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The Commission convened in Suite 1150 at 1331 Pennsylvania Avenue, N.W., Washington, D.C. at 9:00 a.m., Catherine Lhamon, Chair, presiding.

PRESENT:

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PATRICIA TIMMONS-GOODSON, Vice Chair
DEBO P. ADEGBILE, Commissioner
GAIL HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
DAVID KLADNEY, Commissioner
KAREN K. NARASAKI, Commissioner
MICHAEL YAKI, Commissioner*

MAURO MORALES, Staff Director
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LASHONDA BRENSON
MARIK XAVIER-BRIER, Ph.D.
PAMELA DUNSTON, Chief, ASCD
LENORE OSTROWSKY
ALFREDA GREENE
SARALE SEWELL
MICHELE YORKMAN-RAMEY
BRIAN WALCH
JOHN RATCLIFFE

COMMISSIONER ASSISTANTS PRESENT:
SHERYL COZART
JASON LAGRIA
CARISSA MULDER
AMY ROYCE
RUKKU SINGLA
ALISON SOMIN
IRENA VIDULOVIC
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OPENING REMARKS

CHAIR LHAMON: I'm going to call us to order at 9:00 a.m. This briefing of the US Commission on Civil Rights comes to order on December 8th, 2017 and takes place at the Commission's Headquarters, located at 1331 Pennsylvania Avenue Northwest, Washington, D.C.

I'm Chair Catherine Lhamon. Commissioners present at this briefing in addition to me are the Vice Chair Timmons-Goodson, Commissioner Heriot, Commissioner Kirsanow, Commissioner Kladney, and Commissioner Narasaki. I believe that Commissioner Adegbile is on his way. Commissioner Yaki, could you confirm that you're participating by phone?

COMMISSIONER YAKI: Yes, I'm on the phone.

CHAIR LHAMON: Thank you. A quorum of the Commissioners is present. I see that the court reporter is present. Mr. Staff Director, are you present?

STAFF DIRECTOR MORALES: I am. Thank you.
CHAIR LHAMON: Thank you. I welcome everyone here to our briefing titled, The School-to-Prison Pipeline: The Intersections of Students of Color with Disabilities.

In today's briefing the Commission examines federal law and policy on school discipline and civil rights, specifically focused on students of color with disabilities.

While this investigation is the first time the Commission will focus on the particular intersectional identities of students of color with disabilities, this is not the first time the Commission, or our State Advisory Committees, have taken up the issue of school discipline.

In just the last two years, two of the Commission's State Advisory Committees, one in Oklahoma and the other in Indiana, have reported on the school-to-prison pipeline in those states, including making recommendations with respect to race and disability.

The Commission's receipt of these Advisory Committee reports informed our own decision to conduct an investigation onto this issue, and I'm very grateful to the State Advisory Committees for their work.
In addition, in 2011 the Commission published a unanimous commission report on school discipline and disparate impact, looking particularly at racially diverse school district’s responses to the education department’s disparate impact work.

These are only the most recent publications specific Commission reviews on the topic of civil rights and school discipline. The Commission and our State Advisory Committees have also examined the topic in earlier years as well.

And of course, in my past life, as Assistant Secretary for the Office for Civil Rights at the Department of Education, I corresponded with Commissioners Heriot and Kirsanow in their capacities as Commissioners multiple times about their views of the discipline-specific work of the Office for Civil Rights. And I confirmed last evening that that correspondence still lives on the OCR website.

This repeated attention to the civil rights implications of school discipline is a snapshot reminder that concern about this topic, has persisted over time. In fact, the very first desegregation agreements at the Office for Civil
Rights that the Department of Education monitored when Congress created the office, included discipline as a component of desegregation promises.

Because race-based discrimination discipline was a concern already 60 years ago, as schools struggled to come to terms with the federal non-discrimination promise.

More recent data reported to the Office for civil rights in the civil rights data collection, and my experience in forcing federal civil rights laws in schools, confirms that the issue of discipline continues to challenge school communities, particularly with respect to students of color and students with disabilities who very often are the same students.

I saw that just about two weeks ago the current office for civil rights resolved an investigation of racially discriminatory discipline of Native American students with disabilities in a California school district. Finding specifically that the District had violated the civil rights of Native American students with disabilities.

OCR noted in that resolution, for example, that a Native American elementary school
girl, who had had 43 behavioral incidents, of which the school listed 38 as major, and whose teachers noted she had problems focusing and repeated behavioral issues, was not evaluated for disability.

OCR found that the District failed to evaluate Native American students for disabilities before significant changes in placement, including changes made for disciplinary reasons.

OCR also identified within school disparities in discipline for like behaviors between Native American and white students in this District, including for example, the Native American student received a one day out of school suspension for slapping another student on the way to the bus in what was that student's first disciplinary referral that year.

Whereas a white student received discipline of conference with the other student and lunch detention for slapping two students on the same day, which were that student's fifth and sixth disciplinary referrals that year.

The salience of civil rights concern on this topic over decades, together with findings just two weeks ago that a California District
violated students' civil rights precisely at the intersection of race and disability, and as it happened, sex, confirms the critical importance of today's briefing, leading the way for the Commission to make recommendations to the President, Congress and the American people, about appropriate civil rights policy on this issue.

I look forward to working with my colleagues to draw conclusions and to make recommendations after reviewing the material submitted to the Commission and benefitting from today's briefing.

Today's briefing features nine distinguished speakers who will provide us with an array of viewpoints, as well as the opportunity to hear from the public. The first panel includes policy experts and former government officials who will speak to federal education policy on school discipline.

I note here that Commission staff invited current officials from relevant offices within the Departments of Justice and the Department of Education, but they declined to participate in today's briefing.

Panel two includes researchers and
experts on special education and the school-to-prison pipeline.

I thank all who have joined us today to focus on this critical topic. Your views help us to fulfill our mission to be the nation's eyes and ears on civil rights.

I now pass the mic to Commissioner Narasaki, at whose impetus the Commission decided to take up this important issue.

COMMISSIONER NARASAKI: Thank you, Madam Chair, good morning everyone. I'd like to thank our excellent Commission Staff for their hard work in putting together today's briefing.

This hearing, as Catherine notes, is an important example of the role that our State Advisory Committees play.

Last year one when the Oklahoma State Advisory Committee Chair presented their school-to-prison pipeline report at one of our meetings, she shared that while the report focused on race and gender, the committee had received considerable testimony regarding the disproportionate impact of school discipline on students with disabilities. And that the issue warranted further investigation.

After my special assistant Jason Lagria
and I talked with several experts, we found that students of color with disabilities face disproportionate impact from school discipline practices.

For example, Native American, Alaskan Native, Native Hawaiian, Pacific Islander and African American boys with disabilities are approximately two and a half times as likely to be suspended as Caucasian boys with disabilities. Unfortunately, not much research has really focused on this phenomenon.

It was for that reason that I proposed that the Commission examine the intersectionality of the impact of school discipline policies on students who experience discrimination due to their race, their disability status and their status of students of colors with the disability.

I understand that this might be our first investigation that explicitly takes this intersectional approach on this topic. And I look forward, very much, to hearing our panelists today.

As the Chair mentioned, the Commission has held briefings on different aspects of school discipline over the past decade. During that time, our understanding of what many refer to as school-
to-prison pipeline has continued to grow, in part because of the efforts of the Department of Education and the Department of Justice to provide guidance and collect data.

It's my hope that today's hearing will further raise the visibility of what is happening to students with disabilities in our schools. Particularly, what's happening to students of color with disabilities. And too help shine a light on the best practices and the role that the federal government has to play in ensuring that data is collected to identify potential systemic problems and that the best practices are lifted up.

Last year, the Commission had a hearing on the inequitable funding of our public schools and how these funding disparities are exacerbated by segregation and increasing concentration of poverty. That report should be issued next month.

We heard testimony outlining the lack of sufficient funding for school counselors, school nurses, manageable class sizes, compensation to retain and attract the most experienced teachers and necessary training for teachers. All of which is relevant to the ability of our communities to address the challenges that we will be discussing
I think that we can all agree that every school should be equipped to provide every child, regardless of abilities, color, gender or orientation, with the tools that they need to thrive and learn and that teachers have a very challenging and important job.

I hope that most of us agree that the fact that some preschools are suspending very young children, is a fact requiring our very serious attention.

Finally, I commend the Chair for her leadership in suggesting that we follow the example of our State Advisory Committees, who provide a public comment during our hearings.

I thank our witnesses and those of you who are here today to speak during our open comment period. We will hear a lot of numbers and statistics during the hearing.

And while that data is extremely important, it is equally imperative that policy makers and researchers writing about these issues hear how these issues are impacting the classrooms and the lives of our most vulnerable students.

Thank you.
CHAIR LHAMON: Thank you. Commissioner Heriot, I also understand you wanted to speak?

COMMISSIONER HERIOT: Yes. Thank you, Madam Chair. This is an important issue. I don't think a more important one has come before the Commission.

Discipline policy is something our schools have to get right. On the one hand, if disruptive students -- regardless of race or disability -- are left in the classroom, they can make learning impossible for the rest of students. Even dangerous.

On the other hand, if students are being needlessly suspended or expelled, that's obviously a problem, too.

Alas, the evidence is overwhelming that federal policies don't help. That the enforcement activities that the Obama Administration's Department of Education and its Dear Colleague Letter of January 8th, 2014 have been wrongheaded, and according to surveys of teachers, very unpopular.

These policies have overly bureaucratized school discipline, and resulted not in more equitable school discipline, but in chaotic
classrooms.

I don't think there's any doubt that the decisions necessary to maintain order in the classroom are best left to teachers and principals. No, they are not perfect, but they sure beat the federal bureaucracy.

Even when federal directives are well meaning and reasonably nuanced, by the time they reach the foot soldiers on the ground, that is the classroom teachers, any subtlety has vanished.

"Don't discipline minority students unless it is justified," is naturally understood by school district administrators as don't discipline a minority student unless you are confident that you can persuade some future federal investigator, whose judgment you have no reason to trust, that it was justified.

In turn, this is presented to principals as, don't discipline a minority student unless you and your teachers jump through the following time consuming procedural hoops designed to document to the satisfaction of some future federal investigator whose judgment you have no reason to trust, that it was justified.

Finally, teachers hear the directive
this way: just don't discipline so many students; it will only create giant hassles for everyone. This is the nature of bureaucracy. I believe we are better off trusting our teachers.

I think I'll stop there. Other than to say that the Commission staff and the Chairman did want to bring in a Trump Administration official on this. The problem here, however, the obvious person to bring in would have been Kenneth Marcus, the nominee for the chair's old post.

But alas, Mr. Marcus has not received his vote in his senate. His hearing was just a couple of days ago, so he was not able to testify. Instead we have, I believe, four former administrators from the Obama Administration.

CHAIR LHAMON: Thank you. I'll now turn us to begin our briefing.

PANEL ONE: FEDERAL EDUCATION POLICY

CHAIR LHAMON: First, deep thanks to our Commission staff who researched and brought today's briefing into being, including Marik Xavier-Brier, LaShonda Brenson and Maureen Rudolph, in addition to Teresa Adams, Pam Dunston, Latrice Foshee, Abir Hamid, Lenore Ostrowsky, Sarale Sewell, Brian Walch, and Michele Yorkman-Ramey, for
making travel and logistical details for today, work.

In addition, thank you to two new Commission interns, Laura Geberter and Jessica Bonch for their help today.

I caution all speakers, including our Commissioners, to refrain from speaking over each other for ease of transcription and to allow for sign language translation, which is to my right.

I ask everyone present to please silence your phones and not to take flash photos to minimize health risk to persons present.

After the two panels and the lunch break, we will reconvene at 1:00 p.m. for a public comment period. If you're interested in participating in public comment, during which each person will have to up three minutes to speak, we will be honored to hear from you.

