to a large number of people.

The Blueprint concluded that:

“Government alone cannot eliminate violence from our community. In order to turn around the epidemic of youth violence in Minneapolis, we need to surround our youth and their families with supports and opportunities, while also holding them accountable for their actions. We need schools and youth serving organizations to better coordinate services. We need public and private funders to support proven programs and interventions.”

The steering committee further recognized that “there is a strong correlation between failing schools and neighborhoods with high rates of violence.” This has led to a strong partnership between the city and Minneapolis Public Schools to improve educational success.

In Minneapolis, the concept of considering youth violence as a public health issue has meant that it is a problem that can be prevented and that to go forward, multiple strategies are required. No single strategy prevents youth violence. Considering youth violence as simply a criminal justice issue fails to address the underlying causes. From the public health perspective, arrests and incarceration are “band aids” which treat the problem after the fact. What we have sought to do is to create a multi-faceted approach to address the multiple factors which lead to youth violence and to use strategies and interventions which have proven successful to “prevent” and “treat” these factors.

One of the programs we created in Minneapolis, with the help of federal funding, is the North 4 Project. North 4 refers to the four North Minneapolis neighborhoods which in 2006 had

more than half of the city's 57 homicides. The program was designed to "create pathways of success for 30 former gang involved youth who lived in the four North Minneapolis neighborhoods." It was based on the most common response from gang members to the question "what would it take to leave the gang?" The answer was: "to be able to have a steady job." The North 4 program then focused on helping the participants become job ready and subsidized work experiences with the goal of having them evolve into unsubsidized, long term jobs. One of the shocking statistics from the group selected to participate in North 4 was that there was an average of 5.1 friends and family members lost to homicide per youth.

I'd like to share excerpts of a letter from one of the North 4 participants who asked that his name remain anonymous:

"If there is any program that deserves funding in Minneapolis, it's the North 4 Program through Emerge...Emerge gave me the chance to grow...Emerge gives me motivation and hope; motivation to better myself by getting my G.E.D..."

Most of us in the North 4 program have grown up in poverty. I can't speak for all of us, but I can and will provide a better life than what I've had for my children. I remember growing up having to share clothes, a bedroom and waiting for the 13th of every month so we could eat well. I grew up in a family of seven. There was never enough.

I can write a book about my life. I don't know how many copies it would sell. I don't even know if they would publish it...I have seen it all. I can say I grew up too fast."

His letter talks specifically about bettering himself by getting his G.E.D. The value of education and schools which are successful is well proven as a key to employment and family stability. Clearly, violent behavior is unacceptable and we must hold those you commit violent

acts accountable. But as the young man in the letter describes, providing hope through education and jobs using the range of prevention strategies identified in our Blueprint and through programs like North 4, can change the trajectory.

The cost of youth violence is steep. It is the cost of young lives lost. It is the extraordinary cost of investigation, prosecution and incarceration in prisons or juvenile correctional facilities. It is the cost of emergency room visits and serious injuries from gun violence. Just as it is with other public health issues, prevention is far more cost effective than treatment. The cost of mentoring programs, employment training and education are far less than the costs to the community of treating the victims and instigators of youth violence.

Mr. Chairman, I commend you and the subcommittee for your focus on this serious problem. I look forward to working with you and offer our experiences in Minneapolis as a resource to you and the other members of the subcommittee as you continue to look at the problem and identify strategies and potential resources for prevention.



STATE OF MINNESOTA

Juvenile Justice Advisory Committee

Department of Public Safety, Office of Justice Programs
 445 Minnesota Street, Suite 2300, St. Paul, Minnesota 55101
 Voice: 651-201-7348 – Fax: 651-296-5787

Richard Gardell, Chair

Dear Senator Franken,

The Minnesota Juvenile Justice Advisory Committee (JJAC) would like to take this opportunity to review the role of the Juvenile Justice and Delinquency Prevention Act (JJDP Act) in Minnesota beginning with its inception in 1979. Over the past thirty three years, the JJDP Act has been the foundation for protecting Minnesota's youth from entering into the juvenile justice system by putting into common usage the core protections for status offenders and other low level juvenile offenders established by the JJDP Act.

Minnesota's JJAC accepts the responsibilities set out in the JJDP Act very seriously because it is well known that once a youth enters into the juvenile justice system the opportunity for repeat involvement rises dramatically. Over the years the American justice system has focused more on punitive rather than rehabilitative measures. This may serve the overall community in dealing with incorrigible and hardened criminals. However, when a youth engages in status offenses and petty misdemeanor infractions, the presenting fact of their youthful lack of adequate or mature judgment should entitle them to certain protections designed to give them an opportunity to learn and benefit from their indiscretions.

The four core protections of removal of juveniles from adult jails and lock-ups; sight and sound separation of juveniles from adult offenders; de-institutionalization of status offenders; and disproportionate minority contact (DMC) gives the individual youth multiple protective shields from career criminals. It also gives them the opportunity for a personal alert that their behavior while unique to themselves is well known in law enforcement policy and will not be tolerated as they move forward toward maturity. This creates a balance of protecting our youth while making sure they understand and are held accountable to themselves, their families and their community. It also becomes a most effective lesson in life-long learning. Making sure that the core protections are written into each and every jail, lock-up and secure facility in Minnesota has been the responsibility of JJAC over the past thirty plus years. Not only are compliance checks carried out annually to these facilities, another endeavor has been to foster education to the individual law enforcement entity. Minnesota is in complete compliance with the JJDP Act's protection requirements. But, keeping those practices that accomplish compliance in place requires ongoing inspection, monitoring, and education of practitioners.

Stimulating and creating important community based services for youth is extremely important. These evidence based programs have demonstrated excellent outcomes in helping youth choose a law abiding and successful path in life. JJAC has always been able to support innovative youth programming through the administration of grants made possible by funding from Title II, Title V of JJDP and the Juvenile Accountability Block Grants. One example is our work with violence prevention projects on the North side of Minneapolis. A core component of this project is to develop ongoing police/youth dialogue in order for each side to

come to an understanding. Another project funds an initiative for law enforcement to hand out small business size cards pointing out the collateral consequences of a juvenile record. The "Think First" card has had great success in capturing an evasive audience and educating them to the seriousness of the juvenile justice system. Attached is a list of our sub grantees and the innovative and effective work they are doing in specific areas. Please remember that each grantee not only represents important work with our youth, they represent many state and local dollars that are leveraged by the Federal dollars that flow to the state through JJDP.

There is another side to this thirty year endeavor. It is the ongoing effectiveness of the JJDP Act itself. Even with all the players for juvenile justice on the same stage in Minnesota, effective and vigorous performance of these protections and initiatives cannot happen without a commitment by the federal government to not only continue the JJDP Act but to return it to the funding levels from the 2002 Congressional allocation. Attached is the compilation of federal allocations to Minnesota since 2002. It shows a diminution of 87%. A federal JJDP Act allocation is necessary to establish national policy on juvenile justice throughout the United States and to show the commitment of the federal government in protecting our children and guaranteeing to them the opportunity to enter into the adult world with their capacity intact.

Minnesota, like many other states, has an ever expanding immigrant community. The world has changed for many communities as these families new to Minnesota become acclimated to our state. Addressing the issue of Disproportionate Minority Contact in a proactive and effective way is critical to the credibility of our justice systems. This work can only be implemented at the State and Local level. But, national leadership and incentives are necessary to expedite these reforms. Our world has become an ever changing world and it is different from the world of 1979 when the JJDP Act was first promulgated. However, the need for the vibrancy of the four core protections remains intact.

The inherent wisdom contained in the JJDP Act is that the federal government should lead by setting national policy and then fund incentives for state and local governments to implement the reforms necessary to accomplish the policy. That process has worked well to implement across this country core protections like the deinstitutionalization of Status Offenders. Now, as states address the issue of DMC in their justice systems, this leadership from the federal government built on the wisdom of the JJDP Act, is more important than ever before. In order to protect our youth Minnesota and all states need a vigorous JJDP Act that translates into adequate funding and a commitment by the federal government to make sure the four core protections continue.

Thank you for your time and consideration on this important issue.

Sincerely,



Richard Gardell, Chair
Juvenile Justice Advisory Committee

Ending the School to Prison Pipeline

Hearing before the Senate Judiciary Subcommittee on the Constitutional, Civil Rights and Human Rights

Submitted by: Derrick Johnson, President, State Conference NAACP, Jackson, Mississippi

The safety and success of school-aged young people in Mississippi is at risk as a result of school to prison pipeline practices. Thousands of students are arrested, pepper-sprayed, tased and beaten on a daily basis for very minute actions that should result in no more than a one or two day suspension. Furthermore, the students who are not arrested and physically abused, are suspended excessively and referred to alternative schools, losing valuable time in their academic experience. Instead of receiving the extra educational assistance and mental health assistance that would help them to avoid future disciplinary problems, they fall further behind academically and social/mental health issues are rarely addressed.

In the Jones County school district, addressing mental health issues means a mandatory in patient evaluation at Pinebelt Behavioral Services, a private facility funded largely through Medicaid dollars. Parents tell us that they are told that the treatment is mandatory for their child to re enter the school and that when their children return home, they exhibit "zombie-like" behavior. Additionally, many of the students are still held under the supervision of the local youth court until Pinebelt staff signs off on their mental health evaluation. Students in Jones County are sometimes held in the detention center for 60 to 90 days for school fights or insubordination to a teacher. The school to prison pipeline practices in Jones County are very similar to the incidents documented in the Department of Justice findings from the investigation in Meridian (Lauderdale County), Mississippi. These two communities are not unique, unfortunately.

These failing zero tolerance policies lead to high drop out rates, lower academic achievement, students not getting the help they need, and too many kids pushed onto a pathway to prison. These policies also destroy the confidence and self esteem of young people by introducing them to the criminal justice system too early.

Two years ago, we provided assistance to an eight year old, J.A. in Amite County, MS, who had been arrested for hitting the teacher at school. In reality, J.A. struggled against the teacher who was attempting to restrain him. At the time, J.A. was on medication for ADHD and his IEP (Individualized Education Plan) called for a 'cooling off' period when J.A. was aggravated. The teacher, nor the school district, honored his IEP and J.A. was routinely arrested and suspended from school. J.A. has become a target within the school district now. He has been labeled a "bad kid" and unless he transfers to a different school, his academic career will not improve.

This is a destiny that is all too familiar to many young people in Mississippi. Our prisons are full of adults who never received the help that they needed as youth.

Across the country, we find that the rules are different for black and brown students. We are urging Congress to help us to end the disparities that exist in our public education system by ending the school to prison pipeline. Regulations must be placed on states that reduce excessive suspensions and expulsions. Corporal punishment must be banned and police officers must be trained to deal properly with students before they are placed inside of our schools.



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**TESTIMONY SUBMITTED BY
HILARY O. SHELTON
DIRECTOR, NAACP WASHINGTON BUREAU &
SENIOR VICE PRESIDENT
FOR ADVOCACY AND POLICY**

to the

**SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS AND HUMAN RIGHTS**

on

“THE SCHOOL TO PRISON PIPELINE”

December 19, 2012

Good morning Chairman Durbin, Ranking Member Graham, and esteemed Members of the Senate Judiciary Subcommittee on the Constitution, Civil and Human Rights. Thank you for holding this extremely crucial hearing to explain the School-to-Prison Pipeline, the procedure by which students are forced out of our educational system and into the criminal justice system by excessively harsh school disciplinary policies. I am submitting this testimony on behalf of the National Association for the Advancement of Colored People, the NAACP.

As the Director of the NAACP Washington Bureau, the federal policy and national legislative arm of the NAACP, and the Senior Vice President for Advocacy and Policy, it has been my pleasure to work with the NAACP for almost 17 years, and I can honestly say that obliterating the "School to Prison Pipeline" is of our core priorities.

Founded in 1909, the NAACP is our nation's oldest, largest and most widely recognized grassroots-based civil rights organization. We currently have more than 600,000 member/activists nationwide.

The NAACP has advocated for more than 105 years for equality in the areas of education, criminal justice and civil rights; the "School to Prison Pipeline" negatively affects all of them. The School to Prison pipeline refers to the national trend of criminalizing, rather than educating, our nation's children. The pipeline encompasses the growing use of zero-tolerance discipline, school-based arrests, disciplinary alternative schools, and secured detention that marginalizes and denies our most at-risk youth to a high quality education. These policies have been shown to disparately affect African- Americans, other racial and ethnic minorities, as well as students with disabilities and as such have had a devastating effect on these young people's opportunity to succeed.

A 2011 longitudinal study covering more than one million public school students in the State of Texas titled, *Breaking Schools' Rules*, and the Department of Education's 2012 Civil Rights Data Collection (CRDC) both concluded from their research these disturbing trends: first, an overreliance on suspensions, expulsions, and referrals to law enforcement as means of managing student behavior; second, the disproportionate impact of such practices on students of color, students with disabilities, and other subgroups; and, finally, the increased risk of juvenile justice involvement for students who are suspended or expelled. These findings are extremely worrisome to say the least.

At the NAACP we have always advocated for safe, high-quality schools that care for our youth. However, across the country, students are being suspended, expelled, or even arrested for minor misbehavior like being late or violating a dress code. Unlike in times past, instead of students being sent to the guidance counselor or the principal, now they are taken to the police station.

The study, *Breaking Schools' Rules* surmises that African-American students were 31 percent more likely to receive discretionary discipline actions as compared to White and Hispanic students for discretionary (non-mandatory) conduct. The Department of Education's Study concluded that African-American students are more than 3 ½ times as likely to be suspended or expelled as their White peers and that students with disabilities are more than twice as likely to receive out-of-school suspensions relative to their non-disabled peers. These statistics seem to demonstrate that African Americans students along with students with disabilities are not being provided equitable access to education and their civil rights may be potentially violated. Also extremely disturbing are the findings that suspension or expulsion of a student for a discretionary violation nearly tripled the likelihood of juvenile justice contact within the subsequent academic year.

The arrests, detention and juvenile court appearances have deep negative short and long-term consequences for children. Mental and physical health, educational success, and future employment opportunities are often severely damaged when youth are brought into the juvenile justice system. Data reveals that even one court appearance during high school increases a child's likelihood of dropping out and that court appearances are especially detrimental to children with no or minimal prior history. Students dropping out of school often translate, to higher unemployment, poorer health, substance abuse, shorter lifespan, lower earnings, and increased future contacts with the criminal justice system.

Children as young as five years of age have been handcuffed for "acting out" and other similar "wrongdoings". These children do not deserve to be put in handcuffs or be arrested. In many circumstances, the children dealt with in this manner have learning disabilities or histories of poverty, abuse or neglect, and would benefit from additional educational and counseling services. Instead, they are isolated, punished and pushed out. We are in the midst of a crisis, where instead of educating students of color we are either kicking them out of school or causing them to drop out.

The NAACP, recommends that more research is done in the area of school discipline while agreeing with the Department of Education that to create positive learning environment for all our youth, schools must emphasize the essential relationships interconnecting social, emotional, and behavioral skills and student achievement; play an active role in addressing the underlying causes of student misbehavior, like substance abuse, mental illness, and social and emotional disorders; provide students with behavioral supports that directly address or prevent misconduct; and build the capacity of teachers and leaders to implement prevention-based strategies while adhering to appropriate discipline policies. Legislatively, we would like to build a consensus for action among federal, state and local education and justice stakeholders. Collaborate on research and data collection that may be needed to inform this work, such as evaluations of alternative disciplinary policies and interventions. Develop guidance to ensure that school discipline policies and practices comply with the nation's civil rights laws and to promote positive disciplinary options to both keep kids in school and improve the climate for learning; and promote awareness and knowledge about

evidence-based and promising policies and practices among educators and justice stakeholders.

Our education system currently has an overreliance on exclusionary discipline and the fact that this is disproportionately affecting African Americans, other students of color and students with disabilities can no longer be tolerated.

Thank you again, Chairman Durbin and Ranking member Graham and other members of the committee for holding this important hearing and for soliciting the thoughts of the NAACP and for your continued leadership in this area.



Testimony of the NAACP Legal Defense and Educational Fund, Inc.
 Damon T. Hewitt, Director, Education Practice Group
 Eric Rafael González, Education Policy Advocate, Education Practice Group

**United States Senate
 Committee on the Judiciary
 Subcommittee on the Constitution, Civil Rights, and Human Rights**

**Hearing on “Ending the School-to-Prison Pipeline”
 Dirksen Senate Office Building
 December 10, 2012**

I. Introduction

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), we are pleased to submit this testimony in connection with the Subcommittee’s hearing on “Ending the School-to-Prison Pipeline.” We want to thank Chairman Durbin, Ranking Member Graham and Members of the Subcommittee for holding the hearing. This seminal event marks the first time that Congress has devoted a hearing solely to the alarming connection between schools, discipline policies, and the juvenile justice system. And it could not come at a better moment.

School discipline today bears little resemblance to the approaches of a generation ago. Today, far too many schools reflexively resort to harsh exclusionary discipline such as suspension, expulsion, assignment to alternative educational settings and even citations and arrest by law enforcement officers. Disciplinary rates are now more than double what they were in the 1970s. In fact, U.S. schools now suspend more students than at any time in our history. In the 2009-2010 school year, the most recent year for which data are available, over 3,000,000 students were suspended.¹ And some schools call police instead of parents to handle simple disciplinary matters, with students receiving summonses and tickets for non-criminal acts such as using profanity, missing class and running in school hallways.

The overwhelming weight of data and research demonstrates that such practices are counter-productive. They do not make schools safer; instead, they block students’ pathways to success. And they often funnel students into the juvenile and criminal justice systems, thereby fueling the

¹ DANIEL J. LOSEN & JONATHAN GILLESPIE, OPPORTUNITIES SUSPENDED: THE DISPARATE IMPACT OF DISCIPLINARY EXCLUSION FROM SCHOOL 6 (The Center for Civil Rights Remedies at The Civil Rights Project, 2012).

School-to-Prison Pipeline. This is particularly true for African-American students, who are too often disproportionately impacted by these approaches.

With approximately a quarter of all high school students not graduating, and persistent achievement and opportunity gaps in our nation's schools, we must reckon with the impact of the School-to-Prison Pipeline. As the organization that litigated *Brown v. Board of Education*, we fully understand the stakes for African-American students and all students. For this reason, we urge this Subcommittee, as well as the full Judiciary Committee, to examine in depth the multiple causes of, and solutions to, the School-to-Prison Pipeline. We believe this hearing – and subsequent Congressional action – can help to dismantle the School-to-Prison Pipeline. We offer the following testimony in that spirit.

II. Excessive Discipline Yields Racial Disparities

According to the U.S. Department of Education, “across all districts, African-American students are over 3½ times more likely to be suspended or expelled than their white peers.”² And a widely-publicized study by the Council of State Governments showed that African-American students in Texas were 31 percent more likely to be disciplined for discretionary offenses in schools compared to their white or Latino counterparts, and over 80 percent of African-American male students had been suspended or expelled at least once during middle or high school.³ Such sobering data are not exclusive to the South: in New York City, more than 95 percent of the students arrested in the city's schools in 2011 were African-American or Latino.⁴

In addition to more frequent punishment, African American students are also more likely to be punished more harshly, even when engaging in the same conduct as white students.⁵ In this way, race has been shown to be a predictive factor for disciplinary action, as well as for the severity of the disciplinary sanctions.

III. Overreliance on Exclusionary Discipline Undermines Our Nation's Education Goals

While school safety is critical to ensuring that students are able to learn, excessive exclusionary discipline is counterproductive, both in terms of keeping students safe and promoting academic achievement.

² OFFICE FOR CIVIL RIGHTS, U.S. DEPARTMENT OF EDUCATION, CIVIL RIGHTS DATA COLLECTION SUMMARY 2 (2012). <http://ocrdata.ed.gov/Downloads/CMOCRTheTransformedCRDCFINAL3-15-12Accessible-1.pdf>. Despite being only 18% of students in the Civil Rights Data Collection sample, African-American students were 35% of students suspended once, 46% of those suspended more than once, and 39% of students expelled. Furthermore, the CRDC indicates that “Over 70% of students involved in school-related arrests or referred to law enforcement are Hispanic or African-American.”

³ TONY FABELLO et al., BREAKING SCHOOLS' RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS' SUCCESS AND JUVENILE JUSTICE INVOLVEMENT, x, 40-46, (2011). http://knowledgecenter.csg.org/drupal/system/files/Breaking_School_Rules.pdf.

⁴ NEW YORK CIVIL LIBERTIES UNION, SSA REPORTING ON ARRESTS AND SUMMONES, (2012). <http://www.nyclu.org/files/releases/School%20Safety%20Fact%20Sheet%202011-2012.pdf>.

⁵ RUSSELL SKIBA et al., RACE IS NOT NEUTRAL: A NATIONAL INVESTIGATION OF AFRICAN-AMERICAN AND LATINO DISPROPORTIONALITY IN SCHOOL DISCIPLINE, School Psychology Review, 2011 at 85. <http://www.nasponline.org/publications/spr/40-1/spr401Skiba.pdf>.

The American Psychological Association has found that there is no evidence suggesting that the use of suspension, expulsion, or zero-tolerance policies results in improvements in student behavior or increases in school safety.⁶ Indeed, such practices have *negative* effects on student academic performance: students who are suspended and/or expelled, especially those who are repeatedly disciplined, are far more likely to be held back a grade, drop out of school, or become involved in the juvenile or criminal justice system than are students who do not face exclusionary discipline.⁷ Students who are arrested are twice as likely to drop out as their peers.⁸

The harms of excessive use of exclusionary discipline are not limited to individual students. Research indicates that entire schools suffer when suspension, expulsion, or referral to law enforcement become the interventions of choice. Schools with high suspension rates score lower on state accountability tests than other schools, even when adjusting for demographic differences.⁹ In this way, over-reliance on exclusionary discipline threatens our educational goals. Put simply, when a student is not in school, she cannot learn, and we are pushing far too many children out of school.

There are also economic consequences to the ways in which exclusionary discipline and referrals to law enforcement inhibit graduation rates. For example, in 2011, approximately 1.2 million students did not graduate from high school; the estimated lost lifetime earnings for that class of dropouts is \$154 billion.¹⁰ Furthermore, school-based arrests have placed such a drain on state funds that fiscally conservative organizations, such as the Texas Public Policy Foundation, have begun calling for reforms to rethink school-to-court referral practices.¹¹ Clearly, pushing students out negatively affects America's bottom line.

IV. Recommendations to address the School-to-Prison Pipeline

Thankfully, there are proven solutions to securing school safety that do not rely on exclusionary discipline. Evidence-based frameworks such as School-Wide Positive Behavioral Interventions and Supports (SWPBS) and Restorative Justice Practices are being implemented in over 10,000 U.S. schools. Research indicates that effective implementation of SWPBS has reduced disciplinary rates and improved student attendance, academic achievement, and perceptions of

⁶ HOWARD L. TARAS et al., COMMITTEE ON SCHOOL HEALTH, AMERICAN ACADEMY OF PEDIATRICS – POLICY STATEMENT: ORGANIZATIONAL PRINCIPLES TO GUIDE AND DEFINE THE CHILD HEALTH CARE SYSTEM AND/OR IMPROVE THE HEALTH OF ALL CHILDREN, <http://www.cde.state.co.us/cdeprevention/download/pdf/1206.pdf>.

⁷ FABELLO et al., BREAKING SCHOOLS' RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS' SUCCESS AND JUVENILE JUSTICE INVOLVEMENT, xi-xii, (2011). http://knowledgecenter.csg.org/drupal/system/files/Breaking_School_Rules.pdf.

⁸ Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement* 23 JUST. Q. 462 (2006).

⁹ SKIBA & PETERSON, THE DARK SIDE OF ZERO TOLERANCE: CAN PUNISHMENT LEAD TO SAFE SCHOOLS?, Phi Delta Kappan Jan. 1999, at 372-376. <http://www.jstor.org/discover/10.2307/20439450?uid=3739584&uid=2129&uid=2&uid=70&uid=4&uid=3739256&sid=21100974521363>.

¹⁰ ALLIANCE FOR EXCELLENT EDUCATION, THE HIGH COST OF HIGH SCHOOL DROPOUTS: WHAT THE NATION PAYS FOR INADEQUATE HIGH SCHOOLS, (2011).

¹¹ RIGHT ON CRIME, PRIORITY ISSUES: JUVENILE JUSTICE (2010) at <http://www.rightoncrime.com/priority-issues/juvenile-justice/>.

school safety.¹² Implementation of Restorative Justice Practices, another best practice in school discipline, resulted in a 40% drop in suspensions and a 60% drop in arrests in Denver Public Schools.¹³ Bi-partisan support from lawmakers, families, and educators for efforts to improve school discipline have resulted in significant changes in the school policies and practices of Baltimore,¹⁴ Los Angeles,¹⁵ Colorado,¹⁶ Florida,¹⁷ Louisiana,¹⁸ and Maryland,¹⁹ among others.

Below are several recommendations for federal legislation and administrative action that can address the alarming rates at which students are being pushed out of school through exclusionary discipline and referral to law enforcement.

Recommendations for federal legislation:

- 1) Require annual reporting of disciplinary indicators collected in the 2012 Civil Rights Data Collection (conducted by the U.S. Department of Education Office for Civil Rights). These school-level disciplinary and school climate data should be disaggregated by race, gender, disability, and English proficiency, and be collected from all schools and districts, including all charter schools and alternative schools. Such data should be publically reported in accessible formats.
- 2) Require that unusually high and/or racially disparate rates of exclusionary discipline trigger mandatory technical assistance and support. Schools and districts with significant excesses and racial disparities should be required to address the problem. But that can best be accomplished through support and assistance rather than punitive sanctions.²⁰ Schools and districts should be supported in adopting demonstrably effective, positive approaches to improving school climate and limiting the use of exclusionary discipline.
- 3) Provide additional federal funds to develop and implement inclusive approaches to school discipline. Congress can help school districts to replace exclusionary discipline methods with: (a) evidence-based and demonstrably effective school-based discipline frameworks that will be implemented in a culturally relevant manner, such as School-Wide Positive Behavior Support (SWPBS) and Restorative Justice Practices; and (b) increased reliance on school-based service providers such as mental health practitioners, school social workers, school psychologists, school counselors, and school nurses.

¹² ROBERT H. HORNER, et al., A RANDOMIZED WAIT-LIST CONTROLLED EFFECTIVENESS TRIAL ASSESSING SCHOOL-WIDE POSITIVE BEHAVIOR SUPPORT IN ELEMENTARY SCHOOLS, 11 J. POSITIVE BEHAVIOR INTERVENTIONS 133 (2009).

¹³ ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSHOUT: HOW “ZERO-TOLERANCE” AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE “SCHOOL-TO-PRISON PIPELINE” 36 (2010).

¹⁴ Liz Bowie, *Baltimore County School Board Eases Discipline Policy*, BALT. SUN (Jun. 12, 2012).

¹⁵ SCHOOL MASTER PLAN FOR DISCIPLINE, available at: http://lapositivebehavior.com/plan_detail.cfm?id=1

¹⁶ Colo. H.B. 1345 (2012).

¹⁷ Fla. S.B. 1540 (2009).

¹⁸ La. Act 136 (2010).

¹⁹ MD. REGS. CODE tit. 13A. (2012).

²⁰ A model for this approach is evident in the process required by the Individuals with Disabilities Education Act, which is designed to eliminate such disparities. 20 U.S.C. § 1412(a)(22).

- 4) Deemphasize standardized test scores. States can help to mitigate the perverse incentives that stem from test-based accountability by developing and implementing school, teacher, and student assessment mechanisms that rely on multiple sources of diverse evidence of learning. As demonstrated by our current national accountability framework, a focus on test scores as the primary measure of student, school, and district performance creates a direct and powerful incentive to remove students whose performance on the test may negatively affect a school's or district's statistics. By reducing the emphasis on test scores and incorporating additional measures of student learning and teacher practice, the incentives to push out students whose performance on tests is perceived to threaten school and staff evaluations will be drastically reduced.

Recommendation for administrative action:

- 1) Require recipients of competitive federal grants or waivers from compliance with the No Child Left Behind Act administered through the U.S. Department of Education to address high and/or disparate rates of discipline. We support the requirement included in the Race to the Top District-level competition (RTT-D), which calls for grant recipients to address disciplinary disparities. We urge that the Department of Education use the same approach to all grant and waiver programs, including waivers from federal education law provided through the Department's "flexibility package."

V. Conclusion

Our nation is based on the ideal of equal opportunity. Sadly, for many students, especially African-Americans, this ideal is absent from their educational experience. Millions of these students are pushed out of school each year through exclusionary discipline policies that not only fail to improve school safety, but also injure the academic performance of the school as a whole. These alarmingly high and racially disparate rates of suspension, expulsion, and referral to law enforcement must be addressed. And while we need to create safe and healthy learning environments, we must ensure that our schools implement evidence-based practices that support academic growth and improve school climate. The Subcommittee's hearing today is a critical first step in what will hopefully be a strong federal legislative effort to address our nation's harmful reliance on these counterproductive exclusionary discipline policies.



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*Enhancing the mental health and
educational competence of all children.*

December 10, 2012

Honorable Dick Durbin
Chairman, Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, DC 20510

Honorable Lindsey Graham
Ranking Member, Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Hearing on the School to Prison Pipeline

Dear Senators Durbin and Graham:

On behalf of the members of the National Association of School Psychologists (NASP), thank you for the opportunity to submit written testimony regarding ending the school-to-prison pipeline. NASP represents over 25,000 school psychologists who work with students, families, educators, and administrators to support the academic achievement, positive behavior, and mental wellness of all students. NASP believes that all students learn best in inclusive environments that combine high quality, evidence based instruction and effective school-wide discipline practices.

Expansion of Zero Tolerance Policies

In 1994, The Gun Free Schools Act was signed into law, and was re-authorized as part of the No Child Left Behind Act in 2001. This act mandated zero tolerance policies and mandatory suspension/expulsion for students bringing weapons to school. However, many state and local jurisdictions have applied zero tolerance policies to a wide range of behavioral infractions ranging from fighting, disruptions in the classrooms, to the minor and often subjective infraction of disrespect or general disruptive behavior. Further, some schools and districts often apply suspensions and expulsions to minor behavior infractions that occur both in and out of school (Skiba, 2002).

These policies have increased the number of students removed from school for discipline infractions and may have increased student contact with law enforcement (Skiba, 2012). Additionally, these school discipline practices are often employed with no support provided to the student before punitive measures are utilized nor upon their return to school. Schools and school districts have strayed away from the original intent of the law, resulting in the unintended consequence of students being pushed out of school without considering the unique needs of every student in the learning environment. Requiring schools to enact zero tolerance policies according to the original intent of the law as opposed to its expanded use, is the first step in addressing the school to prison pipeline.

Negative Consequences of Zero Tolerance

Ineffective schoolwide discipline policies and practices like zero tolerance do not address school safety or improve student behavior, and are based on the false belief that removing particular students from school will benefit other students and the overall school climate. However, zero tolerance policies have a negative effect on school climate, do not make students and teachers feel safer in school, and are associated with increased student drop out and involvement in the criminal justice system. Specifically, school suspension is a moderate to strong predictor of school dropout (Balfanz, 2003) and increases the likelihood of the student being involved in the juvenile justice system (Fabelo, T.; Thompson, D., Plotkin, M., Carmichael, D., Marchbanks, M., and Booth, E, 2011). There has been great effort to increase the rate of students who graduate from high school and enter the workforce or go to college. Greater attention is being given to promoting positive student behavior through interpersonal skill instruction, clearer and more consistently applied behavioral expectations, and early intervention efforts for students at risk for school failure as a result of social, emotional or behavioral problems. We urge you to work with state and federal education departments to ensure that discipline policies are designed to keep students in school, not push them out.

Disproportional Application of Punitive Discipline

The disproportionate rate that suspension and expulsion are used with racial minority students and students with disabilities is alarming. A wide body of research documents the disproportionate application of disciplinary measures such as suspension and expulsion among certain ethnic groups, particularly African American students (Losen & Skiba, 2010; Children's Defense Fund, 2004). Further, students with disabilities, particularly those with emotional and behavioral disorders, are suspended at rates disproportional to their representation in the population (APA, 2008; Leone, Mayer, Malmgren, & Meisel, 2000). Given that students with behavioral and/or emotional disabilities often demonstrate behaviors that require sustained access to intervention, the continuation of zero tolerance policies in schools is detrimental to this population (Krezmien, Leone & Achilles, 2006). Students with disabilities who are expelled under zero tolerance laws essentially receive no, or a lesser education, as the law allows for schools to deny their reinstatement (McWilliams & Fancher, 2010).

The American Bar Association took the position that zero-tolerance policies should be discontinued in schools due to the fact that administrators were using these policies to keep difficult students out of school, and therefore, denying them an education (Henault, 2001). Educators have a responsibility to provide *every* child with a free and appropriate public education. We should not tolerate the continued exclusion of minority and disabled students from our public school system.

Unnecessarily Burdening the Juvenile Justice System

Schools have a responsibility to keep students safe, yet far too often students are removed from the classroom and placed into the juvenile justice system for behaviors that could and should be addressed in the school environment. Across the country, judges cite being overwhelmed by cases of basic student misconduct that should have been handled by the school. Skiba (2012) notes Pennsylvania reported that the number of referrals to the juvenile justice system had tripled over the past seven years. Additionally, judges have noted that frequently, these court cases have involved minor infractions or involved students whose behavior was likely related to their disability.

An analysis of several case studies reveals the case of "Tony", a student with emotional and behavioral disabilities who was arrested 18 times over the course of two school years for minor behaviors that included speaking out of turn and moving around in class (Browne, 2003). "Tony" deserves proper behavioral support at school, not an arrest record for these behaviors. In Florida, a 14 year old student with disabilities was arrested for stealing \$2 dollars and was held in an adult jail for six weeks, even though this was his first offense. In Chicago, numerous students (aged 11-15) were arrested and held overnight for a food fight (Skiba, 2012). Our students deserve better than this. Schools can do a better job of keeping students in school and our

of the juvenile justice system by implementing effective school wide discipline policies and practices that focus on prevention and intervention.

Positive Discipline

Positive Behavior Interventions and Supports (PBIS) is one example of effective schoolwide discipline. Regardless of what it is called, effective discipline practices involve communicating and teaching behavioral expectations and discipline policies universally to staff members and students coupled with consistent application of the policies and availability of supports to those students who need it. Students with mental or behavioral health concerns, who have difficulties in the home, or have severe academic needs require more intensive individualized supports. These students are the most at risk for failing, dropping out, or engaging in criminal activity (e.g., Allensworth & Easton, 2005; Balfanz & Herzog, 2005).

Effective schoolwide discipline involves primary prevention, secondary support, and tertiary supports. Primary prevention includes clearly communicating and teaching behavioral expectations, recognizing and reinforcing positive behaviors, and school wide prevention efforts. Primary prevention also includes character education programs, mentoring programs, school clubs or other opportunities for pro-social involvement, and access to specialized instructional support personnel (e.g., school psychologists, counselors, and social workers). Effective primary prevention results in less time spent on student discipline, and more time spent on teaching and learning.

Students who have patterns of behavior that impede their learning, or the learning of others require more intense and individualized supports to ensure they reach their academic potential, remain in school, and out of the juvenile justice system. The goal of secondary supports is to prevent at-risk behaviors (e.g., frequent classroom disruption, excessive tardiness) from becoming chronic. Tertiary supports, however, provide intensive individualized support for a specific set of behaviors. These students may have many challenges, and effective coordination of services between the school and community is key to ensuring these students remain in school and out of the juvenile justice system.

NASP Recommendations

School safety is a key component of a successful school, and school violence must be addressed. However, the strict, continued use of zero tolerance policies will not address the problem of the school to prison pipeline; it will exacerbate it. One of the most important investments we can make in stopping the school to prison pipeline is providing resources that allow schools to implement schoolwide effective discipline policies and practices. NASP recommends the following to address the school to prison pipeline:

Ensure safe, supportive, conditions for learning. Students need to feel physically and emotionally safe at school. This starts with safe learning environments that promote student well-being, prevent negative behaviors, and engage students in the classroom and broader school community. All students should a) come to school knowing they are safe, welcomed, and respected; b) have a trusting relationship with at least one adult in the building; c) understand clear academic and behavioral expectations; and d) see their role as positive members of the school community.

Shift to More Effective Positive Discipline. Effective schoolwide discipline practices include implementing a multi-tiered problem solving approach that 1) prevents negative behavior, 2) provides supports for students with behavioral difficulties, and 3) allows for a consistent set of discipline policies and procedures to be implemented when the severity of the behavior warrants punitive action. Moving to this kind of approach reduces negative behavior, and ultimately keeps students in the classroom and in school and out of the criminal justice system. Importantly, integrating school safety measures with efforts to improve school climate and academic achievement results in more sustainable and comprehensive approaches to improving student and school outcomes, both of which help break the school to prison pipeline.

Provide comprehensive and coordinated learning supports to address student social-emotional wellness, positive behavior, and academic achievement. Learning supports should be comprehensive, integrated, and directly connected to the school context. Well-coordinated supports are provided in an integrated, multi-tiered system of support that connects school-wide prevention and skills building with increasingly intense and individualized interventions for higher risk students groups and individuals.

Effective supports include school-based mental health services, early prevention and intervention services, initiatives to actively engage students and families as well as community partners. Students must feel connected and valued as members of the school community and challenged academically in order to be fully engaged in learning. Disengagement from school increases the risk of failure and school dropout, which in turn places them at risk of criminal behavior. Conversely, interventions that promote students' bonding to school reduce tobacco, alcohol and drug use; school dropout; and criminal involvement (Catalano et.al., 2004).

Provide training and support for teachers and other school personnel. Effective positive school discipline is a schoolwide endeavor; however many educators lack appropriate training on how to prevent and respond to problem behavior. Many teachers report that they do not know how to respond to difficult behaviors, and 30% of teachers who leave the profession due to job dissatisfaction indicate that student discipline problems are the reason for their dissatisfaction.

There are a number of professionals that schools and districts can utilize to provide training and support for dealing with difficult behaviors. For example, school psychologists work with teachers to design and implement academic and behavioral interventions, and interventions using positive behavior supports have been shown to improve academic performance and decrease behavior problems (Luiselli, Putnam, Handler, & Feinberg, 2005; Nelson, Martella, & Marchand-Martella, 2002). Teachers cannot be expected to address all student behavior alone, and it is our responsibility to ensure that teachers and students have access to the supports necessary to ensure that teachers feel empowered to teach and students are ready to learn.


Ensure access to specialized instructional support personnel. To accomplish these goals, students need access to specialized instructional support personnel that can support their social, emotional, behavioral, and academic needs and keep students engaged and in the classroom. These professionals (e.g., school psychologists, school counselors, and school social workers), along with teachers and administrators, must play an instrumental role in addressing the school to prison pipeline. Specialized instructional support personnel are adept at collecting and interpreting school-wide data to help identify problem areas and set reasonable goals for improving school climate, school safety, and positive conditions for learning. In addition, these professionals provide individual and group services to at-risk youth, vital consultation to teachers, parents, and administrators, and coordinate with relevant community agencies to ensure that all students have access to the supports they need to remain in school and out of the juvenile justice system.

NASP has a variety of resources related to school safety and effective school discipline. Specifically, we suggest the following documents available on our website:

- A Framework for School-Wide Bullying Prevention and Safety
(http://www.nasponline.org/resources/bullying/Bullying_Brief_12.pdf)
- NASP Position Statement Appropriate Behavioral, Social, and Emotional Supports to Meet the Needs of All Students
(http://www.nasponline.org/about_nasp/positionpapers/AppropriateBehavioralSupports.pdf)
- Enhancing the Blueprint for School Improvement in the ESEA Reauthorization: Moving From a Two- to a Three-Component Approach
(http://www.nasponline.org/advocacy/UCLA_NASP_Brief_FINAL.pdf)

If you would like further information about effective school discipline, positive conditions for learning, or the role of the school psychologist in addressing the school to prison pipeline, please contact Kelly Vaillancourt, PhD, Director, Government Relations (kvallancourt@naspweb.org).

Respectfully,


Susan Gorlin, CAE
Executive Director

Testimony of Mo Canady, Executive Director, National Association of School
Resource Officers (NASRO)
Before the Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights

December 10, 2012

Chairman Durbin, Ranking Member Graham, and members of the Subcommittee:

Thank you for allowing me to testify through this statement for the record. I am Mo Canady and I serve as the Executive Director of the National Association of School Resource Officers (NASRO). NASRO, the world's leader in school-based policing, is a not-for-profit organization founded in 1991 with a solid commitment to our nation's youth. NASRO is comprised of school-based law enforcement officers, school administrators, and school security/safety professionals working as partners to protect students, faculty and staff, and their school community. The "school resource officer," (SRO) also known as a "school safety liaison," or "school based law enforcement officer," refers to commissioned law-enforcement officers selected, trained, and assigned to protect and serve the education environment. The first SRO program was instituted in 1953 in Flint, Michigan, and later spread, in 1968, to Fresno, California. Programs expanded slowly at first, then more quickly during the 1990s. For some school officials, this expansion was prompted by the 15 deadly, highly publicized campus rampages that occurred from 1993-1999. Other educators had equally compelling data in hand to influence the decision: their own campus incident reports and the perceptions of school personnel, students, and parents. Today, school resource officers have become a vital component in school safety planning. The SROs are seen as effective resources in reducing campus disruptions and in enhancing educators' and students' feelings of safety while at school.

The work of NASRO is to provide the highest quality of training to school-based law enforcement officers in order to promote safer schools and safer kids. The goal of NASRO is to provide safe learning environments in our nation's schools, provide valuable resources to school staff, foster a positive relationship with our nation's youth, and develop strategies to resolve problems affecting our youth with the objective of protecting every child so they can reach their fullest potential.

Introduction

My statement for the hearing record focuses on the criticism by advocates of the "school-to-prison pipeline" of policies by public school officials to fashion campus safety plans around interagency partnerships which involve the use of law enforcement personnel known as school resource officers (SRO). This aspect of education law, now commonly known as "school safety law," has been the subject of considerable and thoughtful development over the last thirty years. Over the past two decades, America's public schools have become safer and safer. All indicators of school crime continue on the downward trend first reported when data collection

began around 1992. In 2011, incidences of school-associated deaths, violence, nonfatal victimizations, and theft all continued their downward trend. This trend mirrors that of juvenile arrests in general, which fell nearly 50% between 1994 and 2009--17% between 2000 and 2009 alone. This period of time coincides with the expansion of School Resource Officer programs as part of a comprehensive, community-oriented strategy to address the range of real and perceived challenges to campus safety.

However, recent criticism by advocates of the "school-to-prison pipeline" has called into question the fairness and effectiveness of this type of interagency collaboration in the school context. The SRO has been impugned for being ill suited to the education environment, a source of confusion and intimidation on campus and responsible for an increase in the number of referrals from schools to the juvenile justice system. Advocates of the "school-to-prison pipeline" dispute any correlation between the presence of an SRO on campus and crime reduction and go so far as to associate the presence of the SRO with an increase in crime on campus.

Below, please find a narrative summary of the problems, errors, and misuse of data offered in support of the claims of a "school to prison pipeline". Policymakers have not been alerted to these issues. The appearance of validity for the "pipeline" claims continues to influence state and national reform in school safety law. As set forth below, the absence of a balanced, objective examination of the data describing normative behavioral trends in the juvenile justice and child welfare systems is robbing policymakers of a voice that needs to be heard.

The foreseeable and unintended consequences of the misrepresentations of the data include (1) violation of the civil rights of student victims guaranteed under current state and federal victims' rights laws, (2) obstruction of justice by school officials who may disregard mandatory reporting laws requiring collaboration with child welfare and juvenile justice systems, (3) a rise in discrimination claims brought under federal and state laws against school officials for inconsistent disciplinary policies, and (4) an increase in the loss of goodwill and confidence in public education by parents who increasingly have school choices in-hand.

Problems with the Claims of the Existence of a "School-to-Prison Pipeline"

The school-to-prison pipeline advocates present a fictitious account of what is happening in public schools, which they present to us as political reality. The claims deal wholly in the blackest blacks and the whitest whites, with no grey area. Their kind of simplicity gives attraction to their story and helps politicize it. And since all communities dislike the same things that the school-to-prison pipeline advocates dislike, quite as much as they do, policymakers may accept these claims as true based on common hopes and fears -- again turning fiction into fact. Policymakers are being coerced into supporting reform based on claims of a "school-to-prison pipeline," to avoid being called out as an enemy of children or a bigot for a newly discovered form of discrimination in education. It is as if they are saying:

"This is how things really are. These are the real issues, the real sides. Only your blindness keeps you from seeing it, which, happily, we have come to rescue you from."

(1) The "Pipeline" Proponents Ignore Data That Tells a Different Story

The trouble with the school-to-prison pipeline is that its fiction will not stand the light of factual inquiry. If one goes back three decades to survey the data on school safety and follows it to the present year, what clearly emerges is that in all schools there has been a rise in campus violence. Even when one takes into account the current downward trend in national statistics, the recent reporting by The National Center for Education Statistics and the U.S. Dept. of Justice Report: *Juvenile Offenders and Victims: National Report Series, Juvenile Arrests (2011)* tell us there is still much work to do to step up to the duty to provide a safe learning environment for students in public schools:

- There were 33 school-associated violent deaths during the 2009-10 school year.
- In 2010, among students there were about 828,000 nonfatal victimizations, 470,000 victims of theft and 359,000 victims of violence.
- 5.6% of children carried a weapon on to school property at least one day.
- 7.7% were threatened or injured with a weapon on school property.
- 11.1% were in a physical fight on school property.
- 19.9% were bullied on school property.
- 4.5% drank alcohol
- 4.6% used marijuana on school property
- 22.7% were offered, sold, or were given illegal drugs on school property.
- 50% increase in the percentage of youth who were victims of online harassment.

However, within these statistics are three compelling features that often go overlooked by advocates of the "school-to-prison pipeline." First, only a few big city schools supply the preponderance of school violence data. A recent National Center for Education Statistics study found that 18 percent of the nation's schools accounted for 75 percent of the reported incidents of violence, and 6.6 percent of the nation's schools accounted for 50 percent. As for serious campus violence - murder and rapes - 1.9 percent of schools accounted for 50 percent of the incidents. Demographically, the preponderance of school violence occurs in big-city schools with sizeable populations of students of color. However, there is no causal link between these data and school policies nor do the data support the claim of a national epidemic of a school-to-prison pipeline.

The second feature that goes overlooked by the advocates of the "school-to-prison pipeline" is that the disproportionate racial statistics cited to wrongfully attack educators are not unique to public schools. The school campus disparity simply

mirrors the national data on violence in the community and the response to this violence by child welfare and juvenile justice agencies. And this data is easy to come by. For example, a National Center for Education Statistics study reported that the homicide rate among males between the ages of 14 and 17 is nearly ten times higher for blacks than for whites and Hispanics combined. The disproportionate violence in communities simply manifests itself in classrooms in public schools. And the data supports this conclusion. According to the National Center for Education Statistics, nationally during 2007-2008, more than 145,000 teachers were physically attacked. Six percent of big-city schools report verbal abuse of teachers, and 18 percent report non-verbal disrespect for teachers. And nothing in these statistics establish intent on the part of any educator or school district to violate the law by targeting students of color for harsher disciplinary treatment while giving white students a free pass. And rather than attack educators one would rationally conclude that the factors that produce this disproportionate criminal violence in communities is inherited in classrooms and on public school campuses as well.

Third, the “school-to-jail pipeline” rhetoric is misled by reason of giving insufficient weight to the fact that as the gravity of a campus incident increases, the ability of all partner agencies to exercise discretion decreases as a matter of law. Therefore, competent discussions of school safety policy reform must proceed along two separate branches of inquiry. The first branch looks at the degree to which the campus team applies interventions, remedies, and consequences required by law for serious misconduct on campus. This is a ministerial duty of the highest order. Should this branch fail to hold its weight, then the campus safety enterprise collapses for lack of sincerity, commitment, and goodwill. The second branch is the broader inquiry that the science of child-welfare reform law dictates: how well the team collaborates to produce outcomes that balance the duty to preserve the campus from disruptive forces while nurturing and protecting youth who are compelled to attend school.

(2) The “Pipeline” Proponents Misuse Data to Support Claims

The use of the data by the advocates of the “school-to-prison pipeline” suffers from an inherently superficial and flawed methodology. The proposition that a dozen randomly selected cities can render conclusive evidence on decades of policymaking by thousands of school districts in 50 States strains credulity. Not only does this methodology raise questions of statistical significance, it also reveals a latent assumption by critics that the safety needs of local school districts are basically fungible. The claims by the advocates of the “school-to-prison pipeline” ignore studies and reports that attempt to objectively measure impact of School Resource Officers. They attack educators and SRO programs without any data that show that SROs discriminate against minorities and special needs students. As SRO programs came to prominence in the early 2000s, juvenile arrests declined 17% across-the-board between 2000–2009 (the most recent year for which data was available). The violent-crime index fell 13% and the property-crime index fell 19% during this period. And other assaults, vandalism, weapons, drug, DUI, and curfew and loitering

offenses all fell as well. In 2011, incidences of school-associated deaths, violence, nonfatal victimizations, and theft all continued their downward trend that began in 1992.

A detailed examination of the critics' most-often-cited reports, studies, and statistics show that they do not establish a causal link between increases in local arrest rates or demographic disparities with school safety collaboration and SRO programs. The 2009 paper by Matthew T. Theriot, is frequently cited for its finding that disorderly conduct arrests rose with the initiation of SRO programs in one Southeastern school district. He found also, however, that SROs' presence decreased arrests for assault and weapons charges and, overall, after controlling for economic disadvantage "having an SRO ceases to be a significant predictor of arrests." Further, the data "did not support that SROs discriminate against lower socioeconomic status students. . . . [A]rrest rates declined as poverty increased at schools with an SRO." Theriot concluded that the findings that SROs did not cause an increase in total arrests "are contrary to the criminalization hypothesis."

A 2010 paper "Juvenile Court Referrals and the Public Schools: Nature and Extent of the Practice in Five States," by Michael P. Krezmien and others, found small increases in juvenile- justice referrals originating in schools between 1995 and 2004. Four of the states surveyed saw referrals increase, by 6% at most over the nine-year period, and the fifth state found a decrease in referrals. The data did not account for SROs at all—it makes no conclusions regarding the effect of SRO programs on referrals. "[I]t is possible that the reliance on zero-tolerance policies for school misbehavior and the increased use of SROs to manage school misbehavior may also be related to the increases in [school-based referrals] to juvenile courts. However, these interpretations should be accepted with considerable caution. The variability in the states may suggest that state education and juvenile justice policies and practices may have important implication for understanding the referral rates." Two widely cited articles published by advocacy groups opposed to zero-tolerance legislation fail to make any statistical connection between the initiation and/or ongoing activities of SRO programs and increases in arrests. In 2003, Judith A. Browne, in "Derailed! The School- house to Jailhouse Track," chronicled the rise of zero-tolerance legislation and accompanying district-level policies. Her report acknowledges that states and local school districts followed federal mandates to enact the school-safety laws the article argues against. Nowhere does she attempt to show that SROs were somehow responsible for the policy decisions that increased the severity of punishment for certain school-based offenses that she opposes. Relying on data from 1995, Browne offers statistics on the increase in juvenile arrests in two Florida counties, Baltimore City Public Schools, and Houston Independent School District.

Over 10 years old, the Florida statistics do not state whether the arrests were all made by SROs at school or officers arresting juveniles in general, nor does the article explain whether the changes in data paralleled the initiation of new school-safety laws, school district policies, and/or an SRO program. And, as presented above and

repeated below, Florida is currently experiencing a significant decrease in school-based and juvenile arrests.

Browne's statistics from Baltimore City Public Schools and the Houston Independent School District are also over ten years old and fail to specify the origins of the arrests as school-based, linked to changes in SRO policies, or otherwise. Even so, these statistics show marked decreases in arrests during the three years of data assessed in both counties—lending no support to SRO critics. Current data also shows declining arrests rates in Baltimore. Juvenile justice referrals for Baltimore City were down a total of 15.7% between 2008 and 2010, which was characteristic of Maryland as a whole, whose total decreased 15.9% in those years. Juvenile justice referrals also declined in Texas in 2010, where the state saw an 8% decrease from 2009 in referrals for delinquent offenses. Finally, Browne admits that the disparate impact on racial minorities of school-based arrests follows that of the overall juvenile arrest rate. She presents no evidence of any increase in disparate racial impact at the hands of SRO programs.

A more recent anti-zero-tolerance article often cited by SRO critics is "Zero Tolerance in Philadelphia" by Youth United for Change and the Advancement Project. This policy paper takes aim at the implementation and ramifications of zero-tolerance and other disciplinary measures in Philadelphia schools by legislators and school personnel and the high number of SROs assigned to Philadelphia schools. The paper makes no empirical connection between the higher arrest rates in Philadelphia schools, relative to other Pennsylvania schools, and the implementation of SRO programs or the number of SROs assigned to schools. The arrest data used does not specify whether SROs are making the arrests or whether the changes in arrest rates coincide with implementation or expansion of SRO programs. Indeed, all of the report's SRO-related conclusions are couched in speculative terms of what "may be due in significant part," "may be the case," and that "[i]t appears that both of these dynamics may be at work in Philadelphia." Finally, the paper's assertion that SROs create a hostile environment and a negative impression of law enforcement in the schools is based on one unpublished survey of one unnamed school and focus-group interviews in the district conducted by the Youth United for Change advocacy group. The weakness in the critical commentary by advocates of the "school-to-prison pipeline" is not in their point of view. Rather, its flaw is in refusing to let the data speak for itself.

(3) The "Pipeline" Proponents Make Students More Vulnerable

Parents, victims, educators, and their interagency partners are being unfairly targeted as the "school-to-prison pipeline" is politicized as a national phenomenon. The foreseeable and unintended consequences of this misrepresentation include (1) violation of the civil rights of student victims guaranteed under current state and federal victims' rights laws, (2) a rise in discrimination claims brought under federal and state laws against school officials for inconsistent disciplinary policies,

(3) obstruction of justice by school officials who may disregard mandatory reporting laws requiring collaboration with child welfare and juvenile justice systems, and (4) an increase in the loss of goodwill and confidence in public education by parents who increasingly have school choices in-hand.

Victims' Rights

For students on public school campuses, victims' rights laws formalize what is already established--a human right to be free from abuse on campus. 33 states have enacted constitutional amendments codifying the right. Although each states' victims' rights amendments (VRAs) differ in scope, substance, and length, the constitutional changes made by these states evidence the importance of the right. There is no federal VRA, but Congress has passed a number of legislative acts aimed at protecting victims' rights, including: the Victims of Crime Act of 1984, the Victim's Rights and Restitution Act of 1990, the Victims' Rights Clarification Act of 1997, and the Crime Victims' Rights Act of 2004.

This right extends to students because they are compelled by state law to attend public schools. State constitutions specifically protect student victims of harassment and violence through both VRAs and other legislation. For example, in Alabama, victims of harassment, intimidation, violence or threats of violence on school property may file a complaint on an authorized form and submit the form to the official of the designated local board. Arkansas and California have expanded these rights to protect victims from cyber bullying, in response to technological changes and the growth of social networking. Although these states are careful not to impede students' constitutional rights to free speech, policy makers recognize the importance of protecting the rights of student victims. In addition to state VRAs, state law firmly establishes that educators are liable when students are not protected from routine and foreseeable risks of harm. Today, lawsuits brought by student-victims are successful upon a showing of deliberate indifference under rules similar to that which applies to claims brought against educators for intentional and maliciously inflicted injuries. Federal and state legislatures are now clarifying these rules to encourage student-victim claims. The theme for this emerging liability law for failure to protect victims is called "selective enforcement."

Selective Enforcement

Selective enforcement liability focuses squarely on the failure of educators to implement campus safety rules fairly. Victimized students may challenge either a discriminatory policy or the flawed manner in which an evenhanded policy is implemented. In other words, in the selective enforcement lawsuit, the student accuses the school of indifference or of playing favorites among the student body such that the disciplinary process creates a bias in favor of some students and against others.

There is nothing but trouble for educators who implement policies that expose students to greater risks of victimization. Juveniles who commit crimes on campus in self-defense or who inflict harm on themselves, often speak of the selective enforcement as a factor in their desperation to have school rules enforced fairly for the benefit of all students. The expansion of the selective enforcement lawsuit to include claims beyond historical race and gender is designed to protect all students from discrimination. The U.S. Supreme Court says about such cases that, "the purpose ...is to [protect] every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." See *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). A variety of federal statutes (and an equal number of state laws) may be brought to bear against school officials and SROs, including lawsuits brought under 42 U.S.C. § 1981, selective enforcement claims under 42 U.S.C. §1983, Title VI of the Civil Rights Act (42 U.S.C.A. § 2000d), Title IX claims, and the newly emerging "class of one" lawsuit. In the "Class of One" Lawsuit the student does not claim that he is a member of a "suspect" class or that he was denied any fundamental right. Instead, the student must only show that (1) educators intentionally treated him differently from others similarly situated; and (2) this different treatment was not rationally related to a legitimate educational objective.

Obstruction of Justice by School Officials

Selective enforcement of the school code of conduct may also lead to criminal liability for obstruction of justice. The "school-to-prison pipeline" advocates encourage schools to selectively enforce disciplinary policies in a good-faith attempt to convert some violations of law and school rules into teachable moments and educational opportunities. Under such a policy, no student is similarly situated to another. Unwittingly, the seeds of selective enforcement are planted. Without proper training and frequent assessments, this type of disciplinary policy will create the appearance of deliberate indifference to student victims. Educators will find themselves at-risk of a lawsuit.

For example, as the gravity of student misconduct increases, affirmative duties to report the incident to various agencies for investigation and intervention are triggered. Therefore, even though school officials maintain independent authority to address even these offenses through their disciplinary process, the failure to comply with their statutory duties not only violate the rights of victims, but is itself a violation of the law.

Loss of Goodwill and Confidence in Public Education

The attacks upon educators by "school-to-prison pipeline" advocates portray educators in the worse possible light at a time when goodwill is hard to come by and sorely needed.

As explained previously in these remarks, two parallel trends have continued during the last decade of school-safety reform—falling rates of juvenile arrests and proliferation of SRO programs across the country. If the entry of SROs onto America's campuses built a track to juvenile arrests, where are all the arrests? How can all indicators of school-based crime continue to fall and juvenile arrest rates fall 17% since 2000 if the presence of SROs on campus has opened up a pipeline to the juvenile-justice system?

Further, national statistics show that far fewer incidents of school-based crime are reported to the police than occur. In school year 2009-10, only 15 of every 40 school-based crimes per 1,000 students, for example, were reported to the police. If SROs are criminalizing student behavior that educators once dealt with on their own, how can school-based crime remain so significantly underreported? Even "lesser" crimes that critics allege should be handled by educators without law enforcement involvement fail to support the track allegations as all crimes are on the decline. For example, a crime - disorderly conduct - that pipeline advocates decry is being improperly criminalized--fell 17% between 2005-2009. In California, juvenile arrest rates fell 22% between 2007-2010. In Georgia, juvenile arrest rates fell 19% between 2008-2010.

Public educators are too purposeful and committed to child welfare to confuse juvenile justice with the education mission. Educators are responsible for fulfilling parents' custodial and tutelary interests when children are entrusted to their care. Therefore, campus safety policies are dependent on and interactive with the education mission. The collaborative approach to campus safety is a proven means to fulfill the statutory and constitutional duty to maintain a safe and effective learning environment.

Conclusion

Chairman Durbin, Ranking Member Graham, and members of the Subcommittee, thank you for allowing NASRO to submit this statement for the record. I look forward to answering questions you might have about our work, and NASRO looks forward to working with members of the Subcommittee and others to ensure that our schools are safe, secure, and peaceful learning environments.

In sum, the current data do not support the critics' assertion that SRO programs have created a track to the juvenile-justice system or a unique impact on minority students. The academic studies find no widespread association between SROs and increased arrests and caution against concluding otherwise. The policy papers simply fail to present statistical evidence of any causal relationship between SRO programs and increased arrests or any demographic arrest patterns unique to the school setting.

Those who decry SROs' presence on campus would prefer that educators deal with dangerous and disruptive students on their own, calling in law enforcement only for what critics would deem serious offenses. These arguments forget, however, educators' legal duty to report evidence of abuse and neglect and other crimes that they witness as part of their daily interaction with students. Removing SROs from campus would not relieve educators of their duty to report crime, and so would not somehow prevent students from being arrested for illegal behavior on campus.

State law requires all members of the child-welfare team to report incidents of suspected abuse and neglect. Many states go beyond this traditional duty to require reporting of campus crime to district and law-enforcement officials. For example, Arkansas requires educators to report any crime or threat of crime they observe directly to law enforcement. California requires reporting of drug-related crimes and all crimes and probation violations by serious habitual offenders to law enforcement. And Illinois requires reporting of all batteries against school officials. While it may be easy to blame school-based arrests, suspensions, and expulsions on SROs because of their highly visible role in campus protection and the investigation of misconduct, they are but one component in a community-wide response to juvenile crime and misbehavior. SROs do not draft and ratify juvenile-justice laws. They do not decide whether a juvenile should be charged as delinquent. They do not force educators to allow them onto campus, and they do not decide whether a student should be suspended or expelled from school.

I am not a lawyer, but I take comfort from the fact that the school resource officer, specially trained to serve and protect the educational environment, is an essential component of whatever kind of disciplinary approach a particular district or school determines is best for its students. For example, critics of zero-tolerance legislation and SRO programs often propose restorative-discipline models to deal with student misconduct. These kinds of programs have been found to be compatible with SRO programs that incorporate the triad approach to campus safety. Because restorative-justice techniques involve members of the child-welfare team in a collaborative approach to redirect offending students and make victims whole, SROs' relationships of trust with students, experience with the juvenile justice system, and understanding of conflict-resolution techniques make them valuable members of the team.

That does not mean that we do everything perfectly. We are constantly refining the way that we protect our school communities. NASRO has been blessed with a great deal of success. But given the rapid pace of reform in the child welfare and juvenile justice systems, we take nothing for granted. The men and women of NASRO continue to lead by example and promote a positive image of law enforcement to our nation's youth.

FairTest

National Center for Fair & Open Testing

P.O. Box 300204
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December 10, 2012

U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Hearing on Ending the School-to-Prison Pipeline

Dear Chairman Durbin, Ranking Minority Member Graham, and Members of the Subcommittee on the Constitution, Civil Rights, and Human Rights:

Thank you for the invitation to submit testimony for the subcommittee on the Constitution, Civil Rights, and Human Rights of the Senate Committee on the Judiciary hearing on ending the school-to-prison pipeline.

My name is Monty Neill, and I am Executive Director of the National Center for Fair & Open Testing (FairTest). FairTest advances quality education and equal opportunity by promoting fair, open, valid and educationally beneficial evaluations of students, teachers and schools. FairTest also works to end misused and flawed testing practices that impede those goals. We place special emphasis on eliminating the racial, class, gender, and cultural barriers to equal opportunity posed by standardized tests.

As part of its mission, FairTest has addressed how the high-stakes uses of standardized tests, particularly as a result of the No Child Left Behind Act (NCLB), have led to increased disciplinary sanctions against students. This has disproportionately affected students of color, students with disabilities, and those from low-income families and communities. High-stakes tests are those that play the sole or primary role in educational decisions, such as determining high-school graduation or school sanctions under NCLB (FairTest, 2004, 2012).

Zero tolerance discipline and high-stakes testing policies have similar philosophical underpinnings and similarly destructive results. Both stem from a 1980s movement to impose more punitive policies in criminal justice and public education. Together, they have helped turn schools into hostile environments for many students. The result is a "school-to-prison pipeline," in which large numbers of students are pushed out of school and into the juvenile and criminal justice systems. Too many young people end up in prison, at a cost many times greater than that of a good education. It is a senseless waste of resources and human potential, damaging to both individuals and society.

How does high-stakes testing contribute to the pipeline?

High-stakes testing turns many classrooms and schools into test prep centers rather than offering rich, engaging, well-rounded instruction. Narrow, rote instruction bores and alienates students. Many tune out, feeling they are little more than their scores (FairTest, 2004), and leave school. In addition, exit exams result in many thousands of students leaving high school without diplomas (FairTest, 2008). These tests have been found to lower graduation rates without improving the quality of education (Hout & Elliot, 2011). Some students see no realistic option other than dropping out. Others fail the tests or are deliberately pushed out to manipulate school performance statistics. Regardless of which specific cause, young people who leave or are pushed out are much more likely to end up in trouble or in prison.

Tests and zero tolerance work hand in glove.

NCLB has raised the stakes attached to test results, especially in urban, low-income districts, which face severe sanctions for failure to boost test scores. Zero tolerance imposes harsh penalties for nonviolent infractions, some as harmless as drawing on desks with erasable markers (Herbert, 2010). It provides a pretext for removing low-scoring students and improving a school's test score bottom line. The superintendent of the El Paso public schools was convicted and imprisoned for initiating district policies to remove low-scoring students from school (Fernandez, 2012). In Florida, researchers found schools gave low-scoring students longer suspensions than high-scoring students who committed similar infractions (Figlio, 2003). Zero tolerance and high-stakes testing reinforce each other, creating a downward spiral.

Punitive culture promotes strategies to weed out 'troublemakers'/low scorers.

The damage to school climate and decreased engagement with school foster problem behaviors, which schools and districts too often counter with zero tolerance discipline. Since NCLB, the use of strategies such as withdrawing students from school rolls or sending them to alternative schools or GED programs has increased. Out-of-school suspensions and expulsions are also on the rise nationally, with startling increases in many states (Advancement Project, 2010).

Students of color and the disabled increasingly bear the brunt.

Racial disparities in student suspensions and expulsions are large and increasing. Black students are more than three times as likely to be suspended (Losen and Gillespie, 2012). Between 2002-03 and 2006-07, expulsions decreased by 2% for white students, but increased 33% for blacks and 6% for Latinos. Similar disparities exist for students with disabilities (SWD). In Ohio, for example, SWDs were twice as likely to be suspended out-of-school as their peers in 2007-08. And in Texas, in 2005-06, students enrolled in special education accounted for 11% of the student population but 26% of all out-of-school suspensions (Advancement Project, 2010). Vastly disproportionate numbers of low-income, racial minority, SWDs and English language learners fail state exit tests and do not obtain diplomas (FairTest, 2009).

Prison populations reflect disparate impact of zero tolerance, testing.

The student groups affected by these policies are more likely to drop out and become caught up in the juvenile justice system, making them more likely to land in prison. People of color and those with disabilities are overrepresented in U.S. prisons. Approximately 8.8% of public school children have been identified as having disabilities that impact their ability to learn, but students with disabilities are represented in jail at a rate nearly four times that (Quinn, 2005). One in nine black males between the ages of 20 and 34 is behind bars, compared to one in 30 for men in that age group in general (Pew, 2008).

To undo the damage: reform assessment, reverse zero tolerance.

Zero tolerance is not working. However, alternative prevention and intervention strategies being implemented around the country have been proven successful. For example, a community push for new discipline policies in Denver Public Schools led to a 63% reduction in referrals to law enforcement and a 43% reduction in out-of-school suspensions (Advancement Project, 2010). The New York Performance Standards Consortium (2012), a network of New York high schools that have state permission to use performance tasks instead of standardized tests, reports its 5% suspension rate is less than half the city's 11%. This success, they conclude, is rooted in using alternatives to standardized tests.

The work of the Judiciary Committee, therefore, could positively influence not only juvenile justice legislation but have a positive impact on the Senate's reauthorization of the Elementary and Secondary Education Act. We recommend that this Committee, perhaps together with the Committee on Health, Education, Labor and Pensions, investigate the ways in which high-stakes testing interacts with overly harsh disciplinary policies to harm young people, undermine school climate and damage educational outcomes. To end the Pipeline, it will be necessary to also end the overuse and misuse of standardized tests.

I would be pleased to discuss these issues with you further. I can be reached at 617-477-9792 or by email at monty@fairtest.org.

Thank you.

Monty Neill, Ed.D.
Executive Director
FairTest

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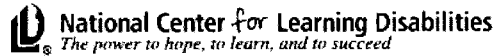
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December 6, 2012

The Honorable Dick Durbin, Chairman
 Judiciary Committee's Subcommittee on the Constitution, Civil Rights and Human Rights
 226 Dirksen Senate Office Building
 Washington, DC 20510

Dear Senator Durbin,

The National Center for Learning Disabilities (NCLD) commends the subcommittee's leadership in holding the "Ending the School-to-Prison Pipeline" hearing on Wednesday, December 12, 2012. This hearing is on a critical topic impacting students with learning disabilities (LD) and other at-risk students.

According to the report by the Center for Civil Rights Remedies at the Civil Rights Project an estimated 13% of all students with disabilities were suspended nationally during the 2009-2010 school year. This is approximately *twice the rate of their non-disabled peers*. For all students with disabilities, regardless of race, it was found that over 400 districts suspended 25% or more of these students. Black students with disabilities were most at risk for out-of-school suspension with an alarming 25% national average *for all districts in the sample*. As you know, the frequent use of out-of-school suspension results in increased dropout rates and heightened risk of youth winding up in the juvenile justice system.

Students with LD comprise over forty percent of students identified with disabilities in our nation's public schools. They are disproportionately poor and continue to drop out at a higher rate than the general population (20% vs. 8% respectively). Students with LD do not have cognitive or intellectual challenges and should be taught to the same standards and held to the same high expectations as their peers. Clearly, students with LD need stronger Federal policies to support staying in school and graduating high school with a regular diploma. Without stronger policies, many students with disabilities are left without the same educational opportunities as other students, or worse, face barriers to achieving the same educational gains as their peers. Federal policies that promote and support best practice can help schools improve teaching and learning environments without forcing students to lose valuable days of instruction.

NCLD strongly supports your efforts to address keeping youth in school and out of the juvenile justice system. This hearing is necessary to ensure a full discussion about the need for policies that lower drop-out rates and ensure more students with disabilities graduate from high school with a regular high school diploma. Thank you again for your leadership and attention to strengthening educational opportunities for students with disabilities.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J. Wendorf'.

James H. Wendorf
 Executive Director

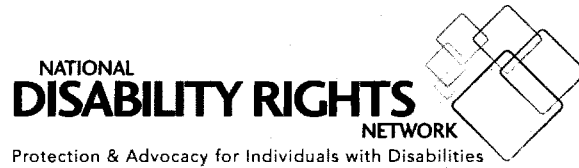
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Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing on "Ending the School-to-Prison Pipeline"
December 12, 2012 2:00 p.m.

The National Disability Rights Network (NDRN) would like to thank Chairman Durbin, Ranking Member Graham, and the Constitution Subcommittee for holding this hearing and raising awareness of the School-to-Prison Pipeline. As more and more of our nation's youth end up in the juvenile justice system, the time for federal leadership on this problem is now. We appreciate the opportunity to provide testimony.

Who Are NDRN and the Protection and Advocacy Systems (P&As)?

NDRN is the nonprofit membership organization for the federally mandated Protection and Advocacy (P&A) systems for individuals with disabilities. The P&As were established by the United States Congress through eight separate statutes to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education.

Collectively, the P&A Network is the largest provider of legally based advocacy services to people with disabilities in the United States.

P&As are in all 50 states, the District of Columbia, the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the US Virgin Islands), and there is a P&A affiliated with the Native American Consortium, which includes the Hopi, Navaho and Piute Nations in the Four Corners region of the Southwest. Each P&A provides a full array of services for people with disabilities, and work with youth to provide assistance with education and services in a variety of settings, including juvenile justice facilities, public and non-public schools, and detention and correctional facilities.

The Nature of the Problem

Children with disabilities should not be punished for their disabilities. Instead, children should be provided the education to which they are legally entitled to and the supports necessary to obtain that education. Unfortunately, many of our public school students do not receive these basic rights.

Statistics show that a disparate number of youth with disabilities, and especially youth of color with disabilities, are involved with the juvenile justice system. As many as 80% of

youth in the juvenile justice system have some form of disability.ⁱ Children of color are also disproportionately represented in the juvenile justice system.ⁱⁱ However, a data analysis released in August of 2012 shows there is far more to the story. "Applying [...] three lenses together – race, gender and disability—yields a more disturbing image than any one of the categories alone...The group that consistently had the highest rate of suspension is African American male students with disabilities. In some of the largest districts in the U.S....suspension rates for this group reached more than 70% of their enrollment."ⁱⁱⁱ

This analysis shows that a specific sub group of children of color, those who are also children with disabilities, receive different treatment than their peers in public school. Within this sub group, children who reside in particular public school districts receive the worst treatment of all. Many of these youth face suspension or expulsion from school - a key entry point into the "School to Prison Pipeline." In order to successfully protect these children from a future in prison, it is necessary to thoroughly examine the problem and tear it out by its roots.

P&A Network Work on the School To Prison Pipeline (STPP)

P&As have been working on preventing improper discipline of students with disabilities for many years, before the link between these cases and the likelihood of future incarceration was widely recognized. Preventing suspension and expulsion of students for the behavioral manifestations of their disabilities is and always has been an important part of the advocacy work that the P&As do. Now, many if not all of the P&As are engaged in both individual and systemic projects to address the school-to-prison pipeline for people with disabilities.

In **Illinois**, a ten-year-old student with ADHD, depression, and oppositional defiant disorder contacted Equip for Equality after being expelled from a charter school. School officials had called the police on the student multiple times, and the student's parent had asked the charter school to evaluate him for special education services, but the charter school refused. As a result of the expulsion by the charter school, Chicago Public Schools also expelled the student and assigned him to an alternative school, where all of the other students were high school-age. The P&A successfully appealed the expulsion, which allowed the student to enroll at his neighborhood school, and then helped ensure an appropriate special education program in that school. The student has made great progress at school and his teachers noticed remarkable growth after he returned. The student and parent are very happy that the student no longer has an expulsion on his record, and is now receiving the appropriate special education services.

In **Texas**, Disability Rights Texas (DRTx) represented a high school student diagnosed with ADHD who, despite his parent's requests for assistance, was not receiving special education or 504 services. He was charged with a misdemeanor for failure to attend class after he repeatedly walked out of the alternative disciplinary placement the school had placed him in instead of providing special education services. His parent was given

a similar citation for contributing to the student's failure to attend. The P&A filed an administrative complaint with the Texas Education Agency (TEA) alleging violations of federal special education law. TEA found that the school district was out of compliance and ordered it to take corrective action. The district evaluated the student and is now providing him special education services. Additionally, DRTx successfully advocated for the student's misdemeanor charges to be dismissed.

P&As also work proactively to solve systemic problems before they start. For example, in **South Carolina** Protection and Advocacy for Persons with Disabilities, Inc. represented several students at an alternative school which serves children with disabilities after the students were subjected to excessive restraint and seclusion and juvenile justice referrals. Once students were placed at this alternative school, it was very difficult for them to return to a regular education setting and they were unable to obtain a high school diploma from the alternative school. The P&A submitted a letter expressing its concern over this situation to the state Department of Education, Office for Exceptional Children (OEC). OEC investigated and met with school district personnel. The district acknowledged that there had been a lack of oversight at the school. As a result, the school made significant changes, including hiring a new school administrator, training staff, including both professional and paraprofessional staff, on appropriate de-escalation tactics and trauma assessment, improving transition planning for its students, reinstating social workers into the school, and adopting positive behavioral interventions and supports. The school developed a transition team to facilitate the students' reintegration into regular school settings and contracted with a behavioral specialist to assess behavior management at the school. Three hundred students were impacted by these changes.

In **Illinois**, Equip for Equality wrote letters to ten different charter networks statewide (covering approximately 30-35 of the charter schools out of the 125 in Illinois) whose Codes of Conduct violated the Individuals with Disabilities in Education Act (IDEA) in a way that would increase expulsions. Each of these charter networks agreed to amend its Code of Conduct as a result. This will prevent the networks from referring so many students for expulsion and to the police. The P&A also spoke at a training for new charter networks to ensure that they understand the rights of students with disabilities and craft their Student Codes of Conduct in a way that adheres to IDEA regarding discipline of students with disabilities.

FEDERAL POLICY RECOMMENDATIONS

- **Effective enforcement of current federal protections is the most effective way to stem the STPP for children with disabilities.** NDRN is very pleased with a recent complaint filed by the U. S. Department of Justice (DOJ) regarding racial injustice in Meridian Mississippi. There are similar problems currently with regard to students with disabilities that are also worthy of DOJ's attention. We encourage DOJ to continue to work with the P&A agencies to identify appropriate cases for enforcement action.

- **Congress should create and appropriate funds for a specific P&A program focused on children with disabilities in the juvenile justice system.** Funding the P&A network to do this work is an extremely cost-effective way to use the existing infrastructure of the P&A System. The P&A network is the largest cross-disability network of advocates in the United States, and P&As have extensive expertise successfully advocating on behalf of youth with disabilities in child-serving systems and advancing systems reforms. All P&As have an interest in and commitment to doing this work, but cite lack of funding and resources as the primary barrier to being more fully engaged while not diminishing the ability to do the other important work the P&As perform.
- **We recommend leadership by all relevant federal agencies, and especially OJJDP, in the area of prevention of school removal.** There is a need to promote and create incentives for the revision of local school codes, so as to eliminate the use of out of school expulsion and promote the development of clear and specific Memoranda of Understanding regarding the use of School Resource Officers, in order to limit their role to matters of real school safety. Providing direct federal support for training schools and teachers in the best practices to prevent school removal.
- **The U.S. Department of Education, Office for Civil Rights (OCR) should continue recent efforts to publish Civil Rights Data Collection (CRDC) data.** This type of federal effort is desperately needed in order to help state and local governments uncover and resolve STPP problems.
- **NDRN encourages OCR to consider specific enforcement actions (e.g. “compliance reviews”) for STPP violations that impact students with disabilities.** One example would be to address the worst offending districts in terms of racial/disability discipline statistics.
- **NDRN recommends effective monitoring and enforcement of the IDEA and ESEA by Department of Education of suspension and expulsion rates and racial disproportionality at the state and local level.**
- **NDRN encourages the better tracking of school discipline rates as an indicator of school needs and improvement in persistently low-achieving schools.** This data is a promising example of how publicly available data could be used to improve school climate.
- **Congress should fund grant programs to support community-based solutions.** The solutions to the causes of the STPP at the local level will often require the efforts and input of all stakeholders. Funds should go toward the development and implementation of multi-year, comprehensive local or regional plans to reduce the use of exclusionary discipline and the number of youth entering the juvenile and criminal justice systems.

Conclusion: Thank you for holding this hearing on this important topic and allowing written testimony to be submitted. The P&As are committed to continuing to be part of the solution to this serious social issue.

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Positive Behavioral Interventions and Supports: A Multi-tiered Framework that Works for Every Student

The most effective tool teachers have to handle problem behavior is to prevent it from occurring in the first place. Positive Behavioral Interventions and Supports (PBIS) programs help teachers recognize the significance of classroom management and preventive school discipline to maximize student success. PBIS strategies are critical to providing all young people with the best learning environment.

—NEA President Dennis Van Roekel

PBIS is a prevention framework that works for all students

Positive Behavioral Intervention Support (PBIS) is a general term that refers to positive behavioral interventions and systems used to achieve important behavior changes. PBIS was developed as an alternative to aversive interventions used with students with significant disabilities who engaged in extreme forms of self injury and aggression.¹ PBIS is not a new theory of behavior, but a behaviorally based systems approach to enhancing the schools' ability to design effective environments that are conducive to quality teaching and learning.

NEA views PBIS as a general education initiative even though its impetus is derived from the special education law, the Individuals with Disabilities Education Act (IDEA). PBIS improves the social culture and the behavioral climate of classrooms and schools which ultimately leads to enhanced academic performance. "Viewed as outcomes, achievement and behavior are related; viewed as causes of each other, achievement and behavior are unrelated. In this context, teaching behavior as relentlessly as we teach reading or other academic content is the ultimate act of prevention, promise, and power underlying PBS and other preventive interventions in America's schools."²

PBIS implementation

Successful PBIS programs are dependent upon the entire school community. The principles and tenets of PBIS are the same as those represented in Universal Design for Learning (UDL) and Response to Intervention (RTI) as they include universal screening, continuous progress monitoring, data-based decision making, implementation fidelity and evidence-based interventions. PBIS is not a manualized, scripted strategy or curriculum. It requires adopting and organizing evidence-based behavioral interventions into an integrated continuum that enhances academic and social behavior outcomes for all students.

Every school has a unique climate, so a one size fits all approach is not as effective as interventions based on the needs of the learning community. School-wide PBIS includes proactive strategies for designing,

Legislation calls for Positive Behavioral Interventions and Supports

Positive Behavioral Supports has held a unique place in special education law since Congress amended the Individuals with Disabilities Education Act (IDEA) in 1997. Referred to as Positive Behavioral Interventions and Supports in IDEA, PBIS is the only approach to addressing behavior that is specifically mentioned in the law. This emphasis on using functional assessment and positive approaches to encourage good behavior remains in the current version of the law as amended in 2004.

An NEA policy brief

In 1972, the court in *Mills v. Board of Education of the District of Columbia* (348 F.Supp. 866 (D.D.C. 1972)) found that students with disabilities were being excluded from educational opportunities for issues related to behavior. Congress intended to address this exclusion in the Individuals with Disabilities Education Act, as the Supreme Court in *Honig v. Doe* (484 U.S. 305 (1988)) clarified, saying:

Congress very much meant to strip schools of the unilateral authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school (p. 323).

teaching and supporting appropriate student behaviors. A continuum of PBIS for all students within a school is implemented in all areas of the environment (classrooms, hallways, restrooms and busses).

PBIS is a multi-tiered system designed to be inclusive of all environments and link research-validated practices. Attention is focused on creating and sustaining primary (school wide), secondary (classroom), and tertiary (individual) systems of support that improve results for desired behaviors. The primary prevention is school-wide for all students, staff and settings. The secondary prevention is for a specialized group of students who exhibit at-risk behaviors and the tertiary prevention would be for those students who need specialized, individualized supports for at-risk behaviors.

Implementing evidence-based intervention practices are the key to a successful PBIS program. Components would include but are not limited to:

School-Wide

- Leadership team
- Behavior purpose statement
- Set of positive expectations & behaviors
- Procedures for teaching school & classroom expected behaviors

- Continuum of procedures for encouraging/discouraging desired behavior
- Individual Student
- Behavioral competence at school & district levels
- Function based behavior support planning
- Team- and data-based decision making
- Targeted social skills and self management
- Individualized instructional and curricular accommodations

Classroom

- School wide
- Maximum structure and predictability in routines
- Positively stated expectations taught, posted, reviewed & supervised
- Maximum engagement through high rates of opportunities to respond
- Continuum of strategies to acknowledge appropriate behaviors and responding to inappropriate behavior

Congress recognized the need for schools to use evidence-based approaches to proactively address the behavioral needs of students with disabilities. Thus, in amending the Individuals with Disabilities Education Act both in 1997 and in 2004, Congress explicitly recognized the potential of PBIS to prevent exclusion and improve educational results in 20 U.S.C. § 1401(c)(5)(F):

(5) Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—

(F) providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services to reduce the need to label children as disabled in order to address the learning and behavioral needs of children.

An NEA policy brief

Non classroom

- Active supervision by all staff
- Positive expectations and routines taught and encouraged
- Precorrections and reminders
- Positive reinforcement

PBIS works for all of us

NEA recognizes that professional development is critical to proper implementation of PBIS and the improved behavioral outcomes that PBIS can foster. For an Individualized Education Program (IEP) team to "consider" the use of PBIS, IDEA requires the team to have knowledge of PBIS, discussion of its use, and the capacity to implement PBIS to improve outcomes and address behavior. If the program is to be successfully implemented school wide, PBIS needs the attention of time, training and buy-in from the entire school community.

IDEA's Requirements to Use Functional Behavioral Assessments and Consider PBIS

IDEA requires:

- The IEP team to consider the use of Positive Behavioral Interventions and Supports for any student whose behavior impedes his or her learning or the learning of others (20 U.S.C. §1414(d)(3)(B)(i)).
- A functional behavioral assessment when a child who does not have a behavior intervention plan is removed from their current placement for more than 10 school days (e.g. suspension) for behavior that turns out to be a manifestation of the child's disability (20 U.S.C. §1415(k)(1)(F)(i)).
- A functional behavioral assessment, when appropriate, to address any behavior that results in a long-term removal (20 U.S.C. §1415(k)(1)(D)).
- www.pbis.org

NEA views PBIS as a multi-tiered system of support that works for all students, and adding language in the Elementary and Secondary Education Act (ESEA) to "consider" the use of PBIS would be beneficial. Utilizing PBIS ensures a consistent and proactive approach for all students. Results from the past few years indicate that this type of intervention (tier 1 through tier 3) can reduce problematic student behavior, reduce referral rates to special education, and enhance students' social behavior.³ PBIS supports the success of all students and establishes an environment in which appropriate behavior is the norm.

References

- ¹ Durrand & Carr, 1985
- ² Algozzine, Wang, & Violette (2011) George Sugai, OSEP Center on PBIS
- ³ www.pbis.org
- ⁴ Cheney, Lynass, Waugh, Iwaszuk, Mielenz & Hawken (2010) Preventing School Failure, 54(3), 152-158

Resources

NEA IDEA Special Education Resource Cadre
Washington, DC 20036

U.S. Department of Education
Office of Special Education Programs
www2.ed.gov/about/offices/list/osep/index.html



1201 16th St., N.W. | Washington, DC 20036 | Phone: (202) 833-4000

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December 10, 2012

Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Human Rights
Washington, DC 20510

Dear Senator:

On behalf of the more than three million members of the National Education Association, we would like to enter the following statement into the record of the December 12 hearing, "Ending the School-to-Prison Pipeline."

The school-to-prison pipeline is both an education and a social justice issue. Overly harsh zero-tolerance discipline policies, misguided high-stakes testing, insufficient services and support, and rising class sizes are pushing more and more students out of the public schools and into the juvenile and criminal justice systems. The overwhelming majority are students of color. To address this troubling trend, the educational system and the judicial system must collaborate, cooperate, and replace punitive zero-tolerance policies with positive strategies that emphasize keeping kids in school — not suspending or expelling them for misbehavior or failure to thrive academically. Such strategies must address the needs of the whole child.

At the same time, it is important to remember that suspensions and expulsions may be sometimes necessary to ensure the safety of the entire school community, including students, teachers, and education support professionals. One of our members put it this way:

I have been teaching in an urban high school for 32 years. Students are expelled for violent acts — fights and assaults — and for possessing and/or being under the influence of drugs or alcohol. If the offending students aren't expelled and remain in the building, where are they supposed to be housed? What staff member wants to be responsible for a violent student or a student high on drugs? What about the safety of the other students and staff? Isn't it fair to have a safe environment for everyone? I have devoted my life's work to inner-city kids and it is truly heartbreaking to watch so many of them make incredibly bad choices over and over.

Overly harsh zero-tolerance discipline policies

In response to highly publicized incidents of violence like the massacre in Columbine High School in Colorado, schools across the nation have implemented zero-tolerance policies that mandate specific punishments for misbehavior, culminating in suspension or expulsion from

school. According to news reports, the punishments are often wildly disproportionate to the infractions — for example, students have been suspended for talking back to teachers and violating dress codes.

The intent of zero-tolerance policies is laudable — to ensure safe schools, the best learning environment for all students. But implementation has been deeply flawed in many schools, districts, and states. Moreover, evidence is mounting that overly harsh punishments have widened achievement gaps and raised dropout rates among students of color and students with disabilities, many of whom are already at risk due to histories of poverty, abuse or neglect.

Nationwide, 17 percent (1 in 6) K-12 black students are suspended at least once — more than double the rate of other subgroups. The risk of suspension is 8 percent (1 in 12) for Native Americans, 7 percent (1 in 14) for Latinos, 5 percent (1 in 20) for whites, and 2 percent (1 in 50) for Asian Americans. Overall, students with disabilities are suspended twice as often as their non-disabled peers. The suspension rate is highest for black students with disabilities: 25 percent (1 in 4) were suspended at least once during the 2009-10 school year. (Source: “Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School,” Civil Rights Project at the University of California Los Angeles, August 2012)

Alarming as they are, these statistics do not capture the full story. Overly harsh punishments can even cause previously successful students to disengage or drop out. The following story, submitted by an NEA member who now lives and teaches in the state of New York, illustrates how this can happen:

My son attended a school in Florida in 9th grade. He was regularly teased by one particular boy in the classroom until one day, he poured some paper scraps over the boy's head after being called “gay” prior to the beginning of a class. The boy kicked my son in the stomach in response (he was aiming lower but missed), sending him falling backwards over his desk. The noise brought the teacher back into the classroom just as my son got back up and punched the guy in the stomach in response. Both boys were immediately suspended from school (zero tolerance policy).

As an educator and responsible parent, I was mortified that my son was involved in a physical altercation and went to the school immediately. I found out that my son was expelled for 10 days, and that he had lost the right to learn even though he has a processing disorder and is protected from discrimination by Section 504 of the Rehabilitation Act of 1973. Returning to school 10 days behind left my son permanently behind and he had the worst educational year of his life. It was hard work getting him to find relevance in continuing to finish out his year. He felt that it was hopeless and he was wasting his time.

My son is not a violent person. He is a ballet dancer. And he is white. The zero tolerance policy made it almost impossible for him to succeed the rest of the school year. And he has successful, professional, and supportive parents. I can only imagine the difficulty that students with less home support must encounter in similar situations.

Misguided high-stakes testing

Increased emphasis on accountability is the hallmark of No Child Left Behind (NCLB), the most recent reauthorization of the Elementary and Second Education Act (ESEA), first passed in 1965 as part of the War on Poverty. Both sides of the political aisle acknowledge that NCLB's approach to accountability needs to change. The undue emphasis on federally mandated, narrow student assessments as the primary accountability yardstick has led to mislabeling and sanctioning schools based on test scores, as well as insufficient funding and support for struggling students and schools. It has also narrowed the curriculum and created perverse incentives to push out low-scoring students, making it virtually impossible for them to acquire the skills necessary to become productive members of society.

For the sake of today's children, the future leaders of America, It is imperative to begin addressing these issues as soon as possible. The next reauthorization of ESEA is long overdue. A recent report from the RAND Corporation stresses the need for multiple measures of performance that capture the full spectrum of skills learned in school:

“[P]ublic schools are expected to promote a variety of outcomes, of which academic achievement as measured by standardized tests is only one. Additional goals of schooling include the preparation of students for life after school, which includes not only readiness for college or the workplace but also social and behavioral outcomes, such as displaying self-regulating behavior, taking personal responsibility, and demonstrating an ability to work in teams... [A]n expanded set of measures could increase the validity of inferences about schools' effectiveness and offer relevant information to principals and teachers about how to improve their schools' performance.” (Source: Heather L. Schwartz, Laura S. Hamilton, Brian M. Stecher, and Jennifer L. Steele: Expanded Measures of School Performance, RAND Corporation, 2011)

Insufficient services and support

Research confirms what common sense tells us: at-risk students need additional services and support to succeed — everything from small class sizes to counseling. Just the opposite is happening in our schools today. Tens of thousands of teachers, counselors, psychologists, social workers, and classroom aides have been laid off, depriving hundreds of thousands of students with little or none of the services and support they need. In the words of our members, this is the situation:

As funding is slashed for public schools, already stressed teachers are being asked to fix seriously at-risk students who often need intense psychological interventions. I am not a trained mental health professional, a probation officer or a detention center guard. I teach French. Please let me do that.