You may sign-up at the registration desk beginning at 9:30 a.m. We will hold the public comment period open for one hour, with slots allotted on a first come, first serve basis.

For any member of the public who would like to submit materials for our review, our public record will remain open until Tuesday, January 16,
2018. Materials can be submitted by mail to U.S. Commission on Civil Rights Office of General Counsel, 1331 Pennsylvania Avenue, N.W., Suite 1150, Washington, D.C. 20425 or by email to schooldiscipline@usccr.gov.

During the briefing, each panelist will have seven minutes to speak. After each panel presentation, Commissioners will have the opportunity to ask questions within the allotted period of time, and I will recognize Commissioners who wish to speak.

I will strictly enforce the time limits given to each panelist to present his or her statement, and you may assume we have read your statement, so you do not need to read it to us as your opening remarks.

Please do focus your remarks on the topic of our briefing, which is the intersection of race and disability in school discipline.

Panelists, please notice the system of warnings lights that we have set up. When the light turns from green to yellow that means two minutes remain. When the light turns red, you should stop talking.

Please be mindful of the other
panelists' time so you don't risk my cutting you off. And my fellow Commissioners and I will do our part to keep our questions and comments precise.

So now, our first panel, in the order in which they speak, includes Anurima Bhargava, whose leadership and government fellow at the Open Society Foundations and former chief of the educational opportunities section in the Civil Rights Division at the Justice Department.

Next, we'll hear from Eve Hill, partner at brown, Goldstein & Levy and former deputy assistant Attorney General at the Civil Rights Division at the Justice Department.

Then Kristen Harper, senior policy specialist for Child Trends and former senior policy advisor for the Office of Special Education and Rehabilitative Services at the Department of Education.

Then Rebecca Cokley, senior fellow for disability policy at the Center for American Progress and former executive director of the National Council on Disability.

And finally, James Scanlan, an attorney who specializes in the use of statistics and litigation.
Ms. Bhargava, please begin. Oh, and I should say, that if you can turn your mic off when not you're not speaking then everyone's mic will work. Here you go. Thanks.

MS. BHARGAVA: Thank you, Madam Chair, and good morning. Thank you to the Commission for opportunity to present and share information on the disproportionate discipline of students of color with disabilities and to highlight the transformational and ongoing work of — to combat discrimination and segregation in schools, in an effort to provide safe and supportive learning environments for all students.

My name is Anurima Bhargava. From 2010 to 2016, I lead civil rights enforcement in schools and institutions of higher education as the chief for the Educational Opportunities Section in the Civil Rights Division of the Department of Justice.

I previously served as director of the education practice at the NAACP Legal Defense Fund, and as a staff attorney to the New York City Department of Education. I am currently a leadership and government fellow at the Open Society Foundations, where my focus is on identifying and addressing the trauma that students
experience related to racial violence.

My testimony today will briefly touch upon what is extensively laid out in my submitted statement. I would particularly commend the Commissioners to the discussion of recent federal investigations contained in that statement and the ways that teachers and national education organizations have used and relied on federal tools and resources.

A student is suspended for bringing ibuprofen to school. Students are suspended, and some even arrested, for wearing the wrong color socks.

An 8-year-old-boy with disabilities is restrained by a police officer, using handcuffs, after he was being disruptive in class. The handcuffs were placed above the boy's elbows, apparently because they would otherwise have fallen off due to his small size.

A 5-year-old-girl is handcuffed and shackled for having a temper tantrum in school. And a 10-year-old spends a day in solitary confinement within her school, in a room where the floor pads are soaked in urine.

These are all examples from recent
federal investigations of the use and exclusionary and punitive discipline practices in schools. Unfortunately, the use of exclusionary practices, suspensions, expulsions, referrals to law enforcement or placement in alternative schools and punitive discipline practices like restraint and seclusion are prevalent and widespread in schools across the country.

In a recent study by the council of state governments in Texas, nearly six out of ten students have been suspended or expelled at least once in 7th through 12th grade. Those percentages were even higher among students with disabilities and students of color.

Seventy-five percent of students with disabilities had either been suspended or expelled at least once and 83 percent of African American male students, 74 percent Latino male students and 70 percent of African American female students had been subject to discretionary disciplinary action.

We know that exclusionary and punitive discipline practices are overused. Students are being excluded from classrooms, referred to law enforcement or subject to restraint and seclusion largely for minor infractions that simply do not
rise to the level of posing an imminent or significant threat to the safety of students or school employees.

We also know that the excessive use of exclusionary discipline is bad for students, resulting in missed class time, a decline in classroom engagement and cohesion and the increased likelihood that students who are suspended or expelled will be retained in grade, drop out or be placed into the juvenile justice system.

The use of practices, like restraint and seclusion, can be dangerous and even fatal for students. We know that such practices isolate and segregated the students from the learning environment, which impacts their academic achievement and ability to engage in both the short and the long-term.

We know that the excessive use of exclusionary discipline is not only harmful for the students who are disciplined, but has serious and negative collateral consequences, even for the students who are not disciplined. The academic achievement and success of all students is reduced in such punitive context.

We know that the use of exclusionary
and punitive discipline practices do not make our schools safer. Indeed, disciplinary rates, even among schools with very similar student populations, vary dramatically if there is no evidence that schools with lower disciplinary rates are any less safe.

We know that these practices simply do not work and are not necessary. There's no evidence that the use of exclusionary disciplinary practices is effective at addressing or reducing the problem behaviors that led to its use. And they certainly do not support teachers and students how to behave and positively engage in school.

After multiple decades of extensive research and working schools across the country, we also know what works. Positive behavioral supports and interventions and restorative justice practices, as two examples, are educationally and behaviorally sound practices that can have, and have extensively been used, and used more effectively to address issues that arise in the classroom.

In part because of the conversion -- the conversions of the widespread and pervasive use of disciplinary practices and the improved
understanding of what works, that all led to a
groundswell in this country. It was a call to
action and repeated request to the federal
government on how to best promote positive
discipline practices in accordance with federal
law.

We heard from thousands and thousands
of students, parents, teachers, school
administrators, school board members and
superintendents and community organizations who
called upon the Departments of Justice, Education
and Health and Human Services for tools and
resources and for the federal government to enforce
federal civil rights laws.

Exclusionary and punitive discipline
practices are not only educationally unsound when
they segregate or discriminate against students of
color or students with disabilities, they violate
federal civil rights laws. We know these practices
disproportionately impact students of colors with
disabilities.

And while these disparities alone do
not prove discrimination, the existence of such
disparities indicate that students of color and
students with disabilities are being
disproportionately disciplined and raise questions regarding whether schools are imposing such discipline policies in a discriminatory manner, in violation of federal civil rights laws.

It is the job of the Department of Justice and Education, to investigate complaints of disproportionate discipline of students with disabilities. There is near universal consensus that disparities should be grounds for an investigation.

In fact, nominee Kenneth Marcus said as much in his recent senate confirmation process.

Federal investigations have explored several areas of concern related to the disproportionate discipline of students with disabilities, including the use of exclusionary discipline to unnecessarily segregate students, the use of disciplinary practice that are harmful and unsafe for students, and the unnecessary treatment of students of color with disabilities differently on the basis of race.

The resolutions of consent decrees that emerge have provided roadmaps for schools, a contact specific and functional how to guide, for all schools who engage in positive disciplinary.
practices --

CHAIR LHAMON: Thank you, Ms. Bhargava

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MS. BHARGAVA: Thanks.

CHAIR LHAMON: -- we're going to have to stop there. Thanks. Ms. Hill.

MS. HILL: Thank you for having me today and in such fabulous company, and for taking on this really, really important issue.

I'm a partner in the law firm of Brown, Goldstein & Levy and was a former deputy assistant attorney general in the Civil Rights Division of the Justice Department, where I worked on disability rights, education rights and Title VI enforcement and implementation across the government.

I've been a disability rights/civil rights lawyer for 24 years, 25 I guess, in virtually every area -- private practice, academia, non-profit and local and federal government.

And I think we need to all agree that the long-term consequences of discriminatory use of exclusionary and criminal discipline is shockingly negative, not just for educational outcomes but for employment, for health, for earnings and for
We can't afford to ignore this problem. The former administration, including the Justice Department where Anurima and I worked, took a systemic approach to racial and disability discrimination in school discipline.

We issued guidance, we issued regulations, best practices and worked collaboratively across the government and with outside entities. We hosted convening’s and participated in public meetings to get the information, to review the data and to make sure that our proposed solutions were useful and workable within the systems that we were working with.

We collected data and looked at it and followed up on it. And we engaged in systemic enforcement and systemic solutions, as well as individual enforcement.

At times, we would investigate beyond the individual incident to see if the incident was a part of a pattern or practice, or a policy or whether school discipline policies and practices were having a disparate discriminatory impact on students of color and students with disabilities.
And we adopted systemic remedies for such problems for schools, such as consulting with experts, identifying the root causes of disparities, identifying discipline policies and training staff to ensure that they could respond effectively to behavior issues, and adopting research based supports and interventions, such as PBIS, to respond to those and to help students meet the expectations that our schools set for them.

As well as adopting, shockingly, MOUs so that school resource officers and law enforcement would know what the limits of their authority were in school, and so everyone would have an understanding of the use that they should be used for in school.

I think it's important to point out that the DOJ did not require schools to adopt discipline quotas or to get rid of any particular type of discipline. Rather, the systemic remedies of root cause analysis, data analysis, training and policies and procedures were designed to change the discrimination that underlies the disparity.

In addition, the systemic remedies of PBIS and other interventions for students, were designed to avoid the educational harm of
unnecessary exclusion from school, and to ensure that our students could meet our expectations.

By contrast, an incident-by-incident approach to investigation enforcement will end up hiding racial discrimination. Intentional discrimination is often not explicit in a given incident.

Non-intentional discrimination, such as the implicit biases that some people had and have not been trained how to address, is often almost invisible in an individual incident. Parents have little or no ability to see that their individual child is being treated differently than another child of another race, or without a disability.

And because exclusionary discipline is recorded, but similar incidents that were not subjected to exclusionary discipline, are not recorded. In the big picture, we looked beyond the individual incident for the systemic impact and addressed the systemic impact through systemic remedies.

And, this is an important approach, because although the federal laws recognize disparate impact as a form of discrimination and a way of proving discrimination, only the federal
government can take that enforcement approach. Individuals can only deal with the individual, often only explicit discrimination.

The current federal response appears to be changing. The Department of Education has already announced that it will not look beyond the individual incident, to look for the systemic practices and policies.

As a result of that, each parent of each child subjected to discriminatory discipline will have to challenge it themselves. And, racial justice and disability advocates will have to work together more than ever to use all the tools available to challenge this discrimination.

And ironically, this may result in more litigation because systemic solutions will not be on the table to stop future incidents.

In addition, the department of education has stated that it's reviewing its guidance to determine what to resend. And much of the material on this subject and others on the Department of Education website has begun to be archived.

As a national economic issue, this is essential. Federal budget cutting measures are
already cutting the safety net that people who can't graduate from high school and can't get jobs would rely on.

And incarceration, as a result of school based exclusionary discipline, cuts holes in that safety net. Excluding students of color and students with disabilities from education and stigmatizing them further with justice system involvement, will make it incredibly difficult to get jobs on which they can survive and will put their health at risk for their entire lives.

Keeping them in education -- even in special education -- is cheap by comparison. As a national competitiveness issue, it's even more important. We are wasting the talents and skills of tens of thousands of children every year. How can we possibly afford to do that?

And as a moral issue, it is similarly essential. The U.S. prides itself on being the land of opportunity, where people can use the inherent skills and the skills and talents that they learn to benefit themselves and their communities. We cannot afford to waste that; we do so at our entire country's peril.