We need funding to be able to provide counseling and teach more appropriate behaviors and parents should be involved in the re-teaching process. Sometimes kids are behaving in ways that are socially acceptable at home and sometimes parents need tools to help them deal with their children appropriately. Teachers need to be able to teach and students need to feel safe and be able to concentrate on learning. Provide support!

As a teacher of students with behavioral and emotional disorders, I believe that some suspensions are warranted for SAFETY reasons as long as the student is in a learning environment with trained school personnel. I also believe that while behaviors are/should be taught/learned in the home, parents and educators must function as a team in teaching positive behaviors and setting expectations and goals. What bothers me most is "punishment without teaching and re-teaching." How can we suspend students, and then bring them back into the fold with NO attempt at remediation??? They will only learn if we REQUIRE them to reflect and set new behavior goals, then hold them accountable for meeting those goals!

The lingering economic downturn, the worst since the Great Depression of the 1930s, has crippled already underfunded programs for students with special needs. The federal government covers just 16 percent of special education costs when the Individuals with Disabilities Education Act (IDEA) provides that it will pay 40 percent. Last year alone, the shortfall shifted nearly \$17 billion to states and local school districts — forcing them to choose between raising taxes and dipping into general education budgets, thereby cutting other critical services.

Class sizes are rising when they should be falling — research shows that small K-3 classes confer lifelong benefits. In the early 1980s, the Tennessee Student/Teacher Achievement Ratio (STAR) study, the gold standard in research on class size and student achievement, established that kids in small K-3 classes do better in later grades. Three decades later, a team of researchers led by Harvard economist Raj Chetty tracked down the now middle-aged students from the original STAR study. Those in small K-3 classes were more likely to attend college, own their homes, and earn higher salaries — \$16,000 more per person or \$320,000 more for a class of 20. (Source: Raj Chetty et al, How Does Your Kindergarten Classroom Affect Your Earnings? Evidence from Project Star, 2011)

Recommendations

Schools need to revisit and replace overly harsh zero-tolerance policies with approaches that actually work — for example, school-wide **positive behavioral support programs** and behavior intervention plans for students who need them. Such programs should aim to teach students the proper way to behave instead of assuming they know how, and require communication with parents about expectations and acceptable behaviors at school so they can be reinforced at home. NEA's policy brief, Positive Behavioral Interventions and Supports: A Multi-tiered Framework that Works for Every Student, provides a comprehensive review and analysis of the issues involved.

To ensure that at-risk students have sufficient services and support, Congress must **reauthorize and fully fund** ESEA and IDEA. The reauthorization process is also an opportunity to address misguided high-stakes testing and other counterproductive practices that contribute to the school-to-prison pipeline.

Educators need **professional development** in culturally responsive classroom instruction, behavior management, and techniques for preventing and de-escalating student misbehavior.

Schools must have the resources to **keep class sizes small**, especially in kindergarten through third grade, to allow educators to work with students individually.

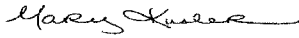
Parent, family, and community involvement is a proven way to raise student achievement, and can be encouraged in a variety of ways — for example, home visits, mentoring, outreach programs, and more. A recent report from NEA's Priority Schools Campaign, *Family-School-Community Partnerships 2.0*, shows the way with case histories of 16 successful efforts from coast to coast.

Ultimately, however, the only way to end the school-to-prison pipeline is to address the needs of the **whole child**. Kids who come to school hungry or sick are not ready to learn. Kids who don't have good role models at home nonetheless need to learn what it means to be a responsible citizen, why it is important to be on time, how to behave in different settings.

For some kids, especially poor kids, the only hope of getting such help is schools with **wraparound services** such as after-school programs that provide enriching experiences, counseling and parent-education programs, and school-based medical and dental care. The acclaimed Harlem Children's Zone takes this approach. So can traditional public schools with sufficient funding and commitment to the goal: transforming not just a struggling school, but an entire community.

America's public schools educate nine out ten of our nation's students. On behalf of them, their teachers, and education support professionals all across the nation, NEA thanks you for the opportunity to address end the school-to-prison pipeline.

Sincerely,



Mary Kusler
Director, Government Relations

Attachments

NEA Policy Brief: *Positive Behavioral Interventions and Supports: A Multi-tiered Framework that Works for Every Student*

NEA Priority Schools Campaign Report: *Family-School-Community Partnerships 2.0*

NATIONAL JUVENILE JUSTICE NETWORK

**Subcommittee on the Constitution, Civil Rights and Human Rights
Committee on the Judiciary
United States Senate**

**“Ending the School-to-Prison Pipeline”
226 Dirksen Senate Office Building
December 12, 2012**

**Statement for the Record of Sarah Bryer
Executive Director
National Juvenile Justice Network
Washington, D.C.**

The National Juvenile Justice Network (NJJN) is pleased to submit a Statement for the Record for today’s hearing on “Ending the School-to-Prison Pipeline.” NJJN leads a movement of state-based organizations that seek systemic change in the way youth in trouble with the law are held accountable. Our national reach includes forty-one members in thirty-three states that work to secure state, local, and federal laws, policies, and practices that are fair and developmentally appropriate for all children, youth, and families involved in—or at risk of becoming involved in—the justice system.

Some School Discipline Policies are Discouraging High Educational Attainment and Instead Pushing Youth Out of Schools

NJJN members have witnessed first-hand in their states the devastation to many youth that has resulted from the overuse of the justice system to respond to minor school infractions as well as zero tolerance policies that have prevented school officials to from treating minor infractions in a fair and balanced manner. Known as the “school to prison pipeline,” certain school discipline policies and practices cause schools to respond to student behavior through direct referrals to law enforcement and the courts, in effect funneling youth from the schools into the justice system. Compounding the problem is the use by many schools of zero tolerance policies; these are policies through which students receive pre-determined punishments for infractions of the rules, regardless of mistakes, ignorance or other mitigating circumstances. These are often excessive punishments such as suspensions and expulsions and some mandate the immediate referrals of

students to law enforcement for a wide range of typical adolescent behaviors.¹ These current practices too often push students out of their schools and into the juvenile and/or criminal justice systems for behaviors and incidents that would not have led to court involvement in the past.²

An example from one of our member organizations, TeamChild in Seattle, Washington, demonstrates how school discipline policies can funnel children into the justice system. In this case TeamChild's client, referred to here as "Rafi," was having significant academic problems in school by the time he was in 6th grade. He began acting out and progressed from disrupting class and fighting to knocking a bathroom door off of its hinges. Rather than providing any services to Rafi, **the school expelled Rafi at the age of 12 years old – indefinitely - no return date provided.** With nothing to do, Rafi began running around with other youth during the day who were committing crimes, began using drugs regularly, and was arrested multiple times. Fortunately for Rafi, his attorney at TeamChild was able to get Rafi back in school after several months of effort. However, after being out of school for so long, Rafi has had a difficult time readjusting to the school environment and has continued to have many setbacks. As Rafi's attorney David Huneryager states in his statement below, "[a] recent study by a different school district in the state found that missing just two consecutive days of school is a significant factor in whether a student will graduate or drop out." See Statement of David Huneryager, TeamChild Staff Attorney, below.

Years of these types of school policies have alienated many children from finishing school, made it difficult for students to succeed because of missing school due to suspensions, and led others to be pushed out through expulsions never to return. This is especially troubling because education is one of our most potent crime prevention tools. Studies have shown that as educational attainment increases, the likelihood of criminal justice involvement decreases.³ As Rafi's story above exemplifies, students who are pushed out of schools suffer disruptions in their education that can escalate poor behavior, drive them to get involved in gangs or engage in dangerous behavior, and dramatically decrease their chances of successfully pursuing educational attainment and leading productive lives.

¹ Russell Skiba, et al., —Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations, || American Psychological Association (August 2006): 9, available at <http://www.jdaihelpdesk.org/Docs/Documents/1%20BINDER%20Tab%207%20Zero%20Tolerance.pdf>.

² See, e.g., Russell Skiba, —Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary Policies, || Indiana Education Policy Center Issue SRS2 (August 2000): 5-6, available at <http://www.indiana.edu/~safeschl/ztze.pdf>.

³ Sarah Lyons and Nastassia Walsh, —Money Well Spent: How Positive Social Investments Will Reduce Incarceration Rates, Improve Public Safety, and Promote the Well-Being of Communities, || Justice Policy Institute (September 2010): 30, available at http://www.justicepolicy.org/uploads/justicepolicy/documents/10-09_rep_moneywellspent_ps-dc-ac-jj.pdf and —Effective Investments in Public Safety: Education, || Justice Policy Institute (2007), available at http://www.justicepolicy.org/uploads/justicepolicy/documents/pre/07-02_FAC_Education_AC-PS.pdf.

Recommendations

Effective school discipline policies and practices have been developed that can keep children in school and keep schools safe. NJJN makes the following recommendations to help schools derail the school-to-prison pipeline and keep youth on the road to educational success.⁴

Law Enforcement and Discipline Policies

- Schools must reject the one-size-fits-all prearranged set of sanctions laid out in zero tolerance policies and instead promote discipline policies that provide individualized assessments and interventions that are appropriate to ensure a safe learning environment.
- Schools must not use law enforcement as a response to non-criminal adolescent misbehavior. If students engage in criminal behavior on school grounds, schools must have graduated responses in place, reserving law enforcement for only the most serious offenses.
- Schools must establish clear guidelines for school personnel and on-campus law enforcement officials regarding the role of each in responding to youth behaviors and exactly which infractions may lead to court referrals. Referrals to court should be reserved for only the most serious infractions.
- To eliminate or curtail the use of mechanical restraints, chemical restraints, corporal punishment, and isolation, law enforcement and school officials must be trained on the traumatic effects of these practices, as well as child and adolescent development, appropriate methods for de-escalation, and safe and effective responses to youth behaviors.
- Schools must focus on prevention and effective intervention as responses to disciplinary issues. Positive Behavioral Interventions and Supports,¹ peer juries, restorative justice processes,¹¹ diversion, mentoring, mental health counseling, and restitution can be particularly effective in improving school safety and promoting positive youth development.

Suspensions and Expulsions

- Schools must reduce their reliance on expulsion.
- Schools must develop quality in-school alternatives to out-of-school suspension and expulsion that keep students and staff safe, while also ensuring youth remain engaged in their educational program and are appropriately supervised.
- Schools that utilize suspensions should ensure suspensions are for the shortest possible duration.¹¹ Suspended students should be given schoolwork and the opportunity to remain current with their educational program.
- Schools must not suspend or expel youth for truancy or tardiness.

⁴ These recommendations are taken our Policy Platform: *Safe and Effective School Disciplinary Policies and Practices*, <http://www.njjn.org/our-work/juvenile-justice-reform-safe-and-effective-school-disciplinary-policies-and-practices>, and many stem from the work of Jim Freeman, Staff Attorney with the Advancement Project (www.advancementproject.org).

- Youth must not be expelled to the streets. Expelled youth and youth with long-term suspensions must be provided with quality alternative educational opportunities.
- Alternative educational programs must comply with federal, state and local educational standards, keep youth current with their primary educational program, provide adequate supervision, and be age-appropriate.
- Schools should not suspend or expel students for off-campus behavior, unless the student is an imminent danger to other students or staff, or unless the behavior occurs during school sponsored or school supervised activities.

Student Rights and Family Engagement

- Schools must provide youth and parents with the opportunity to be heard and proactively engage them in the disciplinary process. Youth and parents must be kept informed of the status of the disciplinary process and given a meaningful and timely opportunity to appeal.
- All information and notifications of disciplinary action and hearings must be translated into the appropriate language to ensure that youth and parents fully understand the process and outcomes.
- Youth facing expulsion or long-term suspension should be entitled to representation by counsel or an advocate. Schools should be required to make written findings as to why the expulsion or suspension was necessary.
- Youth who are expelled should have the right to have a periodic and meaningful review of the expulsion decision.

Students with Disabilities

- In general, suspensions, expulsions, or other changes in placement should not be imposed on special education students for misconduct that is related to a student's disability. A change in placement for special education students can be made only after a manifestation determination review and proper compliance with federal laws and regulations requiring a Functional Behavioral Assessment, Positive Behavioral Supports, and a Behavioral Intervention Plan.^{iv}
- School discipline guidelines must include information about discipline for special education students and specific parameters for disciplinary action for special education students in accordance with state and federal law.

Data and Racial and Ethnic Disparities (Disproportionate Minority Contact)

- Schools and school districts must collect, evaluate and make public non-identifying statistical data (including numbers of referrals to juvenile court, suspension rates, and expulsion rates).
- Schools must work to identify any racial, ethnic, or other disparities currently present in disciplinary action and to prevent any disparate racial or ethnic impact.

Conclusion

It's time to end the school-to-prison pipeline and return school discipline to the purview of the school administrators and teachers to be handled in age appropriate ways that further children's education. By moving away from the heavy handed use of law enforcement and the courts to deal with school disciplinary infractions, we can keep our youth in school and on the road to becoming successful, productive citizens.

ⁱ For more information on positive behavioral interventions and supports (PBS/PBIS) visit www.pbis.org, the federal Office of Special Education's technical assistance center for PBIS.

ⁱⁱ For more information on restorative justice, see Melissa Jones, "Remedies, Not Punishment: Restorative Practices in Schools," California Center for Rural Policy (November 2010), available at <http://www.humboldt.edu/ccrp/sites/ccrp/files/briefs/Restorative%20Justice.pdf>.

ⁱⁱⁱ The vast majority of suspensions are for disruptive, rather than violent, behavior. For example, 51% of suspensions in California in 2008 were for disruptive behavior, while only 6% were for violent behavior. Nanette Asimov, "Suspensions Point to Trouble in Schools," The San Francisco Chronicle (May 19, 2008), available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/05/19/MN5C10MBTP.DTL>.

^{iv} For more information about the rights and responsibilities of schools and students under the Individuals with Disabilities Education Act (IDEA), visit www.idea.ed.gov.



Advocacy for Youth

Statement of David Huneryager, TeamChild Staff Attorney

I am an attorney at TeamChild, a non-profit law firm for youth in Washington State. TeamChild sees close to a thousand youth a year, most of whom are experiencing significant problems in school. My clients are youth ages 12-18 who are involved in the juvenile justice system and who need help accessing community resources like school services or mental health care. Most of our clients are referred to us by people working at juvenile court, such as probation counselors and public defenders. When I meet my clients at court, in detention, or in the community, the first thing I ask them about is school. Nearly every youth I speak to has either been suspended or expelled, or has had significant struggles at school. We often do not have to talk for very long before it is clear that their school problems are precursors to their juvenile justice involvement. Problems like being suspended for months at a time or not being provided appropriate special education services have also heightened their risks of further involvement. My client Rafi is a good example.¹

By the time he was in 6th grade it was clear that Rafi was struggling in school. Rafi's language and math state testing scores, as well as his grades, had started slipping far behind his peers though they had been Bs and Cs a few years before. Rafi was getting in trouble for things like disrupting class and fighting with other students. In December of his 6th grade year he was accused of knocking a bathroom door off its hinges. Rafi's school expelled him indefinitely for damaging school property and the accumulation of other problems.

The school did not offer or provide any services to Rafi, the school did not try to help Rafi keep current with his school work. There was no date upon which Rafi could return to class. And because Rafi's parents worked full-time there was no one else to take care of him. What Rafi had to occupy his time was the streets and the other youth who had been kicked out of school. These were not beneficial influences for this twelve year old. In the six months that followed, Rafi fell in with youth who were occupied primarily with committing crimes during the day. He got arrested more than once, spent time in juvenile detention, and began regularly using drugs.

By the time I met Rafi he had some understanding that if things continued the way they were going he did not have a real future. We were able to work together, along with Rafi's family and other supports, to get Rafi back into school, although that took several months. Because he had been out so long, readjusting

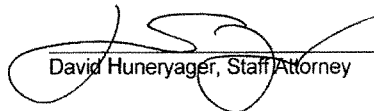
¹ To protect my client's identity I will refer to him as Rafi.

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to the school environment and routine was hard for Rafi. He had and continues to have many setbacks, but Rafi keeps trying. Hopefully he will stick with it and find success, but the odds are against him.

A recent study by a different school district in the state found that missing just two consecutive days of school is a significant factor in whether a student will graduate or drop out. Rafi's experience illustrates this study's finding all too well. His experience also shows how being pushed out of school without services can push a student into the hands of the juvenile justice system.

 12/7/2012
David Huneryager, Staff Attorney



December 7, 2012

Department of Special Education
and Rehabilitation Counseling
229 Taylor Education Building
Lexington, KY 40506-0001

Senator Richard J. Durbin, Chair
Subcommittee on the Constitution, Civil Rights, and Human Rights

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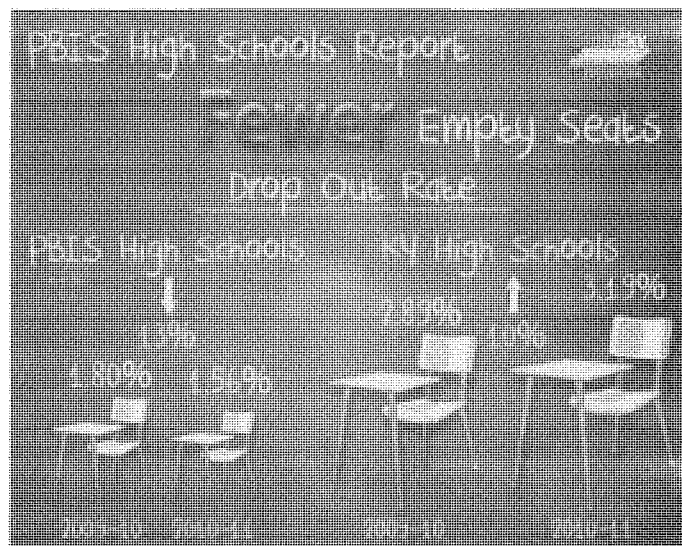
Dear Senator Durbin:

On behalf of the National Technical Assistance Center for Positive Behavioral Interventions and Supports (PBIS Center), it is a privilege to provide testimony related to the hearing on "Ending the School-to-Prison Pipeline," scheduled for December 12, 2012. The PBIS Center is in its 14th year of operation, and is modestly funded by the US Department of Education to support the delivery of an approach to school discipline that is based on a multi-tiered framework of positive supports. The primary focus of this framework is the prevention of initial occurrences of problem behavior through teaching behavioral expectations to all students and providing recognition and reward for successful compliance. A secondary focus is on preventing reoccurrences of problem behavior among students who are at risk of reoffending through evidence-based interventions that can be delivered quickly and effectively. For students who demonstrate chronic patterns of misbehavior, tertiary prevention efforts focus on reducing the impact of behavioral issues on these students themselves, as well as on the environment. Currently, PBIS is implemented in over 18,000 public schools and alternative educational settings throughout the country with 46 states supporting school efforts at the state level, as well as in 15 countries around the world. Research has shown that the effective implementation of PBIS results in reductions in disciplinary events (office disciplinary referrals), improved school climate and perceived school safety, and is associated with increases in student academic performance. Perhaps the most important impact related to ending the school-to-prison pipeline is that teachers and school administrators are able to spend substantially less time dealing with disciplinary issues (many of which involve removing students from the classroom), and students are spending more time in the classroom, where of course instruction is offered. Please visit www.pbis.org for more information on the national PBIS Center.

The implementation of PBIS in schools represents a dramatic departure from the trend toward using reactive and exclusionary disciplinary policies (e.g., zero tolerance, criminalization of student behavior, suspension, and expulsion) that began after passage of the Gun-Free Schools Act of 1994. Subsequent legislation (e.g., the No Child Left Behind Act of 2002) led to increasing pressure on educators to improve academic test scores, which provided tacit encouragement for schools to remove students who present academic and behavioral challenges. These events,

though well intentioned, have marginalized a sizable group of students who are difficult to teach and to manage behaviorally. As you well know, the school-to-prison pipeline is a metaphor for the path that many of these students follow from academic and behavioral failure to disciplinary exclusion, dropping out, patterns of delinquent behavior, arrest, and incarceration. As you also know, the characteristics and needs of incarcerated youth include high rates of illiteracy, educational disability, and mental health disorders. Moreover, ethnic minority groups, especially African American males, are significantly overrepresented in the population of incarcerated juveniles.

Without doubt, the best place to end the school-to-prison pipeline is to prevent entry by keeping youth actively and successfully engaged in school. According to the Center on Crime, Community and Culture, quality educational interventions may constitute the most effective and economical protective factors against delinquency.¹ While merely being in school is not a guarantee of successful learning, it is an important prerequisite. Schools that are implementing PBIS effectively are able to accomplish this. In my home state of Kentucky, high schools that are implementing PBIS have demonstrated a 13% reduction in drop-out rate between 2009-10 and 2010-11, compared with a 10% increase in drop-out rate for the same period in high schools where PBIS is not implemented (see below).



A number of advocacy groups have recognized the potential impact of PBIS on preventing entry of youth into the pipeline, including the American Civil Liberties Union, the NCAAP Legal Defense Fund, the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School, the Juvenile Law Center, and the Southern Poverty Law Center. The latter has specifically recommended PBIS as a framework to reduce student and teacher drop-out rates and to improve school climate and academic performance in Alabama, Louisiana, and Mississippi: "It recommends that schools adopt Positive Behavior Supports, a framework that can fundamentally transform school environments by emphasizing positive behavior and eliminating harsh, zero-tolerance policies that push many vulnerable students out of school and into detention for minor misbehavior" (<http://www.splcenter.org/get-informed/publications>).


Considerably less attention has been given to another facet of the school-to-prison pipeline: youth leaving secure confinement only to be re-arrested and likely to be returned to either juvenile or adult penal institutions. Recidivism rates for all incarcerated juveniles are above 50% nationally,¹⁸ and for youth with disabilities, reported rates are even higher. On any given day, nearly 93,000 youth are held in secure juvenile residential care, almost 7,000 are held in adult jails, and 2,000 are in adult prisons.¹⁹ The average annual cost of incarceration for juveniles nationally is conservatively estimated to be \$43,000 per bed.²⁰ By comparison, the average annual cost of public school education across the country is approximately \$10,000 per student.²¹ These bills of course are paid with taxpayer monies. A reasonable question to ask is what do taxpayers get for these investments? According to the National Center for Education Statistics, 63.8% of 2008-09 high school graduates were enrolled in college the following fall.²² If, as noted by the Center on Culture, Crime and Communities above, education may be the most effective protective factor against delinquency, and if the national recidivism rate for incarcerated youth hovers around 55% as reported by Snyder and Sickmund, taxpayer investment in juvenile incarceration is far from cost effective. The goal of the juvenile justice system is to rehabilitate youth in its care, meaning to return them to a previously intact level of functioning. The fact that over half of incarcerated youth are re-offending or returning to secure care clearly indicates that this goal is not being accomplished. Efforts to reform juvenile justice are ongoing, yet many secure juvenile facilities operate under a model dominated by coercion and control, in which staff are encouraged to watch for and respond to misbehavior with aversive sanctions. These practices continue despite overwhelming evidence that punishment is an ineffective methodology for changing behavior.²³

The successful transformation of punitive public school environments (through PBIS) into positive and supportive cultures that encourage learning and successful compliance with behavioral expectations has persuaded a growing number of juvenile justice jurisdictions to adopt this framework in secure care facilities. A number of juvenile care facilities in several states (e.g., California, Illinois, and Oregon) are implementing PBIS, and Georgia and Texas are beginning implementation in all secure juvenile correctional facilities.

Preliminary reports indicate that youth behavior, academic performance, and staff morale all improve when PBIS is effectively implemented.⁷⁸ While it remains to be seen whether these gains translate into lower rates of recidivism, it is reasonable to assume that improved social learning and academic accomplishment will lead to more successful outcomes as youth transition back to their communities.

In consideration of the above, I respectfully suggest that PBIS be considered as a viable approach to be used in ending the school-to-prison pipeline.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Michael Nelson".

C. Michael Nelson, EdD
Emeritus Professor

¹ Center on Crime, Communities, and Culture (1997). *Education as crime prevention: Providing education to prisoners. Research Brief* (Occasional Paper Series, No. 2). New York: Author.

¹¹ Snyder, H. N., & Sickmund, M. (2006). *Juvenile offenders and victims: 2006 national report*. Washington, DC: U. S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

¹² National Juvenile Justice Network (August, 2009). *National Juvenile Justice Network policy platform: Conditions of confinement*. Retrieved April 12, 2012 <http://www.njjn.org>.

¹³ Lawyershop.com. Retrieved April 12, 2012 <http://www.lawyershop.com/practice-areas/criminal-law/juvenile-law/faqs>.

¹⁴ National Center for Education Statistics. *Fast facts*. Retrieved April 12, 2012 <http://nces.ed.gov/fastfacts/display.asp?id=66>

¹⁵ National Center for Education Statistics. *Digest of education statistics*. Retrieved December 4, 2012 http://nces.ed.gov/programs/digest/d11/tables/dt11_212.asp.

¹⁶ Kerr, M. M., & Nelson, C. M. (2010). *Strategies for addressing problem behavior in the classroom* (6th ed). Upper Saddle River, NJ: Merrill/Prentice Hall.

¹⁷ Sidana, A. (2006). *PBIS in juvenile justice settings*. Retrieved May 9, 2012 <http://www.neglecteddelinquent.org>.



National
Urban League

*Empowering Communities.
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STATEMENT FOR THE HEARING RECORD OF

**MARC H. MORIAL
PRESIDENT AND CEO
NATIONAL URBAN LEAGUE, INC.**

**Before the
SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS**

On

"ENDING THE SCHOOL-TO-PRISON PIPELINE"

December 12, 2012

Mr. Chairman, as President and CEO of the National Urban League (NUL), and on behalf of our 97 affiliates in 36 states and the District of Columbia, we appreciate the opportunity to offer our insights, years of experience and recommendations for "ending the School-to-Prison Pipeline." The National Urban League is a 102-year-old institution that works to provide economic empowerment, educational opportunities and the guarantee of civil rights for the underserved in America. Last year alone we served over 2.6 million Americans in 300 communities throughout the country.

Mr. Chairman, I commend you for focusing this hearing on actually "ending" the school-to-prison pipeline. The National Urban League and other Civil Rights organizations have long held the belief that the mass incarceration of youth has erupted into a civil rights crisis. We are committed to challenging the school-to-prison pipeline, wherein children are funneled out of public schools and into the juvenile and criminal justice system. We are pleased that the U.S. Department of Justice is looking into civil rights violations of African American and disabled students in the State of Mississippi.

For many African American and Latino communities the school-to-prison pipeline is turning too many of their schools into pathways to incarceration rather than opportunity. It means dreams, talents and productive lives stifled forever. For our nation it means the costs associated with the loss of productivity and the loss of contributing citizens to our society. Policymakers must not fail to take advantage of educational and criminal justice reform policies and programs that can permanently dismantle this pernicious life path for our youth and young adults.

The pipeline to the criminal justice system too often begins with **school discipline policies**. For African American and Hispanic youth, this issue is of crisis proportions given the highly disproportionate impact that these policies have on placing them into the first stage of the school-to-prison pipeline. Data from the U.S. Department of Education¹ show that:

- African-American students are over 3 ½ times more likely to be suspended or expelled than their white peers.
- In districts that reported expulsions under zero-tolerance policies, Hispanic and African-American students represent 45 percent of the student body, but 56 percent of the students expelled under such policies.
- Over 70 percent of students involved in school-related arrests or referred to law enforcement are Hispanic or African-American.

Research suggests that experiencing overly punitive discipline in school can increase the likelihood of a student dropping out of school – a phenomenon known as the “school pushout.” It is approximated that 75 percent of State prison inmates and 59 percent of Federal prison inmates have not completed high school. In their report² on the school-to-prison pipeline, the NAACP Legal Defense and Education Fund provides important insights on the use of harsh discipline policies stating that:

- Rather than address the systemic problems that lead to poor educational performance, harsh disciplinary policies provide schools with a convenient method to remove certain students and thereby mask educational deficiencies.
- The overuse of suspensions, expulsions and arrests is a reflection of this lack of resources, [and that while] many well-intentioned educators want to help troubled students [they are hampered by the fact that] due to a lack of guidance counselors and useful intervention programs, they feel that they have no alternatives at their disposal.

Another key contributing factor to the school-to-prison pipeline is the over reliance on **youth incarceration** which has proven a failed and costly strategy that only serves to move our youth further along into the criminal justice system. A recent report on juvenile incarceration³ found that:

- In 2007, roughly 60,500 U.S. youths were confined in correctional facilities or other residential programs each night on the order of a juvenile delinquency court. The largest share of committed youth – about 40 percent of the total, disproportionately youth of color – are held in locked long-term correctional facilities operated by state governments or private contractors hired by states.
- Within three years of release, around 75 percent of youth are rearrested and 45 to 72 percent are convicted of a new offense.
- Nationally, just 12 percent of the nearly 150,000 youth placed in residential programs by delinquency courts in 2007 had committed any of the four most serious violent crimes...yet, incarceration has been found to be especially ineffective for less-serious youth offenders.
- The cost of the average 9 to 12 month stay of one youth is \$66,000 to \$88,000. This...makes little sense given the powerful evidence showing that non-residential programming options deliver equal or better results for a fraction of the cost.

National and Community-Based Strategies for Ending the School-to-Prison Pipeline

Drawing on its years of direct service experience in urban communities across the country, the National Urban League has worked to end those school discipline policies that feed the prison pipeline by replacing them with evidence-based alternative policies, practices and programs that aim to keep our youth safely in school and/or re-engage them after they've been pushed to drop out. The National Urban League has developed key policy and programmatic approaches aimed at our educational and workforce systems that will go a long way toward stemming the school-to-prison pipeline.

The National Urban League's **8 Point Plan to Educate, Employ & Empower**^{iv} has identified 8 key policy areas that must be implemented to curb the explosion of mass incarceration and to help those youth who have been victims of such punitive policies. These policies include key education-related components that have implications for stemming the school-to-prison pipeline for especially minority youth who are disproportionately impacted, such as:

- Fair and Equitable School Funding for All – Nearly 60 years after the *Brown vs. Board of Education* decision, our nation's schools are inequitably funded and available funds are distributed unevenly^v. Funding must be equitable so that educational outcomes do not depend on geography, race, national origin, language or school location.
- Robust Early Childhood Education for Each Child – The availability of early learning opportunities for children is a significant predictor of the level of achievement students will achieve throughout their academic career. A recent study from the University of Minnesota found that, years later, participants in high-quality pre-school programs had lower rates of incarceration than did their peers who were not enrolled, demonstrating the need to fully fund the Head Start program.^{vi}
- Strengthen High Schools and Re-engage Students to Prevent Dropouts – We must raise the high school graduation and college-completion rates of students of color to the level of white students by 2020. Dropping out of high school alone results in billions of dollars in lost income to the nation's economy in one year alone.^{vii} High schools must seek to engage community-based organizations such as Urban League affiliates in new and innovative ways, including in the development of high school improvement, wrap-around services and turnaround strategies.
- Adopt Robust STEM Focused Curriculum and Programs – It is well known that STEM (science, technology, engineering, mathematics) related careers are clear paths to incomes that lead to economic self-sufficiency. Students must be fully prepared for these fastest growing job sectors in America, therefore all classrooms must adopt a robust STEM curriculum aligned with college and career-ready standards and workplace expectations.^{viii}
- Provide Qualified, Effective and Diverse Teachers – Low-income, low-performing students and students of color are far more likely than other students to have inexperienced, uncertified, poorly educated, and underperforming teachers.^{ix} The National Urban League Policy Institute's comprehensive report on teachers^x raises a key point in the relationship between the presence of diverse teachers and the use of harsh school discipline policies. According to the report, research has found that having a high concentration of minority teachers in a large urban district (among other key positive impacts) decreases special education placement rates, decreases school suspension and expulsion rates and increases gifted admission rates.

Based on its signature programs in education and employment that place roadblocks on the school-to-prison pipeline and provide concrete proven alternatives for youth, the National Urban League recommends that Congress immediately pass two key legislative proposals:

Project Ready STEM Act (H.R. 4366) – Introduced by Representative Marcia Fudge (OH), the legislation exposes minority youth to science, technology, engineering and math (STEM) curricula by authorizing a comprehensive program that provides academic support, project-based learning opportunities and awareness of STEM college majors and careers. The Project Ready STEM Act replicates high quality in-school, afterschool and summer programs operated by community-based organizations such as Urban League affiliates with demonstrated experience in achieving positive outcomes for urban minority youth.

- Project Ready STEM was developed by the National Urban League to support students' successful completion of STEM-related course work and to expose them to STEM-related career options. The League currently operates Project Ready in 30 states, and an enhanced Project Ready STEM program would be scaled up to additional service areas under H.R. 4366.

Project Ready Success Story

The story of Tahji Jones demonstrates the success of the Project Ready program. Tahji, a senior at Brighton High School in Rochester, New York credits much of his academic and personal success to his participation in the Urban League of Rochester's Project Ready program. The Urban League of Rochester targets African American males who participate in service learning projects.

- Participation in the program also allowed Tahji to participate in the "Voices in Action: National Youth Summit," hosted by the U.S. Department of Education where he and other Project Ready students met with the U.S. Secretary of Education Arne Duncan.
- After meeting Secretary Duncan, Tahji is planning to major in education in college to help fulfill his goals for the future – ensuring there are more African American male teachers in the classroom.
- As a part of Project Ready, Tahji attended the National Urban League's Annual Youth Leadership Summit where he and other Project Ready students participated in a future problem solving competition. The 2011 competition focused on youth unemployment and after winning first place, Tahji stated, "I had the honor of being a part of a panel which made me feel as if I had a significant level of importance in our nation's community."

The Urban Jobs Act (S.922/H.R.683) – The Urban Jobs Act (UJA) was introduced in the Senate by Senator Kirsten Gillibrand (NY) and in the House by Representative Edolphus "Ed" Towns (NY). The bill provides a comprehensive approach to increasing employment opportunities for at-risk youth in America's urban communities. The UJA would provide federal funding to nonprofit organizations with demonstrated expertise and effectiveness in reaching such youth, allowing them to carry out an Urban Jobs Program. The UJA would fill a major gap in the service needs of youth aged 18-24 who have dropped out of high school or have been subject to any stage of the criminal justice process.

- The Urban Jobs Program is based on a successful National Urban League model (the Urban Youth Empowerment Program or UYEP) for training and employing young adults ages 18-24 who face significant barriers to education and employment.
- By using a case management approach to providing a comprehensive set of services that includes educational offerings, employment and job readiness activities

and support services, the Urban Jobs Program would prepare out-of-school and adjudicated youth for entry into employment, or education leading to employment.

Urban Youth Empowerment Program Success Story

The story of Taneka D. demonstrates the success of the Urban Youth Empowerment Program. Taneka D. was arrested at 15 for assaulting a bully who had terrorized her for years. She enrolled in the Urban League of Pittsburgh's Urban Youth Empowerment Program to put a tumultuous past behind her and plot her path to success:

- Ms. D. was initially put in the Allegheny County Jail amongst hardened adult criminals, and later placed on probation until she graduated high school.
- She spent much of her childhood split between her mother, father and sometimes uncle. Her drug-addict parents were in and out of prison, lending a great deal of insecurity to her home situation. It rendered Ms. D. unable to cope with problems and the situation she faced.
- When she enrolled in UYEP, Ms. D. took full advantage of the opportunities available to her, attending a wide range of workshops, mentoring programs, job skills training and career fairs. UYEP helped her develop the confidence to take steps toward turning her life around. She decided she wanted to pursue a degree in criminal justice at Point Park University, where she eventually enrolled in the fall of 2007.
- Although Ms. D. understood that her past still posed obstacles to her quest for a better life, she wanted to find a job to help finance her pursuit of higher education. She took steps to get her record expunged and landed a job at a local Radio Shack as a part-time sales clerk.
- With UYEP staff encouragement, Ms. D. became motivated and determined. She was then offered an internship with the Pennsylvania Board of Probation and Parole and recently acquired a new part-time job at the University of Pittsburgh's Medical Center, where she ended up facing the biggest challenge of her young life -- working with the bully she had assaulted years before in a fit of fear.
- Ms. D. now enjoys success today. Her attitude is positive, and she understands that life on life's terms is not easy. She has become self-sufficient and realizes that hard work and sacrifice determine success. She believes all her hard work will pay off sooner than later.

In closing, Mr. Chairman, there are clearly proven national and local policy and programmatic alternatives to maintaining a school-to-prison pipeline. We can and must bring it to an immediate end, first and foremost for the sake of those young lives that are so damaged by this gruesome practice and for the very economic and social well-being of our entire nation. The National Urban League will continue to play its crucial role in our urban communities across the country and we stand ready to work with our policymakers to enact positive and permanent policy and programmatic solutions.

Thank for the opportunity to offer our views.

ⁱThe Transformed Civil Rights Data Collection (CRDC), U.S. Department of Education, Office For Civil Rights, released on March 6, 2012. The CRDC, from school year 2009-10, is a representative sample covering approximately 85% of the nation's students.

ⁱⁱ*dismantling the school-to-prison pipeline*, NAACP Legal Defense and Educational Fund, Inc. (LDF), 2005.

ⁱⁱⁱ*Issue Brief, NO PLACE FOR KIDS, The Case for Reducing Juvenile Incarceration*, The Annie E. Casey Foundation (2011).

^{iv}*The National Urban League 8 Point Plan, Educate, Employ & Empower*, National Urban League, January 2012, http://www.iamempowered.com/sites/default/files/nul_8_point_plan_-_educate_employ_ampower.pdf

^vAs reported in the National Urban League 2012 Equality Index, average per student funding in high poverty schools is \$5,937 compared to \$7,244 in low poverty schools.

^{vi}School Based early childhood education and age-28 well-being: effects by timing, dosage, and subgroups. *Science*. 2011 Jul 15;333(6040):360-4. Epub 2011 Jun 9.

^{vii}The Alliance for Excellent Education estimates that if the 1.3 million high school dropouts from the Class of 2010 had earned their diplomas instead of dropping out, the U.S. economy would have seen an additional \$337 billion in wages over these students' lifetimes. And that's only for one year - the country can expect to lose well over \$300 billion in potential earnings [in the] next year as well, due to dropouts from the Class of 2011. If this annual pattern is allowed to continue, 13 million students will drop out of school during the next decade at a cost to the nation of more than \$3 trillion.

^{viii}The National Urban League 2012 Equality Index reports that the average scale score in science for black 8th graders is 124, compared to 129 for Latinos and 160 for whites. For 12th graders the average science scores are 120 for blacks, 128 for Latinos and 156 for whites.

^{ix}According to the National Urban League 2012 Equality Index, 21.9% of high school teachers in high poverty schools do not have an undergraduate degree in the subject they teach compared to only 10.9% in low poverty high schools.

^x*Teachers Matter, Ensuring Qualified, Effective & Diverse Teachers in Every Classroom, A Policy Brief of the National Urban League Policy Institute*, by Jacqueline Ayers and Shree Chauhan, National Urban League Policy Institute, Washington, DC, October 2012.



December 10, 2012

U.S. Senate Committee on the Judiciary
 Subcommittee on the Constitution, Civil Rights and Human Rights
 224 Dirksen Senate Office Building
 Washington, DC 20510

Re: December 12, 2012 Hearing on the School to Prison Pipeline

Dear Chairman Durbin, Ranking Member Graham, and Subcommittee Members,

On behalf of the National Women's Law Center, an organization that for 40 years has worked to expand the possibilities for women and girls in the areas of education and employment, family economic security, and health, we write in support of the upcoming Subcommittee hearing on the School-to-Prison Pipeline.

It is critical that Congress take serious steps to ensure that school environments are healthy, safe, and conducive to learning for all students. Unfortunately, "zero tolerance" policies and over-reliance on exclusionary discipline practices like suspension and expulsion do not improve school climate and instead disproportionately push boys and girls of color out of school and, in many cases, on a path to incarceration.

Evidence regarding the harms of exclusionary discipline practices is overwhelming. The American Academy of Pediatrics found that suspension and expulsion jeopardize children's health and safety and may exacerbate academic failure. The Centers for Disease Control and Prevention found that out-of-school youth are more likely to be retained a grade, drop out of school, become teen parents, and engage in delinquent behavior. And a 2003 study by Dr. Robert Balfanz, co-director of the Everyone Graduates Center and senior research scientist at Johns Hopkins University, concluded that school suspension is a top predictor for being incarcerated by ninth grade.¹ Moreover, exclusionary discipline practices are not improving school climate or academic achievement, even for those who remain in school. To the contrary, the American Psychological Association has found that zero tolerance policies fail to make schools safer and schools with high suspension rates score worse on standardized tests.

Unfortunately, school disciplinary rates are currently the highest they have been in our nation's history. And exclusionary discipline practices are used disproportionately

¹ See Robert Balfanz et al. 2003. "High Poverty Secondary Schools and the Juvenile Justice System," in Johanna Wald & Daniel Losen, eds., *Deconstructing The School to Prison Pipeline*. San Francisco: Jossey-Bass, 77-78.

against students of color and students with disabilities. African American students, including African American girls, are over 3.5 times as likely as their white peers to be suspended or expelled.² According to the most recently released Civil Rights Data Collection (CRDC) from the U.S. Department of Education, African American students represent 18% of students in the CRDC sample, but 35% of students suspended once, 46% of those suspended more than once, and 39% of students expelled. Over 70% of students involved in school-related arrests or referred to law enforcement are Hispanic or African American. African American boys and girls have higher suspension rates than any of their peers. One in five African American boys and more than one in ten African American girls received an out-of-school suspension. Additionally, students covered under the IDEA are more than twice as likely to receive one or more out of school suspensions.³

Another study revealed interesting details about exclusionary discipline practices at urban middle schools, where average suspension rates for all students are twice the national average. This study, looking at middle schools in 18 of the country's largest school districts in 2006-2007, found that Black males were the group most likely to be suspended from school, and suspension rates for Black females were the second highest.⁴ Suspension rates were consistently higher for Black females than for Hispanic or White males.⁵ Over 50% of Black female students were suspended in Milwaukee.⁶ And Black females in middle schools had the highest percentage point *growth* in rates of suspension from 2002 to 2006, higher than for Black males and several percentage points higher than for Hispanic and White females.⁷

There are also racial disparities with respect to the types of discipline used against students and the behaviors for which they are disciplined. A review of discipline data from 400 elementary and middle schools across the country found that African American and Latino students are more harshly disciplined than their white peers for similar offenses.⁸ And research shows that Black girls are more likely than White girls to be subject to disciplinary action that removes them from the classroom.⁹ Related research has revealed that students of color are disproportionately disciplined for subjective offenses, such as "disrespect," and white students are disproportionately disciplined for objective offenses, such as smoking.¹⁰ A 2010 study found that the types of behavioral

² <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf>

³ *Id.*

⁴ Daniel J. Losen and Russell J. Skiba, *Suspended Education: Urban Middle Schools in Crisis*, at 5-7 (Southern Poverty Law Center, September 2010), available at <http://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/suspended-education-urban-middle-schools-in-crisis/>

⁵ *Id.* at 6.

⁶ *Id.*

⁷ *Id.* at 7-8.

⁸ Russell J. Skiba et al. 2011. "Race is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline." *School Psychology Review*, Vol. 40, No. 1, 85-107.

⁹ Jamilia J. Blake et al. 2011. "Unmasking the Inequitable Discipline Experiences of Urban Black Girls: Implications for Urban Educational Stakeholders." *Urban Review*, 43, 90-106.

¹⁰ Russell J. Skiba et al. 2002. "The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment." *Urban Review*, 34, 317-342.

infractions for which Black girls are disciplined differ from their White and Hispanic peers, namely “Black girls were most often cited for defiance followed by inappropriate dress, using profane language toward a student, and physical aggression.”¹¹ Girls of color are particularly affected by disproportionate punishments for minor infractions at school. For example, in Alabama, a high school student was suspended for wearing a dress to prom that was deemed too short by school officials; her other choice was to be paddled, but she opted for suspension instead. In New York, a middle school student was arrested for writing “okay” on her desk.

The Center urges the Subcommittee to explore ways to dismantle the school to prison pipeline so that more of our nation’s youth stay in school and succeed. For example, to enable parents and schools to track and address disparate discipline practices, Congress should provide for the collection and annual reporting to the public of the numbers of in-and out-of-school suspensions, the number of students receiving multiple suspensions, expulsions, instances of corporal punishment, school-based arrests and referrals to law enforcement agencies, the number of referrals to disciplinary alternative schools, and any progress in reducing disparities in discipline. The data collected should be disaggregated by race, gender, special educational status, socioeconomic status, and ELL status, and further disaggregated by gender in each category to allow for more insightful review and decision-making. Additionally, Congress should provide for the collection of better information on disciplinary alternative schools. Many disciplinary alternative schools are dead-end programs leading to dropout, and given the disparate discipline rates among different subgroups of students, the push-out that results from referral to these inferior alternative schools will disproportionately affect boys and girls of color and those with disabilities, further perpetuating achievement gaps and high rates of incarceration.

To improve the ability of schools to maintain a healthy learning environment for all students, measures of school discipline rates and school climate factors must be included in any revised accountability and school improvement system. State performance standards and targets must include progress eliminating corporal punishment and reducing the excessive use of exclusionary or overly-punitive disciplinary practices. Measurement systems should evaluate non-academic indicators, including disciplinary action as well as school climate more broadly. Schools with high rates of exclusionary or overly punitive disciplinary practices, referrals to law enforcement, or corporal punishment should be required to undergo a needs assessment and adopt responsive interventions. A determination that a particular school is not meeting appropriate school climate standards should trigger technical assistance and resources from SEAs and LEAs so that school can implement successful, proven and promising practices for improving the school environment. And lowering rates of suspension, expulsion, or assignment to disciplinary alternative schools should be bases for rewards.

Finally, federal legislation – such as the bipartisan Achievement Through Prevention Act, S. 3733, introduced in the 111th Congress – should encourage schools to

¹¹ *Id.*

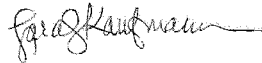
adopt evidence-based practices, such as Positive Behavioral Interventions and Supports, that have been shown to reduce the number of disciplinary referrals; improve academic achievement, graduation rates, and teacher morale; and decrease instances of bullying and harassment.

The Center applauds the Subcommittee's decision to hold a hearing on the school-to-prison pipeline and explore alternatives to exclusionary discipline that can help to end it. We look forward to working with members of the Subcommittee to ensure that all of our nation's children have equal opportunities to learn in a positive school climate. If you have any questions, please feel free to call Lara S. Kaufmann at (202) 588-5180.

Sincerely,



Fatima Goss Graves
Vice President for Education & Employment



Lara S. Kaufmann
Senior Counsel and Director of
Education Policy for At-Risk Students

**Transformative Life Skills (TLS):
A Necessary Condition for Dismantling the School-To-Prison Pipeline**
Statement by Bidyut K. Bose, PhD, Founder and Executive Director, Niroga Institute

"I believe that a yoga-based prevention model could help dismantle the School-to-Prison Pipeline. Niroga Institute recently came to Delaware and trained a group of teachers, school administrators, youth detention staff, and leaders in the juvenile justice community on the Transformative Life Skills (TLS) curriculum. The program was embraced by all. It is programming such as TLS that I would like to see in schools across the country." --- *Chandlee Johnson Kuhn, Chief Judge, Family Court of the State of Delaware, and Member of Council of State Governments School Discipline Consensus Project, which is focusing on the School-to-Prison Pipeline*

Introduction

"Wow! If everyone did yoga, there would not be so much violence in the world." These words were uttered by an incarcerated youth after attending a few Transformative Life Skills (TLS) sessions at Alameda County Juvenile Hall. TLS consists of mindful yoga, breathing techniques and meditation. Another detained youth said, "I learned a lot from it – whenever I get mad and angry, I just start breathing. And I actually *like* yoga." Speaking of the participants in the program, Janice Thomas, PhD, Senior Clinical Psychologist at the Guidance Clinic in Alameda County Juvenile Hall said, "They are really starting to internalize the practices and beginning to understand how they can use it to increase self-control. It's really true. When someone is having difficulty in group I've heard girls spontaneously say to the troubled person, 'now breathe...' It's so cool!"

Youth are going from school to prison because of a host of individual and environmental conditions, involving numerous participants including youth and parents, educators and health care officials, police and probation officers, judges and attorneys. As explained below, the TLS model cost-effectively addresses many of these internal conditions, and has been validated by scientific research as well as the experiences of its participants.

The Problem: High Levels of Stress and Trauma Impact Youth

Many of our most vulnerable children and youth are coming to school not ready to learn. They are dealing with the chronic stress and trauma from abuse and neglect at home, as well as crime and violence, guns and gangs, drugs and death in their communities. And yet we are often rushing to teach them before healing them. When children are unable to focus and engage in school because of dysfunction at home or in the community, when they are disciplined repeatedly, and in due course suspended and expelled, why is it a surprise if they drop out and end up in a juvenile hall or jail? When a child drops out of school, there is high probability that substance abuse, homelessness and juvenile delinquency will follow.

The school-to-prison pipeline is populated with a disproportionately high number of youth of color. And in communities with disproportionate minority contact, there is disproportionately higher stress and trauma. Providing skills for managing chronic stress and healing from trauma especially among low-income communities of color, has to be an integral part of systems change aimed at correcting racial and ethnic disparity, catalyzing racial healing and enabling community health and well-being.

The Solution: A Prevention and Intervention Model for Resolving Stress and Trauma

Probation, health care and education departments of Alameda County, California have been supporting Niroga Institute's cost-effective, evidence-based and trauma-informed TLS program for the past 7 years. School districts throughout the Bay Area are funding TLS programs in schools, both inside and outside of academic time. While yoga is often viewed as socially elite and culturally incongruent, it is a time-tested, secular, universal practice that has been validated by the latest research in neuroscience, epigenetics and somatic psychology. Niroga brings TLS to over two thousand children and youth in schools and alternative schools,

juvenile halls and jails, all over the California Bay Area every week. Our primary focus has been at-risk youth, mostly of color, at high risk of school failure and juvenile delinquency.

In addition to direct service, Niroga Institute conducts TLS trainings for hundreds of educators, mental health professionals, social workers, criminal justice and violence prevention officials, as well as parents, adult allies and community partners serving vulnerable youth. TLS trainings provides a dual advantage:

- **Personal sustainability (stress management, self-care and healing from vicarious/secondary trauma) for the adults caring for vulnerable youth**
- **Professional application of TLS programs for children and youth, in schools and alternative schools, juvenile halls and jails, rehabilitation centers, homeless shelters and foster homes**

Participants Support the Effectiveness of TLS

We recently conducted a TLS training in Delaware, upon the request of the family court chief judge, for about 60 staff and leadership of the Brandywine School District and Youth Rehabilitative Services (YRS). This is what they had to say after the training, involving participants from both ends of the school-to-prison pipeline:

- You should know that lives were changed yesterday! After the training, I debriefed with our staff from Claymont Elementary and the energy that they shared was amazing. They got so much out the experience and they are committed to implementing this in their school. As I continue to process and formulate ideas in my mind, I get excited about the possibilities and opportunities to incorporate mindfulness teaching practices in the Brandywine School District, especially as it relates to disciplining our children. This is a journey and as we continue to build this coalition, good things will happen for Brandywine School District, Niroga, and YRS, but more importantly for the students, staff and communities we serve. *(Dorrell Green, Assistant Superintendent, Brandywine School District)*
- From my perspective, the training was an overwhelming success! I definitely had a few staff who were skeptical...and everyone walked away with a very positive outlook and a new enthusiasm for the work that they do. Who could ask for more! Thank you for spending time with our group. It is amazing to see the transformation. *(Alison McGonigal, Acting Deputy Director, Division of Youth Rehabilitative Services, Delaware Children's Department)*

Scientific Research Provides A Growing Evidence Base for TLS

A recent independent research report summarizing three studies including a randomized control trial of in-class TLS in a challenging urban school, showed compelling findings and implications, spanning three interconnected domains of social function: education, health care and violence prevention. Jennifer Frank, PhD, Research Scientist at the Prevention Research Center at Pennsylvania State University, said: "**Students showed lower levels of perceived stress and greater levels of self-control, school engagement, emotional awareness, distress tolerance and altered attitude towards violence.**" (Dr. Frank's summary report is appended below.)

Social psychologists such as June Tangney at George Mason University, have shown that "high self-control predicts good adjustment, less pathology, better grades and interpersonal success," and that "low self-control is a significant risk factor for a broad range of personal and interpersonal problems" (Tangney, 2004). And Prof. Seligman at the University of Pennsylvania shows that self-control is a better predictor of academic achievement than IQ, and concludes, "A major reason for students falling short of their intellectual potential is their failure to exercise self-discipline" (Seligman, 2005). The latest research in neuroscience (Davidson, 2012) shows that chronic stress disrupts our ability for attention control, emotion regulation, adaptive coping strategies and empathy. The research also shows that integrative mindfulness practices such as yoga and meditation (van der Kolk, 2009), mitigate all these effects, and helps develop self-awareness that leads to self-mastery.

The Policy Implications of TLS

I believe these findings have direct multidimensional impact on the school-to-prison pipeline, education equity and the academic achievement gap. In a paper accepted for presentation at the annual meeting of the Academy of Criminal Justice Science (ACJS) in the Rehabilitation and Treatment track in March, 2013 in Dallas, Texas, first author Dr. Lynette Lee, Professor of Criminal Justice at California State University, Sacramento, writes, "Current rehabilitation and treatment models such as Cognitive Behavioral Therapy (CBT) have transitioned from an exclusive focus on cognition, to include affect and relational influences on behavior. Connections have already been established between antisocial behavior and traumatic stress, and the latest research in neuroscience suggests that mindful movement is an optimal treatment response to traumatic stress. This paper presents an Integrative Behavioral Therapy (IBT) model that incorporates kinesthetics (a historically overlooked component) into existing cognitive, emotional and relational treatment models. We will also discuss the implications of IBT for individual, institutional and community transformation." [IBT and TLS are used synonymously.]

TLS is a Cost Effective Approach

It is not only good policy and a moral imperative, but also an economic imperative. About a million youth drop out of school each year, and about a million youth are detained in Juvenile Halls across the country. The dropout rate is over 50% in our inner-city schools, and the recidivism rate for juveniles with criminal justice system involvement is approximately 75%, and these high percentages are major signs of system failure. Prof. Cecilia Rouse, a labor economist at Princeton University, has estimated the lifetime cost of a high-school dropout to be \$260,000, and the annual cost of school failure at \$260 billion (Rouse, 2005). It costs \$1,000 per year to saturate a youth's life with TLS (\$10 per TLS session x 2 hour-long sessions per week x 50 weeks). With \$260,000, we could comprehensively provide TLS to 260 youth for a year. If even one more youth stayed in school and out of trouble, the program would break even. And if 10% or 26 more youth changed the course of their lives in a positive direction, the Return-On-Investment (ROI) would be 26-fold – we would get our money back 26 times over, with a rate of return of 2600%!

Conclusion

Martin Luther King reminds us from decades ago that "we have guided missiles and misguided men." In an attempt to change systems, we put so much emphasis on our external environments, often neglecting the efforts needed on our internal environments. If even a fraction of the resources that we spend on incarceration could be spent on transforming our internal environments (stress management and healing from trauma), the social return would be substantial. Can we afford not to do it? How many generations of children are we going to waste? Let us dream of a world where most of us are acting with self-mastery, for the greater good, most of the time.

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Links:

- Niroga Institute: <http://www.niroga.org>
- Short compelling videos of Niroga TLS programs: www.niroga.org/media/video
- Prevention Policy Implications of TLS: <http://youtu.be/k2jeEJ6R0cg>

Results of Transformative Life Skills (TLS) Evaluation

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 Prevention Research Center

Educators have increasingly begun to recognize the importance of emotional regulation skills to effective learning and academic success (Zins, Bloodworth, Weissberg and Walberg, 2007; Lopes and Salovey, 2004; Greenberg et al., 2003). Research conducted over the past two decades has confirmed that students' emotional state affects attention, which in turn influences learning, memory, and behavior (Ohman, Flykt and Esteves, 2001).

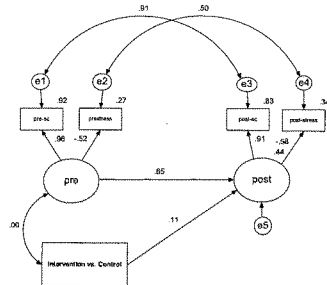
Overview of Transformative Life Skills Program

The Transformative Life Skills (TLS) program is 18-week school-based intervention designed to reduce stress and increase adolescents' adaptive coping skills. The TLS curriculum is delivered in 15-minute lessons (3x lessons per week) in a whole group instructional format. Lessons provide students with direct instruction and practice in the use of meditation, yoga, and progressive relaxation techniques. Below we present the results of two randomized trials of TLS in school settings. Effect sizes (η^2) can be interpreted as .01 = small effect, .06 = medium effect, and .14 = large effect.

Study 1

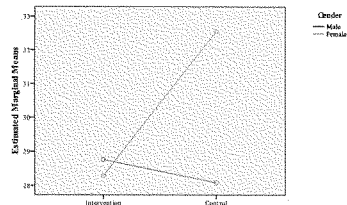
TLS was implemented in 18 classrooms ($n = 512$) in a highly-diverse inner-city high school in California. Classrooms were randomly assigned to treatment or business-as-usual conditions. We examined whether participating in TLS resulted in significant changes in student perceived stress and self-control and the degree of social validity and treatment acceptability among students and teacher participants.

Finding 1: ITT analyses using a Structural Equation Modeling (SEM) approach revealed a significant overall benefit for students receiving TLS. Obtained effect sizes were comparable to other high-cost/high intensity prevention programs.



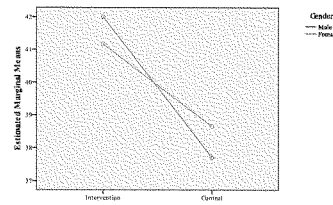
Model Fit Statistics
 $\chi^2=1.256$, $df=1$, $p=0.262$
 $CFI=0.999$, $RMSEA=0.021$, $TLI=0.992$

Finding 2: Females participating in TLS experienced significantly lower levels of Perceived Stress
 $F(3,136)=4.93$, $p<0.05$, partial $\eta^2=.035$.
 Estimated Marginal Means of Post Perceived Stress Summary



Implication: Perceived stress is an important modifiable risk factor during adolescence. High levels of stress predict the onset of depression, anxiety, substance abuse, delinquency (Compas et al., 1993; 2001; Macleod et al., 2004; Siddique & D'Arcy, 1984; Van Praag, De Kloet, & Van Os, 2005; Windle, 1992) and the development of unhealthy dietary practices and disordered eating (Jenkins et al., 2005). TLS significantly reduced perceived stress

Finding 3: Both males and females participating in TLS experienced significant improvements in Self-Control
 $F(3,134)=8.61$, $p<0.05$, partial $\eta^2=.061$.
 Estimated Marginal Means of Post Self Control Summary



Implication: Self-control, which includes the ability to inhibit behavior, follow rules, and control impulsive reactions, is a modifiable mediator of growth in academic and social-emotional competence. Duckworth & Seligman (2005) found scores on Tangney's Self-Control Scale (employed in this study) was a better predictor of student grades, standardized test scores, and attendance than IQ. TLS significantly improved

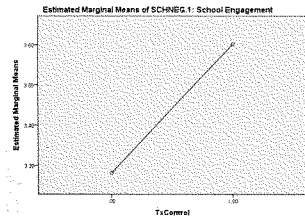
among females and closed the well-know 'gender gap' in the experience of environmental stressors.

adolescent self-control among both males and females participating in the intervention.

Study 2

TLS was implemented with 159 students in grades 6 ($n=88$) and 9 ($n=71$) in a diverse charter school in California. Classrooms were randomly assigned to treatment or wait-list control conditions. We examined whether participating in TLS resulted in significant changes in variables relevant for education, violence prevention, and mental health promotion.

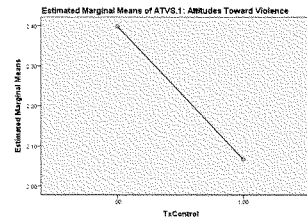
Finding 1: Students participating in TLS reported significantly greater levels of school engagement $F(1,100)=5.95$, $p<0.05$, partial $\eta^2=.056$. There were no significant differences on the basis of grade, race, or gender.



Implication: School engagement is a modifiable protective factor predicting future academic success and preventing school drop out (Kindermann, 2007). In a relatively short period of time (1 semester) students participating in TLS were significantly more engaged in school regardless of their actual academic skills or achievement.

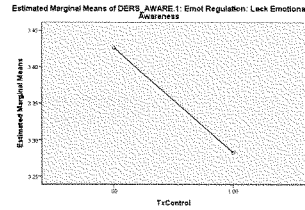
Finding 3: After controlling for prior exposure to violence and overall negative affect, students in the control group had more limited emotional awareness as compared to students participating in TLS. This effect was substantial though borderline statistically significant $F(1,71)=3.67$, $p=0.059$, partial $\eta^2=.049$.

Finding 2: After adjusting for prior exposure to violence, students participating in TLS reported significantly lower attitudes towards violence $F(1,71)=5.90$, $p<0.05$, partial $\eta^2=.077$.

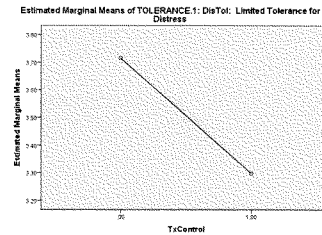


Implication: Exposure to familial and community violence can undermine the development of key emotion regulation skills and desensitize youth attitudes regarding the acceptability acts of aggression and violence behavior (Osofsky, 1995; Eisenberg, 2000). Participating in TLS significantly altered youth's attitude towards violence who viewed it as a less acceptable way to respond to frustration.

Finding 4: After controlling for overall negative affect, students in the control group had more limited tolerance for distress as compared to students participating in TLS. This effect was substantial though borderline statistically significant $F(1,102)=3.54$, $p<0.06$, partial $\eta^2=.034$.



Implication: Emotional awareness is a key prerequisite for the application of emotion regulation; which is a core skill underlying the development of social competence and prevention of psychopathology in youth and adolescence (see Zeman et al., 2006 for a review). Youth who participated in TLS developed greater levels of emotional awareness as compared to students in the control group.

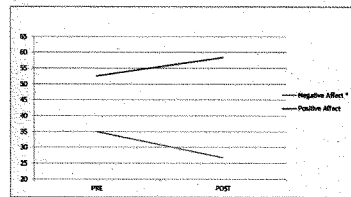


Implication: The inability to tolerate distress has been linked to a variety of serious risk factors including alcohol, drug, and tobacco use, self-injury, suicidal attempts, eating disorders (Zvolensky et al., 2010; Corsopline et al., 2007), and social problem solving deficits (Nock & Mendes, 2008). Students participating in TLS had greater levels of distress tolerance as compared to students in the control group.

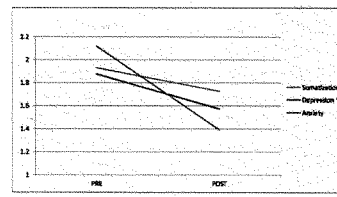
Study 3

TLS was implemented with 103 students in grades 9-11 in a diverse alternative school in California. Students were exposed to 18 weeks of TLS during the fall semester. The effects of TLS were examined pre-post using bootstrapped paired t-tests.

Finding 1: Students had significantly lower levels of negative affect ($p=0.31$) after participating in TLS. Although students made gains in positive affect, this effect was not significant.



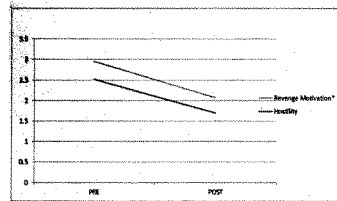
Finding 2: Students who participated in the TLS training had significantly lower levels of depression ($p=.001$) after participating in the TLS training. Reductions in somatization and anxiety were observed, although these effects were not statistically significant.



Implication: A number of studies have identified the important role of general affect in protecting against the future development of psychiatric disorders and building resiliency among youth (Hankin et al., 2011). Negative affect have been linked to future risk for depression and difficulty with emotion regulation (Feng et al., 2009; Sheeber et al., 2009). Youth who participated in TLS had significantly lower levels of negative affect upon completion of the TLS intervention.

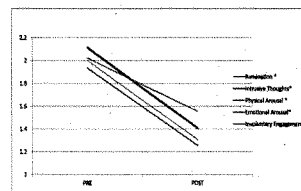
Implication: The transition to adulthood is particularly difficult for youth who experience mental health problems such as anxiety or depression. Youth with depressive-anxious symptoms engage in significantly more risk behaviors, are less likely to obtain a college degree, and over 27% have been charged with an adult crime by the age of 24 (U.S. Department of Health and Human Services, 2009). Youth participating in TLS reported significantly lower levels of depressive symptoms upon completion of the TLS intervention.

Finding 3: Students had significantly lower levels of revenge motivation in response to perceived transgressions ($p=0.001$) after participating in TLS. A general reduction in overall hostility was noted, but this reduction was not significant.



Implication: The capacity to maintain supportive relationships is important for maintaining both mental and physical health (Baumeister & Leary, 1995; House et al., 1988). Prospective studies have found that increases in the capacity to forgive transgressions is related to greater satisfaction with life, more positive mood, fewer negative physical symptoms (Bono, McCollough & Root, 2008). Youth who participated in TLS had significant decreases in their propensity towards revenge motivation upon completion of the intervention.

Finding 4: Students who participated in the TLS training had significantly lower levels of rumination ($p=.001$), intrusive thoughts ($p=.001$), physical arousal ($p=.045$), emotional arousal ($p=.001$), and involuntary engagement in negative thinking ($p=.011$) after participating in the TLS Training.



Implication: The ways in which youth respond to environmental stressors is an important factor in the development of future psychopathology and illness. Maladaptive coping responses such as rumination, emotional and physical arousal, have been linked to the development of a variety of internalizing-externalizing behavior disorders (Compas et al., 2001; Silk, Steinberg, & Morris, 2003). Youth who participated in TLS reported engaging in significantly lower levels of maladaptive coping strategies after completing the intervention.

Social Validity & Acceptability: Participant Feedback

In addition to surveys, we also asked teachers and students to tell us about their experiences participating in TLS. Across all studies, both students and teachers reported that TLS was a beneficial and socially valid practice. Below is a representative listing of feedback we have received to date.

Student Feedback	Teacher Feedback
<p>"I really like the TLS program. It helps a lot to calm me down and helps me refocus for class. It clears my mind of distractions and helps me focus on the importance of simple things."</p>	<p>"I am seeing the beneficial effects of TLS on my students; I feel inspired to apply this in my life."</p>
<p>"Since the TLS program, I have used the breathing methods I have learned when I am upset. It really helps to calm me down."</p>	<p>"The quiet meditation seems to work especially well."</p>
<p>"I really like the meditation that we do. I think that it calms me down, focuses me, and really makes my whole day a lot better."</p>	<p>"I think it's a great program overall, and wonderful to expose the kids to it."</p>
<p>"I like how they teach you skills and stretches that you can use whenever you want."</p>	<p>"I appreciate stepping back for a moment to take on a role as a co-learner rather than teacher."</p>
<p>"This class is very cool and helps a lot. I wish the class were longer though."</p>	<p>"Something I can use for myself and for my students on Thursday."</p>
<p>"Make it last longer (maybe even have a real class) more days doing it." – Student, ECHS</p>	<p>"Helped me! Made me more aware of my own feelings and thoughts. Calmed me way down!"</p>
<p>"I think it has made me think of how I can control myself better in bad situations and think of ways to relax better." – Student, ECHS</p>	<p>"I loved the positive, calm and flexible approach to today's training. I've come away from it with some new ideas of how I might use this in the classroom, and enough training to feel reasonably confident leading it on my own. I also appreciated the ever-needed reminder to take care of myself."</p>
<p>"I like the fact that we can stop whatever is going on at the time and just come to a peaceful mind state afterwards."</p>	<p>"I appreciated the whole presentation. I learned, and I had refreshing physical activity. The idea of implementing this regime district-wide is great – I hope it comes to fruition. I also appreciated the intellectual connection BK made between the physical and emotional condition – very humane!"</p>
<p>"I like how it takes away stress, or rather, how it helps me take away the stress. This program is helping me deal with nervousness."</p>	<p>"Really showed me how it is realistic in the classroom. Calm, peaceful way to unwind after class."</p>
<p>"I think it's very good for me cause it's really help me clear out my mind and forget all the bad things and start over. And it really help me calm down when I am sad or stress out. I love every part of it because I been going through a lot in my life and this program make</p>	<p>"Very simple practices that I can do."</p>
<p>"I think it's very good for me cause it's really help me clear out my mind and forget all the bad things and start over. And it really help me calm down when I am sad or stress out. I love every part of it because I been going through a lot in my life and this program make</p>	<p>"Felt nurtured. Taking care of myself first! Want to apply to myself and my class."</p>
<p>"I think it's very good for me cause it's really help me clear out my mind and forget all the bad things and start over. And it really help me calm down when I am sad or stress out. I love every part of it because I been going through a lot in my life and this program make</p>	<p>"I really liked how it was immediately useful. It can be</p>

me feel good when I close my eyes and take a deep breath.”	applied today.” “Relevant, useful, practical; created HOPE!”
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December 10, 2012

U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Hearing on Ending the School to Prison Pipeline

Dear Chairman Durbin, Ranking Minority Member Graham, and Members of the Subcommittee on the Constitution, Civil Rights, and Human Rights:

Thank you for the opportunity to submit testimony for the hearing on ending the school to prison pipeline before the Senate Committee on the Judiciary's subcommittee on the Constitution, Civil Rights, and Human Rights. As an attorney and child advocate in Ohio, I have witnessed first-hand how the school to prison pipeline harms children and young people in Ohio.

The Ohio Poverty Law Center (OPLC) works with low-income families and legal aid organizations across Ohio to help ensure that all young people have access to high quality educations and are treated with dignity and fairness in schools. Sadly, the data on school discipline that we have gathered from the Ohio Department of Education shows instead that most Ohio school districts push children out of school by overusing harsh exclusionary discipline practices. In a recent issue brief on school discipline I co-authored with the Children's Defense Fund-Ohio, we explain how school discipline data in Ohio shows that Ohio public schools issued more than 200,000 suspensions during the 2010-2011 school year, and that 54 percent of those out of school suspensions were for "disobedient or disruptive behavior" – relatively minor, non-violent, non-criminal behavior. Moreover, the use of out of school suspension, which is one of the most prominent indicators of whether a child will drop out of school, disproportionately impacts African American children, children with disabilities, and low-income children (issue brief available at <http://www.cdfOhio.org/assets/pdf-files/issue-brief-zero-tolerance.pdf>).

This data manifests itself in cases my legal aid colleagues and I see every day while representing children and families in special education and school discipline cases. We've seen, for example, a case in which a six year old girl in Cincinnati was proposed for expulsion from school for bringing her mother's nail clippers to school, or another case in which a third grade

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Page 2

boy in Columbus was suspended from school for saying "yeah" instead of "yes, Ma'am" to his teacher. And in many districts, the use of school resource officers to arrest students for minor misbehavior is a huge problem, too. Last year, I worked with legal aid attorneys in Toledo, Ohio on a case in which an eleven year old girl in 5th grade was arrested at school for refusing to put her books on the floor when instructed to do so. Additionally, teachers are struggling in under-resourced schools and without the tools, training, and support they need to adequately address behavior issues in more developmentally appropriate ways. The combined effect of all of these factors is that many students are out of school so often that keeping up academically and learning appropriate, positive behavior is impossible.

There are evidence-based ways to address these issues and keep more children in school, and our issue brief highlights several of them (many of which are based on projects and systems implemented by the esteemed witnesses from whom you will be hearing on December 12). I hope that the members of the committee will endeavor to find ways to encourage and support communities and schools in implementing positive, preventive approaches to school discipline that de-emphasize suspension and expulsion and promote teaching and modeling positive, respectful behavior for all children. I further urge the federal government to support communities in their fight to end the school to prison pipeline, and I strongly encourage the government to work to reduce racial and disability disparities in discipline, promote alternatives to harsh punishment, and ensure that all young people have the opportunity to succeed.

If I can be of any help in assisting the committee or providing further information about our experiences and efforts in Ohio, please contact me at sbiehl@ohiopoveritylaw.org or 614-824-2504.

Best Regards,

Sarah Biehl
Staff Attorney

Written Testimony of

Christopher L. Scott
Policy Analyst
Open Society Policy Center

before the

United States Senate Committee on the Judiciary,
Subcommittee on the Constitution, Civil Rights and
Human Rights

for the hearing record on

“Ending the School-to-Prison Pipeline”

December 12, 2012

INTRODUCTION: THE SCHOOL-TO-PRISON PIPELINE

The Open Society Policy Center (OSPC)¹ thanks Chairman Durbin, Ranking member Graham, and the full Committee for holding this important hearing on, *Ending the School to Prison Pipeline*.

More than three million students are suspended and over 100,000 students are expelled from school each year. In addition to denying children that time to learn in school, suspensions and expulsions are a leading indicator of whether a child will drop out of school, and out-of-school suspensions increase the risk of future incarceration.²

The nation's growing discipline rates in both traditional public schools and charter schools continue to widen the disparities for disenfranchised youth and systemically push students—especially those who are non-white, and of different language abilities, religions or perceived sexual orientation—out of school.

Research shows that the spike in suspensions, expulsions and arrests produces serious and adverse long term consequences and those schools, by relying on pushing students out of school, inadvertently have created a new pathway to prison. This is the school-to-prison pipeline (STPP).

Schools send students into the pipeline in several ways. First, schools routinely misapply “zero tolerance” policies, which lead to police involvement in minor incidents. Police involvement frequently can lead to arrests, juvenile detention referrals and even incarceration. Second, schools overuse suspensions and expulsions for minor infractions. These extended absences from school discourage students from continuing their education and increase the likelihood they will turn to criminal behavior.

Putting an end to the STPP is critical, not only because the spike in suspensions, expulsions, and arrests is occurring in the face of significant research on the educational and social harms of these practices, but because exclusionary discipline and school policing practices have resulted in entire cohorts of students moving through the STPP and into the juvenile and criminal justice systems.

AN EDUCATION ISSUE AND A CIVIL RIGHTS ISSUE

On the surface “zero tolerance” policies and suspensions and expulsions apply equally to all regardless of race, class and gender. But a growing body of research suggests these policies and practices are applied unevenly. Zero tolerance and policies to “suspend and expel” rule breakers have hit Blacks and Latinos the hardest.

¹OSPC is a non-partisan and non-profit 501(c)(4) organization that engages in advocacy on domestic and international issue including civil rights and liberties, criminal justice reform, immigration, multilateralism, development assistance, health policy and promotion of human rights, transparency and accountability.

² Losen, D., and Gillespie, J. (2012) *Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School*, The Center for Civil Rights Remedies at the Civil Rights Project/Proyecto Derechos Civiles. See <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-ccrr-research/losen-gillespie-opportunity-suspended-ccrr-2012.pdf>

Greater percentages of Black students are suspended and expelled from school than their peers across all races. In 2006, about 15 percent of Black students were suspended, compared with 8 percent of American Indian/Alaska Native students, 7 percent of Hispanic students, 5 percent of White students, and 3 percent of Asian/Pacific Islander students.³ Studies also have shown that students with disabilities are suspended at higher rates than their non-disabled counterparts. And many of these students tend to be black males, who are disproportionately overrepresented in special education and identified as “mentally retarded” or students with significant cognitive disabilities.⁴

The most recent national suspension rates have remained relatively stable. National suspension rates show that 17 percent, or 1 out of every 6 Black schoolchildren enrolled in K-12, was suspended at least once. That still is higher than the 1 in 13 (8 percent) for Native Americans; 1 in 14 (7 percent) for Latinos; 1 in 20 (5 percent) for Whites; or the 1 in 50 (2 percent) for Asian Americans.⁵ Moreover, while African American students make up 17% of all school age youth, they account for 37% of suspensions and 35% of all expulsions and receive harsher discipline than their peers for similar offenses.

These disparities cannot be explained by the simple notion Blacks and Latinos students are inherently bad or violate rules at a greater rate than White students. The disparities can be better explained by the tendency of teachers, principals and administrators, who have biases and negative perceptions of minority students, to respond to disruptive White students with alternative interventions rather than punitive disciplinary consequences.

Black males are also disproportionately and unfairly subjected to policing policies, which includes school based arrests, misdemeanor tickets, referral to law enforcement and juvenile courts and or placement in juvenile detention facilities. Too often, for minor offenses such as truancy, classroom disruption, disobedience, and simple horseplay, which is much too frequently characterized as assault or “terroristic threatening.”⁶

MORE POLICE IN SCHOOLS DOES NOT INCREASE SAFETY

Federal funding compounds the school-to-prison pipeline problem because schools have greater access to federal funding, and districts are willing to move school discipline into the courts and under law enforcement’s jurisdiction. The incentive for more federal funding has exacerbated schools’ reliance on school resource officers (SRO) and policing in schools. While policing in schools is not a new trend, their increasing roles, responsibilities, and daily functions have led to greater incidences of minority student contact with the juvenile and criminal justice systems, and

³ U.S. Department of Education IES National Center for Education Statistics report, “*The Condition of Education*”

⁴ See [Harvard Studies Find Inappropriate Special Education Placements Continue to Segregate and Limit Educational Opportunities for Minority Students Nationwide](#)

⁵ Ibid, *Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School*

⁶ See Delaware Unsafe School Choice Option schools law as an example of “terroristic threatening” language;

<http://attorneygeneral.delaware.gov/schools/laws/11delc621.htm>;

www.doe.k12.de.us/.../files/eSchDisciplineEntryManual.doc

<http://delcode.delaware.gov/sessionlaws/ga141/chp255.shtml>

<http://regulations.delaware.gov/AdminCode/title14/600/608.shtml>

the integration of criminal justice polices in schools. Crime statistics show that majority of arrests for pre-teens occurred in school. This data could suggest that one of the long-term effects of expanding the role of SROs is an increase in the numbers of younger children arrested while in school for fist fights, shoving matches, and other behaviors that rarely warranted police intervention in the past. This is a serious cause for concern. Currently, many, if not all, school discipline approaches are predicated on models of practice that rely on the deployment of police officers as strict enforcers of “student code of conduct” policies and disciplinarians of student misbehavior.⁷

Statistics show that more police are in more schools than ever before. For example, the number of SROs increased by 37 percent between 1997 and 2007.⁸ Some estimates have found that there are more than 17,000 officers who are permanently placed on school campuses.⁹ And some school districts boast a police presence that rivals that of small town forces.¹⁰

In a larger city like Chicago, police have made 2,546 school-based arrests between September 2011 and February 2012. Seventy six percent of those arrested were Black students. On average, 25 students were arrested every day in publicly-funded neighborhood and charter schools, and 19 Black students have been arrested every day this school year.¹¹ Beyond arrests, policing in schools is on the rise in Chicago. CPS recently spent \$6.8 million in taxpayer dollars to install high-definition police cameras at 14 high schools.¹²

Schools and districts have justified the deliberate focus on increased policing as a means of creating safer school environments and improving school climate. But, so far, evidence shows that these policies have been counterproductive in changing student behavior and improving school safety.¹³ There is nothing to show a correlation between policing in schools and the prevention of violence and student misbehavior. Moreover, policing policies and zero tolerance policies have no measureable impact on deterring misconduct or improving school safety, but are associated with a number of negative effects including racial disproportionality, expansion of the

⁷ “In the last decade, the punitive and overzealous tools and approaches of the modern criminal justice system have seeped into our schools, serving to remove children from mainstream educational environments and funnel them onto a one-way path toward prison...” For further reading see: Nancy Heitzeg, *“Education or Incarceration: Zero tolerance Policies and the School-to-Prison Pipeline.”*

⁸ Justice Policy Institute, *Education Under Arrest: The Case Against Police in Schools 1* (2011) [hereinafter *Education Under Arrest*].

⁹ Johanna Wald and Lisa Thureau, Charles Hamilton Houston Institute First Do No Harm: How Educators and Police Can Work Together More Effectively To Keep Schools Safe and Protect Vulnerable Students 1 (2010). See, <http://charleshamiltonhouston.org/assets/documents/news/FINAL%20Do%20No%20Harm.pdf>

¹⁰ Texas Appleseed, *Texas’ School-to-Prison Pipeline: Ticketing, Arrest & Use of Force in Schools 47* (2010); *Education Under Arrest*, *supra* note 1.

¹¹ 2011-2012 arrest data for Chicago acquired through VOYCE/Advancement Project FOIA request to the Chicago Police Department.

¹² Information about 2012 CPS police camera installation available at http://www.cps.edu/News/Press_releases/Pages/04_05_2012_PR1.aspx.

¹³ See *“Final Report, Bi Partisan Working Group on Youth Violence,”* 106th Congress, February 2000 and see also, *“Racial Profiling and Punishment in U.S. Public Schools,”* p. 14.

achievement gap, increased dropout rates, bullying, violence, criminalization of student behavior, and multiple legal issues related to due process.^{14,15}

THE LONG-TERM CONSEQUENCES OF HARSH SCHOOL DISCIPLINE ARE DEVASTATING

The shift in how schools have decided to handle school conduct offenses with exclusionary discipline policies is setting a dangerous precedent and is widening the scope of collateral consequences, especially for Black and Latino males. Research has shown contact with the juvenile and criminal justice systems or removal from school for a significant period of time is directly correlated to criminal involvement or incarceration. Contact with the justice system as a result of policing in schools, suspensions and expulsion or zero tolerance policies, can lead to incarceration, denial of admission into institutions of higher education, and/or enhanced sentencing for offenses committed later in life during adulthood.^{16,17}

Limited data on school based arrests and the lack of enforcement of its collection and reporting compounds the problem even further. While there are some data from the Department of Education's Civil Rights Data Collection (CRDC), national level data on school based arrests are based on small sample sizes. Few school districts collect arrest data and even fewer uses the data to improve schools, reduce disparities and identify practices that keep schools safe and students engaged without relying on suspensions, expulsions, and arrests. On top of that, it has been unclear who has the responsibility—schools or law enforcement—to collect and report data on how many students are arrested each year and whether arrests are rising or falling. Yet, from the limited data that are available, the Department of Education estimates that 70 percent of students arrested or referred to law enforcement, for the 2009-2010 school years, were Black or Latino.¹⁸ Insufficient data prevents useful analysis of why this is the case or whether these arrests are

¹⁴ Ibid, First, Do No Harm

¹⁵ Ibid, Education Under Arrest

¹⁶ "Relevant Conduct": Under certain portions of the "relevant conduct" guideline and its commentary, judges are required to calculate the guideline range based not only on the crime of conviction, but on separate crimes, comprised of their own elements, of which the defendant was acquitted, with which the defendant was never charged, or which were dismissed. The Commission advises judges to find these separate crimes by a preponderance of the "information," without regard to its admissibility under the rules of evidence, if there is sufficient indicium of reliability to support its "probable accuracy." The guideline range is then increased by the same number of months or years as if the defendant had been charged by indictment and convicted by a jury on proof beyond a reasonable doubt, limited only by the statutory maximum for the offense of conviction. See, *"An Introduction to Federal Sentencing,"* p. 7.

¹⁷ Juvenile conduct can be considered and accessed by a sentencing judge if the records are not sealed or if a juvenile is tried as an adult. "Since 1992, 45 states have passed laws making it easier to try juveniles as adults and thirty-one have stiffened sanctions against youths for a variety of offenses. Despite a drop in juvenile crime, the number of formally processed cases involving juveniles—most of them non-violent cases—increased, along with the number of youths held in secure facilities for nonviolent offenses." See, Johanna Wald and Daniel J. Losen, *"Defining and Redirecting a School-to-Prison Pipeline,"* New Directions for Youth Development 99 (Fall 2003): p. 9–15.

¹⁸ See Department of Education CRDC analysis: <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf>

warranted. This suggests not only a hidden crisis for historically disadvantaged subgroups, but also a widespread need for greater reporting and collection of data on school based arrests.

The process of institutionalizing negative consequences and perceptions for Blacks and Latinos, as well as students with disabilities, will perpetuate the use of harmful school discipline practices and policing in schools. Further marginalization of minority youth will continue to create inequitable opportunities and further stratification of society as the achievement gap widens and more youth make contact with the criminal justice system. This will make us, as a society, no closer to seeing the value in teaching and promoting achievement for these vulnerable populations. And will only lead to significantly large cohorts of dropouts among minorities, increased crime rates, intensified gang involvement, greater percentages of illiterate youth, deplorable school systems, high teenage unemployment rates, and a stagnated workforce. All of these factors threaten to set the United States back further globally; both educationally and economically.

RECOMMENDATIONS

The talents and skills of teachers, administrators, students, resource officers and juvenile court workers must be used effectively. The focus of discipline should be on the creation of fair and corrective action plans that provide resources for positive alternatives in addressing disciplinary issues, rather than punishment for the sake of playing politics or being tough. Reform moving forward should emphasize training and remediation along with corrective interventions that are holistic.

There has never been a more important time for federal action on the school to prison pipeline. Therefore, OSPC urges Congress to:

- Reduce school based arrests by placing meaningful requirements on the use of Community Oriented Policing Services (COPS) grants that staff school resource officers (SRO) and other law enforcement officials. These requirements should:
 - Define the role of the SROs and law enforcement in schools and provide assurances their role will not have a harmful or negative impact on school climate or student learning;
 - Provide a 1:1 match of mental health professionals for every SRO or law enforcement official in schools;
 - Train law enforcement officials to be staffed in the school on age appropriate responses to school based conflicts, mediation and conflict resolution;
 - Provide greater oversight of SROs and policing in schools
 - Mandate schools collect and report school based arrest data to the Department of Justice

- Require the Department of Education to annually collect and report school discipline and climate data for all schools
- Instruct the Justice Department's Office of Civil Rights to enforce requirements on schools for collection and reporting of data on school based arrests disaggregated by race, gender, special education status, socioeconomic status and English proficiency and cross tabulated by law enforcement officials and schools.
- Eliminate arrests for truancy and chronic absenteeism.
- Evaluate the hidden costs of exclusionary discipline practices and policing and their effectiveness over less punitive alternatives.
- Pass the proposed Youth PROMISE Act to:
 - Provide resources for the development and implementation of multi-year, local plans to reduce punitive discipline policies;
 - Allow schools and communities to utilize youth-oriented police officers and evidence based training; and
 - Fund community based solutions that can reduce the number of youth entering the juvenile and criminal justice systems.

**Ending the School to Prison Pipeline
Hearing before the Senate Judiciary Subcommittee on the Constitution, Civil
Rights, and Human Rights**

12/12/12 (sent via e-mail)

Testimony from Julie Woestehoff
Executive director, Parents United for Responsible Education, Chicago IL
www.pureparents.org, pure@pureparents.org

Parents United for Responsible Education, or PURE, is a 25-year-old public school parent advocacy group based in Chicago. Over the 25 years we have been working in Chicago, PURE has won many awards including a 2004 Ford Foundation leadership award. We are very proud of our long track record in education reform and as strong advocates for parents in Chicago and across the nation. Thank you for this opportunity to bring our viewpoint into this important discussion.

PURE believes that our students need more resources, more stability, more support services, a richer curriculum, and, especially our older students, a voice in their own education. They also need schools and districts to work more closely and effectively with their parents.

We also believe that students need less high-stakes testing, less experimentation with mediocre charter and turnaround schools coupled with disruptive and too often ineffective school closings, and an end to punitive and damaging discipline practices.

Our members have experienced all of the above problems. We will focus on two major issues in this testimony: the damage from high-stakes testing and the inappropriate student discipline code at one charter school network.

The experiences PURE has helping parents and their children, working with Local School Councils, looking at school practices, and analyzing systemwide policies clearly show that the dropout crisis for African-American and Hispanic youth in the Chicago Public Schools (CPS) is not surprising given the way the schools treat students.

In fact, it is surprising that more students do not drop out because so much of our work is helping parents **keep** their children in school, students who want to be in school but the schools are trying to push them out using a variety of methods. Some of these methods are supposedly not allowed under CPS rules. Some of them are supported by CPS.

High-stakes testing and retention

One major problem is the CPS student retention policy, which, since 1998, has held students back in 3rd, 6th, and 8th grade based on their state test scores. This happens even though the

test makers recommend that promotion decisions should not be made based on test scores alone.

We have filed two discrimination complaints with the U. S. Department of Education, one in 1999 and one in 2010, charging that the policy was unfair and improper, with the most negative impact falling on Latino and African-American students.

In 1999, one of the people filing the complaint with us was a Latina eighth grader. She was an excellent student. She had won awards and scholarships for her writing. Her math score was fine, but her reading score was just a tenth of a point too low. We stated in our complaint that people who learn English as a second language have a special disadvantage taking a 40-minute test in English. For those who have not reached total fluency, each question must be mentally translated into Spanish and then answered, and the answer translated back into English. They lose a lot of time, but that does not mean that they can't read. However, CPS had no interest in that reality.

We won our complaint, but unfortunately the damage had already been done to this young woman. Understandably, she did not want to re-enroll in CPS. She went to a private school but was unable to keep up the tuition. She eventually dropped out.

Hundreds more students dropped rather than go to the CPS Academic Preparatory Centers, which have since been shut down. APCs were segregated schools where eighth grade students who could not meet the cut off scores on the Iowa test had to go for day-long test preparation. They were not allowed to leave and enroll in high school until they had met that cut off score. In 2000, the Consortium on Chicago School Research reported that 29 percent of the students who were retained or sent to APCs in 1997 had dropped out.

In 2010, we filed a new complaint seeking relief from the U. S. Department of Education's Office for Civil Rights (OCR) on behalf of students who have been flunked under the CPS elementary student promotion policy based on an arbitrary cut off score on state standardized tests. We stated in our press release, "CPS has known for years that the policy doesn't work and actually harms children. CPS knows that it disproportionately affects African-American and Latino children. CPS knows that it costs at least \$100 million per year, but instead of cutting this wasteful program, they choose to cut teaching staff and other critical educational resources that actually help children."

One of the complaining parents was the mother of a CPS sixth grader who was retained that fall. His case demonstrates how arbitrary the policy is: CPS required that he go to summer school because his math test score was below the policy cut-off point. Although his reading score was well above the cut-off, he had to take both reading and math in summer school. He passed the math portion, but "flunked" the reading portion because the teacher took away

several test papers and gave him zeros. So, despite the fact that his reading was above average and he passed summer school math, he was retained. In her complaint, the parent wrote, "For every day that my son sits in a six grade classroom, he continues to be discriminated against. This entire process has taken an emotional toll on my entire family, especially my son. (who) no longer wants to attend school. He's not as open with me as he once was prior to his being retained."

These are specific examples of how system wide policies too easily label children and then throw them away. Through hard-fought battles with the prior administration, PURE was able to force changes in these policies, but the system continues to retain an average of 5,000 students every year, and hundreds are retained for the second or third time. Decades of research show that flunking students once makes it likely that the student will drop out. Flunking an African-American or Latino student twice makes it almost 100% sure that he or she will drop out.

Why does CPS continue to have a policy that research shows will cause many students to drop out and costs hundreds of millions of dollars, when CPS has such severe budget problems that it is threatening to close as many as 100 schools, further disrupting students' lives and leading to more students dropping out?