In a system that's clearly applying
discipline more to students of color and students with disabilities, plain justice requires us to respond, both to the discriminatory application of discipline and to the stunningly negative effects of the exclusionary forms of discipline to our children and our communities.

Schools have to avoid writing off children with disabilities and children of color as being born bad, and have to teach them and support them to meet the expectations that we have.

We have to eliminate the discrimination underlying that disproportion, reduce the unnecessary use of discipline and for as long as those discriminatory attitudes exist, reduce the use of exclusionary discipline.

CHAIR LHAMON: Thank you, Ms. Hill.

Ms. Harper.

MS. HARPER: Good morning, Commissioners and thank you, Madam Chair. My name is Kristen Harper and I'm senior policy specialist for Child Trends, a national nonpartisan research institute devoted to improving the lives of children, youth and families.

Previously, I served as an advisor in the U.S. Department of Education, including in the
Office of Special Education and Rehabilitative Services. It is an honor to share with this body Child Trends' perspective on how to safeguard child of color with disabilities with the school-to-prison pipeline.

And I'll start by drawing the Commissions attention to three facts. First, children of color with disabilities face high and disparate rates of suspension and expulsion. Both the federal civil rights data collection, and data submitted by states under the Individuals with Disabilities Education Act, confirm this.

Second, suspension and expulsion are associated with poor academic and life outcomes. We know from a longitudinal study of over one million Texas school children that students who receive a suspension or expulsion are more likely to drop out, be retained in the same grade or enter the juvenile justice system than their peers.

However, this discussion must include a third point: the glaring disparities by race and ethnicity and the identification of education disabilities. Once black children begin grade school, they are 40 percent more likely to be identified with a disability than their peers and
twice as likely to be identified with emotional disturbance.

In highlighting disparities and disability identification, I'm asserting that the school-to-prison pipeline for children of color with disabilities spans both our general and special education systems. One of the most common reasons for special education referrals is child behavior. And we know teacher perceptions of behavior can vary by student race and ethnicity.

A recent Yale study found, for example, that early childhood educators watch black children more closely than others when prompted to examine a group of children for behavioral challenges. The disparities we see in a disability identification then serve as a bellwether for the disparities that we see in discipline.

While many federal provisions offer levers to safeguard children of color with disabilities from the school-to-prison pipeline, I will restrict my remarks to a particular provision under the Individuals with Disabilities Education Act, or IDEA.

Under this provision, Section 618(d), states are required to cite districts with
significant disproportionality, large, racial and ethnic disparities in the identification, placement or discipline of children with disabilities.

Cited districts are required to undergo a review of their policies, practices and procedures, and set aside 15 percent of their federal IDEA Part (b) formula dollars to implement services to address the disparity.

In our work to safeguard children of color with disabilities, the importance of Section 618(d) cannot be overstated. This provision puts resources on the table to drive reforms in the communities that need it most. And it is unique in that it allows us to address the intersections of race and disability, discipline and disability identification.

Historically, the utility of Section 618(d) has been extremely limited. For many years states were allowed broad authority to define significant disproportionality and to utilize criteria that kept District citations to a minimum.

However, in 2016, the U.S. Department of Education issued new regulations, the equity in IDEA rule, to require all states to utilize a standard approach to identify significant
disproportionality among school districts.

While the regulations still afford states some flexibility to determine when to cite districts, it fosters public transparency by helping communities to compare state definitions of significant disproportionality.

Disconcertingly, news outlets have reported in recent weeks that the U.S. Department of Education may delay implementation of the IDEA equity and IDEA rule by two years, and during that time consider rescinding the rule entirely.

These reports seem to be more than rumor, as reporters have identified a draft Federal Register notice that would invite public feedback on a delay of the rule. It must be understood that the equity and IDEA rule already offer states plenty of time to get this right. They do not have to use the standard approach until the spring of 2019.

Ultimately, this means that children of color already are experiencing massive inequities already have to wait two years for relief. They should not be made to wait longer.

I'll close with a note of caution and highlight two emerging threats to our efforts to
better support children of color with disabilities. The first threat is a narrative that offers poverty as an explanation for racial and ethnic disparities in disability identification and in discipline.

While the analysts advancing this narrative are small in number, they are increasing in volume. I strongly caution the Commission against relying on such research.

In making this argument I could choose to pit research methods against research methods, however, this is not a problem of numbers, but rather a fault within the underlying theories driving research questions and analyses.

In a recent piece that I co-authored with Dr. Edward Fergus of Temple University, we remind policy makers of the dangers of drawing conclusions about a child's characteristics based on their income or signing traits to child based off the circumstances of their birth. It evades our collective responsibility to ensure that education systems serving children of different races, ethnicities and socioeconomic backgrounds treat students fairly and equitably and work to create a more equal playing field for those arriving with different resources and privileges.
A second threat is a narrative that frames school discipline reform as a threat to school safety. At a time when communities need our assistance to identify and implement evidence based practices that prevent conflicts before they start, the best approach to improving school safety, we have no time for narratives that present the goals of school safety and education equity as a zero-sum game.

It should go without saying that our educators, our parents and our students want and need both. And as we examine the distance between our current system and our ideal, we cannot ignore that the chasm is widest wherever schools serve children of color and children with disabilities.

When educators are more likely to recommend a suspension for a black child than a white one for the exact same behavior -- as was found in a 2015 study by Stanford University -- we cannot endorse claims that initiatives to rectify such disparity are injurious to school safety.

I am, again, grateful for the opportunity to share my perspective on these issues and thankful for the Commissions effort to elevate this important topic. Thank you.
CHAIR LHAMON: Thank you, Ms. Harper.

Ms. Cokley.

MS. COKLEY: Thank you. I would like to thank the Commission on Civil Rights for having me here to speak today.

It's always a pleasure to engage with long-term friends, even when the topic is one that can't be any nearer to my heart right now than my stomach, because I am quite literally pregnant with my third child at the moment, who is going to be an African American child with a disability.

I would be remiss to not note that black and brown disabled leaders, black and brown disabled educators have been talking about this issue for decades. People like Talila Lewis, Chris Bell, Dr. Sebini Amana, Catherine Perez and others, have repeatedly talked about the disproportionality of discipline practices against students with disabilities.

And it's on their research and their support that I am proud to be here today.

As noted, I served in the Obama Administration in the Office of Special Education Rehabilitative Services at the administration community living at HHS, and finally as the
executive director of the National Council on Disability, where we had issued a report on this very topic.

I walked into my classroom -- let's go back to the 1990s. Yes, the fashion was epic; yes, the music was terrible. I walked into my classroom in 1993, freshman in high school, my mom was the ADA coordinator for the California Community College District, also a little person. My father ran the center for Independent Living, also a little person, and an individual who used a wheelchair.

The first day of high school I got sent to the guidance counsel, and the first thing he said to me was, I'm sorry, ma'am, you must be in the wrong place. Kids like you don't go here. My reaction was, wait, there's a school somewhere in the school district for four-foot two redheaded freckled little people? How did I get to this point in my life without knowing that?

He was adamant that disabled students were a problem, regardless of their race, regardless of their gender. Disabled students were a problem.

He persisted in being my problem those
entire four years. And he is why I do the work today. So thank you, Mr. William Connell, wherever you are today.

These issues are not just issues to me, but they are my life as a woman with a disability and the mother of two, almost three, African American disabled children. The reality of the world I send them out to daily is all too real.

After taking the summer off, I ended up joining the Center for American Progress as a senior fellow to build out the first ever disability policy shop at a non-disability think tank. And it's in that capacity that I'm thrilled to be here.

And I think it's important to note that, because disability rights is not just to be segregated to the disability cabbage patch, but is to be integrated into all civil rights work and into all work in general.

How many of you have watched the Martin Luther King's "I Have a Dream" speech? Probably more times than anybody here. I'm sure a bunch of you all have, right?

How many of you can tell me whose standing next to Dr. King? I will show you whose
standing next to Dr. King. It is a little person, Kenny brown.

Kenny brown was a member of the student non-violent coordinating committee and the NAACP. He was the first African American member of Little People of America. We don't see Kenny in any of the footage of the speech because he is very clearly obscured by a podium that is taller than his head.

Back in the 1950s and '60s, he was actually talking about disproportionality of students of color with disabilities and discipline issues in the education system.

And for his time, found himself in a no man's land when the issues of race and the issues of disability were so historically disconnected.

Flash forward to two years ago, July 27th, 2016, in celebration of the Americans with Disabilities Act, David Johns and I convened a meeting focusing on what it means to be young, gifted, black and disabled. It was the first discussion ever of its kind, and it was the first time that the National Council on Disability had teamed up with the white House Initiative on Educational Excellence of African Americans.
We centered the agenda around the largest group in the room, which were 7 to 17-year-old African American disabled kids. And we did what you should never do to a room full of children; we gave them the microphone.

And there was a 9-year-old-boy in the room and we asked him, what does it mean to be young, gifted, black and disabled, and he said, it means that I have to think about how I control my autism every time I leave the house, so that I'm not beaten up at school or the cops don't shoot me. He was 9 years old.

The fact that that is the number one concern of a 9-year-old-boy today tells us how dire the situation is, how much we need to continue doing the work on this.

We need to stop approaching this issue as if there's only one domain that needs to be fixed, and instead look at it as a series of systems and services facing young people of color transitioning to adulthood. We need to reset expectations for our young people and frankly, for the adults whose job it is to be, well, the adults in the room.

Kids of color with disability start off
with the same fundamental needs of all young people. But it's the adults that tend to screw things up, I find.

We need to look at the intersection of racism and ableism and see how these two impressions dance in such a way that create, perpetuate and reinforce each other. So many young people with disabilities are not diagnosed until they enter the carceral system. I refuse to call it a justice system, so I will leave it at that.

But the very fact that students of color are predominately undiagnosed when they enter, makes disability part of a punishment instead of part of a community. So while you're not just here because you're bad, you're here because you're bad and you're broken.

I'm not talking about a school-to-prison pipeline, I would be remiss not to address the sexual abuse-to-prison pipeline for black and brown girls, which I haven't heard anybody talk about yet, which is critically important. And specifically point out the adultification of young black women, particularly young black disabled women.

We've seen it with the #metoo
campaigns. Society was quick to erase its roots in the black community by activist Tarana Burke.

Research from Georgetown tells us that educators believe that black girls are more independent, need less comfort, need less support than their white peers. Because of this, we need comprehensive bias training across the schools, across youth serving professionals, starting from the daycare all the way up to adult education classes.

As the mother of two children, I already seen in my daughter how she is held to a different standard than her brother. She is 4 years old, and already telling her father and I that she needs a boyfriend.

We stress to her daily that no-one has the rights to put their hands on her, and she has the right to say no to anybody who even tries.

Part of what we need fundamentally need to do, and in closing, and stop talking about IDEA and Section 504, as indicators that there is something wrong with children, and instead talk about the most mechanisms for exercising one's civil rights. I look forward to any additional questions. Thank you.
CHAIR LHAMON: Thank you, Ms. Cokley. Mr. Scanlan. Ms. Cokley, if you could just turn it -- thank you.

MR. SCANLAN: Thank you. I'm here to talk about things one needs to know about data to deal with these issues. And these are things I learned while litigating a very large case for the Equal Employment Opportunity Commission.

So, I'd like to go to my next slide. Okay, federal civil rights policies regarding school discipline has been based on the premise that generally reducing adverse discipline outcomes will tend to reduce relative differences, relative racial differences in discipline rates and the proportion racial minorities makeup of students who are disciplined. In fact, exactly the opposite is the case.

Next slide. Just for clarification, if suspension rates are 15 percent from minorities and 5 percent for whites, the ratio of the minority rate to the white rate is 3.0.

That is the minority rate is three times the white rate. The relative difference is 200 percent. The minority rate is 200 percent greater than the white rate.
If minorities make up 20 percent of students, they would make up 43 percent of suspended students. Next slide.

This shows implications for relative differences in pass rates of lowering a test cutoff, where two groups differ in their average test scores.

At the higher cutoff, the pass rate is 80 percent for the AG, the advantaged group, and 63 percent for DG, the disadvantaged group. That is, AG's pass rate is 1.27 times or 27 percent greater than DG's pass rate.

If we lower the cutoff to the point where 95 percent of AG passes the test, about 87 percent of DG would pass the test. Thus, AG's pass rate is now only 1.09 times DG's pass rate, or 9 percent greater.

Thus, by lowering the cutoff, we reduce the relative difference in pass rates. And it is because lowering the cutoff reduces the relative difference in pass rates that lowering a cutoff is universally regarded as reducing in the disparate impact of a test on which some groups outperform others.

It's also a reason that we generally
think that stringent policies are harder on disadvantaged groups than more lenient ones.

Next slide. But, whereas lowering a test cutoff tends to reduce relative difference in pass rates, it tends to increase relative differences in failure rates, as shown in the last column.

Initially, the ratio of DG's failure rate to AG's failure rate was 1.85. Lowering the cutoff increases that ratio to 2.60.

Thus, persons who examine a disparate impact issue focusing on the relative difference in pass rates would say lowering the cutoff reduced the disparate impact. Those who examine relative differences in failure rates would say lowering the cutoff increased the disparate impact.

And next slide. This slide comports with Table 3 of my written statement, and for instant purpose I will simply say that it shows also, in the final column, that lowering the cutoff increased the proportion DG made up of persons who failed the test.

And I'll add here that, an important thing that this particular table shows is that when you reduce the adverse outcome rate and thus reduce
the proportion of a group that experiences an outcome, you tend to increase the proportion that group makes up of persons who experience the outcome.

In the case of restraint disparities, for example, it is the states that use restraints as the very last resort that will have higher proportions of its restrained students being students with disabilities than states that more regularly use restraints.

Now, previous slide please. Now, the pattern I show here is, I use this slide because it's just simpler to look at. But the pattern shown here is not peculiar to test score data. It is found in essentially any situation where two groups differ in susceptibility to some outcome. Credit data and income data show that lowering an income or credit score requirement, while tending to reduce relative differences in meeting the requirements, tends to increase relative differences in failing to meet the requirements. And in fact, all across the country we are observing the schools that have been relaxing standards while believing doing so will tend to reduce relative differences in discipline rates
have found those relative differences to be increasing.

And the schools are faced with an impossible situation as they do things that they think will have one outcome and in fact have an opposite outcome.

Now, I cite a letter to the Department of Education and to the Departments of HHS and Justice, in my written statement, urging them to explain that their prior guidance on this particular issue was mistaken.

I think they have a moral obligation to do that, but I'm not sure whether they are going to be able to understand this issue. Thus, I urge the Commission not only to take on the responsibility of understanding this issue, but take on the responsibility of a larger issue regarding the fact that all analyses of demographic differences suffer fatally from the failure to understand the way the measures employed tend to be affected by the prevalence of an outcome.

In my written statement, I reference my comments for the Commission on Evidence-Based Policymaking. I think those comments would provide a useful guide to the Commission, for it to
undertake a study of these issues that if addressed sensibly, would place the analysis of demographic differences on a better footing than it's ever been. Thank you.

CHAIR LHAMON: Thank you very much, Mr. Scanlan. And to the full Panel I should also just say for the record that Commissioner Adegbide has joined us and has been with us since before this Panel began.

I'll open up for questions and comments from my fellow Commissioners. Commission Kirsanow.

COMMISSIONER KIRSANOW: Thank you, Madam Chair. And thanks to the Panelists. It's been very illuminating. Thanks to Staff for putting together a great Panel.

I've got a lot of questions but I'll limit myself to a couple. I think it was Ms. Hill. You indicated, I believe, that -- and my reading of the guidance says there is no requirement to adopt quotas, but isn't it in fact the result that that's what school districts will try to do in order to achieve some semblance of proportionality?

In fact, there are reports that school districts are adopting rigid quota systems with respect to discipline.
Minneapolis public schools, in announcing their new discipline policy said, Minneapolis public schools must aggressively reduce the disproportionality between black and brown students, and their white peers, every year for the next four years. This will begin with a 25 percent reduction in disproportionality by the end of this school year, 50 percent by 2016, 75 percent by 2017, and 100 percent by 2018.

How does the Department of Education follow-up on this to ensure that there isn't any adoption of unlawful quota systems in the imposition of discipline?

MS. HILL: Well, I know the Department of Education --

CHAIR LHAMON: Ms. Hill, I think your mic is not on.

COMMISSIONER KIRSANOW: Or the Department of Justice, I'm sorry.

MS. HILL: What we --

CHAIR LHAMON: I think your mic is still not on, sorry.

MS. HILL: There we go.

CHAIR LHAMON: Okay, good.

MS. HILL: Okay. The Department of
Justice would not have required quotas in that way. I think probably what the Minneapolis school district -- and I can't speak for them either -- is trying to do is set goals to force people to engage in the activities that will reduce the discriminatory impact.

So there are two issues that have to be addressed here. One you can address by quotas, which is: we're going to reduce the harms that students face, based on exclusionary discipline.

And you can address that by eliminating exclusionary discipline. But if you're going to address the disproportionate effect of exclusionary discipline, you have to address the underlying causes, which include intentional and non-intentional discrimination, implicit racial and disability bias and the lack of supports and interventions surrounding those students.

As a goal, a number is fine. Simply cutting off the exclusion of students of any color or students of all color is not the full answer to the disproportionality question.

So, the Department of Justice wouldn't have said, 'cut off exclusionary discipline.' They would have said, 'provide the services and supports
that surround students to allow them to meet the expectations for behavior that we have for them, and provide teachers support and training and policies that help them determine when exclusionary discipline should be applied consistently across the board and not influenced by racial bias.'

COMMISSIONER KIRSANOW: I understand and appreciate that. I guess the answer is: the DOJ doesn't do anything to police the imposition or the utilization of quotas, though. It seems that a number of school districts are doing just that.

I have a question, I think, for Mr. Scanlan.

CHAIR LHAMON: Shall we give Ms. Hill a chance just to respond?

COMMISSIONER KIRSANOW: Sure.

MS. HILL: It's not that we wouldn't police them; we wouldn't require them.

COMMISSIONER KIRSANOW: I understand that. Because that would be unlawful, yet they're adopting an unlawful quotas.

We had a hearing a couple of years ago -- maybe three or four years ago -- on bullying and the prevalence of bullying. And we've been focused here on the exclusion or discipline imposed on --
and justifiably so -- on students of color, on the intersection of students of color, students of disabilities. But there's a second cohort here, that is, if students are expelled or suspended and that is lessened, that means that certain students will remain in class.

And have there been any studies on the effect, the disparate effect on students of color and/or students with disabilities, on keeping those disruptive individuals in class?

And I'd like to illuminate it with a couple of stats from the Department of Education, and from the CDC. In 2014, there were 50.7 million students K-12. Nearly four million, 3,954,000 were involved in a physical fight in the preceding 12 months. 2,200,000 carried guns, knives or clubs in the last 30 days. 486,000 were involved in non-fatal violent victimizations. 160,000 teachers were physically attacked. 3,100,000 reported being threatened or injured with weapons. 11,400,000 were bullied in the last year, and 2,839,000 didn't go to school in the last 30 days because they were afraid of students in their class and being assaulted by students in their class.

And it seems to me that the most
vulnerable cohort would be students with disabilities, as we found in our bullying briefing. If disparities are reduced -- and probably justifiably so -- in those who are expelled and they remain in the classroom, have there been studies shown as to the effect on others of those remaining in the classroom, and what disparate effects that may have on people of color and people with disabilities. To anyone.

MS. HARPER: Commissioner, I deeply appreciate your question. While the studies I am aware of examine the implementation of evidence-based practices that allow schools to both reduce the use of discipline while not suffering any increases in student misbehavior.

However, I would also very much caution all of the Commission members against labeling a child disruptive versus not disruptive. On any given day, a child could walk into a classroom on a Monday, after having suffering some form of trauma out of, you know, in their home or out in their community, a friend may have passed away, a close member of the family may have moved away, any number of things could happen, which means that on any given day, coming into school, a child may have
a behavioral incident that is due to trauma or due
to the circumstances that life may throw at them.

What we are asking here is that schools
do not simply throw away, exclude children that
come to school with those difficulties but are
prepared to handle children that are coming to
school with the highs and lows of emotion, the
trials and tribulations of approaching adolescence.

And I think we do ourselves a
disservice and really sort of steer the
conversation in the wrong direction when we try to
say, okay, well, what is the impact of the
disruptive students on the non-disruptive students.
Instead, our conversation really should focus on
how we support educators and support schools in
utilizing evidence-based practices that help
schools to identify quickly when a child is having
an emotional breakdown or having an emotional issue
and seek to address it.

I'll quickly refer to a story often
told by Judge Steven Teske of a child that came
into school one day and threw a chair across the
back of a classroom -- did not injury anybody, but
did take a rather extreme action in a classroom.

And once upon a time, that child would
have been arrested and shipped off to a juvenile detention center faster than you could blink. Instead, that child was sat down by principals, by people that could support her and they talked to her, and they learned that she had been sexually assaulted for weeks on end by her mother's boyfriend.

And so at the end of the day, that child received services and did not harm any other individual. And the person that had been assaulting her all that time was the person that was addressed.

MS. BHARGAVA: If I may, I'd like to build on Ms. Harper's comments which I entirely agree with. I think there's a couple of things to tease out in your questions, Commissioner Kirsanow.

First of all, I think the idea that schools are safer when there are students who are suspended or expelled or not in the classroom, the stats that you presented are certainly concerning about the kinds of violence that's going on in our schools.

And the idea here is not to have -- you know, to not have the option of using things like suspensions or expulsions or other kinds of
disciplinary practices, to address what is violent behavior in a classroom, classroom that threatens the safety of students and employees. But what we're seeing in large part in what's happening in schools around the country, is that these practices are being used for very minor disciplinary issues for the most part.

And that, the exclusion of students from schools is not allowing them the opportunity to learn how to behave in classrooms. To be able to behave and engage academically is something that students need to learn, and they need to learn it together. And if you kick them out of class, they don’t have a chance to be able to do that.

And secondly, when we think about what makes schools more safe, it is that opportunity to give tools and resources to teachers, and to administrators, to figure out how it is that they can most effectively manage their classrooms.

And what we know is that excessive exclusionary disciplinary does not work. What does work are practices that can allow teachers and administrators to understand the reasons why students may be acting out in school, allow them to engage with students to help them to learn how it
is that they should be engaging in school and in classrooms, and give them the opportunity to not only reinforce those behaviors but have them be ones that build a strong community among students.

And so for all of those reasons, the point here is not that we don't have a range of options to be able to address the kind of violence and the kind of concerns that are going on in schools, but it's that those options that keep kids outside of classrooms and don't allow them to learn are reduced.

And secondly, what we do know there is research that tells us that when students are disciplined and you're in a punitive context where there is an excessive use of discipline, it not only harms the students who are being disciplined, it also harms the students who are not being disciplined.

The reason for that is that that kind of classroom environment is not one in which students are learning how to engage with one another, and the degree of anxiety, the degree of concern about that kind of control is, it breaks down cohesion in classrooms.

And so I'll give you one study, which
has looked at this issue from, in the State of Kentucky, that is from Brea Perry and Edward Morris. And what they found is that the adverse effect of exclusionary discipline is strongest in schools with high levels of discipline and low levels of violence, but it's evident in even the most violent and disorganized school environments.