Inappropriate charter school discipline policies

In 2010, PURE supported a parent who complained about the excessive, unreasonable discipline policies at one of the most highly-touted charter school networks, the Noble Street Charter Schools. Noble charter schools fine students for even the most trivial rule violations, such as slouching in a seat, chewing gum, or having a shirt button undone. Not only did this small network of around 6,500 students collected nearly \$400,000 in fines from the mostly low-income families for whom it is supposed to be providing a free public education, it has been widely celebrated by the Mayor and other city leaders. In fact, the Mayor has referred to Noble as having the "secret sauce" to urban education, and has pushed for an expansion of the Noble Network.

In other words, while cities and school districts all across the country are recognizing the urgent need to move away from destructive zero-tolerance discipline, Chicago schools are actively promoting an unprecedented escalation of these overly-harsh practices. Noble CEO Michael Milkie has even been vigorously defending his policy by claiming that the alternative is chaotic, unsafe schools. This is a false choice that should fool no one. There are literally thousands of schools all across the country that are able to maintain orderly, productive school environments, and none of them gouge parents with "discipline taxes."

Noble argues that the fines collected from students are needed to cover the schools' costs for operating its disciplinary system. Yet every other public school in the country is able to

administer school discipline without resorting to the fining of students. If Noble is unable to manage one of its core functions - addressing behavior and discipline - through the tens of millions of taxpayer dollars they receive annually, then it would seem that an investigation would be in order, not an expansion.

Noble and its supporters claim these fines are a small price to pay for the results that Noble achieves. However, if you take a close look at these numbers, you soon learn that they amount to little more than an educational shell game. Noble's reported graduation rate excludes the many hundreds of students who transfer out every year because of these radical practices or other reasons. In fact, the school CEO, Michael Milkie, has admitted that up to 40% of 9th grade students leave for other schools before their senior year. In other words, Noble is being allowed to use these discipline taxes to weed out the students that would otherwise drag down their numbers.

The student whose mother came to PURE for help has been systematically pushed out of the Noble school by the near-daily discipline punishments and fees, by being forced to repeat his freshman year because of the excessive discipline actions, and by general harassment.

The students that attend Noble schools deserve better, as do the students at all other Chicago schools that continue to misuse destructive disciplinary practices. These schools have much to learn from places like Baltimore and Denver, where the schools are reaping the benefits from a common-sense approach to school discipline and school safety. In both places, there has been a conscious effort to reduce harsh disciplinary consequences and instead focus on meeting student needs through early interventions, teaching appropriate behavior, and building healthy relationships between students and their teachers and administrators. As a result, attendance and academic achievement levels are on the rise, and their graduation rates are skyrocketing.

These districts, and the many others like them, are demonstrating that there are no shortcuts to educational success. The real "secret sauce" is to value and respect the educational opportunities of youth, not to push them out into the streets through nonsensical disciplinary practices.

Other problems

PURE has a thousand stories about the frustrations parents and students experience. A parent called PURE because her daughter, a high school junior, had a job starting at 3 pm on weekdays. The parent is a single mom and the family needed the income. They had asked the school to adjust the student's schedule so that she could get to her job on time. The student had room on her schedule and was even signed up for classes she didn't need to graduate. The school refused to make any changes. They told her that she either needed to leave school or quit her job. That was a terrible choice for a low-income family to face. So, a PURE

advocate took them to the school to try to get the school to cooperate. They refused, so we had to take it higher in CPS, to the high school department. Suddenly the school decided that maybe they can change the students' schedule. Here was a student who wanted a future and the school just couldn't be bothered to care until a CPS administrator stepped in.

There are also many problems that happen on a case-by-case basis. PURE receives calls day after day from parents of students who want to stay in school but the door is being slammed shut in their faces. It seems that, instead of trying to HOLD the students in school, they try to let them go or push them out.

Over the past year we have received many calls to go to expulsion hearings or to help students when the school won't let them enroll, saying that they do not live in the attendance area or that they are overcrowded. We have students sitting at home because no school will enroll them or help them find another school.

One of the main factors that we see is that there is not nearly enough counselor support for students. I would say that more than 50% of the students do not know who their counselor is, who to go to for help or information. At the same time, I'd say that 80% of the parents do not know who their child's counselor is because the counselor has not made any contact with the parents except in cases where they are telling them that their children are being expelled, cutting classes, misbehaving, other things that could be fixed if there was better communication before the problems got out of hand and parents and the school could work together to improve the situation. This is especially frustrating for students who feel that they get no support from the school, only blame and punishment.

The whole zero tolerance attitude makes it almost impossible to fix problems like gang problems. Language barriers are not even considered. Instead, if you mess up, you are gone. Another throw away kid.

We understand that the parents have a big role here. But if the school does not have any communication with the parents as far as meetings, workshops, programs, many parents never understand that not only do they have to be involved in elementary school but also in high school. Parents also don't know their rights, so if the school tells them that their child can't come back to the school, the parent may not know what to do. More communication and support for parents would help solve many problems and keep more students in school.

We see that high schools have not made the same effort as the elementary schools to involve parents. We see very few high school bilingual committees, NCLB committees. How many high schools invite parents to form parent patrols, or have workshops or parent volunteers programs? High school students need to see their parents in the school maybe even more

than the younger children. And it's true that many parents need extra help to raise high schoolers.

One more cause of dropouts is the lack of hope so many students feel. Some of that happens because the high school does not help them plan for college, or even give them the idea that they can go on and do more. This is also a problem of poor counseling services and lack of communication with parents. When students see no real future, why would they care about completing high school?

Some solutions

What is the best way to handle issues of school discipline and school safety? How do we create safe and healthy schools that promote academic achievement?

One approach, employed by schools all across the country, relies on common-sense disciplinary practices that treat students fairly and appropriately and produces positive outcomes for students, families, and communities. The other approach, employed by many schools in Chicago, continues to use ineffective zero-tolerance strategies that result in the unnecessary suspension, expulsion, or arrest of tens of thousands of Chicago youth every year. As the research of Advancement Project and others has demonstrated, not only have these practices failed to improve school safety, they lead to high dropout rates, lower academic achievement, and too many youth being pushed onto a pathway to prison.

What is the best way to assure that students are prepared when they move from one grade to another? Any student who is not making enough progress must be given an individualized plan, in consultation with the parents, which addresses the students' real needs. Then that plan must be carried out with everyone taking responsibility for making sure the student succeeds.

Specifically PURE recommends that schools:

- ◆ **End wholesale retention of students.** Retention has been shown by decades of research to increase the drop out rate. Retention should be used only when parents and the school agree that it is in the best interest of that individual child. Other options include developing individualized education plans for at-risk students and creating student portfolios to get a better understanding of the student's strengths and weaknesses.
- ◆ **Hold an extensive, public review of enrollment, discipline, and other policies** to minimize the potential for schools to push students out and maximize the opportunities for student support and cooperative problem solving.

◆ **Increase both the number and the effectiveness of high school counselors** through adding positions, training, and clear communication to students and parents about what to expect from the counselors. Make sure that all students and their families receive extensive, ongoing information about college and other further educational opportunities.

◆ **Require every high school, with the Local School Council, to create a plan for increased parent outreach and participation.** This should include offering parents workshops on their rights and on proper high school policies, opportunities to volunteer and observe in their children's classrooms, and clear information about the school curriculum and programs.

POWER-PAC

Parents Organized to Win, Educate, and Renew – Policy Action Council



We are offering our testimony as parents and grandparents of students in the Chicago Public Schools (CPS), who have seen firsthand the ugly reality of the school-to-prison pipeline. We are also writing as members of POWER-PAC (Parents Organized to Win, Educate and Renew—Policy Action Council), a Chicago-wide organization of African-American and Latino parents and grandparents working to make our schools and communities more family-friendly. We are supported by the non-profit organization COFI (Community Organizing and Family Issues; cofionline.org.) We are also a member organization of the national Dignity in Schools Campaign, which challenges the systemic problem of pushout in our nation's schools (dignityinschools.org).

Our campaign to end the school-to-prison pipeline began in 2004. It was the first issue that we decided to tackle after we came together across race and community to form POWER-PAC in 2003. We shared our stories and realized that many of our children had been criminalized and pushed out of school for non-dangerous or even typical youth behavior. One of us, an African-American mother from the West Side of Chicago, saw her two foster children suspended again and again without the school ever trying to address the root problems. Another one of us, a Puerto Rican mother from northwest Chicago, saw her son punished as he struggled to overcome bullying and the frustration of a learning disability. He eventually dropped out of high school—or, as we believe, pushed out by a school system that would rather get rid of “problem” students than educate them.

We then took our concerns out into the community and discovered that they were shared by most other parents and grandparents. We talked to families from 43 Chicago public schools and found that: 37% percent had had a child suspended; more than 4 out of 5 felt thought the suspension was not appropriate and not handled well; and in more than 2 out of 3 suspensions, the parents were not notified appropriately. As parents, we knew intuitively that this exclusion is no solution. It labels our children as criminals and then sends them out into the street, where they are more at risk and more likely to get caught up in the type of behavior that can get them into *real* trouble, like gang violence or involvement in the juvenile justice system.

That is why we have been campaigning since 2004 to redirect this school-to-prison pipeline in Chicago. We have had many victories: Working with advocates and the district, we helped win a major re-write of CPS’ discipline policies in 2007. The CPS Student of Conduct no longer includes the “zero-tolerance” language that had increased the criminalization of youthful behavior. Schools can no longer suspend pre-kindergarten and kindergarten students—and yes, schools *were* suspending three, four and five-years old before the change. Finally, CPS policy

now officially endorses and encourages the use of proactive, positive discipline to keep students *in* school, where they can learn from their mistakes and stay on track with their education.

We have also taken matters into our own hands by creating and running parent-run, school-based “peace centers” to show that we can address students’ misbehavior and struggles without pushing them out of school and onto the pipeline to prison. We use the philosophy and practices of “restorative justice,” one of the discipline approaches advocated in the CPS Code of Conduct and now spreading across the country. Restorative justice focuses on repairing the harm caused by conflict, rather than just punishing the offender. It has also been used successfully in the juvenile and criminal justice systems.

One of our greatest “peace center” successes has been at Wells Community Academy High School, a Chicago neighborhood high school that receives students from three different neighborhoods, often from competing gangs. Five years ago, the school had a terrible reputation for violence and poor academics. But one of our POWER-PAC members, a Mexican immigrant mother, decided that needed to change when her son, a recent graduate of the school, was killed in a random drive-by in the community around her house and the school. Working with a new principal, POWER-PAC helped her to start a peace center at the school and to bring in other community-based resources. Wells has now achieved a dramatic turnaround, lowering suspensions and arrests, reducing student misconduct, and improving academic performance. (After over a decade on academic probation, Wells is now off.) Our parent “peacemakers” continue to work with dozens of students each month, helping them to resolve conflicts and encouraging them to stay in school when they are struggling.

This is the kind of grassroots, community-led solution that we know can help our children get on the pipeline to college and productive citizenship. But we cannot do it alone. Despite the improvements in CPS policies, our school system still has an alarming rate of suspensions and school-based arrests. The most recent federal data, available for the 2009-2010 school year from the Department of Education’s Office for Civil Rights, shows that 73,375 of CPS students were suspended out-of-school at least once that school year. That includes more than 30 percent of African-American students, which sadly means that our district has one of the nation’s worst racial disparities.

So we know that there is still a lot to do. We have endorsed the national call for a moratorium on out-of-school suspensions, led by the Dignity in Schools and Opportunity to Learn campaigns (stopsuspensions.org). Out-of-school suspensions are so counterproductive that we know our children will be better off if schools are forced to invest their time and resources into positive, proven alternatives like restorative justice. These alternatives, and discipline policies that support them, are detailed in the Dignity in Schools “Model Code on Education and Dignity,” which POWER-PAC helped to inform (dignityinschools.org/our-work/model-school-code). The federal government could help support these alternatives by making funding available

to districts and schools for implementation. We hope that the “Supportive School Discipline Initiative,” a joint initiative currently underway from the Department of Education and Department of Justice, will also help pave the way for systemic reforms. We as parents and grandparents look forward to that day when schools know that reducing student pushout, eliminating racial discipline disparities, and improving school climate is as high of a priority as academics and test scores. That’s the only way we can end the school-to-prison pipeline, and put our children on the pipeline to success.

We are grateful to the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights for addressing this important issue, and for giving the parents and grandparents of POWER-PAC the opportunity to submit this testimony.

POWER-PAC—*Parents Organized to Win, Educate and Renew - Policy Action Council*—is a project of COFI, Community Organizing and Family Issues. POWER-PAC can be contacted c/o COFI, 1436 West Randolph, 4th Floor, Chicago, Illinois 60607. Ph: 312.226.5141. F: 312.226.5144.



COLLEGE OF ARTS AND SCIENCES

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December 7, 2012

Senator Dick Durbin
Chair, Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights
711 Hart Senate Bldg.
Washington, DC 20510

RE: December 12, 2012 hearing on the school-to-prison pipeline

Dear Senator Durbin:

Thank you for holding information hearings on school discipline, and for the opportunity to be heard on this important issue.

I am a professor of sociology and criminal justice at the University of Delaware; my central research focus is on discipline and security at public schools. I have published a book and several peer-reviewed research articles on this subject; I have given expert testimony about it; I have advised my state's former Secretary of Education, a state Legislative Task Force, and the Chief Family Court Judge of Delaware on the topic; I am often asked to speak about and write on the topic; my work on school discipline and security has been funded by the National Science Foundation; and I hold prominent leadership positions within the American Society of Criminology and the American Sociological Association.

Given my knowledge of the research on this area as well as my first-hand research, much of it conducted through observations of school disciplinary actions, I believe I am an expert on the topic before the Subcommittee.

Over the past twenty years, states across the U.S. have shifted their school punishment practices. It is now common for students to be suspended for minor offenses and arrested at school. These trends cause large unnecessary fiscal burdens on cash-strapped public schools while being ineffective, and often very harmful, for the following reasons:

1. School crime across the country has been declining for the past 20 years, according to several credible national, federally-funded sources. Increasingly harsh punishments are not necessary at public schools.
2. Suspension, expulsion and arrest mean that struggling students receive less instructional time, are removed from school, and are at increased risk of dropping out. These

difficulties, along with the arrest records that follow, are major hurdles to their long-term financial and social success.

3. Harsh school discipline exacerbates racial inequality. Research repeatedly finds that youth of color, particularly Black youth, are at increased risk of being punished at school, regardless of their actual behaviors. Black youth are viewed more critically than others due to subtle stereotypes and biases; they are perceived to be more hostile, threatening, and disorderly than other students. This leads to greater likelihood of unnecessary punishment and risk of arrest and incarceration.
4. There is no credible evidence that harsh discipline and security help maintain school safety. Research on the topic has failed to establish such a causal link. Moreover, a growing body of research suggests that these strategies make schools *less* safe. Safe schools are marked by inclusive social climates, where teachers show students that they care, youth feel included in and valued by the school, and people trust one another. Contemporary school discipline and security seeks to impose rigid policing and harsh punishment, which *erodes* these protective elements by turning students against the school and alienating rather than welcoming them into the school.
5. Current strategies of over-policing, zero tolerance, and harsh punishment teach students lessons that hurt American democratic institutions. Students learn to passively consent to authorities, and are alienated from self-governance, as they are punished for critical thought and voice. In my current research, for example, I find that school punishment predicts reduced odds of voting in the future as a young adult.

The essential problem is that schools rely on policing and harsh punishment in a way that makes the problem worse and deepens inequality, rather than addressing student problems themselves. For example, in my research I found that teachers routinely tell me the same thing: students tend to act up in class because they do not understand the course material. But what do contemporary schools do in response? We remove these students from class, providing no alternative teaching, thus ensuring that they fall further behind and the problem grows. I have also found few teachers and administrators who take the time to find out why students misbehave; instead they punish, and do so rather severely, thus missing opportunities to help youth.

It is unfortunate that schools across the U.S. have invested heavily in a set of strategies that is so costly, both financially and to the lives of young people. Financially struggling schools, school districts, and states pay great sums of money for security technology and personnel that only make school discipline problems worse, not better. Though decisions on how to punish students are made by school districts and school administrators, not the U.S. Senate, the federal government has contributed to the problem through bad policies such as mandated zero tolerance policies and targeted funding for schools to enhance their partnerships with policing agencies (through the “Secure Our Schools Act”). But there are many evidence-based practices that, according to the existing research, promise much better results. Undoing federally mandated zero tolerance policies, discouraging high suspension rates, investing in teacher training for classroom management skills, and replacing police officers in schools with mentors trained in child/adolescent development would be a good start. But perhaps more importantly, recognition of the problem and commitment to address it would send a message to school districts across the country about their misplaced efforts.

Again, thank you. I am hopeful that your leadership in addressing this important problem will help improve educational experiences for our youth, and in the process reduce school crime and racial inequality while better equipping the next generation for successful futures.

Sincerely

A handwritten signature in black ink, reading "Aaron Kupchik". The signature is fluid and cursive, with the first name "Aaron" and last name "Kupchik" clearly distinguishable.

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STATEMENT OF JOSEPH B. TULMAN

to the

**Senate Judiciary Subcommittee
on the Constitution, Civil Rights, and Human Rights**

Ending the School-to-Prison Pipeline

**Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and
Human Rights**

Date: December 12, 2012

Time: 2:00 p.m.

Location: Dirksen Senate Office Building Room 226

The United States leads the world in incarceration. We incarcerate more people than any other country, both in total numbers – one quarter of the world’s incarcerated people are in America – and per capita. Other advanced democracies incarcerate, from the adult population, between fifty and 150 per 100,000. America is over 700 per 100,000.¹ America incarcerates nearly five times as many children per capita as the next highest country.² No evidence establishes that American adults and American children are inherently more deviant, delinquent, or criminal than people in other countries. America’s outlier status and experience in regard to incarceration do not suggest that mass incarceration is an effective strategy for controlling or reducing crime.

America only recently began to use mass incarceration. In the last forty years, we have increased by seven-fold the number of incarcerated people in America. On first blush, this unprecedented rise appears to violate the general rule that systems tend toward equilibrium. A closer examination, however, explains the apparent anomaly. Michelle Alexander has aptly and accurately described how America has maintained equilibrium in subjugating mostly low-income people of color.³ Slavery ended, but the Jim Crow era arose. Jim Crow ended, finally, in the 1950s and 1960s, but mass incarceration – focused overwhelmingly on poor people of color – arose, starting with campaigning for “law and order” in 1968.⁴ In the District of Columbia, literally 100 percent of the incarcerated children are children of color from low-income families.⁵

My practice of law started with delinquency defense and child welfare representation over thirty years ago. In the fall of 1984, I started teaching at the Antioch School of Law, in the Juvenile Law Clinic, supervising law students and representing clients in delinquency cases. Subsequently, I became a professor of law at the University of the District of Columbia David A. Clarke School of Law.⁶ I direct the law school’s Juvenile and Special Education Law Clinic, and I direct the Took Crowell Institute for At-Risk Youth. Over several years, beginning in the early 1980s, I began to recognize a clear pattern: almost all of the children whom I was representing in the delinquency system had unmet special education needs. The same was true for many of

¹ See, DAVID M. KENNEDY, DON’T SHOOT: ONE MAN, A STREET FELLOWSHIP, AND THE END OF VIOLENCE IN INNER-CITY AMERICA 146-47 (2011) (calculating the increase as an 1100 percent rise); cf., e.g., Stephen B. Bright, *Legal Representation for the Poor: Can Society Afford this Much Injustice?*, 75 MO. L. REV. 683 (2010) (calculating rise from approximately 200,000 to 2.3 million incarcerated persons as an 800 percent increase).

² “No Place for Kids: The Case for Reducing Juvenile Incarceration,” p.2 (2011), available at http://www.aecf.org/~media/Pubs/Topics/Juvenile%20Justice/Detention%20Reform/NoPlaceForKids/JJ_NoPlaceForKids_Full.pdf.

³ See generally, Michelle Alexander, *The New Jim Crow*, 9 OHIO ST. J. CRIM. L. 1, 11-15 (2011) and Michelle Alexander, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010).

⁴ *Id.*

⁵ Cf. e.g. Arthur L. Burnett, Sr., *Race and National Origin as Influential Factors in Juvenile Detention*, 3 D.C. L. REV. 355, 370 tbl.1 (1995) (showing that the percentage of the population of incarcerated children in D.C. that are minority is 100 percent).

⁶ The Antioch School of Law closed in the late 1980s, and the District of Columbia created the public law school – the D.C. School of Law and, subsequently the U.D.C. David A. Clarke School of Law (UDC-DCSL). The public law school inherited, and has sustained, the unique mission of training law students who themselves come from underrepresented backgrounds; using clinical, hands-on education to the maximum extent feasible; and serving D.C.’s low-income residents. UDC-DCSL is one of the most diverse law schools in the country; the law school has more clinical education per student than any other law school; and UDC-DCSL faculty and law students provide thousands of hours of legal services to low-income D.C. residents each year.

the children and parents I had represented in the child welfare system. Virtually none of my clients had succeeded in school.

Having recognized that the lack of educational success was a principal and perhaps defining factor that led to delinquency involvement for children in D.C. (and elsewhere), I incorporated special education representation into the clinic. Since the early 1990s, my colleagues and I, along with the law students whom we supervise, have been providing special education representation for low-income D.C. residents, with a focus on children who are at-risk of delinquency involvement.

As part of conducting investigations for our clients, my colleagues and I, along with the law students, excavate and examine the school histories of the young people who are the focus of our representation. What we find invariably is a stunning lack of academic success in elementary school. These kids tread water for years; then they start to drown. They fail academically, and they fail socially and emotionally. Often, the problems manifest in serious emotional and behavioral problems at some point in late elementary school or in early middle school. Sometimes, we see that school administrators have held the child back for one, two, or more grades in elementary school. Repeating a grade, however, is not a factor in every case. The substantial lack of academic progress, though, is uniformly a factor.

Another uniform problem that we see in the school histories of these young, at-risk youth is that disproportionately they have been the subject of disciplinary exclusion. Public school and public charter school administrators in D.C. – and, indeed, around the country – are relying on school exclusion. This reliance is demonstrably counter-productive and indefensible. The Council of State Governments and Texas A&M recently concluded and published a massive, longitudinal study on suspensions and expulsions. This study is conclusive. Controlling for every variable imaginable, the researchers established that excluding children increases the likelihood that a child will repeat a grade, increases the likelihood that a child will not complete high school, and increases the likelihood that a child will enter the delinquency system. In addition, the researchers found, not surprisingly, that the use of school exclusion is discriminatory in regard to race and disability.⁷ Moreover, other definitive studies show that alternatives to school exclusion – like PBIS and restorative justice – are effective. School administrators should be using positive behavioral interventions and supports, as well as restorative justice approaches. For individual children who present extraordinary behavioral challenges, school administrators should be employing the evaluations and delivering the services mandated by the Individuals with Disabilities Education Act (IDEA).

Another factor that I recognize as common to at-risk students in late elementary and in middle school years is that they typically have unmet special education needs. We often find in our representation of parents and children that school administrators and other school personnel have assiduously avoided the obvious fact that a child has an education-related disability. Further, we consistently find that school personnel have failed to provide appropriate, detailed and useful, special education evaluations. Frankly, in addition, I have never seen, from a D.C. public school or public charter school, a correctly-designed and properly-implemented functional

⁷ The study, *Breaking Schools' Rules*, is available at <http://knowledgecenter.csg.org/drupal/content/breaking-schools-rules-statewide-study>.

behavioral assessment (FBA). School administrators ordinarily countenance, as a substitute for an appropriate FBA, having a teacher or administrator fill out a form (designated as an FBA) in which that person lists behaviors that the child has exhibited. Compounding the FBA problem, school administrators generate behavioral contracts instead of legitimate behavior intervention plans.

Public school and charter school administrators ignore various other Congressional dictates that are part of the IDEA. These include a failure to provide appropriate related services, particularly behavioral supports, parent training, school-based social work services, recreation and therapeutic recreation.⁸ Moreover, special education officials avoid having representatives of other agencies (e.g., in D.C., the Department of Mental Health or the Rehabilitation Services Administration within the Department of Disability Services) come to individualized education program (IEP) meetings. Special education officials, as well as special education coordinators at individual public and public charter schools, avoid engaging personnel from other agencies in the IEP process based upon an expectation that the personnel from those other agencies will not provide services listed in the IEP and that, therefore, the public school or public charter school personnel will have to provide the service. Thus, inter-agency collaboration is rare. A real integrated system of care for children does not exist in D.C. Even coordinating Medicaid reimbursement is a struggle. I have observed these problems in jurisdictions across the country.

In passing the original special education law, Congress intended to stop the discriminatory exclusion of children with disabilities from public schools. "Congress very much meant to strip schools of the unilateral authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school."⁹ The problem has gotten much worse, however, since Congress acted in 1975. Children with disabilities are much more likely to be excluded from school and referred to delinquency court than are their non-disabled peers.

In the 1997 amendments to the Individuals with Disabilities Education Act, Congress attempted to ensure that court personnel have the information necessary to push back to the schools cases in which school administrators were doing an "end run" of their obligation to identify and to serve children with disabilities.¹⁰ When public school and public charter school personnel refer children – children whom they know or should know have education-related disabilities – to law enforcement and to delinquency court, those school personnel uniformly and without exception fail to comply with the requirement, in 20 U.S.C. §1415(k)(6)(b), to send "copies of the special education and disciplinary records of the child..." Similarly, the juvenile court's intake personnel (usually intake probation officers) do not sufficiently investigate the circumstances surrounding the delinquency allegations and almost never question whether school

⁸ See 34 C.F.R. §300.34.

⁹ *Honig v. Doe*, 484 U.S. 305, 323 (1988).

¹⁰ See, e.g., *In re Trent M.*, 569 N.W.2d 719, 724 (Wis. Ct. App. 1997). Whether school administrators are attempting an end run of special education responsibilities should be considered at the "investigative and referral levels" of the juvenile court process at which decisions are made regarding "whether the case belongs in the juvenile system in the first instance..."

personnel have provided the child with appropriate special education services to address the child's needs. This inquiry, though, is a central function of the court's intake personnel.¹¹ Thus, the child gets "the worst of both worlds" – a lack of legally-required services in school, and a failure by the court system to catch the problem. The court inherits the school's problem, and the community collectively criminalizes another child. In short, we have a rapidly-flowing and jam-packed school-to-prison pipeline.

An effective school should avoid referring children to the police and to the delinquency court for behavior that does not rise to the level of serious and violent conduct. By radically increasing the number of delinquency cases, jurisdictions around the country have inundated their juvenile courts with children who have allegedly engaged in conduct that would never have resulted in a court referral in previous generations. Under current standards – as applied primarily to low-income children of color – almost all of us who are now adults would have been processed as delinquents. Less than three percent of the school exclusions documented in the Texas study were for "zero tolerance" conduct like bringing a firearm to school; over ninety-seven percent of the school exclusions in the Texas study were for discretionary charges.

Congress should not support nor condone the infusion by state and local governments of police presence into public schools. Further, no school system should have mass exclusions.¹² The only children who should be out of school should be those for whom a court has determined -- either pursuant to the delinquency preventive detention standard or pursuant to the mental health civil standard -- that the child is too dangerous to self or to others to be maintained in the community. As the definitive Texas study (see n. 7, *supra*) has established, school exclusion is counter-productive and racially discriminatory. In addition, school administrators disproportionately exclude children with disabilities.

The District of Columbia has about 16,000 suspensions and expulsions per year. Many schools in low-income neighborhoods have allowed administrators to transform schools into hostile, prison-like environments. Uniformed personnel roam the halls, confronting children. This kind of atmosphere is poisonous. It triggers the kind of oppositional attitude that many people consider developmental normative – albeit, usually manageable -- for teenagers.¹³

As I have outlined above, teenagers who are at-risk of delinquency involvement and incarceration have underlying educational issues (including social and emotional issues) that develop before high school. Indeed, my experience is that the problems develop before and

¹¹ "Powers of the probation officer" include "mak[ing] investigations, reports, and recommendations to the juvenile court; receiv[ing] and examin[ing] complaints and charges of delinquency, unruly conduct or deprivation of a child for the purpose of considering the commencement of proceedings. . . . [and] mak[ing] appropriate referrals to other private or public agencies of the community if their assistance appears to be needed or desirable..." Model Juv. Ct. Act § 6 (1968)

¹² The establishment of "alternative" schools for excluded children exacerbates the problem of the school-to-prison pipeline. Texas, for example, has a two-tiered, pervasive system of alternative schools. Yet, the "Breaking Schools' Rules" study demonstrates that school exclusion is counter-productive and discriminatory.

¹³ This dynamic brings to mind the following quote (misidentified as a quote from Mark Twain): "When I was a boy of fourteen, my father was so ignorant I could hardly stand to have the old man around. But when I got to be twenty-one, I was astonished at how much he had learned in seven years."

during elementary school, but the problems begin to manifest in seriously disruptive behaviors often in middle school. Children who are in elementary school are not generally capable of absenting themselves from school routinely. Elementary-age children are generally not chronically using and abusing illegal drugs and alcohol. Similarly, most young children who are seriously at-risk do not begin to steal or commit other delinquent acts at a frequent rate until some point during middle school. I must add also that all of us are more likely to identify children who “act out” in school or elsewhere than we are to identify children who “act in.” That is, some children who are depressed or who are traumatized quietly and, in a sense, unobtrusively harm themselves. They withdraw; they engage in self-injurious behavior or contemplate suicide. They get pregnant.

For most of the children with whom I have worked, especially those who are identified as delinquent, the problems began to manifest in seriously-disruptive and self-destructive behaviors in late elementary and in middle school. Obvious indicia include poor school attendance and frequent tardiness, failing classes in school, and repeating grades. School exclusion (suspension or expulsion) is another primary concern. Children who have changed schools often are clearly more likely to be at risk, as well.

As Congress found in passing the federal special education law (and in passing other disability rights laws), this country has a history of excluding and segregating children with disabilities. America also has a history of discriminating by institutionalizing people (including children) with disabilities. On the other hand, one should not have to say that a child is “at-risk” because the child has an education-related disability (i.e., specific learning disability, emotional disturbance, intellectual disability, and the other disabilities covered by the IDEA). On the contrary, if people complied with the IDEA and other laws, children with disabilities would not be at greater risk.¹⁴ In reality, however, children with education-related disabilities continue to be at greater risk than their non-disabled peers. For these reasons, I must also include – in the list of factors that put a child “at-risk” of entering the school-to-prison pipeline – that the child has an education-related disability.

Another huge component of the school-to-prison pipeline is the almost complete lack of meaningful access to defense counsel for children from low-income families who are facing delinquency charges. Having traveled to most of the states to explore with attorneys and others the state of the delinquency system, I can report that children in some jurisdictions still do not get court-appointed attorneys. In virtually every jurisdiction, court-appointed attorneys have unmanageable caseloads and do not provide effective assistance, as required by the Sixth Amendment. Indeed, in a number of jurisdictions, attorneys counsel child clients to plead guilty at the initial hearing. This practice, in my view, constitutes *per se* ineffective assistance of counsel. Prior to investigation and discovery, no attorney can advise a client to plead guilty.

¹⁴ “Of course, it would be a violation of Section 504 of the Rehabilitation Act of 1973 if a school were discriminating against children with disabilities in how they were acting under this authority (e.g., if they were only reporting crimes committed by children with disabilities and not [those] committed by nondisabled students).” 64 Fed. Reg. 12631 (March 12, 1999).

The courts, including the U.S. Supreme Court, have helped to widen the school-to-prison pipeline and to increase its flow. In *Schall v. Martin*,¹⁵ the Court fundamentally undermined the due process advances of the late 1960s cases of *Kent*,¹⁶ *Gault*,¹⁷ and *Winship*¹⁸ by revising and redefining the liberty interest of a child. In the breakthrough cases, the Court recognized that children had a fundamental liberty interest and that due process was consistent with treating children differently than adults. In *Schall v. Martin*, the Court explained that a child's liberty interest was not as great as an adult's liberty interest because a child is either in the custody of the state or the parent. By falsely equating one form of "custody" with the other, the Court defied common sense and experience. The impact of incarceration on a child is likely more disruptive and even devastating than the impact of incarceration on an adult. In addition, by removing a child from the custody of parents, a court not only overrides the child's liberty interest but also the liberty interest of the parent in maintaining custody over the child. The latter interest is not one that the *Schall v. Martin* opinion considered.

The Supreme Court has also made the litigation of special education matters more difficult for parents, particularly for low-income parents. Specifically, the Court, in *Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health and Human Resources*,¹⁹ ended the "catalyst theory" for attorney-fee shifting in civil rights cases, and, in *Arlington Central School District v. Murphy*,²⁰ interpreted the IDEA's fee-shifting provision as not including reimbursement for expert witnesses. Parents, particularly low-income parents, are seriously prejudiced by these decisions. A third Supreme Court case interpreting the IDEA, *Schaffer v. Weast*,²¹ also creates barriers for parents of children with disabilities by ruling that the burden in a special education case is on the moving party (typically the parent). To her credit, Justice O'Connor is careful, though, in writing for the majority, to explain that only the burden of *persuasion* is on the parent. The Court does not explicitly rule on the burden of *production*. Unfortunately, administrators in public school systems and hearing officers in administrative special education hearings uniformly mush the two together. Schools do not provide adequate information; parents are in the dark; parents lose hearings; and children do not get appropriate services.

Congress should legislatively correct *Schall v. Martin* and the trio of cases (*Buckhannon*, *Murphy*, and *Schaffer*) that prejudice children and that accelerate the flow of the school-to-prison pipeline.

Another factor that is adding to the size and speed of the school-to-prison pipeline is the lack of access to economic opportunity for children from low-income families, and particularly children of color who also have education-related disabilities. Our housing patterns remain segregated by race. In past decades, however, racially-segregated African-American neighborhoods were heterogeneous in regard to income levels. These neighborhoods had small businesses, banks, and professionals, alongside working-class people. In recent decades, African

¹⁵ 467 U.S. 253 (1984).

¹⁶ *Kent v. United States*, 383 U.S. 541 (1966).

¹⁷ *In re Application of Gault*, 387 U.S. 1 (1967).

¹⁸ *In re Winship*, 397 U.S. 358 (1970).

¹⁹ 532 U.S. 598 (2001).

²⁰ 548 U.S. 291 (2006).

²¹ 546 U.S. 49 (2005).

Americans who are economically successful tend to live in neighborhoods that are segregated by class. Thus, the children whom I represent do not grow up in neighborhoods that provide sufficient organic access to legitimate economic opportunity.

Furthermore, workers in today's economy generally cannot make a decent living and support a family without a solid high school education. Ordinarily, to successfully integrate into the economy, a student must attain a post-secondary education. Even a factory job or a hands-on job like auto repair is likely to require computer skills. Many inner-city and rural schools are simply failing to educate effectively. As John Taylor Gotto and other commentators have noted, schools are operating still on the industrial revolution model -- training people to be factory workers rather than information-age workers.

The IDEA requires that every student with a disability who is sixteen or older (and younger, if appropriate) receive individualized transition services. This requirement is meant to ensure that children with disabilities integrate effectively into the world of work. It is not happening. No one is complying with the law. Children with disabilities are not receiving appropriate vocational evaluations, and they are not receiving appropriate training and preparation. A common-sense solution is to use the so-called "*Burlington Remedy*"²² to incentivize school systems to pay culturally-competent adults in low-income neighborhoods to train children with disabilities. This use of the special education law would help children to gain real-world work skills and to integrate into paying jobs. Further, this arrangement would re-cycle public funds into the neediest neighborhoods, rather than shifting resources to high-priced professionals from other geographic areas. Moreover, as I had observed for three decades, many children from low-income families who fail in school consistently, eventually find informal mentors who lead those children too often into illegitimate economic activity.

Another part of America's school-to-prison pipeline is the pervasive push to treat low-income children of color as adults for purposes of criminal prosecution. Virtually every state changed laws in the 1990s to treat more children as adults. More recently, the Centers for Disease Control conducted a meta-study and established that this trend is also counter-productive. We have solid information about what works. One can review the 2001 Surgeon General's Report on Youth Violence. Chapter Five of that report lists effective interventions, most notably certain evidence-based forms of wraparound services (e.g., multi-systemic therapy and functional family therapy) and therapeutic foster care. The multi-year experiment in Missouri is also instructive. That state is striving to incarcerate only children who are serious and violent offenders. In addition, Missouri is demonstrating that incarceration in a small and humane environment, emphasizing treatment and education, can dramatically lower recidivism. The Annie E. Casey Foundation, through the Juvenile Detention Alternatives Initiative, has effectively helped over 100 jurisdictions lower rates of pre-trial and pre-sentence detention, without compromising community safety.

America also must engage in a conversation about our outlandish sentencing policies and guidelines. Criminality is a phenomenon that mostly concentrates in males in mid-to-late adolescence and the early twenties. By sentencing individuals to, by international standards,

²² *Burlington v. Dept. of Educ.*, 471 U.S. 359 (1985).

uniquely long terms of incarceration, we waste both public financial resources and individual potential. The members of the Subcommittee are doing a good thing by beginning a conversation that should have started over forty years ago.

Testimony for the School-to-Prison Pipeline Hearing on December 12, 2012Submitted by Mariame Kaba, Project NIA (projectnia@hotmail.com)

My name is Mariame Kaba and I am the founder and director of Project NIA (www.project-nia.org). Launched in July 2009, Project NIA is a Chicago-based advocacy, organizing, popular education, research, and capacity-building center with the long-term goal of ending youth incarceration. Project NIA's mission is to dramatically reduce the reliance on arrest, detention, and incarceration for addressing youth crime and to instead promote the use of restorative and transformative practices, a concept that relies on community-based alternatives. Through community education, participatory action research, advocacy and organizing, Project NIA facilitates the creation of community-focused responses to violence and crime. *Our goals are:*

1. To empower diverse community members to take leadership in addressing issues faced by youth impacted by the juvenile justice system.
2. To develop effective community-based (rather than criminal legal) means of accountability for violence and crime – using a restorative and transformational justice approach.

Project NIA supports youth in trouble with the law as well as those victimized by violence and crime, through community-based alternatives to the criminal legal process, and we partner with numerous stakeholders to create such alternatives. We advocate for redirecting resources from youth incarceration to youth opportunities.

We are profoundly grateful to our Senator, Richard Durbin, for organizing this hearing about the School to Prison Pipeline and are proud to submit our testimony today.

The School-to-Prison Pipeline in Chicago

In the last 20 years, advocates, students, educators, and researchers have pointed out the existence of a school-to-prison pipeline (STPP).¹ The STPP (<http://www.suspensionstories.com/school-to-prison-pipeline/>) describes how harsh school discipline policies and law enforcement policies intersect to feed young people into the prison system. There has been an explosion of academic research, conferences, and media reports about this phenomenon.

The history of the current intolerance and punitive attitude existing both on the streets and in the schools can be traced back to Columbine. In the schools, the post-Columbine era saw the introduction of federal and state ordinances leading to zero tolerance policies. In the streets, the war on drugs led to more punitive criminal legal responses as a whole (three strikes, mandatory sentencing, zero tolerance). Racial disparities mark the rate of incarceration and school suspensions.

Numerous studies document disproportionate disciplinary practices towards African American male students in particular. This is part of a national trend to criminalize rather than educate students.

¹ The "School to Prison Pipeline" describes the reality that many young people are being pushed out of school and into the juvenile and adult legal systems because of harsh discipline policies, high stakes testing, and social oppression.

Police officers play a critical role in this pipeline and many of them seem to recognize this fact. A school police officers' union in California created an uproar last year by designing and selling t-shirts depicting a young boy behind prison bars with the words: "*U Raise Em, We Cage Em.*"² The local community was rightly incensed by this; yet it should not have come as a surprise that cops see their role in schools as arresting and incarcerating young people.

We can be fooled into believing that schools with metal detectors, surveillance cameras, and police officers feel safe to students, teachers, and staff. However, data from the Consortium on Chicago School Research (CCSR) suggests something different:

*"it is the quality of relationships between staff and students and between staff and parents that most strongly defines safe schools. Indeed, disadvantaged schools with high-quality relationships actually feel safer than advantaged schools with low-quality relationships."*³

In addition, the presence of police officers in our schools often has negative ramifications for students. A new national study by the Justice Policy Institute titled "*Education Under Arrest*" makes a convincing case that:

*"...when schools have law enforcement on site, students are more likely to get arrested by police instead of having discipline handled by school officials. This leads to more kids being funneled into the juvenile justice system, which is both expensive and associated with a host of negative impacts on youth."*⁴

In January 2012, we released a report titled "*Policing Chicago Public Schools: A Gateway to the School-to-Prison Pipeline.*" The report relies on data from the Chicago Police Department (CPD) to show (for the first time in seven years) the type of offenses and the demographics (gender, age and race) of the juveniles arrested on CPS properties in calendar year 2010. We were limited in our findings because CPD reports data by police district rather than by individual school.

The key data points in the report are that:

1. Too many young people are still being arrested on CPS properties. Over **5,500 arrests of young people under 18 years old** took place on CPS properties in 2010. If we include those between 18 and 20 years old, the number increases to over 6,100 arrests.
2. Black youth are disproportionately targeted by these arrests. While they represent 45% of CPS students, black youth account for **74% percent of juvenile school-based arrests**. This mirrors the general trend of disproportionate minority contact within the juvenile legal system. For example, while they comprise only 34% of youth ages 5 to 17 in the city of Chicago, African American youth accounted for 76% of citywide juvenile arrests (youth 17 and under) in 2010.
3. Young men are much more likely to be arrested on CPS properties than are their female counterparts [73% vs. 27%].

² Sacramento Bee (11/15/11). Twin Rivers Police Association stops sales of controversial T-shirts. <http://www.sacbee.com/2011/11/01/4020655/twin-rivers-police-association.html#ixzz1ceD29OXC>

³ Steinberg, M., Allensworth, E. and David W. Johnson (May, 2011). Student and Teacher Safety in Chicago Public Schools: The Roles of Community Context and School Social Organization. <http://ccsr.uchicago.edu/publications/SAFETY%20IN%20CPS.pdf>

⁴ Petteruti, Amanda (Nov 2011). Education Under Arrest: The Case Against Police in Schools. <http://www.justicepolicy.org/research/3177>

4. Male youth under 21 years old are most often arrested on CPS property for simple battery followed by drug abuse violations and disorderly conduct. Females under 21 are most often arrested for simple battery, disorderly conduct and miscellaneous non-index offenses. **Nearly a third (27%) of school-based arrest offenses on CPS property is simple battery.** This suggests that a significant number of CPS students are probably being arrested for fighting.
5. Certain police districts are more likely to arrest youth in schools than others. In particular, the highest aggregate⁵ numbers of juvenile school-based arrests are in the 4th, 6th, 8th, 22nd, and 5th police districts. Together these **five districts account for 39% of total juvenile school-based arrests on CPS properties.**

In discussions about the school-to-prison pipeline, we need concrete examples of how the process works. As such, it is important to understand the role that police and security staff play in our schools. Yet reports about police involvement in CPS have unfortunately not been readily available to the public. There is no easily accessible citywide or statewide data that illustrate how many students are arrested in schools each year. The last report that was written about the role of police in Chicago Public Schools was published in 2005 by the Advancement Project. That report, *“Education on Lockdown,”* found that Chicago Public Schools (CPS) referred over 8,000 students to law enforcement in 2003. Forty percent of these referrals were for simple assault or battery with no serious injuries. Most of these cases were dismissed⁶.

In light of the issues raised in this report, we recommend a few solutions intended to help reduce the reliance on law enforcement in Chicago Public Schools (CPS).

1. CPS needs to move beyond the rhetoric of restorative justice and fully fund credible restorative programs in the schools.
2. We need timely and reliable data tracking the numbers of school-based arrests in CPS. Based on the advocacy of students and organizers, the New York City Council passed the “Student Safety Act” in early 2011. According to the New York Civil Liberties Union, “the Student Safety Act creates **accountability** and **transparency** over police behavior in our schools. Specifically, the Student Safety Act:
 - Requires the Department of Education to report to the City Council on the numbers of suspensions, expulsions, arrests and student-police altercations in schools. The City Council can then track and monitor whether discipline is being enforced equally for all students.
 - Provides lawmakers and the public vital access to raw data on school disciplinary actions.
 - Increases transparency at the NYPD School Safety Division and the Department of Education.” **Chicago needs its own “Student Safety Act.”** <http://chistudentsafetyact.com/>
3. We call on CPS to re-direct resources away from policing to enrichment programs that will support the healthy development of students.

⁵ We wish that we could compare arrest rates per district but we cannot access total numbers of youth in each district in order to do those calculations. Arrest rates would tell us more about whether certain districts are disproportionately targeting youth for school-based arrests.

⁶ Education on Lockdown (2005) - <http://www.advancementproject.org/digital-library/publications/education-on-lockdown-the-schoolhouse-to-jailhouse-track>

4. Finally, we call on policymakers, law enforcement, and school administrators to ensure the privacy of student records. We strongly oppose the efforts to violate student privacy by increasing “information-sharing” between law enforcement and educational institutions.

To access the full report, visit the *Policing Chicago Public Schools* blog at <http://policeincps.com>

Closing “Failing” Schools: Another Aspect of the Pipeline

Last year, the nation was greeted by stunning news <http://www.detnews.com/article/20110221/SCHOOLS/102210355/1409/Michigan-orders-DPS-to-make-huge-cuts>. In an attempt to close a budget deficit of over \$327 million, the city of Detroit has decided to close half of its public schools. The schools will be shuttered over the next four years. This move will likely cause high school class sizes to swell to 60 students. If you think that this is a joke, you would be mistaken. 74,000 students remain in Detroit Public Schools; down from nearly 160,000 just ten years ago. Visualize for a few seconds what this plan means... Detroit will reduce the number of schools in the district from 142 to 72. In other words, the city will close 70 schools leaving 72 open to educate the remaining students.

Sometimes, discussions about the school to prison pipeline can either be overly analytical or overemphasize individual stories. Analysis is good and so are individual stories. However what is also needed is a case study that illustrates the systemic nature of the school to prison pipeline. We have found that in Detroit.

The Detroit school system which has been admittedly mismanaged (http://www.upi.com/Top_News/US/2011/02/22/Detroit-to-eliminate-half-of-public-schools/UPI-84761298354738/) has been hemorrhaging students for years. A recent study suggests that “[a]t more than half of Michigan’s high schools, fewer than 10% of students graduating this spring are college ready <http://www.freep.com/article/20110222/NEWS05/102220374/Many-Mich-high-school-grads-not-ready-college-data-show?odyssey=tab|topnews|text|FRONTPAGE>. Unsurprisingly most of these students are concentrated in the Detroit public school system. With such dismal results, some will argue that in Detroit, the school to prison pipeline is already in full effect. I do not disagree with this assessment.

However, the active dismantling of a city’s entire public education system cannot be the solution to addressing the system’s current failings. The truth is that families who have resources and the means have already pulled their children out of Detroit public schools over a period of years. Those young people who are left behind are unsurprisingly the poorest and least mobile ones. Closing 70 schools will not improve their lot and will in fact make their educational experiences even worse, causing even more of them to drop out of school. Detroit in making the decision to close half of its schools has decided to, in effect, consign its remaining 74,000 students to the prison system. Low-income parents in Detroit must be suffering even more sleepless nights. This plan is short-sighted and also cruel.

Michigan already spends \$2 billion a year — more than it spends on higher education — on one of the nation’s largest prison systems. Residents of the state should now expect that number to increase over

the next few years. Most of Michigan's 44,000 prisoners don't have high school diplomas and the state's current school closing plan will ensure that future prisoners suffer the same fate.

We are watching something truly astonishing taking place in Detroit – the wholesale abdication of public responsibility for our children. We here in Chicago worry that the same thing is happening with respect to the school closure policy that is currently being implemented by the Chicago Public Schools.

Conclusion

The School to Prison Pipeline is a civil rights and racial justice issue. It is not just a juvenile justice issue but also a general criminal justice one. At bottom, the pipeline is a critical education issue. In 1970 there were 1.7 million students suspended per year in American schools. That figure doubled to 3.8 million annual suspensions in 2009. We at Project NIA believe that it is not student behavior that has changed but rather our responses to that behavior. This means that we can intervene and that this pipeline can be dismantled.

The subjective nature of school discipline and punishment lends itself to inequity. When looking at suspension reports, words like disruptive and disobedient are often examples of behavior that lead to suspension. However, disobedience is truly in the eye of the beholder and the existence of racism means that young black boys in particular find themselves most often punished for this type of behavior.

We must target and eliminate such inequities within our educational system but also in society at large.

The School to Prison Pipeline in Chicago: A Fact Sheet

Suspensions and Expulsions in Chicago Public Schools (CPS)

Research suggests that students who have been suspended are three times more likely to drop out by the 10th grade than their peers who have never been suspended.⁷ Data obtained from the *Illinois State Board of Education* (ISBE) through a Freedom of Information Act (FOIA) request suggests that CPS administered **17,020** in-school suspensions, **40,662** out-of-school suspensions and **217** expulsions in the 2010-2011 academic year. Specific demographic information (race, gender) about these suspensions and expulsions was not available at the time of the request. However, based on past data, black male students are likely to be disproportionately targeted by CPS suspensions and expulsions.

Total Numbers of Chicago Public School Students Suspended & Expelled (2010-2011)

	In-School Suspensions	Out-of-School Suspensions	Expulsions	TOTAL
Elementary School (pre-k-8 th grade)	4,950	18,878	59	23,887
High School	12,070	21,784	158	34,012
TOTAL	17,020	40,662	217	57,899

Dropouts/Pushouts

Based on data from the 2009 and 2010 American Community Survey, among 19- to 24-year-olds in the City of Chicago⁸:

-Nearly 42,000 or 15 percent do not have a regular high school diploma.⁹ The share of youth in the city of Chicago without a regular high school diploma (15%) was higher than that of the remainder of the Chicago Metro area (9.7%), state of Illinois (11.5%), and the entire U.S. (13.7%).

-19 percent of males did not have a regular high school diploma while 10 percent of females didn't have a high school diploma. Male youth in the city were nearly two times more likely to be dropouts than their female peers.

-30 percent of Hispanic males did not have a regular high school diploma

-27 percent of African American males did not have a regular high school diploma

-Only 4 percent of White, non-Hispanic males did not have a regular high school diploma.

⁷ Goertz, M.E., Pollack, J.M. & Rock, D.A. (1996). Who drops out of high school and why?: Findings from a national study. *Teachers College Record*, 87, 357-73, available at www.tcrecord.org/Content.asp?ContentId=688.

⁸ Sum, Andrew et. al. (November 2011). "High School Dropouts in Chicago and Illinois: The Growing Labor Market, Income, Civic, Social and Fiscal Costs of Dropping Out of High School. Center for Labor Market Studies, Northeastern University.

⁹ These are conservative estimates of the number of high school dropouts. The American Community Survey tends to have below average coverage rates for low income households and respondents are known to sometimes exaggerate their educational credentials.

Juvenile Arrests in Chicago

In 2010, there were 27,563 total juvenile arrests (youth 17 and under) in Chicago.¹⁰ While African American youth represent 33.7% of young people between 5 and 17 years old in Chicago, they represent 76% of juvenile arrests (20,930) in the city in 2010. This is compared to Latino youth who account for 32.8% of youth in Chicago and represent 19.6% (5,418) of all juvenile arrests. White comprised 11.7% of youth ages 5 to 17 in Chicago and accounted for 3.3% (936) of juvenile arrests.¹¹

In 2010, there were 5,574 juvenile arrest of youth 17 and under on Chicago Public School (CPS) property. If we include those between 18 and 20 years old, the number increases to over 6,100 arrests.

Black youth are disproportionately targeted by these school-based arrests. While they represent 45% of CPS students, black youth account for **74% percent of juvenile school-based arrests**. This mirrors the general trend of disproportionate minority contact within the juvenile legal system. For example, while they comprise only 34% of youth ages 5 to 17 in the city of Chicago, African American youth accounted for 76% of citywide juvenile arrests (youth 17 and under) in 2010.¹²

Incarceration Rates and Dropouts¹³

In Illinois, dropouts accounted for 51% of the incarcerated population between the ages of 18 and 34 in 2010. In that year, 10% of native-born high school dropouts (18-34) in Illinois were in jail or prison, an incarceration rate that was 2 percentage points above the U.S. average (8.0%).

A native born male high school dropout (18-34 years old) was 5 times more likely to be incarcerated than a native-born male with a high school diploma and nearly 30 times more likely to be in jail or prison as a native-born male with an Associate's degree.

Among 18 to 34-year-old males in Illinois, 14.7 percent of high school dropouts were incarcerated in 2010, while only 3 percent of male high school graduates (with no completed years of postsecondary schooling) spent time behind bars (in jail or prison).

The incarceration rates of young adult dropouts varied widely across gender and race-ethnic groups. Male dropouts in Illinois and the U.S. are much more likely to be incarcerated than their female peers. The incarceration rate of native-born 18 to 34 year old male dropouts in Illinois was 15%, compared to a rate of under 2% for native born female dropouts in this age group.

Black male dropouts in Illinois had by far the highest incarceration rate among the three major race-ethnic groups. Nearly 29% of 18 to 34 year old, Black male dropouts in Illinois were incarcerated in 2010. Incarceration rates of Black males fell sharply with their educational attainment, declining to under 8% for high school graduates and only 2% for Associate degree holders. Native-born Hispanic male dropouts (6.6%) in Illinois had a similar incarceration rate as native-born White male dropouts (6.5%).

¹⁰ Patterson, Caitlin and Kaba, Mariame (2011). Arresting Justice: A Report about Juvenile Arrests in Chicago, 2009 & 2010. <http://arrestingjustice.wordpress.com/>

¹¹ Ibid.

¹² Kaba, Mariame and Edwards, Frank (2012). Policing Chicago Public Schools. <http://policeincps.com>

¹³ Sum et al. (November 2011)



December 12, 2012

Chairman Dick Durbin
 Senator Lindsey Graham
 Senator Patrick J. Leahy
 Senator Jon Kyl
 Senator Sheldon Whitehouse
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 Senator Richard Blumenthal

U.S. Senate Committee on the Judiciary
 Subcommittee on the Constitution, Civil Rights and Human Rights
 224 Dirksen Senate Office Building
 Washington, DC 20510

**RE: Senate Judiciary Subcommittee Hearing Record Statement
 Ending the School-to-Prison Pipeline**

Dear Subcommittee Senators and Chairman Durbin:

Public Counsel and CADRE, close partners in defending a student's human right to dignity in their education and a parent's right to participation in their child's education as part of the larger Dignity in Schools Campaign to dismantle the school-to-prison pipeline, submit a record statement for the Senate Judiciary Subcommittee hearing on ending the school-to-prison pipeline (STTP).

Public Counsel is the public interest law office of the Los Angeles County and Beverly Hills Bar Associations and the Southern California affiliate of the Lawyers' Committee for Civil Rights Under Law. Established in 1970, Public Counsel is dedicated to advancing equal justice under law by delivering free legal and social services to indigent and underrepresented children, adults and families throughout Los Angeles County. Each year, Public Counsel's Children's Rights Project provides representation and advocacy to more than 6,000 of the most vulnerable children in Los Angeles County.

Community Asset Development Redefining Education (CADRE) is a grassroots, non-profit organization made up of and led by African American and Latino parents/caregivers whose children attend local schools in Los Angeles. Through the lens of human rights, CADRE parents organize other parents to help dismantle the school-to-prison pipeline by holding the local school district accountable to provide a quality education to students no matter what neighborhood they live in. Since its 2001 inception, CADRE has sustained an emerging base of several hundred members while training low-income parents of color to be advocates for their child's education. Being solution oriented, CADRE supported the adoption of school wide positive behavior and intervention supports (SWPBIS) in LAUSD to at least address discipline practices that lead to the criminalization of teenage behaviors and putting students on the school-to-prison track.

Public Counsel, CADRE and allies throughout the state and country are working to deter the criminalization of school related conduct because it is an exclusionary form of discipline that alienates students and families. From our extensive work with at-risk youth, we have seen that students who face heavy handed school discipline are not only at a higher risk of entering the juvenile justice system, but also tend to face obstacles to academic achievement related to their special education needs and their social, emotional and physical health.

Given the complexity of this problem and the variance in circumstances for individual students and families, dismantling the school-to-prison pipeline requires a multi-disciplinary approach that is supported by schools, parents and community groups. The same schools, parents and community groups are instrumental to understanding the root of the problem; each entity offers a unique experience and understanding of school discipline criminalization.

FINDINGS

School-Based Arrests and Citations

Public Counsel, CADRE, and partners in the Los Angeles Chapter of the Dignity in Schools Campaign are working to dismantle the school-to-prison pipeline (STTP) both through implementation of positive alternatives to punitive discipline and through creating meaningful diversion for inappropriate school-based arrests and citations. From 2009 through 2011, Los Angeles School Police Department (LASPD) issued 33,845 citations to people 19 years old and younger.¹ During that time, students as young as seven years old received citations and approximately 24% of all citations were given to middle school students. Of citations given, 23% of them were for "Disturbing the Peace." Although African American students make up just fewer than 10% of the student population in Los Angeles Unified School District (LAUSD), they received approximately 18% of all citations issued. Our organizations are concerned about the high number of citations issued in LAUSD and the criminalization of student disciplinary issues.

Equally troubling are the number of arrests that LASPD Officers make each year. In 2010, there were 1,773 arrests and in 2011 there were 1,807 arrests; in each of those years respectively battery arrests made up 16% and 22% of arrests.² It is crucial to highlight the significant number of arrests for batteries because a wide range of behavior can constitute a battery. A school-yard scuffle where no one is seriously injured is now landing 12 and 13 year old students in

¹ All data received from the Los Angeles School Police Department through a Public Records Act Request.

² All data received from the Los Angeles School Police Department through a Public Records Act Request.

delinquency court. Additionally, there is racial disproportionality in the breakdown of offenses: batteries made up 61.7% of the arrests of African American young people whereas for White students batteries were only 45.7% of their arrests. In LAUSD, there were over 54 schools where more than 10 arrests occurred in a given year.

School discipline cannot be examined separately from school-based arrests and citations. An individual school in Los Angeles may have reduced their out of school suspensions to zero, but LASPD Officers might have issued a significant number of citations to students at the same school. In fact, below you will hear from a CADRE parent whose son attended this very kind of school. If we are most concerned about transforming the cultures of our schools so that students and families feel welcomed and safe, we must look at the comprehensive indicators of school climate, culture and discipline; this must include the tactics that criminalize students and feed them into the juvenile justice system.

School-Wide Positive Behavior Interventions & Supports Implementation in Los Angeles

In 2007, Los Angeles Unified School District (LAUSD) passed a comprehensive Discipline Foundation Policy rooted in School-Wide Positive Behavior Interventions and Supports (SWPBIS). CADRE parents led the charge to pass the policy and have worked diligently, with the support of Public Counsel, to monitor its implementation in South LA schools. In November, 2012, CADRE and Public Counsel worked together to compile and analyze data on overly harsh school discipline. The involvement of CADRE parents was essential because they were able to give meaning to school discipline data and SWPBIS documents collected through Public Records Act Requests. The CADRE parents have spent long hours working and observing in the schools of South Los Angeles and their testimony provides an important “on the ground” perspective. Notably, this perspective emphasizes the inability of data alone to define the school-to-prison pipeline and the necessity of implementation and close monitoring after broad policy decisions.

CADRE organizes parents in South Los Angeles, and having clear lens on discipline issues in these schools is crucial because they are extremely under-resourced and they have some of the starkest examples of disproportionality in school discipline practices. Addressing racial disproportionality in these schools would significantly impact the entire district. The data analyzed represents many different facets of the school discipline system, including: interventions and counseling, parent involvement, interpretation for non-English speaking parents, school analysis of discipline data, and suspensions. Each of these factors is important in preventing students from entering the school-to-prison pipeline, each has a role in SWPBIS implementation. CADRE and Public Counsel are committed to implementing SWPBIS in South Los Angeles schools because meaningful and positive school discipline practices can divert students away from the pipeline by identifying and helping students with behavior issues rather than resorting to exclusionary discipline practices such as repeat class removals, suspension, expulsion, and ultimately incarceration. SWPBIS can lead schools away from non-school duties, like law enforcement, and towards the main purpose of schools, educating students.

One of the elements of SWPBIS is tiered interventions for misbehaving students. Eventually, each school will provide effective intervention by identifying at-risk students, matching student needs to the appropriate resources, and using appropriate consequences. Review of school-site tiered interventions is crucial to the monitoring of positive behavior support implementation

because where a school has decreased their number of out of school suspensions, local education service center staff should be doing monitoring visits to ensure suspensions have been replaced with positive tiered interventions. Of the 67 schools that submitted documentation, 24 schools provided clear evidence of interventions at their school site; thus only 35% of schools who responded to our request had clear evidence of interventions.

Collection and analysis of discipline data is another element schools must consider when approaching discipline issues. School administrators should establish methods of recording and collecting discipline data, with this information school staff can better evaluate and implement discipline policies so that students are benefitted. Our organizations graded each school surveyed on discipline data collection practices. Schools received A's and B's where they had a large body of documentary evidence showing regular monthly meetings, review of discipline data at those meetings, and clear action steps to address patterns of disciplinary incidents. Schools assigned F grades do not have any evidence of collection or use of discipline data. 11% of schools graded received A's or B's in the discipline data category; 52% received F's. Schools cannot appropriately target support for behavioral interventions if they do not understand their school discipline issues; review of data is a key to that understanding.

Parent involvement is also a very important part of correcting students' behavior before turning to exclusionary discipline, such as expulsion and incarceration. Closely linked to parent involvement are interpretation services, as parents who cannot communicate with school staff have difficulty understanding how to assist in correcting their child's misbehavior. Schools with documentation that parents were consistently included in positive behavior support team meetings and that updates on positive behavior support implementation activities were regularly shared with the parent community received an A or B grade for parent involvement. Schools assigned F grades do not have any evidence of any parent involvement on the behavior support team. 18% of schools received A's or B's in the parent involvement category, while 46% received F's. Only 22% of the schools surveyed provided consistent interpretation services to concerned parents, a majority (53%) did not offer any interpretation services.

Unsurprisingly, many of the schools with poor positive behavior support also had high suspensions data and rates. Suspension rates are indicative of a school's use of exclusionary discipline and suspension can represent one of a student's first steps away from school towards prison. For each of the last four school years, students at schools in South L.A. endured a substantially higher suspension rate. In the 2011-2012 school year, South L.A. schools' suspension rate was 4.8% while that of LAUSD as a whole was only 2.8%, making the suspension rate in South L.A. 71.4% higher than that of the District. This gap was the highest of the last four school years despite the decrease in suspensions over time in both regions and apparent improvement in suspension numbers as to both.

The South L.A. region is challenged by racial disparities in suspension in addition to the overall disparate suspension rates. For each year data was collected, African-American students across LAUSD were suspended at a rate extremely disproportionate to their enrollment. In 2011-2012, 9.5% of LAUSD students were African-American, but African-Americans made up almost 30% of all suspensions. The South Los Angeles region is important because a large portion of LAUSD's African-American students attend school in South L.A.; LAUSD's African-American

enrollment hovers around 10%, in South Los Angeles that number is closer to 20%. If African-American students cannot be assured equal treatment in areas of high African-American concentration, then they cannot be assured equal treatment in any location.

Over the last three school years, nine schools in South L.A. consistently had the worst suspension data. Review of the collected discipline data shows that suspensions are concentrated in these top suspending schools that also have some of the worst African-American disproportionality; intense support to these schools would address some of the most serious issues of disproportionality. A middle school that had the most suspensions in the region surveyed suspended 2,173 students between September, 2009 and June, 2012. That school's staff issued 960 suspensions during the 2009-2010 school year, their total enrollment for that year was only 1,468 students. If each suspension was charged to a different student, then the school would have suspended 65.4% of the entire student body in one school year. The overall suspension rate dropped to 46% in 2010-2011, but climbed back to 60.3% (652 suspensions) in 2011-2012. Of the 652 suspensions issued in 2011-2012, 29.6% (193 suspensions), cited "willful defiance" as the reason for the suspension.

More alarming are the rates of African-American suspension at this middle school. African-American students have accounted for 60% to 65% of all suspensions at the school for the last three school years. For the 2009-2010 school year, the school had 461 African-American students, but suspended African-Americans on 618 occasions for a suspension rate of over 100%. The rate fell slightly to 89.6% in 2010, but the suspension rate of African-Americans was again over 100% for the 2011-2012 school year.

The data cited above, while helpful, cannot completely summarize the problems facing schools in South Los Angeles. School parent and volunteer testimony and experiences are necessary to complete our understanding of school discipline, without such information the school-to-prison pipeline will be hard to break.

PARENT TESTIMONY

While CADRE and Public Counsel have been encouraged by the decreases in suspensions overall and in South L.A. during the last four years, more recent anecdotal reports from parents and clients have raised concerns that schools are cooking the books. Instead of reforming practices and implementing positive behavior support systems, they may be removing students from school and class without providing documentation or appropriate due process.

CADRE, through its organizing work, and Public Counsel, through direct representation of students, have collected several stories of illegal suspensions, both in and out of school, along with stories of illegal classroom removals. Several core parents of CADRE are regular volunteers at their children's school, some of them volunteering an average of three to four days a week. These parents have observed students, for periods of over several hours at a time, sitting in the office or doing campus clean-up in lieu of being in class. Often, over a week's period, it is the same small group of students. Our organizations understand that elementary school teachers can suspend students from their classroom for the remainder of the day, but even so, such removals must be documented and the parent notified.

A CADRE parent and Public Counsel client shared her daughter's experiences with illegal classroom removals during the 2011-2012 school year. The student struggles in academic areas and has faced several different types of inappropriate discipline. The student was made to sit in a chair facing the wall during her English class. This punishment was issued to a recurring group of students and occurred for every English class period for weeks at a time. Other punishments were also illegally employed, such as detention. The detentions were always issued by the same teacher, often without reason, the teacher would send the student to detention before the student would even enter that teacher's classroom. Here, Public Counsel's client tells of the detentions in her own words:

"In addition to this classroom punishment, my daughter also spent several periods at a time in detention in a book storage room. These detentions began after students returned from spring break and continued until the end of the school year. During these detentions, my daughter received no instruction or academic help and was not allowed to complete school work from classes she was enrolled in. Additionally, she could not collect work from the class periods missed when she was in detention. There were teachers and other students in the detention room, but no interaction was allowed. I was never informed of these class removals by school staff, I discovered them when asking my daughter about her lack of homework. She explained to me that she could not get the homework because she had been in detention when the work was assigned."

Other parents shared similar experiences; a core CADRE parent also had problems getting school staff to approach her son's problems compassionately. Many of the problems stemmed from the school staff's failure to communicate with the student's mother despite the fact that the parent spent four days a week at the school. School administrators would only contact the parent until four or five incidents involving the student had taken place. The student faced repeated and consecutive classroom removals like the student described above. The CADRE parent's son also had problems with over-zealous policing at school. The school issued zero suspensions in the 2011-2012 school year, but LASPD Officers issued multiple citations to students. The parent describes some of the difficulties with discipline issues below:

"In December 2011, the School Police gave my son a citation claiming that he had tried to fight with another student. I asked the school for services, counseling or something else that would help my son resolve these issues. When I asked this of the school, they just responded, 'We don't have those kinds of services. You have to look for those services outside of school.' The School Police also gave my son a ticket in February, 2012 because some students said he was going to fight with another student. The School Police officer asked my son if he was going to fight another student. My son did not plan on fighting any other students, but he didn't want to talk to the officer, so he told him 'I don't want to speak with you.' The officer gave him a citation for refusing to speak with him, but described the alleged violation as fighting. I know that my son used to have problems, but I also know that Edison Middle School treated my son like he couldn't change his behavior, like these was no solution to these challenges."

Another Public Counsel client faced similar challenges in receiving meaningful behavior support from her eight year old son's school. The client's son receives special education services and the client had hoped for increased behavior support for her son. Unfortunately, the student's parent was called almost every other day and was instructed to come pick her son up from school. The school used these illegal suspensions instead of using positive interventions that would include the student in classroom activities. Below, the parent tells of her son's experiences in being removed from class and school:

"My son did not receive any out of school suspensions, but I was continually called to pick him up from school. In total, my son missed over three weeks of instruction just in his second grade year because of these removals. They just kept calling me to pick him up and kept him from attending school. My son was always very sad and frustrated when I picked him up at school, he felt singled out and stopped wanting to go to school. I wanted to work with my son's school, but I felt like they had already given up on him. Every time the school had me pick him up, I felt like they were telling me my son did not have the same rights as other students."

These parents repeatedly asked the school for help and the school would answer with sending the student home, but without a documented suspension. For many students, there are unexplained absences where the student was sitting in the office or a detention room and not receiving instruction. These human rights violations cannot be tolerated in our schools.

You do not have to spend a lot of time in our schools to see the stark disparity in student treatment across the district. We believe school discipline practices are at the center of dismantling the school-to-prison pipeline because they signal the status of relationships in a school: is this a school where students are treated like valuable human beings who have a complex set of feelings and circumstances? Or is this a school where punishment is given and no questions are asked about how a student is doing or why they acted the way they did? We have never thought this transformation would be easy, but every day the lives of children are at stake.

As part of a broader coalition to create state-wide solutions to these issues, Public Counsel and CADRE helped to secure the victory of five progressive school discipline bills in California. Those bills include: AB 1729 which requires that other means of correction be used prior to "in-school suspension"; AB 1909 which ensures that social workers and attorneys who represent a foster youth are informed of pending school discipline hearings and decisions; AB 2537 which gives additional discretion to administrators to not expel in certain circumstances; AB 2616 which aligns truancy laws with best practices by giving school districts more discretion in determining whether a pupil is truant; and SB 1088 which facilitates the speedy reenrollment of youth who have had contact with the juvenile justice system.

CADRE and Public Counsel, on behalf of all the parents and students we work with, respectfully submit this testimony. We, along with countless others, have laid out many of these facts and stories for the past fifteen years in order to bring attention to a decades-old school-to-prison pipeline. We do believe that the data and these stories have finally made their way into the national consciousness, as evidenced by today's historic Subcommittee hearing. We urge the

Subcommittee to elevate this issue to a national urgency worthy of strenuous debate and serious consideration within national policy. State to state, the school-to-prison pipeline is causing the bottoms to fall out of our most vulnerable communities, undermining any chance we might have at stability and progress. It will both cost and shape us for decades to come if we do not marshal resources and leadership to ensure that, in seeking to be a global leader in education, the United States does not simultaneously lead in the false promise of the civil and human rights to dignity and a quality education.

Sincerely,



Maisie Chin
Executive Director
CADRE



Robert McCann
Associate Director of Organizing
CADRE



Roslyn Broadnax
Core Parent Leader
CADRE



Laura Faer
Education Rights Director
Public Counsel



Ruth Cusick
Staff Attorney
Public Counsel



**The Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights
Ending the School-to-Prison Pipeline
Wednesday, December 12, 2012 at 2:00 p.m.
Dirksen Senate Office Building, Room 226**

Thank you for the opportunity to participate in this hearing on the topic of closing the *School to Prison Pipeline*. Closing this *Pipeline* is of critical importance to the future of communities and to our nation's welfare, so we thank Senator Durbin for the invitation to submit testimony.

I am Cynthia Robbins¹, an independent consultant and co-leader of the Racial Justice Initiative of TimeBanks USA² (TBUSA). We formally launched the Racial Justice Initiative (RJI or the Initiative) in 2009, with the RJI's first Colloquium in Madison, WI. There, the Initiative, collected input for its seminal law review article, *An Offer They Can't Refuse: Deliberate Indifference Meets Juvenile Justice Alternatives that Work*,³ (hereafter as the Article or "An Offer"). The Article sets forth the RJI's evolving social action and legal advocacy strategy to challenge policies that disproportionately push young people of color out of schools and into the delinquency system. RJI's novel strategy is designed to challenge structural racism in the school discipline, delinquency and other public systems by creating a platform to advocate for the use of proven alternatives to improve these systems. The Racial Justice Initiative offers the Public Documentation Forum⁴ as a critical tool in closing the "School to Prison Pipeline".

Juveniles of color are more likely than their white counterparts to be harshly disciplined in school, suspended or expelled, arrested, referred to juvenile court rather than to diversion programs, charged, waived to adult court, detained pre-trial and locked up at disposition. There is ample documentation of Disproportionate Minority Contact (DMC) in the juvenile delinquency process and disproportionate

¹ Cynthia Robbins is an Independent Consultant with a focus on Organizational Development, Philanthropy, Education and Racial Justice. Robbins Co-Founded and Co-Leads RJI; Former Executive Director, See Forever/Maya Angelou School; Former Staff Attorney and then Board Chair, District of Columbia Public Defender Service, Former Senior Program Officer, Eugene and Agnes E. Meyer Foundation, Founding Director, Public Counsel's Urban Recovery Legal Assistance; Board Member, Phelps Stokes Fund, Co-Founder East Palo Alto Community Law Project; Stanford Law School, JD; Harvard University, AB (Crobde@gmail.com)

² TimeBanks USA ("TBUSA") has been building a movement to reform economic and social systems, policies and practices so that they empower people to create the type of communities they want and need. With affiliates in more than 35 states and over 30 countries, this nimble "think and do" tank has served as a catalyst for innovations. One is DC's Time Dollar Youth Court, which diverts 60-70% of non-violent youth offenses from the Courts back to the community through a peer-governed jury process, young people restore justice. See www.TimeBanks.org.

³ See *An Offer They Can't Refuse: Racial Disparity in Juvenile Justice and Deliberate Indifference Meet Alternatives that Work*, Edgar Cahn & Cynthia Robbins, 13 UDC/DCSL L. Rev. 71 (2010). An electronic copy of the article is available at <http://www.racialjusticeinitiative.org/wp-content/uploads/2010/11/Article-An-Offer-They-Cant-Refuse-2010.pdf>. Also see: www.RacialJusticeInitiative.org.

⁴ The Public Documentation Forum is also called a Public Notice Hearing and it is a process developed and described in the law review article "An Offer" see footnote 3.

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exclusionary school discipline in schools across this nation. There is also a substantial body of knowledge about ways to reduce and even eliminate DMC, suspension and expulsion. Nonetheless these processes that push children out of school persist.

We launched the RJI to address the virtually insurmountable barrier to judicial relief for challenges stemming from the systematic practices and policies of governmental agencies—even despite indisputably disproportionate effect. Heretofore, the legal requirement set forth in *Washington v. Davis*, 426 U.S. 229 (1976), has required injured parties to prove discriminatory intent when bringing a civil rights case under 42 USC §1983.

The Article, *An Offer*, proposes a new way to meet this intent requirement, utilizing the test supplied in *City of Canton v. Harris*, 489 U.S. 378 (1989). *City of Canton* says that intent can be inferred when government policymakers decide among alternatives to follow an injurious course of action, demonstrating a “deliberate indifference” to rights protected by the United States Constitution and federal laws. *An Offer* contends that failure to use knowledge about demonstrably effective and cheaper alternatives that reduce or eliminate DMC or exclusionary school discipline constitutes “deliberate indifference” and, therefore, gives rise to liability under 42 USC §1983. When official decision-makers have had formal notice of racial disparity and alternatives that are less costly and more effective, we contend that the failure to use these alternatives represents “intentional disregard” of injury to the fundamental constitutional rights of youth of color in the school discipline and juvenile delinquency systems.

This Article summarizes the legal argument and precedent, provides a brief overview about a strategy to reduce or eliminate DMC, and to limit the over-reliance on exclusionary school discipline. Instead, RJI advocates the use of proven strategies for keeping children out of the *School to Prison Pipeline* while improving school attendance and school climate, through: PBIS (Positive Behaviors, Interventions and Supports), social and emotional learning, restorative justice and peer engagement. These alternatives are more effective and less expensive in the short and long term than the failing and racially disproportionate exclusionary school discipline practices such as suspension and expulsion. This hearing offers a great context to review what we know works and to lift up these alternatives to keep children out of the *Pipeline*.

For the past two years, the RJI has been focusing on shutting down the *School to Prison Pipeline* by promoting more progressive school discipline policies. We target the over-reliance on punitive, exclusionary school discipline such as suspension and expulsion, and the disproportionate rate at which young people of color and those with disabilities are pushed out of school. Extended absences from class and school make it virtually impossible for students to re-engage and graduate.

The RJI engages affected students and their families, along with advocates, experts and public officials in **Public Documentation Forums (PDF)**, also called Public Notice Hearings. These forums are designed to document evidence about the injury of present practices and the availability of more effective alternatives. Sharing this information publicly promotes accountability for doing what we know works. Once officials are informed about the existence of more effective, less expensive, less discriminatory alternatives to exclusionary school discipline practices, failure to adopt those alternatives may trigger a legal mandate to compel the use of knowledge about effective strategies, policies and practices.

The Public Notice Hearing is designed to confront officials with the explicit choice to use or fail to use effective alternatives to delinquency system engagement. Public Notice Hearings engage advocates, concerned civic, legislative, judicial and other leaders, along with affected youth and families in presenting the extensive body of knowledge that has emerged over the past twenty to thirty years that would save scarce public resources, reduce DMC, and mitigate one of its most injurious manifestations:

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the pipeline channeling young people of color from schools into the juvenile delinquency system. We contend that officials have an obligation to make use of knowledge of alternatives since existing practices have a disproportionately injurious impact on youth of color. We see the Public Notice Hearing as a tool to compel the adoption of known more effective, less expensive, non-discriminatory practices.

The Article describes two highly successful alternatives to delinquency system engagement, Time Dollar Youth Court and the Youth Advocacy Programs, which are both far more effective at reducing recidivism and increasing public safety at a fraction of the cost of system engagement and incarceration. The strategy is a tool to advocate use of these and other effective programs that will keep our young people in our communities, attending school and out of the delinquency system.

As part of the preparation for a Public Documentation Forum, the RJI team engages in extensive research and analysis of the targeted jurisdiction. We review local statutes, regulations, policies and practices; perform statistical analysis of the number of youth within the school systems and jurisdiction; determine the percentages referred from key public systems (e.g., law enforcement, schools); and investigate the number and quality of alternatives to system engagement programs currently available and easily replicable from locally and nationally known models. The RJI is excited to learn about community-based alternatives from a host of people including families, educators, advocates, experts and officials.

Why is the Racial Justice Initiative Focusing on DC?

We're conducting **Public Documentation Forum Process** in DC because we live here. Our community is also uniquely well positioned to succeed, due to the intensified efforts of DC Public Schools and the DC Public Charter School Board to secure the data required to track and address the over-reliance on exclusionary school discipline practices in traditional and charter public schools. In addition, there is an engaged accountability circle ready to use this strategy to challenge, inform and improve the decision-making practices at different stages of the school discipline process. We seek commitments from community leaders to participate as witnesses and conveners. We hope to be part of the solution by gathering information about local and national successful discipline strategies and the resources that may be accessed by schools to improve classroom management, convert student misbehavior into *teachable moments* and to adopt techniques to create a culture of achievement and learning in public schools. When we focus on keeping children in school and on task, the conversation can turn to a different agenda that involves all of the stakeholders capable of achieving the goals of getting students to attend school ready to learn – every child, every day. We do better where school teachers and administrators join with students and families in considering all of the ways to improve students' focus on coming to school, being in school and achieving successful educational outcomes.

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**Realigning State Resources:
Redeploy Illinois Shifts Limited State Resources to Community
Alternatives**

*Redeploy Illinois Savings Pass \$40 Million as Counties Decrease
Commitments to State Juvenile Correctional Facilities*

*Truants and Youth Suspensions/Expulsions Successfully Redirected
to Appropriate Advocacy and Services in One Redeploy County*

Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

Wednesday, Dec. 12, 2012

We are grateful to Senator Durbin and the fellow members of the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, for this opportunity to present written testimony on the impact of ending the school to prison pipeline in the United States, with specific information on the impact of one community-based “last resort” alternative program in Illinois.

Redeploy Illinois was launched in 2004 as part of an effort to reduce reliance on juvenile incarceration. At the time, Illinois youth facilities held over 1,500 youth, and projections estimated an increase to over 2,000. The fiscal incentives favored state funded juvenile incarceration, rather than locally funded community based alternatives. Redeploy Illinois was an attempt to shift the fiscal incentives to community-based alternatives, rather than state funded incarceration.

Redeploy Illinois allocated funds to counties, or groups of counties, to develop local alternatives to reduce their commitment to state juvenile correctional facilities by 25%, compared to the previous three-year average. The initial state investment in Redeploy was \$2 million – and today it is just under \$3 million.

The modest Redeploy Illinois investment has paid off. The 28 counties participating in Redeploy have achieved an average **51% reduction** in commitments to state juvenile correctional facilities.

Cost Savings Significant: The annual appropriation for Redeploy Illinois is \$2.4 million, and the savings to state taxpayers has been significant. By averting

commitments of a projected 883 youth in Redeploy counties, there has been a potential \$40 million in incarceration cost avoidance, according to the latest annual report on the outcomes of Redeploy Illinois.¹

"The cost savings are dramatic but just as important is the success of the young people participating in Redeploy Illinois," said Michelle R.B. Saddler, Secretary of the IDHS. "Not only are real dollars being saved, so are real lives. Community-based services for justice-involved youth are considerably less expensive and vastly more effective than incarceration, and that saves tax dollars and enhances public safety."

Redeploy Programs Reduce Repeat Offending: Preliminary results of a cost-effectiveness study of the four original Redeploy Illinois sites point to a 14.2 percent reincarceration rate for Redeploy Illinois participants, and that compares with a 57.4 percent reincarceration rate among non-participants. Even youth who began but did not successfully complete Redeploy had a lower rate of re-arrest and incarcerations than juvenile justice-involved youth not in Redeploy in the same counties, according to early analysis of the research.

"We've had plenty of anecdotal evidence about the positive impact of mental health, drug treatment and educational services provided to youth in their home communities, and these findings by independent researchers add to the evidence about the wisdom of this rehabilitative approach," said George W. Timberlake, who is Chair of the Illinois Juvenile Justice Commission and is a member of the Illinois Models for Change Coordinating Council.

Redeploy Services Include Educational Services for Youth with Truancy and School Suspension/Expulsion Issues:

Counties agreeing to participate in Redeploy Illinois agree to reduce commitments to IDJJ by 25 percent. In exchange, the state provides funding to develop or expand local alternatives designed by local officials to meet the needs of delinquent youth in their communities, who are screened and assessed by probation staff prior to admission to the program. Services include educational assistance. The Redeploy Illinois evaluator reports the educational assistance has been successful:

From FY2005 through FY2010, 224 youth were offered educational assistance (tutoring and GED services) based on risk and needs assessments. Of the 224 youth, 157 (70.1%) were successfully completed the specific educational requirement; 8 (3.6%) were considered neutral; 35 (15.6%) were considered unsuccessful because parents or youth refusal to participate or youth did not complete the requirements; and 24 (10.7%) were unsuccessful and committed to IDJJ. At the end of the Redeploy Illinois

¹ 2010-2011 Redeploy Illinois Annual Report
<http://www.dhs.state.il.us/page.aspx?item=61715>

Program, only 3 of the 157 youth who were considered successful in the educational assistance-related programs were charged with new offenses.

In addition to tutoring services, 24 youth referred to employment and/or vocational skill training and 15 youth were referred to alternate schools. Of those youth who were given vocational skill training (n=24), 21 (80.1%) successfully completed the program, while 3 were considered neutral discharge and 1 youth was considered unsuccessful. Of the youth sent to alternate school (n=15) 12 (80%) were successful, and only 1 youth was committed to IDJJ.

Parents overwhelmingly were pleased with the Redeploy Illinois program. All respondents said that they would choose the RI program for their child, felt it provided positive results for their family, and wanted to see the program continued. Common themes included happier children, improved anger management and coping skills, and increased communication skills. Parents also talked about the RI program providing increased opportunities over regular probation, especially educational opportunities, "He doesn't run away anymore. He makes all A's in class. I think we are a lot closer now. We can actually talk now instead of argue. We can talk with each other instead of talking at each other." Likewise, one parent explained: "They even help him with his homework. If he's having problems with anything, he's going to help him do it faster for college so they help out with anything that you need."

Parents most commonly praised the educational support and mentoring as the most effective part of the RI program: "He's graduating early. Graduating a whole year early."

In addition, parents praised the mentoring portion of the program, especially in relation to providing transportation and reminders. "They helped out courts date and stuff. Pick us up from work and drop us back off. They help out a lot." Likewise, another described, "And she [the mentor] actually was one of our biggest supporters. She was the number that I had twenty-four hours a day, she was at our home three times a week. She was directly involved with the probation officer. She was probably the biggest help."

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Innovative Educational Advocacy in One Redeploy Site:

The Redeploy Illinois Program in St. Clair County has been able to refer Redeploy youth to the Land of Lincoln Legal Assistance Foundation for educational advocacy. Land of Lincoln began this program in January 2012. The staff attorney assigned to this advocacy program is an AmeriCorps VISTA Program volunteer. The legal advocate assists youth in three (3) educational areas. The attorney can advocate and assist students attempting to enroll in a school setting. This includes assistance in the transfer of transcripts from one school district to a new school district. In addition, legal advocacy is available for applying for evaluations for special education programs. The legal advocate attends IEP meetings related to the youth once an IEP is established. Finally, the legal advocate can assist those students expelled from school districts. This assistance includes advocacy at expulsion hearings and advocating for alternative placement for the youth in an educational setting if expulsion is ordered. The attorney involved in the program estimated that between twenty-five (25) to thirty (30) youth have been served since mid January 2012 with legal services from the Land of Lincoln Program.

As you can see, youth with educational issues including truancy and suspension/expulsion issues, can be successfully treated in the community – even when they have moved to the deepest end of the juvenile justice system.

Finally, one other quick note. The St. Clair Redeploy Illinois site discovered that a significant percentage of its population was developmentally disabled. The Redeploy Illinois Program's caseload in St. Clair County is comprised of over 60% lower functioning youth. Thirty percent (30%) of those youth have an IQ of 69 or lower. These youth typically only benefit from DD services when they are 18 years old. The Site Visit Team was advised through the Assessment Questionnaire that youth under age 18 who are developmentally delayed, convicted of a delinquency offense and then re-offend may be sentenced to DJJ due to a lack of appropriate resources. The Site Assessment Team was advised that the Metro East Disability Services Agency has assisted Redeploy staff in requesting what is identified as a Children's Waiver which is an order entered by the Juvenile Court Judge directing DHS to provide home-based services and/or transportation for DD youth. This allows DD youth to receive in-home services that would otherwise not be available. This preliminary evidence of developmental disability issues in the deepest end juvenile justice population requires more attention, to ensure a proportionate, individualized and appropriate response. But it is a cautionary note to resist sweeping youth from schools into the juvenile justice system.

CONCLUSION:

Attached is an appendix of some very poignant case examples (first names have been changed to maintain confidentiality) from Redeploy Illinois sites. These individual case histories clarify that school issues are frequently intertwined with issues involving behavioral/mental health, substance abuse, family conflict, and

poverty. Addressing one issue alone is not necessarily successful. The greatest success in helping youth reenter school and/or move on with GED and/or vocational training, results when youth are provided individualized and holistic services within their community. Earlier evaluations of other Illinois programs, particularly the Juvenile Justice Mental Health Initiative, emphasized that the most valuable resource was often a small pot of flexible dollars tailored to address emergency individual needs ranging from transportation to shoes/clothing tailored to school/sports/job interviews.

Individualized, holistic community based services are most effective.

Thank you for this opportunity to comment on your examination of the critical issue of ending the school to prison pipeline in the United States. Please let us know if you need further information.

Respectfully submitted,

Michelle Saddler
Secretary
Illinois Department of Human Services

Note - Attached is an appendix of a few individual case histories from Redeploy IL sites.

APPENDIX**St Clair and Madison Counties**

#1) Jimmy is a 16-year-old male who was referred to the Redeploy program due to charges of Knowingly Damage to Property Over \$300, Possession of Drug Paraphernalia, Possession of Cannabis, as well as supervision and probation violations. Jimmy was facing a sentence to the Illinois Department of Juvenile Justice because of his inability to follow through with the conditions of his probation. In addition, Jimmy maintained poor academic performance due to multiple truanies stemming from habitual substance abuse. It was apparent that substance abuse had taken over Jimmy's life and thus, enabled his poor decision-making. Jimmy resorted to drugs and alcohol to ease the stressors within his immediate environment. At this point in time, Jimmy was dealing with the inconsistent presence of his father in his life, as well as juggling the responsibility of parenting his one-year-old child.

On December 28, 2009, Jimmy was furloughed to placement in residential substance abuse treatment facility for his severe substance abuse. Jimmy has remained an active participant throughout his treatment process and has made dramatic progress towards achieving sobriety. Jimmy is scheduled to successfully complete residential substance abuse treatment in the coming weeks. Since becoming sober, Jimmy has reported feeling rejuvenated and focused for the first time in his life. He stated that he enjoys being sober and is determined to achieve many personal goals that he has for himself. He has also begun the process of filing for joint-custody of his son.

Redeploy established the following goals for Jimmy upon his acceptance into the program: enroll and attend school or GED classes on a daily basis; seek positive recreational activities and employment; comply with the conditions of his probation; participate in substance abuse treatment, individual and/or family therapy, and mental health treatment, if necessary; attend local NA/AA groups in his community; and care for his one-year-old son. Jimmy and his family have yet to address all the established goals due to his placement in residential substance abuse treatment; however, he had made noteworthy strides towards improving his life in all domains. Jimmy has the means, motivation, determination and support to improve the quality of his life, not only for him, but also for his son. Redeploy is eager to guide Jimmy throughout the start of his new, sober life.

#2) Kelly was referred to the Redeploy program in May of 2011. Her charges consisted of two counts of Battery and Theft Over \$300. Kelly also presented with severe mental health, school, and family relationship issues that led to several Petitions to Revoke Probation prior to being referred to the Redeploy Program.

At the time of referral, Kelly had been hospitalized for psychiatric treatment on nine occasions from the age of nine to fourteen. Her diagnoses included Bi-Polar Disorder, Major Depressive Disorder, Conduct Disorder, Disruptive Behavior Disorder, and Polysubstance Abuse. Kelly had been prescribed several psychotropic medications and also had numerous counselors over the past several years. Kelly would refuse to take her medication and she and her mother did not follow up or cooperate with recommended

counseling. Along with her mental health issues, Kelly and her mother had an extremely volatile relationship.

Upon referral, Kelly and her mother were very resistant in participating in the Redeploy program. Kelly would often report that she did not need medication or counseling and would refuse to take the medication and participate in counseling. Redeploy encouraged Kelly and her mother to cooperate with and participate in the Redeploy program and with referred counseling to no avail. The one thing the case manager did not do was to give up on this case. At the time, everyone in Kelly's life wanted nothing to do with her and even her teachers and probation officer wanted to see her locked up. The case manager recognized Kelly's behaviors to stem from her mental illness which, neither she nor her mother was actively addressing. Kelly would sometimes spend an entire appointment in her living room with her case manager with a blanket over her head and would refuse to make eye contact. Other times Kelly would curse at her worker and call her names. The case manager understood that Kelly's behavior was in an effort to get the case manager to leave. The case manager was professional and would not leave nor did she allow herself to get into power control struggles with Kelly.