And that adverse impact is that the academic achievement -- academic achievement of students that are disciplined and are not disciplined is reduced when you have these kinds of punitive context, and that's something I think we should all be considered about.

COMMISSIONER KIRSANOW: Thank you. Although I would note, it's just puzzling to me, we keep using this term -- and I'd like to know what the baseline is -- we keep using this term excessive exclusionary discipline.

But based on Department of Education and CDC in 2014, I just recited stats that when you add them all up come up to 17 million individuals who are either in some type of fight, some kind of altercation, some type of nonfatal violent victimization, teachers physically attacked, but the total number of those expelled was 130,000.
Seventeen million, where somebody is getting punched out, yet a 130,000 expulsions.

Now, I grew up in the Mesozoic era, and if you hit a teacher you're gone. Yet 160,000 teachers were hit and 130,000 total expulsions, and not each one of those was due to a teacher being hit. So, what's the definition of excessive?

Especially when you have nearly three million students who took at least one day off in the preceding 30 days because they're afraid to come to school.

MS. HILL: I could respond to a little bit of that. I'd also ask, what's the definition of being hit?

Because in my special education practice years ago, the definition of being hit, which was used to expel a student with a disability, was that he poked the teacher in the hand with a green felt tipped pen. So there are varying degrees of being hit.

COMMISSIONER KIRSANOW: Sure. And the CDC says 3,954,000 were involved in a physical fight. I assume that's not being touched with an eraser.

Some cohort of that 3,954,000 was
probably, look, I kind of resemble this remark. I was kind of a miscreant as a kid.

But some of those were probably physical fights. And there were 486,000, strike that, 160,000 teachers physically attacked. I doubt it was with an eraser. At least some cohort was probably something more than an eraser. Yet, we only have 130,000 expulsions.

So, I'd like to know what does excessive mean? What is the correct number that should be expelled?

MR. SCANLAN: Certainly I can't answer that question. But on the effect on student environment of stringent discipline policies, I have a web page discussing the APA, American Psychological Association, zero tolerance study. And I regard that as representative of a dubious body of research that always find that stringent discipline policies lead to degrade the educational environment rather than improve it.

I don't know any sound, I'm not in a position to appraise all that research, but I think that's something that the Commission could very seriously study to see really, what are the effects. I don't really believe in the research
that's out there, but the Commission can study it and try and really find out, what are the effects of varying levels of discipline on the educational environment. And on educational achievement.

MS. HARPER: So, I have some familiarity with the CDC numbers as well as the numbers gathered by the National Center for Education statistics. However, I don't have the precise numbers that you have in front of me.

But one concern is, I'm not sure that those numbers can be added together. You may have incidents in those numbers where you have a single child engaging in multiple acts.

And then looking at a child involved with, that could easily include an incident where one child was an aggressor, one child was a victim. If even that incident even permits that sort of division between the students involved.

So I would not suggest in trying to figuring up an appropriate or adequate level of discipline doing a comparison between statistics out there on the prevalence of violent and disruptive behavior to a comparison of how many students are being removed from school.

I will say this though, the vast
majority of out of school suspensions are not for, the vast majority of out of school suspensions and school suspensions, they are not for violent behaviors, they're for disruptive behaviors.

We're finding that much of the disparities that we see are for incidents of what's often termed willful defiance or insubordination.

My fellow Panelists also referenced some areas of discipline where I think we would all agree that discipline in those cases, particularly an out of school suspension, seems egregious.

A child is coming to school wearing the wrong sock, a child, in one case, in one school, we had a couple of students that were suspended for wearing their hair in braids.

And I will say, much of the work that is needed to address the excessive use of discipline is trying to look at those non-violent, non-criminal behaviors where we can absolutely be thinking about alternate ways of reaching kids and teaching kids about, how do you sit and engage and stay on task and treat others with kindness and respect.

MS. BHARGAVA: Let me also just add to that. This is not a numbers game. This is a game
about how it is that we actually provide a more effective way in which to manage misbehavior in schools and to make sure that everybody in a school building is safe.

And so, it's specific to what it is that excessive refers to. When we're talking about excessive exclusionary discipline or punitive practices, it's not a numbers game as much as it is, excessive is when there are students who are being suspended and expelled for minor disciplinary infractions. Like the ones that Ms. Harper just mentioned.

Excessive is when you have students who are being expelled or suspended or arrested for the same kind of behaviors that other students are not being arrested or expelled or suspended for.

Excessive is when you have the use of really dangerous practices, like restraint seclusion, on students when those are not necessary and actually make students very much unsafe in schools.

Excessive is when you have situations in which you may have a student who is manifesting a disability and is punished for the manifestation of the disability without identifying what that
disability, why that disability may be there and making sure that the students get services and are not actually punished for what it is that might be a manifestation of the disability.

Excessive is when you have students of color who are deemed to be emotionally disturbed and segregated out of classrooms at rates that are far beyond students not of color and they are placed in environments and classrooms and schools where they don't get the kind of educational resources and their secluded from students who may be engaging in the same kind of behaviors but are not found to have an emotional disturbance.

So those are the ways in which we see school discipline being excessive in schools. And so those are the kinds of things that we're worried about.

The question of what these numbers tell us, there are all kinds of things that are related to the kinds of misbehaviors we have in school.

But what we know, what we know is that the vast majority of students who are being excluded, who are being punished, are being excluded and punished for things that teachers across the board.
So the American Federation for Teachers, the National Education Association, have themselves said, we don't want to engage in this kind of discipline for those kinds of practices. It's not making us more safe, it's not making our kids more safe.

And it's -- they are among the many national educational organizations that have really welcomed the kinds of tools and resources that were put out by the federal government, to make sure that we promote positive school requirements and reduce the use of things that really aren't making students any safer and they're not educationally sounds.

CHAIR LHAMON: Thanks, Ms. Bhargava. I see, Ms. Hill, you wanted to get in, I'm going to give you just one minute, I have questions from other Commissioners as well.

MS. HILL: It will take only one minute. I would say, just in response to the numbers, if we were to agree that discipline is actually not being used enough, and yet we can see that discipline is being used more on students of color and students with disabilities, that would indicate that discipline is not being used enough for white students without disabilities.
And I would say that's part of the disproportion problem. The disproportion problem may not be that we're not using discipline enough, I doubt that, but it may be that we're just using it more on certain students.

And I would say the students with disabilities who are staying away from school, because they're being bullied, are not being kept away from school because of bullying by students with disabilities. So why are students with disabilities being excluded and suspended at greater rates than the students who are apparently bullying them?

CHAIR LHAMON: Thank you, Ms. Hill.

Commissioner Adegbile,

COMMISSIONER ADEGBILE: Good morning. Thanks for your thoughtful testimony to each of the Panelists.

I want first to direct a question to Ms. Bhargava and Ms. Hill that will help me understand some of the skepticism that some of my colleagues have expressed about the federal role in this area. And it's my understanding that there are several federal laws, passed by the Congress of the United States, that require the federal government to
enforce them. Where there are factual bases to do so. You've mentioned some of those laws today.

And so I've taken a look at the Dear Colleague letter that was referenced from 2014 and it says that successful programs may incorporate a wide range of strategies to reduce misbehavior and maintain a safe learning environment, including, and then it mentions a lot of the interventions that each of you have described.

And then it goes on to say that the department recognizes that schools may use disciplinary measures as part of a program to promote safe and orderly educational environments.

So, if that is the guidance that DOJ was offering, it seems to me that you're recognizing, first, that there's a range of ways to address these problems, and second, that there is an important federal role and a need for guidance in this area.

And so if you could speak specifically to what the feelings of trust would be for families of students that are either having discrimination targeted at them because of their race or disability or an intersection of those two, what trust would families have if the federal government advocates its responsibility in this area?
MS. BHARGAVA: So thank you, Commissioner Adegbile. You're are correct, the guidance that was issued in January of 2014 was really to put out information on the administration of fair and effective discipline.

And the goal was not to take away from schools and teachers, the kinds of tools and resources they may have to address misbehavior in classrooms, is really to give a range of ways in which they could provide a positive school climate for all children, in accordance with federal law.

And so back to my response to Commissioner Kirsanow, that does not mean that there are, the use of suspensions and expulsions, and even arrest in schools, is something that is banned entirely. There are instances in which those kinds of practices may well be necessary.

And particularly in a case where there's an imminent threat to the safety and security of students and school employees. The goal really was to make sure that when discipline is imposing school it's not done in a discriminatory manner.

And what we're talking about today is the ways in which multiple investigations, the information that we're getting in terms of data,
shows that students of color and students with disabilities are being disproportionately disciplined. In a myriad of ways in schools.

Not only in terms of the proportion of students of color and students with disabilities who end up with pretty severe disciplinary consequences, but also in the kinds of circumstances in which we see students of color and students with disabilities getting in trouble, where there are lots of other ways in which we can actually handle those kinds of situations.

So, I think it's important, in fact it's necessary for parents and for students, they know that when their kids are going to school, they will be, the kinds of misbehavior, the kinds of classroom management practices that will be used to address that misbehavior, that that's done in a fair and consistent manner. And in a manner that really is ensuring that what students come to class for, which is to learn and to learn how it is that they actually are able to engage with one another, that is the goal.

The goal is not to have a situation in which the relationship between parents and students and schools is one in which students are out of
class, they're out of school and they're not finding ways in which we actually reinforce the kinds of behaviors that were talked about in the guidance, that were talked about in the larger school discipline package.

And again, I think it's important to understand that the reaction, what was the catalyst for the school discipline package, the catalyst was the voices of students and parents and community members and teachers and principals and national educational organizations who really asked for information, asked for guidance and asked for tools and resources.

And the result, both of the investigations and of the guidance, is that you see, in classrooms around the country, changes that teachers and students have talked about the ways in which that's positively impacted what they feel like and they're excitement about going to school. And in fact, has built the kind of community and trust that focuses on dignity and on respect for students. And for teachers in that process.

And so what we see from what got us here and what's happened afterwards, in terms of the engagement by the federal government on school
discipline, is that it has been a uniformly, almost uniformly positive one, in terms of there's a range of resources out there for students and teachers who are able to use, and for parents to actually be able to restore the trust that they had lost in schools where six out of ten students are being suspended or expelled. That's just not something that we need in terms of how we actually interact in schools today.

CHAIR LHAMON: Thank you. I have a list now going of questions, and, Commissioner Narasaki, I just want to make sure that if you have a question you have time, so I'm going to come to you after the next question. Vice Chair.

VICE CHAIR TIMMONS-GOODSON: Yes, thank you very much, Madam Chair. This question is for Ms. Hill.

For a period in my judicial career I served as a juvenile court judge, and so your written statement where you included words to the effect, and I'm quoting now, "the police officers who used to bar the front door are now resource officers who escort children out the back door."

And I was wondering if you elaborate on that? And in doing so, tell us exactly how you see the role of school resource officers in schools
today, and if you could, touch upon whether these resource officers are aggravating or alleviating the zero tolerance policies that often push children out.

MS. HILL: Thank you for the question. I think what I was referring to was that perhaps not coincidentally, the same student who were previously explicitly banned from public education are now, we're seeing, the students who are more disproportionately taken out in out of the public education system in the discipline process.

And it's interesting to me that one of the ways that some schools are doing this is by implementing law enforcement in the schools and calling them school resource officers. Which don't have to be, I want to be clear, don't have to be a negative. They don't have to be a way of getting students out of school.

They can be a way of, if they're trained properly, if their mission is clear to both sides, they can do a law enforcement role. But they're a law enforcement role.

And what we've seen happen too often, is they don't have a clear understanding of the limits of their role and the administrators and teachers
don't have a clear understanding of their role.

And so administrators and teachers will take conduct that used to be a reason for a trip to the principal's office or a note home to your parents and turn it over to the school resource officer, because that person is there, that person has a higher level of authority than it appears the teacher may have. And the teacher has other things to do and may not have had the training to effectively deal with the behavior in an educational way, in a positive way, in a way that keeps the student in the class.

And so that over reliance, that unclarity of roles, many schools don't even have a memorandum of standing with their school resources officers or their local law enforcement to make clear what those roles should be. And it's resulting in all the prejudices and fears and misunderstandings leading to the result that we took a strong stance against of having students with students of color and students of disabilities not be in these schools.

CHAIR LHAMON: Commissioner Yaki, do you have a question?

COMMISSIONER YAKI: Thank you very much,
Madam Chair. I don't know if I really have a question as much as just comments and maybe some of the Panelists can respond, and this may be the same one I ask for each Panel, which is, it's almost foundational, which is, what are the kind of, it sounds so much like there's a question of resources available to these schools in terms of training, in terms of education, in terms of awareness, how to deal with young children.

And it comes at a time when you see you right now that Congress is passing laws that would effectively divert even more resources away from our public schools. And I'm just wondering, have there been any studies on the impact of reductions and public education funding and impact on these kinds of programs that would sort of help break the cycle, increase the sensitivity training or the kind of personnel resources that would be needed to deal with this issue?

CHAIR LHAMON: I will say that there are four Commissioners with questions pending and eight minutes left, so go, go, go quickly with your answers.

MS. BHARGAVA: Commissioner Yaki, I think we'll just say that there are, there have been
really extensive federal grants and resources that have been provided to schools, to school resource officers and to others to really support these kinds of practices that have made our schools much safer and educationally sound. And so, the ability to have those resources has been incredibly important to schools.

It's one of the major ways in which the federal government engaged in this area. And so I think it's important that those resources across the board continue.

MS. HARPER: I'll just quickly add that there are glimmers of hope in terms of access to resources that can help address this issue. It's important to realize, in 2009, 2009 was the last year in which states received Title 4 ESEA dollars under the safe and drug free schools and communities act. I mean, it was dollars went to every single state to support issues of student health and safety and it stopped abruptly in 2009.

In 2017, for the first time since then, all states, you know, states received $400 million under the student support and academic enrichment program, which, while it has to be divided up under
a few priorities, includes formula dollars to address student health and safety. So that's a critical source of funding that can address the issues that we're talking about today.

And I'll note, most schools have some sort of resources to address issues of student, safety student health. But the issue is that they're not deployed efficiently.

And our work is really to help them figure out, is this the approach you really should be using, is it evidence based. Let's look at your data, is it really accomplishing what it needs to accomplish, if not, we need to rethink.

CHAIR LHAMON: Thank you. Commissioner Heriot.

COMMISSIONER HERIOT: Thank you. Thank you. I think I have at least two questions here. Yes, is that on? Okay. I have two questions.

One of them is aimed primarily, I think, to you, Ms. Bhargava, but may be to everybody as well. A couple of times in your testimony, in the answers to questions, you've used the phrase, what we know. And when you do, I have seen members of the audience nodding this way in vigorous disagreement with what we know here.
And I'm wondering if it isn't time for a little bit more modesty in terms of federal presence in this issue. There's a long history here.

A number of you have referred to exclusionary discipline. That is excluding students, suspensions, expulsions, saying they're bad because students don't receive instruction.

The thing is, back before the 1970s, a much more common practice was to hold students after school. That is, more instruction rather than less instruction.

But as a result of federal officials, social justice, lawyers and courts, it became much, much more difficult for schools to have any kind of a serious program where students are kept after school. And it's starting to look like that was a mistake, that maybe that would have been a better practice to hold students after school.

CHAIR LHAMON: I'm going to ask you to move to the question just because we have very little time.

COMMISSIONER HERIOT: Yes, I know. A whole different series of social justice warriors created sexual harassment policies that ended up creating incentives for schools to expel, not expel,
but suspend kindergartners. Which, again, turned out to be a bad policy.

Congress, we've referred to resource officers here. Yes, Congress has created subsidies that created incentives for schools to higher police officers or retired police officers or things that are like police officers, and now that's turn out to be something that people object to. Isn't it time we be a bit more modest on this?

Another thing that you brought up, my second question --

CHAIR LHAMON: Let's pause there for just for now --

COMMISSIONER HERIOT: Nope, nope.

CHAIR LHAMON: -- because two other people have questions after you. Does anybody want to respond to that question?

MS. BHARGAVA: I'll say one sentence. When I said what we know, I'm speaking about decades of research and experience, I'm speaking of what it is --

COMMISSIONER HERIOT: But nodding in disagreement is still going on behind you.

MS. BHARGAVA: I can't see behind me unfortunately. I'm sorry, I don't know what people
are doing behind me, but I can say that we're speaking to research, experience. What schools, what teachers in themselves and education of organizations across the country have said is, what is more effective and educationally sound to try to make schools safer.

CHAIR LHAMON: Commissioner Narasaki.

COMMISSIONER NARASAKI: Thank you. Since we have limited time, Ms. Cokley, I would like to ask you to, in writing later, let the Commission know from the report that the National Council on Disabilities did, what recommendations you think have been followed up on and which ones you think still need to be.

So my main question is, I've struggled with this issue, because in the testimony there's both the over identification of minority and disability students and the under-identification. So, I want to focus on the under-identification and say, why is that happening and what could the federal government be doing to help make sure that kids are being identified with disabilities when they have them, so that they can get the supports that they need?

So what's happening there that's not
happening now and what could be done?

MS. HARPER: I deeply appreciate that question. I actually think it's an area where there is a lot more thought that needs to be brought to bear to figure out how to address this.

To be clear, when we look at IDEA Section 618(d) and other areas where we're trying to figure out, okay, where do we have over-representation versus under-representation? I use over-representation and under-representation deliberately.

You cannot use numbers to identify over-identification or under-identification. The only way I know to do that is to actually look at a child, an individual child's records and look at the process that a school used to decide whether or not this is a child with disabilities or not and make a case-by-case determination of whether or not the schools and the district's decision making was appropriate.

I do not doubt that under-identification exists. But while we can look at over-representation in the numbers and say, you know what, there's an issue here that's going on and we need to find ways to understand why we are seeing
such wide disparities such that children of color are over-represented, it's completely impossible to use that sort of, that same sort of analysis to identify under-identification.

Why? Because there is such a thing as a natural zero. There are some places where some places actually won't be identified in any children with disabilities.

COMMISSIONER NARASAKI: Well, I actually mean, one of the reasons why I have the question is in a couple of testimonies its pointed out that students who become, and end up in a detention or incarcerated in some way, are later identified as having a disability. So it seems to me that they should have been identified before they got there. And so there has to be something that's happening there.

CHAIR LHAMON: And I'll invite our Panelists to respond to that in writing, if you could. We are out of time. I know that both Commissioner Kladney and I have questions, maybe we can ask them and see if you'll be willing to respond to us in writing afterwards. Commissioner Kladney.

COMMISSIONER KLADEY: My question is pretty quick. Ms. Bhargava.
MS. BHARGAVA: Bhargava.

COMMISSIONER Kladney: God, I'm terrible. I apologize. Anyways, it was spoken about options and training and things like that.

And Commissioner Heriot asked you about, in her last question about, you say this and you say that and people shakes their head no. And you said there's research.

And I was wondering if there's some studies that you, not necessarily a study, but citations to studies for us, if you could provide that to us regarding jurisdictions where these options and different trainings have taken place and result from before and after, I think that would be extremely helpful.

And I just have a comment. When I was in school and kids got in a fight they didn't go to jail. That's all. I don't know about anybody else.

Chair Lhamon: Okay, in the interest of time I'm going to ask my question. And to say that, Mr. Scanlan, in his testimony and in his written testimony, attributed a set of beliefs to federal discipline policy.

And for the three Panelists who were participant in generating federal discipline policy,
I'd be interested in having you respond about whether you believed that the generation of that policy would tend to reduce relative percentages of racial differences in rates of experiencing discipline. And I don't think we have time for a response now, so I would welcome a written response if you'd be willing.

Thank you very much to each of our Panelists, we appreciate it. We will take a break until 10:40 when we will begin the next panel.

(Whereupon, the above-entitled matter went off the record at 10:36 a.m. and resumed at 10:45 a.m.)

CHAIR LHAMON: Okay, we're coming back to order as it is now 10:40. We'll proceed with our second panel.

PANEL TWO: STAKEHOLDERS, RESEARCHERS, EXPERTS ON SPECIAL EDUCATION AND THE SCHOOL-TO-PRISON PIPELINE

CHAIR LHAMON: In the order in which they speak our Panelists are Max Eden, senior fellow at the Manhattan Institute.

Dan Losen, director of the Center for Civil Rights Remedies at the University of California Los Angeles.

Monique Morris, founder and President of
the National black Women's Justice Institute.

And Paul Morgan, professor of education
at Pennsylvania State University.

I appreciate each of you coming. Mr. Eden, please begin.

MR. EDEN: The school-to-prison pipeline. It's a very rhetorically powerful term and it's a very intuitively plausible notion.

There's two key assumptions that a substantial share of the disparity and discipline rates is caused by teacher bias. And that suspension cause students harm.

This assumption was the basis of the Obama Administration's 2014 school discipline guidance. Wherein Arne Duncan laid 100 percent of the blame for the disparity on teachers and their alleged racial discrimination. And he declared that the school-to-prison pipeline must be fought every day.

However, more rigorous research published since has largely undermined both of those assumptions. And evidence is mounting that efforts to fight the school-to-prison pipeline is creating a school climate catastrophe and has, if anything, put at risk students at greater risk.
Now, back when Arne Duncan made his declarations, there was some plausible evidence. Not for the notion that teacher discrimination caused 100 percent of the gap, that was an absurd slander against the most companionate professionals in America. But the notion that it played some part.

The best study of the time, published by Russell Skiba in 2011, found that black students were suspended more frequently and more severely than white students for the same offenses.

But the study admitted two shortcomings, it didn't control for schools and it didn't control for past student behavior. In 2014, Skiba rectified these shortcomings, and within, school discrimination vanished.

This is not a one-off finding. Joshua Kinsler found it in 2011 in North Carolina, Gary Ritter found it in 2017 in Arkansas. The overall disparity is driven primarily by differences between schools, not discrimination within schools.

It's notable though that all these studies, including the one by Tom Loveless this year, has found a consistent pattern that schools with higher percentages of African American students
have higher suspension rates. This could be perceived as troubling and could be interpreted as systemic discrimination or systemic bias.

But schools can't be biased, only people can be biased, only teachers can be biased, only principals can be biased. And that bias does not play a substantial part in these between school differences.

Constance Lindsay and Cassandra Hart published a very thorough study to assess discrimination and teacher referral to the principal's office. At middle and high schools serving a high share of African American students, there was no difference in suspension based on teacher race.

That's not to say that bias doesn't exist, just that it does not account for a large or even moderate share of the gap. Lindsay and Hart found that in raw terms, black teachers were more likely to suspend black students. However, applying reasonable assumptions and controls, they then found that white teachers were slightly more likely to.

They estimate though that if black students were taught by all black teachers, it would reduce their odds of receiving a suspension by about
two percent. Now, that's not nothing, but it's not 100 percent.

The evidence that suspension has caused harm has also largely been undermined by more rigorous research. Prior research was content to look at a correlation and call it a causation.

It went like this. You have two students who look the same to statisticians, one punches one of those 160,000 teachers, gets suspended and drops out. The other behaves, doesn't get suspended and graduates.

Advocacy shops then broadcast this finding as evidence that the suspension was the problem. That is not good social science.

To assess causality, you have to control for behavior. This year, two studies from the University of Arkansas did just that.

One found a four percent increase in the chances of being held back in the next grade, which is plausibly negative. The literature and greater tension is mixed.