While Kelly did not change her behavior overnight, she did start utilizing her case manager by calling her when she was upset or when she had been in an argument with her mother. The nature of that counseling relationship started to change and Kelly began to contemplate the need for taking care of her mental health needs. Kelly did appear back before the Court for an offense of Disorderly Conduct. At this time Redeploy asked she be evaluated for fitness due to the severity of her mental health issues. The evaluation was completed and Kelly was found unfit to stand trial in the new case. Therefore, Kelly was ordered into the custody of DHS for fitness restoration. Kelly was placed at Streamwood Behavioral Health Center. Kelly struggled significantly in the beginning of treatment at Streamwood. However, over time she began to take her medication as prescribed and participate in counseling. Kelly was there for several months and her case manager could see a complete change in her personality and behavior. Kelly appeared happy and comfortable in her own skin. Kelly also talked about future goals such as completing high school and going to college. Kelly was found fit to stand trial and ultimately had the Disorderly Conduct charge dismissed as well as her successful completion of probation. Kelly hugged the case manager she had given so much grief to showing her appreciation for the effort that was put into her case. If Kelly would have been sent to the Illinois Department of Juvenile Justice in the first place, the chances are she would not have had the individualized treatment by Redeploy as well as staff at Streamwood. In addition, Kelly most likely would have been part of the 50% of youth who are released from IDJJ and return. To this date, Kelly continues to take her medication and participate in school. Kelly has not committed any crimes since participating with Redeploy.

#3) David is a 17 year old male who was referred to the Redeploy program in July 2011 after acquiring a new charge of Burglary, Possession of Ammunition, Possession of Cannabis, and a Petition to Revoke Probation (PTRP). David was placed on probation for 5 years for his charges. In addition to Redeploy, he was Court ordered to participate with a variety of community-based services while in residential substance abuse treatment.

David completed residential substance abuse treatment and was allowed to return home with his grandparents in October 2011. David had difficulty entering back into his hometown and avoiding his negative peer group. He also struggled with structure and discipline that his grandparents were providing him with; it was never implemented early on in his life by his biological mother. David left his home with his grandparents in November 2011. Probation issued a warrant for his arrest. He was picked up and presented before the Court on January 20, 2012. David was allowed to return to residential treatment. David initially struggled with acclimating back into the residential facility where he had been previously. He worked hard to overcome emotional and personal issues with peers at the facility. David also relapsed on synthetic marijuana that another youth brought into the facility. After being placed on jeopardy status David came to terms with the two choices he had. He could continue to make the wrong choices and ultimately end up in jail or decide to make treatment work for him. David chose the latter.

During this stay at residential treatment, David took initiative to work on his family relationships. He took responsibility for past actions and transgressions against the grandparents that support him the most. David has also talked and spent time with his biological mother and his new stepfather in an attempt to build a stronger bond. This was difficult for David emotionally because he has never had strong family relationships although he has desired to have them. It was also a struggle for him to take responsibility for his past actions but David has learned that his past does not define him and he can overcome his battles in order to be a successful member of his community.

David has also worked hard to prepare to take the GED test in April. He feels confident and looks forward to moving on to college afterwards. David also realized that he is gifted in playing the guitar. During treatment he taught himself how to play and utilized music as an outlet for his emotions. David continues to progress in his abilities and loves to play the guitar his grandparents bought for him. He plays daily and has already done research into local guitar lessons when he moves next month.

David completed residential treatment successfully at the very end of March. He is moving into a recovery home where he will continue to work on acclimating himself into the community. David has settled all pending legal matters and at this time has no upcoming court hearings. On the day David moved to his new home, he was scheduled to have a job interview at his favorite store. David looks forward to the opportunity to start a new life for himself. David has developed self confidence, a positive attitude, and desire to have a successful future. David's future plans include preparing a portfolio of designs for a shoe company, taking the GED test, attending the local community college, working, and guitar lessons.

#4) Curtis was referred to Redeploy Illinois in January of 2011 after being charged with Robbery. Curtis was referred because the Court was considering committing him to the Illinois Department of Juvenile Justice. Redeploy met with Curtis in detention and with his mother several times prior to his sentencing date. Redeploy had learned that Curtis had never been in trouble with the legal system before and had been a successful wide receiver for a neighboring community high school football team. Curtis presented to be a very personable and intelligent young man. Part of what led Curtis to being in the position he was in, was his difficulty in taking ownership over his own actions and blaming others. Curtis was present when an adult he was with robbed another individual at a gas station.

Redeploy helped Curtis and his mother develop goals that not only addressed all of his life domains, but also targeted his level of responsibility with not only his crime but his day to day behavior. The Court allowed Curtis to remain in the community and work with Redeploy. The Court also placed him on the Electronic Leg Monitor (ELM). Curtis initially struggled with abiding by the ELM which placed him back before the Juvenile Judge. This was a great learning experience for Curtis as Redeploy and the Juvenile Judge were able to further develop his level of accountability and willingness to take back power in his life through positive choices on a daily basis. He was allowed to continue working with Redeploy and was ordered to continue on probation and with the Electronic Leg Monitor.

Since that time, Redeploy helped Curtis be transferred from a behavioral school that he was not being successful in to LOGOS school in St. Louis, Missouri. Since this transfer, Curtis has thrived at this school and is making good grades. He also has joined their basketball team and has found a lot of success with this activity. Curtis also joined a local youth coalition in his community that looks to reduce violence and promote positive activities.

Through all of this, it became apparent that Curtis was not only making behavioral adaptations, he was making cognitive changes. Curtis' faulty perceptions about his future and those around him have become more positive. Curtis is taking more responsibility for his actions and takes complete responsibility for why he is placed on Probation in the first place.

Curtis' case manager submitted an application to the Models for Change Conference that was to take place in Washington D.C. in December of 2011. Out of 300 applications submitted around the nation, Curtis was selected to come speak at the conference from the perspective of a youth in the juvenile justice system and what has worked and what has not for him.

Curtis and his mother, accompanied by his case manager went to Washington D.C. and participated in the conference. Curtis was able to articulate his perspective and explain the things that have helped him. The incredible thing about this conference was that Curtis walked away feeling like he has a few hundred supporters other than just his case manager. Curtis and his mother were also able to go to the National Mall and see the monuments. Curtis and his mother would not normally have the income to see something like this, or even be able to take a vacation. Curtis truly views this as a life changing event for him. Curtis has been with Redeploy for one year now and continues to do extremely well. The State presently has an over 50% failure rate on all youth that return from juvenile prison. If Curtis would not have been afforded the opportunity to work with Redeploy, he most likely would have fell in that population's failure rate and maybe never get out of the cycle of going in and out of prison.

#5) Kobe is a 16 year old male who was referred to the Redeploy program in March of 2011 after acquiring charges of Attempted Robbery, Aggravated Battery (two counts) and Mob Action. In addition to Redeploy, he was ordered to participate in a variety of community-based services.

Since being placed on probation Kobe has worked very hard at complying with his conditions of probation. Kobe consistently makes his appointments with Redeploy, Probation, and counseling for anger management which he completed successfully in the summer of 2011. Kobe also focused on rebuilding his relationship with his mother. Although they lived in the same home, Kobe's maternal grandmother was his biggest supporter and the one person he went to in a time of need. Kobe's communication with his mother has improved but it will continue to be an area that they will need to work on.

Kobe has also continued to be a successful athlete at his high school. Kobe participated in both football and wrestling last year; ending his school year with a great record. The family moved to another town in March of 2012 and Kobe had to quickly adjust to a new school, friends, and environment. Kobe's grades increased dramatically and he continues to maintain a B average at the new school. He reports enjoying his classes and that slowly he is making new friends. Kobe instantly sought out the football and wrestling coaches upon transfer and is already working hard for a starting position on both teams.

Kobe has overcome many obstacles and refocused his attention from a negative outlook to a bright and optimistic future. He looks forwards to continuing with athletics and is searching for summer work. Kobe has learned to accept responsibility for his actions and is working on continual changes to improve his life and lead to a promising future. Due to his continued progress and success, Redeploy closed his case successfully in April 2012.

Peoria County

Outlined below are 3 brief case studies submitted by Kelly Craig, Redeploy Program Case Manager for Peoria County.

Case #1

Jeremiah, 16 year old African American male was referred the Redeploy Illinois Program after being adjudicated for Armed Robbery. Redeploy staff worked closely with Jeremiah as the Redeploy Illinois Program was the last attempt offered by the Court before consideration for commitment to the Illinois Department of Juvenile Justice.

The assigned Redeploy counselor assisted the family with getting Jeremiah enrolled back into District 150. He had previously stopped attending school on a regular basis. Once enrolled, the Redeploy counselor contacted the school on a weekly basis to monitor attendance and conduct. Jeremiah was also engaged in pro-social activities in the community such as fishing and sports. Jeremiah also performed community service by gardening at Scotts Prairie in Peoria as a way of restorative justice to the community.

Jeremiah also received assistance from his Redeploy counselor on how to fill out a job application and apply for jobs in the community. He remains in good standing at Woodruff Career and Technical Center where he recently completed the ninth grade. He has not had any reported Probation Violations since beginning the Redeploy Illinois Program.

Case #2

Ivan, 17 year old African American male was referred to Redeploy Illinois Program after being adjudicated for Residential Burglary. Upon being referred to Redeploy Illinois, Ivan was deep into the juvenile justice system and had been detained in secure detention on several occasions. Through the assistance of Redeploy Illinois and tutorial services, Ivan graduated from high school this past May and through the assistance of his Redeploy counselor, obtained employment at OSF Hospital in Peoria where he works today. He also successfully completed Probation.

Case #3

Jarrell, 15 year old African American male was referred to Redeploy Illinois Program following his adjudication for Aggravated Battery. Many of his aggressive acts involved students and school personnel. Jarrell played basketball for Peoria High School as a Freshman before quitting the team.

While participating in the Redeploy Program, Jarrell participated in the Washington Aggression Interruption Training (WAIT) and was monitored by his Redeploy counselor in school 3-4 times per week as that is where a majority of Jarrell's issues were focused. Jarrell regained his standing at Peoria High School and rejoined the basketball team for his Junior year. As a Senior, he was the starting point guard for the 3A IHSA State Basketball Champions.

Jarrell graduated from Peoria High School this past May and is currently playing basketball in junior college.

Macon County

Macon County Community A.C.C.E.S.S.

Response to Senator Durbin's request for Redeploy success stories.

6 December 2012

1. Macon County's first Juvenile Justice Newsletter was published using Redeploy Illinois funds and an AmeriCorps Vista Volunteer. The newsletter introduces the new juvenile judge and provides one stop information on the juvenile justice programs in Macon County. www.MaconCoJJC.org

2. MC's YASI flagged for violence and mental health. He was also high in legal history. When he started Community ACCESS on 5 October 2011, he was in transition from Macarthur High School to SEAP. His schooling was very shaky because of his history of behavior problems. While attending SEAP, his home interventionist from Shockwave initiated several intervention meetings with administrators in order to devise a plan for his educational success. MC contributed to this own success because he was willing to cooperate with intervention plans set forth on his behalf. As a result, he completed SEAP successfully and transferred to Futures Academy. At Futures, he completed all coursework with Cs and above and graduated with his high school diploma in May. MC has been attending one counseling session per week with Heritage Behavioral Health where he's receiving substance abuse treatment. He also sees a psychiatrist for mental health issues. MC independently sought and obtained employment at Pastabilities. MC almost lost his employment at Pastabilities for missing a day. He informed his home interventionist that he was tired and didn't wake up. His probation officer, counselor and home interventionist spoke with him and explained that his marijuana usage had increased and was probably affecting his energy and ability to perform his duties at work. He thought that there was no way his employer would take him back. MC and his home interventionist from Shockwave set a goal to talk to his supervisor, apologize, and reassure them that it would not happen again. Pastabilities agreed to take MC back. He was also in the Shockwave mowing program. MC enrolled and attended classes at Richland Community College during the fall semester. MC successfully completed a CRB. As part of this CRB he made a presentation to the Decatur City Council regarding issues important to Decatur youth.

3. On Monday, July 16, 2012, two Community A.C.E.S.S. (CA) youths, M C and DM attended the City Council meeting. They attended the City Council meeting in partial fulfillment of their CRB contract. MC presented at the Council meeting under "Appearance from Citizens." In his presentation, he suggested that the City Council should provide a planetarium for teens as well as a variety of fun activities. MC had visited the planetarium in St. Louis and was impressed with it. His mother was present at the City Council meeting. DM did not want to stand with MC at the podium. He also refused to stand up in the audience while the presentation was being made. He was not comfortable with this setting. However, he had done a great job collecting data by distributing surveys, which teenagers had completed. MC seldom looked at his notes. He spoke with confidence and poise. At the end of the meeting, a reporter interviewed MC. In addition, John Phillips invited the youths to be on his radio show on Tuesday (7/17/12) at 5:00 p.m. Crawford agreed to attend.

4. Preparing the youths for the City Council Meeting: A session was held with the youths to explore what is available for youth to do in Decatur. Youths were asked to provide suggestions on regarding what they would like to be available for youth in Decatur. They were asked to dream and not to be concerned with the cost of implementation. Both took an active part in the discussions. CRB facilitators John Johnson and Linda George were invited to the session. They also attended the City

Council meeting in support of the youth. Based on the information that was gathered at the session, a type written draft was given to MC who manually rewrote it in his own words.

Lee County

With us being such a small county and Kelly being here one day a week, I tend to handle all correspondence with the Redeploy Program. There is a success story in our Program Plan submitted to DHS in June but doesn't really mention much about school. This particular minor was pursuing her GED as she was having on going school issues. We have not had another graduation of Redeploy minors since that time. Here are some general thoughts though from previous minors that went through the program since inception.... Several of the Redeploy teens we have had transferred from public schools, to alternative education with great success ie. Options Program (Ran by ROE office), Transitions Program (also ran by ROE), Camelot or the GED program. In a few of our cases it was not that the public school had no choice but to expel them, but that due to their issues (explosive anger, truancy, suspensions for behavioral issues, learning disabilities, depression, drugs etc) in their original school, our Redeploy Program's PLL therapist and the Probation officer collaborated in exploring alternative school options with the public school personnel, as alternative educational programs would support the clients educational success. These options were crucial in exploring due to the teens emotional, mental, social, academic etc. issues that were being presented during the time enrolled in Redeploy. Oftentimes the link between the Redeploy (PLL) therapist, Probation Officer to the school is an integral part of the clients educational success. We assist in the transition via communication between counselors and schools for the client from one school to another and as well as in offering help with something as practical as transportation to school if that is a pressing issue. Some of these kids would have become high school drop-outs. There is a direct connection between Redeploy services with its intensive holistic approach where we deal with every aspect of the teen's life which always includes the educational component. Besides that, we have knowledge of prior evaluations on the teens in Redeploy before entering into our program, including any evaluations, IEP's. behavior and truancy school records, medication records and other vital information if they have signed the consent forms. Usually, we have been the ones to recognize from the communication with the school and the mental health agency when a minor is on medication and when they are not taking it properly or mixing it with other substances because we are seeing behavioral issues happen in school or in the home which goes beyond just the proper diagnosing of a problem such as ADHD.

This is just some thoughts that come to mind that the State may one day want to see as a direct correlation between the Redeploy program and success in areas such as education, for whatever it's worth. Thanks Kim

Lasalle County

My name is Cynthia Robinson and my agency, Youth Service Bureau of Illinois Valley, is the treatment provider for the LaSalle County Redeploy Illinois Program. I have two success stories I would like to share with you.

The first involves the "Crown" family. They are a nuclear family with 3 children James 15, Brittany 13, and Randy 11. For years, both mom and dad and all three children have been on probation for a multitude of crimes including battery and domestic violence. Dad had been involved in gang activity since he was a child and has a lengthy criminal history. He has been in and out of the home, and unreliable and undependable his children's entire lives. Dad did not complete grade school and has never had a job.

Mom works for a home health-care facility. She works to make ends meet for the family, but also has a criminal history. When dad would not come home for days, Mom would track him down, and physically assault him and whatever woman she would find him with. She often brought her children with her to confront her husband, and her children assisted in throwing bricks through the girlfriends' windows. In the last year, James set a physically disabled classmate's hair on fire on the bus and Brittany assaulted a police officer as well as several classmates. There appeared to be no hope for this family.

After the 2 oldest children were enrolled in the Redeploy program and we began working with the entire family, the children's school attendance began to improve, as did their grades. The children were in group three times per week, received weekly individual and family therapy, the parents also received weekly individual therapy and case management services. The children began to open up and trust the clinicians. They engaged in, and became invested in, treatment. The children's grades and behavior continued to improve. Dad left the home, and filed for divorce. The mother and children all completed their probation with no further incidence of criminal behavior.

The children have recently completed treatment and are doing very well in school. While they have both officially "graduated" from group, both children continue to attend group three times per week of their own volition. Both have become leaders in the group, facilitating treatment for their peers. Mom is working on her GED and may attend classes at the junior college.

Interestingly, I received a call this week-end from dad. He said he was back in the area and he asked if he could talk to me and do some therapy. He said he wants to figure out why he keeps "f..ng up." That we'll reserve judgment on.

The second is a young girl named Julie. Her mother was recently released from a prison in New Mexico after serving a lengthy sentence on drug charges. Mom had left dad and her five kids years before this last incarceration. When Julie learned her mother had been released from prison she ran away, hitchhiking to New Mexico to develop a relationship with her mother. Once she got to New Mexico and located her mother at her grandmother's home, her mother again rejected her. Julie is only 14. Julie has an extensive history of assault, robbery and truancy. She was on probation, so she was put on a plane and flown back to Illinois. Even though we were not yet working with Julie in the Redeploy program, YSBIV quickly accepted a referral and picked her up from O'Hare.

When one first meets Dad he appears a bit intimidating as he has a skull and crossbones tattooed between his eyes, "FUCK" tattooed on his knuckles, his nipples are pierced, and he rarely wears a shirt. But he is actually a very concerned, loving father. Dad is not able to work because of a legitimate back injury. Again YSBIV began working with Julie, her father and the other children, providing the full array of services. They quickly responded, making stunning changes in the way the family interacts, discipline, communication etc. The children were no longer allowed to be truant and had to complete their homework. Dad worked in partnership with the clinicians and strived to learn new parenting techniques. Julie is set to graduate from treatment after the first of the year. She routinely tells her therapist that she does not want to be done, but wants to stay in treatment. The school is very pleased with the strides this family has made.

We are very proud of the work we have done with these youth. It is very, very hard stressful work. Not all cases turn out so well. But stories like the ones I just shared with you make it worthwhile.

If I can be of further assistance please feel free to contact me: (815) 431-3021. I would be honored to discuss our program further.

2nd Circuit

#1 Our most recent MST client (S. Fields) was expelled from Mt. Carmel High School in the Spring of 2012. He entered and recently completed the MST program. As of August of 2012 he is again enrolled in school, and so far is doing fairly well. At a court appearance on October 16, 2012 his father told the court that the MST program was the most beneficial program they have participated in and he was highly complimentary of the program.

#2 I have a success story on one of my cases I recently closed out of Jefferson County Re-Deploy. Savannah H. was referred to the MST program for multiple problems such as substance abuse; runaway behaviors; and school problems. After engaging the family and getting mom to buy into the MST program, changes were made immediately. Savannah's school problems consisted of truancy; academic struggles, and behavior concerns with peers and staff. Mom and I began prioritizing the biggest drivers

to Savannah's behaviors and it was identified that her substance use had the biggest impact on her school success and overall compliance. The Therapist began working with mom on implementing structure, monitoring and a Behavior Plan that addresses behaviors by linking powerful consequences and rewards directly to the behaviors. Mom was engaged and on board with Therapist recommendations evidenced by her follow-through with plans. Mom began to feel empowered and her confidence regarding her parenting skills increased; which led to changes in Savannah's behaviors. Savannah began testing limits; however mom remained consistent and utilized her social supports. Savannah began to comply with the new structure in the home, and realized that mom was serious about rule enforcement. Savannah eliminated her substance use; which was the driver that caused her to skip school, act out in school, and lack respect for school staff. Mom increased her collaboration with school staff and began to build a solid linkage with school staff by implementing a communication plan. Savannah made a turn around in school, and successfully completed the MST program. Savannah completed the MST program with zero unexcused absences; zero discipline reports, and positive reports from each of her teachers stating her progress, and positive changes this school year. Savannah's academic performance increased and she was able to earn straight A's and B's on her report card. Savannah became passionate about her education and linked her sobriety to her academic/ school success. Mom's level of empowerment; supervision; and increased parenting skills played a key role in Savannah's overall success.

Please note: Kids Hope United is now One Hope United. Please note my new email address.

McLean County

In McLean County, and in all Counties throughout the State, educating clients continues to be one of the most important and difficult aspects of probation. With Redeploy services, McLean County has been able to work with the schools in our local districts to determine the educational program that best suits the individuals we serve. This is done through assessments and regular contacts with all team members who are working with the client. In McLean County, many of the clients are behind in school by as much as two years, making graduation seem impossible. Knowing how long it will take them to graduate, clients become frustrated and stop attending school all together. With the help of Redeploy, Heartland Community College (HCC), and The McLean County Youth Build Program (Youth Build), clients are given a new perspective on how their education can be completed.

HCC works with Redeploy clients to assess their current education level and is able to provide them with the educational services needed to successfully complete their G.E.D. The cost of the G.E.D. exam is \$50.00, making it unaffordable for many of our clients. When entering the Redeploy program, clients are told Redeploy will assist or pay for the G.E.D. exam, as long as they complete the assessment and pre- placement exam required by HCC. Over the past year, HCC has helped four Redeploy Clients successfully complete their G.E.D.; and while college is not for everyone, all four of the clients went on to take collegiate level classes at HCC.

Youth Build is an alternative educational setting which offers either a high school diploma or G.E.D., while providing skills in carpentry and warehouse management. Clients are typically referred to

Youth Build for the same reasons as those who attend HCC and are assessed by the Redeploy team and the case manager. The case manager will take on the role of the parent and assist the individual in gathering all information needed to enroll at Youth Build. In FY 12, McLean County Redeploy assisted a client who was heavily involved with the selling of narcotics as well as gang activity. He was a regular topic at monthly meetings and it seemed as though all hope was lost; however, that was not the case. His Redeploy case manager was able to sell him on the idea of the Youth Build program and found the “hook” to help him be successful. The individual registered for the program and began attending on a regular basis. He earned his high school diploma in a year and is now taking courses at Lincoln Community College.

RESTORATIVE SCHOOLS VISION PROJECT

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December 8, 2012

Honorable U.S. Senator Dick Durbin, the Senate's Assistant Majority Leader and
 Chairman of The Senate Judiciary Subcommittee on the Constitutional, Civil
 Rights, and Human Rights & Fellow Subcommittee Members

Re: Ending the School-to-Prison Pipeline: Hearing Before the Senate Judiciary
 Subcommittee on the Constitution, Civil Rights, and Human Rights

Dear Senators:

I am a Board Member of the Restorative Schools Vision Project, (RSVP) a non-profit organization located in Sacramento, California. As an organization we have dedicated ourselves to offering schools an alternative to zero tolerance discipline policies. We have done this by facilitation workshops in schools and school districts in Restorative Justice and Restorative Practices as well as by having a presence in the schools themselves. We have also participated, as a member organization of the Dignity in Schools Campaign, (DSC) in facilitation workshops nationally on both Restorative Practices and Social and Emotional Learning. As a member of DSC we have advocated for putting an end to the School-to-Prison Pipeline.

Over the past six years, working in local public schools we have observed first hand how students, particularly those of color, are disproportionately singled out for harsh punishment, particularly out of school suspensions. The most common reason given for the overwhelming number of these suspensions is for "willful defiance", a very subjective standard that does not lead to understanding or true accountability and often comes about as a result of cultural misunderstandings on the part of administrators and teachers.



"It is easier to build strong children than to repair broken men."
 Frederick Douglass

We have offered a viable alternative to out of school suspension in Restorative Justice Practices. As reflected in the DSC Model School Code, (See http://www.dignityinschools.org/files/DSC_Model_Code.pdf) Restorative Justice is a theory of justice that emphasizes repairing the harm caused or revealed by misconduct rather than punishment by:

- Identifying the misconduct and attempting to repair the damage;
- Including all people impacted by a conflict in the process of responding to conflict; and
- Creating a process that promotes healing, reconciliation and the rebuilding of relationships to build mutual responsibility and constructive responses to wrongdoing within our schools.

The Model Code defines Restorative Practices as social and emotional practices that offer “a framework for a broad range of restorative justice approaches that proactively build a school community based on cooperation, mutual understanding, trust and respect, and respond to conflict by including all people impacted by a conflict in finding solutions that restore relationships and repair the harm done to the school community.” Evidence based research has proven that teaching social and emotional practices in schools not only reduces conduct problems but also improves student academic performance by as much as 11 %. (See <http://casel.org/why-it-matters/benefits-of-sel/meta-analysis/>)

Recognizing the deleterious effect that suspensions have on student achievement and how school pushout leads to eventual youth incarceration, we believe that Congress must now show strong leadership in putting and end to the school-to-prison-pipeline.



“It is easier to build strong children than to repair broken men.”
Frederick Douglass

Legislation similar to that authored by Congressman Steve Cohen (D-TN), Restorative Justice in Schools Act, H.R. 415 introduced in the House last year would give school administrators and teachers the tools needed to help our youth learn compassion as well as learn how to resolve their conflicts without violence.

This year, bipartisan legislation introduced in the House by Judy Biggert (R-IL), Dale E. Kildee (D-MI), and Tim Ryan (D-OH), The Academic, Social, and Emotional Learning Act of 2011, HR 2437 will expand the availability of programs that teach students skills such as problem-solving, conflict resolution, responsible decision-making, relationship building, goal-setting, and self discipline. "This legislation will help teachers provide result-driven instruction in skills that keep children focused on learning and prepare them to succeed in the real world," says Representative Judy Biggert, a member of the House Education and the Workforce Committee.

These are examples of recently introduced legislation that can be funded by the Elementary and Secondary Education Act (ESEA) and would go a long way toward ending the school-to-prison pipeline.

Respectfully,

Richard Jaffee Cohen
Board Member, Restorative Schools Vision Project



"It is easier to build strong children than to repair broken men."
Frederick Douglass

I am faculty at Loyola Law School in Los Angeles, California.¹ Through my work at Loyola's Center for Juvenile Law and Policy, I am the co-director of a juvenile justice clinic. Within the clinic, I teach substantive classes on trial skills and juvenile law and I supervise law students representing clients in delinquency proceedings in Los Angeles. In addition, I teach Criminal Procedure and a seminar course on issues in criminal justice. Before joining the faculty at Loyola, I was a trial attorney at the Public Defender Service for the District of Columbia ("PDS"). At PDS, I represented three categories of clients: 1) children charged in delinquency court, 2) children charged as adults with serious and violent felonies, including homicide, and 3) adults charged with serious and violent felonies, including homicide. Prior to becoming a lawyer, I taught high school and ran an after-school volunteer program at the Maya Angelou Public Charter School in Washington, D.C. As a teacher, I worked with many youth who had been adjudicated delinquent and had spent time in juvenile correction facilities.

My testimony will describe how the school to prison pipeline has impacted three of the clients I have represented in juvenile delinquency court in Los Angeles. I have chosen stories to demonstrate a few important concerns about the school to prison pipeline: 1) children are punished twice, 2) timing is important to intervention on behalf of children with special education needs, and 3) increased police presence and increased funneling of children to delinquency courts for incidents occurring at *public* school² can have a negative, stigmatizing effect.

1) CHILDREN ARE PUNISHED TWICE – ONCE IN SCHOOL AND AGAIN IN DELINQUENCY COURT

Simply put, children who misbehave at school are subject to two punishments. The consequence doled out by the public school for the offense which occurs in school is immediate. A child is suspended, expelled, or given detention. Notice of the punishment is immediate, even if an expulsion hearing is required a few days later. The consequence which occurs in juvenile delinquency court, on the other hand, will happen at a later date and time, often at a much later time depending on the jurisdiction.

Young people benefit from consequences which are immediate. The impact of a consequence which is doled out months later is not as great as the consequence which immediately addresses the problematic behavior. School is the most appropriate place to deal with problems that occur in school. The connection is direct and the consequence can be immediate and therefore meaningful to the child. The passage of time is felt more accurately by children. A period of months feels longer to a child than it does to an adult.

¹ My testimony is offered in a personal capacity and is not a representation of either Loyola Law School or the Center for Juvenile Law and Policy.

² If a child is in private school, the police are not involved, so these concerns are for those students who attend public school only. In Washington D.C. and Los Angeles, California where I have taught and practiced as an attorney, public schools are disproportionately filled with poor children and children who belong to racial and ethnic minority groups.

*Ben Lopez:*³

On January 9, 2012, Ms. Johnson, a Los Angeles High School Assistant Principal suspended Ben Lopez ("Ben") for allegedly possessing a controlled substance, marijuana, on school grounds. Ben was fifteen years old at the time. On January 9th, Ms. Johnson took immediate action and suspended Ben from school. Ms. Johnson further directed Ben and Ms. Lopez, his mother, to go to the Los Angeles Police Department at some point. Ms. Johnson did not provide a specific date for them to appear at the police department and no citation was given to Ben on January 9th. Ben and Ms. Lopez both went to the Los Angeles Police Department on January 27, 2012. At that time, Ben was given a citation for allegedly violating California Health & Safety Code § 11357(e).

Ben and Ms. Lopez went to the Los Angeles Juvenile Court in March 2012, on the date they were cited to appear, they presented the citation, and they were informed that no case had been filed by the District Attorney at that time. They were turned away by court personnel. Neither Ben nor Ms. Lopez received further notice of a new court date.

On September 24, 2012, the District Attorney filed a petition against Ben. The petition alleged one count based on the alleged conduct on January 9, 2012: a violation of Health and Safety Code § 11357(e). Nothing in the discovery provided by the prosecution contained any rationale for (1) the failure of the District Attorney's office to prosecute Mr. Lopez when the offense originally occurred or (2) the delay in prosecution of the case from January 9th, when the incident occurred, to September 24th, when the District Attorney filed the petition.

Arraignment was scheduled for September 24, 2012. However, Ben and his family did not receive any notice of the scheduled arraignment. In Los Angeles juvenile delinquency courts, attorneys are not appointed by the court and do not meet their clients to commence representation until the date of the arraignment. As Ben's purported counsel, I contacted Ms. Lopez by telephone based on the information contained in the citation provided to me in discovery for the purpose of informing Ms. Lopez of the court hearing for Ben on that date. Ms. Lopez informed me that she had not received any notice of the September 24th appearance. I then represented to the Court that Ms. Lopez could bring Ben to court on September 26, 2012. The Court issued and held a bench warrant until September 26, 2012, the date of the continued arraignment in this matter.

Ben and Ms. Lopez were present in Los Angeles court for the arraignment on September 26, 2012. On September 26th, Ben entered a denial to the single charge for a violation of Health and Safety § 11357(e). On September 26th, I informed the Court of (1) the extraordinary delay of eight and a half months from the date of the offense to the date of both the filing of the

³ Ben Lopez is not the name of the young man in this story. I have changed his name to protect attorney-client confidentiality. This case occurred within Los Angeles County. I have changed the name of the school administrator, the location of the offense, the school name, the police department name, and the courthouse where it occurred, but I have not changed exact dates or the length of time between dates.

petition and the arraignment and (2) the failure to notify Ben and Ms. Lopez about the court date of September 24, 2012. Ms. Lopez's address was correct on the citation and petition.

The next hearing in the case was scheduled for October 31, 2012. In advance of that hearing, I filed a motion to dismiss the case based on failure to prosecute,⁴ speedy trial rights,⁵ and in the interests of justice.⁶ This was Ben's first and only ever case in delinquency court. He had not gotten into any trouble at school before or since this incident in January of 2012. Possession of marijuana in school is a misdemeanor offense in California carrying no confinement time.⁷ The judge heard the motion and denied it.

By the time Ben had reached me as his attorney, it was too late for me to provide him with any assistance in the disciplinary procedures at Los Angeles High School. Due to this experience, he and Ms. Lopez decided he should go to another school and he had already transferred schools. Ben enrolled in a continuation high school instead of a traditional high

⁴ Failure to prosecute or abandonment of prosecution is also called a motion for dismissal for want of prosecution.

⁵ Speedy trial rights for criminal defendants arise out of due process concerns and trial rights. See Fifth Amendment to U.S. Constitution, Fifth Amendment to State Constitutions. Some courts have concluded that the nature of adolescence and the underlying rehabilitative goals of juvenile courts mean that speedy trial guarantees should be applied even more rigorously in juvenile delinquency court than in the adult criminal context, *see, e.g., P.V. v. District Court in and for the Tenth Judicial District*, 199 Colo. at 360, 609 P.2d at 112 ("It is our view that the speedy resolution of juvenile proceedings brings about more significant benefits to a child and to society than are accrued through application of speedy trial rules in adult proceedings. Certainly the average juvenile is far more vulnerable to psychological harm during the pretrial period than the average adult would be."); *In the Matter of Benjamin L.*, 92 N.Y.2d at 667, 708 N.E.2d at 160, 685 N.Y.S.2d 404 (reasons for speedy adjudication "are even more compelling in the juvenile context [than in the adult criminal context]" because "a delay in the proceedings may undermine a court's ability to act in its adjudicative and rehabilitative capacities" and because the "nature of adolescence" may render a delay acutely prejudicial for the juvenile and his or her defense). Trial rights are also generally associated with the Sixth Amendment to the U.S. Constitution and the Sixth Amendment corollary to State Constitutions. Speedy trial rights guard against three separate injuries that can be suffered by an accused as a result of undue trial delay: (i) prolonged pretrial incarceration; (ii) inconvenience, indignity, and anxiety resulting from the pendency of unresolved charges for a protracted period; and (iii) prejudice to the respondent's ability to present defensive evidence at trial when the trial is not held promptly in relation to the events at issue. *See, e.g., United States v. Ewell*, 383 U.S. 116, 120 (1966) (Speedy Trial Clause is "an important safeguard to prevent 357 undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of an accused to defend himself"). There are also California specific speedy trial timetables once a petition has been filed. CAL. WELF. & INST. CODE § 657(a)(1) (2012) (a juvenile has a right to a trial within 30 days of filing of a petition; and, for detained children, a right to trial within 15 days of the order of detention). In California, misdemeanors in adult criminal court have a statute of limitations of one year.

⁶ The court's authority to dismiss a juvenile court petition in the interests of justice in California arises under CAL. WELF. & INST. CODE § 782. That section states in relevant part: "A judge of the juvenile court in which a petition is filed...may dismiss the petition...if the court finds that the interests of justice and the welfare of the minor require such dismissal or it finds that the minor is not in need of treatment or rehabilitation." CAL. WELF. & INST. CODE § 782 (2009). The court shall have jurisdiction to order such dismissal regardless of whether the minor is, at the time of such order, a ward or dependent child of the court. Cal. Wel. & Inst. Code § 782 (2009).

⁷ See California Health & Safety Code § 11357(e).

school. When I met Ben almost nine months after the incident, I realized he presented with a number of issues that made me concerned that he was a child entitled to special education services. I referred Ben and Ms. Lopez to a special education lawyer and he is in the process of pursuing those services currently. Ms. Lopez had also already gotten Ben connected with counseling services to deal with his marijuana usage.

In early November, Ben received the opportunity to have probation. Some of the terms of his probation include community service, counseling, drug testing, performance in school, attendance at school, and consent to search.

2) TIMING IS IMPORTANT TO INTERVENTION ON BEHALF OF CHILDREN WITH SPECIAL EDUCATION NEEDS

Ben's story demonstrates how failure to have the services of an attorney at an early stage can lead to fewer legal resources to support a child subjected to disciplinary proceedings for a school event. It may also mean that the student changes to schools, disrupting their education. The impact of the absences of legal services is compounded when a child is entitled to special education services. A child with an Individualized Education Plan ("IEP") is entitled to a manifestation determination prior to the imposition of a school disciplinary consequence.⁸ This procedure is designed to ensure that a child is not unfairly punished for an incident which was a manifestation of his or her disability.

Having a delinquency lawyer can help to link children and parents with resources.⁹ For an example of what can occur when a child has the early intervention of a delinquency attorney and / or special education attorney, I will share information about a case where my client's behavior was a manifestation of her disability. I referred, Julia,¹⁰ the client whose story I share below, to a special education attorney through my office.¹¹ The education attorney represented Julia at the manifestation determination IEP. However, as this case illustrates, even if a child wins a manifestation determination hearing, that determination does not have any meaning in delinquency court and the child will not receive a lesser or different punishment. Further, children with mental health issues should have an IEP and may have behavior problems in school due to their health.

⁸ A child is entitled to special education services and an IEP under Individuals with Disabilities Education Act ("IDEA"), a federal law incorporated into state law in all fifty states and in the District of Columbia. Under the 1997 Amendments to the IDEA, school personnel seeking to exclude a child for discipline reasons must make additional steps. The school personnel must first determine whether the behavior in question was a manifestation of the child's disability. 20 U.S.C. § 1415 (k)(4),(5). The IEP team, which includes parents and other "qualified personnel," makes the manifestation determination. 20 U.S.C. § 1415(k)(4)(B).

⁹ Education rights belong to the parent and not the child.

¹⁰ Julia is not the name of the young girl in this story. I have changed her name to protect attorney-client confidentiality. This case occurred within Los Angeles County. I have eliminated the name of the school resource officer, the teacher, the location of the offense, the police department name, the psychiatrist, and the courthouse. I have not changed dates.

¹¹ Ideally, service providers should function as we do in my office at the Center for Juvenile Law and Policy and as I did as an attorney at PDS, where defense attorneys in delinquency court and education attorneys work together to provide holistic support for clients we jointly represent.

Julia:

At fifteen years old, Julia first became my client in January of 2009 when she was arrested and detained for three offenses: (1) Second Degree Commercial Burglary, in violation of the PENAL CODE 459, a felony, (2) Resist, Obstruct, Delay of peace officer or EMT, in violation of PENAL CODE, 148(A)(1), a misdemeanor, and (3) Battery in violation of PENAL CODE 242, (a) (1), a misdemeanor. In this case, Julia was accused of stealing beer from a liquor and convenience store (felony commercial burglary and battery). She was with an older boy at the time. He was not arrested. Julia managed to get out of the backseat of the police car where she was detained and ran away (resisting, obstructing, delaying a peace officer in execution of his duties). After getting away from the police, Julia then went to school. She was wearing handcuffs when she got there.

Julia presented with mental health issues, substance abuse issues, a history of neglect in the home, familial mental health history, difficulties in school, and emotional issues. I referred Julia to a special education attorney within my office. She was assessed, a process that took several months, and ultimately deemed eligible. Her special education placement and Individualized Education Program (IEP) began in October of 2009. Her IEP designation at that time was Other Health Impaired (OHI), and she was thought to suffer from ADHD. She then suffered several hospitalizations for self-injurious behavior.

Julia's second arrest was in March of 2010 for an incident which occurred at school. Julia was sixteen years old. She was charged with three offenses: (1) Burglary Violation of PENAL CODE 45, a felony, (2) Petty Theft, Violation of PENAL CODE 484(A), a misdemeanor, and (3) Vandalism Under \$400 Damage-Damage/Destroy in violation of penal code 594(A). These charges arose out of an incident where Julia broke into the athletic office at her high school. She broke the window with her hands and crawled through the broken glass. Once inside, Julia took some money that was in the office.

When the teacher found Julia, she had alcohol on breath. Julia told the health clerk, "This is not the kind of life for me, no one listens to me, is this what I have to do in order to get someone's attention...?" The teacher requested that Julia be placed on a 5150 mental health hold because of her emotionally labile state and concern that Julia was at risk for self-harm.¹² Although the school police officer at the scene did not feel that Julia met 5150 criteria, and did not take her to a hospital, a psychiatrist I later got appointed through the Court conducted an evaluation of Julia and reviewed the school records of this incident in addition to hospital and IEP assessment records. The doctor believed that Julia's "comments and dysregulated behavior suggested that she would have likely benefited from psychiatric assessment and possible intervention on that date."

¹² CAL. WELF. & INST. CODE § 5150, states in part, "... an application in writing stating the circumstances under which the person's condition was called to the attention of the officer, member of the attending staff, or professional person, and stating that the officer, member of the attending staff, or professional person has probable cause to believe that the person is, as a result of mental disorder, a danger to others, or to himself or herself, or gravely disabled."

Julia shared with me as her counsel and with the psychiatrist that she broke in to the school because she was frustrated and upset, and that she found money on the desk which she took as an after- thought. Julia also explained that she was in a state of mind at the time where she was not thinking clearly and feeling depressed and not caring what happened to her. According to the psychiatrist, it was “clear from review of the police records and photos that Julia was in a state of distress and exercised poor judgment in breaking into the office. [Julia]’s depressive symptoms and history of self-injurious and impulsive behaviors likely impaired her judgment in appreciating the dangers in climbing through a broken glass window (i.e. sustaining multiple injuries).”¹³

At a manifestation determination, Julia’s conduct in this incident was deemed a manifestation of her disability. In court, after a plea agreement in this case was reached, Julia was suitably placed in a residential treatment facility.

Julia was only identified as a child entitled to special education services *after* she was first arrested and became my client in juvenile delinquency court. Having an education attorney enabled her to have greater services provided through school. Her education attorney represented her interests and the interests of her parents at a manifestation determination IEP. Despite the fact that the school was on notice of Julia’s issues and the teacher recognized her mental health needs, the officer in this case did not respond with an appreciation for Julia’s mental health needs and did not show deference to the education professional.

3) INCREASED POLICE PRESENCE AND INCREASED FUNNELING OF CHILDREN TO DELINQUENCY COURTS FOR INCIDENTS OCCURRING AT *PUBLIC* SCHOOL CAN HAVE A NEGATIVE, STIGMATIZING EFFECT

While police and school resource officers are used differently in different school districts, in the large urban school district of Los Angeles, I have found that my clients are arrested and processed through juvenile delinquency court for offenses, no matter their age, special education status, mental health issues, or the circumstances of the event.

*Mario:*¹⁴

When Mario came to court, he set off the metal detector. Mario brought every trophy he had even earned with him to court to show the Judge. He was eleven.

Mario was a sixth grade student in middle school when he was arrested for hitting another student, Javier,¹⁵ with a padlock in November of 2009. Mario was overweight and was

¹³ Julia was diagnosed with the following Axis 1 DSM-IV DIAGNOSES: Major Depressive Disorder, Recurrent, Anxiety Disorder Not Otherwise Specified, ADHD Not Otherwise Specified, Parent Child Relational Problem and Poly-substance Use, R/O Eating Disorder Not Otherwise Specified.

¹⁴ Mario is not the name of the young boy in this story. I have changed his name to protect attorney-client confidentiality. This case occurred within Los Angeles County. I have changed or eliminated the names of the teacher, school and police officers. I have not changed the dates or the length of time between dates.

teased for his weight. This incident occurred after a pattern of verbal attacks and unwanted touching by Javier, the student Mario hit. By all accounts, including the classroom teacher's account, Javier was the class bully.

According to the teacher, she was first alerted to an issue when Javier told her that Mario, who sat directly behind Javier, was kicking his chair and bothering him. The teacher told Mario to stop bothering Javier and to do his work. Shortly after, another student reported to the teacher that Mario was crying. She saw Mario crying and asked what was wrong. The teacher told the school resource officer that Mario suddenly got up and started hitting Javier in the back of his head with a padlock. The teacher immediately got in the middle and stopped Mario. Javier was taken to the hospital and needed stitches on his head.

Mario was detained, arrested, taken to the police station, booked, interrogated, and later released to his mother.

Mario was charged in a petition dated January 2010, with one felony, assault with a deadly weapon, a padlock, in violation of Penal Code §245(A)(1), and special allegation, Penal Code §12022.7 (bodily harm inflicted during commission of felony not having bodily harm as an element). In January 2010, Mario was arraigned, where he entered a denial to all charges. In February, I filed a motion to dismiss pursuant to Welfare and Institutions Code §782.¹⁵ This motion was heard and denied in March 2010.

The officer who interrogated Mario claimed that he read Mario his Miranda rights and that Mario waived his rights because he really wanted to explain what really happened with Javier.¹⁷ According to the officer, Mario told him that Javier had been bullying and "scooping" him since the beginning of November 2009. Mario explained that "scooping" was when someone "grabs another person by the tits and pulls on them." Mario told the officer that during 6th period around 1:00 pm Javier had come up behind him in the restroom while he was washing his hands and scooped him. Mario also told the officer that when Javier "scooped" him, it made Mario mad and he wanted to tell Javier to stop bullying and "scooping" him.

The officer reported that Mario told him he tried to get Javier's attention during 7th period by tapping him on the shoulder to tell him to stop "scooping" him, but Javier ignored him. According to the officer, Mario went on to describe that it really made him mad when Javier told the teacher about Mario bothering him. The officer claimed that when the teacher

¹⁵ I have also changed the name of the bully / "victim" in this case in order to protect his privacy. His real name is not Javier.

¹⁶ See *infra* note 6.

¹⁷ In addition to Miranda warnings and waiver, because Mario was less than 13 years old, the officer was also supposed to complete what is called a "Gladys R." form. There was nothing in the police report about administering a Gladys R. with Mario, but there was a partially filled out Gladys R. Questionnaire attached to the crime report. It says it was completed by the school resource officer who was responsible for detaining Mario at the school. California law establishes a presumption that children under 14 are unable to commit crime and that may be defeated by *clear and convincing* evidence. *In re Gladys R.*, 1 Cal.3d 855, 464 P.2d 127 (Cal. 1970).

then told Mario to leave Javier alone, Mario was further aggravated. It was at this time that Mario took out his padlock, held it in his right hand, and hit Javier before the teacher stopped him. Javier needed medical attention and Mario told the officer that he was sorry that what he did meant that Javier had to go to the hospital. The officer reported that when he asked Mario why he did not tell an administrator or the teacher about being “scooped”, Mario said he did not want to tell on anyone and wanted to try to handle it himself.

When I met Mario at his arraignment in juvenile court, he was still eleven and a sixth grader. Mario appeared to be a shy and soft-spoken child. He enjoyed math and science. At the time, he said that he hoped to one day be a dentist because teeth fascinated him. Mario also has a history of depression and anxiety. At his previous school, Mario received many awards, which his mother saved, for things such as, being student of the month, perfect attendance, completion of assignments, good attitude, honor roll, certificate of citizenship.

After the alleged incident, Mario was forced to switch schools. Mario liked his new school because, in his words at the time, “no one is mean to me there.” Mario also participated in an after-school program at his new school and maintained a 3.0 GPA.

Before this incident, Mario had no prior history of misbehavior either at home or at school, and he had no disciplinary problems since.

Several years prior to this incident, Mario’s parents took him to a psychiatrist for treatment of depression for a period of about a year. His parents resumed Mario’s counseling with the same psychiatrist after the incident with Javier and well before he got to court. His psychiatrist offered his opinion that Mario did not pose future anger management issues.

All of the foregoing mitigating facts and circumstances, many of which were contained in the police report, were presented to the bench officer¹⁸ in an effort to obtain a dismissal in the interests of justice. Additionally, after investigating the case, I was able to present the prosecuting attorney and the bench officer with a letter from Javier and his parent expressing that they both did not want to see Mario charged in delinquency court for this incident. The bench officer denied the motion.

Mario successfully completed a period of probation and will be eligible at eighteen to seal his juvenile record. Should Mario seek employment prior to turning eighteen years old, he will have to declare that he was arrested.

To me, Mario should never have been forced to go to court. The child who he injured and his parent were not interested in prosecution. Mario and Javier could have both benefited from sitting down and working this out, perhaps with their parents. There were background issues in this case – bullying – that the school was best-suited to address. Mario should not have been subjected to the stigma of arrest, criminalization, and having to go to court. He

¹⁸ In California delinquency courts, cases are heard by Judges, Commissioners, or Referees. This case was before a Commissioner,

should not have to deal with the consequences, even if only until he is eighteen, of having a juvenile record. I will never forget the image of him, at eleven, with his backpack of trophies.

CONCLUSION

I hope my experiences and those of my clients will suggest some questions that deserve greater research and attention in the committee's quest to understand the school to prison pipeline more fully. As a high school teacher and as a defense attorney for children in delinquency court, I have seen repeatedly that without opportunity for achievement, support, encouragement, and success in school, the greater the chances a child will wind up in the delinquency system. The children in juvenile delinquency court, and the adult offenders I have represented in criminal court, have presented with disproportionately high occurrence of special education needs in school, a history of school failure, and a history of educational neglect. In the jurisdictions where I have practiced, I have seen a number of children ushered through delinquency court without concern for whether juvenile court is the best place to address their issues and without concern for the stigma that goes along with arrest, criminalization, and processing through the court system.

The following submissions are a representative sample of numerous additional statements submitted by students, youth organizers, parents and other family members, teachers, school administrators, juvenile court personnel, and others discussing their personal experiences with the school-to-prison pipeline. For additional statements, please contact the Subcommittee on the Constitution, Civil Rights, and Human Rights.


DRUM- DESIS RISING UP & MOVING

 72-18 ROOSEVELT AVENUE 2ND FLOOR, JACKSON HEIGHTS, NY 11372

TEL. (718) 205-3036 | FAX (718) 205-3037 | WWW.DRUMNYC.ORG

Good afternoon everyone. My name is Nilesh Viswashrao and I am a youth leader of DRUM- Desis Rising Up and Moving, which is a community based organization in New York City organizing low-income South Asian immigrants and we are a core member of the Dignity in Schools Campaign National and New York. Today I would like to talk about the role of NYPD in the New York City public school system,

According to the Student Safety Act data, in just less than 3 months, there were 279 Arrests, and 532 summonses. You have to wonder what is the number going to be for the whole school year. And we need to ask ourselves, is this school safety? Is this the NYPD showing us that they are keeping us safe, by arresting us and giving us court summons for the most minor things? The majority of students in NYC public schools are youth of color, and yes you guessed it, the 279 Arrests and 532 summons the majority of those are Black, Latino, youth of color in low-income communities, such as myself. The NYPD's control of our schools criminalize us. NYPD criminalize and target us in schools just like they target people of color in the streets. About a few weeks ago we learned that there have been over 684,000 Stop and Frisks by the NYPD in 2011 and 91% of them were people of color.

In schools the zero tolerance policies haven't helped, they've only left us with the disturbing numbers we have today. Taking purely punitive approaches to our youth has done nothing but criminalize them, pushing them out to the streets, pushing them into incarceration. When I was a student in high schools everyday I was harassed by the SSA's and NYPD officers, looking for any and every reason to

slam my face into the pavement, me and my friends were threatened, frisked, and discriminated against, to the point where most of us never made it past high school. One particular incident was when I walked into a fight outside of my school and NYPD officers and SSAs came to break it up and I got arrested. Even though I had nothing to do with it! I was handcuffed to a fence and searched by the officers and then questioned. After which I was given a \$50 fine and a court summons to attend. I am one of too many youth of color with this kind of school experience, and I'm here to say, stop the school to prison pipeline now!

Our schools lack proper funding. Last year there were 23 schools on the NYC Schools Closing List. These are schools that lack the resources to provide us with a proper and quality education. And yet, the city pays \$221 million on school policing, on metal detectors, scanners, police vans- is that fair? Is it fair that every year while our schools go through budget cuts, lose teachers, students get suspended, harassed and pushed out, the NYPD never faces a budget cut? The NYPD never has to worry about being under resourced, never worries about being held accountable for what they do to youth of color. Until now.

New York City public schools must end the use of zero-tolerance discipline and require the use of restorative justice and positive behavior support interventions. We need to stop relying on NYPD officers and School Safety Agents for handling discipline issues and the stop spending \$221 Million every year on school policing. That is money our schools needs.

Dear Chairman Dick Durbin:

It is with great honor and appreciation of your work with the Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights that I write this to be submitted on record on the discussion of Ending the School-to-Prison-Pipeline.

I live in Santa Monica, California. I am a parent and community leader. I advocate for educational system and juvenile system changes in order to stop the school-to-jail-pipeline that has incarcerated so many youth for many years. I want to take this opportunity to share two incidents of two children who were railroaded into the system. As well as share some of the work we are doing to address this issue and safeguard children.

The first story is about a 13 year old African American middle school student who had been bullied by a bigger student. The bigger student had been harassing the African American student for some time now who finally defended himself by standing up to the bigger student. The next morning the bigger student went to school accompanied by an older sibling who went to an administrator and filed a complaint that the African American student had pulled a knife on him. The African American student was summoned to the assistant principal's office where he was questioned about the incident. The African American student explained what happened, the administrator asked about the knife, and the student explained he never had a knife. The student was suspended and the assistant principal told him she was calling the police. The police came, did a search, no knife was found and the police advised the principal that the later the grandmother, who was the legal guardian, was contacted the better. The African American student was handcuffed and arrested in front of other students. This occurred despite witness testimony of no knife and no prior bad behavior in school or outside of school. His rights were not told until after arriving at the police station. No parent or school official was present at the time. And, the grandmother was not notified of his arrest until later that day. This was the first time the student had ever had contact with police.

The second incident happened at the same middle school. The student was a 12 year old Latino student. A Caucasian student threw an open milk carton on the back of the Latino student. The Latino student pushed the Caucasian student away from him. The administrator was called to the scene and spoke to both students separately. The Latino student was suspended and the principal called police, and police arrested the Latino student and charged him with assault with a deadly weapon (because he used his fists when he pushed the Caucasian student). The Caucasian student only received Saturday school. Police removed the Latino student from campus and took him to the local police department where he was detained. He was removed from campus during lunch time. The parents did not get a call until hours later to let them know their son had been detained. Like in the previous incident, this was the first time the student had contact with the police.

Both of these students now had a criminal record and were now in the 'system'. They were labeled and considered trouble-makers and youth who didn't have promise for a good future. Their arrests and having to go to court caused a great deal of harm to them psychologically and emotionally. It also took a toll on both of their families. One of the parents worked in the medical field for 15 years at the time this happened to her son. She was so worried about her son going to jail during the court process that she had a difficult

time focusing at work. One day while at work she injected a patient with a wrong dose of medicine and lost her job. She was out of work for some time and because of the seriousness of it she was seen as a liability and never gained employment in the medical field again. She found a job in a preschool and her income to help provide for her family was much lower and had a negative impact on the economic stability of the family.

Both of these families were so frightened by what happened that they outreached to other parents for help. A group of parents and community leaders got together with them and we began our own investigation of these incidents as well as into police protocol, and suspension and expulsions. We found several things that raised red flags. One was that when we went to the school district to inquire about student arrests on campus they had no information, so we inquired about student suspensions and expulsions which confirmed what we saw happening. It confirmed that students of color, while they made up the minority of the students, made up the majority of suspensions and expulsions in most of the district's schools, in particular the middle school where these two incidents took place. And, we found out the reason the district wasn't aware of arrests or how many was because the administrators at the middle school were calling some of the officers directly rather than calling 911 where calls get recorded. So, there was no way of knowing how often police was called, how many arrests and the demographics of the students arrested.

We began to get the word out into the community asking parents and students to come forward if they had had something like this happen to them. We had so many parents come forward that we did not have enough volunteers to document their stories. We mobilized about 600 people to attend a school board meeting where we brought the district's data on suspensions and expulsions and personal testimony of arrests from students and parents.

The superintendent at that time created a task force comprised of some of the parents who testified, district staff, police personnel, and other community members to address this issue. Later that year the school board adopted a new policy. The required report would provide information about the student, the reason police were summoned and police response. A second procedure would create a uniform protocol for administrators to follow when a student is questioned by police. Such a protocol would require administrators to fill out a written incident report; notify parents or guardians of the student involved; notify the student involved that the student has a right to have parents or guardians present during questioning and that if a student requests parents or guardians to be present, questioning of the student must stop if parents or guardians are not present. In addition, the protocol required that administrators could release student records to police ONLY if permission is given by the parents of the student or if police present administrators with subpoena or a court order.

The above incidents and policy implementation took place ten years ago. I believe we've made some impact, however, youth of color are still entering the juvenile and prison system for minor offenses and defiances. The zero-tolerance policy is very punitive and ties the hands of administrators to intervene in alternative and restorative ways. Police approach and policies are geared heavy towards enforcement, not prevention or intervention, and are very aggressive and destructive to children. The trauma encountered during an arrest or incarceration can change a child for the worst. This is why the federal government must co-lead this work with local government, agencies and communities. The City of Santa Monica, the Santa Monica Malibu School District, nonprofits and community members

continue to work on this important issue. Two years ago we began a more cohesive and collective approach with the various institutions to work towards systems and institutional change. (please note that the City of Santa Monica and the Santa Monica-Malibu School District have also submitted statements for this hearing highlighting their leadership and outlining the collective work). We are doing whatever it takes, however, we need the federal government's help in achieving the utmost success for all children. We need federal policies in place that are aligned with this work and a reinvestment of money to provide alternatives to incarceration.

Thank you for having a discussion on this issue, and I greatly hope that you make this issue a priority and put forth the efforts needed to ensure no more children are railroaded into the prison system. The future of our children depends on us doing better now.

Best Regards,
Irma Carranza



Lincoln High School
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Principal: James R. Sporleder

December 10, 2012

To: Chairman Durbin, Members of the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights.

From: Jim Sporleder, Principal of Lincoln High School in Walla Walla, Washington 99362

Re: "Pipeline to Prison" and the "Traditional Model" of School Discipline

Dear Chairman Durbin:

I am a principal of an Alternative High School, and after 20 years of implementing "Traditional Discipline," I have changed my philosophy and have made a complete paradigm shift in my beliefs and the manner in which I address student discipline. Three years ago I was introduced to the Adverse Childhood Experience (ACE Study) and how Complex Trauma impacts brain development and how high levels of stress impairs a student's ability to learn, problem solve, being able to focus, making appropriate decisions. I have learned that a student needs time to be able to de-escalate before doing any problem solving, or discussing the immediate consequences of their behavior. At Lincoln we look at students through the "lens" or what is causing the behavior, versus the traditional model of reacting to the behavior. Since we have implemented a trauma sensitive approach, our "Out of School Suspensions" went from 728 days out of school to 135 days in days in just one year. We went from 600 office referrals to 320 in that same year as well. I stand firm that we are holding students more accountable than we ever did under the traditional approach. Why? I use "In School Suspension" which holds students accountable to for attendance, getting their school work completed, and I know my kids are in a safe place. What have we seen? Stronger student relationships, students accepting responsibility for their behavior and consequences, and the greatest result....we are seeing students with a history of behavior problems, changing and becoming more connected to school, which in turn brings more success in their classes. I am a strong supporter for the Washington League of Voters who has aggressively challenged disciplinary policies that place a student on a "Pipeline to Prison". The traditional model of discipline has mislabeled so many kids as: lazy, unmotivated, disruptive, disconnected, angry, explosive, without taking the time to seek the cause of the behavior. What I have discovered since I have made my paradigm shift, the results that I am seeing aligns with the research. All of our schools across the country have students that have been impacted by ACE's and Complex Trauma. The predictors of ACE students are very similar with Pipeline to Prison, if interventions are not put into place. The research clearly shows that students experiencing high levels of stress physiologically cannot control themselves when they are in the "Fight-Flight-Freeze" mode. I can only speak for our secondary schools, as a school system we are suspending students for too long a period of time, this only reinforces a student not feeling valued, cared for, and sends a message that we don't want you here.

I feel the advocacy movement...."Pipeline to Prison", is exposing and challenging disciplinary policies that are excessive and do not show any evidence that they have any significant impact on the student. Students that come to Lincoln who have a long history with discipline are usually already involved in the Juvenile Justice System, supervised by a Probation Officer, and most likely are severely deficient in credits to graduate on time. However, by using the strategies from the ACE Study, these students can make changes and be successful. How? By developing positive adult relationships, showing them that they are valued, you appreciate having

them in school, discipline with dignity, and looking for the cause before giving the consequences. When a student knows he/she is cared for and valued, behavior begins to change, the student feels more connected to school, and they begin to make academic progress towards earning their credits for graduation. These are great kids that have been mislabeled.

Please take note to what I am going to share. The brain research has been around a long time, but we don't use it when we make decisions or develop policy that impacts the lives of the students. Use the research, it is a powerful tool to not only change policy, but to provide the reasons why we need to make significant changes. The ACE Study is a great place to start.... it shows how empathy and a different approach through a new understanding, motivates the change from a traditional model to look through the "Lens" of a Trauma Sensitive Model. Google Lincoln High School, Walla Walla, Washington and you will see the reduction in suspensions that we have experienced since we changed our model. If you make policy change and then mandate that it be followed, I believe you will lose the purpose and goal of creating an effective policy change that is to keep more kids in school. For those who are mandated to follow the policy, they will resent the mandate and that will have a negative impact when the principal is dealing with the student in a resentful manner or with anger. Create Policy that is tied to the ACE Study and it gives a solid reason why we need to make changes in how we handle student discipline. I believe the policy, integrated with the research, has a greater opportunity to demonstrate a solid reason why we need a paradigm shift across our system that is more effective, holds students more accountable, and at the same time.....pursues the cause of the behavior so that any underlined issues can be addressed with empathy and support. We have a huge challenge before us. Zero Tolerance Policies, High Stakes Testing, Current Policies that Label Schools as Focus Schools.....even when the playing field is so lopsided. These are some of the things that need to be a part of the discussion, for many of these things that I have mentioned are in my opinion why so many students get removed from school. They are labeled and pressure is to remove them so that they don't impact the learning of others. I have also found that the Trauma Sensitive Model is met with strong resistance.....We are paid to teach, we are not counselors, behavior is taken personally therefore consequences are more punitive, students have to be held accountable..... on and on. A Trauma Sensitive Model holds students more accountable, shows significant positive outcomes, keeps students in school as much as possible, and looks to finding support and empathy for those students that are experiencing difficult times in their lives and the stress is overwhelming.

Sincerely,

Jim Sportleder

Name: Jaritza Geigel City and State: Brooklyn, NY

Organization: Make The Road New York

I attended public school my whole life. High school was no different.

I first attended High school in Manhattan for the first two years. At the time I was dealing with a lot of issues in the home that began to make its way into school. By my sophomore year I found myself sitting in a room with my guidance counselor encouraging me to go to an alternative school. She made it seem like it was the only solution for me, but as I walked through the halls I noticed that half of the students that I came in with were slowly starting to disappear. We had been pushed out of the school so that they could keep their graduation rates high. I remembered sitting in Math class that day watching the way my teacher interacted with the students. Those that didn't understand were pushed to the back and those that could keep up got more out of him than the rest of us.

The last two years of my High School experience was spent at The Bushwick High School for Social Justice. The teachers, staff, and administration were completely different. They were encouraging, funny, supportive, and engaging. If there was anything that I wish I could change was the fact that I had to go through scanning every day and deal with rude School Safety Agents, and a dean that was quick to suspend instead of taking into account all sides to the story.

For the last three months I had been harassed by a senior female student. For three months I approached staff and the dean about it and not once was she suspended. When we finally had mediation and they made me feel like I was the person harassing her. The last day of school we got into an altercation and even though for three months she instigated it I was the one who got suspended for the first week of my senior year. All I could remember thinking was unfair they had been. How is it that I get harassed and the minute there's an altercation I'm the one that gets suspended, it wasn't fair. Unfortunately, this was happening a lot. I had a friends getting suspended for having a hat on, or being caught in a 'sweep', because the teacher told them to stand in the hall way. I had one friend that the moment he stepped into school he was being called into the main office and then wouldn't be seen for another week. It was getting ridiculous. I was a witness when a female safety agent handcuffed my classmate and proceeded to punch her in the face.

With the way discipline was being forced on us and going through metal detectors, and scanning everyday I felt like a criminal. It made it hard to want to even come to school. It wouldn't matter how hard teachers and staff tried to make the environment welcoming, because every morning our day consisted of being yelled at, and stripping out of many layer of clothing.

I have been a part of my organization since I stepped into their partnership high school, The Bushwick High School for Social Justice, at the age of 16. I have watched my fellow classmates be suspended or arrested for minor infractions. Now five years later, as a youth organizer at Make the Road New York, I listen as my young people come in and tell me that it's still happening. Students, particularly black and brown, are still being suspended, and arrested for minor

infractions. These same young people who felt as I felt every time they stepped foot inside their school the feeling of being a criminal.

In NYC, students with the Student Safety Coalition fought for the Student Safety Act. A bill that requires the NYPD and the DOE to release data of arrests, suspensions, expulsions, based on race, gender, IEP, etc. They would release this data to the City Council.

With the data to back up what young people have been saying for years about being criminalized and targeted in their schools we have been pushing for changes to the Discipline Code through Dignity in Schools- NY Chapter and are seeing some changes begin to happen.

We are also pushing for restorative justice practices that are really address the social and emotional support of students and work on creating a more educational environment for young people. Black, brown, LGBTQ, undocumented, and students with IEPs shouldn't have to walk into school and walk in fear of being targeted, harassed, or mistreated inside their schools. It's great that the School to Prison Pipeline is finally being addressed, because make no mistake this is something that has been happening for years and hopefully today we will take real, common sense next steps to dismantling it.



December 5, 2012

U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510
Stephanie_Trifone@Judiciary-dem.Senate.gov

Re: Hearing on Ending the School-to-Prison Pipeline

Dear Chairman Durbin, Ranking Minority Member Graham, and Members of the Subcommittee on the Constitution, Civil Rights, and Human Rights:

My name is Jarrel Strong and I am a high school student from Miami, Florida. I am a member of Power U Center for Social Change, a member organization of the Dignity in Schools Campaign. I am submitting this testimony to share my experience with school push out. I have experienced school push out and I believe this leads to school-to-prison pipeline.

At my school, Miami Carol City Senior High, the principal, administrators, and the chairman over discipline handle discipline by consistently giving students out-door suspensions with no questions asked. I've been suspended from school because I was out of school uniform. Neither the security guard, nor the administrators asked me why I was out of school uniform. I was placed in in-door suspension for 3 whole days which had me missing work and earning failing grades in my core classes. I believe this is unfair because students are not given the opportunity to tell their side of the story.

In addition to the incident I experienced, I also witnessed a queer (gay) student getting jumped by over 6 football players. The queer boy was embarrassed of being beaten up and having over 100 students in the cafeteria witness the event. He was bruised and scratched up and received 10 days out-door suspension, while the foot ball players received no sort of discipline. These cases often come up in my school.

Some students feel that they can't change this and are scared to speak up against it. Students tell me that the administration has power to do whatever they want so that is why things are the way they are. These harsh discipline policies discourage students from attending school because they feel that the school environment feels like a jail house. Students feel like they are criminals who are being severely punished and have no right to their education.

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My school is a traditional public school. Some minor infractions students are suspended for are being tardy to school, being out of school uniform, talking back to school employees, and skipping school. Students are arrested for fighting and bringing pepper spray to school. Kicking students out of school is not a solution that helps students resolve their problems.

The school-to-prison pipeline has impacted me because I have seen that Black and Latino students are affected the most by the zero tolerance policies compared to White students. At Power U Center I participated in a research project where over 600 students were surveyed in which they were asked how zero tolerance policies had impacted them. In our study, for the 2008-2009 school year, we found that Black students were four times more likely to be suspended than White Students. This proves that my peers are being trapped in this school-to-prison pipeline. There are no positive messages sent to students that are suspended and arrested because pushing students out doesn't encourage students to stay in school or want to go to school.

As a result of what I see in schools I feel something must be done. In my community we are working to change this system by organizing our friends and other students to speak out against unfair suspensions and arrests. We have had a lot of success doing this in schools and in the community. We know that we can make a change here. Our first step is spreading the word. People need to know that what is going on is unfair and that they can change that. As students and young people we can help fight back for what's right. We do outreach at high schools to get more youth involved and speak at school board meetings.

I feel that the solution to unfair suspensions and arrests is the implementation of Restorative Justice. Restorative Justice helps misbehaving students deal with the harm they have caused to individuals and to the school community. Restorative Justice recognizes the needs and the purpose behind a student's misbehavior and addresses the problem. Zero tolerance has many negative side effects on the person who did harm, without getting to the root cause of the problem or making things right. Restorative Justice also works with all participants to create ways to make things right and make plans for future changes.

As I mentioned before, I am a member of the Dignity in Schools Campaign and I support the federal recommendations they have proposed. I feel that implementing Restorative Justice into schools at a federal level will benefit students and the school community.

Sincerely,

Jarrel Strong
Student Leader
Power U Center for Social Change

**Comments to the Senate Judiciary Subcommittee on the Constitution, Human Rights & Civil Rights
December 12, 2012 Hearing on Ending the "School to Prison Pipeline"**

To the Honorable Chairman Durbin and Honorable Members of the Committee:

As an attorney, special education advocate, and parent of a child with a disability, I commend the Committee for taking up this important issue. There are a number of questionable disciplinary practices in our public schools, some of which I have seen firsthand and some of which I read about all too often in the press. Unfortunately, disparities are clear from disciplinary referral data, including referrals to (or from) the juvenile justice system. The data show that discipline referrals disproportionately impact students with disabilities, minorities and the economically disadvantaged. My comments focus on students with disabilities.

Behavior & Disability: The Nexus that Drives Discipline Referrals by Administrators

Whether in or out of the classroom, the behavior of students with disabilities is frequently misunderstood, leading to a high number of discipline referrals.¹ Many families I serve have children with an autism spectrum disorder (ASD) or AD/HD. Teachers frequently find their behavior in class, such as fidgetiness, distractibility, off-topic or socially inappropriate comments, failure to demonstrate active listening, and lack of impulse control, unacceptable. The failure to take a "disability perspective" in such cases will frequently lead teachers to believe that the behavior is purposefully disrespectful. For those students with an autism spectrum disorder, and for some with AD/HD too, the nature of the disability can significantly affect whether the student can recognize and adapt to classroom norms (sit down, stay still, do not interrupt, look like you are paying attention by tracking the teacher with your eyes, do not fiddle with your pencil, etc.).

Rather than addressing the underlying need, or ignoring the offending behavior, some teachers refer for discipline and repeatedly chastise students in front of their peers. This can have a terrible impact on the student. School can become a hostile environment for those facing challenges posed by a disability. Removal from school often feels like a relief to such a student. From the behavioral analysis perspective, this is called a positive reinforcement of a negative behavior. It's a big "no-no" because it is ineffective and can cause undesirable behaviors to increase rather than decrease.

Outside of the classroom setting, students with ASD or AD/HD may find it difficult to judge whether other students are being friendly or if their peers are actually messing with them. In an effort to fit in, such students are particularly prone to pressure from their peers and may be less savvy in their explanations to administrators. In this way, social deficits can contribute in significant ways to students with disabilities exercising poor judgment and can lead to negative perceptions of them.

Positive Behavior Intervention Support

It does not have to be this way. In Virginia and in many other states, training projects supported at the state level are underway to provide "Positive Behavior Intervention Support"² or PBIS at the school (and sometimes district) level to provide positive and effective interventions school wide, with

buy in from students, teachers and administrators. The reach of these projects has been limited, however, and it requires the schools to "get on board" with a significant commitment. Some school districts have been resistant to participating in these state programs in spite of demonstrated results. Among these are highly regarded school systems in Northern Virginia whose discipline disparities for students with disabilities are notable.

Practices of Concern

School districts have their own policies which may vary in implementation at individual schools. Some administrators may opt not to make formal referrals. Problems tend to concentrate in particular schools. There are numerous disciplinary practices known by special education advocates to be used on students with disabilities in school districts in Northern Virginia. Among these are seclusion (being kept in a room alone isolated from other students), restraint (being physically restrained by school personnel or school resource officers). This issue was recently highlighted in a Washington Post article printed on December 7, 2012, about a civil rights lawsuit filed on behalf of a student in the Prince William County Public Schools. Students with disabilities are also suspended for long terms or reassigned to "alternative" school programs frequently for behaviors relating to the student's disability. The behavior frequently reflects the school's failure to recognize or meet the needs of the student. Students with disabilities who are victims of bullying often get disciplined for reacting to the bullying. Schools have a difficult time sorting out victims from bullies, and being less socially savvy does not help a bullying victim make his case. Zero tolerance policies can result in absurd outcomes, such as expulsion of elementary students for bringing a toy gun to school.

It should be a concern to everyone that this is happening to students with disabilities at a much higher rate than the rest of the public school population. For example, based upon the most recent Arlington County Public Schools data available on the United States Department of Justice Office of Civil Rights (2004)¹⁸, 60% of long term suspension or expulsion cases were for students with disabilities, although students with disabilities made up less than 15% of the school population in 2004. A school administrator is ill equipped to function as investigator, judge, jury and executioner – and yet it is at the school level that all this is determined. In cases of physical aggression, all too often any involved students, including victims, are punished. Thus a victim of aggression is victimized twice: once by the bully and again by a school system that does not allow victims to defend themselves from violence.

Even when facts are not clear, school systems still proceed with expulsion proceedings. The evidentiary standard for school discipline is a lower standard. The due process offered does not afford much legal protection. In fact, the school discipline process seems to undermine the rights of minors in a myriad of ways. For example, schools take student statements without a parent present even when it is known they will most likely face a criminal charge. Students are expected to show remorse if they want a better outcome from a hearing officer, but expressions of remorse can be taken as admissions of wrongdoing.

Parallel Systems of Justice?: Why Schools Make Bad Courts

One of the most disturbing trends we are seeing in Virginia is the way in which schools have created a parallel justice system by exercising their authority under state law. This is happening in two different contexts: through the criminalization of rule breaking in school, resulting in increasing numbers of referrals to law enforcement, and through the exercise of school jurisdiction for "crimes in the community" which are referred to schools by law enforcement. Mandatory coordination between law enforcement and schools can be disadvantageous in a number of ways. Mostly, it "ups the ante" so that schools do not feel free to use misbehavior as an opportunity to counsel students on their choices or give second chances to students.

"Zero tolerance" attitudes have spread around the country with states authorizing courts to try juveniles as adults, eliminating probation and parole, and passing three strikes laws. This environment has contributed to the increase in school discipline cases. Cases that would never be pursued by police are being pursued by schools. Children are treated as if they are lost causes, removed from the regular education setting, reassigned to "alternative schools" or expelled altogether.

Adults Get More Due Process Defending A Speeding Ticket

When school offenses cross over into the criminal universe, the stakes are high. Adults have more due process defending a speeding ticket than public school students do when a school investigates a student accused of a crime. In cases where criminal charges have been filed, students facing expulsion find their legal rights squeezed between two parallel systems. If they cooperate with the school system to improve their chances of avoiding expulsion, students may place themselves at additional risk in a pending criminal case.

Schools make very poor courts. The school discipline process provides extremely limited due process. For example, in Fairfax County expulsion hearings, students have no opportunity to bring their own witnesses or to confront witnesses against them, or even to know the identity of the person who has provided evidence against them. If witness statements are provided, they are heavily redacted. Witness statements are taken by administrators and redacted to remove the names of witnesses or other involved students. There is no opportunity to challenge the reliability of witness statements or to elicit exculpatory evidence. In short, school officials conclude what happened and students have a very limited opportunity to contest their version of the facts.

An "appeal" to the School Board is a closed proceeding, such that the student and their advocate or parent is not permitted to attend, and the decision is made "on the administrative record." This is the same "record" that precludes the confrontation of witnesses, a constitutional protection in criminal cases. Even typical legal arguments, such as whether the facts offered actually meet the criteria of a school policy violation is often skipped in the typical school hearing case.

Meanwhile, the school presents their version of facts, based upon their internal investigation. The school also presents a disciplinary record, which, when listing every minor offense, can look like a long rap sheet. Offenses as minor as making an inappropriate comment, interrupting, or repeatedly

tapping your pencil on a desk may be listed on discipline records as "insubordination" or "showing disrespect to a teacher" or "causing a disruption in class."

Again, schools make poor courts. Even serious offenses that result in recommendations for expulsion do not result in juvenile detention for many students, especially if there is no past criminal history. However, they often result in the student being expelled from school, making it far more likely they will avoid authority figures, instead gravitating toward people who may not make good role models.

Some Virginia school districts are now opting to pursue disciplinary action for offenses occurring away from school and which also have no connection to school.¹⁶ These cases are reported to schools by law enforcement, as mandated by state law, and can result in expulsion or reassignment to a "non-traditional school." Although reassignment to such a school means the student with a disability will continue to receive their education, they most likely will not receive the special education services they require or complete the classes in which they are enrolled. These facts alone place them at risk of not graduating on time or obtaining a standard or advanced diploma.

School board authority to expel students is so broad that children can forfeit their right to attend school at any time. The consequences of these policies are significant. One could argue that for a young person expulsion from school or school "reassignment" is more life altering than anything else that could happen to them as a kid. Students who are removed from school are essentially discarded by our society at a very young age. When a person is treated in this manner, should it surprise us when they decide that they do not care to conform to social norms?

By passing the Americans with Disabilities Act¹⁷ and the Individuals with Disabilities Education Act¹⁸, Congress took a strong stand: that we would not hide those who fall outside of the comfortable norm, that we would not force them behind closed doors and away from others, that we would not segregate them from the rest of the school population. The education policy of the United States is to include students with disabilities, to place them in the least restrictive environment. Disciplinary practices in our schools are seriously undermining this policy.

What action can be taken to reverse this trend?

1. Public schools should limit the types of offenses that can lead to expulsion.
2. All "zero tolerance" policies in school should be reevaluated to determine if outcomes justify their use.
3. School districts should report data on discipline by school and by all disability categories that exist under the state law so that schools can identify the need for training.
4. Schools should pursue Positive Behavior Intervention Support training so that teachers are better prepared to handle behaviors that are interfering with instruction in the classroom.
5. With regard to students with disabilities, Congress should revise the provisions for "Manifestation Determination Review"¹⁹ (MDR) under the Individuals with Disabilities Education Act so that the review is meaningful. The MDR hearing is often a rubber stamp. It is extremely difficult to meet the current standard for an MDR. Students with disabilities

are being expelled even when it is clear that their disabilities contributed directly to the actions for which they are being disciplined. This means that children are removed from the school system and placed in alternative settings where they are less likely to be successful, where they will not receive the same of services or an equivalent education, at a higher cost to the school system.

6. Reassignment should require a finding by the school that the student poses a direct danger to other students based upon factual information in the school's possession. A mere charge pending in a criminal matter should not be enough to conclude that the student is dangerous to others.
7. Schools need to take real steps to eliminate bullying by teachers, administrators, parents and students alike.

We as a society need to be more inclusive so that individuals who stand out or have eccentricities are not victimized. Congress should act to end the School to Prison Pipeline. It all starts with how discipline is handled in our schools. Students with disabilities make up a disproportionate number of discipline referrals. The behavior resulting in discipline is often caused by the failure of schools to identify and address the needs of a student with special needs. The Committee should consider what revisions to federal law may be needed to ensure that this disparity is eliminated.

I thank that Committee for the opportunity to submit comments.

Respectfully yours



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¹ Discipline referrals data broken out by special education students is often collected by school districts, but the data is not always publicly available. In Northern Virginia, it is known that special education students make up more than 40% of discipline referrals in some school districts although students with disabilities make up 15% or less of the student body. This data should be collected and made available to the public, preferably broken out by subgroup and disability. If this is done states and districts will be in a better position to identify where positive behavior training support is most needed.

² Virginia's PBIS training support is described at <http://ttac.odu.edu/pbisva>

³ Source: <http://ocrdata.ed.gov/DistrictSchoolSearch> (see custom charts and detailed data tables).

⁴ VA Code Section 22.1-277.2:1 (2009)

⁵ 42 U.S.C. § 12102 *et seq.* (2008)

⁶ 20 USC § 1415(k)(1)(E)

⁷ 20 USC § 1415(k)(1)(E)

Esmeralda V., 14 years old

Roosevelt High School, LAUSD

When I was a 7th grader, still in middle school I clearly remember being stopped by a school police officer. I had stayed after school with my friend and we were waiting for my teacher to stay with her. As we were waiting to cop passed by, he said to leave because we were not allowed to be there.

He never asked us why we were there although we had a good reason. After he left we still stayed waiting for the teacher, and he passed by us again. He cussed at us and told us if he came back and we were still here he will give us a citation.

This made me feel so mad because he didn't even bother to asking why we were there. Talking about this still makes me angry, because I didn't do anything wrong for him to treat me like that as well as my friend.

I have known students who have been arrested for skipping class tagging, having makers , being on school grounds when they say you're not supposed to be, and being accused of stealing or taking something at school been The school doesn't care about us, they never ask what, when or why. They instantly assume we are doing something wrong.

This is why I joined The community Rights Campaign's Taking Action Club at my school to get power to fight back learn my rights and get other students to do the same.

Jacquelin R.
11th grade at Crenshaw High School, Los Angeles Unified School District
Los Angeles, CA

When I was in 8th grade at Barack Obama Preparation Academy, I went to the bathroom with a friend and there were girls smoking in there. The police came in and accused us of being with them. We told them we weren't but they still accused us and searched our bags and interrogated us, asking us invasive questions, like whether any of our parents or family members smoked marijuana.

After that I went back to class but I couldn't really concentrate. It gave me a headache. The next day I didn't want to go to school. I was scared I might get blamed or accused of doing something else I didn't do. That feeling lasted for about a month and then it slowly started going away. My mom was really mad that they were harassing innocent youth like us.

That same year, I had a cousin at another nearby middle school who got a ticket for tagging. He was in 7th grade. And I had two other friends at Barack Obama who got tickets, one for stealing and the other for marijuana.

This kind of thing really affects students. You have this constant fear that you are going to get caught for doing something, or that you are going to be at the wrong place at the wrong time and get caught up. You worry about getting a criminal record that will mess up your life.

It continues at my high school, Crenshaw. The assistant principal regularly comes into classes to do random searches, often with a Security Officer. Because of my experience in middle school, every time this happens, I feel nervous and stressed. What if they find the markers in my bag—will I get a ticket for tagging like others I've seen who get caught with markers?

I got involved with the Community Rights Campaign when I heard organizers talking about just how many people get these tickets and who gets them most, and I realized this is unjust and that we can fight it. We need to make sure this stops happening and help people who have already had these experiences to realize they were treated wrongly.

Name: Marcela Moralez-Morris

City and State: Grand Rapids, MI

Organization: Juvenile Court

I am a supervisor over a court school program servicing youth on probation and who are suspended/expelled, truant or academically behind. The purpose of this school is to ensure that youth who are delinquent still have a place to go to get their education. Many of our students want to be in school and enjoy the extra help given by my staff. They are involved with small classroom settings, tutors and proficient teachers. In my past years working as a probation officer, I have seen many kids getting kicked out of school for minor reasons but mostly because they were known to be on probation or trouble in the community. The more a youth gets suspended, the farther behind they become and the less likely they will be able to succeed in the classroom. This leads to increased time on the streets and a higher risk of delinquency.

Many of our youth would get suspended from school and go to juvenile detention. The kids would spend days sometimes weeks in detention attending school only to receive elective credits that do not count towards their graduation. I have seen many kids become frustrated stating they completed the work but yet not getting the appropriate credit for their efforts. These kids then become problems in their base schools because they don't want to complete work they have already completed in detention and they become further behind academically. We see many youth who are 16 or 17 years old who have no credits towards graduation come through the juvenile courts. When the court orders them to attend school, they push back against that as much as possible. What 16 or 17 year old wants to take classes with ninth graders? So instead, they will act out to get put out of school back to the streets where they want to be. If educators would take the time to listen to the young people and help them instead of force them they may have better academic success. I believe kids want to learn but they do not want to be in an environment where they are behind because they do not want to look "stupid" or be with students who are not their age.

Many of the public schools our youth attend in our area use the zero tolerance for everything. I have seen youth kicked out of school for 3 days just for yelling or swearing in the classroom. I have seen youth expelled because of gang talk on their facebook page, but who have minimal problems in school. Now, one of the bigger school districts here are suspending kids for sagging their pants. Once schools know a youth is on probation, they will target that youth and ensure that they get suspended and/or expelled. I know kids need to be held accountable for their behaviors, but sending them to the streets only encourages delinquent behavior and more referrals to the court. There are many other methods to use instead of suspensions and expulsions. I know there are four exceptions to the zero tolerance rules but many of the school districts strictly enforce automatic expulsions.

The school program that I oversee has two classrooms with 14 students in each room. I will not allow youth to be sent home unless there is a threat to security, other students or staff. Most behavior problems can be addressed by separating the student from the

classroom and talking with them one on one. Most of the kids have many other issues going on in their life that sometimes need to be addressed before they can be successful in a classroom setting. We try to help them both academically and socially. In order for youth to be successful, they need to know they have support, guidance and respect. When they know they can trust someone, they will work hard.

Discipline is different now then when I was a student because they would involve parents, teachers and other staff. Now, the police or probation officer is called before a parent is notified. Schools rely on the courts to assist with problem students instead of making parents become involved and hold their youth accountable. Kids are being charged nowadays with things you never would have been charged with when I was in school. A fist fight when I was a student would result in parents being called, an after school detention or Saturday school. Now, it's an assault and battery, you get a record and possible expulsion. This type of treatment towards our youth tells them they are not worthy of being in school, you can't make mistakes and now they are labeled. The youth then become the target of the police. This also makes it difficult for youth to mature and grow. They are unable to get jobs or get into college when they have a juvenile record. This also make youth ineligible for school of choice. A student may want to go to a school outside of their district but with suspensions or behavioral problems, other schools will not want to take them. When a youth makes a mistake, they are limited to what they can do to improve and change their ways.

Our community has been holding some meetings to address the school to prison pipeline. Some of the school districts in the area are starting to recognize the issue but still feel they are following policy or their hands are tied when disciplining students. Our community has a strict discipline charter school which enrolls the youth the other schools expel. This has been a great place for probation officers, youth, parents and the community to ensure the continued education of troubled youth. It is important to understand when a youth is not in school, they will be out in the community with no supervision during the day and then will be at a higher risk to become involved in delinquent behavior. If a student can go to school at a strict discipline charter school, they should be able to remain in a regular school.

There are several steps that can take place to help both the schools and the students who misbehave. First of all, sending a youth home for several days or expelling them only allows them to come back with minimal improvements. If you keep them in school, give them discipline during school or after school, the youth will still be able to complete their school work and won't get behind. There can be different programs to reward positive behavior to entice a kid to do well. Schools need to have group counseling or life skills as part of their curriculum. Many of the youth today are dealing with issues in the community and at home that adults didn't have to deal with. Some youth are coming from single parent homes, parent(s) who are incarcerated, involved with the juvenile courts, watched a friend get shot/killed, use substances, are being threatened by gangs, involved with gangs, financial problems or many others. Having group sessions where youth can express themselves and gain guidance into how to make positive choices and

avoid peer pressure can be very beneficial. Youth need to understand the choices they make and the consequences that can occur from those choices.

Part of the programming with my school includes rewarding youth with student of the week, calling parents on a weekly basis to give positive reports not just negative ones, having group counseling sessions two hours per week to discuss topics that may be affecting our students and talking with them individually about problems. It is amazing how youth respond to student of the week. They fight for that recognition and sometimes argue as to why they should get the honor and not someone else. They also come to school. They know they have staff that support them and will help them. Even some of the students who are the most difficult would stand up for one of the staff if someone was giving them a hard time. They take pride in their grades and try to work hard. Many of my students do not want to leave once their trimester is over. My program is a trimester long to help get youth on track to return to their base school. We try to keep students when we can, but limited finances and staff will not always allow for that. We have kids in our school who have committed serious offenses, belong to gangs, have been expelled for guns and many other issues and the majority of those students complete the program successfully.

The federal government can assist with keeping youth in school by providing funding for after school enrichment programs or funding for counseling during the school day. As I stated above, my program provides life skills groups for the students. This is a great program for youth to participate with as it teaches them skills needed to be successful not only in school but in life. Making money available for tutors and mentors will also be important for students who need them. The federal government can help by making sure that the money that is allocated for each student follows them to whatever school they are placed in. For example, if a student is attending X School District on count day but gets suspended or changes to another school due to discipline issues, the money school X is receiving should be sent to the new school. This will make sure schools work with the student instead of getting the money then kicking the youth out of their school. The process that is currently in place allows the original school district to reap all the benefits of a student who no longer attends their school. The receiving school district then provides for the student, but is limited to resources because of funding.

I have been working with juveniles for over 16 years. I have seen youth come through the system and go on to prison, youth who go on to college and youth who go to the morgue. I believe the system fails them daily. I also believe that this can change and that schools need to be held accountable for educating and supporting our youth. Youth spend the majority of their time in school eating breakfast, lunch and learning. It's important to make sure we have highly skilled educators that cannot only teach but who also are able to work with youth and the issues they may bring. Schools should be able to get rid of a teacher who cannot work with students or lack conflict resolution abilities. School is not only about academics, it should teach about life, choices and consequences.

Marlyn Tillman
Co-Founder
Gwinnett SToPP
Snellville, GA 30078

School to Prison Pipeline Testimony

I am a parent and an education advocate in my community. As a parent we always advocate for our children. It is a very different world than the one we baby boomers experienced while growing up. There are many influences and pressures that today's youth face. There's peer pressure to engage in risky behaviors; there's the high stakes testing; and then there's the "tracking" and profiling that school systems do. School systems decide the track our kids are on; who will follow the special education or regular education path, who will further their education, and they help determine who will go on to the juvenile justice system. And of course, they want students to believe that once they enter those hallowed halls, all of their rights are left outside the school house door.

I'm sure that you have heard the expression "zero-tolerance equals zero sense" in relationship to school discipline policies. Students suspended for cutting a birthday cake with a knife that was present in the school. A student suspended for violating a school's prohibition on chains, which are categorized as weapons, by carrying a Tweety Bird wallet key chain. The five year-old arrested at school in Georgia for throwing a temper tantrum. These are the cases that made it to the press. What about the kid that was suspended for glaring at the teacher? Or what about the child who was expelled from school for defending herself when attacked by a fellow classmate? None of those real life incidents made the press.

My son learned that he could be targeted for the clothing that he wore. The problem was the school would not tell him which clothing was considered gang related activity and therefore, prohibited. The school wanted to be the fashion police but they would not provide a list of the fashion faux pas so that he would not fall under scrutiny. In Gwinnett County Public Schools (GCPS), gang related attire was at the highest level of disciplinary action. And in my view, it was used to target and profile the black students at the school.

But my son, Kyle, knew that wasn't right or fair. In this instance, the school administrators had the wrong kid. Kyle had just spent two weeks that past summer at the Crump Law Camp housed at Howard University School of Law. The camp included a trip to the Supreme Court where he received a pocket sized copy of the Constitution. So when they questioned him about his clothing and they wanted to search his backpack he tells them which amendments that they will violate and proceeded to pull out his pocket copy to show them. Of course, that didn't garner him much favor with the school administrators. He was disciplined for being disrespectful and a gang member. I later told him that unfortunately, students aren't recognized for having protection from illegal searches in school.

My son was an honor student and the child of a very active, involved parent, avid PTA'er; held offices, chaired committees; yet this happened to him. And this very active parent after failing to resolve this issue at the local school and county level was forced to seek a legal remedy for my student. What happens to the children whose parents don't know the Constitution or the laws

that are there to protect them? Should they be destined to permanent expulsion or the juvenile system?