And it should be noted for the purpose of intersectionality of this Panel, students with disabilities became 12 percent less likely to be held back.
The other study found a statistically significant, though practically not large, improvement in the next year on reading and math scores. If we are willing to revise our assumptions based on better evidence, then the fairest statement becomes, teacher bias does not play a substantial role in the overall disparities and being disciplined does not have a significant military effect on students.

And if we're willing to revise our assumptions, based on the evidence, we should be utterly alarmed that our efforts to fix the school-to-prison pipeline has actually amplified it.

I spent the better part of a year collecting and analyzing evidence on the effects of discipline reform in major urban districts. Here is my current tally, some of it is based on forthcoming work.

Discipline reform has, according to students, made schools less safe and respectful in New York, Chicago, Los Angeles, Washoe County, which is in Reno and environs, Virginia Beach and Seattle. Which is still under OCR investigation.

And if you look at the student surveys, it is very, very bad. It has done substantial
academic harm to students in Los Angeles, Oakland and Philadelphia, where truancy rose by 16 percent after reform.

   Probably because students were scared to come to school. Because whereas suspensions for conduct offenses were limited, suspensions for serious offenses rose. And because of that, the overall racial disparity rose.

   Now, it has not harmed students in Miami or Washington, D.C., but it has not happened there. Miami still warehouses students at offsite detention centers and does not call it suspending them.

   And in Washington, D.C., the principals engaged in systematic fraud by suspending students and not telling their administrators.

   School surveys in Minneapolis and Madison do not show a deterioration, but those surveys do not extend back to before the reforms. Other teacher surveys and local coverage, however, paint a bleak picture.

   I am not aware of any district that has implemented a district of reform, has administered consistent surveys and has not found a deterioration in student safety or respect.

   I appeal to everyone in this room, who
believes this to be a good idea, to direct me
towards that research as I am trying to conduct a
comprehensive national study of this question.

We are on a very dangerous road. If
teacher bias accounted for 100 percent of the
disparity, as the previous administration directly
alleged, or even a substantial share, then we could
probably question their judgment without much
consequence.

But if it doesn't, if it encompasses a
moderate to small share, then we're eliminating the
fair and wise judgment of good and true people and
we should expect bad consequences. Because maybe
teachers know better.

Maybe they know more about how to manage
their classrooms than the bureaucrats and activists
who would blame them for society’s problems and
accuse them, teachers, of mass racial
discrimination. Maybe if we want to really do
something about the school-to-prison pipeline, we
should not issue coercive edicts that limit their
thoughtful and prudent discretion. Maybe, just
maybe, we should start trusting teachers again.

CHAIR LHAMON: Thank you very much. Mr.
Losen.
MR. LOSEN: Yes. Thank you. My name is Dan Losen, I'm the director of the Center for Civil Rights Remedies at UCLA's Civil Rights Project. And I've been doing research on this particular area since 1999.

But I should also point out that I'm a former teacher. I taught public school for ten years. And I have a lot of empathy for teachers who kick kids out of the classroom because I was that teacher.

I was kicking kids out of my classroom right and left. I thought I had to demand respect from day one. And it was very frustrating.

And I also would say my classroom bordered on chaos most days. I was also not always the best prepared teacher.

My principal came back to me and said, Dan, you have a classroom management problem. And fortunately I was in a district where they had training and support for young teachers like myself, who were really dedicated to improving our practice.

And by my tenth year, I never sent a single student to the principal's office. I didn't need to because I found other ways, through training and support, to be an effective teacher without
kicking kids out.

So there's a lot that schools can do, and I know it from personal experience, and also I would point out, if we go to the next slide, that there's a whole book on what works, called "Closing the School Discipline Gap." It also contains some of the research showing the impact of excessive disciplinary exclusion.

But half the book is dedicated towards a range of different interventions. Everything from restorative practices, social and emotional learning, threat assessment in Virginia and so on.

One of the best studies is a randomized controlled study on teacher training that was focused on engagement. So teachers, half the district, were trained in improving their engagement with their students and half the teachers weren't.

The ones that got the training, and it was a very rigorous sustained training program, eliminated the racial disparities and almost eliminated all their office referrals from their classroom.

So there's a lot that can be done. And there are things that are proven effective. I would point out that none of the studies in this book
involve racial quotas. Not a single one.

They all have one thing in common, which was improving relationships. And so there doesn't have to be a race conscious piece even to some of the remedies that are very effective in reducing disparities.

If we could go to the next slide. That's a summary which I just gave. So let's, in the interest of time, I'm going to skip forward. Keep going. Next slide. Next slide. Next slide.

So, one of the things that, I'm glad this discussion is framed in terms of, what is the impact on achievement of the racial disparities, among kids with disabilities, from being excluded from the classroom.

And we're also, we're not just talking about the discipline guidance, we're also talking about regulations that tell states to look at the district level for large racial disparities among kids of disabilities, in terms of their discipline, because of the concern about the impact on their achievement.

I mean, I don't think any member of the Panel would say that missing school somehow wouldn't likely impact your achievement. If you're not there
the days of instruction and then you're tested in algebra on something you missed, obviously it's going to impact your learning.

So I think it's sort of a no brainer that removing kids unnecessarily would absolutely have an impact on achievement. But we also have research on this point.

Studies of chronic absenteeism showed that missing three days of suspension, in the month before the national assessment of education progress in reading, lowered their grade level scores, after controlling for other factors, by a full grade level. By a full grade level.

So there is a tremendous impact of missing instruction. So let's go to the next slide. And the next one.

So why look at discipline in terms of days of mis-instruction. Well, I think the answer is obvious. Because the disparate impact is not just about who is being removed from school but what happens, what did they miss?

And I would point out that students with disabilities are receiving more. They're receiving OT, PT, they're receiving extra counseling. A whole range of special education and services.
So when they are removed, if you remove two students for a dress code violation, one with disabilities and one without, the impact is going to be greater on the student with disabilities, if it's for the same length of time, because they're getting more when you're in the school. They're also losing more when they're out of school.

If we can go to the next slide. So we used data collected and reported to the public by the U.S. Department of Education. Where they look at the students who were removed, they put them in ranges of days of missed instruction.

And we attributed values. So their ranges are, students who just missed one day. Two to ten we multiplied that by five. The average of two to ten is six, so this is a conservative estimate. And for more than ten days we attributed a value of 11.

So let's go to the next slide. So this is what we found. Across the nation, black students with disabilities, K-12, missed 119 days of instruction per 100 enrolled. 119 days per 100 enrolled. That's outrageous right here.

I don't think anyone on this Panel would say that we should accept that as the status quo.
Compare that to white students who missed 43 days, white students with disabilities missing 43 days.

The disparity is 76 days more missed instruction per 100 enrolled for black students with disabilities. There's an obvious impact on achievement.

And our studies in Massachusetts, where we had the breakdown by why students were removed, 60 percent of the students with disabilities in Massachusetts, who lost instruction because of discipline, 60 percent were for non-violent, non-criminal, non-drug related offenses. A catch-all Category 18.

So if you can go to the next slide. The other thing that's important, and this is sort of to look at a response to James Scanlan research, but also about what to do.

We have to measure how to reduce disparities and evaluate what's working in terms of reducing the rates for all students. This is really about good educational practice.

Commonsense practice, improving instruction, reducing unnecessary suspensions. And when you do that, sometimes the risk ratios don't change, but the racial gap narrows. And that's what
I have no more time. That's it. Thank you very much.

CHAIR LHAMON: Thank you, Mr. Losen.

Dr. Morris.

DR. MORRIS: Thank you, Madam Chair and Commissioners for the opportunity to participate in this briefing. When discussing girls, instead of using the phrase, school-to-prison pipeline, I use school-to-confinement pathways in order to uplift the policies, practices, conditions and the prevailing consciousness that contribute to the criminalization of our students in ways that render them vulnerable to future contact with the criminal legal system along its continuum.

The National black Women's Justice Institute and organization, for which I am cofounder and president, recently released an analysis of 2013/2014 school data collected by the U.S. Department of Education Office for Civil Rights.

The report details the prevalence of African American, Latino and white girls along the school continuum. In this report and data shared in my written statement, the institute found that black girls with and without disabilities,
disproportionately experienced discipline across the continuum.

In my book Push Out, The Criminalization of black Girls in Schools and other published articles in book chapters centering the educational experiences of black girls and young women impacted by criminalization, I profiled several girls with disabilities. Those with physical disabilities, learning disabilities and mental health conditions that informed their experiences in schools, in particular, with school discipline.

I anchor my work in ethnographic methods and narrative inquiry to breathe life and rigor into the lived experiences of our collective understanding of this phenomenon.

We can use these qualitative data to better understand why there are racial and gender disparities in school discipline and how they manifest. And also, it can inform how we develop safe and responsive learning environments for all students.

Overall, my work is found that for black girls with and without diagnosed disabilities, critical pathways to school push out include, a reliance on school discipline and response to non-
violent student behavior.

Which unnecessarily removes girls from their classrooms and schools, differential dress code enforcement, which may lead to body shaming, body policing, chronic suspension, expulsion, school avoidance and other forms of absence, gender based violence on campus that often goes unaddressed, which may also lead to school avoidance and other physical altercations and/or assaults, increased surveillance, presence and intervention of law enforcement in student disciplinary decisions and actions taken in schools, and the failure among adults in schools to recognize and respond to the trauma of black girls and other girls of color. Particularly among those with disabilities when harm has been committed and symptoms manifest in the learning environment.

Overall, there is a dearth of research that explores how attributional stereotyping of African American girls with disabilities may impact institutional responses to their behaviors or the ways in which adverse childhood experiences, or exposure to chronic stress, impact their behaviors and performance in schools.

What we do know is that the removal of
girls from school renders them vulnerable to participation in underground economies. According to the Human Trafficking Pro Bono Legal Rights Center and the National Disabilities Right's Network, girls with disabilities are particularly vulnerable to sexual predators and traffickers who seek girls and young women with cognitive or developmental disabilities by stalking group homes and other facilities serving people with disabilities.

For girls with disabilities, this form of exploitation and trauma often places them at risk of being in contact with law enforcement and/or the juvenile delinquency system, institutions that have been documented to have a limited capacity to respond to survivors of sexual violence.

School districts, in partnership with educators, should develop and/or support a robust continuum of culturally competent and gender responsive alternatives to suspension and expulsion. We know that education is a critical protective factor against contact with the criminal legal system, so we have to stop finding creative ways of treating certain children as disposable.

PBIS has shown some positive impact on
the behaviors of students with disabilities, but it is important to understand that being responsive to trauma also means developing strategies to address the institutional harms that trigger feelings of distrust and lack of safety. Particularly among black girls whose bodies and modes of expression are routinely misinterpreted as violent, as defiant or as a disturbance to the school.

Safer schools are those with a robust continuum of evidence based and innovative practices that include restorative practices, counseling, mindfulness, yoga, training and practical tools that emphasis empathic responses to student misbehavior.

Every school district should implement equity policies that include a robust articulation of gender equity, and student focus responses to sexual assault, including specific supports for survivors with disabilities.

I also recommend that school districts reduce policing, school policing, and reinvest in educators and be her resource, a toolkit developed by the Georgetown Law Center on poverty and inequality and the National black Women's Justice Institute, we call for a specific activities, protocols and training, to increase law enforcement
capacity, to engage effectively with girls of color, accounting for their layers of identity, including their ability, race, ethnicity, gender identity and sexual orientation to the extent that they are present in schools.

The last recommendation that I would like to share is that we invest in diversifying the teaching profession. Diversifying our nation’s teaching force to include certified teachers of color with disabilities is part of how we increase the capacity of our educator workforce to improve its cultural awareness and responsiveness to the diversity of our nation’s students.

While I believe that most educators enter the profession because they genuinely believe in the promise of all children, this level of diversity can improve the ways in which girls with disabilities are treated in schools and thus the way they behave in schools.