In this post 9-11, Columbine and Va Tech world that we live in; it is imperative that we stop the assault on our freedoms and the Constitution and that we speak for those that are afraid or don't know. Please continue to support the ACLU in the much needed work that they do. They are supporting what we stand for as a country. If one of us loses our rights, all of us lose our rights. If this trend continues future generations will not know the America that we've been privileged to know.

To carry on this work, I have founded an organization and joined others who fight against the School to Prison Pipeline. This is near and dear to my heart is because of the attempt to place my son in the pipeline. I shudder to think what kind of person he would be today or where he would be, had GCPS ripped him out of his AP and Honors classes to go to the alternative school, technically because of his clothing but really because of his black skin.

In Gwinnett, nearly 30% of the population of the alternative schools receives special education services and nearly 70% of the alternative school population is minority, even though collectively, all minorities comprise 44% of the overall student population. I, myself overheard a school employee ask a tribunal member that took a break from an ongoing hearing; "Have you gotten to the part where they're found guilty yet? And if that's what's happening in Gwinnett; what is happening in the rural areas? These Gwinnett numbers are also reflected in nation-wide statistics. These problems are systemic and not genetic. To Gwinnett's credit, they have begun to review their policies but, sadly, have refused to look at how biases interplay.

The prison industrial complex is real and it is swallowing our children and our future

Respectfully Submitted.

Statement by Tracey Wells-Huggins, RN and Founder of

Renewed Minds CDC, Inc.

Senate Judiciary Committee

December 8, 2012

When my son was three-years-old I was called by his pre-school teacher to have an impromptu conference based on his "obvious defiance to authority figures." It appeared that she was able to speak intelligently to this fact based on his insistence that he count out 1-2-3 cookies when promoted to only count 2. Her theory was further proven by his additional intentions of pouring a full glass of milk (to go with the 3 cookies I am certain) instead of the half glass that he was instructed to pour. Defiant to authority at age 3? I was afraid for my son because I couldn't understand what kind of system labels a child so harshly at such a young age. Later I realized that this language was my first encounter with the school to prison pipeline.

Fast forward to the 3rd grade, due to his difficulty with reading, my son had his first IEP (Individualized Education Plan) and this was also our introduction to the world of Child Study Teams. Fear that my son would be 'labeled' again and be forced to live with this stigma launched me into a full scale learning frenzy about the best ways to advocate for him. After all, who better to fight for a child than a mother? I would have thought that my presence and often persistence would have been a welcomed to those in the education system. I learned that my very presence and questions made me a 'problem parent' especially when many parents don't show up for meetings. Decisions can be made easily when no one is questioning why this or that is considered best practice. It also is uncomfortable to challenge the 'experts' about finding something positive to say before outlining all the negative things they have 'seen in your child'. The pipeline has been allowed to thrive and grow based on the fear of challenge...until now.

Our story gets deeper. When my son was arrested but had not been detained or charged officially with a crime, the school denied him access on the very next day based on input from the local police. This really opened our eyes. It is far easier to suspend a child from school and create a 'log of inappropriate behavior' leading them directly into 'alternative schools' often viewed as the last stop before detention in my community. The message that the 'bad kids' are the ones in these settings and the stigma attached is horrible. Renewed Minds as an organization makes educating these students about the pipeline through poetry slams and workshops an ongoing part of our work. Since these students are the ones being pushed out the most it makes sense to engage them as partners in this fight for their lives and futures.

The correlation between children with IEP's and involvement in the juvenile system is a significant red flag that we must address with our movement. It is clearly no coincidence that an overwhelming percentage of youth involved in juvenile courts and held in detention centers across this nation have educational needs that have gone underserved, misdiagnosed and/or even neglected due to overcrowded classes and ratios that make it almost impossible to an effective educator for students who need extra help. If you were to take a poll of any detention unit, jail or prison population you would see a trend of many incarcerated individuals with great potential. The link between education as a system and the juvenile justice world must be taken seriously into consideration and slated for immediate change. Advocacy from those of us directly affected and in the fight is only the beginning. We need the support of the federal government to move this matter forward. Not getting that support reinforces the message that our youth are merely dollar signs for an industry that thrives on ignorance and under educating the vulnerable.

My son is now 20-years-old and is currently active in a great local GED program. He had considered returning to 'regular school' after having dropped out, but the knowledge of his past experiences and the fact that 'they know me from past' led him to think outside the box. He will be successful because he wants to be and he has support from his family. The need for the relationship between education and juvenile justice is clear to those of us who have been

affected by it personally. It is our most sincere hope that our government will not only get acquainted with our cause but take serious action to support it and promote real change for all.

Tracey Huggins

Aka

Will's Mom

December 4, 2012

[Tre' Murphy]
[2524 N Charles St.]
[Baltimore, MD 21218]

U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510

Hearing on Ending the School-to-Prison Pipeline

Dear Chairman Durbin, Ranking Minority Member Graham, and Members of the Subcommittee on the Constitution, Civil Rights, and Human Rights:

Thank you for the opportunity to submit testimony for the hearing on ending the school to-prison pipeline before the subcommittee on the Constitution, Civil Rights, and Human Rights, Senate Committee on the Judiciary. My Name is Tre Murphy and I am an organizer for the Baltimore Algebra Project and Alliance for Educational Justice. I have witnessed the school-to-prison pipeline firsthand and urge the committee to resolve to keep students in our schools, and not in prisons.

As the Senate Subcommittee meets to explore the problems that perpetuate the school to prison pipeline, I urge you to pay close attention to the youth led organizations across the country that have already come together to propose a solution through what we call the National Student Bill of Rights (NSBR). The National Student Bill of Rights for all Youth (NSBR) is an effort to bring together youth from across the country to define a youth vision for education and social justice. Youth from different cities in 23 states are developing local bills and working together to write a national bill that will become a unifying document for youth nationwide and a driving force for a new youth movement. Key rights include: the right to employment, the right to recreation, and the right to study curriculum that acknowledges and addresses youth's material and cultural needs. We believe that if these and other rights were protected by the federal government, many more youth would be in the pipeline to college than in the pipeline to prison.

The facts show that since the creation of zero tolerance laws and regulations we have seen a significant spike in youth charged with crimes. This has lead to problems with their records and to negative effects on their education in ways never seen before.

But it doesn't stop there: among many other things there is still the problem that youth voices aren't being heard. We know from research and experience that youth have always been on the fore-front of any great movement, but when it comes to the educational system and all the things that directly affect them there is little youth voice in decisions, and if there is it is almost never taken into consideration.

There is also the problem of school closings that has contributed to the school to prison pipeline. When we allow our schools to close down and force students out of a community that they are

familiar with tensions result within the educational community itself. No one knows better how to avoid educational disturbances than the youth who have experienced them.

The organizations who submit this testimony believe the best way to stop the school to prison pipeline is through rights outlined in the National Student Bill of Rights created by young people. We are entitled to these rights, but are not yet granted them under federal law.

For more information see www.nationalstudentbillofrights.org or contact Tre Murphy tmurphy@baltimorealgebraproject.org, Collique Williams wcollique@gmail.com, Saeda Washington saeda@yucyouth.org, Nique Douglas nique@projectsouth.org



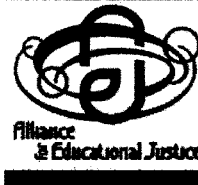
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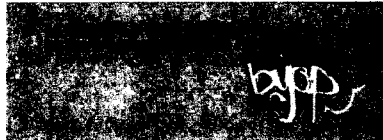
Youth United for Change



Project South



Alliance for Educational Justice



BYOP - Boston-area Youth Organizing Project

Youth Art & Self-empowerment Project (YASP)**Written Testimony on the School-to-Prison Pipeline****By three young people incarcerated in Philadelphia's adult jails**

The school to prison pipeline affected me and my family by me being arrested and keeping me out of school for a fight. I'm in prison and still not in school, how is that helping me? I'm missing days and learning lessons from school for a fight. Suspensions or arrest doesn't send a good message for students because the problem still is not getting resolved by suspending students or arresting them. The students didn't get no counseling or a chance to talk it out. Suspensions is just a vacation off of school you still out of days of work and education. And getting arrested, you get months and days out of education. People's families are concerned and worried about what's going to happen when I get out. Am I going to be able to return to school? Parents spend a lot of money for education to just throw a student education away like that. I need my education I been out of school for a month now I can't wait to return. I'm going have lots of work to do. Also children don't get report cards and things that matter when they get put out of school then there marked absent everyday that's when truancy court comes for them but they got put out of school that's not fair for a student that got suspended or arrested. Something's has to be done concerned, my family is to and the community's.

By Chaundrah, 15 years old, at Riverside Correctional Facility

School to prison pipeline

I believe youth especially young black males need stability. Good teachers, challenging work and after school programs. Will keep teens busy and out of the streets. A lot of teens just need someone to be there and support them. So if they don't have a good stability at home, they should have teachers and counselors to be there. Because the job of a teacher is not just to teach it's to care and nurture the young teens and their minds. As I grew up the teachers I had were very impatient with me and my behavior problems. But all I needed was a patient and caring teacher.

By Jaleel, 17 years old, at Philadelphia Industrial Correctional Center

School-to-prison pipeline

The reason for young people going from school into prison is because of our environment and friends. My favorite saying is "friends are future". Pick your friends wisely because your friends

can make you go down the wrong path. Another reason of the school going into prison is because attitudes, and sometimes our backgrounds. If we didn't get into any trouble since day one of our early years in school, we would never have a background to begin with. Since we have a background that's how we recognize. Everything really happens from 2nd grade. You know 18 and older vote for the president? Well 2nd graders test scores vote for jails. I say that because however we do in 2nd grade on our test decides if a new jail opens. They pick 2nd grade because 1st grade is smooth but 2nd grade is when school really is school. I looked up on the internet before and it said 70% of the world that failed the 2nd grade and everyone I know failed it was the 2nd grade. The school-to-prison pipeline is all set- up for real

By Tysheed ,17 years old, at Philadelphia Industrial Correctional Center

To: U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
 From: Nina Sears, New York, NY
 Date: Monday, December 10, 2012
 Subject: Hearing to End the School to Prison Pipeline Testimony

I first learned about the impact of the School to Prison Pipeline (STPP) during the summer of 2007. Along with several other college students, I was a servant leader intern with the Children's Defense Fund's Freedom School Program at Maya Angelou Public Charter School (MAPCS), Evans Campus. The *CDF Freedom Schools* Program "provides summer and after-school enrichment that helps children fall in love with reading, increases their self-esteem, and generates more positive attitudes toward learning."¹

I did not know the term for it at the time; however, I knew a system existed. And so did my scholars. For some students, MAPCS represented a final stop before alternative schools or juvenile detention. Some of our students, predominantly young, African American men and women, had hopped from school to school in hopes of finding a place of acceptance and academic support—leaving a trail of suspensions and expulsions. Upon first look of their records, it would seem easy to make judgments about their behavior, character and ability to learn. To many, they were "trouble-makers," "delinquents," and "dangerous."

During our daily reading circles, they shared horror stories of being thrown out of classrooms and schools by teachers and principals, whom they perceived as uncaring. The reasons for the punishment seemed miniscule: wearing their hats in the school building, eating in class, and "talking back" to a teacher. When students were outside of school, opportunities abound for them to *actually* get in trouble. And some did. However, the perceptions previous school officials held of the students did not align with what I saw in my classroom over those five weeks. I witnessed something totally different:

When students were spoken to with respect, they responded respectfully.

When asked to help establish standards for our classroom to follow, not only did they contribute their ideas to build a safe space for one another, they were able to hold themselves accountable for their actions.

If they stepped outside of the cooperation contract, and required disciplinary attention, most responded well to simply being pulled aside and having a chat with me versus automatic dismissal from class or—even worse—the school.

Our students were able to "behave." They were like any human being who desired to be treated with respect, fairness, and understanding.

¹ Retrieved from <http://www.childrensdefense.org/programs-campaigns/freedom-schools/>.

Yet a majority of my male scholars experienced the opposite of this in their public schools. Sadly, it was no coincidence they shared similar stories. According to the U.S. Department of Education's Office of Civil Rights 2002-2003 data, Black students have a higher risk of out-of-school suspension. They are nearly three times as likely as White students to be suspended and are about two and half times more likely to be expelled.² Black students continue to be overrepresented among suspensions and expulsions. It is likely that many Black students, similar to my scholars, tend to be disciplined more severely for more subjective reasons.³

My students honestly noted the punishments they received did little to change their behavior. Many were suspended multiple times. Based on findings of the American Psychological Association Zero Tolerance Task Force (2008), "school suspension in general appears to predict higher future rates of misbehavior and suspension among those students who are suspended."⁴ My scholars tended to have negative views of their old schools as a result of the punishment cycle. While the pipeline does not guarantee immediate passage to prison, the connections are too large to ignore. In a study of incarcerated individuals, nearly all interviewed said "their school experiences involved detentions and various forms of outplacement."⁵

After three summers with the Freedom Schools Program, I moved to New York City, where the School to Prison Pipeline became even clearer. While working in different capacities in education, I learned about the peculiar relationship between the New York City Department of Education (DOE) and the Police Department (NYPD). The Student Safety Agents, who were once employed by the Board of Education, now report directly to the NYPD. This may not have been so large a problem, if evidence demonstrated that this change resulted in: fewer student suspensions, expulsions and arrests, a change in student behavior, and similar resources put toward ensuring the holistic well-being of each student. None exists. According to the New York Civil Liberties Union there are some 5,200 school safety agents in city schools. However, this is nearly double the number of guidance counselors who work for the DOE.⁶

What message does this send to our students? One could argue the DOE and other school systems with large police presence are most concerned about the safety of our students. While I do not doubt the DOE and NYPD are worried about student safety, I do question the effectiveness of the methods employed.

In my current work as a college advisor with an educational nonprofit in New York City, I taught a small class of incoming freshmen students during our 2011 Summer Bridge Program. The students and I spoke extensively about issues of education justice with particular focus on the

² Russell Skiba et al., "Are Zero Tolerance Policies Effective in the Schools?" American Psychological Association Zero Tolerance Task Force, *American Psychologist*, December 2008.

³ Ibid.

⁴ Ibid.

⁵ Ronnie Casella (2003). Punishing Dangerousness through Preventive Detention: Illustrating the Institutional Link between School and Prison." *Deconstructing the School to Prison Pipeline*, p. 66.

⁶ New York Civil Liberties Union, "Number of Police Officers in Major Cities vs. SSAs in NYC Schools." Retrieved from http://www.nyclu.org/files/number_of_police_officers_in_major_cities_vs_ssas_in_nyc_schools.pdf.

pipeline. The class time became a space for the students to share their stories with the school system. All had attended New York City Public Schools. As we read different materials and discussed the role of schools in this pipeline, they were astounded to realize they were a part of this system unknowingly. It was incredulous to them that there was a name to describe and discuss what they had known.

One of the male students angrily shared, "This was my life." He had been suspended multiple times from school and had poor relationships with some of his teachers and the schools' safety agents whom he felt did not care about him. During a long-term suspension, the work he received at the alternative site did not match the pace of his classes. He fell behind, and thus cared less and less about the work. The student credited a traumatic event outside of the school environment as well as the care and supports of this educational nonprofit for encouraging him to make a life-change and pursue a college education. Without adequate support, the student was not sure of his life's outcome. Many youth, especially who do not have access to additional resources, rely on their schools. If their schools deny these supports, through suspension and expulsion, this can "frustrate them, erect further blockades in their life courses, and accelerate their slide toward delinquency."⁷

Just as that student had been labeled, I saw the same connection to my scholars. In 2007, I was fascinated by this dichotomy. The students who were labeled by others, and seemed to live up to those labels, were human beings. When treated as such, they responded positively. They came to know their worth and importance through our summer program. If this could happen during a five-week summer program, I am convinced it is possible on the school level. Nearly six years after that summer experience, I continue to hold to this ideology: no child is unteachable, unreachable, and unloveable; everyone deserves a chance to learn, and be treated with dignity. I have worked in various capacities in youth development and have yet to see this proven untrue. I continue to teach and share information whenever I have the opportunity, so others become aware of this system and are sparked to take action.

To be clear, this is not a blame game. I recognize this pipeline is a result of a number of systems working together. I do not fault teachers or administrators, especially those who work in schools that are resource-strapped and focused primarily on the outcomes of standardized tests. In these tough environments, I imagine how difficult it can be to juggle both the academic and wellness needs of students. Burnout often becomes an issue for teachers and administrators who attempt to address both. However, there are alternative methods such as Positive Behavior Interventions and Supports and Restorative Practices. These methods have been utilized on the school and district level with promising results.⁸ Of course, implementation of these methods is key and not necessarily easy. On the federal level, it will be critical to provide funds to State Educational Agencies to ensure districts—with some of the highest and most disproportionate disciplinary

⁷ Ibid, p.69

⁸ Dignity in Schools Campaign, Fact Sheet: Creating Positive School Climate and Discipline; Retrieved from http://www.dignityinschools.org/files/Fact_Sheet_RestorativeJustice_PBS.pdf.

rates—are able to implement these methods successfully. It would be a great next step to tear down a system that devastates the lives of many and to restore dignity and respect to our students.

Thank you to the U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights for bringing this important issue to light and allowing so many to share their stories on public record.

Ending the School to Prison Pipeline

"10% reduction in overall adolescent arrests in 2011" (from previous year) JPPO records in a community that has 1500 adolescent referrals to the Juvenile Probation office for pre-adjudication review, only 75 end up incarcerated in our local detention facility.

Why?

In 1999, our local District Court Judge Barbara Vigil started a Regional Juvenile Justice Board. Serving District 1 which includes Santa Fe, this Board brought together the local police department, sheriff's department, Child Protective Services, the Juvenile Probation Office, Local mental health providers and School District representatives to sit at the table and discuss our juvenile justice system. The Board took on a project; Targeted Community Action Project (TCAP) that started with selecting a criteria of adolescents to use for wraparound services to determine what we needed to do to break the "Prison to Pipeline" effect in our community. (A community of approx. 90,000 we house over 500 inmates in the local county detention facility and over 1,000 in a State Penitentiary) TCAP initially selected ten (10) high-risk youth that were involved with every segment of the local service continuum. Over a three year period representatives from all the member organizations met weekly in Judge Barbara's chambers to review cases and provide support. During this period of time TCAP worked with 23 clients and their families. Of the 23 clients only one was committed to a correctional facility. We received grant funding and used it to provide a support model that we call ICM – intensive community monitoring which works with youth that are on interim status between the preliminary hearing and their adjudicatory hearing. Over 87% of these ICM youth complete their probation successfully with no additional delinquent acts.

Over the years, the partnership between board and the local school district has addressed truancy, early childhood issues, and applied for and received the prestigious SSHS grant (2008). We continue to work together to strengthen a community wide approach to diversion from detention. The school district participates actively as a Board member.

Most important elements of the work we do:

- In the community – juvenile justice system.
 - Day Reporting Program – This program offers an alternative to detention by providing an all-day program at our local detention center. Half of the day is devoted to educational remediation and remainder of day offers access to life skills instruction and interaction.
 - JPPO interviews with truants, and arrested youth to divert them from incarceration
 - Our JPPO uses a Risk Assessment Inventory tool to determine if a youth is eligible to be placed in detention. The tool determines the risk level necessary for a youth to warrant detention.
 - ICM program (as described above)
- In the school district:
 - School District Asset based discipline plan – Behavior Expectations for Students (changed from Code of Conduct that describes the offense rather than the positive behavior expectation)
 - Project Success Specialists in the MS – Student Assistance Program that addresses life circumstances that are causative factors in life of a juvenile delinquent – drug involvement, violence, etc.
 - Universal Prevention Curricula – Second Step Pre-K through 3rd grade and grades 7-8 and Botvin's Lifeskills Curriculum grades 4-6. Bullying Prevention Guidance Lessons in all grades.

- Trauma First Aide (used by school counselors) and a classroom model called “Slow Down Time” to reduce trauma in students at all grade levels
- Mental Health Referral System (5 mental health agencies adopt schools to provide clinical counseling on campus, referrals from parents)
- HS Second Chance program – students returning to HS after a long absence or return from detention enter school through this program. It provides assessments to determine level of performance, Credit Recovery E2020 plus Reconnecting Youth Curriculum to help students ready themselves to re-enter the regular classroom.

Contribution by Tita Gervers, SSHS Project Director, Santa Fe Public Schools, New Mexico and Jack Ortega, Santa Fe Regional Juvenile Justice Board, Santa Fe, New Mexico



*With Vision ...
By Faith ...
Through Action*

SAMUEL DEWITT PROCTOR CONFERENCE, INC.

"The Social Justice Network"

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December 10, 2012

"Our failure to institutionalize the supports necessary to provide Black males with a substantive opportunity for success has yielded a climate where in 2011, according to NAEP, academically only 10% of Black male 8th graders are deemed proficient in 8th grade reading, and only 52% are graduating from high school in a four-year period. Thus the penal institutions remain populated with too many Black males and the classroom teaching and student rolls with too few."

John H. Jackson, President and CEO Schott Foundation for Public Education
The Urgency of Now: The Schott 50 State Report on Public Education and Black Males 2012

On behalf of the Samuel DeWitt Proctor Conference, I am pleased to submit this statement for the record to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights.

The mission of the Samuel DeWitt Proctor Conference (SDPC) is to nurture, sustain, and mobilize the *African American* faith community in collaboration with civic, corporate, and philanthropic leaders to address critical needs of human and *social justice* within local, national, and global communities. SDPC seeks to strengthen the individual and collective capacity of *thought leaders* and activists in the church, academy, and community through education, advocacy, and activism.

SDPC was named for Dr. Proctor, a leading theologian, pastor, civil servant and university president of the 20th century. Dr. Proctor's voice echoes in our organizational core that it is by God's mercy and grace that "some of us are further along on the scratch line," but we all share the burden of knowing, we are not yet free."

Our current work includes our many efforts to address issues of criminal justice reform in this state and the nation, with special attention given to racial disparities and related intergenerational consequences these disparities have upon African American families and communities. We are currently engaged in hosting community justice hearings in twenty-two states on the impact of the criminal justice system on the African American community, as experienced by those closest to it. As we bear witness to the relationship between schooling and prisons, education vs incarceration, we see the devastating toll the school to prison pipeline has on our communities.

The Schott Report made special reference to the impact on African American males. When you examine the impact educational policy and the culture of violence are having on young African American girls, you see additional and different patterns of othering and entry into the criminal justice system.

Senate Judiciary Subcommittee: Schools To Prison Pipeline 12.12.12

Simply put, this nation must interrupt the systemic nature of the school to prison pipeline, reverse and prevent the mass incarceration of young African Americans, other youth of color and those from marginalized and low-income communities.

Enough research has been done to identify specific triggers, both policy and operational, that are more likely to predict and/or result in the disparate entry of certain children into the criminal justice system. At the heart of the school to prison pipeline are the consequences of failing schools which also institute policies such as zero tolerance as a band-aid approach to “manage,” not educate children. The cycle is systemic, far too predictable and increasingly beginning at a much earlier age.

From the perspective of the faith and educational community, several assumptions and observations are submitted for review and consideration.

1. Budgets are a reflection of values. The disproportionate funding of jails over jobs is quite telling about the nation’s values and the perceived potential value of young African American youth in this nation.
2. The era of zero tolerance has resulted in significant increases in the numbers of expulsions and/or negative behavioral labeling of children. The era of zero tolerance has also resulted in younger and younger children being subject to said labeling and push out. These are symptoms of a failed educational system, along with inadequate family and community systems to support children. In the most prosperous nation in the world, this standard is unacceptable.
3. Often the children are being taught by the least experienced teachers, many not familiar with the children’s community and culture, leading to even greater age, socio-economic and cultural gaps between the children and the instructional team, resulting in more disciplinary referrals.
4. The reality is that all children bring their situations from home and community across the threshold of schools. These realities include poverty, hunger, parental instability and increasingly homelessness. In the midst of these realities, these same children have less access to recreational facilities, extra-curricula activities, health professionals and social workers. The physical buildings, in which many urban school children attend, are hardly environments to affirm self-discipline and learning.
5. The physical presence of police, the inter-transferability of education-police agency budgets in some cities, send a message to all members of the school community about the state of affairs. While there is increased support in areas of policing, there is declining support to address the years of erosion of resources in the areas of support that make for healthy well-rounded children.

Where do the children learn the necessary life skills that help them deal with anger, disappointments, othering, marginalization, challenges etc., if in the place where they come to be socialized and educated the response is for them to be pushed out, rather than afforded models for restorative justice and positive affirmation?

What are the consequences to those who don't get pushed out, but rather must bear witness to more and more punitive environments, driven by fear, threats and violence? What must a child internalize to have to bear witness and focus more on how to navigate a hostile system than embrace an affirming one?

In conclusion, any group who finds that 1 of 3 of their young males are facing prison or under the control of the justice system, as is the African American community, is at risk for survival.

Today, the United States leads the world in incarceration rates, approximately 700 persons per 100,000 population. U.S. incarcerates 25 percent of all prisoners in the world and is only 5% of the world's population. One-third of black men between the ages of 18 – 28 are in prisons, jails, on parole or waiting for their day in court. Women with children are one of the fastest growing demographics in incarcerated persons and more than 7 million children have a parent under some form of correctional supervision.

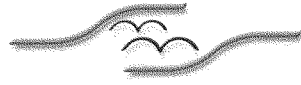
The racialized and class patterns and systems which perpetrate mass incarceration in this nation are clear markers that this country is moving further away from core practices that evidence a real democracy and freedom for all. Prisons have become sites of relocation; failed schools are fueling them and now there is a movement to privatize the failure and misery of America's children.

The Samuel DeWitt Proctor Conference, along with the National Cares Mentoring Movement, begun by Susan Taylor, Editor Emeritus of Essence Magazine, recently convened a group of students in a Chicago high school. Two of the most recurrent responses to the questions about barriers to their success and violence in their communities were the lack of recreational facilities and opportunity for employment.

As the U.S. Senate considers the "fiscal cliff," let us do all we can to protect our children from being pushed off the cliff by a system of failed schools and institutional finger pointing that result in greater evidences of a society devoid of compassion and care for the most vulnerable of all, the children.

Let us hope that the fruit of this hearing will help to reverse the trends of the school to prison pipeline.

Iva E. Carruthers, PhD
General Secretary
Samuel DeWitt Proctor Conference



**Santa Monica
Malibu Schools**

December 10, 2012

Honorable Dick Durbin,

As a school district, we in the Santa Monica-Malibu Unified School District know that our job is to prepare students for a bright future, not one that includes prison and joblessness. We, as educators, realize that we need to constantly examine our practices and programs and we know that the underfunding of public education in California makes it even harder for us to implement plans that truly support our most at-risk youth and keep them on the road to a life of options and personal development. We are pleased the federal government and the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights is examining these same issues through hearings on the school-to-prison pipeline. In the Santa Monica-Malibu Unified School District we have a community already endeavoring to examine these critical issues and we know it will take all agencies, state and federal, to examine and change policies and practices that leave our most at-risk youth without the supports they need to lead productive, fulfilling lives. .

We are fortunate to be a pre-K through 12 public school district in a community that values the mission and goals of public education. In partnership with the City of Santa Monica and local agencies, non-profits and organizations, we are collaborating on The Santa Monica Cradle to Career (C2C) Initiative, a collaboration that was created because of our community's desire to develop a system that works to ensure that all youth in our community have every opportunity for success, from birth into adulthood. Our lofty objective is to unite the various systems and organizations that work to support youth so that all children, whatever their ages, have a network of services that are integrated to make sure our community's youth are supported and guided as they travel the road from childhood to adulthood.

Schools cannot do it alone. The key to ensuring that at-risk youth have the resources and the support they need is to have all agencies working together. Working with leaders from the city of Santa Monica, Santa Monica College, a variety of local nonprofit, neighborhood and parent organizations as well as partners in the business community, our school district leaders are seeking ways to share information and data so that we can best support the young people in our community, intervening when necessary and clearly identifying strengths as well as opportunities for collaboration that will shore up areas where we fall short of meeting the needs of our youth. Our Youth Well Being Report Card is an excellent example of how we have begun to examine those areas and identify areas for improvement. We encourage the federal government to find and support new ways of ensuring the success of our most vital national resource, our youth.

Sincerely,

Sandra Lyon
Superintendent

Santa Monica-Malibu Unified School District

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Board of Education: Ben Allen • Oscar de la Torre • José Escarce • Maria Leon Vazquez • Laurie Lieberman • Ralph Mechur • Nimish Patel
Sandra Lyon, Superintendent

Ending the School-to-Prison Pipeline

Written Testimony from the Schott Foundation for Public Education

For the Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights,
and Human Rights: December 12, 2012

I. Background

The Schott Foundation for Public Education is pleased to have this opportunity to submit written testimony to the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights as part of the Committee's hearing on the school-to-prison pipeline. The Schott Foundation supports grantees working toward promoting a high quality education for all, paying particular attention low-income students and students of color. The Foundation also supports grant-making, convenings, strategic planning and donor collaboration to:

- Build public will to guarantee every child has the right to high-quality public education.
- Support statewide campaigns to educate the public and policymakers.
- Develop partnerships with donors, funders, business leaders, education reform advocates, teachers, parents, youth and community leaders.
- Foster the growth of emerging leaders in traditionally underserved communities.

As the Foundation noted in its recent report *The Urgency of Now: The Schott 50 State Report on Public Education and Black Males*, all too many of our nation's most vulnerable students are locked out of educational opportunity, pushed out of school and then locked up in prison. The Committee is no doubt aware of the following facts:

- Just over half of the nation's Black male students graduate from high school with regular diplomas four years after ninth grade;
- The unemployment rate of those Black Americans lacking a high school diploma is now equal to the nation's unemployment rate in the worst days of the Great Depression;
- One-third of Black male young adults without a high school diploma will serve time in prison;
- The best way to prevent crime and reduce poverty is to increase the quality of the education available to all Americans.

Before describing the way in which the school-to-prison pipeline works, it will be useful to describe its effects.

II. Effects of the School-to Prison Pipeline

One of the most serious effects of the school-to-prison pipeline and other causes of the mass incarceration of young adult Black men is the impoverishment of Black neighborhoods. Professors Lance Hannon and Robert DeFina have determined that, for the nation as a whole, "had mass incarceration not occurred [during the period 1980 to 2004], poverty would have decreased by more than 20%, or about 2.8 percentage points. At the national scale, this translates into several million fewer people in poverty had mass incarceration not occurred . . ."¹ Given the disproportionate number and percentage of African-American men among the incarcerated, the increase of Black poverty from mass incarceration is obviously yet more substantial.

Professor Bruce Western has observed that “. . . the main effect of the prison boom on gender relations is due precisely to the approximate fact that men go to prison, and women are left in free society to raise families and contend with ex-prisoners returning home after release.”ⁱⁱⁱ Over half of the Black men in prison have children and nearly as many were living with those children when they were sent to prison.ⁱⁱⁱ Research shows that before most young men who went to prison did so, they were contributing significantly to their households’ income. This contribution may have been enough to keep those families out of poverty.^{iv} Once men are incarcerated, that contribution comes to an end and in many, if not most, cases their families fall into poverty. While a man is in jail, his partner (or former partner) and their children are deprived of his income and, given the employment difficulties of ex-prisoners, after he is released they are deprived of his full potential as a worker and the income he can provide to his children’s household is severely limited. In most cases, from the moment of arrest (if not before^v), his children live in a household with an income below the poverty line. Professors Hannon and DeFina find that this effect, unsurprisingly, is “especially pronounced in areas with a high proportion of non-White residents,”^{vi} that is, ghettos where most Black men of an age to have young children are likely to be incarcerated, on parole or probation.

As there are approximately 850,000 Black men who are incarcerated, it is reasonable to estimate that as many as one-third of the Black families living in poverty are the families of incarcerated men and many more are the families of formerly incarcerated men. Looked at from the point of view of the children themselves, Professor Betty Pettit concludes that “. . . one-quarter of recent cohorts of black children can expect to have a parent imprisoned during their childhood Among recent cohorts of children of high school dropouts . . . 62 percent of black children had a parent who went to prison before they reached age seventeen.”^{vii} According to Professor Pamela Oliver and her associates at the University of Wisconsin, “The income results seem quite straightforward. High rates of Black male imprisonment are associated . . . with reduced family income, especially in less educated families Thus, one clear path of effect from imprisonment to child poverty is through the reduction in male incomes due to imprisonment.”^{viii} This reduction in incomes is not only while the father is in prison, but for years after his release from prison. Western and Pettit calculate that incarceration reduces earnings for Black men through age 48 by 44%.^{ix} As the median income for Black males is approximately \$40,000, a 44% reduction brings that income to the poverty level.

The incarceration of young adult Black males has significant economic consequences not only for the partners (or former partners) of prisoners and ex-prisoners, not only for their children, but also for the neighborhood and for the wider community. The impact of reduced incomes due to the mass incarceration of men on the Black community, as well as on individual families, is severe: a 9% reduction in average earnings for all Black men, incarcerated or not.^x (The effect of post-incarceration earnings reduction for the Black community is more than four times that for the White community.) In addition, there are issues pertaining to the changing nature of the American economy. Peak manufacturing employment in the United States was reached in 1979 at 19,426,000.^{xi} In 2011 it was down to 11,733,000,^{xii} while the population had increased by 85 million. The disappearance of nearly half the employment opportunities traditionally available to those with limited educational attainment living in poorer communities further impoverishes those communities and contributes to the incidence of violent crime. The poorer the community, of any race or ethnicity, the more violent crimes occur there. The more violent crimes, the more

long-term incarcerations and as a result the poorer the community. The increasing impoverishment of American families in the lower tenth- or fifth income levels accelerates this increasing rate of violent felonies, and hence, incarcerations.^{xiii}

The school-to-prison pipeline begins early. Children from low-income households where the adults have relatively low levels of educational attainment arrive at pre-school with substantially smaller vocabularies and other resources than children from higher-income households with better educated parents. Those three- and four-year-old children who are most in need of high quality, full-day, preschool programming are the least likely to receive it, despite decades of research showing the strongly positive results of high quality early childhood education. State funding for Pre-K programs is actually decreasing nationwide, while less than a third of four-year-olds and just 4% of three-year-olds are enrolled in those programs. All too often Pre-K programs are inadequate even for those children fortunate enough to be enrolled in them. Nearly half those programs fail to meet a critical level of quality standard benchmarks.^{xiv} And push-out, shamefully enough, begins with these young children. Research by Walter Gilliam at Yale has shown that Black boys in preschool are much more likely to be locked out of classes and expelled from school than any others. Gilliam has demonstrated that this is because of the inadequate training of the adults, not because of unusual behavior by the children.^{xv}

Unfortunately, neither the quality of education available for Black and other students from low-income families nor the discipline policies applied to them improve once they enter the K-12 system. Per student expenditures on education vary with the relative wealth of their neighborhoods, not with the challenges facing the students. Some districts spend \$25,000 to \$30,000 per student, others have only a fifth or less of that. The chances of a student receiving a high quality education, in many parts of the country, can radically increase by merely crossing a district boundary from an underfunded, urban district, to a well-resourced suburban district. This is not only the case between districts; it is also the case, astonishingly enough, within many districts.

According to a recent U. S. Department of Education study of Title I schools (i.e., those serving high percentages of students from impoverished families) by Ruth Heuer and Stephanie Stullich: “42 percent to 46 percent of Title I schools (depending on school grade level) had per-pupil personnel expenditure levels that were below their district’s average for non-Title I schools at the same grade level, and from 19 percent to 24 percent were more than 10 percent below the non-Title I school average.”^{xvi} In other words, nearly half the schools serving students from impoverished households received less funding from their district than those serving students from more prosperous households and nearly a quarter of those had per student expenditures significantly lower. Researcher Ary Spatig-Amerikaner has used the newly available database of actual state and local spending on school-level personnel and non-personnel resources analyzed by federal researchers Heuer and Stullich to show that “schools with 90 percent or more students of color spend a full \$733 less per student per year than schools with 90 percent or more white students . . . On average, the high-minority schools . . . would see an annual increase of \$443,000 in state and local spending if [the] were brought up to the same per-pupil spending level as those schools with very few nonwhite students. This is enough to pay the average salary for 12 additional first-year teachers or nine veteran teachers.”^{xvii} Spatig-Amerikaner attributes these differentials in per pupil instructional spending to “maldistribution of resources at the district

level . . . Districts have teacher assignment practices that place the least-experienced teachers in high-minority, high-poverty schools. Because novice teachers earn so much less in salary, the total spending at these high-needs schools is likely to be lower than spending at schools in wealthier neighborhoods that employ veteran teachers” (p. 14).

The Schott Foundation has found that students from low-income families, especially male Black students, are less likely than others to be identified for Gifted and Talented programs, less likely to be enrolled in Advanced Placement courses, less likely to attend schools offering a high quality, challenging curriculum. There are other issues unnecessarily limiting the educational achievement of male Black students. Gifted and Talented programs typically receive more resources than regular classrooms. In theory, assignments to these should be race-neutral: Whites, Blacks, Latinos and Asians have equal proportions of intellectually gifted children and talent can be found everywhere. And yet, U. S. Department of Education Office for Civil Rights (OCR) district-level data shows that while Black students have an equal chance of receiving the increased resources characteristic of Gifted and Talented programs as White, non-Latino students in Montgomery County (MD) and Milwaukee, but barely more than one-tenth that opportunity in Memphis and Nashville. Male Black students are assigned to Advanced Placement Mathematics at less than a tenth the rate as male White, non-Latino students in some districts. Disparities in access to courses like Advanced Placement Mathematics are traceable to district policy decisions, as the College Board has repeatedly advocated an “open admissions” policy for its Advanced Placement program. All students should have the opportunity to attempt these well-resourced programs, which often are taught by a school’s best-qualified teachers.

Similarly, the ratio of male Black to male White, non-Latino students classified as Intellectually Disabled (replacing the Mentally Retarded category) reach 8-to-1 in Atlanta and 6-to-1 in Wake County, despite decades of research showing that such disabilities are evenly distributed in the population. Such classifications all too often carry with them a stigma and restrict student access to challenging curricula.

A recent study by Michael A. Rebell and his colleagues at Teachers College, Columbia University, found that “schools with high proportions of low-income, struggling or disabled students . . . could not afford enough staff members to meet standards in core subjects or in services like extra help for struggling students [some] were not meeting state minimums for the amount of instructional time devoted to science, including . . . high schools that were not offering any chemistry or physics classes . . . Schools could not keep up with standards in art, occupational studies, health and physical education. None were offering the minimum amount of support services for struggling students, like remedial after-school programs. Students with disabilities were not receiving enough extra academic support . . .^{xviii} These findings are consistent with those reported in the Foundation’s study: *A Rotting Apple: Education Redlining in New York City*. Just as preschool students need more schooling and higher quality education, so K-12 students, especially Black and other students from low-income families, need the same: challenging curriculum; well-trained and passionate teachers; extended school days, weekends and summers for more education supported by individual opportunity plans. Tragically, their chances of having such excellent opportunities to learn today are slight.

In addition to being locked out of opportunities for quality education, male Black students are pushed-out of school by subjective and inequitably applied school discipline policies. According to the most recent available national survey by the U.S. Department of Education (2006), an extraordinary 19% of all male Black students were suspended from school that year, as compared with the closely aligned male Hispanic and non-Hispanic White rates of much less than half that. Out-of-School suspension ratios vary from approximately 8 to 1 in Newark and Atlanta (and 6 to 1 in two other Atlanta metropolitan area districts) down to less than twice the percentage of male Black as compared to male White, non-Latino students being given these punishments in districts like Boston. The absolute percentage of students give out-of-school suspensions also varies widely.

Based on what comes as close as possible in social science to a controlled experiment, a Justice Center of the Council of State Governments and the Public Policy Research Institute study of a rich record base maintained by the Texas State Education Department documented that while Black and White students come afoul of objective rules (“mandatory actions”) in approximately equal proportions, when public schools in Texas act on their own discretion, they punish Black students nearly a third more often than both Hispanic and White, non-Hispanic students, and male Black students much more often yet.^{xix} The consequences for the educations of Black students are severe. According to the study: “A student who was suspended or expelled for a discretionary violation was twice as likely to repeat his or her grade compared to a student with the same characteristics, attending a similar school, who had not been suspended or expelled” (p. xi). Further, “a student who was suspended or expelled for a discretionary violation was nearly three times as likely to be in contact with the juvenile justice system the following year,” and so into the criminal justice system later. A conservative estimate is that 300,000 Black male students punished with out-of-school suspensions each year, who would not have been removed from the classroom if they had been from any racial or ethnic background other than Black.

III. Solutions

There are alternatives. In Connecticut, school suspension law allows for many forms of intervention other than out-of-school suspensions to improve students’ behavior. A few of the dozens of examples from a Connecticut Voices for Children report^{xx} include the following:

- School-wide behavior supports;
- Reduce unstructured time, adding more supervision at targeted times and locations
- Active teaching of social skills and addressing the behavioral challenges that data indicate are most prevalent;
- Mentoring, including peer mentoring programs, to improve school climate and student discipline;
- Reflective essays, apologies, and responsible thinking classrooms designed to encourage and teach children to think through their behavior;
- Community Service.

Out-of-school suspensions are counter-productive for the student and for society at large. They disproportionately affect male Black students and are a major factor in perpetuating education inequities. According to Donna Lieberman of the New York Civil Liberties Union:

Suspensions, often the first stop along the [school to prison] pipeline, play a crucial role in pushing students from the school system and into the criminal justice system. Research

shows a clear correlation between suspensions and both low achievement and dropping out of school altogether. Such research also demonstrates a link between dropping out of school and incarceration later in life. Specifically, students who have been suspended are three times more likely to drop out by the 10th grade than students who have never been suspended. Dropping out in turn triples the likelihood that a person will be incarcerated later in life.^{xxi}

Those students have arrived at the terminus of the school-to-prison pipeline: incarceration.

Lock-out through inequitable school funding; inadequate opportunities for challenging coursework; disparate consignment to inappropriate Special Education programs and push-out through inequitable school discipline policies and practices are all barriers to achievement for male Black students and entry-points to the school-to-prison pipeline.

What is to be done?

The Schott Foundation supports the Opportunity to Learn Campaign, a national movement to create a stronger, safer, more prosperous America now by closing the opportunity gap in public education. The campaign connects advocates across the country to ensure every child's fundamental civil right to a high-quality public school education, regardless of where they live. The OTL Campaign seeks systemic policy change at the local, state and federal levels to hold our nation's elected officials and education leaders accountable for providing every child access to four research-proven resources that are necessary to have a fair and substantive opportunity to learn:

- High-quality early childhood education;
- Highly prepared and effective teachers;
- College preparatory curriculum;
- Equitable instructional materials and policies.

In addition to these vital supports, policymakers have an agenda of actions to close the school-to-prison pipeline, varying from ending disparate and inequitable school funding between districts and within districts, to equal protection actions to end the inequitable rules and practices currently in effect in the area of school discipline and to bring to an end the introduction of punitive and harmful practices into the nation's schoolrooms.

Notes

ⁱ DeFina, Robert and Lance Hannon The Impact of Mass Incarceration on Poverty *Crime & Delinquency*, Crime Delinquency OnlineFirst, published on February 12, 2009 as doi:10.1177/0011128708328864, p. 21.

ⁱⁱ Western, Bruce. *Punishment and Inequality in America*. New York: Russell Sage Foundation, 2006, p. 15.

ⁱⁱⁱ Pettit, Becky. *Invisible Men: Mass Incarceration and the Myth of Black Progress*. New York: Russell Sage Foundation, 2011, p. 84.

^{iv} Hannon and DeFina, p. 3.

^v According to Defina and Hannon, “Two-thirds of people detained in jails report annual incomes under \$12,000 *prior to arrest*” (emphasis added). This is half the poverty level for a family of four.

^{vi} DeFina, Robert H. and Lance Hannon. “The Impact of Adult Incarceration on Child Poverty: A County-Level Analysis, 1995-2007.” *The Prison Journal* 2010 90: 377 originally published online 9 September 2010 DOI: 10.1177/0032885510382085. The online version of this article can be found at:

<http://tpj.sagepub.com/content/90/4/377>, p. 16.

^{vii} Pettit, Becky. *Invisible Men: Mass Incarceration and the Myth of Black Progress*. New York: Russell Sage Foundation, 2011, p. 87.

^{viii} The Effect of Black Male Imprisonment on Black Child Poverty

Pamela E. Oliver, Gary Sandefur, Jessica Jakubowski, and James E. Yocomp, p. 12.

^{ix} Western and Pettit, op.cit., p. 12.

^x Western, Dr. Bruce and Dr. Becky Pettit. *Collateral Costs: Incarceration’s Effect on Economic Mobility*. Washington, DC: The Pew Charitable Trusts, 2010, pp. 12-4.

^{xi} As a matter of interest: “Total justice employment” grew from 1,270,342 in 1982 to 1,797,704 in 1992.^{xi} By 2007 it had reached 2.5 million, an increase of 93% over that in 1982.

^{xii} Bureau of Labor Statistics, Establishment Data, Historical Employment, Table B-1. Employment on nonfarm payrolls by major industry sector, 1962 to date. <ftp://ftp.bls.gov/pub/suppl/empsit.ceseeb1.txt>

^{xiii} Certain statistical anomalies have obscured the extent to which mass incarceration has impoverished Black communities. “The lower tail of the black wage distribution is further truncated by the joblessness of inmates. As the criminal justice system has grown, the observed wages of black men increasingly overstate the economic well-being of the general population. Moreover, reliance on estimates of the population derived from household-based samples increasingly understate racial inequality in economic outcomes.” Pettit, Becky. *Invisible Men: Mass Incarceration and the Myth of Black Progress*. New York: Russell Sage Foundation, 2011, p. 53.

^{xiv} National Institute for Early Education Research. *The State of Preschool 2011*.

http://nieer.org/sites/nieer/files/2011yearbook_executive_summary.pdf

^{xv} Gilliam, W. S. (2005). *Prekindergarteners left behind: Expulsion rates in state prekindergarten systems*. New Haven, CT: Yale University Child Study Center.

^{xvi} Heuer, Ruth and Stephanie Stullich. *Comparability of State and Local Expenditures Among Schools Within Districts: A Report from the Study of School-Level Expenditures*. U.S. Department of Education, Office of Planning, Evaluation and Policy Development, Policy and Program Studies Service, 2011, p. 29.

^{xvii} Spatig-Amerikaner, Ary. *Unequal Education: Federal Loophole Enables Lower Spending on Students of Color*. Center for American Progress, August 2012.

^{xviii} <http://www.nytimes.com/2012/12/10/nyregion/years-after-ruling-poor-schools-in-new-york-still-struggle.html?ref=nyregion>

^{xix} Fabelo, Tony et al., *Breaking Schools’ Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement*, 2011.

^{xx} Dufresne, Alexandra et al. *Teaching Discipline: A Toolkit for Educators on Positive Alternatives to Out-of-School Suspensions*. www.ctvoices.org/publications/teaching-discipline-toolkit-educators-positive-alternatives-out-school-suspensions

^{xxi} <http://www.nyclu.org/content/impact-of-school-suspensions-and-demand-passage-of-student-safety-act> citing Goertz, M.E., Pollack, J.M. & Rock, D.A. (196). Who drops out of high school and why?: Findings from a national study. *Teachers College Record*, 87, 357-73, available at www.tcrecord.org/Content.asp?ContentId=688 and Coalition for Juvenile Justice. *Abandoned in the Back Row: New Lessons in Education and Delinquency Prevention*. 2001 Annual Report, available at www.juvjustice.org/media/resources/resource_122.pdf.



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Thank you Chairman Durbin, Ranking Member Graham and Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights Committee members.

We deeply appreciate your attention to the important matter of education and the urgent need to address damaging school disciplinary policies and practices that effectively leave so many young people on the margins of society. My name is Gabriella Celeste and I am submitting testimony as an interested party concerning the December 12, 2012 Subcommittee hearing on "Ending the School-to-Prison Pipeline." As the Child Policy Director with the Schubert Center for Child Studies at Case Western Reserve University ("Schubert Center"), I am part of a larger group of stakeholders and experts in Ohio that the John T. and Catherine D. MacArthur and George Gund Foundations have helped to convene to collectively address issues in the juvenile justice system.

The Schubert Center bridges research with policy, practice and education for the well-being of children and families. It is in this capacity that I offer the following input for your consideration. This testimony will briefly discuss the importance of education as a protective factor for healthy child development and the value of a positive school climate overall, and will highlight some Ohio school discipline data and implications for young people in the juvenile justice system and in other life domains; some of the relevant state and federal school discipline policies that contribute to the exclusion of students from school; some promising practices in Ohio and elsewhere that provide potential interventions and alternatives to school push-out practices; and, finally, some considerations for federal policy opportunities to address the "school-to-prison-pipeline."

Education as a Protective Factor for Children and the Value of Positive School Climate

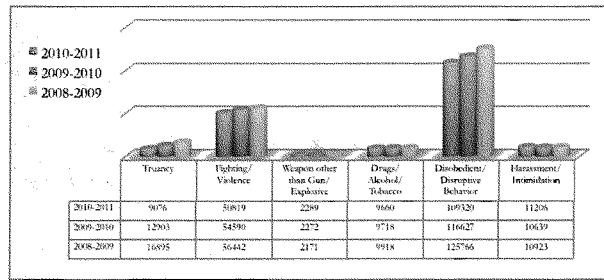
"One of the most important findings of educational psychology of the past 30 years is the positive relationship between the amount and quality of engaged time in academic learning and student achievement" (Skiba & Rausch, 2006). Models of youth violence and delinquency have identified school alienation-school bonding as one of the strongest variables in predicting delinquency (Skiba & Rausch, 2006). School failure and disengagement are widely recognized as risk factors predicting delinquency; factors including commitment to school, involvement in conventional activities such as sports teams and school clubs, and bonding with teachers, parents, and peers can serve to protect and insulate even the most at-risk youth from delinquency and other problems (Jenson & Fraser, 2006). Positive school climate is associated with academic achievement, school success, effective violence prevention, student healthy development, and teacher retention (Cohen, 2009). Conversely, research has found that schools with harsh disciplinary practices typically have lower achievement scores and other poor outcomes (Losen, 2011).

A Snapshot of School Discipline in Ohio

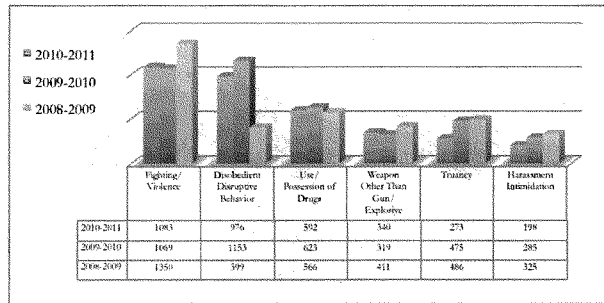
In Ohio, school disciplinary practices resulted in 3,990 students being expelled from school and 203,627 out of school suspensions in the 2010-2011 school year (ODE, 2011).

- Out-of-School Suspensions and Expulsions:** While declining slightly, out-of-school suspensions continue to be administered frequently and primarily for non-violent conduct. **During each of the last three school years, the combined number of out-of-school suspensions for truancy and “disobedient/ disruptive behavior” was greater than the number of out-of-school suspensions for every other reason combined.** In the 2010-2011 school year, 53.6 percent (109,320) of suspensions were due to disobedient/disruptive behavior and 4.5 percent (9,076) of suspensions were for truancy. Similarly, while “fighting/violence” was the largest single category for expulsions (27 percent), 24.5 percent (976) of expulsions were for disobedient/disruptive behavior and 6.8 percent (273) of expulsions were for truancy. The data illustrated in the charts below was retrieved from the Ohio Department of Education Interactive Local Report Card (ODE, 2011).

OHIO OUT-OF-SCHOOL SUSPENSIONS BY REASON AND YEAR



OHIO EXPULSIONS BY REASON AND YEAR



- ***Disproportionate Impact of Disciplinary Practices on Ohio Students with Disabilities & Minority Students:*** In the 2010-2011 school year, students with disabilities made up 27.5 percent of the total out of school suspensions but only represent 14.8 percent of the total enrolled student population for the same year. The racial disparities are even greater. For instance, although black students made up only 16.1 percent of the total student population during the 2009-2010 school year, they accounted for a 50 percent of the students expelled that year as well as 50 percent of the students given out-of-school suspensions. Of the total out-of-school suspensions given to black students, 53 percent were for disobedient/disruptive behavior, compared to 47 percent of the suspensions given to white students for the same behavior. Additionally, according to the 2010-2011 State Report Card for Ohio, only 56 percent of black students graduated on time versus 83.8 percent of white students.

The following are some examples of “zero tolerance” disciplinary practices in Ohio schools:

- 17-year old arrested and subsequently expelled for shooting a paper clip with a rubber band (Kalail, 2010).
- Middle-school honor student with no disciplinary record was expelled for 80 days because he mistakenly left his Swiss Army knife in his backpack after a weekend Boy Scout camping trip (D'Aurora, 2012).
- An eight-year-old girl in Cincinnati received an 11-day suspension and was proposed for expulsion for bringing nail clippers to school (Mrozowski & Byczkowski, 2004).
- A 13-year old honor student from Fairborn, Ohio was suspended from school for 10 days for accepting two Midol tablets from a classmate (Associated Press, 1996).

Impact of Disciplinary Exclusion: The “School-to-Prison Pipeline” in Ohio

When students are removed from the classroom as a disciplinary measure, the odds increase dramatically that they will repeat a grade, drop out, or become involved in the juvenile justice system.

- ***Graduation Rates:*** While Ohio's overall 4-year graduation rates are similar to the national average, Ohio ranks 46th in the country for graduation rates of black males, the group most impacted by harsh disciplinary practices (Schott Foundation for Public Education, 2012). According to comparable state-by-state graduation data recently released by the U.S. Department of Education, Ohio ranks fourth highest in the nation in the gap between white and black (59 percent and 85 percent respectively) student graduation rates (Richards, 2012).
- ***Academic Failure & Dropouts:*** During the 2010-2011 school year alone more than 1,800 Ohio students withdrew due to expulsion (ODE, 2011). When students return to school after a period of disciplinary exclusion, they have lost ground academically which can contribute to further acting out and increase the likelihood of further disciplinary action. A Texas study found **students with at least one disciplinary contact were five times more likely to drop out of school compared to those without any disciplinary contact.** (Fabelo et al., 2011).

- **Pathway to Prison:** Roughly 80 percent of Ohio adult prisoners are high-school dropouts. (ODRC, 2012). When students are suspended or expelled, they often stay home unsupervised, increasing the chances of behavior that can lead to juvenile court involvement (American Academy of Pediatrics, 2003, p.1207).

Unintended Consequences: Discipline Policy as a Factor in School-to-Prison-Pipeline

While school discipline is primarily a school district level matter, Ohio's statutory code addresses school discipline procedures in several ways that may contribute to the "school-to-prison-pipeline." For instance, Ohio's "zero tolerance" law requires each district school board to adopt a "policy of zero tolerance for violent, disruptive, or inappropriate behavior, including excessive truancy" (ORC 3313.534); and by permitting the permanent exclusion of students ages 16 or older from school for committing a criminal offense as defined in the statute, which references and extensive list of eligible offenses including complicity (ORC 3313.662). At the federal level, the No Child Left Behind reauthorization of the Elementary and Secondary Education Act encourages referrals of students to law enforcement for school-based behavior, as well as funding for school resource officers and other security personnel and supplies (20 U.S.C. § 7115(b)(2)(E)(ii)-(vi)).

Rather than zero tolerance mandates, state and federal policy could promote effective alternatives to exclusion for all students consistent with a school-wide positive behavior interventions and supports (PBIS) framework and provide guidelines to narrow the use of expulsion as a last resort, for instance by suggesting specific limits on exclusionary practices for non-violent behaviors, such as "disobedient/disruptive behavior." In addition, while the Ohio Department of Education requires school districts to collect and report discipline data, improving state and federal data reporting requirements to ensure all schools, including charter and alternative schools, provide disaggregated data (by gender, race, disability, socioeconomic status, etc.) that includes the nature of disciplinary offenses for both special education and regular education students as well as tracking the types of school-based referrals to juvenile court, would better inform decision-making and illuminate potential points for alternative interventions.

Promising Practices & Efforts to Dismantle the "School-to-Prison-Pipeline"

Evidence-based and cost effective changes in school disciplinary practices can greatly increase positive school climate, leading to greater academic achievement, school success, effective violence prevention, healthy student development, and teacher retention, as well as diverting struggling students away from the juvenile justice system. Best practices incorporate adolescent development principles to better ensure effective outcomes for young people. **Ohio's School-Based Responder Model**, piloted in Jackson and Summit counties as a school-based juvenile court diversion program focused on youth with mental health needs, has shown promising results. The Summit county model has been successfully expanded from three middle schools to twelve schools and has a training manual to promote replication throughout the state. Jackson county has also expanded its "Teen Talk" responder model to serve all of the county school districts and partnered with a local behavioral health provider to expand its satellite services (Mental Health/Juvenile Justice Action Network, a Project of Models for Change, 2011).

These efforts warrant further study to document their effectiveness and to consider opportunities for replication and expansion, particularly funding strategies to support school-community resource partnerships. In addition, other evidence-based strategies to effectively keep students in school and avert juvenile court involvement include extension of PBIS tiered strategies to a broader range of students district-wide, adoption of effective restorative justice practices and provision of culturally sensitive classroom behavior management teacher training and support to maximize students' opportunity to learn and reduce disciplinary referrals (American Psychological Association, 2008).

We commend the efforts of the U.S. Department of Justice and U.S. Department of Education to address the school-to-prison-pipeline and to promote positive disciplinary options to keep children in school and improve the climate for learning through their joint "Supportive School Discipline Initiative" (DOJ, 2011). States and school districts would benefit from federal guidance, technical assistance and fiscal incentives to adopt and expand efforts to end the school-to-prison-pipeline. Specifically, to:

- ***Revise statutory zero tolerance and related discipline policies:*** These revisions should reinforce the shared mission of student learning and school safety, promote school-wide PBIS and effective alternatives to expulsion, and reduce overuse of exclusionary disciplinary practices, law enforcement and justice system intervention.
- ***Improve statewide data collection and reporting:*** Improve school safety and discipline data collection and reporting at the school-level and statewide, including charter and alternative schools, to better reflect the demographics (e.g. special education and regular education students) and the nature of the reported disciplinary offenses, as well as school-based referrals to juvenile court.
- ***Expand school-community partnerships promoting evidence-based practices to effectively keep students in school, increase academic success and reduce risk of juvenile court involvement.*** This includes funding for school-based mental health providers as well as restorative practices and positive youth development providers and services.

We are willing to assist you and your staff in any way and appreciate your attention to this important issue impacting our young people and our nation. Thank you for your attention and consideration.

Sincerely,



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SOURCES

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STATEMENT FOR THE RECORD

To: U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights [REDACTED]

From: South Carolina Appleseed Legal Justice Center¹

Re: Hearing on the School-to-Prison Pipeline

Date: December 19, 2012

I. Description of Our Organization

South Carolina Appleseed Legal Justice Center (SC Appleseed) has a thirty-year history of fighting for low income South Carolinians to overcome social, economic, and legal injustice. Among other goals, SC Appleseed works to improve the public school system so that it better serves low-income, special needs, and minority students in South Carolina. SC Appleseed staff has worked on a number of education policy issues, including special education, discipline, enrollment, support for English Language Learners, education of homeless students, school finance, bullying, and the education of students in foster care. SC Appleseed has advocated on a statewide level for legislation and policies to ensure equal educational opportunities for all children as well as engaged in systemic litigation on education issues. We serve as a leading resource for community groups and individuals who wish to become active in their local schools.

Since 2008, we have worked specifically on statewide efforts targeted at improving educational outcomes and reducing disciplinary removals of students with disabilities. By partnering with other legal and advocacy organizations in the state, we have provided direct assistance to over 200 families. We have used that information and other data shared by fellow special education stakeholders to develop and maintain a database of special education issues in our state. We are part of a number of networks of service providers which have also informed our efforts. We have conducted parent outreach and training, and provided technical assistance, outreach and training to build the network of legal and lay advocates available to work with students and parents on special education issues. The great majority of the assistance requested by both families and other organizations has involved addressing school discipline, specifically exclusionary tactics including suspension and expulsion.

SC Appleseed respectfully submits this information to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights about the effects of the school-to-prison pipeline

¹ Please direct questions or requests for sources or additional information to Amanda Adler, Staff Attorney, 803-779-1113, ext. 108, amanda.adler@scjustice.org.

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in our state and appreciates the Subcommittee's attention to this pressing issue. We hope that the information contained herein is informative and helpful.²

II. The School to Prison Pipeline in South Carolina

Recent data released by the U.S. Department of Education Office of Civil Rights (OCR) reinforces what we have already learned through our experiences working with South Carolina students and families: our state has a school-to-prison pipeline epidemic which begins when students are denied needed services in school and instead are systemically removed from the education process. According to OCR 2009-10 data, the most recent available, over 103,000 suspensions were issued in South Carolina and over 3900 students were expelled. Our 14.78 percent suspension rate is one of the highest in the nation.

South Carolina is a state with deeply entrenched, intergenerational pockets of poverty, and disability and poverty present dual challenges for many of our state's students. Many of these same students are children of color and are often enrolled in low-performing schools in the state. Our work has focused on the needs of Individuals with Disabilities Act (IDEA)-eligible students who have been pushed out of school. While IDEA requires that schools provide procedural safeguards for students with disabilities who manifest behavioral challenges, we have found many instances where those safeguards are ignored or circumvented, and students instead face lengthy suspensions without services or even expulsion.

In addition to these administrative discipline options, students in our state also face the possibility of being charged criminally for school misbehavior. One of the most often-used charges for which students were referred to the South Carolina Department of Juvenile Justice (DJJ) is a vaguely-written law that makes "disturbing schools" a crime. The wording of the law has caused the arrest of many students for incidents such as throwing pencils, running in hallways, and acting "obnoxiously." Tragically, the end result for far too many disabled students is evident: the rate of IDEA-eligible students in our DJJ school system is three times that of other public schools in the state.

The pipeline in our state is also fed by a lack of needed – and legally-required – services for students with disabilities in our schools. By way of example, SC Appleseed recently brought special education litigation against one of the school districts in the state. That action was meant to stem the tide of students being pushed out of schools and into a life consigned to academic and economic failure. The defendant school district was found to be systemically denying their students adequate counseling services, psychological services, social work services, or other supports, even for students with voluminous documentation of mental health needs, including one student whose records stated he "heard voices in his head telling him to do bad things." That student was receiving five (5) minutes of counseling per week. Many other students with similar needs were receiving the same token amount of services. The district was ordered to take

² This Statement uses the most recent, publicly available data.



immediate corrective action, but our work over the course of years tells us that this is far from the only district failing its most vulnerable students.

Our dismal graduation rates are well-known nationally. Public high schools in South Carolina graduate only 61.7 percent of their students. This is 12 percent less than the national average and 26 percent less than the state's federally-defined graduation performance goal. The graduation rate for students with disabilities is even more alarming: only 38.4 percent of students with disabilities in South Carolina graduate with a regular high school diploma. An effective method of improving these numbers is by insisting that schools stop suspending and expelling our students.

Further, the harsh punishments described above are meted out disproportionately to students of color and students with disabilities. While 6.9 percent of the state's white students were suspended, 19.2 percent of its black students received that punishment. The expulsion rate for black students was almost four times higher than for white students. Further, students of color who also have disabilities are even more at risk of being excluded from school.

III. Stemming the Pipeline in South Carolina and the Nation

Most importantly, taking action to stop the pipeline and to keep students in school has the potential to mitigate human and civil rights violations in South Carolina and across the country. The student population described above is systemically being denied equal access to our public education system as they are pushed out of school and into the criminal justice system. Unfortunately, in South Carolina, as in many other states, education is still viewed as a privilege to be earned or deserved, and we must, at a minimum, enforce the student rights to an education that do currently exist under law.

Stopping the pipeline could also serve to mitigate poverty in our state. South Carolina's high school graduation rate ranks us forty-seventh in the nation. This educational crisis bears out effects far beyond high school, though. The pervasive poverty in our state is hurting children, families, and our economy and prospects for a bright future. Over one in five of our young children under the age of six live in poverty and thirteen percent of all our children live in extreme poverty. In addition, South Carolina ranks forty-third among states for overall child well-being.

The pushout problem has also had disastrous consequences for South Carolina's future workforce. In 2009, approximately three-fourths of adults in the state did not have a college degree and almost one out of every four had no high school diploma. Instead, they have a much higher risk of entering the juvenile and criminal justice systems. South Carolina ranks thirty-sixth in the nation in the percentage of adults with bachelor's degrees. In 2011, South Carolina ranked forty-sixth in the nation in per capita income. On average, each person in the state has almost \$8,000 less income than the average American. By working to help bridge the education

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gap in our state by stopping the school to prison pipeline, we can also improve the economic fortunes of our citizens.

IV. Recommendations for Action

Using information we have gleaned from convening a number of statewide stakeholder discussions, meeting and talking with hundreds of parents, seeking the input of school officials, and working with partner organizations, SC Appleseed respectfully makes the following recommendations.

Positive Behavior Interventions and Supports (PBIS) is a well-known, research-supported, data-driven, proven method of improving schools' climate and reducing exclusionary discipline which feeds the school-to-prison pipeline. It is currently practiced to one degree or another in over 250 South Carolina schools. When implemented properly, PBIS has reduced discipline referrals for students of all ages, and is effective with students with disabilities and other circumstances which place them at risk of being caught in the pipeline. According to the South Carolina Department of Education, PBIS is a "major advance in school-wide discipline." However, PBIS is not universally adopted in our state, and federal action to incentivize or even mandate its implementation could make a huge difference for South Carolina students.

Data collection is desperately needed in order to fully understand when and why students are out of school, but districts in South Carolina are largely unaccountable for the exclusion of students. Federal action that would require school districts to disaggregate and report data by school on suspensions, expulsions, and criminal charges against students, the duration of each exclusion from school, and the reason for the discipline would help families, communities, and other stakeholders participate with the schools to stop the school to prison pipeline. Additionally, for those students who have already been incarcerated, there is a need to require school districts to report on the number of students readmitted at the end of their punishment.

Increased federal support for the enhanced enforcement of IDEA protections can help protect students from disabilities from being forced from school. When parents challenge the actions of a school district, whether over the denial of needed services or over the removal of a student from school, they typically face a daunting system of complex law and regulation without representation or any other assistance. Given this uneven playing field, school districts typically prevail and there is little consequence for districts that systemically engage in illegal actions that feed the school to prison pipeline. Currently-available data could be used in new and different ways to red-flag districts that show trends of pushing out students with disabilities and provide those districts help in making meaningful improvements. Also, parents need reliable and responsive avenues when they report IDEA violations which could be accomplished with federal support and incentives.


Attention at the national level must be paid when states criminalize typical adolescent misbehavior. At a minimum, additional and specific data should be collected about juveniles

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incarcerated for nonviolent and status offenses while at school, and the involvement of school resources officers in facilitating that contact with the criminal justice system must be documented as part of that effort. Federal funds must not perpetuate the school to prison pipeline by supporting over-policing in schools and criminalization of students which research has repeatedly demonstrated only lessens the chances for academic success.

In conclusion, we commend Chairman Durbin and our fellow South Carolinian Ranking Member Graham for convening last week's hearing and welcome the opportunity to participate further in the ongoing work of the Subcommittee.



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TESTIMONY OF

THE SOUTHERN POVERTY LAW CENTER

regarding

ENDING THE SCHOOL-TO-PRISON PIPELINE

Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

December 12, 2012

INTRODUCTION

The Southern Poverty Law Center respectfully submits the following testimony regarding “Ending the School-to-Prison Pipeline” to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights. Founded in 1971, the Southern Poverty Law Center (“SPLC”) is a nonprofit civil rights organization dedicated to fighting hate and bigotry, and to seeking justice for the most vulnerable members of society. SPLC is based in Montgomery, Alabama, and has offices in Atlanta, Georgia, New Orleans, Louisiana, Miami, Florida, and Jackson, Mississippi.

At the SPLC, we work to break the cycle of juvenile incarceration by making schools and juvenile justice systems more responsive to the needs of children, families and the communities in which they live. SPLC has represented, and continues to represent, youth who are subject to unlawful arrest and excessive force at school. We challenge the over-reliance on school suspension and zero-tolerance discipline policies that disproportionately affect African-American and Latino students. We seek reform through public education, community organizing, litigation, legislative advocacy, training and technical assistance. We commend the Subcommittee for recognizing the crisis that is pushing children out of the classroom and into the criminal justice system and for its willingness to hear from advocates, parents, and the students who experience this problem directly.

There is still much work to be done to end the school-to-prison pipeline, particularly in the Deep South.

The School-to-Prison Pipeline Begins with Inequities in Public Education

There are higher rates of children living in poverty in the Deep South than anywhere in the United States. Approximately one in four children in Alabama, Florida, Georgia, and Louisiana live in poverty with even higher rates in Mississippi.¹ Poverty in our communities seeps into our schools and classrooms. Of the twenty states that spend the least amount per pupil, ten are in the South.² This leads to fewer resources and qualified teachers and professionals. In Alabama, less than 10 percent of four-year-olds are served in state-funded pre-kindergarten.³ Mississippi is the only state in the country with no state-funded pre-kindergarten program.⁴ Studies have repeatedly shown that children without access to pre-kindergarten are less prepared for school and fall behind academically.⁵

A father recently shared with us that his son, who attends a majority African-American school in Alabama, does not have a qualified eighth grade math teacher, and has not had one all year. That his son is failing math comes as no surprise. When this father expressed his concern to the principal, the principal said he had to choose between hiring an eighth grade math teacher and hiring a librarian. The principal chose the librarian. Administrators should not have to make such choices. The amount that Alabama spends per pupil per year has decreased by more than

¹ Demographics of Poor Children from the National Center for Children in Poverty, Mailman School of Public Health, Columbia University, <http://www.nccp.org/profiles/demographics.html> (select desired state from dropdown menu; then select "All Children: Poor" from the profile dropdown menu) (last visited Dec. 10, 2012).

² Public Education Finances: 2010, Table 11: States Ranked According to Per Pupil Public Elementary-Secondary School System Finance Amounts: 2009-2010, U.S. Census Bureau, available at http://www.census.gov/newsroom/releases/pdf/cb12-113_table11.pdf.

³ *Preschool for Y'all*, Preschool Matters Today, National Institute for Early Education Research, www.preschoolmatters.org (last visited Dec. 10, 2012).

⁴ *Id.*

⁵ Eileen M. O'Brien & Chuck Dervarics, *Pre-kindergarten: What the research shows*, The Center for Public Education, (March 2007), available at <http://www.centerforpubliceducation.org/Main-Menu/Pre-kindergarten/Pre-Kindergarten/Pre-kindergarten-What-the-research-shows.html>.

\$1300 since 2008—the largest decrease in per pupil spending in the country.⁶ Students who are struggling academically, and whose academic needs are not being addressed, are more likely to act out to avoid embarrassment. Without proper spending, schools lack the protective interventions, like reading specialists and paraprofessionals, to ensure these students get the help they need. In poor school districts, where classrooms are packed, needs are great, and resources are scarce, students who misbehave are often either suspended or referred to law enforcement.

Each year, Mobile County Public Schools in **Mobile, Alabama** suspends and expels thousands of students—disproportionately students of color and students with disabilities—for minor misbehavior such as tardiness, skipping, and uniform violations. In 2010-2011, 74 percent of all school suspensions were for nonviolent, non-drug related offenses. In Mobile, long-term suspensions can last anywhere from 11 days to the end of the semester. Many students receive back-to-back long-term suspensions. These students fall behind academically, are repeatedly retained and eventually age out and are often encouraged to drop out of school. This “push out” of students occurs against a backdrop of zero tolerance discipline policies, unlimited principal discretion to suspend, and a denial of due process protections for students facing exclusion. In 2010, the SPLC initiated a campaign in Mobile to reform exclusionary school disciplinary practices and empower parents to become advocates for their children and community. In partial fulfillment of this goal, we filed a federal lawsuit on behalf of students who were suspended for months at a time over minor misbehavior and who were denied any due process to defend themselves against the removal.

⁶ Phil Oliff, et al., *New School Year Brings More Cuts in State Funding for Schools*, Center on Budget and Policy Priorities (Sept. 4, 2012), <http://www.cbpp.org/files/9-4-12sfp.pdf>.

In North Florida, African-American students are subjected to harsh discipline practices at a much higher rate than white students. African-American students are frequently written up for vague and minor offenses. In Bay County, Florida, one student was written up for defiance because he refused to take his book out and work during class. Another student in Bay County was suspended for three days for classroom disruption because he was tapping his pencil on a desk. In Escambia County, Florida, African-American students number 14,730 or 36 percent of the school population yet account for 65 percent of students receiving out-of-school suspensions. These harsh discipline practices push students, disproportionately African-American students, out of school and into the school-to-prison pipeline. The school districts' ambiguous policies result in vastly disparate disciplinary activity, high levels of subjectivity on the part of teachers and administrators, the overuse of justice system involvement, and dramatically reduced educational opportunities for African-American children. In summer of 2012, the SPLC filed a series of civil rights complaints to challenge these discriminatory disciplinary practices in North Florida.

These harmful zero tolerance policies and practices occur in school districts all across the South. For every student that our campaigns will reach, there are thousands more that will be left unreached. There is still much work to be done particularly here in the Deep South.

Brutal School Disciplinary Tactics Fuel the School-to-Prison Pipeline

The school-to-prison pipeline is fueled by brutal disciplinary practices where children are literally pulled out of their classrooms, placed in handcuffs or other restraints, maced, and arrested for minor misbehavior.

In **Birmingham, Alabama**, nearly every high school has one or more police officers permanently stationed in the school. These officers are routinely called to handle minor disciplinary problems, and once they appear, the school administrators consider the situation a police matter. Students are arrested—and sometimes maced—for normal, adolescent misbehavior such as swearing, horseplay, and disrespectful conduct. While the physical effects of this punishment are horrific—injury to the eyes, temporary loss of vision, burning and discoloration of the skin, loss of breath and, in some cases, respiratory arrest—the impact goes far beyond that. When a child is maced, that child is arrested, taken to the juvenile lock-up, strip searched, and then left in a cell to wait for a parent to come. Although Birmingham schools and police have signed an agreement with the family court that children should not be arrested for this low-level misbehavior, the arrests and the trauma it causes the children continue. In December 2010, the SPLC filed a federal lawsuit on behalf of students who were subjected to the use of chemical weapons, primarily mace, by police officers acting as school resource officers in Birmingham City Schools.

Students at **Jackson, Mississippi's** Capital City Alternative School are regularly disciplined for minor infractions by being shackled for hours at a time to fixed objects like railings, desks, and chairs. These students are left unsupervised in isolated rooms and are denied access to classroom instruction. In June 2011, the SPLC filed a complaint against Jackson Public Schools to stop this practice and recently reached a comprehensive agreement that bars the use of fixed restraints by all District staff on any student.

In **Jefferson Parish, Louisiana**, school officials have given armed police “unfettered authority to stop, frisk, detain, question, search, and arrest schoolchildren on and off school

grounds” in violation of the children’s civil rights and school district policy.⁷ Students are often arrested for minor misbehavior—often not involving criminal misconduct—that should be handled by school personnel rather than police officers. In fact, 70 percent of the school arrests over the past two years were “dismissed, refused, or diverted by the courts.”⁸ We filed a civil rights complaint on behalf of African-American school children in Jefferson Parish who are disproportionately subjected to the overuse of arrests and seizures.

These campaigns challenge incidents of school arrests and uses of force, but the impact to the students and their communities extend far beyond these incidents. Not surprisingly, studies show that being arrested has detrimental psychological effects on children. An arrest nearly doubles the likelihood that a child will eventually drop out of school. Coupled with a court appearance, an arrest nearly quadruples the odds of dropping out and increases the likelihood of future interaction with police. School arrests and uses of force fuel the pipeline by pushing students out of classrooms and into jails, detention centers, and prisons.

The Prison End of the Pipeline

The Walnut Grove Youth Correctional Facility (“WGYCF”) is a youth prison in **Leake County, Mississippi**. WGYCF is operated by a private prison company. It houses over 1,200 young men between the ages of 13-22 nearly all of them African-American. All of the youth at WGYCF were tried and convicted in the adult criminal justice system. Nearly eighty percent of the youth at WGYCF are incarcerated for non-violent offenses. Many of the youth at WGYCF had similar experiences in school: they struggled academically, started acting out, and

⁷ Q.B., et al. v. Jefferson Parish Public School System, Office of Civil Rights, Department of Education, Jan. 11, 2012, http://cdna.splcenter.org/sites/default/files/downloads/case/011112_JeffParish_Arrest.pdf.

⁸ *Id.*

eventually got kicked out. Their arrests followed soon thereafter. Mississippi's criminal laws allows children as young as 13 to be tried as adults for any criminal offense. Once imprisoned, these youth are subjected to horrific abuse and mistreatment, and for years were denied any educational opportunities. If released, they face the uphill battle of living as convicted felons. In 2010, we filed a lawsuit challenging the abuse, dangerous conditions and lack of medical care and educational services and recently reached a comprehensive agreement to rectify these harms.

In **Meridian, Mississippi**, youth are routinely arrested and transported to the juvenile detention center for minor classroom misbehavior. In addition, if a student is on probation and suspended from school, it can be considered a probation violation in which case the student is sent to the detention center to serve the length of the suspension. At the detention center, children are subjected to additional abuse, including the use of mace and other restraints. Recently, the Department of Justice (DOJ) filed a lawsuit to stop these illegal practices. We are very pleased at DOJ's actions yet urge Congress to remember there are many more "Meridians" across the South.

STPP Contributes to the Re-segregation of the South

The school-to-prison pipeline excludes a disproportionate number of African-Americans from the classroom and subjects them to harsh discipline, excessive use of force, and increased criminal justice involvement. Essentially, it pushes youth, particularly African-American youth, out of schools and into the juvenile justice and criminal justice systems.

The 2009-2010 Department of Education Civil Rights Data Collection survey, the most expansive of its kind, covered 85 percent of the nation's students and was the first release of this

crucial federal data since 2006. The results from the schools surveyed show public school systems in the Deep South where Black students represented 18 percent of students but 46 percent of those suspended more than once and 39 percent of those expelled. One in five Black boys and more than one in 10 Black girls received an out-of-school suspension compared to one in 14 White boys and one in 33 White girls. Arrests and police interactions also disproportionately affect low-income schools with large African-American and Latino populations. Black and Latino students represented more than 70 percent of those involved in school-related arrests or referrals to law enforcement--an astonishing number that requires rigorous examination of the reasons why and action to change unfair racial practices in the application of discipline.

CONCLUSION

The school-to-prison pipeline consists of the policies and practices that pull students out of classrooms, science labs, and libraries and push them into abusive and violent jails and prisons. It is a crisis that disproportionately impacts African-American and Latino children, their families and communities. We hope to protect our children by bringing an end to the zero tolerance policies and over-policing that push children out of school, and to refocus public resources toward evidenced-based disciplinary practices that keep children in school.

RECOMMENDATIONS

To truly end the school-to-prison pipeline, we urge Congress to encourage, and school districts to implement, the following reforms:

1. Increase the use of research-based alternatives to suspension, such as positive behavior interventions and supports, in order to remedy not simply punish misconduct;
2. Require annual reports on the total number of in-school suspensions, out-of-school suspensions, extended or long-term suspensions, expulsions, and arrests disaggregated by race, poverty, and gender;
3. Create agreements between the schools, police departments and court systems in districts with high arrest rates to limit school-based arrests and the use of restraints like mace and handcuffs;
4. Provide simple explanations of infractions and due process procedures in the student code of conduct to ensure consistency in application and limit unfettered administrator discretion that has historically operated to the detriment of children of color; and
5. Create appropriate limits on the use of law enforcement officers in the public school setting.

Thank you for the opportunity to be heard on these important matters.

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Statement by Juanita Lauritsen, Executive Director, Southwest Minnesota Private Industry Council

The Southwest Minnesota Private Industry Council (PIC) provides youth employment services in 14 southwest Minnesota counties. Youth are referred through a variety of sources including schools, human service agencies, county public health agencies, community corrections departments, parents and past or current participants. A variety of services are offered, including, but not limited to: work experience, career exploration activities, post-secondary tuition assistance, and job seeking/retention assistance, transition services and support services.

Educators in Southwest Minnesota have long expressed concerns over the readiness of some students to succeed in today's competitive job market. Employers in our area are echoing that sentiment and have asked for assistance in better preparing young adults for the responsibilities of employment. Corrections staff have indicated a need to employ young offenders in order to give them an avenue to pay restitution to their victims. The Southwest Minnesota Private Industry Council (PIC), in coordination with the Southwest Minnesota Workforce Council, Youth Council, educational institutions, local employers, community corrections, Workforce Center Partners and other local agencies has developed a plan to work towards better preparing these young adults to be competitive, responsible, skilled employees.

While the collaboration between agencies, the courts, and schools in Southwest Minnesota has always been a source of pride, there are still unmet needs for young offenders. The PIC has an established reputation for conducting work experience opportunities and career exploration programs to fit the needs of young offenders in hopes of giving them a new start.

Students who lack good work skills, references, or have restitution obligations take part in a work experience program. Many of the students live in very small towns with few job opportunities plus their reputation may hinder their chance for employment. The work experience component is a valuable tool to use to help at-risk youth become more prepared for independent living. Students who have no work history or less than stellar reputations have a chance to prove they can be successful, with work site supervisors acting as mentors.

Paid work experiences offer the opportunity to gain employment, develop work skills necessary to succeed in future jobs with less risk to the employer, and earn money to pay restitution to victims. Whenever possible, participants are placed in work experience sites that match their skills and their interests as well.

Work experience sites offer the following jobs:

- Library Tech
- Youth Corps (Wildlife Management)
- Teacher's Aid
- Tire Technician
- Custodian
- Child Care Aid
- Food Prep
- Stocking
- Lawn Maintenance
- Small Engine Mechanic Assistant
- Office Assistant
- Sandwich Artist
- Restaurant Hostess
- Maintenance/Janitorial Assistant
- Cashier/Customer Service
- Youth Peer Leader
- Embroidery
- Hair Salon Assistant
- Ag Implement Assistant
- Computer Repair
- Shelf-Stocker
- Activities Assistant
- Dietary Aide
- Library Page
- Assembler
- Floral Shop/Assistant
- Auto Shop Assistant

In response to educator and employer concerns over students' lack of preparedness to compete in the job market, the PIC has partnered with a variety of businesses and agencies to organize several events/services aimed at assisting youth put at-risk.

EVENTS & SERVICES

“Employees” of “LifeSkills, Inc.” Learn Many Soft Skills at the 10th Annual LifeSkills Event

Submitted by: Kati Birhanzl

Attitude, Attendance, Appearance, Ambition, Accountability, Acceptance, Appreciation. The participants in the 10th annual LifeSkills Event were invited to “bring their A game” as shown in the You Tube video which played while they entered. (View it here: http://www.youtube.com/watch?v=C3_cVGsQrck).

Invitations sent out weeks in advance to the alternative learning programs and centers in our 14-county service area, asked participants to complete an application with interview questions. They were also encouraged to dress for success at the event.

As participants entered the Conference Center on the Southwest Minnesota State University campus, they were greeted by Cathy Ervin, Southwest Minnesota Private Industry Council (PIC). Ervin signed in the “employees” who were then directed to use their time cards to punch in for the day.

Hope Torma and Kati Birhanzl with PIC delivered messages throughout the event focused on the soft skills they were learning, hands-on in various ways. As participants actively engaged in their three “department meetings”, they built teamwork, leadership, problem-solving, budgeting and financing skills. The Marshall Area Financial Empowerment Collaborative, Students in Free Enterprise of SMSU and PIC job counselors provided these sessions.

A partner in the event, SMSU Cultural Diversity Department delivered a “company-wide” address. Michele Sterner educated the participants on social norms, explaining how some body cues, faces, motions or words are different depending on the culture. Student volunteers from this department also assisted in the employee evaluation.

During the event, attendees were evaluated on basic attributes necessary to be a good employee (teamwork, leadership, following directions, attitude, taking appropriate break times, timeliness transitioning between sessions, etc.). Certificates and prizes demonstrating and relating to the skill in which they showed great effort were given to those who ranked highest. Full evaluations with positive feedback were given to the teachers for their students. Beginning with their initial application, interview questions, and actions while “on the job” that day, every participant walked away with tools to assist them in becoming a great future work force.

- **Available Services**

- Paid work experience at no cost to employers
- Job Keeping and Seeking Assistance
- Career Exploration and Assistance
- Post-Secondary Education Assistance

- **Youth Events**
 - Breaking Traditions
 - Career Expo
 - Classroom Workshops
 - College Visits
 - LifeSkills
 - Camps to Careers
- **Post-Secondary Education Assistance:** Offer assistance in exploring, applying for and funding college expenses.
- **Career Exploration Activities:** Staff acts as resources to both program eligible youth and teachers who request assistance in the classroom. Can be a format presentation, small group discussions or on an individual basis. Resources included; labor market information, career assessment and interpretation, arranging field trips, in-class speakers, one-on-one information interviews, and job shadowing.

Breaking Traditions & Camps to Careers:

Hands-on career exploration sessions offered in partnership with the Minnesota West Campuses.

- **Job Seeking and Keeping Skills:** Staff acts as resources to both program eligible youth and teachers who request assistance in the classroom. Can be a formal presentation, small group discussions or on an individual basis.
- **Breaking Traditions:** The SW MN PIC also hosted its 18th annual Breaking Traditions event and was held at four of Minnesota West Community and Technical College's five campuses giving participants more opportunities to explore careers through hands-on exploration as well as tours of program areas offered at Minnesota West campuses. All students were exposed to non-traditional careers for their gender; ranging from Cosmetology to Plumbing and HVAC. Among the four campuses visited a total of 80 youth participated and increased their awareness of career opportunities and what colleges can help offer and what steps need to be taken to become a future student.
- **Camps to Careers:** Healthcare Camps to Explore Dental Assisting & Allied Healthcare Careers *Career Camps for Young Adults Offered in Canby and Luverne* Southwest Minnesota high school students and recent graduates had the opportunity this month to explore career opportunities in one of the fastest-growing segments of the healthcare industry. Two- one day summer career exploration camps, offered through an innovative program called Minnesota Camps to Careers, allowed young adults to try on a career in two critical segments of the

healthcare industry: dental assisting and allied healthcare careers. Camp participants received hands-on experience, classroom instruction and professional career development guidance, including on-the-job training to build networks within the healthcare industry, and improving job readiness when seeking permanent employment. Dental Assisting and Healthcare careers cover a variety of skill and education levels. Median wages in these growing industries range from \$41,695 to \$166,400. Dental assistants help dentists with patient care, office tasks, and lab duties. The increasing trend for people to keep their natural teeth will fuel the demand for dental services. Demand will also increase due to a higher emphasis placed on dental care in younger generations. Health care is a growing industry in SW Minnesota and a good long term career prospect. The dental assisting camp was held June 19 on the Minnesota West Community and Technical College Canby campus. The allied healthcare career camp was June 21 on the Minnesota West Community and Technical College Luverne campus. For more information, contact Eriann Faris, Southwest Minnesota Private Industry Council, Inc. Phone 800-818-9295. Email: efaris@swmnpic.org. To view a video on Camps to Careers, visit www.campstocareers.org.

- **Tri-WAY:** Skills are developed that will enable youth to be prepared to search for a job, safety on the job and understand expectations on the job. This is part of the intake/application process. The Tri-Way can now be located online at www.swmnpic.org under BrainShark. Classroom presentations can also be done as requested.

TITLE II funds for these projects are used to support current state and federally funded employment programs (Workforce Investment Act and Minnesota Youth Program). These programs collaborate together to provide the services necessary to get young offenders back on track after their involvement with the corrections system, while reducing recidivism, and learning the value of responsibility and accountability.

Success Stories

Brandon

Brandon was referred to the SW MN Private Industry Council's Youth Programs by Principal of the Worthington ALC December 2010. Brandon at the time of enrollment was on probation for a petty offense and was expected to be completed on March 2011. At that time he was working at a local small engine shop as a shop assistant/custodial. Brandon really enjoyed his job and had developed a positive relationship with his supervisors. Brandon successfully completed probation. In August 2011 Brandon reoffended, and was charged and found guilty for a felony offense and was brought to trial. At all of his court

proceedings his worksite supervisors were present at all of them, which showed him positive support and a reminder that he has great potential. Through the entire process Brandon also showed great communication skills, keeping in contact with PIC staff through his entire process from court to detention. February 2012, Brandon was released and contacted PIC staff to see about being placed back at his old worksite, so that he could work towards paying off fines and restitution and he was placed back at the small engine shop. Brandon has shown great strides and his potential and confidence have grown tremendously. From February to August of 2012 Brandon has missed zero days of school, is passing all of his classes, has worked and paid off all court costs and fines and also paid \$1,704.29 towards restitution. On August 6th, 2012 Brandon approached his worksite supervisor with concern that his work experience may be ending due to funding. Brandon's supervisor said he knew someone that did the hiring at one of the grocery stores in town and would give them a call and a positive work reference for Brandon. That same day Brandon received a phone call to interview and on August 10th Brandon was hired on and is working 15-20 Hours per week while he continues to work on finishing his senior year of high school.

Tanna

"At 14 years old, I attended inpatient treatment for meth addiction. I was there for approximately 45 days. I continued with outpatient care four days a week when I was released and continued to do so for about 6 months. It was difficult because I wasn't able to finish my eighth grade year of junior high since I had to go to treatment two weeks prior to the end of the term. Fortunately, my school cooperated with me and I was able to finish my work in treatment and still acquire enough credits to pass. While doing outpatient treatment, I had to miss half of the day of school Monday through Thursday, which wasn't easy. It was a challenge to keep up on my schoolwork and still attempt to live a normal life of a now 15 year old. It was hard to face the fact that my life was far from normal. I successfully completed inpatient and outpatient treatment and have not used since May 28, 2005. My current supervisor, is the one who introduced me to the idea of applying for PIC Youth Programs. She thought the program would work out well for me, and it has! I have worked as her office assistant since June 2009. I assist her with activities like after school clubs and Parent's Night Out during the school year. In the summer, I helped her with summer camps, a mentoring program, and other short term classes for children. I absolutely love working with children and they really show me how precious life truly is. PIC also helped me to complete my Certified Nursing Assistant course, which I needed to apply for nursing school. I have learned a lot while working through PIC Youth Programs. I have learned organization and communication skills. I am currently attending college and plan to complete the coursework for the Registered Nurse program. By working through this program, I realized that going to college is a huge necessity to have a successful occupation as an

adult. I greatly appreciate all that PIC has done for me and the program will be in my heart forever! Thank you!"



School to Prison

Pipeline

Testimony

12-13-12

For more than 35 years, the Student Advocacy Center of Michigan has worked to assure all Michigan's children realize their right to a quality public education, but we continue to be appalled by the number of children and youth excluded from their schools with no education, deserted by the very people charged to help them learn and then handed over to law enforcement. We no longer seem to take responsibility as adults of doing the hard work of teaching our children to learn from their mistakes. Rather, we take every opportunity to exclude them from a supportive community.

Consider a recent case of ours — a soft-spoken high school student with an emotional impairment who is now receiving only two hours of instruction a week at home and is being called to court for an incident involving an apple paring knife. The school principal said she believed that the student never intended to hurt anyone, but she still recommended that he be excluded from school. The student used the knife to cut an apple (his mother usually cuts his apples but they were running late that day) and later to sharpen a pencil after his broke during an exam. When the teacher asked for the knife, he also handed her the blade shield. He said he never intended to hurt anyone and the panel seemed to believe that. But still, his case was forwarded to the police and the student was excluded from school. (Of course, the district continues to receive full funding for the student.)

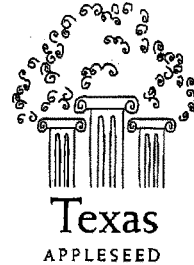
Or consider the case of a young teen repeating the 7th grade who will now have to try it a third time because she is expelled from every public school in the state for a year. She was frequently mouthy in class and one day, a teacher slapped her in the face, according to 16 eyewitness accounts. The student says she walked away after that, but others say she seemed to have some physical contact with that teacher, who remains in the classroom. The mother has called the "virtual schools" touted by the school board who expelled her, but they say they can't enroll expelled students and even if they could, they are full. But she's welcome to pay more than \$1,000 to take classes. The mother, like so many of our clients, can't afford this.

These cruel policies have disproportionate impacts on the very students who need additional support if we care about the achievement gap — low-income students, students of color, students with disabilities, and students with mental illness. These policies are not making our schools safer; they are damaging the life chances of our most vulnerable children. And it must stop.

School districts must be expected to educate ALL students, even the ones who make mistakes in school and need extra adult guidance. Withholding education cannot be allowed. This must be explicit. For too long, the federal zero tolerance policy has been used by our state as an excuse to push out far too many students from the education they deserve and our community needs them to have. Reform is urgent.

Thank you for taking time to study this issue.

Peri Stone-Palmquist, LMSW, MPP, CTS
Executive Director



Written Testimony of Texas Appleseed
Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Human Rights
Hearing: "Ending the School to Prison Pipeline"

Wednesday, December 12, 2012, 2:00 PM
Dirksen 226

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Texas Appleseed appreciates the opportunity to present written testimony before the Subcommittee on the Constitution, Civil Rights and Human Rights of the Senate Committee on the Judiciary. We commend the Subcommittee for its interest in the problems associated with exclusionary student discipline, often referred to as the “School to Prison Pipeline” (Pipeline).

Texas Appleseed, a non-partisan, non-profit, 501(c)(3) organization, is part of a national network of 16 public interest law centers in the United States and Mexico. Our mission is to promote justice for all Texans by leveraging the volunteered skills and resources of lawyers and other professionals to identify practical solutions that create systemic change in broad-based issues of social equity. Texas Appleseed has been researching the existence of the Pipeline in Texas schools and advocating for change at the local and state level for the last seven years.¹

The “school-to-prison pipeline” is not a problem that is unique to a single state, or a handful of school districts, but rather a problem that exists nationwide. It is marked by the increased use of suspension and expulsion in the years following adoption of sweeping “zero tolerance” laws at the state level. It is also marked by an increased reliance on school-based law enforcement to handle what used to be routine student discipline issues. Anecdotal stories in Texas abound, and are much like those that have surfaced in other states:

- An 11-year old student in suburban Houston arrested and expelled for pulling a fire alarm.
- A 12-year-old girl given a Class C misdemeanor ticket for “Disruption of Class” for spraying perfume on herself after other students told her she smelled bad.
- A 17-year old honors student arrested and jailed for truancy when she missed school to work two jobs to support herself and her siblings.

Perhaps most relevant to this Subcommittee, this is a problem with significant implications for the judiciary and those who safeguard constitutional rights. Nationally, juvenile and criminal court judges have complained of the growing reliance on the court system to handle low-level student misbehavior.² In Texas, these problems spurred the Texas Judicial Council to create a Juvenile Justice Committee focused specifically on this issue.³ And, as will be discussed, the impact of these policies on African American students and students with disabilities raises critical issues regarding protection of constitutional rights.

¹ See Texas Appleseed, *Texas’ School to Prison Pipeline: Dropout to Incarceration* (2007); Texas’ School to Prison Pipeline: School Expulsion (2010); Texas School to Prison Pipeline: Ticketing, Arrest & Use of Force in Schools (2010); *Breaking Rules, Breaking Budgets: Cost of Exclusionary Discipline in 11 Texas School Districts* (2012).

² See Judge Steve Teske, *A Perfect Storm, an Imperfect System Equals Injustice* (2011), available at <http://jjie.org/judge-steve-teske-perfect-storm-imperfect-system-equals-injustice/8817>

³ See Texas Judicial Council webpage for committees, available at <http://www.courts.state.tx.us/tjc/cte-active.asp>

Ultimately, the question for policy makers to ask is whether this type of discipline is working to promote good student outcomes – both for those who are disciplined, and for the rest of the student population. Texas Appleseed’s research and that of others indicates it is not, and that better solutions exist.

I. Texas’ Research Shows Reliance on Exclusionary Discipline is Ineffective

What is unique about Texas is our access to data collected each year by the Texas Education Agency (TEA). Few states are collecting discipline data that is as robust as the data Texas collects. This data has allowed Texans to study the existence and effects of the Pipeline by examining trends in discipline and outcomes associated with it. Texas Appleseed’s first two reports analyzed suspension and expulsion data *for every school district in the state*, and our third report analyzed arrest and Class C ticketing data for 26 school districts. The findings of these three reports were surprisingly consistent, though they focused on different aspects of discipline and policing, revealing:

- **Wide variation in disciplinary referral and use of law enforcement** to ticket or arrest students, suggesting that *where a student attends school*, and not the nature of his or her behavior, determines the likelihood of disciplinary or law enforcement action.
- Discretionary school decisions to suspend, expel, and refer to an alternative school **disproportionately impact African American and special education students**.
- **Students become involved in the Pipeline at an early age.** Our research showed that elementary school students – even as young as kindergarten – are subject to suspension, referral to alternative education programs, and ticketing and arrest by school-based police officers.

Perhaps most distressing was our finding that though good information is readily available about research-based programs proven successful in reducing behavioral problems and improving academics, relatively few Texas districts are implementing such programs.

In 2011, The Council of State Governments (CSG) used Texas data to conduct a landmark study of the correlation between student discipline, academic attainment, and involvement in the juvenile justice system.⁴ This report relied on a student-for-student match of data between the TEA data system and data maintained by the Texas Juvenile Probation Commission. This unique data set allowed CSG to conduct a multivariate analysis – allowing them to test single predictors of poor outcomes and focus specifically on the effects of student discipline.

⁴ The Council of State Governments, *Breaking Schools’ Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement* (2011).

Among the reports key findings:

- **Six in ten public school students** were ‘suspended’ or expelled at least once between their 7th & 12th grade school years, and **97 percent of the disciplinary referrals** were made at the discretion of school officials for low-level misbehavior, rather than for the serious mandatory violations included in the state’s “zero tolerance” provisions.
- **31 percent of students** with one or more suspensions or expulsions repeated their grade level at least once, and **Nearly 10 percent of students** with one disciplinary contact dropped out compared to 2 percent of those with no disciplinary contact.
- Students who were suspended or expelled for discretionary violations were **nearly three times as likely** to be in contact with the juvenile justice system the following year.

CSG’s findings showed the same trend Texas Appleseed’s research revealed regarding race and student discipline, showing **83 percent of African American male students had at least one discretionary disciplinary referral**, though their rate of mandatory referrals was lower than that of other students. When the effect of race alone was isolated as part of the multivariate analysis, African American students were shown to have a **31 percent higher likelihood** of a discretionary discipline referral when compared to other students. Students with disabilities were also significantly more likely to have a discipline referral.

Another surprising finding from the CSG report indicates that the oft-quoted defense of exclusionary discipline – that removing disruptive students from the classroom works to promote learning for those who remain – does not hold true. CSG compared disciplinary rates between campuses with virtually identical student and campus characteristics and found, **“a school that makes frequent use of suspension and expulsion does not necessarily create an environment that enables the overall school to achieve better academic outcomes.”**⁵

Perhaps the most important lesson to be learned from the Texas research – both Appleseed’s and CSG’s – is that the traditional methods of handling student discipline simply don’t work for today’s students. Not only do they fail to lead to positive student outcomes in the form of improved behavior and academic success – they appear to be more harmful than helpful. Further, they have a particularly harsh impact on African American students and students with disabilities – student populations that are already at increased risk for dropout and juvenile justice system involvement.

⁵ Council of State Governments, *supra* note 4 at 82.

II. The Role of “Criminalization” in the Texas Pipeline

In addition to problems associated with internal student discipline, more recent research indicates that increased reliance on school police (sometimes referred to as “School Resource Officers” (SROs)) to handle low-level, non-violent misbehavior also plays a role in the Pipeline. Texas Appleseed’s third School to Prison report, published in late 2010, focused on this piece of the Pipeline.⁶ Again, this is not a problem that is confined to Texas – reports from across the nation reveal similar patterns.⁷

In Texas, perhaps one of the more unique manifestations of this problem is the very high number of Class C misdemeanor citations – or tickets – issued to children by school police officers. Low-level misconduct such as cursing, chewing gum, or disrupting class—misbehaviors formerly dealt with by a detention or a trip to the principal’s office—are now met with criminal charges. This practice of ticketing is widespread throughout the state – last year alone over 229,000 non-traffic citations were issued to juveniles in Texas.⁸ Texas Appleseed just completed an updated analysis of ticketing and arrest data for 42 school districts, finding:

- The most commonly cited “offenses” in all of the school districts that provided data were “Disruption of Class” or “Disorderly Conduct.” Students are frequently cited for making too much noise in class or for using profanity, but are also often cited for schoolyard fights.
- As is true of internal disciplinary referrals, African American students are overrepresented in school-based ticketing and arrest. In many districts, they received tickets at rates two-to-three times their representation in the student body.

The consequences of even a Class C violation can be very serious for students and their families. First, the student’s parent or guardian must appear in court with the student, requiring the parent to take time off from work for as many appearances as are necessary to resolve the case. Fines represent a serious financial costs in addition to any wages lost to the parent’s time off from work. The fine for a Class C Misdemeanor can be up to \$500. Students are also assessed court costs of at least \$70 dollars in addition to a fine.

⁶ Texas Appleseed, Texas School to Prison Pipeline: Ticketing, Arrest & Use of Force in Schools (2010).

⁷ Justice Policy Institute, *Education Under Arrest: The Case Against Police in Schools* (2011); Charles Hamilton Houston Institute for Race and Justice, *First Do No Harm: How Educators and Police Can Work Together More Effectively* (2010); Lisa H. Thureau and Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools*, 54 N.Y.L. SCH. L. REV. 977, 1015 (2009); American Civil Liberties Union of Connecticut, *Hard Lessons: School Resource Officer Programs and School-Based Arrests in Three Connecticut Towns* (2008); New York Civil Liberties Union, *Criminalizing the Classroom, The Over-Policing of New York City Schools* (2007); Pennsylvania Protection & Advocacy, Inc., *Arrested Development: Students with Disabilities and School Referrals to Law Enforcement in Pennsylvania* (2004).

⁸ Based on FY 2012 data from the Office of Court Administration, available at <http://www.courts.state.tx.us/pubs/AR2012/toc.htm>. It is not clear that this includes data for all courts; this figure is likely conservative.

For students with multiple tickets, these fines can multiply. One municipal court providing data to Texas Appleseed indicated a youth had received as many as 11 tickets. In the same court, more than 350 youth had received multiple tickets, with some receiving as many as six. The financial repercussions of a ticket, or multiple tickets, can be devastating for families with limited resources. One parent explained to Texas Appleseed:

My son has received tickets for various offenses ranging from horseplay...[to] having cigarette butts in his jean pockets . . . three for foul language, [and] one huge one for missing school (classes – not whole days). The total for said tickets was \$1,520, [but] it might as well have been a million to someone in my financial situation.

Financial penalties are not always the most serious aspect of a youth's ticketing case. Failure to pay a fine or satisfy the obligations of a deferred disposition can result in a youth's arrest once he or she turns 17. Furthermore, while a Class C criminal conviction may not seem important to a 14 year-old, a criminal record can have serious implications for the student's college plans and professional future. Because these misdemeanor tickets are prosecuted in adult criminal courts rather than in the juvenile system, they carry the same consequences that a criminal conviction carries for adults – the protections afforded to youth in the juvenile system do not apply to these cases. Youth appear in court without appointed counsel and often simply plead guilty or "no contest." If a student is convicted, he or she may have to reveal the conviction on college and job applications. These convictions may also bar a student from joining the military, and can carry consequences for professional licenses.

Students also may be arrested on Texas campuses when they are charged with a Class B misdemeanor offense or higher. Appleseed's data shows that most school-based arrests are made for non-violent offenses. In many cases, the behavior does not appear to merit this harsh result. Examples of stories that parents or attorneys have shared with Texas Appleseed include:

- An 11-year old special needs student who was arrested for "assault on a public servant" after throwing a packet of papers at her teacher.
- A 17-year-old student with Asperger's who was arrested and put in jail for striking her teacher's aid. The student, who weighed 95 pounds and was barely five feet tall, did not injure the aid.
- A middle school student who became annoyed with the boy behind her who was kicking the back of her chair. After repeatedly telling him to stop, she jabbed his ankle with her pencil. The pencil broke the skin – requiring the boy to get a bandaid from the nurse's office. The young woman was arrested for "aggravated assault with a deadly weapon."

While Texas Appleseed in no way condones classroom disruption, use of profanity, schoolyard fights, or assaultive behavior – it is not clear that the use of law

enforcement is an appropriate or effective way of managing this type of low-level misbehavior.

Rather, there is a great deal of evidence that suggests that use of school-based law enforcement to correct non-violent misbehavior leads to poor outcomes. Multiple studies have documented the problems associated with relying on school police to correct misbehavior through arrest or referrals to the juvenile justice system.⁹ In Texas, Tarrant County recently hired the National Center for School Engagement to conduct a review of the underlying reasons for truancy in the county's school districts. NCSE found, "Police tickets seem to serve to alienate students from school."¹⁰ This tends to confirm conversations that Texas Appleseed has had with students and parents statewide. In fact, Texas Appleseed has learned that in some cases, high fines associated with tickets lead some parents to un-enroll their children from school, feeling their financial circumstances left them with no other option.

III. Better Options Exist

A. School-wide Positive Behavioral Interventions & Supports (SW PBIS)

Better options do exist, and a well-developed body of research supports programs or models that not only reduce the total number of disciplinary referrals, but may also improve overall school culture and academics. One such program – School-wide Positive Behavioral Interventions and Supports (SW PBIS) – is becoming an increasingly popular alternative to "zero tolerance" disciplinary models. Several states have created statewide SW PBIS initiatives, providing technical assistance and support to schools and districts interested in the model.¹¹

SW PBIS is based on the proven model that children perform best when they are explicitly taught what to do, when positive behavior is identified and praised, and when behavioral mistakes are corrected and met with effective consequences. Emphasis is on preventing misbehavior before it occurs, and celebrating positive behavior. SW PBIS schools report major improvements in academic performance (including standardized tests),¹² attendance, and school climate. This results in significant reductions in disciplinary referrals, school-based disciplinary actions (such as detentions or in-school

⁹ See Philip J. Cook, Denise C. Gottfredson & Chongmin Na, *School Crime Control and Prevention*, 39 CRIME & JUST. 313, 372 (2010); Catherine Y. Kim, *Policing School Discipline*, 77 BROOKLYN L. REV. 1, 26 (2012); Gary Sweeten, *Who Will Graduate? Disruption of High School by Arrest and Court Involvement*, 23 JUSTICE QUARTERLY 462, (2006).

¹⁰ Tarrant County Truancy Task Force, *Truancy Solutions: A Collaborative Plan for Schools, Police Departments, Community Agencies and the Juvenile Justice System* (2012)(on file with author).

¹¹ For example, several states – including Florida, Illinois, and Maryland – have created state-level support programs for schools interested in implementing school-wide PBIS.

¹² See Academic Achievement and the Implementation of School-wide Behavior Support, available at http://www.pbis.org/pbis_newsletter/volume_3/issue1.aspx.

suspensions), off-campus disciplinary actions (such as expulsions or placements in alternative schools), and referrals to special education based on behavioral concerns.¹³

B. Social and Emotional Learning (SEL)

Social and Emotional Learning (SEL) is not one curriculum or program; rather, it is a systems change framework that should occur throughout the entire school.¹⁴ In general, costs of implementing a SEL framework will include training costs and student surveys.¹⁵ Hiring additional personnel is usually unnecessary.¹⁶ Several specific frameworks or programs can be used to implement SEL, including Developmental Assets, Caring School Community program, and Tribes Learning Community.

The goal of SEL is to help children strengthen their ability to work constructively with others, manage their emotions, resolve conflicts with consideration for others, develop positive relationships, work more effectively, and make responsible, safe, and ethical decisions.¹⁷ SEL can foster school improvement and can be implemented from preschool through high school.¹⁸ Effective SEL programming taught consistently can reduce school dropout, nonattendance, conduct problems, and substance use.¹⁹

C. Restorative Justice Model

Restorative Justice, when applied to a school setting, focuses on how student behavior has harmed others and how to make amends.²⁰ Schools often use the Restorative Justice model as a way to build community in schools and to strengthen connections between students and the school as an institution.²¹ By building these connections, restorative

¹³ Robert Horner et al., *A Randomized, Wait List Controlled Effectiveness Trial Assessing School-Wide Positive Behavior Support in Elementary Schools*, *Journal of Positive Behavioral Supports*, Vol. 11, pp. 133-148 (2010); Jeffrey R. Sprague & Robert H. Horner, *School Wide Positive Behavioral Supports*, in *The Handbook of School Violence and Safety: From Research to Practice* (2007). For additional research on PBIS, please visit www.pbis.org

¹⁴ Telephone Interview with Donna Black, Educational Consultant (Sept. 17, 2012).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *What Is SEL?*, COLLABORATIVE FOR ACADEMIC, SOCIAL, AND EMOTIONAL LEARNING, <http://casel.org/why-it-matters/what-is-sel/> (last visited Sept. 27, 2012).

¹⁸ *Id.*

¹⁹ See David Osher et. al, *Developing Safe, Supportive and Effective Schools: Facilitating Student Success to Reduce School Violence*, *Handbook of School Violence and School Safety* (2011).

²⁰ David R. Karp and Beau Breslin, *Restorative Justice in School Communities*, 33 *Youth & Society* 249, 250 (2001).

²¹ *Id.*

justice focuses on student culture as a whole, rather than merely directing change at singular issues, such as drug and alcohol abuse.²²

In a school setting, restorative justice often occurs in restorative circles in the classroom, where students can deal with the harm of student misbehavior or rule-breaking that has affected the classroom or school community.²³ A restorative circle in the classroom provides an opportunity to use community values to address the problem and allows everyone to communicate.²⁴ It is essential to have a whole school approach to restorative justice.²⁵ SW PBIS is a helpful framework to have in place or to implement with restorative justice.²⁶

Ed White Middle School in San Antonio implemented the model by providing a two-day training, materials, and a part-time consultant to visit the school three to four days a week and to attend staff meetings.²⁷ The Institute of Restorative Justice and Restorative Dialogue at The University of Texas at Austin is using the model at Ed White for research on restorative justice.²⁸ Ed White uses the highly recommended whole school approach to restorative justice.²⁹

D. These Options are Also More Cost Effective

While schools across the nation are facing budget shortfalls, SW PBIS, SEL, and Restorative Justice not only pay off with increased student attendance and significant reductions in disciplinary referrals, but also achieve these results at a fraction of the cost of suspensions and expulsions.

Texas Appleseed recently completed a survey of the financial costs to 11 school districts of suspension, expulsion, and school security costs.³⁰ During the 2010-2011 school year, **we found that these 11 school districts spent nearly a combined \$140 million** on out of school suspensions, referrals to Disciplinary Alternative Education Programs, and expulsions to the Juvenile Justice Alternative Education Programs.

In addition, these 11 districts also **spent about \$87 million on security**, monitoring services and campus policing. Spending on school security and policing far outweighs what these districts spend on social work services—a combined \$18.6 million, during the

²² *Id.*

²³ Telephone Interview with Dr. Marilyn Armour, Associate Professor, The University of Texas at Austin and Institute for Restorative Justice and Restorative Dialogue (Sept. 24, 2012).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Texas Appleseed, *Breaking Rules, Breaking Budgets: Cost of Exclusionary Discipline in 11 Texas School Districts* (2012).

2010-2011 school year. Spending additional resources on counseling and social work services could do more to address the root causes of student behavioral problems at school.

We compared the costs of exclusionary discipline to those of SW PBIS, SEL, and Restorative Justice and found that these programs are far more cost-effective than the use of traditional, exclusionary discipline.³¹

IV. Conclusion

Texas-based research demonstrates that the overreliance on suspension and expulsion have serious academic, financial, and public safety consequences. In addition to concerns regarding the effectiveness of suspension and expulsion, we have a growing concern over the “criminalization” common school misbehavior in Texas.

Texas is moving toward solutions. Several legislative initiatives have taken positive steps to decrease internal disciplinary referrals and Class C ticketing.³² In 2011, the Governor’s office funded a pilot in Waco ISD that has reduced Class C ticketing in that district by 77 percent – and has announced plans to create a competitive grant for districts that wish to replicate this pilot.³³ As discussed in our Cost of Discipline report, many school districts have opted to implement alternatives that have both reduced disciplinary referrals and costs associated with exclusionary discipline.³⁴ But more remains to be done.

We thank the Subcommittee for its interest in the issue, and for holding this hearing – public forums dedicated to engaging stakeholders in finding solutions to this problem are critical.

³¹ *Id.* at 73.

³² See Council of State Governments, *supra* note 4, at 9.

³³ Office of the Governor Criminal Justice Division, Waco Independent School District & Public Policy Research Institute of Texas A&M, Powerpoint Presentation: Re-thinking Law Enforcement in Texas Schools (2012)(on file with author).

³⁴ Texas Appleseed, Cost of Discipline, at 73-76.



Statement for the Record

**Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights
“Ending the School-to-Prison Pipeline”
December 12, 2012**

Crime Rates, Zero-Tolerance, School Discipline and the Juvenile Justice System
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The Texas Public Policy Foundation is pleased to provide the following comments to the Subcommittee.

Introduction

It is universally acknowledged that children will misbehave. Thus, so long as institutionalized education exists, so too will disciplinary problems. Both school discipline practices and the prevailing societal norms evolved with the educational institutions, which created the present-day system of zero-tolerance discipline: a system of mandatory punishments for specified behavior with little discretion and few alternatives. Zero-tolerance policies today extend to cover drugs, alcohol, violence on and off campuses, plus other relatively minor infractions.

Zero-tolerance policy supporters claim that this method of discipline is forceful enough to eliminate school violence through deterrence and removal from the classroom. Advocates also argue that the zero-tolerance policy is clear-cut and uniform, and can provide peace of mind to parents.

The data, however, reveals that the intended results of zero-tolerance measures were not necessarily achieved. Many studies have been conducted on zero-tolerance policies that cast doubt on their effectiveness. Furthermore, current crime and victimization rates do not indicate that zero-tolerance policies have produced increases in school safety. On top of that, these programs have been found to cost millions in taxpayer dollars each year through costly alternative programs for suspended students, while other costs compound the taxpayer investment, including lost educational hours for students and lost wages for parents taking time off work to deal with a suspended child.

This evidence indicates that alternatives to zero-tolerance policies may lead to a more effective system of school discipline for students by keeping them in school and reducing overreliance on the justice system for school-based discipline. A tiered response to most low-level school discipline issues could create a far more effective approach to discipline via effective, targeted intervention into minor misbehavior, while ensuring that the most serious of on-campus offenses are still dealt with immediately, appropriately, and strictly.

Zero-Tolerance in Practice

An Overview of Zero-Tolerance

Zero-tolerance policies generally mandate a certain punishment—usually suspension or expulsion—for certain misbehavior with little room for deviation. A swift, mandatory, and severe punishment was predicted to not only deter school crime but also to quickly correct student behavior. Furthermore, a rigid framework was expected to allow far more expedient handling of disciplinary issues: students would have a defined set of rules and easily understand the boundaries, while administrators would have a simple policy to apply.

These policies originally applied to guns and deadly weapons on school campuses, but were slowly expanded to incorporate a great deal of student conduct,¹ including alcohol, drugs, and lesser violence.²

Sadly, at the same time that zero-tolerance policies were growing in breadth and degree, one of the most serious and horrific instances of school violence occurred. In April 1999, in a tragic school shooting incident, 13 students were killed by two of their classmates in Littleton, Colorado. This horrific—but rare—incident was highly publicized, and stoked fears that violent crime was possible at even “safe” suburban schools.³ Understandably, parents were terrified and concerned about a widespread problem involving crime at school, and administrators relied heavily on zero-tolerance policies to quell those fears.

Zero-Tolerance Policies in Texas

In 1995, Texas enacted the modern version of the school discipline code, as part of a revision of the entire state education law.⁴ The new code firmly established zero-tolerance measures for a number of infractions, and gave local school districts the latitude to establish additional individualized standards for school discipline. Each district must establish a code of conduct that sets out the circumstances and behavior, including both the state standards and the individual district rules, that triggers removal from a classroom, placement in a Disciplinary Alternative Education Program (DAEP), suspension, and expulsion.⁵ Thus, school discipline in Texas varies widely between different districts and schools, and involves not only zero-tolerance measures, but also a variety of alternative placements for disciplined students and sanctions that go beyond the scope of the state standards.

Texas did make an effort to introduce some level of discretion in school discipline. In 2009, the Legislature approved House Bill 171, which mandated consideration of specific factors in disciplinary decisions, including self-defense, intent or lack thereof, disciplinary history, and disabilities affecting capacity to appreciate wrongfulness.⁶

There are a number of disciplinary options. First, suspension is permitted for any behavior so specified in a particular school’s code of conduct, which can be broad enough to cover behavior both on- and off-campus.⁷ Second, misbehavior can also be addressed through a Class C misdemeanor citation. Under Texas law, such citations can be issued for disrupting class or other activities, which includes emitting an unreasonable amount of noise, enticing a student away from class, preventing or attempting to prevent a student to attend class, and entering a classroom without permission and disrupting activities.⁸

Third, placement in a DAEP is a disciplinary option separate from suspension. Along with adoption of a zero-tolerance policy, the Legislature mandated that schools establish DAEPs, which provide education for students with discipline issues in a separate setting from the rest of the student body.⁹ Placement in a DAEP can be mandatory or discretionary, and the misbehavior which can trigger a DAEP placement is specified in either the Texas Education Code or local codes of conduct.

The fourth disciplinary option is expulsion. Expulsion is mandatory for the following behavior on school grounds or at a school activity:

- The use, exhibition, or possession of a firearm, illegal knife, club, or a variety of other weapons;

- Aggravated assault, sexual assault, aggravated sexual assault, arson, murder, attempted murder, indecency with a child, aggravated kidnapping, aggravated robbery, manslaughter, negligent homicide, or sexual abuse of young children; and
- Felonious drug or alcohol possession, delivery, or use.¹⁰

Expulsion is discretionary for a wide variety of behavior.¹¹ Expelled youth are not necessarily completely without educational opportunity, however. Twenty-eight Texas counties with populations greater than 125,000 are mandated to implement Juvenile Justice Alternative Education Programs (JJAEPs) to educate expelled students and sometimes those in juvenile justice placements.¹² While six counties outside of this statutory mandate have chosen to implement their own JJAEPs, the rest of Texas counties do not have JJAEPs and ordinarily expel students “to the street” without any provision for continued education.

Empirical Evidence: Zero-Tolerance and School Crime

There have been a variety of efforts to evaluate zero-tolerance policies and the resulting gains or losses in school safety and discipline measures. In 2006, a task force of the American Psychological Association published a study that found:

- Zero-tolerance policies had a negligible effect on the consistency of punishments;
- Strict removal of disruptive students did not increase school safety ratings or academic achievement (even when controlling for socioeconomic status); and
- Children who were disciplined under zero-tolerance models were not deterred from further misbehavior and were *more* likely to re-offend.¹³

Other studies have highlighted the lack of gains in safety measures, the correlation with increased crime and disruption, or the disproportionate application of zero-tolerance policies.¹⁴ Still other evaluations look at the impact zero-tolerance policies have on dropout rates, which indicate that removal from school interrupts the habit of regular attendance and can serve as a precursor to dropping out of school.¹⁵

The effects of high suspension rates due to zero-tolerance policy programs are another focus of study. Researchers point to increased numbers of students suspended from public schools and the ways suspension detracts from academic performance and capabilities and factors into dropout rates.¹⁶ In fact, dropping out of school is often the beginning of a series of poor decisions. Statistics from the Texas Department of Criminal Justice indicate that at least 40 percent of adult prison inmates in Texas prisons in 2011 dropped out of school.¹⁷

Zero-tolerance policy opponents argue that the policies are far too broad, capturing innocuous behavior and jeopardizing students’ futures in the process. Examples across the United States are quite dramatic:

- A six-year-old was suspended from school after sharing lemon drops with another student;¹⁸
- Another student was suspended for drug possession after turning over another student’s marijuana to authorities;¹⁹
- Kindergartners playing cops and robbers were suspended because they used their index fingers and thumbs to make a mock firearm;²⁰
- A student received a suspension after confiscating a knife from a suicidal classmate and securing it in his locker;²¹ and
- A 12-year-old Boy Scout in Texas was expelled, arrested, and placed in an alternative school after accidentally leaving his scouting pocketknife in his jacket pocket.²²

Zero-Tolerance Policy Outcomes

"Breaking Schools' Rules"

In 2011, the Council of State Governments Justice Center, along with the Public Policy Research Institute at Texas A&M University, released the findings from a six-year study of every seventh grade student attending a Texas public school between 2000 and 2002.²³ The study tracked the records of almost one million students to capture the wide ranging impacts of school discipline policies.

The study results indicated the following:

- Almost 60 percent (553,413 students) received at least one disciplinary action (which includes suspensions, DAEP placements, or expulsions);²⁴
- Of those students, the average frequency of discipline was eight suspensions or expulsions per student, while half of the students had received at least four disciplinary actions;²⁵
- African-American students were more likely to be disciplined than their white or Hispanic peers; and
- Students with educational disabilities were also more likely to receive a disciplinary action.²⁶

The study also found a correlation between specific disciplinary actions and being held back a grade, failing to graduate, and contact with the juvenile justice system suggesting that current discipline was ineffective at correcting misbehavior.²⁷ Finally, there were substantial differences in discipline rates between schools very similar in demographics and risk factors, indicating that zero-tolerance policies are not successful in reducing inconsistencies and disparate treatment by school discipline systems.²⁸

This report focused only on suspensions and expulsions; however, there is another widely used disciplinary method in Texas schools. As previously mentioned, schools may issue Class C misdemeanor tickets for a wide range of behavior as listed in each school's code of conduct. Out of the courts that report such data, almost 275,000 non-traffic tickets were issued to juveniles in Texas.²⁹ The fines for such tickets cost up to \$500 and require time away from school for the youth and often time away from work for a parent. The data on the use of these Class C misdemeanor tickets reveals that minorities and special education students were disproportionately given tickets as well.³⁰

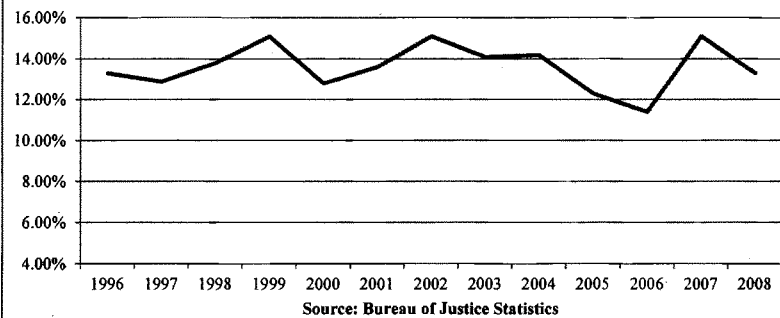
Are Schools Safer Today?

School discipline is an expensive proposition: in the 2009-2010 school year, schools across Texas spent \$327 million on security and monitoring services.³¹ At last tally, DAEPs alone cost schools an additional \$232 million.³² In light of these expenditures, as well as the exhaustive variety of disciplinary resources and the extensive zero-tolerance state laws in place for almost two decades, Texas taxpayers, parents, and students should be benefitting from dramatically safer schools.

Schools are indeed safer, but the degree to which schools are safer than prior to the implementation of zero-tolerance in Texas is no greater than the degree to which the rest of the country is safer, and merely tracks the national drop in crime rates during the last two decades. Put another way, there is no indication that zero-tolerance policies have made schools safer; by some measures, schools are actually less safe than other public places.

Indicators of crimes committed on school grounds and by juveniles shed light on whether zero-tolerance policies have had an effect on school safety or juvenile desistance from crime. First, when considering where violent crimes occur across the nation, the proportion of all violent crimes that occur at school has barely fluctuated in the last decade.

**Figure 1: Percent of All Violent Crimes
Occurring at School**



The percentage of violent crimes at school was equal in years 1996 and 2008, 13.3 percent

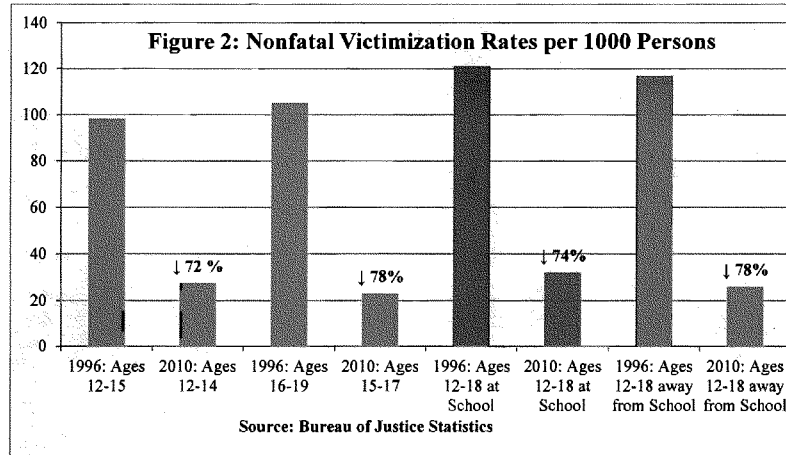
(see Figure 1). This suggests that zero-tolerance policies have not been able to drive violent crimes out of schools, or reduce the proportion that occur at school as opposed to other locations that are not overseen by zero-tolerance policies.

Second, when considering victimization rates (which includes victims of crime that are both reported and are not reported to authorities), schools are still the least safe places for youth, and actually have become less safe than in 1996 across the country.

Table 1: Victimization Rates by Age and Location

Year: Category	Rate per 1000
1996: Ages 12-15	98.3
2010: Ages 12-14	27.5
1996: Ages 16-19	105.2
2010: Ages 15-17	23
1996: Ages 12-18 at School	121
2010: Ages 12-18 at School	32
1996: Ages 12-18 away from School	117
2010: Ages 12-18 away from School	26

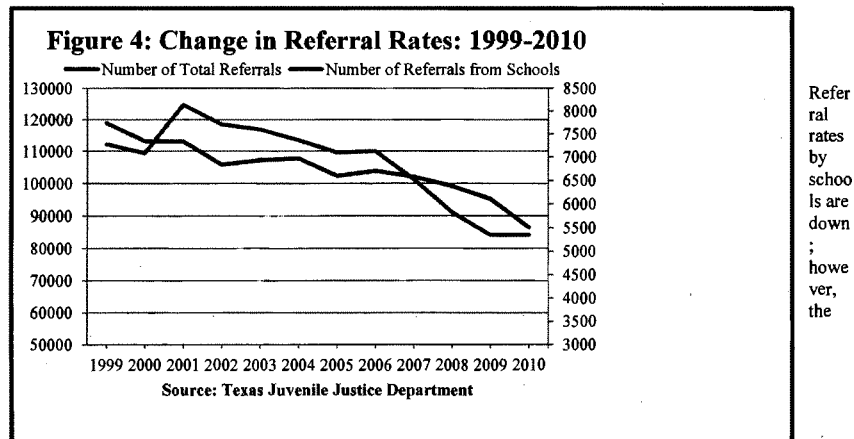
Source: Bureau of Justice Statistics



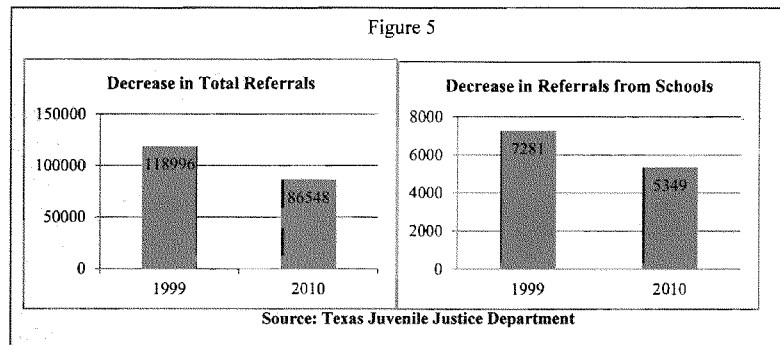
Nonfatal victimizations were highest at school in 1996 and 2010 (see figure 2) as compared to victimization rates away from school as well as victimization rates for youth generally. Furthermore, victimizations were 1.03 times more likely to occur at school than away from school in 1996. In 2010, that ratio grew to 1.23.

It is important to note that victimization rates have fallen between 1996 and 2010; however, the drop is in the same proportion as the drop in victimizations unrelated to school, indicating that it is the universal drop in crime rates that is responsible for the decrease in victimization. Further, the increased ratio—from 1.03 to 1.23—of victimizations at school as opposed to away from school indicates further failings of zero-tolerance policies.

A third and final indicator as to the relative safety of schools specific to Texas is the number of referrals made by schools to juvenile probation departments. Schools can make referrals, akin to arrests, to juvenile probation departments for student behavior.



referral rates are down in roughly the same proportion that overall referral rates are down. The drop in referral rates for Texas overall, when compared to those specifically from schools, reveals a mirror-image drop in referrals.



In both types of referrals, the drop in referral rates between 1999 and 2010 amounted to a 27 percent drop. The universality of this decrease is indicated by the drop in total juvenile arrests across Texas (which includes those that do not result in a referral to juvenile probation), which decreased 24 percent between 1999 and 2009 (the last year for which data is available).³³ This suggests that the drop in referrals is attributable to the overall drop in crime and not a drop in school crime as a result of effective discipline through a zero-tolerance policy.

To be sure, it is very good news for students, teachers, and parents that school crime is down. But the drop in school crime and victimization is more likely due to the overall drop in crime across the country over the last two decades, not the zero-tolerance policies in effect in Texas.

A New School Discipline Model

Zero-tolerance policies have failed to bolster school safety as opposed to other places youth frequent and have produced high costs for taxpayers. Largely in response to these issues, a more effective model for school discipline has developed in the form of a three-step, or tiered, disciplinary model.

This model was pioneered by Judge Steven Teske, a Georgia juvenile court judge who saw increasing numbers of students in his courtroom for behavior that did not require judicial management. To that end, Clayton County, Georgia, convened the "Blue Ribbon Commission on School Discipline," which was tasked with reviewing current policies and identifying possible alternatives.³⁴

The result of the Commission's work was a cooperative agreement signed by officials in the court system, schools, police departments, and juvenile justice agencies to reform their school discipline procedures.³⁵ The agreement established a three-step system to address certain misbehavior. The plan is limited to the following types of behavior: misdemeanor-type delinquent acts involving offenses against public order including affray, disrupting public school, disorderly conduct, obstruction of police (limited to acts of truancy where a student fails to obey an officer's command to stop or not leave campus), and criminal trespass (that does not involve damage to property).³⁶

The agreement prohibits a juvenile complaint to be filed for one of these offenses unless certain prerequisite steps have already been taken on the first and second offenses.³⁷ The first offense results in a Warning Notice, admonition, or no action, within the discretion of the school resource officer (SRO).³⁸ A second or subsequent offense results in a referral to the School Conflict Diversion Program, Mediation Program, or other program sponsored by the court. The program is attended by both the student and the parent, and the program administers reports the successful completion (or not) to the school.³⁹ If these steps are unsuccessful in curbing the delinquent behavior, a juvenile complaint may be filed upon the third offense.⁴⁰

The results of this new approach to handling school disciplinary issues are significant: referrals to the juvenile court dropped 67.4 percent, saving those valuable resources for more serious cases in genuine need of judicial case management; the rates of weapons on campus are down 73 percent; and graduation rates increased 20 percent.⁴¹

One rather unexpected outcome of this system is an increased level of school police presence on campus and more positive interactions between students and school police officers. Clayton County schools report that because school police officers do not have to leave campus to transport and file referrals for low-level offenses as frequently, officers are able to spend more time on campus, increasing their knowledge of and familiarity with the student body, and engaging in more friendly and positive interactions with students.⁴² Students, then, began to perceive officers as being on school campus to help, leading to increased information sharing about concerns on campus, bolstering the percentage of crimes solved.⁴³

This system was recently adopted in Jefferson County, Alabama, where family court officials, the district attorney, law enforcement, and Birmingham City Schools collaborated to adopt a tiered discipline plan. In that jurisdiction, the agreement applies to minor school-based offenses—defined as affray (fighting), third-degree criminal trespass, third-degree assault, disorderly conduct, harassment, menacing, and minor theft.⁴⁴

Just as in Clayton County, the first offense under the new system results in a Warning Notice, admonition, or no action, at the discretion of the school official. The second offense results in admonition and counsel, a second warning, or an assignment of the student and parent to a School Conflict Workshop.⁴⁵ Upon the third offense, the school may refer the student to the court. The agreement does include an exception for “exceptional circumstances,” which permits school administrators to bypass the graduated system.

A Texas Experiment

News of Clayton County’s success has quickly spread. Last year, Governor Rick Perry’s Criminal Justice Division sought to determine whether Judge Teske’s disciplinary system in Georgia could be replicated in Texas. The Division partnered with the Waco Independent School District (WISD) and the Waco Police Department to develop progressive sanction diversion programs, which were initiated last summer. Rather than simply referring a student to the juvenile justice system, WISD now has several options for disciplinary interventions, including a peer-to-peer mediation and mentoring program, the Parent and Student Education Diversion Program, or Teen Court* (an alternative to the automatic DAEP placement for fighting mandated in Waco). Early results show a 27 percent drop in citations issued.⁴⁶

Conclusion

Given the high rates at which students are disciplined under the zero-tolerance policies, the empirical data on the zero-tolerance model which calls into question its efficacy, and the disparate treatment afforded students under

* Sanctions usually handed down by the Teen Court include verbal or written apologies, community service to the school, or a requirement to attend Saturday school to make up missed schoolwork.

the current system, careful implementation of an alternative model for school discipline, such as the tiered approach, may produce substantially better outcomes.

The recent drop in school crime is so statistically similar to overall drops in crime that it cannot be substantially attributed to zero-tolerance policies. Given how often zero-tolerance policies remove students from campus, one would expect schools to be safer than other places for youth since the application of zero-tolerance policies. Unfortunately, this is not the case, which creates a significant need for more effective disciplinary systems.

The tide is beginning to turn away from zero-tolerance policies: the Michigan Department of Education recently resolved that its schools should review and limit zero-tolerance policies while focusing on alternatives,⁴⁷ Chicago's Board of Education increased discretion for school officials,⁴⁸ and Colorado's Legislature enacted legislation⁴⁹ to gradually eliminate zero-tolerance policies from its schools.⁵⁰

Through proper reforms, policymakers can ensure zero-tolerance policies are focused on the most serious of student offenses which truly create a danger on school campuses, and provide effective intervention for low-level behavior. These more effective approaches decrease unnecessary reliance on justice systems, conserving those resources, and can create higher rates of success in school and graduation.

While the present system might be broken, it is not beyond repair. Schools exist not only to teach math, science, and history, but also serve as safe places where children can learn to be functioning members of society. Appropriate responses to behavior and ensuring that children remain in school must become a priority in schools.

¹ Sasha Polakow-Suransky, "America's Least Wanted: Zero-Tolerance Policies and the Fate of Expelled Students," in *Public Assault on America's Children: Poverty, Violence and Juvenile Injustice* (2000), pgs. 101-129.

² Christopher Boccanfuso and Megan Kuhfield, "Multiple Responses, Promising Results: Evidence-Based Nonpunitive Alternatives to Zero Tolerance," *Child Trends* (March 2011), pg. 2.

³ Glenn Muschert, "Frame-changing in the media coverage of a school shooting: The rise of Columbine as a national concern," *The Social Science Journal* 46:1 (March 2009), pg. 169.

⁴ "Bill Analysis: C.S.S.B. 1," Public Education Committee (April, 1995), pg. 1.

⁵ *Tex. Educ. Code* § 37.001.

⁶ *House Bill 171*, 81st Legislature.

⁷ *Tex. Educ. Code* § 37.005.

⁸ *Tex. Educ. Code* § 37.124.

⁹ *Tex. Educ. Code* § 37.008.

¹⁰ *Tex. Educ. Code* § 37.007(a).

¹¹ *Tex. Educ. Code* § 37.007(b) et seq.

¹² *Tex. Educ. Code* § 37.011.

¹³ Russell Skiba et al., "Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations," *American Psychological Association Zero Tolerance Task Force* (August 2006), pgs. 40-51.

¹⁴ See Russell Skiba and Reece Peterson, "School Discipline at a Crossroads: From Zero Tolerance to Early Response," *Exceptional Children* 66:3 (2000), pgs. 337-339.

¹⁵ "Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline Policies," *The Advancement Project and Civil Rights Project* (July 2002), pg. 11.

¹⁶ Johanna Wald and Daniel Losen, "Defining and redirecting a school-to-prison pipeline," in *New Directions for Youth Development* (2003).

¹⁷ "Statistical Report Fiscal Year 2011," Texas Department of Criminal Justice, pg. 1.

¹⁸ Cara DeGette, "6 Year Old Busted For Candy," *Denver Post*, Nov. 19 1997.

¹⁹ James Hanks, "School Violence: From Discipline to Due Process," (2004) pg. 50.

²⁰ "Kindergartners Suspended for Playing 'Cops,'" *Los Angeles Times*, April 7, 2000.

²¹ *Ratner v. Loudoun County Public Schools*, 16 Fed. Appx. 140 (4th Cir. 2002).

²² Helen Eriksen, "Discipline bill on Perry's desk," *Houston Chronicle*, June 4, 2005.

²³ Tony Fabelo et al., "Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement," Council of State Governments Justice Center and the Public Policy Research Institute, Texas A&M University (July 2011).

²⁴ *Ibid.* pg. 36.

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- ²⁵ Ibid. pg. 37.
- ²⁶ Ibid. pgs. 42, 50.
- ²⁷ Ibid. pgs. 60, 66.
- ²⁸ Ibid. pg. 82.
- ²⁹ "Texas' School-to-Prison Pipeline: Ticketing, Arrest & Use of Force in Schools," Texas Appleseed (December, 2010) pg. 18.
- ³⁰ Ibid. pg. 68-69.
- ³¹ "2010-11 State Profile Report: Academic Excellence Indicator System," Texas Education Agency, Division of Performance Reporting.
- ³² "Texas State Government Effectiveness and Efficiency," Legislative Budget Board (Jan. 2011), pg. 537.
- ³³ FBI Arrest Statistics: 1994-2009.
- ³⁴ "A Written Report Presented to the Superintendent and Board of Education," Blue Ribbon Commission on School Discipline (Jan. 2007), pg. 5.
- ³⁵ "Cooperative Agreement Between the Juvenile Court of Clayton County, the Clayton County Public School System, the Clayton County Police Department, the Riverdale Police Department, the Jonesboro Police Department, the Forest Park Police Department, the Clayton County Department of Family and Children Services, the Clayton Center for Behavioral Health Services, Robert E. Keller, District Attorney, and the Georgia Department of Juvenile Justice."
- ³⁶ Ibid. pg. 4-5.
- ³⁷ Ibid. pg. 5.
- ³⁸ Ibid. pg. 5-6.
- ³⁹ Ibid. pg. 6.
- ⁴⁰ Ibid.
- ⁴¹ Steven Teske, "A Study of Zero Tolerance Policies in Schools: A Multi-Integrated Systems Approach to Improve Outcomes for Adolescents," Journal of Child and Adolescent Psychiatric Nursing (2011) pg. 93.
- ⁴² Steven Teske, Brian Huff, and Cora Graves, "Collaborative Role of Courts in Promoting Outcomes for Students: The Relationship Between Arrests, Graduation Rates and School Safety," Keeping Kids in School and Out of Court, pg. 138.
- ⁴³ Ibid.
- ⁴⁴ "Collaborative Agreement," Birmingham City Schools Collaborative.
- ⁴⁵ "Collaborative Agreement," Birmingham City Schools Collaborative.
- ⁴⁶ Information and data on the "Suspending Kids to School" program was compiled from interviews conducted with Criminal Justice Division staff and Charlene Hamilton, Program Manager, Suspending Kids to School.
- ⁴⁷ "Resolution to Address School Discipline Issues Impacting Student Outcomes," State of Michigan Department of Education (June 2012).
- ⁴⁸ "Board of Education Approves Student Code of Conduct to Foster Positive, Safer Learning Environments and Limit Removal of Students from Schools," Chicago Public Schools, Press Release (June 2012).
- ⁴⁹ Summarized History for Bill Number HB12-1345, last accessed July 23, 2012.
- ⁵⁰ House Bill 12-1345, Second Regular Session, Sixty-eighth General Assembly, State of Colorado.

Testimony by Dr. Robert K. Ross
President and CEO
The California Endowment



Why Is California Suspending More Students than it Graduates?

Mr. Chairman, Senator Graham, and members of the Subcommittee:

My name is Dr. Robert K. Ross, and I serve as President and CEO of The California Endowment. Our foundation is dedicated to expanding access to affordable quality health care and improving the overall health of Californians.

For the past two years, The Endowment has worked very hard to raise awareness about the problem of extreme school discipline and to help schools and school districts reform their discipline policies.

It might surprise you that school discipline is such a high priority of a health foundation like ours. And to be honest, it surprises me too! So before beginning the substance of my testimony, I wanted to explain how we came to focus on this issue and why we believe it advances our health mission.

It started when The Endowment launched “Building Healthy Communities,” a program in which we work extremely closely with 14 cities and neighborhoods across California, helping local advocates reshape their communities in ways that improve health. It’s part of a broader effort at The California Endowment to promote the idea that health isn’t just the result of what happens inside a doctor’s office. We say “Health Happens Here:” in schools, in neighborhoods and with prevention.

As part of our Building Healthy Communities planning process, we sat down with young people in our target neighborhoods and asked them: What are the obstacles to getting ahead in your neighborhoods and in your schools? What blocks you from leading a healthier life?

We kept hearing the same answer, over and over again. Young people told us that extreme school discipline policies were among the biggest barriers they faced. Excessive suspensions were pushing them away from school, making it harder to earn a diploma. These young people understand the value of graduating high school, and they want to attend college, too. They believe that education is the key to a successful life—and they’re right, of course. All the research shows that educational attainment is strongly correlated with increased earnings, reduced chronic disease rates, and longer and happier lives.

I was surprised that school discipline was raised so frequently by young people in our Building Healthy Communities sites. To be honest, the issue hadn’t been my radar screen at all. But I believe that we should listen to our young people, so we studied the issue and helped our youth leaders understand how to work with education leaders and policymakers to advocate for change.

In a very short time, we’ve achieved strong results. In addition to changes at the school and district level, I’m very pleased to report that effective January 1 five new laws take effect in California that steer schools and school districts toward common-sense discipline approaches. California is joining the ranks



of states like Colorado, Connecticut and Florida in working at a statewide level to improve school discipline policies. And together, our states have elevated school discipline from a local concern to a national priority.

Today, I'm going to share with you some of what we've learned about school discipline policies in California and throughout the nation. I'll start with these six headlines, and then I'll come back and add some additional detail.

1. **Our schools suspend too many students**, often for minor infractions that would have meant a stern lecture, or a visit to the principal's office back when I was a student.
2. **African Americans and Latinos face a disproportionate risk for suspension**. It's unfair, and it almost certainly contributes to persistent achievement gaps.
3. **It doesn't work**. There is no evidence that more suspensions lead to safer campuses or more productive classrooms. In fact, a growing body of research suggests just the opposite—that academic achievement goes up when suspension rates go down.
4. **There is a better way**. Pioneering schools and school districts are discovering alternatives to a suspension-first approach, and they're achieving great results.
5. **People support reform**. Surveys conducted by The California Endowment show overwhelming support for common-sense reform.
6. **Teachers and school administrators need our help**. Shifting away from longstanding practice is hard, and we can't reasonably expect schools to reform their policies without expert advice, training, and ongoing support.

Now let's discuss those points in some detail.

1. Public schools suspend too many students.

According to the California Department of Education (CDE), California's public schools issued more than 719,000 suspension and expulsion orders during the 2010-2011 academic year—more students than California graduates each year. To put that in perspective, there are 718,000 public school students in the entire state of South Carolina, home to the distinguished Ranking Member, Senator Graham. That means if South Carolina shut down its entire school system and suspended every student in the state, from Kindergarten through 12th Grade, the Palmetto State would still record fewer suspensions than California.

In California, most suspensions were issued for reasons unrelated to violence or drug abuse. I heard about one student being suspended for playing with water balloons after one popped too close to a teacher. Another was suspended for slapping a desk out of frustration, after a confrontation with an administrator over the school's dress code. These students displayed poor judgment, as teenagers often do. But when I was a student, infractions like these would have been handled with a stern lecture or perhaps a visit to the principal's office. Instead these students were sent home. They fell behind in their classwork and may have been completely unsupervised during the day. Yes, they made mistakes. But surely, suspension wasn't the appropriate remedy.

California is not an outlier in its approach to school discipline. As a percentage of students in our public school system, California's suspension rates are about average—and individual stories like the ones I just shared are common in all parts of our nation. Extreme school discipline policies, which lead to excessive suspensions, exist in California, Illinois, South Carolina, and every other state in the union.

2. African Americans and Latinos face a disproportionate risk of suspension.

According to an analysis of data released by the U.S. Department of Education's Office for Civil Rights, White students face a 5% risk of suspension in any given academic year. That means about one in 20 White students will be suspended, on average. For African Americans, suspension risk more than triples, to 17%. Latino suspension rates are 7%. Disparities in California public schools are similar.

The UCLA Civil Rights Project looked even closer at California's suspension trends and reached some stunning conclusions. For example, African Americans with disabilities face a 28% risk of suspension. In some major districts, suspension rates for African American males with disabilities exceed 50%.

Educators across the country are working diligently to reduce persistent achievement gaps—especially achievement gaps between African American boys and their peers. It's a complex challenge, and I do not claim to have all the answers. However, I'm absolutely certain that keeping young people in school is part of the solution. Sending African Americans boys home, to fall further behind in their schoolwork, can't possibly help.

3. It doesn't work.

There is no evidence that extreme school discipline policies make classrooms safer. After reviewing research about the effectiveness of zero tolerance policies, a special task force of the American Psychological Association had this to say:

An extensive review of the literature found that, despite a 20-year history of implementation, there are surprisingly few data that could directly test the assumptions of a zero tolerance approach to school discipline, and the data that are available tend to contradict those assumptions. Moreover, zero tolerance policies may negatively affect the relationship of education with juvenile justice and appear to conflict to some degree with current best knowledge concerning adolescent development.

I come from a research background, so I'll translate that for you. Basically, it means there is no evidence that zero tolerance policies are good, and considerable evidence to suggest they're bad.

But what about the impact on suspended students themselves? Does a suspension jolt students into better behavior? Do they get "scared straight?" Again, the evidence is clear. Suspended students are more likely to drop out, repeat a grade, and get into serious trouble with law enforcement. And it's not just repeat offenders. A study released last year by the Council on State Governments Justice Center showed that even one school suspension increases students' risk for dropping out.

Suspensions don't help students find the right path, they simply push them further away from school.

Finally, there is no evidence that schools with higher suspension rates perform better academically. In fact, existing research suggests just the opposite—that schools with lower suspension rates score higher on achievement tests than demographically similar schools with high suspension rates.

4. There is a better way.

Schools in California and across the nation have identified alternative approaches to school discipline—strategies that reduce suspension rates while holding students accountable for their actions. And these alternative approaches are working.

For example, at Garfield High in East Los Angeles, administrators reduced the number of suspensions from 510 in 2008-2009 to ONE in 2010-2011 after implementing a discipline policy based on the Positive Behavioral Supports model. During that period, Garfield's score on California's Academic Performance Index increased by 114 points.

Similarly at Davidson Middle School in the San Francisco Bay Area, suspensions dropped from 375 in 2008-2009 to 45 in 2011-2012. Davidson relied primarily on Restorative Justice strategies, in which students who misbehave "make it right" by fixing any damage they've caused. Davidson's performance on the API increased 65 points during that four year period.

5. People support change.

In the spring of 2012, The California Endowment commissioned a survey to gauge California's attitudes toward school discipline reform. The results were clear and unmistakable:

- 80% of Californians believe that school discipline policies should be reformed;
- 92% support prevention-oriented policies that teach positive behaviors, while holding students accountable for their conduct; and
- 61% recognize that suspensions increase risk for dropping out and committing crimes in the future. As I described earlier, this opinion is supported by the research.

These poll numbers tell part of the story, but they can't capture the energy and enthusiasm supporting reform in California. For example, when Governor Jerry Brown was considering whether to sign or veto the school discipline legislation I referenced earlier, a number of youth advocates circulated an online petition urging his support. Within days, 15,000 Californians added their names. It was a pace I'd never seen before. I've attached the full text of that petition as an addendum to my testimony.

6. Teachers and administrators need help.

Since The California Endowment first began working to reform school discipline policies, we've learned just how challenging it can be to change longstanding practices. Policymakers cannot simply write a new law and expect that everything will be fixed overnight. Discipline reform is an ongoing process.

Often, administrators don't fully understand their options and feel boxed-in by zero tolerance policies with mandatory suspension requirements. Teachers may have been taught to send all discipline cases to the principal's office, so they lack the training needed to solve small problems on the spot and identify emerging behavioral issues before they grow into full-blown classroom disruptions.

Educators want help. This year, The California Endowment asked EdSource, a highly respected education think tank, to survey district leaders responsible for discipline policies and learn more about their needs and priorities. The results both surprised and encouraged us. California education leaders strongly prioritized resources and training. Their top two priorities were hiring counselors and providing additional instruction and resources for teachers and administrators. Increasing security staff ranked dead last.

To support these leaders, The Endowment created a \$1 million fund to help Central Valley school districts transform their approaches to school discipline. As a region, the Central Valley has particularly high suspension rates, but it's also home to some of the most innovative reformers in our state. We believe the area is poised for rapid progress and are excited by the number and quality of applications received. The energy our fund helped generate demonstrates to me that educators truly want help improving their approaches to school discipline. Applications are under review right now, and I expect to see great results from our grant program.

And finally, many of the California laws going into effect January 1 are designed to provide schools with tools they can use to reduce suspensions while continuing to hold students accountable for their conduct. The Endowment strongly commends Governor Brown and leaders of the California legislature for taking these meaningful steps toward reform.

While I'm on the subject of commending policy leaders, I want to highlight the work of the U.S. Department of Education, and in particular its Office of Civil Rights. The Department volunteered to release national suspension data earlier this year, knowing full well that release could to criticism. Rather than sweep controversial findings under the rug, the Department chose to release them in the full light of day. That was a courageous decision, and it accelerated demand for change in California and other states. In addition, the Department of Education and the Department of Justice jointly created the Supportive School Discipline Initiative, which aims to bring safe and productive learning environments to every classroom in the nation. Secretary Duncan and Attorney General Holder have demonstrated real leadership on this issue, and we appreciate their actions.

* * *

In conclusion Mr. Chairman, there can be no doubt that the youth leaders who approached us in our Building Healthy Communities sites were right all along. Extreme school discipline policies are an obstacle to student success in California and across the nation.

- Because we suspend too many students;
- Because African American and Latino students are disproportionately affected;
- Because extreme school discipline doesn't create productive school environments;

- Because there are better approaches;
- Because the people support change; and
- Because teachers and administrators need our help

The time for common-sense reform is now.

Thank you for the opportunity to share this testimony with the Subcommittee. If you have any questions, please let me know.

References

Number of California Suspensions in 2010-2011:

<http://dq.cde.ca.gov/dataquest/Expulsion/ExpReports/StateExp.aspx?cYear=2010-11&cChoice=ExpData1&Pageno=1>

Student-Submitted Stories about School Discipline in California

<http://www.youtube.com/user/FixSchoolDiscipline?feature=watch>

Analysis of OCR data by the UCLA Project on Civil Rights

<http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-crrr-research/losen-gillespie-opportunity-suspended-crrr-2012.pdf>

American Psychological Association Report on “Zero Tolerance” School Discipline Policies

<http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>

Information about the Impact of Suspensions on School Performance and Individual Students

<http://justicecenter.csg.org/resources/juveniles/report#rpt>

See also, Rausch, M. and Skiba, R. (2006), *The Academic Cost of Discipline: The Relationship Between Suspension/Expulsion and School Achievement*, Center for Evaluation and Education Policy, Indiana University (no link available).

Information about Public Attitudes Toward School Discipline Reform

<http://tchenews.calendow.org/releases/new-statewide-poll-shows-strong-231781>

Information about Educator Attitudes toward School Discipline Reform

http://www.edsource.org/assets/files/publications/edsource_discipline_survey_09-10_v6.pdf

Information about The California Endowment’s School Discipline Fund

<http://tchenews.calendow.org/releases/california-endowment-creates-1-231937>

Statement by the California Endowment Commending Governor Jerry Brown and California’s Legislative Leaders for Enacting Common-Sense School Discipline Reform

<http://tchenews.calendow.org/releases/the-california-endowment-issues-statement-regarding-governor-brown-and-the-california-legislature-s-actions-on-issues-related-to-common-sense-school-discipline>

Addendum 1.

Petition Submitted to Governor Jerry Brown by the Alliance for
Boys and Men of Color



Nearly 15,000 people sign Change.org petition to Fix School Discipline

Petition Submitted to Governor Jerry Brown September 2012
by the Alliance for Boys and Men of Color

Available online at: <http://www.change.org/petitions/gov-brown-time-to-fix-school-discipline-in-ca>

Gov. Brown: Time to Fix School Discipline in CA

"We are students, young leaders, and concerned citizens from across California who need your help to fix a big problem in our state — the overuse of harsh, out-of-school discipline. Legislation awaiting your signature would bring vital improvements to education policy for students and schools across the state.

*In 2011, California schools suspended students out of school more than 700,000 times, making California a national leader in a contest we don't want to win. In fact, **we are suspending more students each year than we are graduating from high school.***

How can students learn if they are not in school?

*Too often, suspensions are for things that used to just get students sent to the principal's office, like being late, talking back, or horsing around. When a student is suspended, they fall behind in classwork, are far more likely to drop out, and far more likely to get in trouble with the law and enter the juvenile justice system. **Young men of color bear the brunt of these out-of-school removals** and, not surprisingly, have the highest rates of dropout and incarceration in the state.*

Some school districts are finding solutions that help all students. Los Angeles, Oakland, West Contra Costa, Woodland county and others are holding students accountable for their behavior while also sharply reducing school removals by using restorative justice and positive behavior approaches. Studies show that all students in the school do better academically when these reforms are implemented and school safety and attendance rates also improve.

***WE NEED YOUR HELP!** Several bills are on your desk right now, including SB 1235(Steinberg), AB 1729 (Ammiano), and AB 2242 (Dickinson), that will make California a leader in keeping students in school and using effective discipline approaches. Together we can bring improvements to all students and schools across the state.*

***We all win when students thrive.** Please stand with us and sign these bills, to keep students in school!"*



Addendum 2.

Article published on EdSource.org about California Legislation to Promote Common-Sense School Discipline Policies

Available online at: <http://www.edsource.org/today/2012/bills-influencing-school-disciplinary-policies-head-to-governor/19447#.UMEHxazyQT0>

Bills influencing school disciplinary policies head to governor

August 28th, 2012

By Susan Frey

Seven bills that collectively will shift thinking on how California schools discipline students will likely land on the governor's desk at the end of the current legislative session on Friday.

Although the bills no longer mandate changes that their authors originally envisioned, "they start to lay out alternatives to suspensions and expulsions," said Erika Hoffman, a lobbyist for the [California School Boards Association \(CSBA\)](#). "These bills set out a process for how teachers, administrators, and school board members can begin to think about discipline differently."

The new laws emphasize a more constructive approach to discipline, such as working with students and parents to tackle the root causes of the disruptive behavior and requiring students to make amends instead of simply removing them from school.

The bills are aimed at changing punitive discipline policies that have led to a disproportionate number of African American and Latino students facing suspensions and expulsions.

"California issues more suspensions than diplomas each year," said Laura Faer, an attorney with [Public Counsel Law Center](#), a pro bono law firm based in Los Angeles that is the chief sponsor of many of the bills.

The bills fall short of requiring districts to embrace the more positive methods because legislators are wary of creating mandates that the state would have to fund.

Funding training for teachers and administrators in the new disciplinary approaches is the hard part, Hoffman said. "We are having a hard time funding just about anything. But it's a goal we can all work for."

Although CSBA and the [Association of California School Administrators \(ACSA\)](#) originally opposed the bills, they now support the amended versions. Laura Preston, a lobbyist for ACSA, said she hopes to work with Public Counsel and other proponents to provide training to administrators and do it "without the heavy-handed approach" of a mandate when districts are struggling to make ends meet.

Faer said the amendments, though a compromise, should help all schools focus on "solutions to discipline that hold students accountable and keep schools safe, while also improving attendance and achievement."

By the end of the legislative session on Monday, five of the bills had passed the major legislative hurdles before being sent to the governor, and the remaining two appear likely to be approved by the Legislature by the end of the week. Faer is hopeful the bills will become law, saying her organization has been working closely with the governor's office on the amendments.

The bills that have passed the major legislative hurdles include:

- Senate Bill (SB) 1088, introduced by Sen. Curren D. Price, Jr., D-Los Angeles, prohibits public schools from "denying enrollment or readmission to a pupil solely on the basis that he or she has had contact with the juvenile justice system."
- SB 1235, introduced by Senate President pro Tem Darrell Steinberg, D-Sacramento, Sen. Price, and Sen. Michael J. Rubio, D-Bakersfield, encourages a school district where the number of pupils receiving off-campus suspensions in the prior year exceeded 25 percent of either its total enrollment or of a numerically significant subgroup to implement positive behavioral interventions or other strategies designed to address the school climate. The bill also requires the superintendent of public instruction to invite such schools to attend a regional forum to provide assistance and training in positive approaches to discipline.
- Assembly Bill (AB) 2537, introduced by Assemblymember V. Manuel Perez, D-Coachella, gives more flexibility to school administrators in deciding whether to expel students for possessing a controlled substance or an imitation firearm. It also no longer requires administrators to notify police if a student is disciplined for unlawful activity.
- AB 1729, introduced by Assemblymember Tom Ammiano, D-San Francisco, would authorize administrators to use "alternatives to suspension or expulsion that are age appropriate and designed to address and correct the pupil's specific misbehavior." It would also authorize districts to document the other means of correction used and to place that documentation in the student's record. Other interventions include a positive behavior support approach, a conference with the parent and student, or participation in a restorative justice program in which the student makes amends to anyone he or she has harmed.
- AB 2616, introduced by Assemblymember Wilmer Amina Carter, D-Rialto, gives school administrators the discretion to address each individual student's circumstances for being absent, including investigating the root causes for the student missing school. It also provides a different approach when classifying students as truant.

The following bills are likely to be approved by the Legislature:

- AB 1909, introduced by Assemblymember Ammiano, requires the agency that places a child in foster care to notify the education liaison of the child's school district at the time of placement, and requires the agency to invite the pupil's attorney to any disciplinary hearing that may involve expulsion if the expulsion is not required by law.
- AB 2242, introduced by Assemblymember Roger Dickinson, D-Sacramento, prevents administrators from expelling or giving an extended suspension for students who have "willfully defied" authority or "disrupted school activities." Currently, about 40 percent of all suspensions

fall under willful defiance or disrupting school activities, according to Dickinson. The bill also clarifies what constitutes "electronic bullying" by phone, computer, or pager.

One bill that had widespread support, AB 2145, introduced by Assemblymembers Dickinson and Luis A. Alejo, D-Salinas, did not pass. The bill would have required school districts to provide data on expulsions and suspensions broken down by race, ethnicity, socioeconomic status, and other student characteristics. The bill would have cost \$150,000 to implement and \$30,000 each year, according to the Department of Finance, whose opposition made some legislators reluctant to support it.

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 5570 MATHEMATICAL SCIENCES BUILDING, BOX 951521
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December 10, 2012

U.S. Senate Committee on the Judiciary
 Subcommittee on the Constitution, Civil Rights, and Human Rights
 224 Dirksen Senate Office Building
 Washington, D.C. 20501

Re: Hearing on Ending the School-to-Prison Pipeline

Dear Chairman Durbin, Ranking Minority Member Graham, and Members of the Subcommittee on the Constitution, Civil Rights and Human Rights.

My name is Daniel J. Losen and I am the Director of the Center for Civil Rights Remedies (CCRR), an initiative of the Civil Rights Project at UCLA. I appreciate the opportunity to submit this statement for the record. Improving our understanding of the contributors and remedies to the "school-to-prison pipeline" has been among the focal points of the research efforts of The Civil Rights Project since 1999.

Many of the submissions and much of the testimony you will hear will put a human face on the far too frequent use of suspension and expulsion in our nation's public schools. To sharpen the focus further, I call your attention to an important new research finding by Robert Balfanz, Vaughan Byrnes and Johanna Fox of Johns Hopkins University. Their recent longitudinal study tracking a statewide cohort of 9th graders in Florida, found that being suspended just once was associated with an increase in the risk for dropping out. Specifically, the associated dropout risk for the cohort doubled from 16% for students with no suspensions, to 32% for students suspended just once! As the authors concluded, "Thus the risk for long-term harm that such disciplinary policies impose for students is a threat not for only students with multiple suspensions, but also for those students with a single suspension."¹ Given our growing knowledge of the relationship between disciplinary exclusion and poor academic outcomes, the public and education policy makers at every level should seek to know as much about suspensions as we currently know about attendance, test scores, and graduation rates.

Unfortunately, the magnitude of this problem, including the tremendous disparities along the lines of race, gender and disability status, has gone largely unnoticed. For this reason, I have attached nine separate descriptive state level reports for review by the members of the committee (produced for this hearing). The data for each of the nine states in this submission (CA, IL, MN, PA, OH, SC, TX, VA, VT) are derived from the

¹ A statement summarizing the new research findings, and written by the authors is also attached. Their full research paper along with findings from approximately 15 others regarding both the harms and the remedies to frequent disciplinary exclusion will be presented at a jointly sponsored conference, *Closing the School Discipline Gap: Research to Practice*, to be held in Washington D.C. on January 10, 2013. The co-sponsors are Education Week, The Equity Project at Indiana University and Gallup.

Center for Civil Rights Remedies' recent national report, *Opportunities Suspended: The Disparate Impact of Disciplinary School Exclusion*. The National report contains details on every state and district surveyed by the U.S. Department of Education in 2009-2010. The report, and a downloadable file with these data are available on our website at www.civilrightsproject.ucla.edu. The file allows users to find the data on their district easily, but also to compare states and districts using the sorting and filtering tools.

The following is an excerpt from the executive summary. It is just a fraction of the extensive national, state and district level findings available in the full report and downloadable files.

Well over three million children, K-12, are estimated to have lost instructional "seat time" in 2009-2010 because they were suspended from school, often with no guarantee of adult supervision outside the school. That's about the number of children it would take to fill every seat in every major league baseball park and every NFL stadium in America, *combined*.

Key Findings from Analysis at the National, State, and District Levels

National

- National suspension rates show that 17%, or 1 out of every 6 Black school children enrolled in K-12, were suspended at least once. That is much higher than the 1 in 13 (8%) risk for Native Americans; 1 in 14 (7%) for Latinos; 1 in 20 (5%) for Whites; or the 1 in 50 (2%) for Asian Americans.
- For all racial groups combined, more than 13% of students with disabilities were suspended. This is approximately twice the rate of their non-disabled peers.
- Most disturbing is the fact that one out of every four (25%) Black children with disabilities enrolled in grades K-12 was suspended at least once in 2009-2010.
- Students with disabilities and Black students were also more likely to be suspended repeatedly in a given year than to be suspended just once. The reverse was true for students without disabilities and for most other racial/ethnic groups.

State

- Suspension rates, based on the sample, varied dramatically between states; for example, North Dakota had an estimated rate of 2.2% for all students, whereas South Carolina suspended 12.7% of enrolled students.
- Although Blacks had the highest suspension rate in most states, in Montana, Whites (3.8%) were suspended more often than Blacks (3.4%).
- The highest suspending states (based on the sample) differed by racial group.
 - Illinois was highest for Blacks, at 25.3%.
 - North Carolina, at 17.8%, was highest for Native Americans.
 - Connecticut had the highest rate for Latinos, at 13.5%.
 - Whites and Asian Americans were highest in Wyoming, at 10% and 5.8%, respectively.
- When the risk for being suspended was compared for Blacks and Whites, Illinois had the largest racial gap in the nation (21.3%). Illinois also suspended nearly 42% of all Black students with disabilities.

District

- Several of the nation's largest districts suspended 18% or more of their total enrollment, including Memphis, Tennessee; Columbus Ohio; Henrico, Virginia; and Chicago, Illinois. Almost 200 districts suspended more than 20% of all enrolled students.
- Although over 300 districts suspended over 25% of the Black children enrolled, high suspension rates for Black students were not the norm in every district. Of the 4,504 districts in the Civil Rights Data

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Collection (CRDC) sample that enrolled at least 10 Blacks and at least 1,000 students in all, the risk of suspension for Blacks was 3% or less in over 1,400 districts.

- Similarly, over 300 districts suspended over 25% of the students with disabilities, without regard to race, but well over 600 districts suspended 3% or less of this subgroup.

These data are shocking, but they cannot come close to capturing the full scope of the problem. One reason is that the data collected by the federal government tells us how many students were suspended one or more times, but not how many suspensions were meted out. We know that many students are suspended repeatedly, but we don't know how often or for how long. How many total days of instruction are lost to disciplinary exclusion? Further, little information is known about the reasons for suspensions. Finally, the federal government does not collect and report these data annually.

Therefore, with this submission, I encourage Congress to start with one simple and non-controversial first step: require all state educational agencies to annually report to the public the data on school discipline, disaggregated by race, gender, socio-economic and disability status, down to the district, and (to the extent permissible) school level. The reports should include: the number of students suspended, number of incidents, reasons for out-of-school suspensions, and days of lost instruction.

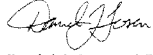
Of course such public reporting would only highlight the problems, not solve them. But to solve the problems, educators also need a reliable stream of information. Once school leaders and the public have identified the problems and are pursuing remedies, these same data will be essential to efforts at distinguishing what is working from what is not.

In addition we also recommend the following:

1. Include suspension rates among the factors schools and districts use to measure performance and provide incentives to limit the use of out-of-school suspensions as only measures of last resort.
2. Support stepped up federal civil rights monitoring and enforcement to address the large disparities in discipline by race, disability, and gender in the highest-suspending districts.
3. Provide greater support for research on promising, evidence-based interventions and target more funds for the implementation of systemic improvements in approaches to school discipline, as well as for classroom management to ensure that teachers and principals have sufficient training and professional development opportunities in this area.

In conclusion I would like to refer the members to the attached documents produced for this submission. I applaud the Chairman and all members of the committee for the attention they bring to the issues and encourage their future efforts to address these important problems with new legislation. As you pursue solutions, The Center for Civil Rights Remedies and the Civil Rights Project would be happy to provide any member of this committee with data analysis and would welcome any opportunity to summarize the latest research findings once they are presented at the upcoming January 10th conference.

Sincerely,

A handwritten signature in cursive script, appearing to read "Daniel J. Losen".

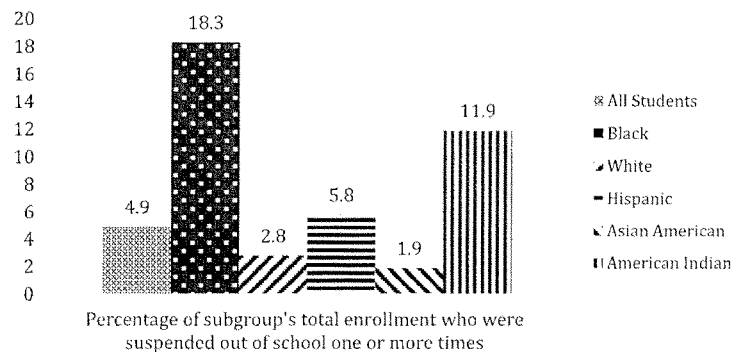
Daniel J. Losen, J.D., M. Ed.,
Director, Center for Civil Rights Remedies
The Civil Rights Project at UCLA

Minnesota

Summary of the Use of Out-of-School Suspensions Analysis of Federal Data

Based on the data districts reported to the U.S. Department of Education, across grades K-12,¹ Minnesota was estimated to be ranked 38th, and therefore not among the highest suspending states in the U.S. in 2009-2010. However, it was approximately the 12th highest-suspending state for Black students and was fifth for the size of the discipline gap between Blacks and Whites. The following snapshot breaks down the suspension rates further by race and disability status at the state level, with additional details about rates in Minnesota's districts.

Figure 1. The Risk for Suspension for Students in Minnesota



The source of all the raw data used to generate this report is the Civil Rights Data Collection from 2009-2010 as publicly reported by U.S. Department of Education Office for Civil Rights.² This estimated risk for suspension for Minnesota is based on an OCR sample representing approximately 90% of all students in the state.

¹ OCR collects and publicly reports data on the number of students suspended in 2009-10. The data are from two entirely separate categories: students suspended only one time and students suspended two or more times. Students were only counted in one category. A national report was created by the Center for Civil Rights Remedies of the Civil Rights Project at UCLA containing breakdowns of every state and district in the OCR sample. At each level, national, state and district, the analysis combined the categories to arrive at the unduplicated number students suspended one or more times. Each reporting district's superintendent certified their discipline and enrollment data as accurate. For each state, the sampled district numbers were combined and the total number of students suspended one or more times was divided by each group's total enrollment. The state number is therefore presented as an estimate and the sample size indicated.

² Analysis was reported by The Center for Civil Rights Remedies National Report: Opportunities Suspended: The Disparate Impact of Exclusionary School Discipline by Daniel J. Losen and Jonathan Gillespie (2012). For a downloadable spreadsheet that allows for sorting and comparisons of every school district and every state please visit www.civilrightsproject.ucla.edu.

Many districts have significantly higher rates than the state average: For example, the suspension rates for students in **Minneapolis, MN**, are as follows: Over-all, 16.5%; Black, 34%; White, 4.5%; Hispanic, 5.9%; Asian American, 2.6%; American Indian, 22.6%.

Many districts in Minnesota are not high suspending districts: Despite the alarming statewide average for Black students, and despite the even more disturbing findings that follow, it is important to note that many districts in Minnesota did not suspend high numbers of Black students. In fact, in 8 of the 63 districts that suspended Black students in Minnesota, the suspension rate for Black students was less than the state average (4.9%) for all students.

The risk for suspension is much higher for secondary students: The data summarized above represents all students in K-12 suspended *at least* once. We know that out of school suspensions are typically much higher for male students in middle and high schools. In the 2010 report by Losen and Skiba, *Suspended Education: Urban Middle Schools in Crisis*, the national risk for suspension for middle school students, based on the data collected and reported by the U.S. Department of Education for 2006, was estimated as follows:³

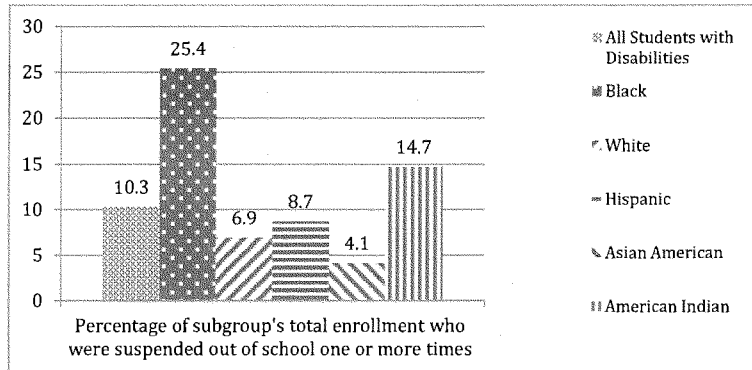
Black Males, 28.3%; Black Females, 18%; Hispanic Males, 16.3%; Hispanic Females, 8.5%; White Males, 10%; White Females, 4%; All Males, 14.7%; All Females, 7.5%.

The middle schools report also analyzed suspension trends in 18 large urban districts and found that rates had risen most rapidly for Black Females between 2002-2006.

Students with disabilities are typically suspended a twice the rate of their non-disabled peers: Nationally, based on data on K-12 students from districts across the nation, approximately one out of every eight enrolled students with disabilities (13%) were suspended at least once in 2009-2010. Figure 2 shows the rates broken down by race and disability for students in Minnesota:

Figure 2. The Risk for Suspension for Students with Disabilities in Minnesota

³ Daniel J. Losen & Russell J. Skiba, *Suspended Education: Urban Middle Schools in Crisis*, National Report. The Civil Rights Project at UCLA (2010). Available at www.civilrightsproject.ucla.edu.

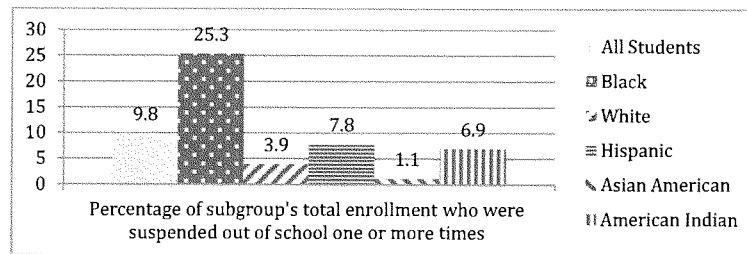


Illinois

Summary of the Use of Out-of-School Suspensions Analysis of Federal Data

Based on the data districts reported to the U.S. Department of Education, across grades K-12,¹ Illinois was estimated to be the 6th highest suspending state in the U.S. in 2009-2010 and the highest suspending state for Black students. The following snapshot breaks down the suspension rates by race and disability status at the state level, with additional details about rates for Illinois districts, including the largest district, Chicago.

Figure 1. The Risk for Suspension for Students in Illinois



The source of all the raw data used to generate this report is the Civil Rights Data Collection from 2009-2010 as publicly reported by U.S. Department of Education Office for Civil Rights.² This estimated risk for suspension for Illinois is based on an OCR sample representing approximately 78% of all students in the state.

Many districts have significantly higher rates than the state average: For example, the suspension rates for students in **Chicago**, are as follows: Over-all: 18%; Black: 30.3%; White: 6.3%; Hispanic: 8.9%; Asian American: 1.3%; American Indian: 26.1%.

¹ OCR collects and publicly reports data on the number of students suspended in 2009-10. The data are from two entirely separate categories, students suspended only one time and students suspended two or more times. Students were only counted in one category. A national report was created by the Center for Civil Rights Remedies of the Civil Rights Project at UCLA containing breakdowns of every state and district in the OCR sample. At each level, national, state and district, the analysis combined the categories to arrive at the unduplicated number students suspended one or more times. Each reporting district's superintendent certified their discipline and enrollment data as accurate. For each state, the sampled district numbers were combined and the total number of students suspended one or more times for each group was divided by their total enrollment. The state number is therefore presented as an estimate and the sample size indicated.

² Estimates are based on the analysis reported by The Center for Civil Rights Remedies National Report: Opportunities Suspended: The Disparate Impact of Exclusionary School Discipline by Daniel J. Losen and Jonathan Gillespie (2012). For a downloadable spreadsheet that allows for sorting and comparisons of every school district and every state please visit www.civilrightsproject.ucla.edu.

Many districts in Illinois are not high-suspending districts: Despite the fact that Illinois ranks as the highest in the nation for Black students, and despite the even more disturbing findings that follow, it is important to note that many districts in Illinois did not suspend high numbers of students. For example, in approximately one third of the 176 districts that suspended Black students in Illinois the suspension rate for Black students was less than the state average (9.8%) for all students.

The risk for suspension is much higher for secondary students: The data summarized above represents all students in K-12 suspended at least once. We know that out-of-school suspensions are typically much higher for male students in middle and high schools. In the 2010 report by Losen and Skiba, *Suspended Education, Urban Middle Schools in Crisis*, the national risk for suspension for middle school students, based on the data collected and reported by the U.S. Department of Education for 2006, was estimated as follows:³

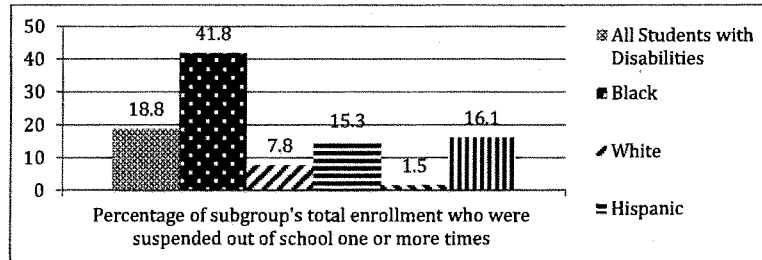
Black Males, 28.3%; Black Females, 18%; Hispanic Males, 16.3%; Hispanic Females, 8.5%; White Males, 10%; White Females, 4%; All Males, 14.7%; All Females, 7.5%.

The middle schools report also analyzed suspension trends in 18 large urban districts and found that rates had risen most rapidly for Black Females in middle school between 2002-2006.

Students with disabilities are typically suspended at twice the rate of their non-disabled peers: Nationally, based on data on K-12 students from districts across the nation, approximately one out of every eight enrolled students with disabilities (13%) were suspended at least once in 2009-2010. Figure 2 shows the rates broken down by race for students in Illinois:

Figure 2. The Risk for Suspension for Students with Disabilities in Illinois (by race)

³ Daniel J. Losen & Russell J. Skiba. *Suspended Education: Urban Middle Schools in Crisis*. National Report. The Civil Rights Project at UCLA (2010). Available at www.civilrightsproject.ucla.edu

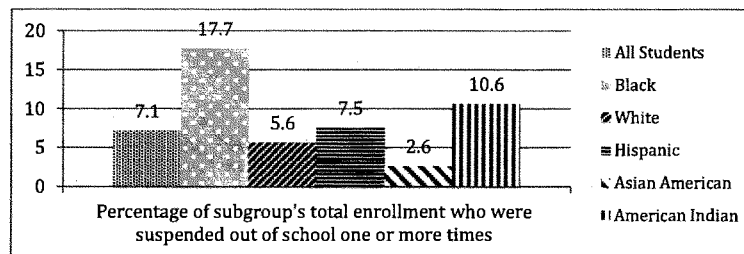


California

Summary of the Use of Out-of-School Suspensions Analysis of Federal Data

Based on the data districts reported to the U.S. Department of Education, across grades K-12,¹ California was estimated to be the 21st highest suspending state in the U.S. in 2009-2010 and the 15th highest suspending state for Black students. The following snapshot breaks down the suspension rates by race and disability status at the state level, with additional details about rates in California for high-suspending districts.

Figure 1. The Risk for Suspension for Students in California



The source of all the raw data used to generate this report is the Civil Rights Data Collection from 2009-2010 as publicly reported by U.S. Department of Education Office for Civil Rights.² This estimated risk for suspension for California is based on an OCR sample of approximately 91% of all students in the state.

¹ OCR collects and publicly reports data on the number of students suspended in 2009-10. The data are from two entirely separate categories, students suspended only one time and students suspended two or more times. Students were only counted in one category. A national report was created by the Center for Civil Rights Remedies of the Civil Rights Project at UCLA containing breakdowns of every state and district in the OCR sample. At each level, national, state and district, the analysis combined the categories to arrive at the unduplicated number students suspended one or more times. Each reporting district's superintendent certified their discipline and enrollment data as accurate. For each state, the sampled district numbers were combined and the total number of students suspended one or more times was divided by each group's total enrollment. The state number is therefore presented as an estimate and the sample size indicated.

² Estimates are based on the analysis reported by The Center for Civil Rights Remedies National Report: Opportunities Suspended: The Disparate Impact of Exclusionary School Discipline by Daniel J. Losen and Jonathan Gillespie (2012). For a downloadable spreadsheet that allows for sorting and comparisons of every school district and every state please visit www.civilrightsproject.ucla.edu. The state level data are based on the sample of district OCR collected from that state. A detailed report on California, *Suspended Education in California*, by Daniel J. Losen, Tia Martinez and Jon Gillespie (2012) is also available at the same website.

Many districts have significantly higher rates than the state average: For example, the suspension rates for students in San Bernardino Unified, CA, are as follows: All: 13.6%; Black: 26.2%; White: 12.6%; Hispanic: 11.4%; and Asian-American: 6.6%; and American Indian: 18.3%.

Some districts in California are not high suspending districts: For example, despite the alarming statewide average for Black students, and despite the even more disturbing findings that follow, it is important to note that some districts in California did not suspend high numbers of Black students. In fact, in 22 percent of the approximately 328 districts that suspended Black students in California, the suspension rate for Black students was less than the state average (7.1%) for all students.

The risk for suspension is much higher for secondary students: The data summarized above represents all students in K-12 suspended at least once. We know that out of school suspensions are typically much higher for male students in middle and high schools. In the 2010 report by Losen and Skiba, *Suspended Education: Urban Middle Schools in Crisis*, the national risk for suspension for middle school students, based on the data collected and reported by the U.S. Department of Education for 2006, was estimated as follows: ³

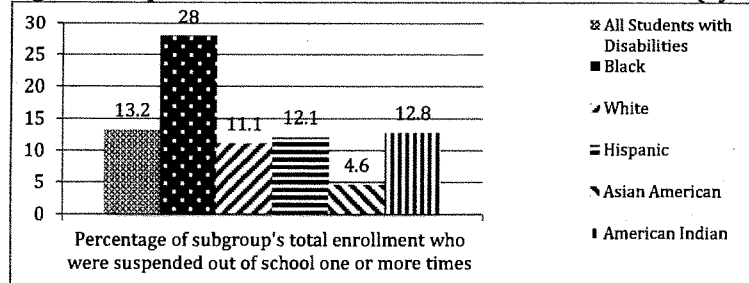
Black Males: 28.3%; Black Females: 18%; Hispanic Males: 16.3%; Hispanic Females 8.5%; White Males: 10%; White Females: 4%; All Males: 14.7%; All Females 7.5%.

In **Los Angeles**, one third of all Black Male students (32%) had been suspended at least once. The corresponding rates for other groups was as follows: Black Females, 19%; Hispanic Males, 15%; Hispanic Females, 8%; White Males, 11%; White Females, 3%.

The middle schools report also analyzed suspension trends in 18 large urban districts and found that rates had risen most rapidly for Black Females between 2002-2006.

Students with disabilities are typically suspended a twice the rate of their non-disabled peers: Nationally, based on data on K-12 students from districts across the nation, approximately one out of every eight enrolled students with disabilities (13%) were suspended at least once in 2009-2010. Here are the rates broken down by race for students in California.

³ The middle schools report was based on the 2006, U.S. Department of Education's Civil Rights Data Collection. See Daniel J. Losen & Russell J. Skiba, *Suspended Education: Urban Middle Schools in Crisis*, National Report, The Civil Rights Project at UCLA (2010). Available at www.civilrightsproject.ucla.edu

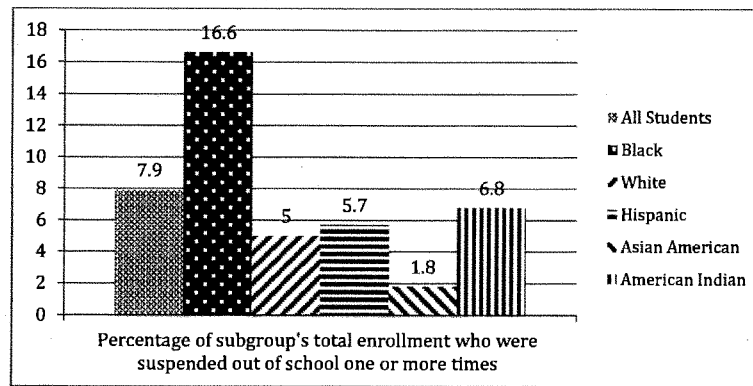
Figure 2. Suspension for Students with Disabilities in California (by race)

Virginia

Summary of the Use of Out-of-School Suspensions Analysis of Federal Data

Based on the data districts reported to the U.S. Department of Education, across grades K-12,¹ Virginia was estimated to be the 18th highest suspending state in the U.S. in 2009-2010 and the 22nd highest suspending state for Black students. The following snapshot breaks down the suspension rates by race and disability status at the state level, with additional details about rates in Virginia for high-suspending districts.

Figure 1. The Risk for Suspension for Students in Virginia



The source of all the raw data used to generate this report is the Civil Rights Data Collection from 2009-2010 as publicly reported by U.S. Department of Education Office for Civil Rights.² This estimated risk for suspension for Virginia is based on an OCR sample representing approximately 94% of all students in the state.

¹ OCR collects and publicly reports data on the number of students suspended in 2009-10. The data are from two entirely separate categories, students suspended only one time and students suspended two or more times. Students were only counted in one category. A national report was created by the Center for Civil Rights Remedies of the Civil Rights Project at UCLA containing breakdowns of every state and district in the OCR sample. At each level, national, state and district, the analysis combined the categories to arrive at the unduplicated number students suspended one or more times. Each reporting district's superintendent certified their discipline and enrollment data as accurate. For each state, the sampled district numbers were combined and the total number of students suspended one or more times for each group was divided by their total enrollment. The state number is therefore presented as an estimate and the sample size indicated.

² Based in part on prior analysis reported by The Center for Civil Rights Remedies National Report: Opportunities Suspended: The Disparate Impact of Exclusionary School Discipline by Daniel J. Losen and Jonathan Gillespie (2012). For a downloadable spreadsheet that allows for sorting and comparisons of every school district and every state please visit www.civilrightsproject.ucla.edu.

Many districts have significantly higher rates than the state average: For example, the suspension rates for students in Henrico County, VA, are as follows: Over-all, 23.1%; Black, 39.4%; White, 11.0%; Hispanic, 17.6%; Asian-American, 3.9%.

Some districts in Virginia are not high suspending districts: Despite the fact that Virginia is estimated to be a relatively high suspending state and the alarming statewide average for Black students, and despite the even more disturbing findings that follow, it is important to note that some districts in Virginia did not suspend high numbers of Black students. In fact, in thirteen percent of the approximately 82 districts that suspended Black students in Virginia, the suspension rate for Black students was less than the state average (7.9%) for all students.

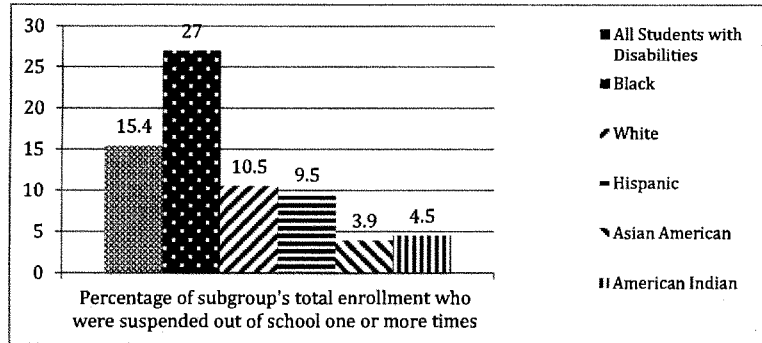
The risk for suspension is much higher for secondary students: The data summarized above represents all students in K-12 suspended at least once. We know that out of school suspensions are typically much higher for male students in middle and high schools. In the 2010 report by Losen and Skiba, *Suspended Education, Urban Middle Schools in Crisis*, the national risk for suspension for middle school students was estimated (based on federal data for 2006) as follows:³

Black Males, 28.3%; Black Females, 18%; Hispanic Males, 16.3%; Hispanic Females, 8.5%; White Males, 10%; White Females, 4%; All Males, 14.7%; All Females, 7.5%. The middle school report's analysis of 18 large urban districts also found that rates had risen between 2002-2006 most rapidly for Black Females.

Students with disabilities are typically suspended a twice the rate of their non-disabled peers: Nationally, based on data on K-12 students from districts across the nation, approximately one out of every eight enrolled students with disabilities (13%) were suspended at least once in 2009-2010. Here are the rates broken down by race for students in Virginia

Figure 2. The Risk for Suspension for Students with Disabilities in Virginia

³ This report was based on the 2006, U.S. Department of Education's Civil Rights Data Collection. See Daniel J. Losen & Russell J. Skiba, *Suspended Education: Urban Middle Schools in Crisis*, National Report, The Civil Rights Project at UCLA (2010). Available at www.civilrightsproject.ucla.edu

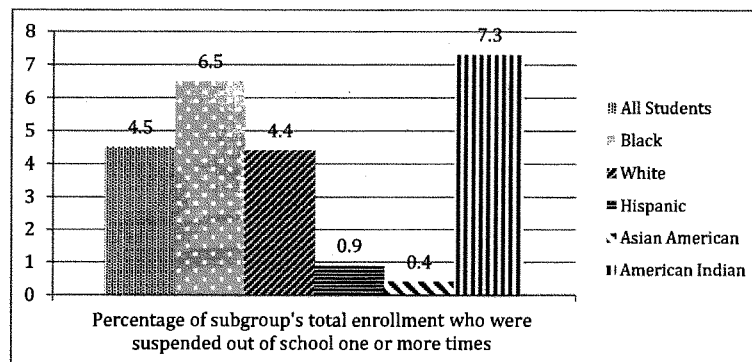


Vermont

Summary of the Use of Out-of-School Suspensions Analysis of Federal Data

Based on the data districts reported to the U.S. Department of Education, across grades K-12,¹ Vermont was ranked an estimated 41st, among the lowest suspending states in the U.S. in 2009-2010 and ranked 42nd, also among the lowest states for suspension rates for Black students. The following snapshot breaks down the suspension rates by race and disability status at the state level.

Figure 1. The Risk for Suspension for Students in Vermont



The source of all the raw data used to generate this report is the Civil Rights Data Collection from 2009-2010 as publicly reported by U.S. Department of Education Office for Civil Rights.² This estimated risk for suspension for Vermont is based on an OCR sample of approximately 59% of all students in the state.

¹ OCR collects and publicly reports data on the number of students suspended in 2009-10. The data are from two entirely separate categories, students suspended only one time and students suspended two or more times. Students were only counted in one category. A national report was created by the Center for Civil Rights Remedies of the Civil Rights Project at UCLA containing breakdowns of every state and district in the OCR sample. At each level, national, state and district, the analysis combined the categories to arrive at the unduplicated number students suspended one or more times. Each reporting district's superintendent certified their discipline and enrollment data as accurate. For each state, the sampled district numbers were combined and the total number of students suspended one or more times for each group was divided by their total enrollment. The state number is therefore presented as an estimate and the sample size indicated.

² Estimates are based on the analysis reported by The Center for Civil Rights Remedies National Report: Opportunities Suspended: The Disparate Impact of Exclusionary School Discipline by Daniel J. Losen and Jonathan Gillespie (2012). For a downloadable spreadsheet that allows for sorting and comparisons of every school district and every state please visit www.civilrightsproject.ucla.edu.

Often districts have significantly higher rates than the state average: For example, the suspension rate for Black students in **Burlington, VT**, was 11%.

The risk for suspension is much higher for secondary students: The data summarized above represents all students in K-12 suspended *at least* once. We know that out of school suspensions are typically much higher for male students in middle and high schools. In the 2010 report by Losen and Skiba, *Suspended Education: Urban Middle Schools in Crisis*, the national risk for suspension for middle school students, based on the data collected and reported by the U.S. Department of Education for 2006, was estimated as follows:³

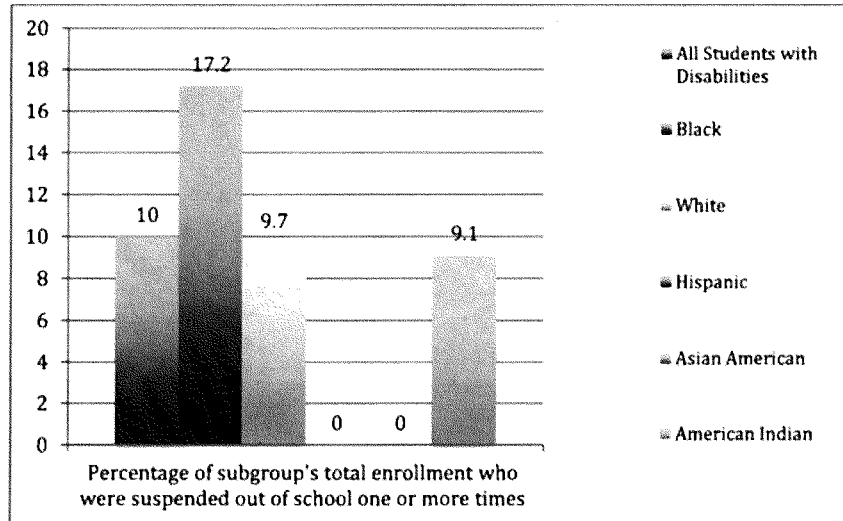
Black Males, 28.3%; Black Females, 18%; Hispanic Males, 16.3%; Hispanic Females, 8.5%; White Males, 10%; White Females, 4%; All Males, 14.7%; All Females, 7.5%.

The report also analyzed suspension trends in 18 large urban districts and found that rates had risen most rapidly for Black Females between 2002-2006.

Students with disabilities are typically suspended a twice the rate of their non-disabled peers: Nationally, based on data on K-12 students from districts across the nation, approximately one out of every eight enrolled students with disabilities (13%) were suspended at least once in 2009-2010. Here are the rates broken down by race for students in Vermont.

Figure 2. The Risk for Suspension for Students with Disabilities in Vermont

³ Daniel J. Losen & Russell J. Skiba, *Suspended Education: Urban Middle Schools in Crisis*, National Report, The Civil Rights Project at UCLA (2010). Available at www.civilrightsproject.ucla.edu.

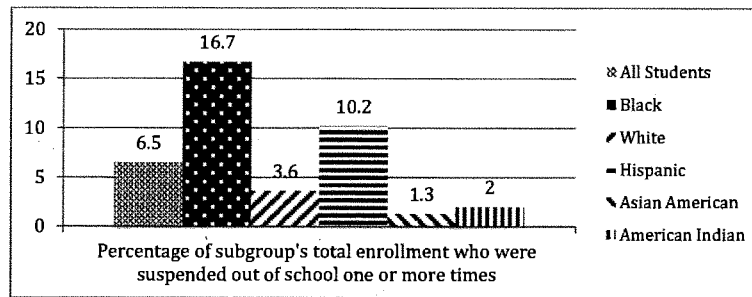


Pennsylvania

Summary of the Use of Out-of-School Suspensions Analysis of Federal Data

Based on the data districts reported to the U.S. Department of Education, across grades K-12,¹ Pennsylvania was estimated to be the 26th highest suspending state in the U.S. in 2009-2010 and the 21st highest suspending state for Black students. The following snapshot breaks down the suspension rates by race and disability status at the state level, with additional details about rates in Pennsylvania for high-suspending districts.

Figure 1. The Risk for Suspension for Students in Pennsylvania



The source of all the raw data used to generate this report is the Civil Rights Data Collection from 2009-2010 as publicly reported by U.S. Department of Education Office for Civil Rights.² This estimated risk for suspension for Pennsylvania is based on an OCR sample representing approximately 77% of all students in the state.

Many districts have significantly higher rates than the state average: For example, the suspension rates for students in Pittsburgh, PA, are as follows: Over-all, 32.7%; Black, 42.4%; White, 16.5%; Hispanic, 20.5%; Asian American, 6.6%; and American Indian, 14.3%.

¹ OCR collects and publicly reports data on the number of students suspended in 2009-10. The data are from two entirely separate categories, students suspended only one time and students suspended two or more times. Students were only counted in one category. A national report was created by the Center for Civil Rights Remedies of the Civil Rights Project at UCLA containing breakdowns of every state and district in the OCR sample. At each level, national, state and district, the analysis combined the categories to arrive at the unduplicated number students suspended one or more times. Each reporting district's superintendent certified their discipline and enrollment data as accurate. For each state, the sampled district numbers were combined and the total number of students suspended one or more times for each group was divided by their total enrollment. The state number is therefore presented as an estimate and the sample size indicated.

² Based in part on prior analysis reported by The Center for Civil Rights Remedies National Report: Opportunities Suspended: The Disparate Impact of Exclusionary School Discipline by Daniel J. Losen and Jonathan Gillespie (2012). For a downloadable spreadsheet that allows for sorting and comparisons of every school district and every state please visit www.civilrightsproject.ucla.edu.

Some districts in Pennsylvania are not high suspending districts: Despite the fact that Pennsylvania is estimated to be a relatively high suspending state and the alarming statewide average for Black students, and despite the even more disturbing findings that follow, it is important to note that some districts in Pennsylvania did not suspend high numbers of Black students. In fact, in one in three of the approximately 176 districts that suspended Black students in Pennsylvania, the suspension rate for Black students was less than the state average (6.5%) for all students.

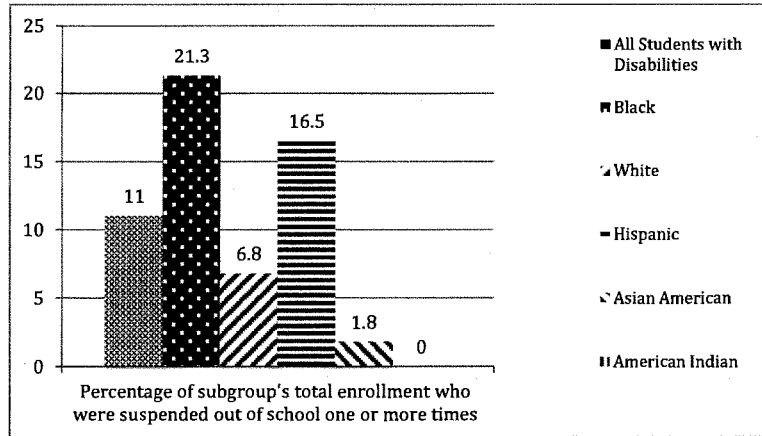
The risk for suspension is much higher for secondary students: The data summarized above represents all students in K-12 suspended at least once. We know that out of school suspensions are typically much higher for male students in middle and high schools. In the 2010 report by Losen and Skiba, *Suspended Education, Urban Middle Schools in Crisis*, the national risk for suspension for middle school students, based on data from 2006, was estimated as follows:³

Black Males, 28.3%; Black Females, 18%; Hispanic Males, 16.3%; Hispanic Females, 8.5%; White Males, 10%; White Females, 4%; All Males, 14.7%; All Females, 7.5%. The middle school report's analysis of 18 large urban districts also found that rates had risen between 2002-2006 most rapidly for Black Females.

Students with disabilities are typically suspended a twice the rate of their non-disabled peers: Nationally, based on data on K-12 students from districts across the nation, approximately one out of every eight enrolled students with disabilities (13%) were suspended at least once in 2009-2010. Here are the rates broken down by race for students in Pennsylvania

Figure 2. The Risk for Suspension for Students with Disabilities in Pennsylvania

³ This report was based on the 2006, U.S. Department of Education's Civil Rights Data Collection. See Daniel J. Losen & Russell J. Skiba, *Suspended Education: Urban Middle Schools in Crisis*, National Report, The Civil Rights Project at UCLA (2010). Available at www.civilrightsproject.ucla.edu

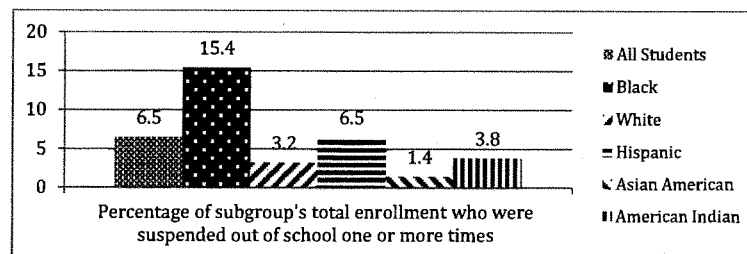


Texas

Summary of the Use of Out-of-School Suspensions Analysis of Federal Data

Based on the data districts reported to the U.S. Department of Education, across grades K-12,¹ Texas was estimated to be the 25th highest suspending state in the U.S. in 2009-2010 and the 26th highest suspending state for Black students. The following snapshot breaks down the suspension rates by race and disability status at the state level, with additional details about rates in Texas for secondary schools and for the largest district, Houston.

Figure 1. The Risk for Suspension for Students in Texas



The source of all the raw data used to generate this report is the Civil Rights Data Collection from 2009-2010 as publicly reported by U.S. Department of Education Office for Civil Rights.² This estimated risk for suspension for Texas is based on an OCR sample representing approximately 88% of all students in the state.

Many districts have significantly higher rates than the state average: For example, the suspension rates for students in **Houston**, are as follows: Over-all: 11.1%; Black: 19.5%; White: 4.2%; Hispanic: 8.9%; Asian American: 2.4%; American Indian: 13.2%.

¹ OCR collects and publicly reports data on the number of students suspended in 2009-10. The data are from two entirely separate categories, students suspended only one time and students suspended two or more times. Students were only counted in one category. A national report was created by the Center for Civil Rights Remedies of the Civil Rights Project at UCLA containing breakdowns of every state and district in the OCR sample. At each level, national, state and district, the analysis combined the categories to arrive at the unduplicated number students suspended one or more times. Each reporting district's superintendent certified their discipline and enrollment data as accurate. For each state, the sampled district numbers were combined and the total number of students suspended one or more times was divided by each group's total enrollment. The state number is therefore presented as an estimate and the sample size indicated.

² Analysis was reported by The Center for Civil Rights Remedies National Report: Opportunities Suspended: The Disparate Impact of Exclusionary School Discipline by Daniel J. Losen and Jonathan Gillespie (2012). For a downloadable spreadsheet that allows for sorting and comparisons of every school district and every state please visit www.civilrightsproject.ucla.edu.

Many districts in Texas are not high suspending districts: Despite the alarming statewide average for Black students, and despite the even more disturbing findings that follow, it is important to note that many districts in Texas did not suspend high numbers of Black students. In fact, in more than 27% of the approximately 227 districts that suspended Black students in Texas, the suspension rate for Black students was less than the state average (6.5%) for all students.

The risk for suspension is much higher for secondary students: The data summarized above represents all students in K-12 suspended *at least* once. We know that out of school suspensions are typically much higher for male students in middle and high schools. In the 2010 report by Losen and Skiba, *Suspended Education: Urban Middle Schools in Crisis*, the national risk for suspension for middle school students, based on the data collected and reported by the U.S. Department of Education for 2006, was estimated as follows:³

Black Males: 28.3%; Black Females: 18%; Hispanic Males: 16.3%; Hispanic Females 8.5%; White Males: 10%; White Females: 4%; All Males: 14.7%; All Females 7.5%.

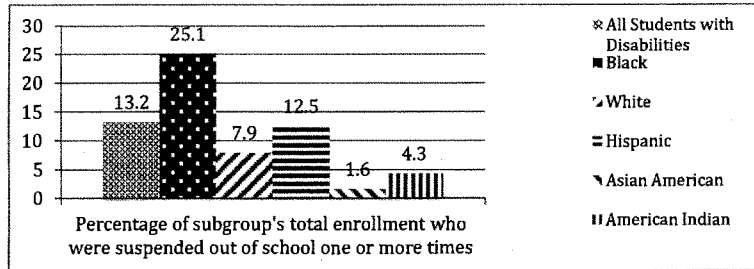
Based on the U.S. Department of Education's data for **San Antonio Texas**, in 2006, 42% of all Black Male middle school students were suspended at least once. The corresponding rates for other groups was as follows: Black Females: 27%; Hispanic Males 23%; Hispanic Females 12%; White Males 19%; and White Females 12%.

The middle schools report also analyzed suspension trends in 18 large urban districts and found that rates had risen most rapidly for Black Females between 2002-2006.

Students with disabilities are typically suspended a twice the rate of their non-disabled peers: Nationally, based on data on K-12 students from districts across the nation, approximately one out of every eight enrolled students with disabilities (13%) were suspended at least once in 2009-2010. Figure 2 shows the rates broken down by race and disability for students in Texas:

Figure 2. The Risk for Suspension for Students with Disabilities in Texas

³ Daniel J. Losen & Russell J. Skiba, *Suspended Education: Urban Middle Schools in Crisis*, National Report, The Civil Rights Project at UCLA (2010). Available at www.civilrightsproject.ucla.edu.

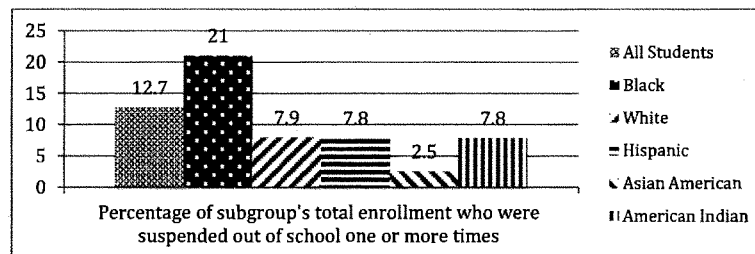


South Carolina

Summary of the Use of Out-of-School Suspensions Analysis of Federal Data

Based on the data districts reported to the U.S. Department of Education, across grades K-12,¹ South Carolina was estimated to be the highest suspending state in the U.S. in 2009-2010 and the 6th highest suspending state for Black students. The following snapshot breaks down the suspension rates by race and disability status at the state level, with additional details about rates in South Carolina at the district level.

Figure 1. The Risk for Suspension for Students in South Carolina



The source of all the raw data used to generate this report is the Civil Rights Data Collection from 2009-2010 as publicly reported by U.S. Department of Education Office for Civil Rights.² This estimated risk for suspension for South Carolina is based on an OCR sample representing approximately 96% of all students in the state.

Many districts have significantly higher rates than the state average: For example, the suspension rates for students in Florence SC, are as follows: Over-all, 23.1%; Black, 32.8%; White, 12.5%; Hispanic, 13.6%; and Asian American, 3.4%.

Some districts in South Carolina are not high suspending districts: Despite the fact that South Carolina is estimated to be the highest suspending state and the

¹ OCR collects and publicly reports data on the number of students suspended in 2009-10. The data are from two entirely separate categories, students suspended only one time and students suspended two or more times. Students were only counted in one category. A national report was created by the Center for Civil Rights Remedies of the Civil Rights Project at UCLA containing breakdowns of every state and district in the OCR sample. At each level, national, state and district, the analysis combined the categories to arrive at the unduplicated number students suspended one or more times. Each reporting district's superintendent certified their discipline and enrollment data as accurate. For each state, the sampled district numbers were combined and the total number of students suspended one or more times was divided by each group's total enrollment. The state number is therefore presented as an estimate and the sample size indicated.

² Based in part on prior analysis reported by The Center for Civil Rights Remedies National Report: Opportunities Suspended: The Disparate Impact of Exclusionary School Discipline by Daniel J. Losen and Jonathan Gillespie (2012) For a downloadable spreadsheet that allows for sorting and comparisons of every school district and every state please visit www.civilrightsproject.ucla.edu.

alarming statewide average for Black students, and despite the even more disturbing findings that follow, it is important to note that some districts in South Carolina did not suspend high numbers of Black students. In fact, in one sixth of the approximately 72 districts that suspended Black students in South Carolina, the suspension rate for Black students was less than the state average (12.7%) for all students.

The risk for suspension is much higher for secondary students: The data summarized above represents all students in K-12 suspended *at least* once. We know that out of school suspensions are typically much higher for male students in middle and high schools. In the 2010 report by Losen and Skiba, *Suspended Education: Urban Middle Schools in Crisis*, the national risk for suspension for middle school students, based on the data collected and reported by the U.S. Department of Education for 2006, was estimated as follows:³

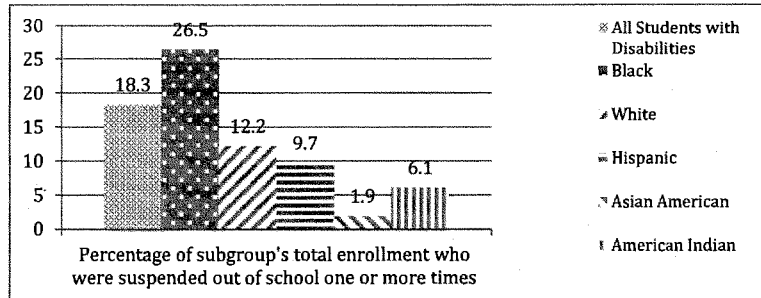
Black Males, 28.3%; Black Females, 18%; Hispanic Males, 16.3%; Hispanic Females, 8.5%; White Males, 10%; White Females, 4%; All Males, 14.7%; All Females, 7.5%.

The middle schools report also analyzed suspension trends in 18 large urban districts and found that rates had risen most rapidly for Black Females in middle school between 2002-2006.

Students with disabilities are typically suspended a twice the rate of their non-disabled peers: Nationally, based on data on K-12 students from districts across the nation, approximately one out of every eight enrolled students with disabilities (13%) were suspended at least once in 2009-2010. Here are the rates broken down by race for students in South Carolina.

Figure 2. The Risk for Suspension for Students with Disabilities in South Carolina

³ These estimates are based on the 2006, U.S. Department of Education's Civil Rights Data Collection. See Daniel J. Losen & Russell J. Skiba, *Suspended Education: Urban Middle Schools in Crisis*, National Report, The Civil Rights Project at UCLA (2010). Available at www.civilrightsproject.ucla.edu.

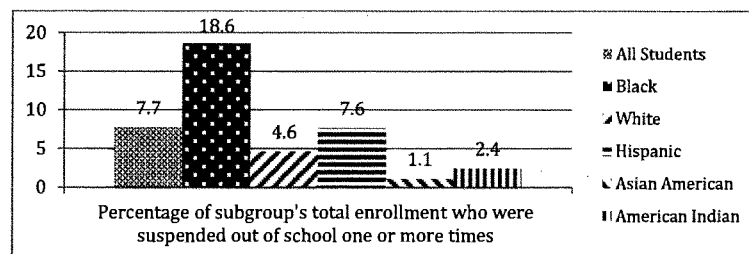


Ohio

Summary of the Use of Out-of-School Suspensions Analysis of Federal Data

Based on the data districts reported to the U.S. Department of Education, across grades K-12,¹ Ohio was estimated to be the 19th highest suspending state in the U.S. in 2009-2010 and the 10th highest suspending state for Black students. The following snapshot breaks down the suspension rates by race and disability status at the state level, with additional details about rates in Ohio for high-suspending districts.

Figure 1. The Risk for Suspension for Students in Ohio



The source of all the raw data used to generate this report is the Civil Rights Data Collection from 2009-2010 as publicly reported by U.S. Department of Education Office for Civil Rights.² This estimated risk for suspension for Ohio is based on an OCR sample representing approximately 71% of all students in the state.

Many districts have significantly higher rates than the state average: For example, the suspension rates for students in Columbus City, OH, are as follows:

¹ OCR collects and publicly reports data on the number of students suspended in 2009-10. The data are from two entirely separate categories, students suspended only one time and students suspended two or more times. Students were only counted in one category. A national report was created by the Center for Civil Rights Remedies of the Civil Rights Project at UCLA containing breakdowns of every state and district in the OCR sample. At each level, national, state and district, the analysis combined the categories to arrive at the unduplicated number students suspended one or more times. Each reporting district's superintendent certified their discipline and enrollment data as accurate. For each state, the sampled district numbers were combined and the total number of students suspended one or more times was divided by each group's total enrollment. The state number is therefore presented as an estimate and the sample size indicated.

² Based in part on prior analysis reported by The Center for Civil Rights Remedies National Report: Opportunities Suspended: The Disparate Impact of Exclusionary School Discipline by Daniel J. Losen and Jonathan Gillespie (2012). For a downloadable spreadsheet that allows for sorting and comparisons of every school district and every state please visit www.civilrightsproject.ucla.edu.

Over-all: 23.3%; Black: 29.2%; White: 15.7%; Hispanic: 11.7%; Asian-American: 7.5%; and American Indian 12.5%.

Some districts in Ohio are not high suspending districts: Despite the fact that Ohio is estimated to be a relatively high suspending state and the alarming statewide average for Black students, and despite the even more disturbing findings that follow, it is important to note that some districts in Ohio did not suspend high numbers of Black students. In fact, in one quarter of the approximately 158 districts that suspended Black students in Ohio, the suspension rate for Black students was less than the state average (7.7%) for all students.

The risk for suspension is much higher for secondary students: The data summarized above represents all students in K-12 suspended *at least* once. We know that out of school suspensions are typically much higher for male students in middle and high schools. In the 2010 report by Losen and Skiba, *Suspended Education, Urban Middle Schools in Crisis*, based on data from the U.S. Department of Education from 2006, the national risk for suspension for middle school students was estimated as follows: ³

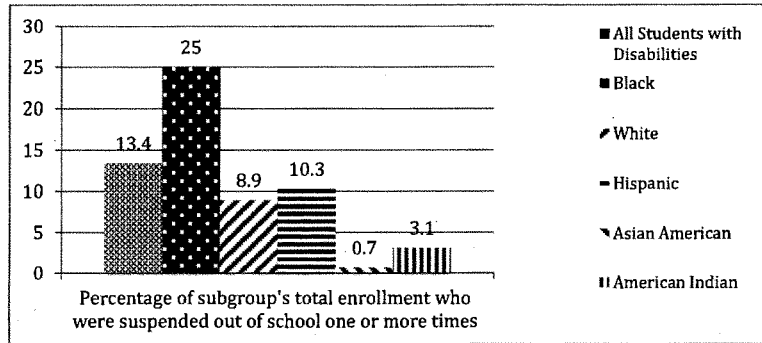
Black Males, 28.3%; Black Females, 18%; Hispanic Males, 16.3%; Hispanic Females, 8.5%; White Males, 10%; White Females, 4%; All Males, 14.7%; All Females, 7.5%.

The middle schools report also analyzed suspension trends in 18 large urban districts and found that rates had risen most rapidly for Black Females in middle school between 2002-2006.

Students with disabilities are typically suspended a twice the rate of their non-disabled peers: Nationally, based on data on K-12 students from districts across the nation, approximately one out of every eight enrolled students with disabilities (13%) were suspended at least once in 2009-2010. Here are the rates broken down by race for students in Ohio

Figure 2. The Risk for Suspension for Students with Disabilities in Ohio

³ This report was based on the 2006, U.S. Department of Education's Civil Rights Data Collection. See Daniel J. Losen & Russell J. Skiba, *Suspended Education: Urban Middle Schools in Crisis*, National Report, The Civil Rights Project at UCLA (2010). Available at www.civilrightsproject.ucla.edu

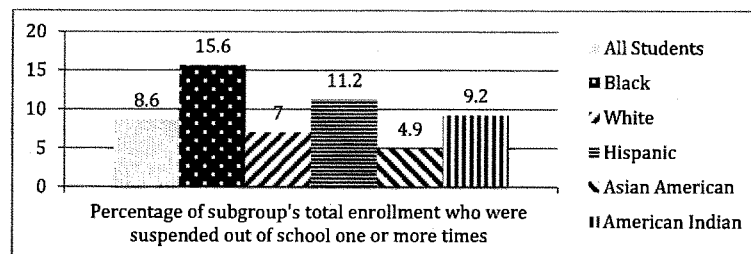


Rhode Island

Summary of the Use of Out-of-School Suspensions Analysis of Federal Data

Based on the data districts reported to the U.S. Department of Education, across grades K-12,¹ Rhode Island was estimated to be the 14th highest suspending state in the U.S. in 2009-2010 and the 25th highest suspending state for Black students. The following snapshot breaks down the suspension rates by race and disability status at the state level, with additional details about rates for Rhode Island districts, including the largest district, Providence.

Figure 1. The Risk for Suspension for Students in Rhode Island



The source of all the raw data used to generate this report is the Civil Rights Data Collection from 2009-2010 as publicly reported by U.S. Department of Education Office for Civil Rights.² This estimated risk for suspension for Rhode Island is based on an OCR sample representing approximately 84% of all students in the state.

Many districts have significantly higher rates than the state average: For example, the suspension rates for students in Providence, RI, are as follows: Overall, 13.7%; Black, 19.7%; White, 11.2%; Hispanic, 12.6%; Asian American, 7.8%; American Indian, 19.4%.

¹ OCR collects and publicly reports data on the number of students suspended in 2009-10. The data are from two entirely separate categories, students suspended only one time and students suspended two or more times. Students were only counted in one category. A national report was created by the Center for Civil Rights Remedies of the Civil Rights Project at UCLA containing breakdowns of every state and district in the OCR sample. At each level, national, state and district, the analysis combined the categories to arrive at the unduplicated number students suspended one or more times. Each reporting district's superintendent certified their discipline and enrollment data as accurate. For each state, the sampled district numbers were combined and the total number of students suspended one or more times for each group was divided by their total enrollment. The state number is therefore presented as an estimate and the sample size indicated.

² Estimates are based on the analysis reported by The Center for Civil Rights Remedies National Report: Opportunities Suspended: The Disparate Impact of Exclusionary School Discipline by Daniel J. Losen and Jonathan Gillespie (2012). For a downloadable spreadsheet that allows for sorting and comparisons of every school district and every state please visit www.civilrightsproject.ucla.edu.

Many districts in Rhode Island are not high-suspending districts: Despite the more disturbing findings that follow, it is important to note that many districts in Rhode Island did not suspend high numbers of students. For example, in four of the 18 districts that suspended Black students in Rhode Island the suspension rate for Black students was less than the state average (8.6%) for all students.

The risk for suspension is much higher for secondary students: The data summarized above represents all students in K-12 suspended at least once. We know that out-of-school suspensions are typically much higher for male students in middle and high schools. In the 2010 report by Losen and Skiba, *Suspended Education, Urban Middle Schools in Crisis*, the national risk for suspension for middle school students, based on the data collected and reported by the U.S. Department of Education for 2006, was estimated as follows:³

Black Males, 28.3%; Black Females, 18%; Hispanic Males, 16.3%; Hispanic Females, 8.5%; White Males, 10%; White Females, 4%; All Males, 14.7%; All Females, 7.5%.

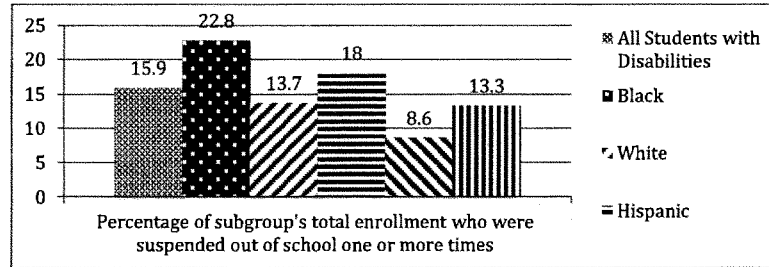
The middle schools report also analyzed suspension trends in 18 large urban districts and found that rates had risen most rapidly for Black Females in middle school between 2002-2006.

Providence was one of the districts studied in the 2006 report. The middle school suspension rates in 2006 for Providence were as follows: Black Males, 32%; Black Females, 25%; Hispanic Males, 25%; Hispanic Females, 18%; White Males, 15%; White Females, 18%.

Students with disabilities are typically suspended at twice the rate of their non-disabled peers: Nationally, based on data on K-12 students from districts across the nation, approximately one out of every eight enrolled students with disabilities (13%) were suspended at least once in 2009-2010. Figure 2 shows the rates broken down by race for students in Rhode Island:

Figure 2. The Risk for Suspension for Students with Disabilities in Rhode Island

³ Daniel J. Losen & Russell J. Skiba, *Suspended Education: Urban Middle Schools in Crisis*, National Report, The Civil Rights Project at UCLA (2010). Available at www.civilrightsproject.ucla.edu

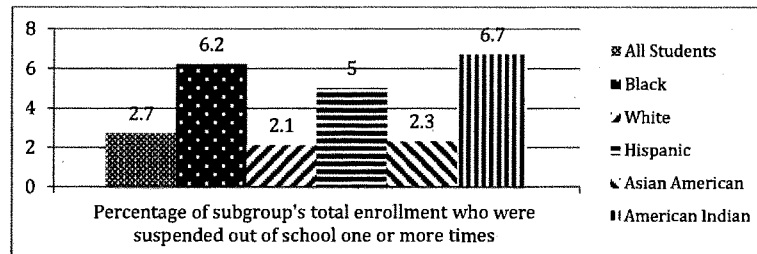


Utah

Summary of the Use of Out-of-School Suspensions Analysis of Federal Data

Based on the data districts reported to the U.S. Department of Education, across grades K-12,¹ Utah was estimated to be the second lowest suspending state in the U.S. in 2009-2010 and the 5th lowest suspending state for Black students. The following snapshot breaks down the suspension rates by race and disability status at the state level, with additional details about rates in Utah for secondary schools and for the largest district, Salt Lake City.

Figure 1. The Risk for Suspension for Students in Utah



The source of all the raw data used to generate this report is the Civil Rights Data Collection from 2009-2010 as publicly reported by U.S. Department of Education Office for Civil Rights.² This estimated risk for suspension for Utah is based on an OCR sample representing approximately 85% of all students in the state.

Some districts have significantly higher rates than the state average: For example, the suspension rates for students in **Odgen**, the highest suspending district in the state, are as follows: Over-all, 15.2%; Black, 20.3%; White, 14.2%; Hispanic, 16.3%; Asian American: 6.5%; American Indian, 11.4%.

¹ OCR collects and publicly reports data on the number of students suspended in 2009-10. The data are from two entirely separate categories, students suspended only one time and students suspended two or more times. Students were only counted in one category. A national report was created by the Center for Civil Rights Remedies of the Civil Rights Project at UCLA containing breakdowns of every state and district in the OCR sample. At each level, national, state and district, the analysis combined the categories to arrive at the unduplicated number students suspended one or more times. Each reporting district's superintendent certified their discipline and enrollment data as accurate. For each state, the sampled district numbers were combined and the total number of students suspended one or more times was divided by each group's total enrollment. The state number is therefore presented as an estimate and the sample size indicated.

² Analysis was reported by The Center for Civil Rights Remedies National Report: Opportunities Suspended: The Disparate Impact of Exclusionary School Discipline by Daniel J. Losen and Jonathan Gillespie (2012). For a downloadable spreadsheet that allows for sorting and comparisons of every school district and every state please visit www.civilrightsproject.ucla.edu.

Most districts in Utah are not high suspending districts: It is important to note that 12 of the 32 districts in Utah suspended 2% or less of the total enrollment and only 2 exceeded the national average for all students. Moreover, in 7 of the 13 districts that suspended Black students in Utah, the suspension rate for Black students was less than the national average (7.4%) for all students.

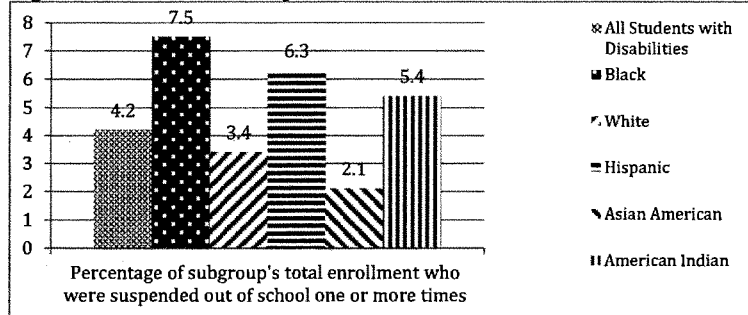
The risk for suspension is much higher for secondary students: The data summarized above represents all students in K-12 suspended *at least* once. We know that out of school suspensions are typically much higher for male students in middle and high schools. In the 2010 report by Losen and Skiba, *Suspended Education: Urban Middle Schools in Crisis*, the national risk for suspension for middle school students, based on the data collected and reported by the U.S. Department of Education for 2006, was estimated as follows:³

Black Males, 28.3%; Black Females, 18%; Hispanic Males, 16.3%; Hispanic Females, 8.5%; White Males, 10%; White Females, 4%; All Males, 14.7%; All Females, 7.5%.

The middle schools report also analyzed suspension trends in 18 large urban districts and found that rates had risen most rapidly for Black Females between 2002-2006.

Students with disabilities are typically suspended a twice the rate of their non-disabled peers: Nationally, based on data on K-12 students from districts across the nation, approximately one out of every eight enrolled students with disabilities (13%) were suspended at least once in 2009-2010. Figure 2 shows the rates broken down by race and disability for students in Utah:

Figure 2. The Risk for Suspension for Students with Disabilities in Utah



³ Daniel J. Losen & Russell J. Skiba, *Suspended Education: Urban Middle Schools in Crisis*, National Report, The Civil Rights Project at UCLA (2010). Available at www.civilrightsproject.ucla.edu.

Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade

Robert Balfanz, Vaughan Byrnes, and Joanna Fox

Everyone Graduates Center, School of Education, Johns Hopkins University

Prepared for the Center for Civil Rights Remedies and the Research-to-Practice Collaborative, National Conference,
Closing the School Discipline Gap, to be held January 10, 2013 in Washington, D.C.

ABSTRACT

Over the past several years, research from several states and large city school districts have identified out-of-school suspensions as one of the primary indicators of high school dropout. The exclusion of students from school for disciplinary reasons is directly related to lower attendance rates, increased course failures, and can set a student on a path of disengagement from school that will keep them from receiving a high school diploma and further affect their chances of enrolling in post-secondary schooling and realizing many life-long career opportunities.

Recent research has also suggested that there are clear and evident demographic disparities in the use of out-of-school suspensions as a disciplinary measure and that certain subgroups of students, particularly those from minority and high poverty backgrounds, are more likely to be suspended, as well as more frequently, for longer durations of time, and for more minor offenses. Given the impact of suspensions on student academic outcomes and the racial disparities in their application, any policies that serve to increase student exclusion from the schooling environment will also serve to further increase the achievement gap that exists between white and non-white students in the US and to institutionalize such inequality.

This study is based upon a longitudinal analysis of data for a cohort of 181,897 Florida students who were first time 9th graders in the 2000-01 school year and follows them through to high school and post-secondary outcomes. Analysis of 9th grade suspension data finds that black students, students who are economically disadvantaged, and special education students are three demographic subgroups that are disproportionately suspended, both in the frequency of suspensions and the number of school days lost. While poverty and ethnicity are themselves highly correlated, poverty alone does not explain the disproportionately high suspension rates amongst black students, raising the possibility that imposition of suspensions are racially biased.

Further analyses show that out-of-school suspensions in the 9th grade year are also significantly and negatively correlated to later high school graduation as well as post-secondary enrolment and persistence. *Students' associated likelihood of dropping out double with their first suspension.* Thus the risk for long-term harm that such disciplinary policies impose for students is a threat not for only for students with multiple suspensions, but also for those students with a single suspension.

Additional analysis though shows that disciplinary incidents are interrelated with other of indicators of student disengagement from school, such as course failures and absenteeism. Policies seeking to address these issues cannot focus on reducing suspensions alone but must also address student attendance and course passing in a comprehensive and systematic manner. For some students, the first event which throws them off track is being suspended, for others attendance and course failure may co-occur or come first, but in most cases within a year of being suspended ninth graders are also struggling with course failure or not attending school regularly or being suspended again and as a result are on the path to dropping out. Some policy alternatives such as early warning indicator systems, improved classroom management training, social emotional learning, and SWPBIS, target reductions in suspensions but are also part of broader efforts to improve student engagement and achievement.

INDIANA UNIVERSITY

CENTER FOR
EVALUATION &
EDUCATION POLICY

CEEP

December 10, 2012

Russell J. Skiba, Ph.D
The Equity Project at Indiana University
1900 E. 10th Street
Bloomington, IN 47406

U.S. Senate Committee on the Judiciary
 Subcommittee on the Constitution, Civil Rights, and Human Rights
 224 Dirksen Senate Office Building
 Washington, D.C. 20510

Re: Hearing on Ending the School-to-Prison Pipeline

Dear Chairman Durbin, Ranking Minority Member Graham, and Members of the Subcommittee on the Constitution, Civil Rights, and Human Rights:

Thank you for the opportunity to submit testimony for the first ever hearing on ending the school- to-prison pipeline. My name is Russell J. Skiba and I am the Director of the Equity Project at Indiana University. The Equity Project conducts and disseminates non-partisan, high-quality research in order to better understand and address issues regarding K-12 educational inequity. For the last 20 years, researchers at the Equity Project have significantly advanced our understanding on a range of issues specific to educational inequity. We are currently conducting and commissioning leading edge research in school discipline, special education and the school-to-prison pipeline. While our research is not advocacy oriented, it has often been used to inform policy discussion through consultation with both the U.S. Departments of Education and Justice, and the national dialogue, highlighted in such sources as the New York Times, USA Today and the Washington Post.

Many respondents have shared their personal stories and experiences concerning the School to Prison Pipeline with the Committee. These stories are by no means idiosyncratic or unique, but rather are validated by extensive and consistent research findings on school suspension and expulsion. Although exclusionary and punitive approaches to discipline are intended to improve school safety and student behavior, a number of negative effects have been documented associated with suspension, expulsion, or increased police presence, including:

- *Negative impact on school climate:* Schools with higher rates of suspension have lower ratings of academic quality, pay less attention to issues of school climate, and have been found to be perceived as *less safe* by students and teachers;
- *Reduced academic achievement and lost educational opportunity:* School engagement and school achievement have been found to be lower in

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schools with high rates of suspension and expulsion, especially for African American students;

- *Increased risk of school dropout:* A recent study by the Council for State Governments found that suspended/expelled students were five times as likely to drop out as compared to students with no disciplinary action;
- *Increased risk for involvement in the juvenile justice system:* Suspended or expelled students have been shown to have an increased likelihood of contact with the juvenile justice system in subsequent years, even after controlling for demographics.

Rigorous study over forty years has also consistently shown that students of color are disproportionately represented in suspension and expulsion. Those disparate rates, which cannot be explained by either poverty or different rates of disruptive behavior, clearly place youth of color at higher risk for a range of negative educational and life outcomes.

We applaud Chairman Durbin, Ranking Minority Member Graham and the other members of the subcommittee for bringing national attention to this issue. Ensuring that all students have an equal opportunity at a quality education that prepares them to be successful, productive, and contributing members of our democracy is critical to the future success of our country. As the subcommittee contemplates efforts to end the school-to-prison pipeline, the Equity Project at Indiana University stands ready to provide the highest quality evidence available that can ensure more of our students are successful.

Sincerely,



Russell J. Skiba, Ph.D.
Director, Equity Project at Indiana University
skiba@indiana.edu
www.indiana.edu/~equity

HEARING BEFORE THE SENATE JUDICIARY SUBCOMMITTEE ON THE
CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

"ENDING THE SCHOOL-TO-PRISON PIPELINE"

WRITTEN STATEMENT SUBMITTED BY
THE NATIONAL AFRICAN AMERICAN DRUG POLICY COALITION, INC.

December 12, 2012

I have the honor on behalf of the National African American Drug Policy Coalition, Inc. ("National Coalition") initially created April 1, 2004 and incorporated as a District of Columbia non-profit corporation on January 12, 2006, and accorded its Internal Revenue Service its Section 501(c)(3) tax-exempt status on August 30, 2006, as its Vice-President of Administration and National Executive Director, to submit this written statement as testimony on **"Ending the School to Prison Pipeline"** to reduce drastically the waste of our human resources resulting from mass incarceration in this Nation.

The National Coalition was developed to bring together to act in unison those National African American organizations dealing with criminal and juvenile justice matters, healthcare issues related to substance abuse and mental health, and those areas seriously impacted by policies in these three (3) areas such as education, access to affordable housing, and workforce development and

employment. At its core, the National Coalition has as its mission the elimination of disparate treatment and unlawful discrimination in the policies and their application in each of these areas, with the objective of advocating and educating the public as to what policies would best achieve these purposes.

Among the initial organizations joining the National Coalition under the leadership of the National Bar Association were the Association of Black Psychologists; National Association of Black Social Workers, Inc.; Howard University and its School of Law; Congressional Black Caucus Foundation, Inc.; National Dental Association; National Black Caucus of State Legislators; Association of Black Sociologists; and National Black Nurses Association, Inc. Under my leadership as the National Executive Director starting August 1, 2004, other National African American organizations in these fields were approached to join the National Coalition, and they did so.

Among them were the National Organization of Black Law Enforcement Executives; National Association of Blacks in Criminal Justice; National Black Alcoholism & Addictions Council, Inc.; Black Administrators in Child Welfare, Inc.; Association of Black Health-System Pharmacists; National Medical Association; National Black Police Association; National Alliance of Black School Educators;

National Institute for Law and Equity; National Conference of Black Political Scientists; Black Psychiatrists of America, Inc.; National Black Prosecutors Association; National Organization of African Americans in Housing; and Thurgood Marshall Action Coalition. At that point, we incorporated as a District of Columbia non-profit corporation. Subsequently two (2) additional organizations joined the National Coalition - the National Historically Black Colleges and Universities Substance Abuse Consortium, Inc. and the National Association of Health Services Executives. In addition, at the present time there are sixteen (16) statewide and local chapters, and we have in existence Planning Committees in twenty (20) other cities and locales preparing to create Chapters to carry out our mission objectives. As a result of our growth and demand for our input and services, in the Fall of 2011 we amended our By-Laws to allow individual persons to join our National Coalition, as individual members. Membership is open to persons of all races and national origins who support our mission and objectives.

From the very beginning one of our major objectives has been to develop and implement a proactive juvenile delinquency education and prevention program which would incorporate principles of self-determination and promoting a strong work ethic and a desire by students to excel in their academic studies. Thus we designed a three part program. First, we would send professional

members of our member organizations and the disciplines they represent on a year round basis as requested into all schools starting at the **Third Grade** to do three things: 1) To give a health lecture on the biological, neurological and medical impact of underage drinking of alcoholic beverages and the use of illegal drugs, stressing the adverse consequences on their growth, health, wellness and intellectual capacity to learn to their maximum ability; 2) To become “**role models**” in telling their own personal stories of overcoming poverty and adverse conditions to become doctors, dentists, social workers, psychologists, lawyers, judges or members of other professions through not engaging in wrongdoing and excelling in their school studies as well as in sports or in music and entertainment; and, 3) To make a commitment to provide tutors to those students who need such help to stay at grade level and to reward those students starting in the **Eighth Grade** who can maintain a solid “B” average with a counselor-mentor in the field of endeavor the student then thinks he or she may want to make his or her life work. Thus, a youth who wants to become a doctor will be assign a doctor as a counselor-mentor to guide that youngster as if he or she were his or her own child. Likewise, a child who wants to become a lawyer would be assigned a lawyer or a judge, a youngster who wants to be an engineer would be assigned an engineer, and so forth for each and every profession where there is a

National organization of such professionals. Finally, for these youth, we promise them apprentice-internships when they get to be juniors and seniors in high school, with the goal of significantly reducing school drop outs. This program applies not only to students who want to go to college, but also to students who want to go into the trades, vocations, or even the arts. **This is our self-imposed self-determination or affirmative action program of Black professionals.**

We are also building collaborative relationships with all of the Black fraternities and sororities, both college and graduate chapters, 100 Black Men, Inc., and Concerned Black Men, Inc. The network we are establishing also includes retired African American military officers and non-commissioned officers. The Assistant National Executive Director of the National Coalition is Retired Major General John R. Hawkins, III, U.S. Army whose last active duty military assignment was as the head of the U. S. Army Human Resources office. We have also developed a collaborative relationship with the National Black Chamber of Commerce to promote mentorship and internship programs for Black youth all over the Nation who want to go into business.

We conclude that such proactive programming will help change the attitude and perspective of our youth on the importance of educational

achievement, and thus reduce truancy, bullying, disorderly and defiant conduct, and other disciplinary problems in schools which result in School Resources Officers calling in regular police officers to arrest misbehaving youngsters, taking them away from their duties of policing the community at large. We advocate that Principals and School Counselors should exercise stronger internal controls and even when school discipline is merited, it be in school suspension rather than pushing the child out of school onto the streets to engage in juvenile delinquent behavior. Zero tolerance should be tempered by an individualized determination as to whether the behavior or conduct in question was intentional by the youth or merely inadvertent or accidental, such as a kitchen knife inadvertently left in a student's handbag or a prescription medication inadvertently brought to school, and thus whether harmful conduct was intended which would be disruptive of the school environment. We plan to elicit affirmative recommendations from our Member Organization, the National Alliance of Black School Educators, on what procedures can be developed to deal with more school discipline cases in-house without referral to the juvenile justice system, thus subjecting these youngsters to the pressures which would lead them deeper into the pipeline to adult crime. We will also explicitly ask them for their recommendations in dealing with the disparate impact of suspensions and expulsions of African American and Hispanic

American youth and how we can deal with the implicit bias and prejudice suggested by recent studies which show such substantial differences in how minority youth have been treated by school administrators and teachers.

When external action is necessary to deal with a child's behavior and where the home is dysfunctional, we suggest an alternative to formal arrest and juvenile proceedings. We suggest the use of a citation making a referral to a diversion program, a non-profit Youth Court alternative program, where the youth is exposed to a process of taking corrective action, not repeating the offending conduct and behavior in the future and an attitude changing process. Of course, if the citation is not honored, an arrest could be judicially authorized for formal juvenile court proceedings.

For example, in the District of Columbia, there is a non-profit corporation, called the "Youth Court of the District of Columbia." A youth is referred and must acknowledge his or her offending conduct, and then a youth jury of peers assess what the penalty should be, i.e. to write an essay about the offending conduct and how the youth will change and not do it in the future, perform a specific community service, and then return to be on a peer jury, or to serve as a defense lawyer. Through this role playing the youth comes to see and appreciate both

sides of his or her conduct or behavior during a 120 day period. Many of these youth become so involved that they continue with Youth Court as a volunteer project for an additional period, their grades improve, they do not offend again, they become leading students in their schools, and some go on to college. For those students who are referred to Youth Court and where the youth needs a tutor, one will be provided through a collaborative relationship with the National African American Drug Policy Coalition, Inc., and where the home is dysfunctional the youth will also be provided with a counselor-mentor as described above who will cater to that youth's aptitude and interest to develop a positive productive individual. It is our intent to develop the District of Columbia model to an extent that it will be considered as a model for other Youth Courts throughout the Nation.

As previously stated our National Coalition is creating chapters throughout the Nation. Their primary mission is to serve as Coordinating Advisory Committees to State and local officials on drug policy, mental health, criminal and juvenile justice and related issues and to develop and implement a Speakers Program to provide professionals to go into the schools as described herein to engage in "fireside chats" with our youth. In addition we urge each chapter to develop liaison relationships with a minimum of three (3) churches with

substantial African American congregations to encourage and expand their youth ministry programs and to provide speakers to those groups and internship opportunities to their youth as well as to encourage their retired and senior members to volunteer to be counselor-mentors and to become involved as volunteers in our youth program.

Our biggest obstacle in implementing the program as outlined above has been obtaining adequate funding to afford the administrative staff necessary to implement the program as we have outlined it here. This program is in its infancy stage. We are broadening our outreach to private foundations as well as to the government to obtain additional revenue to hire 2-3 administrative staff persons full time to carry out these functions. Up to this time these functions have been performed by the volunteer efforts of the National Executive Director and the Assistant National Executive Director, with the part-time assistance of Howard University Center for Drug Abuse Research staff of two persons.

Thus, we urge that instead of cutting government funding for mentoring programs across the Nation, such funding should indeed be increased. In the long run, they will save the government substantial funds in connection with law enforcement activities, court operations, and incarceration costs, and result in

more citizens being productive in their lives, paying taxes to the government and thus increasing its revenue resources and increasing the productivity of the Nation and its well-being.

We welcome this opportunity to submit our views and hope that they will be helpful as this Subcommittee considers proposed solutions for dealing with this most serious problem in our society where we imprison more persons than any other Nation on the face of this Earth and where we are slipping backwards in the quality of education we afford our youth, and the quality of our workforce – both lay and professionals – is deteriorating in comparison with other industrialized countries of this world.

Respectfully submitted,

Arthur L. Burnett, Sr.
National Executive Director



UNITED STATES COMMISSION ON CIVIL RIGHTS

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December 19, 2012

Dear Distinguished Senators:

We write in our individual capacities as three members of the eight-member U.S. Commission on Civil Rights,¹ and not on behalf of the Commission as a whole, to offer a public comment in response to the Senate's recent hearing on "Ending the School to Prison Pipeline."

The Commission recently published a report on the related topic of "School Discipline and Disparate Impact,"² which examines a U.S. Department of Education ("ED") initiative intended to reduce racial disparities in discipline. During a day-long briefing on the topic, the Commission heard sworn testimony from five teachers, seven school administrators, and an ED representative. The Commission also solicited letters from school districts across the country about their responses to the ED initiative and published all replies received in our final report. The report also contains several statements representing the varied views of all eight members of the Commission, which discuss in greater depth both comments made at the briefing and scholarly research into disciplinary disparities. Copies of statements authored by two signatories to this letter (Todd Gaziano and Gail Heriot) that express constitutional, statutory, and policy concerns about the ED initiative are also attached to this letter.

Thank you for your attention. You may send any questions to Commissioner Heriot's special assistant, Alison Schmauch Somin, at aschmauch@usccr.gov or (202-376-7671).

Sincerely,

Gail Heriot
Commissioner

Todd Gaziano
Commissioner

Peter Kirsanow
Commissioner

¹ The U.S. Commission on Civil Rights is an independent, bipartisan agency that makes appraisals of the laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin, or in the administration of justice. 42 U.S.C. § 1975(a).

² United States Commission on Civil Rights (2012). Full text of the report can also be found online at http://www.usccr.gov/pubs/School_Discipline_and_Disparate_Impact.pdf.

Statement and Rebuttal by Commissioner Gail Heriot

On March 8, 2010, Secretary of Education Arne Duncan stood on the Edmund Pettus Bridge in Selma, Alabama. The occasion was the forty-fifth anniversary of the confrontation known as “Bloody Sunday” between peaceful civil rights demonstrators and state and local police. There he delivered an emotional address in which he declared that the previous administration had been guilty of a lack of vigilance in combating discrimination and promised that he would “reinvigorate civil rights enforcement.”

The emotion that Duncan felt was understandable in view of the site of his speech. But Duncan’s words had the ring of a general rallying his troops to fight the last war. His strategy—a frontal attack on what he evidently regards as hidden race discrimination—bears little relation to the problems schools, especially schools that primarily serve minority children, actually face. Instead of promising to cut through the layers of bloated bureaucracy that smother innovative schools and teachers at all levels, he promised to use the Department of Education’s bureaucracy to double down on schools. His Department of Education would be conducting “compliance reviews” and issuing “a series of guidance letters to school districts and postsecondary institutions that will address issues of fairness and equity.”¹ One media report later said that rather than “waiting for cases to come in the door,” Duncan’s Department of Education “plans to use data to go find [civil rights] problems.”²

Disciplinary actions will be a special concern in carrying out Secretary Duncan’s vow to root out subtle discrimination and disparate impact. He told the crowd, “African-American students without disabilities are more than three times as likely to be expelled as their white peers” and “African-American students with disabilities are over twice as likely to be expelled or suspended as their white counterparts.” The Department of Education’s plan, which had been in the works well before his speech, is to keep schools under careful surveillance: “We will review whether districts and schools are disciplining students without regard to skin color. We will collect and monitor data on equity,” he said.

The danger should be obvious: What if an important reason African-American students were being disciplined more often than white or Asian students is that more African-American students were misbehaving? And what if the cost of failing to discipline those students primarily falls on their fellow African-American students who are trying to learn amid classroom disorder? Will unleashing the Department of Education’s Office for Civil Rights and its army of lawyers cause those schools to eliminate only that portion of the discipline gap (if any) that was the result of race discrimination? Or will schools react more heavy-handedly by tolerating more classroom disorder, thus making it more difficult for students who share the classroom with unruly students to learn?

¹ Crossing the Next Bridge: Secretary Arne Duncan’s Remarks on the 45th Anniversary of “Bloody Sunday” at the Edmund Pettus Bridge, Selma, Alabama (March 8, 2010), available at <http://www.ed.gov/news/speeches/crossing-next-bridge-secretary-arne-duncan-s-remarks-45th-anniversary-bloody-sunday-ed>.

²Paul Baskin, “Education Department Promises Push in Civil Rights Enforcement,” *The Chronicle of Higher Education*, March 8, 2010.

There are two sides to the “disparate impact” coin. Secretary Duncan focuses only upon the fact that, as a group, African-American students are suspended and expelled more often than other students.³ By failing to consider the other side of the coin—that African-American students may be disproportionately victimized by disorderly classrooms—his policy could easily end up doing more harm than good to the very group he is attempting to help.⁴

There are many theories as to why some students misbehave in schools and others do not. While both misbehaving and model students come from every walk of life, no one should be

³ In this respect, the controversy over disparate impact in school discipline may have parallels to the controversy over the death penalty. For many years, some opponents of the death penalty argued that it should be abolished because it has a disparate impact on African-American male offenders. According to Department of Justice figures, 34.6% of all offenders executed between 1976 and 2011 were black, 6.87% were Hispanic and 56.6% were white. This constitutes an overrepresentation of blacks, who made up around 12% of the American population during that period. Such an overrepresentation may seem troubling until one learns that Department of Justice figures over that period also record that 52.2% of all homicide offenders are black. Indeed, some studies have found that if there is a problem with the death penalty, it is not that black offenders appear to be discriminated against; it is that black victims appear to be discriminated against. Most homicides are within race. According to Department of Justice statistics, 46.9% % of all homicide victims are black, yet only 14.2% of those executed for homicide killed black victims. Some empirical studies have attempted to explain this as the result of a lack of value placed upon black lives by prosecutors. See Theodore Eisenberg, *Death Sentence Rates and County Demographics: An Empirical Study*, 90 Cornell L. Rev. 347 (2004)(citing studies suggesting that it is black victims who are discriminated against and arguing instead that such murders may simply be more likely to take place in places dominated by voters who oppose the death penalty). Those who advocate more lenient school discipline (or just different methods of school discipline) may or may not have a point, just as those who oppose the death penalty may or may not have better arguments regarding the death penalty controversy. But insofar as they premise their argument on the supposed disparate impact of the policies they oppose, they must recognize that there is another side to the coin. Efforts to reduce the number of African-American offenders who are subject to the death penalty are likely to exacerbate the disparate impact on African-American victims, which in the view of many is just as bad if not more so. Ultimately, it is to be hoped that policy over the death penalty and over school discipline matters can be decided over considerations that transcend race, gender or ethnicity.

⁴ I agree with Commissioner Gaziano that Title VI simply does not permit the Department of Education to proceed against schools on a disparate impact theory and that the Department’s regulation nonetheless adopting that theory, 34 C.F.R. sec. 100.3, is therefore unauthorized by law. It requires actual discrimination. See Section 601 (Title VI) of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000d (No person shall “on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance”). See also *Alexander v. Sandoval*, 532 U.S. 275 (2001). I also agree with Commissioner Gaziano that the problem with disparate impact analysis is not simply that it goes beyond what Congress authorized in Title VI; it actually contradicts Title VI. If one group receives more school discipline than another because (for whatever reason) its members violated more school rules than the other, race-conscious efforts to alter the “disparate impact” are usually themselves discriminatory.

Commissioner Yaki makes it clear that he would like to see disparate impact analysis used more widely. He calls the “revival of disparate impact analysis in [Title VI] enforcement” a “particularly commendable” development—although at least in the draft of his statement that was made available to me, he did not attempt to explain why the law permits the Department of Education to pursue such a legal strategy. Among the racial and ethnic disparities that he believes are in need of remedying are “a wide achievement gap, disparate dropout rates, and skewed placement in special education or gifted and talented programs.” Commissioner Yaki is, of course, right to be concerned with these matters, which he concedes are not necessarily the result of “conscious discriminatory intent.” I would add that discrimination, either conscious or unconscious, has very little to do with these problems or their solutions. The sooner that is recognized, the sooner the problems can be solved.

surprised to learn that students from households below the poverty line tend to present more discipline challenges than others. Since according to the U.S. Census 27.4% of blacks live below the poverty line, while 26.6% of Hispanics, 9.9% of whites and 12.1% of Asians do, one should not be astonished to find that racial groups are not disciplined at the same rates.⁵ Similarly, though probably not unrelatedly, 72% of African American and 53% of Hispanic children are now being born outside of wedlock, as opposed to 29% of white and 17% of Asian/Pacific Islander children.⁶ Given that much research has found that children born outside of wedlock or living in single-parent households are more likely to engage in anti-social behavior than other children, it would be naïve to expect rates of discipline to be equal across races.⁷ One

⁵ To the contrary, if living below the poverty line were the sole determinant of who misbehaves inside or outside of the classroom (which it is surely not), one would expect African American students to be disciplined at roughly 2 to 3 times the rate for white students—which is exactly what Secretary Duncan's figures showed. Non-Hispanic white and Asian households also have higher median incomes than black and Hispanic households. According to the Census Bureau, in 2010 non-Hispanic white households had a median income of \$54,620 and Asian households \$64,308; black households had a median income of \$32,068 and Hispanic households \$37,759. See U.S. Census Bureau, *Income, Poverty, and Health Insurance Coverage 2010*. See also Ellen Brantlinger, *Social Class Distinctions in Adolescents' Reports of Problems and Punishments in School*, 17 *Behavioral Disorders* 36 (1991).

⁶ Child Trends Data Bank, "Births to Unmarried Women," available at <http://www.childtrendsdatabank.org/?q=node/196>.

⁷ See, e.g., William S. Comanor & Llad Phillips, *The Impact of Income and Family Structure on Delinquency*, J. App. Econ. 209 (2002); Susan C. Duncan, Terry E. Duncan, Lisa A. Strycker & Nigel R. Chaumeton, *Relations Between Youth Antisocial and Prosocial Activities*, 25 J. Behavioral Med. 425 (2002); Lela Renee McKnight & Ann Booker Loper, *The Effects of Risk and Resilience Factors in the Prediction of Delinquency in Adolescent Girls*, 23 *School Psychology Int'l* 186 (2002); Amy L. Anderson, *Individual and Contextual Influence on Delinquency: The Role of the Single Parent Family*, 30 J. Crim. Justice 575 (2002); Stephen Demuth & Susan L. Brown, *Family Structure, Family Processes and Adolescent Delinquency: The Significance of Parental Absence Versus Parental Gender*, 41 J. Res. Crime & Delinquency 58 (2004); Todd Michael Franke, *Adolescent Violent Behavior: An Analysis Across and within Racial/Ethnic Groups*, 8 J. Multicultural Social Work 47 (2000); Marcia J. Carlson & Mary E. Corcoran, *Family Structure and Children's Behavioral and Cognitive Outcomes*, 63 J. Marriage & Family 779 (2001). But see Mallie J. Paschall, et al., *Effects of Parenting, Father Absence, and Affiliation with Delinquent Peers on Delinquent Behavior Among African-American Male Adolescents*, 38 *Adolescence* 15 (2003) (finding no delinquency difference in a non-random sample of 260 African-American, adolescent males between those who reported living with a father or father figure and those who did not).

One of the witnesses at our briefing, teacher Patrick Walsh, made it clear that it was his opinion that the racial disparities in discipline were largely the result of poverty and family structure and not related to race per se. He stated: "It's not the African American girls on their way to UVa or William & Mary [who disproportionately are disciplinary problems at school]; it's not the black girls from Ghana or Sierra Leone or Ethiopia who come here to live the American dream, but it's the black girls who are products of what Colbert King in a great article that everybody should read that was in the Post last Saturday called an inter-generational cycle of dysfunction. Girls who have no fathers in their homes, who often are born to teen mothers. They're a small group, but the fact is they cause enormous problems in school ... and it's the same with the boys." Transcript at 26-27. Walsh openly acknowledged that this cycle of dysfunction likely had roots in a history of racial discrimination. He was not, however, optimistic that the disparity would disappear before "the problems of poverty and teen pregnancy and lack of fathers can be reduced or solved." Id. See Colbert I. King, *Celebrating Black History as the Black Family Disintegrates*, Washington Post (February 4, 2011) (the article to which Walsh was referring).

Efforts to suggest that the differences in the rates of discrimination between blacks and whites are anomalous (in the sense that they cannot be accounted for in large part by factors such as socio-economic class or fatherless homes) tend to fall short of the mark. Consider, for example, *Breaking Schools' Rules: A Statewide*

cannot infer race discrimination from the differing discipline rates. Indeed, given that schools with African-American principals and mainly African-American teachers are just as likely as schools with white principals and mainly white teachers to have a large “discipline gap,”⁸ it is unlikely that anything other than differing rates of misbehavior contribute significantly to the differing rates of discipline. Those who claim to have demonstrated that discrimination and racism are at work are simply scandalmongering.⁹

Study on How Schools Discipline Relates to Students' Success and Juvenile Justice Involvement—a report issued by the Justice Center of the Council of State Governments and the Public Policy Research Institute of Texas A&M University. That study purports to find that even after 83 different variables (including a measure of economic disadvantage) are taken into account, African American students are still 31.1% more likely than white students to have been the subject of discretionary disciplinary action in the 9th grade. The implication, at least to some readers, was that perhaps some teacher reports of misbehavior by African American students were false or misleading. But the presence of both parents in the student's home was not taken into account. And the method used to control for economic disadvantage was rudimentary. Rather than control for household income, parents' educational attainment or other markers of socio-economic status, the study controlled only for whether the student is eligible for free or reduced-price lunch or other public assistance. A binary classification system of this type does not convey the whole picture. It treats a student whose parents earn a penny more than the eligibility cut-off the same as a student whose parents are both wealthy, well-educated professionals. Similarly, it treats a student whose parents earn the maximum allowable for reduced-price lunch benefit (\$40,793 for a family of four in 2010), because they are both attending graduate school, the same as a homeless child being shuffled from one shelter to another. It is not clear from the Texas A&M study that students of different races with truly similarly-situated family and socio-economic status will have differing rate of school discipline problems. Moreover, it is certainly not clear that the African-American students (or the students of other races) looked at by the study had not committed the infractions for which they were disciplined or that they did not deserve to be disciplined in the particular way the school authorities chose to discipline them.

⁸ Tony Fabelo, Michael D. Thompson, Martha Plotkin, Dottie Carmichael, Miner P. Marchbanks III and Eric A. Booth, *Breaking Schools' Rules: A Statewide Study on How Schools Discipline Relates to Students' Success and Juvenile Justice Involvement* (2011)(“Texas A&M study”). See also Catherine P. Bradshaw, Mary M. Mitchell, Lindsey M. O'Brennan, Philip J. Leaf, *Multilevel Exploration of Factors Contributing to the Overrepresentation of Black Students in Office Disciplinary Referrals*, 102 J. Educ. Psych. 508 (2010).

⁹ See, e.g., Russell Skiba, Robert H. Horner, Choong-Geun Chung, M. Karega Rausch, Seth L. May & Tary Tobin, *Race Is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline*, 40 School Psych. Rev. 85 (2011)(“Skiba-Horner”). Skiba-Horner purports to find that African-American students tend to be punished more harshly for the same general categories of behavior. But the actual data behind the study do not support such a finding. The authors readily admit that, in making their comparisons, their data failed to take into consideration whether the student was in any way a repeat offender—a variable that they further admit “might well be expected to have a significant effect on administrative decisions regarding disciplinary consequences. Skiba-Horner at 103. But this is no hypothetical possibility. Elsewhere in the Skiba-Horner analysis they find that “students from African-American families are 2.19 (elementary) to 3.78 (middle) times as likely to be referred for problem behavior as their White peers.” Id. at 85. In other words, their own data point strongly in the direction that African-American students are in the aggregate much more likely to be repeat visitors to the principal's office. This is a study at war with itself.

Skiba-Horner attempts and fails to draw support for its conclusion by citing a number of earlier studies. Consider, for example, “Student Suspension: A Critical Reappraisal,” which Skiba-Horner describes as having found “no significant difference in [disciplinable] behavior between African-American and white students.” See Shi-Chang Wu, William Pink, Robert Crain & Oliver Moles, *Student Suspension: A Critical Reappraisal*, 14 Urb. Rev. 245 (1982). In that article, the authors asked both black and white students eight questions designed to determine whether their propensity for anti-social behavior such as “Would you cheat on a test (if you could get away with it)?” and do you agree or disagree or are you undecided about whether if “you want to get ahead, you can't always

be honest?" They found that among students with similar answers, black students tend to get suspended more than white students. This, of course, is not the same thing as finding "no significant differences in behavior between African American and white students." First, there was no finding that African American and white students gave similar answers to the questions; the study did not make such a comparison and instead simply compared African American students to white students *who gave similar answers*. Second, even among students who gave similar answers, there is no reason to believe they engaged in the same level of bad behavior. If, for example, the average white student with a high number of anti-social answers had greater reason to believe he would be punished by his mother and father if he engaged in bad behavior at school and got caught than an equivalent African American student, the anti-social white student could be expected to behave better. (Indeed, one of the main problems with the Department of Education's policy is that it deprives minority students of the opportunity to develop the discipline they need to succeed—something that white, middle-class students will often adequately learn at home.) In short, Skiba-Horner was off-base for citing this article as evidence that African-American students engage in misbehavior at the same rates as white students.

An earlier effort by the lead author in Skiba-Horner was similarly flawed. Russell J. Skiba, Robert S. Michael, Abra Carroll Nardo & Reece L. Peterson, *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 34 Urb. Rev. 317 (2002) ("Skiba-Michael"). It purports to provide evidence that part of the reason that African-American students in the middle schools in the school district under study get referred for discipline a little over twice as often as white students is race discrimination on the part of teachers. It does so by demonstrating that *among students who are referred for discipline*, African-American students are proportionately more likely to be referred for "Disrespect," "Excessive Noise," "Threat," and "Loitering," while white students are proportionately more likely to be referred for "Smoking," "Left without Permission," "Vandalism," and "Obscene Language." Apparently, there were no statistically significant differences in the proportions on matters of "Fighting," "Endangering," "Conduct Interference," "Throw/Propel Objects," "Gambling," "Sexual Acts," "Indecent Exposure," "Minor Offenses," "Spit," "Truancy," and a few unspecified reasons for discipline referral. Skiba-Michael at 332-333, Table 5.

Note that this is emphatically not the same thing as a finding that white students actually commit or are referred for committing "Smoking," "Left without Permission," "Vandalism," or "Obscene Language" more often than African-American students. Given that African-American students are referred for discipline at rates more than twice that of white students, it may well be (indeed it may be likely) that the rate of African-American referrals for these behaviors is higher than the rate of white referrals across the board. Skiba-Michael studiously avoids presenting data on that point and instead argues that because a somewhat higher percentage of the total African-American referrals are for conduct that is subjective in nature (compared to the percentage of total white referrals for that kind of conduct), teachers are likely being harsh on African-American students on account of their race.

Even if this were the most plausible explanation for the different proportions, it is unclear that it would explain more than a very small proportion of the overall differences in rates of referral. More important, however, it is not the most plausible explanation for the higher proportion of referrals for subjective misbehavior among African-American students. Given that the overall rates of referrals for misbehavior are more than twice as high for African-American students as for white students, the number of African-American students who are repeatedly referred for misbehavior is undoubtedly much higher. It is perfectly sensible for teachers to be quicker to refer students for "subjective misbehavior" if the student already has a track record of misbehavior. If the best behaved student in the class says something that could plausibly be interpreted either as a threat or as a lame joke, teachers may be inclined to give him the benefit of the doubt; if a student who attacked another student last week says the same thing, it is more than reasonable to interpret his behavior less favorably.

I strongly suspect one would find similar results if one looked at the arrest and prosecution records of adult parolees. Those who have never been arrested or convicted of a crime normally get the benefit of the doubt when it comes to misconduct that requires the police officers' subjective judgment; parolees are less likely to. Consequently, the proportion of parolees who get prosecuted for offenses that might be viewed as subjectively defined would likely be higher than the proportion of first-time offenders who get prosecuted for such offenses. But that would be true regardless of the offender's race. Skiba-Michael has uncovered no evidence that one would not expect to find under

I do not purport to know the best way to maintain discipline in the nation's classrooms or to cause students to adopt the self-discipline they will need to live happy and useful adult lives.¹⁰ I strongly doubt that there is a "one size fits all" best way. That is why the Constitution does not confer upon the federal government the authority to set school discipline policy, and Congress does not even purport to confer such authority on the Department of Education. These are matters best left to individual schools and local school districts. As a nation, we are better off having a variety of approaches to school discipline in order to foster experimentation and adaptation to local needs. For the same reason, education policy in general is best left to individual schools and local school districts.¹¹

It is not, therefore, my intention to take sides in the general debate over whether suspension and expulsion rates are too high or whether more effective alternatives to current disciplinary policies can be found.¹² It may well be true, for example, as critics of current

well-functioning school discipline policy where it happens to be the case that African-American students misbehave at higher rates than white students. The authors' conclusions to the contrary are unwarranted.

¹⁰ A sometimes spirited debate over general school discipline policy has been going on for over a century. On the one hand, there is the Progressive view mostly closely associated with John Dewey who argued that strong disciplinary methods only served "to cow the spirit, to subdue inclination" and to foster "indifference and aversion" to schools. John Dewey, *On Democracy and Education: An Introduction to the Philosophy of Education* 129 (1916). On the other, there are conservatives who argue that Progressive methods have been a disservice to students, especially those born into family environments that fail to instill self-discipline into each new generation. See, e.g., Jackson Toby, *The Schools in Crime* (James Q. Wilson and Joan Petersilia, eds. 1995). See also Gerald Grant, *The World We Created at Hamilton High* (1988). It is unnecessary for me to weigh in on that debate in order to make the points that (1) classrooms must be reasonably orderly in order for students to learn; (2) it is not the federal government's responsibility to decide what sort of discipline policy will best promote that orderliness or even what level of orderliness is to be sought; and (3) issues of race should not drive the debate.

¹¹ Indeed, one can go somewhat further: Even if one size could potentially fit all, it would be hard to know what that size is. The success of education policy, including discipline policy, is something that is hard to measure. In the short run, it is very difficult to tell what is working and what is not, and sometimes even in the long run, separating good practices from bad can be tough. As a consequence, education is prone to fads and fashions, not all of which have turned out to be in the best interests of students. A good example is the New Math. See Morris Kline, *Why Johnny Can't Add: The Failure of the New Math* (1973). Similarly, a debate raged for some time between advocates of the phonetic approach to literacy and those who favor the "sight-word" or "whole language" approach. It is doubtful that the last word has been written on this topic. Let us hope that the nation's children will be able to read it when it comes. See Rudolph Flesch, *Why Johnny Can't Read—And What You Can Do About It* (1955); Marilyn Jager Adams, *Learning to Read: Thinking and Learning About Print* (1990). In the end, the best defense against the risk created by faddishness is a decentralized system of decision-making about education. Schools that march in lockstep have been known collectively to march off a cliff.

¹² One issue I am willing to take a stand on is the gross misuse of statistics. In their draft statement provided to me, Commissioners Castro, Achtenberg and Yaki wrote, "One thing is painfully clear about the disparate state of school discipline imposed on students of color: it creates a highway from the schoolhouse to the jailhouse." In their view, a student who receives "disproportionate discipline" is "more likely to drop out of school." Draft Statement of Chairman Martin R. Castro and Commissioners Roberta Achtenberg and Michael Yaki at 7. The theory that African Americans are dropping out or turning to crime *because* they have been disciplined by schools is a fashionable one these days. Commissioners Castro, Achtenberg and Yaki appear to be committed to it. See id. at 6 ("Studies have shown that students suspended in 6th grade are far more likely to be suspended again and research indicates that suspensions and expulsions are, in turn, correlated to an increased risk of dropping out. A research study has also

practices argue, that because suspensions take misbehaving students out of the classroom, they have the effect of putting those students further behind their peers.¹³ This is part of the price that has been paid for eliminating corporal punishment in most states and in severely limiting the use of “staying after school” as a method of dealing with student misbehavior.¹⁴ Whatever the other virtues and/or vices of these approaches to instilling discipline in children, they did not have the effect of removing them from instruction for significant periods of time.¹⁵

shown that students who are suspended three or more times by the end of their sophomore year of high school are five times more likely to drop out or graduate later than students who had never been suspended”(citations omitted). But their theory runs headlong into Occam’s Razor. A far simpler theory is that students who tend to misbehave when they are younger also tend to misbehave when they are older. The only thing that is “painfully clear” is that the correlation Commissioners Castro, Achtenberg and Yaki cite does not prove causation.

¹³ Commissioner Yaki also complains that too many students are being arrested for offenses that are best dealt with outside the criminal process. Draft Statement of Commissioner Yaki at 1. He may be well be right. See, e.g., Kathyne Solove, Student Arrested for Burping During Class, ABC News (December 2, 2011). But a large part of the reason that too many trivial incidents are being treated as criminal matters is that school districts are hiring police officers (known as school resource officers (“SROs”)) to patrol school hallways rather than relying on traditional school administrators to keep order. Problems are inevitably defined by the tools we use to deal with them. If police officers are hired to deal with school discipline issues, the issues will be viewed as criminal. In turn, the reason so many school districts hire police officers to keep order is the COPS in Schools program, which is funded through the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322 (1994). COPS in Schools provides up to \$125,000 per officer per year for three years to schools willing to hire such officers.

This is not a race problem. It won’t be cured by the “revival of disparate impact analysis” that Commissioner Yaki lauds. Draft Statement of Commissioner Yaki at 1. The way to stop the problem is for Congress to terminate the COPS in Schools program and for school districts to return to relying on more traditional school administrators focusing on discipline. Of course, that may not be as easy as it sounds. Once a program and the jobs that go with it are in place, it is devilishly difficult to get rid of them. That is why government should think twice and then twice again before creating a program. I note that the Violent Crime Control and Law Enforcement Act of 1994 was the brainchild of now-Vice President Joseph Biden and was a thoroughly bipartisan effort from start to finish. These are the kinds of programs that can cause the greatest problems. Nobody on either end of the political spectrum thinks them through until it is too late. If it becomes clear that they are not working well, the solutions offered (e.g. by Commissioner Yaki) consist of yet more federal intervention. At some point, it would be helpful for federal authorities to stop thinking of themselves as the solution to every local problem and thus to stop the cycle.

¹⁴ These are not the only ways in which the art of maintaining order in the classroom and of helping students to internalize self-discipline has had to change with the times. At one point, teachers were encouraged to have one-on-one relationships with their students. These days, teachers are discouraged from being in the same room alone with a student on account of concerns over sexual harassment and sexual harassment laws.

¹⁵ Many schools apparently take the position that without parental consent they cannot keep a student after school. It is not clear to me why the state has the authority to compel a student to attend school during regular school hours, but has no authority to compel a misbehaving student to spend an hour or two after school unless the school has cleared this with the student’s parents. Of course, that authority should only be exercised in a reasonable manner. Working out a model procedure that would permit this seems to me like a more useful project than Secretary Duncan’s effort to force the problem into a “race discrimination” paradigm. This is a surmountable problem. Student who are sent home are more likely to fall further behind in school and to get into trouble than students who are kept after school. That is true regardless of the race of the students who are suspended or expelled.

Rather than try to resolve all questions of school discipline policy,¹⁶ I will stick to two points that should be obvious, but which seem to have gotten lost in this debate.

First, in general, disorderly students mean disorderly classrooms. And disorderly classrooms make learning less likely to occur—something that both teachers and students recognize.¹⁷ The problem may be significant in many places, but it is particularly acute in inner-city schools and other low-income areas.¹⁸ An article in the *San Francisco Chronicle*, entitled “Students Offer Educators Easy Fixes for Combating Failure,” had this to say on the topic:

¹⁶ Commissioners Castro, Achtenberg and Yaki argue that zero-tolerance policies have contributed to the high number of suspensions and expulsions of minority students and that these policies should be reined in. By removing discretion from teachers, principals and other school authorities, such policies are designed to prevent discrimination, not promote it. Zero-tolerance policies can therefore sometimes be good policies. But no one can accuse me of being a fan of over-the-top zero-tolerance policies that are practiced in schools today. It is important, however, not to forget that many schools enacted zero tolerance policies at least in part due to federal pressure. See the Gun Free School Zones Act of 1996 (P.L. 104-208.)

When the Department of Education issued its policy declaring that school districts that don’t control sexual harassment would face stiff consequences, school districts understandably adopted policies designed to remove discretion from teachers and principals. See 6-Year-Old Boy Accused of Sexual Harassment, WSPA-7-On-Your-Side (April 4, 2008); Yvonne Bynoe, Is that 4-Year-Old Really a Sex Offender?, *The Washington Post* (Oct. 21, 2007); Scott Michels, Boys Face Sex Trial for Slapping Girls’ Posteriors, ABC News (July 24, 2007); Gitika Ahuja, First-Grader Suspended for Sexual Harassment: Boy’s Mother Says He’s Too Young to Even Understand the Accusation, ABC News (February 9, 2006). These incidents were not isolated. According to the Maryland Department of Education, 166 elementary school students were suspended in the 2007-2008 school year for sexual harassment, including three pre-schoolers, 16 kindergarteners and 22 first graders. In Virginia, 255 elementary students were suspended for offensive sexual touching in that same year. Juju Chang, Alisha Davis, Cole Kazdin and Olivia Sterns, First-Grader Labeled a Sexual Harasser: Has Zero-Tolerance for Sexual Harassment in Schools Gone Too Far?, ABC News (Feb. 19, 2009). And if over forty Maryland pre-schoolers, kindergarteners and first-graders have been suspended for sexual harassment, can you imagine how many middle and high school students have been suspended for antics, real or imagined, that they never should have been suspended for? Schools cannot afford to be found out of compliance by the Department of Education or liable to a private litigant (who might use the failure to discipline any sexually harassing student as evidence of indifference). I fully expect the Department of Education’s new policy on bullying will result in similar zero-tolerance rules. Things are thus likely to get worse rather than better. That, of course, brings me back to Commissioners Castro, Achtenberg and Yaki. They have vigorously supported the Department of Education’s new bullying policy. See U.S. Commission on Civil Rights, Peer-to-Peer Violence and Bullying: Examining the Federal Response 90, 100, 214 (2011). Their enthusiasm for the Department of Education’s sexual harassment policy appears to be no less vigorous. See *id.* But their support for these policies cannot be easily squared with their concern over zero-tolerance rules. The latter is the result of those policies.

¹⁷ All of the teachers who testified before the Commission were in substantial agreement on this point. See, e.g., Statement of Louise Seng at 36; Transcript at 26 (Patrick Walsh testifying); Transcript at 115 (Principal Suzanne Mackey stating that schools slide into chaos without enough discipline).

¹⁸ Is it possible to overstate the degree to which classroom disorder is affecting middle- and high-income areas? Of course it is, and some people have. One careful scholar—New York University professor of sociology and education Richard Arum—reports that there is “little evidence supporting the contention that the level of disorder and violence in public schools has [generally] reached pandemic proportions.” But, he writes, it is “indeed the case in certain urban public schools,” various factors have combined “to create school environments that are particularly chaotic, if not themselves crime producing.” Unless the problem is solved, students in these schools will continue to be shortchanged in their education. See Richard Arum, *Judging School Discipline: The Crisis of Moral Authority* 2

Thousands of learned men and women gathered in Sacramento this week to chew over the vexing question of why black and Latino students often do poorly in school, someone had a fresh idea: Ask the students.

So they did. Seven struggling students - black, brown and white - spent an hour Wednesday at the Sacramento Convention Center telling professional educators what works and doesn't work in their schools. It was the only one of 125 panels at the two-day Achievement Gap Summit convened by state schools chief Jack O'Connell where students had their say.

"If the room is quiet, I can work better - but it's not gonna happen," said Nyrysha Belion, a 16-year-old junior at Mather Youth Academy in Sacramento County, a school for students referred for problems ranging from truancy to probation.

She was answering a question posed by a moderator: "What works best for you at school to help you succeed?"

Simple, elusive quiet.

Nyrysha said if she wants to hear her teacher, she has to move away from the other students. "Half our teachers don't like to talk because no one listens."

The others agreed. "That's what made me mess up in my old school - all the distractions," said Imani Urquhart, 17, a senior who now attends Pacific High continuation school in the North Highlands suburb of Sacramento.¹⁹

(2003). This underlines my earlier point that Secretary Duncan's efforts may disproportionately harm the very students he is attempting to help.

¹⁹ Natasha Asimov, "Students offer educators easy fixes for combating failure," *The San Francisco Chronicle*, November 15, 2007. These students' stories match up well with complaints that students gave in response to a 1998 study, entitled "Strategies to Keep Schools Safe." "Some of my classes are really rowdy," a student from Seattle told the researchers, "and it's hard to concentrate." "They just are loud and disrupting the whole class," a student from Chicago similarly said about some of her classmates. "The teacher is not able to teach. This is the real ignorant people." Sasha Volokh and Lisa Snell, "Strategies to Keep Schools Safe," Policy Study No. 234, January 1998, available at <http://reason.org/files/60b57eac352e529771bfa27d7d736d3f.pdf>.

This point was also brought home in an unusual manner at the Commission's briefing during a discussion about the effectiveness of detentions as a punishment. "The irony is that they [unruly students] like the detentions," teacher Allen Zollman testified. "The detentions are a haven of tranquility apart from the mayhem that's going on in the school.... I think they're behaving just badly enough to earn the detention." (Emphasis supplied.) Teacher Louise Seng also said she agreed with Zollman's remarks. Transcript at 52. Seng retired in 2006 from teaching at Harrison-Morton Middle School in Allentown, Pennsylvania, a majority-minority school where many students came from

Second, viewing the issue through the prism of race and poring over school discipline data in search of disparate impact is likely to create more heat than light. School districts don't need one discipline policy for African-American and another for white students and still others for Hispanic and for Asian-American students. They need one fair and effective policy that applies to everyone, letting the chips fall where they may. If schools should be modifying their discipline policies, it should not be because there are more students of one race than of another that are misbehaving in school. It should be because they have made a sincere judgment—free from federal coercion—that it is in the best interests of their students that they do so.²⁰ Given that federal law confers no authority upon the Department of Education's to formulate general discipline policy, it should play no role in the formulation of that policy.

Real racial discrimination—or “disparate treatment,” the rather bloodless term now in vogue—is another matter. There is no question that if a school were to administer discipline one way for misbehaving white students and another way for similarly misbehaving African-American students on account of their race, that would be a violation of Title VI, which the

poor backgrounds. Seng testified at our briefing that she was not then aware of efforts at Harrison-Morton or other majority-minority Allentown schools to lower disparities in discipline, but that she thought that any such efforts would have a negative effect on classrooms. An article in the Allentown Morning Call published eight months after Seng gave her testimony —Steve Esack, “Teachers Say Discipline Code Giving Students Upper Hand,” *The Morning Call*, October 7, 2011— indicates that Seng's concerns may have been warranted. According to the article, Allentown recently adopted a new code of conduct that makes it more difficult for teachers to suspend students. A month after the new policy went into effect, teachers told *The Morning Call* that they believed that under the new policy, “students have the upper hand.” See also Steve Esack, Parent Says Behavior at Allen High Out of Control, *The Morning Call*, October 13, 2011 (“Bathrooms are unsafe and trashed, detentions get ignored, study halls are a zoo, and school was dismissed 10 minutes early, without parental notification, last Wednesday to quell a potential gang fight with bricks and bats, [parent Karen Santone] said.”).

Two months later, the Morning Call reported that in the view of teachers and city residents “a culture of defiance” had set in at area schools.” “Some have worried,” it wrote, “that the district's staff cuts and a new discipline code, which seeks to reduce school suspensions so students don't miss class have contributed to the outpouring of incidents both on and off school grounds.” Devon Lash & Steve Esack, Allentown School District Pays for Extra Police Coverage, *The Morning Call*, December 21, 2011.

These articles do not mention racial disparities as impetus for this new policy. Nor do they mention the Department of Education's new initiative. But they do mention that the new approach in Allentown is rooted in Positive Behavioral Interventions and Supports, a popular decision-making framework that many of the school districts at our briefing said that they are using to try to curb disciplinary disparities. It would not be surprising if Allentown adopted the PBIS program at least in part as a response to the Department of Education's initiative.

²⁰ It is interesting to note that last month the Department of Education released a pair of guidances—one for colleges and universities and another for elementary and secondary schools—instructing them on when and how they can give preferential treatment to minority students in admission in order to produce a racially diverse class. In those documents, the Department emphasized that the Supreme Court was willing to defer to their academic judgment that diversity is a compelling purpose. It seems odd that the Supreme Court would defer to school in a case involving actual intent to discriminate on the basis of race, while the Department of Education is unwilling to defer to the same school's academic judgment on what disciplinary policies are best. It is the former that involves actual race discrimination and hence raises serious equal protection issues, while the latter involves only racial disparate impact with no suggestion, much less proof, that any student is being treated differently on account of race.

Department of Education has some responsibility for enforcing.²¹ Similarly, if a school were to administer discipline to misbehaving students whose victims were Hispanic differently from the way it would have administered it if the victims had been Asian, that would be a violation of the law. Of course, ordinarily school administrators and school district administrators know to take action when discrimination of that kind occurs without any prodding from the Department of Education. The country has changed a lot since Bloody Sunday. But there have been serious lapses even in recent years.²² When administrators fail to act, school boards have a responsibility to act, and when they fail, state education or civil rights authorities should do so. When these institutions default, the federal government has a responsibility to act.

But Secretary Duncan's policy has little to do with allegations of actual discrimination. His program is to sift through data looking for evidence of disparate impact. If he does so, he is almost certain to find it. Indeed, if he were to sift through data looking for disparate impact of discipline policies on boys vs. girls or Japanese Americans vs. Vietnamese Americans, he is almost certain to find that too. Secretary Duncan does not explain why he regards higher rates of discipline referrals for African-American over white students to be a problem and not higher rates of boys over girls or whites over Asians. Middle-school students are more likely to be disciplined for bullying (or victimized by bullying) than are elementary or high school students. But if my observations as a middle-school student from 1969 to 1971 are any guide, it is because more middle-school students are bullies, not because of age discrimination. Disparate impact is not the same as actual discrimination, and it would be difficult to find any education policy or practice that has no disparate impact based on race, national origin, gender, or some other protected classification. Seating students in alphabetical order has a disparate impact on Chinese

²¹ For public schools, such discrimination would also be a violation of the Constitution. See U.S. Const. amend. xiv.

²² See, e.g., G.W. Miller III, *Asian Students Under Assault: Seeking Refuge from School Violence*, Philadelphia Weekly (September 1, 2009) (detailing allegations that Asian students in inner city Philadelphia high schools had been subject to racially-motivated, student-initiated violence about which high school administrators did little or nothing); Asha Beh, *Attacks Against Asian Students Prompt Private Meeting*, NBC Philadelphia (December 14, 2009) ("The students—and adult advocates—claimed that staff allowed this to happen on their watch and added taunts of their own"). In this case, both the U.S. Department of Justice and the Pennsylvania Human Relations Commission eventually stepped in. See *Justice Department Reaches Settlement with Philadelphia School District on Anti-Asian Harassment*, Asian American Legal Defense and Education Fund in the News (December 15, 2010).

Not all federal investigations into allegations of actual discrimination involve incidents of equal gravity. In response to a document request from the Commission, the Department of Education turned over correspondence with school districts regarding both disparate treatment and disparate impact discipline complaints that the Department had investigated within the last few years. One such letter, for example, contained an allegation that a Chicago Public Schools teacher discriminated against a student on the basis of race by "not giving Student A a glue stick for an in-class assignment, and then punishing the student by making him stay after class when he could not complete the in-class assignment because he did not get a glue stick." Letter from Don Ray Pollar of the Office for Civil Rights to Arne Duncan, Superintendent of the Chicago Public Schools, Re: OCR Docket 0581103 (July 15, 2008). After an investigation, the Department of Education concluded that there was insufficient evidence of discrimination to take further enforcement action. It is not clear to me that this investigation was a good use of the Department of Education's scarce resources, and it is tempting to wonder what the delegates to the 1787 Constitutional Convention in Philadelphia would have thought about the modern reach of the federal government they had created. At least one can say, however, that the Department had received an actual complaint from someone who felt the student had been discriminated against on account of his race.

Americans, since they have a disproportionate number of surnames beginning with the letters W, X, Y and Z.

No doubt Secretary Duncan would argue that his discipline initiative will not assume that all disparate impact is a violation of Title VI. Only that part of a school district's discipline gap that cannot be explained and justified by the school district will form the basis of a finding of non-compliance with Title VI. But this reflects a lack of understanding of the nature of bureaucracy, the kinds of situations for which it is useful and the kinds of situations where it ordinarily does more harm than good.

The edicts of bureaucracies are usually devoid of nuance by the time they reach the foot soldiers on the ground (in this case, classroom teachers). "Don't do X unless you have a good reason to do X" is naturally understood by school district administrators as "Don't do X unless you are confident that you can persuade some future federal investigator whose judgment you have no reason to trust that you had good reason to do X." In turn, this is communicated to principals as "Don't do X unless you jump through the following time-consuming procedural hoops designed to document to the satisfaction of federal investigators whose judgment you have no reason to trust that you had good reason to do X." Finally, this is communicated to the teacher as simply "Don't do X; it will only get us in trouble."²³

²³ Teacher Allen Zollman testified that teachers in his school district already have to fill out a three-page form showing that they have exhausted all reasonable alternatives before finally referring a disruptive student to the principal's office:

Before the student can be removed and placed in 'time out', the teacher must prepare a disciplinary referral—what many of us used to call a 'pink slip'. This is a two-page form with space for three offenses—not just one—and a checklist of measures taken by the teacher before issuing this referral. These measures include a private conference with the student, a change of seat location, a lunch time or after-school detention, or a phone call to a parent. Sometimes the foregoing strategies are effective, but often they are not. What is important to note here is that in order to get a disciplinary referral for disruption in my school, there must be three infractions and they must be documented in writing BEFORE the student can be removed from the classroom.

All of this comes at a real cost: the need for documentation makes it harder for teachers to discipline students *at the moment of the disruption*, rather than days or weeks after the fact. Meanwhile, other students must suffer while the disruptive behavior continues:

[F]or mere disruption, it is no simple thing to have a student removed at the time of the disruptive behavior. This means that for extended periods of time, it can happen that very little teaching and learning will take place in a given classroom... [T]he need to build up a case to refer a misbehaving student and then wait for action at a higher level leaves me dealing with the problem myself for a while or, more often, persuades me to let things continue as they are without issuing a referral, in other words, teach through chaos. Indeed, because of behavior problems, there are times when very little teaching or learning takes place.

In such an environment, students see few meaningful consequences for their actions, so they not only continue to misbehave but the behaviors get more

Effectively administering school discipline is an enterprise that requires attention to the individual situation. This cannot be done well by distant bureaucracies.²⁴ It must be done by the actual principals and teachers, under the supervision of local school district administrators and school boards. And the Department of Education's policy makes their effectiveness less likely.²⁵

brazen, with more and more students joining in the fun, until even the quote-unquote 'good' kids are acting out. They often become cynical, reminding teachers that nothing will happen to them.

Jamie Frank offered a similar account of the problems with overly bureaucratic discipline in her school:

You have to contact - we have a computer form where you have to check off the same thing. Three times you have to contact the parent before you can send them to the administrator, and then once it's at the administrative level you don't know what's going to happen to that child. You refer the child and it's up to the administration to determine what's going to happen. It's most likely that that child will be back in school if they are a minority student, if they are a minority. Transcript at 50.

Ms. Frank drew the same lesson as Mr. Zollman about how bureaucracy leads to lenience, which in turn leads to disorder: lack of discipline "sends the message that nothing's really going to happen to these students." A typical student will think to herself, "If I do the same thing, if I misbehave again, nothing will really happen."

²⁴ The abundance of statistical information collected to assist federal and state authorities in setting disciplinary policy often obscures more than it illuminates, thus underlining the need for local control. For example, one much-cited report conducted by UCLA's Civil Rights Project and the University of Colorado's National Education Policy Center reports data showing African-American first-time offenders are suspended for dress code violations more often than their white counterparts. It does not appear to have taken into consideration that not all dress code violations are equal. A student who is suspended for wearing prohibited street gang colors or insignia is not the same as a student who is told to put on a sweater and given a warning for wearing a blouse that is too revealing. See Daniel J. Losen, *Discipline Policies, Successful Schools and Racial Justice* (2011). The only way to do justice is to pay close attention to the particular facts of each case. That simply cannot be done well at the federal level.

²⁵ Commissioner Kladney argues that the evidence presented at our briefing that "paperwork requirements interfered with [teachers'] ability to mete out discipline in the classrooms or would result in no disciplinary actions being taken" is merely "anecdotal." "Relying on anecdotal evidence that teachers will not discipline students, because there is paperwork involved is wrong," he wrote. Draft Statement of Commissioner Kladney at 3.

There are several responses to that argument. To begin with, as David Hume once observed, the level of evidence necessary to persuade a reasonable person of the truth of a claim must be proportional to the claim. Extraordinary claims require extraordinary evidence. Ordinary claims ... not so much. See David Hume, *An Enquiry Concerning Human Understanding* 114-16 (1748).

No claim can be any more ordinary than "if you place costs on a particular human activity, you will get less of it; similarly, if you reward that conduct, you will get more of it." School disciplinary policies are themselves built on the widespread conviction that punishing bad behavior will result in students' doing less of it. The same thing is true applied to teachers. If you make teachers jump through procedural hoops before they can impose discipline, they will be less likely to impose that discipline. Indeed, the very purpose of Secretary Duncan's discipline initiative is to reduce the level of discipline currently administered to minority students, and the school districts that

If the local authorities had been engaging in a pattern of resistance to the Constitution or federal authority, the situation might well benefit from the intervention of federal authorities despite the lack of nuance that such an intervention would inevitably entail.²⁶ But such situations are rare. Far more common, however, are the day-to-day situations that require discretion on the part of those closest to the situation.²⁷ Outside of cases in which there is credible evidence that a student has been treated differently in a disciplinary matter on account of his race or ethnicity—which should, of course, receive attention from local authorities and (sometimes, if necessary)

I have discussed infra at ____ have adopted that purpose. It seems strange and naïve to take the position that it will be ineffective in its aim.

But just in case someone does want more outside evidence (in addition to that provided by sworn testimony of our panel of teacher witnesses) that bureaucratic procedures slow down and ultimately reduce activity in the school discipline context, there is plenty of it. Nationwide, 70% of public middle- and high-school teachers told pollsters in 2004 that “[r]educ[ing] the paperwork & formal documentation required to take disciplinary action would either be a “very effective” or “somewhat effective” solution to the discipline and behavior problems found in the nation’s public schools. This poll was conducted by Public Agenda, an organization dedicated to research on public policy issues founded by Carter Administration Secretary of State Cyrus Vance and the well-respected pollster Daniel Yankelovich. The Public Agenda, *Teaching Interrupted: Do Discipline Policies in Today’s Public Schools Foster the Common Good?* 38 (2004). It was not the respondents’ favorite way to deal with the problem, but it garnered a very strong majority of teachers. The two favorites—garnering 94% support each—were (1) “Find ways to hold parents more accountable for their kids when they misbehave in school,” and (2) “Treat special education students who misbehave just like other students—unless their misbehavior is related to their disability.” These methods are, of course, also at odds with the Department of Education’s school discipline initiative. Sadly, given the legal environment in which schools must operate, these teachers did not seem to agree that the paperwork requirements in effect then were unnecessary. But a strong majority (57%) of those of those answering the question on these requirements said they go “beyond common sense” and “mostly exist to protect the schools for parental or legal challenges.” See also Richard Arum, *Judging School Discipline: The Crisis of Moral Authority* (2003).

An additional troubling aspect of Commissioner Kladney’s arguments is that it appears to place the burden of persuasion on the wrong side. Commissioner Kladney is defending a new policy that essentially wrests the power to control discipline from local hands and places it in federal hands. While “radical” is a much overused word, it is one that may be fairly be applied here. If the Department of Education can use its clout to require local schools to justify their discipline policies because of their disparate racial impact, then it can use that clout to require local schools to justify all their policies and decisions, since all policies have a disparate impact on some racial, national origin, gender, or disability group. See *supra* at 11 (pointing out that seating students alphabetically has a disparate impact on Chinese Americans, since a disproportionate number of Chinese surnames begin with the last four letters of the alphabet). In public policymaking, incomplete evidence is the rule, not the exception. It is part of the human condition. As a result, citizens ordinarily require the advocates of new initiatives to carry the burden of persuasion. To be adopted, an initiative should affirmatively be a good idea. It is insufficient to say, “I support this policy, because its opponents have not proven to my satisfaction that it is bad.”

²⁶ See, e.g., *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218 (1964).

²⁷ The tragedy of such policies, of course, is that there was no reason to believe the classroom teacher’s judgment was in any way inferior to the federal investigator’s concerning when it is appropriate or inappropriate to do X. Left to her own devices, she probably would have acted in a way the Department of Education would have approved of most of the time. Indeed, given the fact that she is there on the ground and hence privy to all the facts, she is likely to get it right more often than the federal investigator. But in the overly bureaucratized world of education, her judgment is discounted. Her role is reduced.

from state and federal authorities—Secretary Duncan’s initiative is likely to do more harm than good.²⁸

Meanwhile, there is already evidence that the Department of Education’s discipline policy may be pushing schools in a troubling direction.²⁹ Consider, for example, the Tucson Unified School District plan under which teachers and principals are expected to “striv[e] for no ethnic/racial disparities.”³⁰ Elaborate procedures were set out requiring an “Equity Team” to

²⁸ Dr. Richard Arum has argued that the legal movement of the late 1960s and early 1970s toward greater students’ rights (characterized by cases like *Goss v. Lopez*, 419 U.S. 565 (1975)) has had a significant and not altogether salutary effect on schools across the country.

“Educational litigation increased dramatically during the late 1960s and early 1970s, a period we will term the *student rights contestation period*. While the volume of litigation has subsequently stabilized or moderately declined, both the threat of legal challenges to school authority and the effects of litigation on school practices remain.”

Richard Arum, *Judging School Discipline: The Crisis of Moral Authority* 5 (2003).

According to Arum, “[t]oday’s schools inherit from that period a historical legacy” in which (1) “students have developed a sense of legal entitlement” that “has produced skepticism about the legitimacy of school disciplinary practices as well as a general familiarity with resorting to legal avenues to contest such practices”; and (2) schools have responded by “forms, practices, and cultures—including wide-spread normative taken-for-granted assumptions about the necessity of organizing school discipline in particular ways” that are not necessarily in the best interests of students.

I don’t know if Dr. Arum is correct. But if he is right, he has demonstrated that a small government agency can have a significant and deleterious effect on the discipline culture of schools across the country. He convincingly demonstrates that “the major institutional actor advancing legal challenges to public school disciplinary practices” during the late 1960s and early 1970s “was the Legal Services Program established by the Office of Economic Opportunity.” *Id.* at 8. “In 1967, the OEO Legal Services Program ... employed nearly 1,200 lawyers; by 1972, the program ... employed over 2,000 lawyers.” According to Arum, by 1972, these lawyers spent 7.7% of their time challenging educational practices. *Id.* at 9. Let us hope that history is not repeating itself with a federal agency—this time the Department of Education—again having a significant and deleterious effect on discipline culture. See also Gerald Grant, *The World We Created at Hamilton High* (1988)(providing evidence for Dr. Arum’s thesis at a New York high school).

²⁹ A typical school district receives eight percent of its funding from the federal government. See the U.S. Department of Education, *10 Facts About Education*, available at <http://www2.ed.gov/about/overview/fed/10facts/index.html>. In a district with many high poverty schools eligible for grants under Title I, the percentage of its budget coming from the federal government is likely to be even higher. See, e.g., Marty Strange, “Rural schools lose in funding formula,” May 21, 2010, available at <http://www.dailyyonder.com/rural-school-lose-funding-formula/2010/05/10/2738> (a brief account of how the Title I funding formula works and why inner-city schools are disproportionately likely to fare well under it). No superintendent is eager to tell parents and teachers that she will be forced to cut her district’s budget by eight percent or more next year. The Department of Education never need come close to actually revoking federal dollars; the mere possibility that such a funding cut could befall a district is often enough to send local administrators scurrying to do the federal government’s bidding.

³⁰ Tucson Unified School District Governing Board, *Post-Unitary Status Plan 25* (July 30, 2009).

ensure “social justice for all students” in discipline matters. The plan specifically sets out as its “goal” that the district “*will* reduce the disproportionate number of suspensions of African American and Hispanic students.” (Italics added.) It states that one of “the expected outcomes” of the implementation of its new procedures, which includes a requirement that all long-term suspensions be reviewed by the “Director of Student Equity,” will be a decline in out-of-school suspensions “especially with regard to African American and Hispanic students.”³¹

The Tucson Unified School District does not state why it believes that greater attention to fairness in discipline will yield a reduction in suspensions “especially with regard to African American and Hispanic students.” Perhaps it is supposed to be taken on faith. If, however, in moving towards its goal and expected outcome, the school district ends up consciously or unconsciously doing exactly what the law forbids—doling out discipline on the basis of a student’s race or ethnicity—it will be in violation of the law, not in some sort of heightened compliance with it owing to its efforts to respond to disparate impact. This policy was likely adopted at least in part as a result of the belief that the Department of Education would regard its racial disparities in discipline to be evidence of a violation of Title VI.

Dr. Hertica Martin, Executive Director for Elementary and Secondary Educations of the Rochester Public Schools in Olmstead County, Minnesota, testified both in person and in response to our inquiries by letter. She stated in her letter:

As a result of analyzing our discipline data and the disproportionalities which exist, our schools have implemented a number of strategies ... to decrease the number of referrals for our black and brown students. The implementation of these strategies has resulted in a decrease of 363 suspensions and expulsions from 2007-2008 to 2009-2010 school years.³²

The Winston-Salem/Forsyth County School District was also forthright in explaining to the Commission that its reasons for reducing discipline overall is specifically to reduce racial disproportionality in discipline:

To address the disproportionate discipline of African-American students in the district [italics added], the WS/FCS [Winston-Salem/Forsyth County] discipline policies were revised this year to specifically disallow administrators from aggravating disciplinary sanctions based on prior, unrelated misconduct. Further, minor code of conduct infractions occurring in prior school years may not be considered *at all* [italics in original] when assigning disciplinary sanctions. Administrators are also able to use mitigating factors in assigning discipline, and may consider circumstances such as a student’s truthful statement, a student’s

³¹ Id. at 26.

³² Letter from Dr. Hertica Y. Martin to Lenore Ostrowsky of the U.S Commission on Civil Rights, January 12, 2011.

positive history, and a student's respectful cooperation during the discipline process.³³

Perhaps Rochester's and Winston-Salem's new, more lenient policies will work better at keeping order than the old ones did. But I am not optimistic. The fact that their administrators seem to be driven by concerns about disparities in and of themselves rather than by concerns that the old policies were generally unsatisfactory is not a good sign. Moreover, a disciplinary system like Winston-Salem's that forbids teachers and principals from considering a student's past misbehavior in determining the proper response to the student's current misbehavior is wrongheaded in the extreme.³⁴

These school districts are not alone. In Dorchester, South Carolina, school authorities write, "The superintendent has established a Discipline Task Force to examine and ensure that policies and procedures are equitable for all students and lead to reduction in racial disparities in school discipline particularly among African American males."³⁵ But it is unclear why they believe that fairness and a reduction of racial disparities in discipline are compatible goals. They do not appear to be suggesting that, up to now, their schools have been engaging in discrimination. Rather, they appear to be assuming that fairness and a reduction in racial disparities are one and the same.

In Washington, D.C., concerns about racial disparities also led to repeals of policies that prohibited students from receiving credit for courses if they are absent from class too frequently. In the view of Jamie Frank, a teacher witness at the Commission's briefing, rescinding this policy actually disproportionately harmed minority students by taking away a previously strong incentive to attend class. Without such incentive, Ms. Frank said, too many minority students give into the temptation not to attend class and miss out on valuable learning.³⁶

³³ Letter from Donald Martin, Superintendent of the Winston-Salem Forsyth County Schools, to Lenore Ostrowsky of the U.S. Commission on Civil Rights, December 10, 2010, reproduced at page ____ in this report. In the same letter, Winston-Salem stated that it has also changed its policy regarding suspensions. Before, short-term suspensions could last ten days at most; now, the maximum is eight. Also, no student can now receive an out-of-school suspension for truancy. For these latter two changes, the district mentions only "fairness and consistency" as its motive, which in context might be readily interpreted to mean "fairness" to all racial and ethnic groups.

³⁴ The general intuition that repeat offenders should be punished more harshly than first offenders runs throughout federal and state sentencing law. See, e.g., U.S. Sentencing Guidelines Manual sec.4A1.1 ("The Comprehensive Crime Control Act sets forth four purposes of sentencing. (See 18 U.S.C. sec. 3553(a)(2).) A defendant's record of past criminal conduct is directly relevant to those purposes. A defendant with a record of prior criminal behavior is more culpable than a first offender and thus deserving of grater punishment. General deterrence of criminal conduct dictates that a clear message be sent to society that repeated criminal behavior will aggravate the need for punishment with each recurrence."); Cal. Pen. Code 667 et seq. (codifying what is sometimes popularly called the "three strikes law," which provides that a defendant with two or more prior felony convictions will be sentenced to life imprisonment.) A New York Times article published in 2010 states that twenty-five other states also have some version of the three strikes law. Emily Bazelon, *Arguing Three Strikes*, The New York Times (May 21, 2010).

³⁵ Memorandum to U.S. Commission on Civil Rights at 2 attached to Letter from Joseph R. Rye, Superintendent of Dorchester School District Two dated December 13, 2010.

³⁶ Statement of Jamie Frank at 36.

No one should imagine that the reactions of these schools to the Department of Education's initiative are a victory for African-American students struggling their way through inner city schools. To the contrary, the primary beneficiaries of this ill wind will likely be the businesses and activist groups who provide computer software aimed at tracking school discipline and training programs for teachers and administrators aimed at reducing disparities as well as the additional school administrators hired to carry out the new policies.

**School Discipline and Disparate Impact Briefing Report
Statement of Commissioner Todd Gaziano**

The Department of Education's policy that threatens to sanction schools whose disciplinary policies unintentionally have a greater impact on students of certain races than others is flawed both as a matter of law and policy.

The Education Department's Legal Errors

Title VI of the Civil Rights Act of 1964 at Section 601 provides that no person shall, "*on the ground of race, color, or national origin*, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d (emphasis added). Simply put, section 601 prohibits intentional discrimination by school officials on the basis of race, color, or national origin. That's what it means to act "*on the ground of race, color, or national origin*."

Yet, the Department of Education's regulations go much further, prohibiting recipients from using "criteria or methods of administration which *have the effect of* subjecting individuals to discrimination because of their race, color, or national origin." 34 C.F.R. § 100.3 (emphasis added). As Deputy Assistant Secretary of Education for Civil Rights Ricardo Soto explained in his statement to the Commission, the Department's regulations prohibit "race-neutral policies, practices, or procedures that have a disparate impact on the basis of race, color or national origin."

Although this phrasing has been part of the executive branch's lexicon for some time, it is still worth pausing a moment on the Orwellian doublespeak of anything having a "disparate impact on [a] basis" to show how hard the Department must strain to use some of the words of the statute in service of the opposite of what they provide. Because a disparate impact is usually understood as an unintended effect, and may include many unintended effects, this formulation awkwardly attempts to equate unintended "impacts" with the actual basis (or ground) for the action. Putting aside this nonsensical use of the English language, Soto's testimony accurately described the Department's disparate-impact theory and its subjective test relating to whether the Department thinks the educational reason for the action is both legitimate and substantial, and has no other reasonable alternatives:

Unlike cases involving different treatment, cases involving disparate-impact theory do not require that a school had the intent to discriminate. Rather, . . . the pertinent inquiry is whether the evidence establishes that a facially neutral discipline policy, practice, or procedure causes a significant disproportionate racial impact and lacks a substantial, legitimate educational justification. Even if there is a substantial, legitimate educational justification, a violation may still be established under disparate impact if the evidence establishes that there are equally effective alternative policies, practices, or procedures that would achieve the school's educational goals while having a less significant, adverse racial impact.

Where does this authority come from? The text of Section 601 most certainly does not prohibit unintended effects. If an action has an unintended racial effect, then the action was not taken "on the ground of race." Section 602 authorizes regulations to enforce the prohibition in section 601, but does not authorize rules to enforce other prohibitions agency officials deem desirable.

The prohibition in Title VI contrasts with other federal civil rights laws in which Congress explicitly placed restrictions on actions or policies that have a disparate racial impact. Although some of these provisions have raised constitutional questions as applied to the states, at least there is no doubt that Congress forced the issue. For example, the 1991 amendments to Title VII explicitly authorized a “disparate impact” cause of action and set forth the burden of proof necessary to establish an “unlawful employment practice based on disparate impact.” 42 U.S.C. § 2000e-2(k)(1)(A).

Under Section 2 of the Voting Rights Act (VRA), one circumstance which may be considered in determining whether political processes violate the Act is the “extent to which members of a protected class have been elected to office in the State or political subdivision.” 42 U.S.C. § 1973(b). Thus, Congress put in place at least a partial effects test in which the process is judged in part by its outcome, even if the process was not intended to discriminate on the ground of race.

The Americans with Disabilities Act (ADA) prohibits “using qualification standards, employment tests or other selection criteria *that screen out or tend to screen out* an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity.” 42 U.S.C. § 12112 (emphasis added).

As the above examples show, Congress knows how to prohibit unintended policies or effects. The VRA and the ADA do not use the term “disparate impact” or even the word “effect” but they turn on the outcome of the actions at issue. There is nothing like that anywhere in Title VI. Indeed, the opposite is so. Congress prohibited actions taken “on the ground of” race, color, or national origin, and no fair reading of that clause can turn it into an outcome or effects test.

In the most recent opinion from the Supreme Court on the subject, five justices seemed to agree that the Education Department’s disparate impact regulations in Title VI were invalid, although the Court’s holding did not resolve that question. In *Alexander v. Sandoval*, the Court wrote that it is “beyond dispute—and no party disagrees—that § 601 prohibits only intentional discrimination.” 532 U.S. 275, 280 (2001). The Court chose to rest its opinion in *Sandoval*, however, on whether private plaintiffs could sue to enforce disparate impact regulations issued under section 602. The Court held that there was no private cause of action to enforce disparate-impact regulations, *id.* at 291, and so there was no reason to reach whether the regulations themselves were invalid. Nevertheless, the majority’s discussion of the disparate impact regulations is an unmistakable indication that five justices thought the disparate impact regulations were invalid.

The Court twice noted that section 602 only grants federal agencies authority to “effectuate the provisions of [Section 601] of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability.” And it repeatedly stated that section 601 only prevented intentional discrimination, see *id.* at 280-81. Section 602 does not by its terms empower agencies to issue regulations that go beyond prohibiting the intentional discrimination forbidden in Section 601. Thus, there is no textual argument that section 602 authorizes the disparate impact regulations.

The Department’s only defense is to rely on the now thoroughly discredited notion that federal agencies are empowered to enact any regulations that effectuate the broad *purposes* of the underlying statute rather than the statute’s actual terms. The Supreme Court in *Sandoval* pointed out that it has abandoned support for that approach and had begun the process of invalidating regulations that had no other basis in law. *Id.* at 287. The reason the *Sandoval* Court assumed that the disparate impact regulations were valid in deciding that case is more complicated than is worth explaining here, but the

current Court often chooses a narrower ruling if that will dispose of the case, and one was available in *Sandoval*. Nevertheless, the five-justice majority's most telling indication of what it thinks about the validity of the Title VI disparate impact regulations is contained in this passage:

We cannot help observing [in the dissent] how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with' § 601, when § 601 permits the very behavior that the regulations forbid. See *Guardians*: "If, as five Members of the Court concluded in *Bakke*, the purpose of Title VI is to proscribe *only* purposeful discrimination ..., regulations that would proscribe conduct by the recipient having only a discriminatory *effect* ... do not simply 'further' the purpose of Title VI; they go well *beyond* that purpose."¹

Given the Supreme Court's helpful warning, the executive branch should have shown similar restraint, reexamined the legality of its disparate impact regulations, and abandoned them since they were unauthorized. But there was no serious reexamination of the power that the federal agencies had claimed for themselves, at least there is none the Department has drawn to the Commission's attention. Instead, there was a series of pronouncements that the Supreme Court had not expressly overturned the regulations. These statements are bereft of analysis but declare that the federal government will continue business as usual. In short, the agency officials and bureaucrats doubled down on their own claim of power. Their pronouncements regarding the precise holding of *Sandoval* are accurate, but the legal foundation for the regulations themselves after *Sandoval* is more flimsy than ever.

Intentional Discrimination in the Name "Fairness"

Even if a disparate-impact regulation is authorized by Title VI, reliance on this "theory" is bad policy. In almost any real-world setting, one cannot ensure both equality of treatment and equality of results. Trying to ensure equality of result when the underlying merit is decidedly uneven—or in this situation, the underlying misconduct is uneven—can only be achieved by engaging in intentional discrimination.

In at least some school districts, the law of averages dictates that some groups of students will merit more discipline than their proportionate share of the student population. If children from certain backgrounds (e.g., fatherless homes or neighborhoods with lots of gang members) misbehave at a higher rate and such children are not evenly distributed among all racial and ethnic groups, there is even more reason to expect differences in the level of misbehavior among different groups of students, whether that is potentially violent or just disruptive of learning. If discipline is meted out in proportion to who deserves it, a disparate impact will be found. The only way to "fix" the disparate impact is to intentionally discriminate. As Roger Clegg has written, "Under the guise of combating the problem of 'unintended discrimination,' the [disparate impact] theory demands deliberate discrimination."²

Concentrating on disparate impacts in each school or district will lead, sadly but inevitably, to discriminatory treatment of similarly-situated students in violation of the law. Teachers who try to get their numbers "right" by ensuring that discipline is evenly distributed among students of all races and ethnicities will have to treat individual students unequally. The converse is also true: Teachers who

¹ *Id.* at 286 n.6 (full citations omitted; ellipsis and emphasis in the original quote).

² Roger Clegg, *Disparate Impact in the Private Sector: A Theory Going Haywire*, BRIEFLY . . . PERSP. ON LEGIS., REG., & LITIG., NAT'L. LEGAL CENTER FOR THE PUB. INT., Vol. 5, No. 12, at 11 (Dec. 2001).

are careful to treat all students the same, regardless of race, gender, or ethnicity, will inevitably observe some disparate impacts if behavior meriting discipline is not perfectly distributed among those groups. The only exception to the above is if no discipline is ever meted out.

Differences in family structure are one reason why students may misbehave at different rates. The estimated out-of-wedlock birth rates in the United States in 2010 were 17% for Asian or Pacific Islander, 29% for non-Hispanic whites, 53.3% for Hispanics, 65.6% for American Indians or Alaska Natives, and 72.5% for non-Hispanic blacks.³ The rates of children estimated to be living in single-parent families in 2009 were 16% for Asian and Pacific Islanders, 24% for non-Hispanic whites, 40% for Hispanics, 53% for American Indians, and 67% for blacks.⁴ Growing up in single-parent families puts children at greater risk of dropping out of school and becoming a teen parent.⁵ It is associated with much higher incidents of child neglect.⁶ As the report notes on page [66], scholars cite family composition as a predictive factor in cognitive performance.⁷ Sadly, data from Wisconsin also suggests that “the probability of incarceration for juveniles in families headed by never-married single mothers [is much] higher than for juveniles in the two-parent family.”⁸ In sum, family structure does not dictate the result for any child, but it does affect the odds of certain negative outcomes and behaviors.

When determining whether a school district may have discriminated on the basis of race, the Department examines the rates of discipline for the different races of students in the district. Briefing Transcript at 158, 160-61 (Soto Testimony). Data alone may trigger an investigation. *Id.* at 185. Given this method of triggering the investigation, it is unlikely the Department would ever detect that a district is disciplining a group too little in order to get its numbers right. The Department notices disparities; a school district with disciplinary actions equally distributed among groups will not be noticed. The incentive for school districts, principals, and teachers is to make sure there are no disparities in discipline among races of students so as to avoid an investigation by the Department, which would be costly and time consuming for the school district.

The report and the testimony of the witnesses demonstrated that administrators and teachers are very concerned about disparities in discipline. A teacher from the suburban Washington, DC area testified that her district monitors the disciplinary rates in her classes for African-American and Hispanic students relative to the other students. The district’s expectation is that there will not be disparities, and she is held to account if there are.⁹

³ BRADY E. HAMILTON, JOYCE A. MARTIN & STEPHANIE J. VENTURA, U.S. DEP’T OF HEALTH & HUMAN SERV., CENTERS FOR DISEASE CONTROL & PREVENTION, NAT’L CENTER FOR HEALTH STATISTICS, NAT’L VITAL STATISTICS REPORTS, VOL. 60, NO. 2, BIRTHS: PRELIMINARY DATA FOR 2010, Table 1 (Nov. 2011).

⁴ THE ANNIE E. CASEY FOUND., KIDS COUNT DATA CENTER, DATA ACROSS STATES: CHILDREN IN SINGLE-PARENT FAMILIES BY RACE (PERCENT) – 2009.

⁵ See MARK MATHER, POPULATION REFERENCE BUREAU, U.S. CHILDREN IN SINGLE-MOTHER FAMILIES (May 2010).

⁶ See DIANE DEPANFILIS, U.S. DEP’T OF HEALTH & HUMAN SERV., CHILDREN’S BUREAU, OFFICE ON CHILD ABUSE & NEGLECT, CHILD NEGLECT: A GUIDE FOR PREVENTION, ASSESSMENT AND INTERVENTION, Chapter 4 (2006) (citation omitted).

⁷ Richard Arum and Melissa Velez, *Class and Racial Differences in U.S. School Disciplinary Environments*, at 4, chapter in IMPROVING LEARNING ENVIRONMENTS IN SCHOOLS: LESSONS FROM ABROAD (Forthcoming: Palo Alto, Stanford University Press).

⁸ PATRICK FAGAN, HERITAGE FOUND., CONGRESS’S ROLE IN IMPROVING JUVENILE DELINQUENCY DATA (March 10, 2000).

⁹ Report at [33-34] (Statement of Jaime Frank).

Two school districts told the Commission they have changed their discipline policies in order to reduce racial disparities in discipline. The Winston-Salem/Forsyth County Schools in North Carolina revised its discipline policies to “address the disproportionate discipline of African-American students in the district.”¹⁰ The Tucson Unified School District outlined the “shift” in its discipline policies with the goal “to ensure . . . the reduction of disciplinary incidents” for African American students. Expected outcomes for African American students are “[r]educed discipline referrals to the office” and “[r]educed suspensions and expulsions.”¹¹ I do not know whether the original discipline policies were sound or not, but changing them solely to affect a racial outcome serves no educational purpose, and racial balancing for its own sake is not constitutional.

Of the 17 school districts that responded to the Commission, nine reported using the Positive Behavior Intervention Support (PBIS) program, a “systems approach to preventing and responding to classroom and school discipline problems.” One goal of the PBIS program is to “eliminate[e] the disproportional number and racial predictability of the student groups that occupy the highest and lowest achievement categories.”¹² Artificially decreasing the discipline of misbehaving students or artificially increasing the discipline for goody-two-shoes students who are the best behaved is not a sound educational or civil rights policy. For the well-behaved students, it can only breed resentment, or worse, a desire to live “down” to the lowered expectation.

The Counterproductive Effect on Minority Students

Of course, there is nothing wrong with schools implementing programs to improve student behavior, which may eventually result in less disparity in discipline among different groups. The danger is that schools will weaken disciplinary measures in order to equalize the disciplinary rates, which will only increase disruptive behavior.¹³ Such a change will harm well-behaved students the most by interfering with the productive learning environment they deserve. This may be especially harmful to minority students who, as Arum and Velez point out, “are exposed to school environments with high levels of disorder, violence and concerns over safety” and who therefore “face the disparate impact of inadequate and ineffective discipline in U.S. schools.” “Significantly,” they go on to say, “in schools with higher levels of disciplinary administration, we . . . have found that the gap between African-American and white student test performance does not exist.”¹⁴ In short, an increase in the use of disparate impact investigations is likely to cause substantial harm to minority students about whom the Department professes concern.

¹⁰ Letter from Donald L. Martin, Jr., Superintendent, Winston-Salem/Forsyth County Schools to Lenore Ostrowsky (Dec. 10, 2010).

¹¹ Letter from Augustine Romero, Director of Academic and Student Equity, and Jimmy Hart, Director of Academic Equity for African American Studies, Tucson Unified School District to Martin Dannenfelser (Dec. 13, 2010).

¹² Letter from Romain Dallemard, Superintendent, Rochester (MN) Public Schools, to Martin Dannenfelser (Nov. 30, 2010).

¹³ My own view is that the risks associated with too little discipline are greater than those with too much, and thus, any approach that lessens the proper level of discipline are worse than the converse, even if applied fairly across the board.

¹⁴ Arum and Velez, *supra* note 7, at 35-36.

Rebuttal to Other Commissioner Statements

Statements by Commissioners Castro, Achtenberg and Yaki are unclear on some seemingly important points, or at least some points that seem important to them. Their joint statement begins with a condemnation of zero-tolerance policies, but the remainder of their statement is much more concerned with the exercise of discretion in discipline by school administrators. There is no acknowledgement of the contradiction between these two positions. The only easy way to harmonize them is to assume the authors advocate no discipline, but that is not supported by other portions of the joint statement. It is a puzzle.

As for most zero-tolerance discipline policies, I'll register my opposition here, especially when they are used to sanction a kindergartener who makes a finger gun, grade school boys who draw pictures of soldiers, and others who bring nail clippers to school. Conservative and libertarian thinkers are the leading voices against crazy, zero-tolerance rules.¹⁵

Although Commissioners Castro, Achtenberg and Yaki bemoan the increase of zero-tolerance policies,¹⁶ one of the main drivers of this increase is the kind of accusations leveled against school administrators in the rest of their joint statement, i.e., that administrators' discretionary decisions are racially discriminatory. School administrators also may fear private litigation over their exercise of discretion, but there should be little doubt that the accusation of racial injustice from the federal government and others would be a powerful force encouraging the growth and blind application of zero-tolerance policies.

The only conclusion a careful reader might draw from such a mish-mash is the importance these commissioners attribute to getting the racial percentages right, regardless of anything else. It would be unfortunate in the extreme, however, if their racial bean-counting contributes to the entrenchment of zero-tolerance policies, especially if such policies have the counterproductive effect that my fellow commissioners attribute to them.

Turning to their central claim, Commissioners Castro, Achtenberg and Yaki are relatively clear in their assertion that the disparities among racial groups in school discipline have a significant racial explanation, i.e., that schools are unfairly disciplining blacks and Hispanics relative to whites and Asians due to their race and not because of other relevant factors. This is an extraordinary claim that calls for extraordinary, or at least very carefully documented, evidence. Yet, there appears to be very little evidence supporting that contention, certainly not the studies cited in their statements, which are either seriously flawed or easily distinguished. More scholarly study would be helpful, but it should be

¹⁵ Prominent critics of zero-tolerance rules have included my colleagues at The Heritage Foundation, see, e.g., HERITAGE FOUND., CASE STUDIES: CRIMINALIZING KIDS I: TRUE TALES OF ZERO TOLERANCE OVERCRIMINALIZATION (Dec. 2003) (high school senior arrested, suspended from school, and not allowed to attend graduation ceremonies for having a kitchen knife in her car in the school parking lot); HERITAGE FOUND., CASE STUDIES: CRIMINALIZING KIDS II: MISDEMEANOR MISTAKES AND FELONY FORGETFULNESS (describing arrests of children for minor offenses pursuant to zero-tolerance policies); and *Reason* magazine, see, e.g., Charles Oliver, *No Hugging, No Learning*, REASON HIT & RUN (Nov. 10, 2011) (middle school students suspended for briefly hugging); Radley Balko, *Further Adventures in Zero Tolerance*, REASON HIT & RUN (Feb. 3, 2011); Radley Balko, *Zero Tolerance Follies*, REASON HIT & RUN (March 5, 2010).

¹⁶ In the first paragraph of their joint statement, they report that "almost 90% of U.S. public schools have established and implemented some sort of zero-tolerance policy ... result[ing] in a substantial increase in the number of expulsions and out-of-school suspensions currently being imposed by schools."

more rigorous and carefully designed than that relied upon by the activists who try to use simple disparities to prove something malevolent.

The activists are not unlike those who think that differences in the racial composition of the prison population are proof of discriminatory treatment in the criminal justice system. Simplistic analyses of the offenses charged and sentences imposed compound the problem if they do not control for other important factors, including an offender's past criminal history. Any criminology graduate student can debunk the poorly designed studies by demonstrating how the introduction of additional factors eliminates the supposed proof of discrimination. Unfortunately, the simplistic and faulty "studies" continue to fuel the myth of a racist criminal justice system. When all the relevant factors are taken into account: "[T]here is almost no reliable evidence of racial bias in the criminal justice system's handling of ordinary violent and non-violent offenses. Rather, the facts overwhelmingly show that blacks go to prison more often because blacks commit more crimes."¹⁷

As is the case with pseudo-studies of racism in the criminal justice system, so it is with poorly designed studies of school discipline. One study cited by Commissioners Castro, Achtenberg and Yaki found differences in punishment for students sent by teachers to the principal's office for committing supposedly similar offenses. Black and Hispanic students were more likely to receive suspension or expulsion relative to white students for similar offenses.¹⁸ But the study's authors admitted they did not take into account which students committed prior infractions, "a variable that might well be expected to have a significant effect on administrative decisions regarding disciplinary consequences."¹⁹ More importantly, the authors' own data showed that blacks were 2.19 times as likely to be referred for misbehavior as whites in grades K-6 and 3.79 times as likely as whites in grades 6-9,²⁰ making it much more likely that the black students were repeat offenders in any particular encounter. Since repeat offenders may rightly receive more punishment, the study cannot tell us whether administrators unfairly punished anyone.

A Texas study, also cited by Castro, Achtenberg and Yaki, found that "African-American and Hispanic students were more likely than white students to experience repeated involvement with the school

¹⁷ AMY L. WAX, RACE, WRONGS, AND REMEDIES 91 (noting some admitted anomalies with certain drug offenses). Professor Wax continues:

As a noted criminal law scholar sympathetic to black concerns stated in an exhaustive summary of the literature, "[v]irtually every sophisticated review of social science evidence on criminal justice decision making has concluded, overall, that the apparent influence of the offender's race on official decisions concerning individual defendants is slight." With respect to arrests, "few or no reliable, systematic data are available that demonstrate systematic discrimination." Rather, "arrests can by and large be taken as reasonable reflections of the involvement in serious crime of members of different racial groups." Likewise, "... blacks are not singled out for stricter or more frequent prosecution. Nor do they receive longer sentences once criminal history and other sentencing factors are taken into account.

Id. (citing MICHAEL TONRY, MALIGN NEGLECT 50, 71, 79).

¹⁸ See Russell J. Skiba et al., *Race Is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline*, SCH. PSYCHOL. REV., Vol. 40, No. 1, at 85, 95 (2011) [hereinafter Skiba, *Race is Not Neutral*].

¹⁹ *Id.* at 103.

²⁰ *Id.* at 93.

disciplinary system for multiple school code of conduct violations.”²¹ The paper noted that the “reader should not discount the possibility of overrepresentation of African Americans among students who are repeatedly disciplined flows from the previous finding that African-American students are disproportionately involved in the discipline system in the first place.”²²

The Texas study included a multivariate analysis in an attempt to compare students of different races who were otherwise from similar backgrounds, including socioeconomic background. But it did not isolate whether the students came from a single parent household, which is likely far more important than other socioeconomic factors. Instead, acknowledging the importance of family structure, the analysis included as a variable the percentage of families in the student’s *county* headed by a single parent.²³ This crude variable does not remotely capture the family structure of an individual student. The analysis thus classified many students as coming from similar backgrounds when they differed with regard to their family situation.

The statement of Commissioners Castro, Achtenberg, and Yaki cites a different study for the proposition that black students tend to be referred for discipline more often for “subjective offenses, such as disrespect or excessive noise,” while white students tend to be referred more often for “behaviors that are objective, such as smoking, vandalism, and using obscene language.”²⁴ An examination of the study itself reveals that black students were also more often referred for “threat” or “loitering,” while white students were more often referred for “leaving without permission.”²⁵ The subjective offenses have elsewhere been termed “defiance.”²⁶ All such offenses could be serious, but threatening behavior—even if subjective—should be viewed as more serious than skipping class.

Moreover, threats and other forms of defiance might well be more disruptive in a classroom setting than obscene language. None of these behaviors will be helpful for the student later in life; teachers should try to stop them all. But teachers and principals need discretion to deal appropriately with each situation. Crude generalizations about subjective offenses (that may include threats) versus objective offenses are not helpful. They will either encourage the administrators to ignore so-called subjective offenses or to try to formulate a zero-tolerance rule that converts such subjective offenses into defined, objective offenses.

²¹ TONY FABELLO ET AL., *BREAKING SCHOOLS’ RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS’ SUCCESS AND JUVENILE JUSTICE INVOLVEMENT*, COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER; PUBLIC POLICY RESEARCH INSTITUTE 42 (2011).

²² *Id.* at 42 n.80.

²³ *Id.* at 94.

²⁴ Statement at ---.

²⁵ Russell J. Skiba et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, *THE URBAN REV.*, Vol. 34, No. 4, at 317, 332 (Dec. 2002).

²⁶ Skiba, *Race Is Not Neutral*, *supra* note 18, at 101. In contrast, a 2010 study of elementary students cited by Commissioners Castro, Achtenberg, and Yaki did not find that black students were more likely than white students to receive an office disciplinary referral for defiance. See Catherine P. Bradshaw et al., *Multilevel Exploration of Factors Contributing to the Overrepresentation of Black Students in Office Disciplinary Referrals*, *J. EDUC. PSYCHOL.*, Vol. 102, No. 2, at 508, 513 (2010) (hereinafter Bradshaw et al.).

Finally, one study of elementary students was cited by Commissioners Castro, Achtenberg, and Yaki for the proposition that black students receive office disciplinary referrals at a higher than expected rate after controlling for various factors.²⁷ The study had another interesting finding, however: that black male students in classrooms with black teachers were more likely to receive office disciplinary referrals than the other students.²⁸ Perhaps all the findings in this study of 21 elementary schools were anomalous, idiosyncratic, or explained by some other factor that further review and study would reveal. Yet the authors suggest that the “findings do not suggest that a cultural or ethnic match between students and their teachers reduces the risk of [office disciplinary referrals] among Black students.”²⁹

The study suggests four possibilities to me: (1) the black teachers in the study were biased against black male students compared to other students and wanted black males punished at higher rates, (2) the black teachers in the study were biased in favor of reforming black male students as compared to other students, (3) the black teachers were more concerned about the negative effect of misbehaving black male students on others in the class, or (4) none of the above. In any event, the study does not easily support the simple message of racial hostility or indifference by a majority white establishment against minority students.

In the end, however, the biggest difference between at least four of us on the commission and Commissioners Castro, Achtenberg and Yaki is our disagreement with their predictable call for an “immediate and substantive” intervention by the federal civil rights enforcers at the U.S. Department of Education. At best, such intervention will be merely unlawful, costly, and bureaucratic. In addition, I believe it will likely be counterproductive and make matters worse for minority students in schools with the most serious discipline problems.³⁰

²⁷ Bradshaw et al., *supra* note 26, at 511.

²⁸ *Id.* at 514.

²⁹ *Id.* at 515.

³⁰ See also “Dissent and Rebuttal Statement of Commissioners Gaziano and Kirsanow” in U.S. Commission on Civil Rights, *Peer-to-Peer Violence and Bullying: Examining the Federal Response* at 163-68 (Sept. 2011), regarding the likely counterproductive effects of greater federal involvement aimed at preventing student bullying and harassment.



**WRITTEN TESTIMONY: Hearing before the Senate Judiciary Subcommittee on the Constitution,
Civil Rights, and Human Rights**

Name: Emma Tai, VOYCE Coordinator

With stories from VOYCE student leaders Davisha Junius and Timothy Anderson

City/State: Chicago, IL

Organization: Voices of Youth in Chicago Education (VOYCE)

Voices of Youth in Chicago Education (VOYCE) is an organizing collaborative for education justice led by students of color from six community organizations across the city of Chicago. For the past two years, our Campaign for Safe and Supportive Schools has advocated for structural reforms that would place stronger limits on exclusionary discipline at all publicly-funded schools, including charters; create public and transparent reporting systems on the use of harsh discipline at all publicly-funded schools; and increase investments in the student supports and interventions that address the root causes of violence and misconduct.

Illinois, and the Chicago Public Schools system in particular, is in dire need of these reforms. Original research by VOYCE and Advancement Project has shown that in the 2010-2011 school year, students in the state of Illinois lost 1,117,458 days of instruction due to disciplinary actions; Chicago Public Schools students alone constituted over 300,000 of these lost instructional days. According to a public records request to the Illinois State Board of Education, 92% of the disciplinary actions issued in Chicago in 2010-2011 were for “other reasons,” meaning for offenses that were not serious enough to be reported specifically to the state. This means that over 100,000 suspensions and expulsions—not even including arrests, detentions, and fines—were for minor offenses that could have been handled differently.

Under ever-increasing pressure to raise standardized testing scores, schools are using measures like suspensions and arrests to “push out” the lowest-scoring, highest-need students while our public officials turn the other way. It should come as no surprise that the increasing use of suspensions and

other exclusionary discipline measures disproportionately impact low-income students of color, particularly special education students, who also are the most likely to bring down a school or classroom's average test score. Federal civil rights data has shown that Illinois suspends proportionally more African-Americans than any other state, while CPS suspends 63% of all African-American students with disabilities at least once. These disparities are some of the highest in the country.

The direct personal experience of VOYCE student leader Davisha Junius captures the systemic failure of this system and the likelihood that vulnerable students like Davisha, who is a teenage mother and has a behavioral disability, will be pushed out through harsh discipline:

I was at my first elementary school just for the first month of sixth grade. I got kicked out because they didn't have anyone who could teach students with an IEP (Individualized Education Plan). They talked to my mom and I don't know what they said, but the next day I came to school and they turned me around and told me I was no longer enrolled.

They sent transcripts to another school, where I went for the rest of the first quarter and all of second quarter. Then they kicked me out because the social worker was only there once a week and I needed a certain amount of hours per week. They couldn't give that to me, so they transferred me to another school.

At my last elementary school, I got suspended for three or five days a number of times. I was being a bully and fighting, just to see if I was going to get kicked out. I just had my mind made up that I was going to get kicked out again but when they didn't kick me out like I wanted them to, it got out of my head. I changed my ways.

But then I went to Simeon for the beginning of my freshman year, and got kicked out the third week of school. I kept getting 10-day suspensions for not wearing my ID or wearing inappropriate clothes. I missed a lot of work at Simeon. I got kicked out because I couldn't pay [a fine] for detention.

When I got kicked out of Simeon it kind of brought it back for me I'm not meant to be in school, period. I don't like being a student no more. What's the point of being in school if you're just going to get kicked out?

Davisha, now a VOYCE student leader at Gage Park High School, attended five different schools in the past four years through a combination of harsh discipline, pushout and a persistent, systemic failure to successfully address the behavioral issues caused by her disability. A national analysis of the Office of Civil Rights suspension data has shown that Black students with disabilities are more likely to be suspended in Illinois than any other state in the country, with 41.8% of all Black students with disabilities suspended at least once.

High suspension rates and other pushout practices, such as Davisha's experience with fines at Simeon Career Academy, are not isolated to just students with disabilities. High-need students who don't perform well on tests, even when it's due entirely to external factors such as food insecurity or homelessness, are at risk of being pushed like. Like Davisha, VOYCE student leader Timothy Anderson was bounced around from one elementary school to another after he and his sister, who were living in shelters at the time, were teased for their clothes and acted out:

I was eight the first time I got suspended. I had anger problems and would fight anyone.

Instead of dealing with my problems, they kicked me out in the middle of fifth grade. They transferred me to a charter school, but I got kicked out on my first day there. They called my momma into the principal's office and told her if I couldn't behave on the first day, I couldn't go there no more because they didn't want any more problems.

The next school I went to had a strict uniform policy. I couldn't wear the uniform because my momma couldn't afford it. So then they kicked me and my little sister out. I was there for a week and a half.

I finished eighth grade at the next school I went to. They tried to hold me back in sixth grade because I had switched so many schools that they didn't know what credits I had. But my momma got make-up work for me and I stayed on track.

The turning point for me was joining VOYCE when I started high school. When I joined VOYCE, I wanted to clean up and become the student I am now, because people depended on me. Being depended on made me feel like I could actually do something and make progress with my life. Dependability was missing in my education before VOYCE. But I've learned that instead of working by yourself, you have other people you can rely on and who can depend on you. Now I see myself becoming a community organizer and helping with the community and the students in the future.

My proudest moment with VOYCE was when we passed the new Student Code of Conduct. I worked a lot on it, and I know that with reducing the suspension time, I actually did something that was going to affect a lot of students.

As a result of the organizing of VOYCE student leaders like Timothy and Davisha, the Chicago Board of Education approved a new Student Code of Conduct this year that ended automatic two-week suspensions, cut the maximum suspension time in half, and ended arrests for disorderly conduct. The effects of these revisions can already be felt on the ground: When Timothy's little sister, Tiara, was sent to the in-school police room this fall for a verbal altercation with a security guard, the police told the principal they could not arrest her for disorderly conduct.

However, as Timothy and Davisha's stories show, Chicago and school districts across Illinois must do much more to prevent students from being pushed out of our schools. The expanding charter school sector in Chicago, which is projected to grow by as many as 60 schools in the next five years, still has no meaningful oversight at either the city or state level to prevent the overuse of the most harsh and exclusionary practices, such as arrests, suspensions and fines. This has resulted in students like Timothy being easily kicked out of a charter school, while students like Davisha are pushed out of neighborhood schools through practices like detention fines that originated with charters and are still not monitored or tracked by CPS officials in any way.

Additionally, CPS continues to aggressively expand the use of high-stakes testing despite the significant research documenting the connection between pressure to raise test scores and the over-suspension of low-scoring, high-need students. Original research by VOYCE has shown that this year is one of the most heavily tested years in Chicago history, with the average 11th-grader spending over 50 instructional hours in standardized testing and students as young as kindergartners required to sit through at least three required assessments. And the CPS high school calendar shows a whopping 96 days of possible testing, compared to just 81 days of testing-free instruction.

With local districts increasing the pressure on schools to deliver higher and higher test scores, it's no wonder that we are seeing the lowest-scoring, highest-need students pushed out through suspensions and other exclusionary discipline measures. We need strong Congressional oversight and guidance that compels local school districts to report comprehensively on how overly harsh discipline practices are being used at all publicly-funded schools. We also need Congress to push districts like Chicago, with some of the country's highest racial disparities in school suspensions, to eliminate these disparities through a clear, research-based course of action such as stronger limits on exclusionary discipline practices such as arrests at all publicly-funded schools and investments in supports and interventions, not ineffective overpolicing. We can't wait.



**WRITTEN TESTIMONY: Hearing before the Senate Judiciary Subcommittee on the Constitution,
Civil Rights, and Human Rights**

Name: Maria Degillo, VOYCE Organizer

With stories from VOYCE student leaders Keshandra Neal and Jose Briceño

City/State: Chicago, IL

Organization: Voices of Youth in Chicago Education (VOYCE)

Voices of Youth in Chicago Education (VOYCE) is an organizing collaborative for education justice led by students of color from six community organizations across the city of Chicago. For the past two years, our Campaign for Safe and Supportive Schools has advocated for structural reforms that would place stronger limits on exclusionary discipline at all publicly-funded schools, including charters; create public and transparent reporting systems on the use of harsh discipline at all publicly-funded schools; and increase investments in the student supports and interventions that address the root causes of violence and misconduct.

Illinois, and the Chicago Public Schools system in particular, is in dire need of these reforms. Under ever-increasing pressure to raise standardized testing scores, schools are using measures like suspensions and arrests to "push out" the lowest-scoring, highest-need students while our public officials turn the other way. Federal civil rights data has shown that Illinois suspends proportionally more African-Americans than any other state, while CPS suspends 63% of all African-American students with disabilities at least once. Original research by VOYCE and Advancement Project has shown that in the 2010-2011 school year, 29 students were arrested on school property every single day, as compared to five arrests per day in New York City schools; 97% of these arrests were of Black and Latino students and 82% were for misdemeanor offenses that could have been handled differently.

VOYCE student leader Keshandra Neal has direct experience with the overuse of school-based arrests:

"I never figured that I would be the first of my brothers and sisters to get arrested, but when I was in eighth grade, I was arrested just for walking past a big fight that broke out after school.

The day after the fight, we were in lunch and six police officers came into the lunchroom. They came and grabbed us and handcuffed us and said whatever we said could be used against us. No matter how I cried and pleaded and told them I didn't have anything to do with it, they wouldn't listen. I was charged with third-degree battery.

Even though I had good grades, my teachers treated me differently after that. They saw me as someone who got into fights and got arrested. They didn't want to let me graduate, eat lunch with my class, or go on our class trip even though I hadn't done anything.

It showed me that the world wasn't fair."

Original research by VOYCE and Advancement Project has shown that Keshandra, arrested when she was just thirteen years old, is not alone. For one, in Chicago, African-American students like Keshandra are 4.4 times more likely to be arrested than their white peers. And data from the 2010-2011 school year shows that 47% of the arrests were for students age 15 or younger. This means that fourteen students age 15 or younger are arrested from school every single day in CPS.

Former student leader Jose Briceño, who graduated from high school in 2010 and is currently an organizer-in-training with VOYCE, also had direct experience with school-based arrests and the devastating impact that they can have for the futures of immigrant youth in the U.S.

I was going through some tough times my senior year, and the only thing that was there for me was to go outside and be tagging. My senior year, one night I got arrested and the cops told me, "You shouldn't be doing this, you're already going to graduate." They basically gave me a chance and didn't charge me with a higher crime, so I got lucky that time. So I kind of learned my lesson and decided that getting arrested won't do me better. I decided to start passing my classes, because I was failing. I was doing make-up work and had given up hanging out with my friends, my girlfriend, my family just to do my school work.

So then two months [after my arrest] they called me into the security office and started asking me these questions. The security guards knew what name I used when I wrote graffiti, because the police computers in their office showed that I had been arrested. They told me that they were trying to get this tagger who had been destroying school property and that they were checking with all of the writers in the school if they know him to turn him in. I told them that if I knew him, I would turn him in, but I don't know him.

They said that since I didn't give them his name, they were going to punish me instead, for this one-inch-sized tag that I had made like two years ago, before even my first arrest. The assistant principal and the cops came in and I said, I know I did that damage but I'll clean it off, I know how to clean it off. I told him I already got arrested before and I want to graduate, I'm doing better in school and I only got a few weeks left to graduation. But all he did was look me in the eye, he didn't answer me, he just left the room.

So I asked the cops, what is his decision? And they said, we're sorry to tell you this but he decided to arrest you. So they handcuffed me and led me outside the security office, and then I had to wait for the other cops to take me to the station, where I was booked and spent the afternoon in a cell at the station.

[Being suspended for two weeks] affected me big time, I had to ask my girlfriend to get my school work every day and I had to stay up overnight working on essays because of all those days I was missing at school. I always had an A in art class, and from an A it went back to an F. And there was one class that I had barely made it up to a C and then because of those missed days the teacher just put an F on [the gradebook].

The assistant principal showed me he didn't care. I never felt that bad from a staff member from the school, you know. How are you just going to walk away and not respond to me? You're telling me I'm going to be a criminal instead of seeing that I'm trying to do good now. Instead, how about you tell me, "I'll take you to this art class to get your mind off that street, let's make the school better. Can you coordinate some murals inside or outside the school?" Luckily I had a mindset where today I am not committing any crimes, I'm working. But what they did made me feel like this is what you are going to do throughout your whole life. You're going to become a criminal. That's how they made me feel.

As an undocumented immigrant, Jose's arrest could impact his ability to successfully apply for Deferred Action and to stay in the country working safely and legally. He admits that his parents are frightened for him, and for the impact that his unjust arrest will have on the likelihood of him being detained or deported in the future.

Although they don't show up in the Office of Civil Rights database, school-based arrests in Chicago are out of control. Despite pressure from VOYCE this past year to significantly overhaul the CPS Student Code of Conduct, and to put stronger limits on the use of school-based arrests for minor offenses, the discipline code in Chicago still has over 20 offenses on the books that can lead to the arrest of a student—even if it is your first time, even if you are ten years old, even if you are undocumented. And the expanding charter school sector in Chicago, which is projected to grow by as many as 60 schools in the next five years, still has no meaningful oversight at either the city or state level to prevent the overuse of the most harsh and exclusionary practices, such as arrests, suspensions and fines.

We need strong Congressional oversight and guidance that compels local school districts to report comprehensively on these measures at all publicly-funded schools, and that pushes districts like Chicago, with some of the greatest racial disparities and highest arrest rates in the country, to eliminate

these disparities through a clear, research-based course of action such as stronger limits on exclusionary discipline practices such as arrests at all publicly-funded schools and investments in supports and interventions, not ineffective overpolicing. We can't wait.

December 10, 2012

*Re: Statement for the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
Hearing on Ending the School to Prison Pipeline*

Via email to:

Dear Chairman Durbin and members of the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights:

The W. Haywood Burns Institute (BI) was encouraged when we learned of the Subcommittee Hearing to End the School to Prison Pipeline. Please accept our testimony on behalf of this important endeavor.

The BI is a national non-profit organization based in San Francisco, California. We seek to protect and improve the lives of youth of color and poor youth by promoting fairness and equity in youth-serving systems across the country. Specifically, we work with local juvenile justice systems to reduce racial and ethnic disparities using a data driven, consensus based approach. We have worked with dozens of jurisdictions across the nation, including twelve counties in California, and we have achieved measurable reductions in racial and ethnic disparities.

National data highlight the gravity of the problems that currently exist in the justice system. Juvenile justice data indicate that youth of color are far more likely to have contact with the juvenile justice system than White children, and in particular, are far more likely to be detained or incarcerated.

In a one-day count of detained youth across the nation in 2010ⁱ:

- Latino youth were more than **2 times** as likely as White youth to be detained.
- Native American youth were nearly **3 times** as likely as White youth to be detained.
- Black youth were **5 times** as likely as White youth to be detained.

Moreover, contrary to what many people believe, the vast majority of youth are detained for non-violent offenses such as status offensesⁱⁱ, property offenses, and lower-level offenses such as fighting and theft. Federal data from 2010 shows that only 25 percent of youth detained were there for violent offenses against a person.ⁱⁱⁱ

In our work across the country over the past decade, we have become very familiar with “non-judicial drivers” that contribute racial and ethnic disparities in the juvenile justice system. As our nation and states continues to slash basic safety net programs and underfund public education and other critical services, these “extra-judicial” factors that contribute to system involvement become more profound. With growing research to support it, one clear example of an extra-judicial factor contributing to disparities in the juvenile justice system is lack of access to education and school discipline policies that disparately impact youth of color.

Data from the Department of Education and Department of Justice indicate significant increases in rates of suspension and expulsion for children across the nation, with racial and ethnic disparities similar to those that we observe in the justice system.

- Nationwide, school suspensions almost doubled between 1974 and 2010, from 1.7 million in 1974 to 3.3 million in 2010.

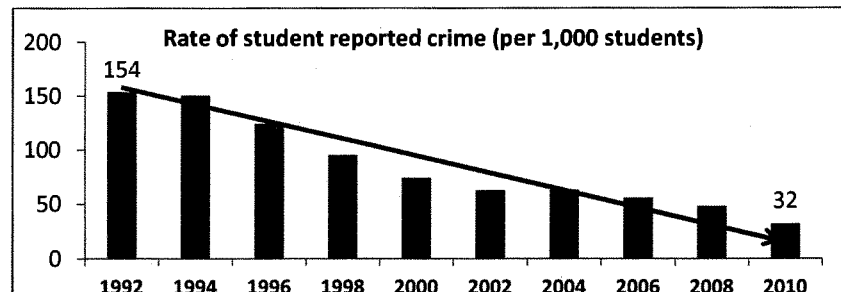
- Department of Education data indicates Black students are 3.5 times as likely to be suspended or expelled as their White peers.
- 70 percent of the students involved in school-related arrests or referred to law enforcement were Black or Latino.

Contrary to popular notions, these suspensions and expulsions are not simply the result of youth today, and particularly youth of color, misbehaving more often or committing more crime. According to a number of recent reports,^{iv} racial and ethnic disparities in school discipline cannot be explained by more serious patterns of rule-breaking amongst youth of color. In fact, research concludes that racial disparities in school discipline are more significant in subjective and vague offense categories.

Additionally, the research highlights the ineffectiveness of suspension as a means to control behavior or to help children become successful in the long-term. Suspension is strongly associated with low achievement and an increased likelihood of dropping out of school. Suspensions:

- Do *not* increase school safety
- Do *not* increase parental involvement
- Do increase teacher turnover
- Do increase the likelihood of juvenile justice involvement

Finally, as the following graph illustrates, the rate of student reported crime has consistently trended down since the early 1990s.



Source: Indicators of School Crime and Safety: 2010. National Center for Education Statistics, U.S. Department of Education, and Bureau of Justice Statistics, Office of Justice Programs.

The ground breaking study, *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement*, conducted by the National Council of State Governments, found that only 3 percent of suspensions and expulsions in Texas were mandatory. In fact, the remainder of disciplinary actions were made at the discretion of school officials, primarily in response to violations of local schools' conduct codes. This discretion resulted in a startling number of suspensions and expulsions for students of color and those with special education needs. Data also suggests that lesbian, gay, bisexual, and transgender (LGBT) youth also experience disproportionate suspensions and expulsions.

As student crime continues to decrease, local, state and national policy makers must ask themselves: Why are suspensions and expulsions of youth of color continuing to rise? What can and should be done to reduce the overuse of harsh discipline such as suspension and expulsion, particularly for youth of color, who bear the brunt of these discretionary policies? These are just some of the questions we address at the

Burns Institute as we work to prevent the unnecessary involvement of youth of color and poor youth in the juvenile justice system.

In reducing the use of detention for youth of color in the justice system, two key strategies have been instrumental to our success:

1. Forming a collaborative which includes community stakeholders, parents, youth, and system stakeholders to critically examine policies and practices which contribute to negative outcomes for youth.
2. Using a data-driven approach to understand the problem and implement solutions.

These pillars have lead to a variety of solutions around the country which have served to reduce detention utilization for youth of color, and in some cases, have stemmed the flow of children from the education to the juvenile justice system. Solutions are different depending on the local context and community, but there is no doubt that the school to prison pipeline is a solvable problem.

For instance, in Clayton County, Georgia, the juvenile court judge observed an overwhelming number of children coming before the court for fights in school and other minor violations. The courts were being clogged up with inappropriate cases, and kids were losing out because they weren't in school. A collaborative developed a new protocol for four misdemeanors: fights, disorderly conduct, disruption and failure to follow police instructions. The protocol resulted in a decrease in school referrals to the court.

In Peoria County, IL the use of a restorative justice model in schools reduced the number of referrals to the juvenile justice system for youth of color. Peoria County examined data on school referrals to the police and determined that the County's racial and ethnic disparities were aggravated by certain school discipline policies that had a disparate impact on youth of color. The County successfully reduced disproportionate referrals of youth of color to the juvenile justice system by working with the school system to strengthen school-based conflict resolution protocols.

Since research has emerged in the past decade on the serious impact of childhood trauma on brain development and children's behavior in schools, Washington State and Massachusetts have been leaders in implementing school-wide trauma-informed responses children. The practices which are implemented at the classroom and school-level are supported at the school, district, and state level, not leaving the problem in the hands of teachers alone. Schools in both states have had great success in reducing suspensions, expulsions, and referrals to the juvenile justice system. More importantly, they have improved school climate and helped to create environments where even children who have experienced serious childhood trauma can thrive. Since the research also indicates that youth of color are significantly more likely than White youth to experience childhood trauma, these trauma informed practices should impact the high rates of suspensions and expulsions experienced by youth of color in particular.

There are many different approaches we can take besides kicking kids out of school into the justice system. Here are just a few more:

- Changing School Conduct Codes
- Positive Behavioral Interventions and Supports (PBIS)
- Community Service and Restitution
- Mediation
- Mentoring
- Saturday School
- In-school Suspensions
- Peer Panels
- Community Teams

- Anger Management
- Drug &/or Alcohol Counseling
- Restorative Circles
- Fairness Committees

We encourage your subcommittee to consider the available data and latest research, which strongly supports a departure from the status quo. Successful approaches like the ones listed above should be bolstered by federal guidelines and funding.

Those of us who have worked in the justice system know that detention facilities are not benign places for children. They are associated with negative life outcomes, such as lower educational and career attainmentⁱ, and they come with a great cost in a time of fiscal crisis. Moreover, we have seen successful models that are less expensive and more effective.

Our country's history shows that youth of color have often been perceived as unworthy of investment of public dollars, "incorrigible" and "unredeemable."

Knowing all of this, decision makers and service providers have a moral imperative to work relentlessly to help students be successful in school and to end the school to prison pipeline. We hope the Senate Judiciary Subcommittee will move this work forward.

Sincerely,

James Bell
Executive Director

Laura John Ridolfi
Law & Policy Analyst

Anna Wong
Policy & Research Associate

ⁱ Sickmund, M., Sladky, T.J., Kang, W., and Puzzanchera, C. (2011) "Easy Access to the Census of Juveniles in Residential Placement." Online. Available: <http://www.ojjdp.gov/ojstatbb/ezacjrp/>

ⁱⁱ Status offenses are behaviors that are not illegal for adults such as breaking curfew or running away.

ⁱⁱⁱ Violent Offenses include homicide, violent sexual assault, robbery and aggravated assault. Data Source: Sickmund, M., Sladky, T.J., Kang, W., & Puzzanchera, C. (2011). "Easy Access to the Census of Juveniles in Residential Placement." Available: <http://www.ojjdp.gov/ojstatbb/ezacjrp/>

^{iv} *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement*, The Council of State Governments Justice Center and Public Policy Research Institute, July 2011. "Suspended Education in California," *The UCLA Civil Rights Project*, 4/10/12. "Educate Every Child: Promoting Positive Solutions to School Discipline in Virginia," Legal Aid Justice Center, November 2011.

^v *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*. Justice Policy Institute. Holman, B., & Zidenberg, J. (2011).

Submitted to the US Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
"Ending the School-to-Prison Pipeline"

Keeping Youth out of the School-to-Prison Pipeline

A community-based approach to keeping students safely in
schools and communities and saving taxpayer dollars

December 12, 2012



About YAP

YAP was founded in 1975 in Pennsylvania by a group of innovative thinkers who successfully returned juveniles housed in the Camp Hill State Correctional Institution for adults (located just outside Harrisburg, PA) to their home communities. Our mission since our founding has been to provide community-based alternatives to institutionalization by providing individualized, flexible and holistic services to system-involved youth and families.

YAP's unique service combines best practices from the fields of wraparound, mentoring, family support, positive youth development and restorative justice. Our efforts are geared toward helping individuals and families build upon their strengths, natural resiliencies and supports to provide a positive path for development and ensuring each youth and family has a voice and a choice in the services they need and receive. Today, YAP serves children, youth and young adults with diverse needs at various levels of involvement with juvenile justice, child welfare and mental health systems.

Since our founding, local governments across the country have asked YAP to help deinstitutionalize vulnerable populations, and today YAP operates community-based programs in 25 major US cities including the South Bronx, Baltimore, Philadelphia, Newark, Camden, Pittsburgh, Toledo, Chicago, Dallas, Fort Worth, Houston, Phoenix, Las Vegas, Tampa, Jacksonville and Denver as well as dozens of other urban, suburban and rural communities. We are the largest non-profit service provider in the nation with deinstitutionalization as its mission and sole focus. YAP currently provides direct services and advocacy in 100 communities throughout 18 states impacting 12,000 families each year. We also support programs in Ireland, Guatemala and Sierra Leone.

We work with marginalized and disadvantaged people most likely to be subject to institutionalization and mistreatment in the US and around the world. Historically, the people we serve include racial and ethnic minorities, gang members, sex-trafficked youth, Native American young people, youth with disabilities, inter-generational families in poverty, Irish Travelers and other Roma people, former child-combatants and "street children."

YAP is accredited by the Council on Accreditation and recognized by OJJDP, the Annie E. Casey Foundation, the National Council on Crime and Delinquency, the American Youth Policy Forum and the National Gang Center as a "promising, best practice model".

This publication is a product of the Youth Advocate Programs Policy & Advocacy Center, whose mission is to promote policies and influence change that create or invest greater resources in families and communities and reduce reliance on institutionalization.

For more information, please contact YAP's National Policy Director, Shaena Fazal, Esq. at sfazal@yapinc.org or (202)594-6893.

Background

Youth Advocate Programs Inc., (YAP) works with youth in 18 states across the country. The youth we work with are those most likely to be kicked out of schools and end up in jails, detention centers and prisons. Using a family-centered, individualized community-based approach, we work to give the youth and school the supports they need to stop the pipeline. In this report, we will demonstrate how our approach helps to address the underlying causes of behaviors that often subject youth to school push out and how we work to address those causes.

Common Causes of School to Prison Pipeline

Numerous studies and reports have come to the same conclusion about the causes of the school-to-prison pipeline. Students are being kicked out of schools and into the juvenile and criminal justice systems due to zero tolerance policies, overreliance and discriminatory use of school discipline and overly broad student codes of conduct that lead to discipline for innocuous behavior. Vulnerable youth, such as children living in impoverished communities, youth with educational disabilities, students of color, students with involvement in the child welfare or juvenile justice system, homeless youth, gang-involved youth and youth who are chronically truant or absent are most likely to fall victim to the pipeline. Zero tolerance policies ushered in during the 1990's coincided with the misguided "tough-on-juvenile" policies premised on the now discredited "teenage superpredator" label. These policies resulted in more kids being kicked out of school and into the justice system.¹

Schools often push the "bad apples" through the pipeline - those 5% of students who seem to cause 95% of the problems. The thought is that if we remove the bad apples, other kids will do well. While that may seem logical, it is a misguided approach. Many of those "bad apples" for example, are kids suffering from trauma and many kids who suffer trauma at an early age learn aggression as a vital response². When we kick them out without understanding their behavior we send a message that we are giving up on them. Other students also learn to be dismissive of youth who behave differently, reinforcing negative stereotypes. "Throwing away" these youth has come back to haunt many communities in the form of increased welfare, incarceration, violence and dependencies.

Policy changes at the school and local levels are necessary to end the school to prison pipeline. In the last several years, important work by organizations like the Advancement Project and the Center on State Governments have documented the harmful policies that lead children into the pipeline and promoted efforts to change those policies. For example, the Advancement Project's report *Education on Lockdown: the School to Jailhouse Track*, recommends solutions such as limiting school arrests and zero tolerance policies, introducing more due process and providing more resources for youth and schools, such as access to social workers.

These reports also argue for more investment in prevention and intervention. A key component of effective prevention and intervention is to engage families and communities to support at-risk youth. Parental engagement has been shown to decrease suspensions and instances of violent behavior, two leading causes of the pipeline. The good news is we have the knowledge of "what works" to prevent youth from being pushed into the pipeline and can effect change for more and more

¹ President Clinton's Gun Free Schools Act, which financially incentivized schools to expel students who brought guns to school for at least one year led more schools to mandate expulsions under zero tolerance policies for myriad offenses, not limited to gun possession. It had the effect of painting students with a broad brush rather than identifying their individual strengths, needs. *The Columbine Effect*, by John Cloud, Time Magazine December 6, 1999, <http://www.time.com/time/subscriber/article/0,33009,992754,00.html>.

² *Trauma and Recovery*, by Dr. Judith Herman

students, improving not only the students' futures, but also their families and communities and ultimately, society at large.

We know that programs like Peer Juries, volunteer panels that act as alternative courts for youth in the juvenile justice systems and alternatives to expulsions and suspensions for things like fighting can make a difference. Yet, these programs are frequently underfunded or unfunded, while policymakers favor the destructive and expensive paths of school discipline that lead to youth dropping out or being involved in the juvenile and criminal justice systems. We need the political will to shift our foci and invest in resources to keep high risk students thriving in schools and communities.

We Can't Afford the Costs of School to Prison Pipeline

The costs of pushing children out of school and into the pipeline are both avoidable and excessive.

Consider these statistics:

- Annual cost of incarcerating a youth averages \$89,000³
- Annual cost to incarcerate a person in the adult system averages⁴: \$31,286⁵
- Annual income of HS Dropout: \$17,299
- Annual income of HS Graduate: \$26,933
- Costs to society of a high school dropout over their lifetime: \$260,000
- Costs to society of the approximately 6.7 millions disconnected youth⁶:
 - Annually: \$252 billion to society (\$93 million to each taxpayer)
 - Lifetime: \$4.7 trillion to society (\$1.6 trillion to each taxpayer)

"...if the students who dropped out of the class of 2007 had graduated, the nation's economy would have benefited from an additional \$329 billion in income over their lifetimes."

-Alliance for Excellence in Education Policy Brief, 2007

These numbers demonstrate that while it might appear to serve the immediate need of a classroom or school to kick a "bad apple" out, the long-term social and economic costs are unaffordable. The bottom line is that it benefits everyone to keep a child in school. Students who stay in school and graduate will earn more money, have more earning power, more financial and social security, rely less on government benefits, be contributors (taxpayers), and are more likely to have stronger family and community connections. For the community and taxpayers, we benefit greatly from having fewer people in costly, ineffective institutions and also by having more working people in the community contributing to our economy as taxpayers and consumers.

³ The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense, May 2009 , http://www.justicepolicy.org/images/upload/09_05_REP_CostsofConfinement_JJ_PS.pdf

⁴ Because many youth in high school are waived into adult court or because the states they live make youth as young as 16 or 17 automatically adults for purposes of criminal activity, this number is also relevant to school-to-prison pipeline issues. Importantly, youth in the adult criminal just system are far less likely to get the services they need or access to education.

⁵ The Price of Prisons: What Incarceration Costs Taxpayers, Christian Henrichson & Ruth Delaney, http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/http___www.vera.org_download_file=3495_the-price-of-prisons-updated.pdf

⁶ The costs associated with "disconnected youth" come from a report by John Bridgeland of Civic Enterprises, called Opportunity Road, http://www.civicenterprises.net/MediaLibrary/Docs/opportunity_road.pdf. In that Report, Bridgeland notes that 6.7 millions youth, ages 16-24 are "opportunity youth" because they feel promise about their futures; but absent help, they will remain disconnected from work and school, at a staggering cost to society. Certainly students who are most susceptible to the pipeline can be considered among our nation's disconnected youth.

Case Study: Chicago Youth Advocate Programs - Focus on Keeping Students Safe and Improving Educational Outcomes

After the brutal beating death of Chicago Public Schools student Derrion Albert went viral, CPS partnered with YAP to work with the youth it determined to be 20 times more likely to be victims or perpetrators of gun violence.

From 2009-September 4, 2012, YAP Served 557 youth from Chicago's most gang-involved and impoverished communities on the south and west sides. At its peak, our program had 200 men and women from these communities working day and night to create and execute service plans to help these youth achieve educational success and stay safe. Here are some important outcomes:

- We re-enrolled 179 students who were chronically truant or hadn't been to school in years.
- Our Advocates, available 24/7, kept 93% of our students safe, despite predictions that they would not be safe.
- Of our seniors, 87% graduated high school or received their GED's, with 41% enrolled in college and 9% enrolled in trade school.
- 13% of seniors achieved honor roll status while enrolled in our program.

If we push kids out of schools and do not work to reconnect kids to school and work, the costs are staggering.

The question is, in addition to changing zero tolerance policies, how can we support more students and schools so that youth stay in school and out of the pipeline, avoiding detention, jail and prison?

YAP Approach to Interrupting the School to Prison Pipeline

Youth Advocate Programs, (YAP) specializes in working with the most vulnerable youth and families in the country, those most at risk of being victims of the school to prison pipeline. Our work can be simply defined as providing intensive, community- and strength-based, individualized wraparound and advocacy services for youth and their families. We partner with youth, adults and families to move them from where they are to where they want to be, providing intensive (7-30 hours of service per week), unconditional support to those with the highest need and in crisis, helping them achieve personal, educational and social success. This kind of advocacy is becoming widely accepted as an intensive form of mentoring, targeted to meet the complex needs of youth at highest risk of dropping out. Importantly, by supporting students and their families, we are also supporting the school administration and enhancing school safety. Our services are transitional and designed to effect long term change.

Key to our success is the people we hire to work with YAP kids and families. We strategically hire people – who we call Advocates – who live in the same communities as our kids and families. The Advocates are natural experts in understanding the neighborhood's assets and challenges. They come from diverse backgrounds and hold credentials from GED to PhD; the only requirement is that they have care and concern for their communities. This approach positions our Advocates to be credible messengers to their youth and families.

YAP also matches youth with Advocates based on shared interests and strengths to further help engage youth and build the trust needed for true growth and change. Our Advocates know their communities and the schools; they build relationships with teachers, principals, school counselors and school security, and they advocate for what their kids need most.

While our approach is individualized and flexible to adjust for inevitable changes, a key part of our success is also collaboration with other community organizations and resources. We not only

work to help the youth improve his or her behaviors, but we also work to strengthen communities.

Our experience shows us that working with the community to help keep kids safe and thriving is the most desirable outcome, and that communities have untapped resources to help. As the sociologist John McKnight says, "[t]he community is more hospitable than it is not."

Some of the unique ways our Advocates have helped keep students out of the pipeline include:

Family Engagement:

Every youth we work with has an Individualized Service Plan. The plan is created with a Program Director, Advocate, parents, youth and other formal or informal supports the youth identifies as important to him or her, comprising what we call a "child and family team." Together this team works to devise a plan that identifies and builds on individual and family strengths and assets. The family, youth and team members participate as equal members of the team; everyone is considered a contributor. The plan is developed using assessment tools that target needs and purposefully plan to address each need using community resources. This entire process is intended to improve youth outcomes, but also to engage the family and team members in the process. Keeping the family involved gives them ownership over the plan, and in the school setting, helps parents to participate in the youth's educational plan. Parental engagement is key to a youth's educational success.

Children Exposed to Trauma

Many of the youth we work with have been exposed to early childhood trauma, as exposure to community violence or victims of sexual or physical abuse. Youth who have grown up living in multiple foster care homes, residential placement or group homes or have been locked up in the juvenile justice system are angry and fearful resulting in behaviors in school that may lead teachers or administrators to kick them out and back into the systems they came from. In many instances, schools do not possess the resources or skilled staff to reach these youth. But with the right supports, with an Advocate they trust, these youth can change behavior and get the help they need to stay in school and avoid being pushed out.

Our staff is trained to identify root causes of trauma that may lead to behavior likely to push them into the pipeline. Because our approach is individualized and relationship-based, once we identify the trauma, we can help the youth access counseling or other formal and informal supports to help improve school relationships and behavior.

Youth Living and Attending Schools in Violent Neighborhoods

For many students, simply getting to and from school safely is a challenge due to the violence in their neighborhoods. As we witnessed in the brutal videotaped beating of Chicago Public Schools student Derrion Albert, school closings that force youth to go to schools in neighborhoods that may be dangerous for them to travel to or through, inhibit access to education. For example, more than 1,300 Chicago Public Schools students have been shot since 2008 through June 2012, 127 fatally⁷, creating an environment that is clearly dangerous for students. Community violence is a complicated and misunderstood issue that our community-based advocates are skilled at understanding. They can help

⁷Number of CPS students shot rises, as does fear of more to come, by Noreen S. Ahmed-Ulla, June 26, 2012 http://articles.chicagotribune.com/2012-06-26/news/ct-met-cps-student-violence-0625-20120626_1_cps-students-students-shot-safe-haven-program; Two Hundred and Fifty Eight Public School Students Shot in Chicago Last Year, July 10, 2012, <http://www.care2.com/causes/two-hundred-and-fifty-eight-public-school-students-shot-in-chicago-last-year.html#ixzz2EcM9rFOg>; 508 Chicago Kids Shot in Just 16 Months, March 10, 2009, <http://tutormentorconnection.ning.com/profiles/blogs/508-chicago-kids-shot-in-just>.

youth get safely to and from school, doing things as basic as driving them there themselves and being available before and after school, targeting the times when youth are most likely to be exposed to community violence. This kind of support and supervision often results in youth giving up the weapons that many young people view as essential to their survival for the circumstances in which they live.

Educational Help

Many of the youth in our programs have Individualized Education Plans. Some youth are placed into alternative programs or classes that do not challenge them leading to boredom, and in some cases, acting out that may lead to involvement in the pipeline. In other cases, youth may need IEP's and do not get them. Traditional mental health services may also be offered but for many young people, not accepted. Through our individualized service planning, our Advocates will have identified each youth's unique needs and strengths so they can advocate for appropriate placement in schools and educational support services that are culturally sensitive, non-traditional and most important, accepted by youth and families as beneficial to addressing their challenging circumstances.

Poor attendance / chronic absenteeism

Students may have all kinds of reasons for not attending school, although failure to attend or chronic absenteeism does not mean that students do not want to attend to school or that they will not attend school. In some states, the pipeline is codified; where truancy is a status offense, for example, youth who are truant are sent to local detention centers.

In Pittsburgh, PA, we work in partnership with the Allegheny Department of Human Services to help return truant youth back to school. In the 2009-10 school year, we served 233 youth, and when they graduated from our program, 73% of students who were chronically truant and at-risk of being in detention, were attending school 4-5 days a week. And in our Chicago program, we were able to re-enroll nearly 200 youth in school that live in violent, impoverished neighborhoods.

Key to our success are simple yet effective interventions; ensuring that kids wake up and get to school; accompanying youth during the school day as needed; supporting the young person in addressing the underlying reasons for truancy (e.g., bullying, sexual identity issues, conflict with other students or teachers, domestic violence at home; homelessness); providing or arranging for tutoring and other educational supports and working with the family to ensure that schooling is reinforced and supported after hours in the home.

A community-based model that meets youth where they are and develops a plan to get them back on track can help reduce the number of high school dropouts and youth in the pipeline.

Poverty & Work

A Case Study: Disconnected or Opportunity Youth (Youth Ages 16-24)

YAP also has tracked our progress with a cohort of 723 youth ages 16-24 who were either not attending school or engaged in work when they entered our program in August 2010.

At the time of their discharge from our program, 64% were either working or in school or both, and post-discharge, that number rises to 84%.

Our model of service not only addresses the needs of each youth, but we build on strengths, all with the goal of reconnecting youth to their communities and families and to the opportunities that exist for them.

Almost 100% of the youth YAP serves live in poverty and receive school lunches. Research shows that students eligible for school lunches and who live in poverty-stricken neighborhoods are disproportionately caught up in the pipeline. We can help to alleviate the symptoms of their poverty by, for example, planning for time with a caring adult while a parent works two or three jobs; helping to involve the youth in activities that interest him or her; helping a youth access counseling or treatment and finding employment for the youth.

Wherever possible and necessary, we include "supported work" to our service delivery. Supported work is YAP's subsidized work program where we match youth in jobs at community businesses or nonprofits and pay the wages. We search for supported work placements that reflect the youth's interests. Importantly, supported work teaches the youth job skills, gives a youth work experience, meets important economic needs and helps the community invest in the youth's success. Our Advocates are also trained job coaches, and with the new employer, are another set of eyes in the community focused on the youth's well-being.

YAP Advocates can improve the chances that a youth living in impoverished conditions can achieve personal and social success if they have the support they need. When they feel supported, behavior changes and the pipeline can be averted.

Conclusion

Kicking students out of school and into the pipeline has a reverberating effect on youth. Youth who do not graduate high school end up more likely to be involved in the criminal justice system, on public welfare, underemployed or unemployed and have a lifetime of disconnectedness. They will suffer chronic collateral consequences, especially if they end up with criminal histories that will disable them from opportunities to work, receive benefits they need and have access to affordable housing, among others consequences.

We have to ask, when we kick a youth out of school and in to the pipeline, have we done all we can do to help that child have the best outcome possible? If not, then we need to do more. If we don't the youth will not be the only ones who feel the effects; society and taxpayers will suffer, as will whole communities. The pipeline affects us all.

Approaches like YAP strengthen schools, supports youth, families, communities and school administrators. This inclusive approach leads to far better outcomes. The approach outlined above is one of several that demonstrates how we can stop the pipeline. There are ways to keep youth and schools safe that do not include kicking them out of school.

Our experience shows us that kids are quite redeemable and we should invest in them.

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ACLU, "Ending the School-to-Prison Pipeline"

http://www.aclu.org/files/assets/aclu_statement_for_sjc_subcomm_hearing_on_the_school_to_prison_pipeline_12_2012.pdf

Vera Institute Testimony

<http://www.vera.org/sites/default/files/resources/downloads/michael-jacobson-testimony-school-to-prison-pipeline.pdf>