It is worth noting that a trauma informed practice understands that for a person who has experienced a severe or extremely harmful event or series of events, there are certain behaviors, words and conditions that trigger in her or him, a negative reaction. Reactions that are often
responses to past abuses or neglect.

Emotional safety is supported in learning spaces by emphasizing a respect for the diversity of thought and the rigor that comes from positive appreciative reasoning and engagement with the student and material.

Thank you for the opportunity to share these preliminary thoughts and thank you for providing a platform to demonstrate that our commitment to uplift our girls with disabilities as sacred and loved are real.

CHAIR LHAMON: Thank you, Dr. Morris. Dr. Morgan?

MR. MORGAN: Thank you. It's an honor to be here for this panel today. Next slide, please. I'll just be reviewing some of the peer reviewed work that we've been conducting, most of which is peer reviewed, some of which is currently going through peer review in regards to this topic.

The work that I'm presenting in regards to disability identification has gone through a series of peer review processes and high impact journals across a range of different fields, including in public health, sociology, and education. Next slide, please.
This, our findings have been reported on a number of different bipartisan organizations, Brookings, the Fordham Institute, New York Times, National Affairs, others. Next slide, please.

And what we're essentially doing in terms of the intersectionality question regarding disability and race, we're examining to what extent we find evidence that minority children are being inappropriately over-identified as disabled based on their race or ethnicity.

And then second, in terms of preliminary calculations I'm presenting today, where we've been examining who's at risk for suspension, particularly in regards to the question of the intersection between disability and race. Next slide?

Much of this work is relying on nationally representative data collected by the US Department of Education. That represents the best available evidence to investigate these questions.

A unique feature of these data is they include student level measures of potential confounds including academic achievement, family socioeconomic status, school composition and other explanatory factors.

We're therefore able to approximate
contrasts between children who seem observationally similar in regards to their likelihood of being identified as having disabilities or their risk for suspension. Next slide, please.

So, are US schools inappropriately over-identifying children disabled based on their race or ethnicity? Next slide.

When we look at the national data in the fourth grade, and we break this down by student, individual level student achievement, we find that amongst children who are displaying a very low levels of reading achievement, and so might reasonably be expected to be potentially having disabilities, that among similarly achieving children, about 75 percent of white children have been identified in US schools in fourth grade as having disabilities, with the contrasting percentages for minority children, black, Hispanic, and American Indian children much lower. Next slide, please.

When we look at this across the achievement distribution, this is the number, these are the numbers I was just presenting. So what you see here is as children's achievement goes up, their likelihood of being identified as having
disabilities in US schools goes down. That makes sense.

We see that across the different racial and ethnic groups that we examined. But within each row and across each similar level of academic achievement, we consistently find that white children, and also English-speaking children are consistently more likely to be identified as having disabilities in schools, whether we examine this in fourth, eighth, or twelfth grade than otherwise similarly achieving children who are racial and ethnic minorities. Next slide, please.

I know this text is very small. If we look at this specific to different disability conditions, here we're looking at emotional behavior disorders. We've looked at this for ADHDs, specific learning disabilities, specific language impairments, other health impairments, intellectual disabilities, other types of disability conditions that are very low prevalence.

We consistently find initial evidence of over-representation similar to what Ms. Harper was talking about when we don't do adjusted estimates. But when we take into account potential explanatory factors, including those identified by a National
Research Council Report expert panel in 2002, and correct the adjustments, the estimates for other potential explanatory factors, we consistently find that minority children in US schools are less likely to be identified as having disabilities than otherwise similar children who are white or English speaking.

And we've found that prior to school entry, after school entry, for special-ed generally, across a range of different specific disability conditions, whether we use parent report or teacher report.

And these findings are incredibly consistent with those that have been reported over the past several decades in public health which also finds substantial disparities attributable to race or ethnicity amongst otherwise similar children displaying the same clinical needs. Next slide, please.

If we track this across time beginning in 2003 up until the latest administration, the data we're examining here, this top line represents white children with their, amongst children, with the estimates corrected for reading achievements at the individual student level.
And what you find here is with all the other racial and ethnic groups, they're displaying numbers below one relative to whites. What does that mean? It means relative to similar children, peers, again, racial and ethnic minority children in the US have been less likely to be identified as having disabilities beginning in 2003 when this data began to be available up until the latest administration of these data, which also includes 2015, the most recently available. Next slide, please.

If you look at this across the racial, or excuse me, the economic distribution of US schools, here what we've done, the two lines represent the percent of fourth grade children who identified as having needing special services, whether the children are black, or excuse me, white, or black.

What you see here is that you see the two lines. And what happens is as the school's economic disadvantage increases, both groups, white and blacks, displaying relatively similar levels of academic achievement, experience declining likelihoods of being identified as having disabilities.
But, you also always see a disparity between white and black children in regards to the relative percentage of children who are being identified as having disabilities. Next slide, please.

So that’s looking at the intersection between disability and race generally. Now let’s look a little bit more specifically in regards to suspension. Next slide, please.

So what we see here when we estimate a regression equation on who’s likely to be suspended, yes or no, we find with uncorrected estimates that children who are black are more likely to be suspended by the end of eighth grade than children who are white, with minimal correction for some confounds.

We also see initially that children with disabilities are more likely to be suspended. However, when we correct the estimates for other potential explanatory factors including individual level behavior measured at the start of kindergarten, we find that black children relative to similar children who are white are, remain more likely to be suspended.

But children with disabilities are not,
nor are children with disabilities who are of color are not. There is no statistically significant interaction here. Next slide, please.

When we look at this specific to how many times a student has been in, excuse me, suspended, we find the same pattern. Children who are black are more likely to experience more suspensions. Children with disabilities or children with disabilities who are racial and ethnic minorities are not at greater risk for suspension. Next slide.

So our results indicate disparities attributable to discriminatory practices in regards to disability identification. Schools seem more likely to identify children who are white or English speaking relative to otherwise similar children who are racial and ethnic minorities.

Minority children are more likely to be suspended. But children with disabilities don't seem to be more likely suspended after accounting for potential confounds. And we see that same finding in regard to the interaction between race and disability. Thank you.

CHAIR LHAMON: Thank you, Dr. Morgan.

Thank you. So I'll open up for questions from my
fellow Commissioners. Commissioner Narasaki?

COMMISSIONER NARASAKI: Thank you, Mr. Losen. Or Dr. Losen, sorry. In your written testimony you have a lot of discussion about the actual issue about whether schools are in fact feeling safe or not safe or who are trying to undergo reform, which seemed to be at odds with Dr. Eden's observation. So I'm wondering if you could expand on that.

MR. LOSEN: Yes. So one of the studies in our book looked at students in Chicago for example. And they looked at students who were attending schools in the highest crime neighborhoods. And they found that the schools that had the highest safety measures among those schools, were ones that were really engaged in building trust between teachers and students, and teachers and parents.

Now, it also happens -- now this is correlational, not causation, but those -- all those schools were much lower suspending. So in other words, the higher safety ratings in those types of schools were ones that suspended fewer students.

I would also point out that even Max Eden's own report, if you look at Mayor Bloomberg's
reforms, suspensions declined dramatically during Mayor Bloomberg's control over the schools there. And there was no change in school climate according to Max Eden's own studies.

So the idea that when we reduce suspensions that there has to be chaos as a result is absolutely not supported even by the researchers who are claiming that is the case.

And I would also point out that Eden's study -- when you look at individual schools -- did not find a correlation between lowering the suspensions. The schools that lowered suspensions didn't look different in terms of the changes in climate than the schools that stayed the same or increased suspensions.

So the idea that reducing suspensions breeds chaos is not supported even by those researchers who are trying to make that claim.

And lastly, I've been going around the country working with Dr. Skiba and other researchers to find good examples of schools that are more effective. And these schools often are in high crime neighborhoods. And there are schools that have very low suspension rates. Some have dramatically declined, others have been low for a
long time.

And they all seem to have the same thing in common. They really invest in kids, they care about kids, they go to extra measures to make sure that students have the supports they need. They develop relationships.

You talk to the security guards in those buildings, and the school police. It's all about developing relationships and giving students second and third chances. And those are very orderly schools. And there are very low suspension rates. There are alternatives to kicking kids out right and left for all kinds of offenses that work very effectively.

And then the last thing is this assumption that we have order when we kick out a lot of kids is not supported in the research. The study that often gets pointed to is one in Florida -- Alachua County, Florida -- where they say, you know, this idea that you can expose students more to disruptive peers.

Well guess what, that was a study of the second highest suspending -- county in the state of Florida. So during that period, that was a very high suspending county where there was this cost
associated with -- and the disruptive peers were students who had domestic violence -- had been exposed to domestic violence.

So the idea that you would kick out more kids who have been exposed to violence in their home or are traumatized, as a solution, makes no sense whatsoever. I think what really that study stands for is that if we don't have some sort of trauma intervention or support kids who come from troubled situations, then we do get more disruption.

But that would be an intervention, kicking a kid out of school is a non-intervention. That's less adult involvement with a child, not more. And it doesn't work. And there is no research that says it works.

CHAIR LHAMON: Mr. Eden, do you want to respond?

MR. EDEN: Yes. Kind of want to take that point by point, all right? We have to be very careful of drawing assumptions from studies and try to parse out exactly what they tell us. Dan's study of Chicago showed us -- well the study he referred to showed us that good schools are good. I can 100 percent buy that.

A study by the University of Chicago's
Schools Consortium of the effects of lowering suspensions from ten days to five found a causal deterioration in student respect and teacher-reported disruptive behavior.

Regarding my work in New York City, that is absolutely correct that Bloomberg lowered suspensions by 16,000 and saw no negative effects. We have to think about what the reform was.

That reform was a teacher may not kick out a student for the first time that he commits a low-level infraction. That seems very sensible to me. It seems very sensible that you could eliminate those and see no bad consequences.

The second reform was that if a teacher wants to suspend a student, they have to ask the principal to ask the administration for permission, knowing that the principal doesn't want to ask and the administration doesn't want to give.

I posit that that creates a very different dynamic that will undercut teachers across the board. It is true that there was not a direct correlation, it was an across the board thing. However, when you see a series of across the board policy changes in multiple cities, and you see a series of across the board deteriorations, it should
raise eyebrows.

COMMISSIONER NARASAKI: Thank you. I just have one short follow up. So trying to parse and read between the lines of -- with statistics is not my forte. I try to -- I kind of go against the stereotype of Asians in terms of numbers.

Is it the case that the question is not whether to do this, but how well it gets done? How much investment there are in teacher training, how much gaming is being done by principals as opposed to being -- investing in the real work of supporting teachers in the classrooms in order to create a better learning environment for all kids?

MR. LOSEN: If I could respond to that, yes. And I think that one area of agreement that I would have with Max Eden is that we look at the school climate surveys because safety is a non-negotiable. And so I get upset when folks falsely attribute to those discipline reform proponents like myself to say that we would trade off somehow with safety.

Absolutely not. You know, we are teachers. We are parents, we are students. These are our schools, and that's not on the table. And safety also means safety from bigotry, from unfair
and unjust educational environments.

CHAIR LHAMON: Yes.

DR. MORRIS: I would just want to offer, one, that I fully agree with the element of how we're defining safety and the core and critical need to redefine that.

I also want to say that it's very important to support participatory action research that engages the affected population in understanding and interpreting these data, and understanding the conditions that are taking place in our schools, not just with educators and other adults, but also with young people who are active participants in the co-construction of their learning and who are able to sit with us as partners in understanding what they need to feel safe, how they need responses to be engaged such that they are responsive to them at the intersection of their identities.

This is a discussion about intersectionality. And so it's important for us not to just say the intersections of race and disability and leave it at that, but to understand that there are multiple intersections in forming a student's understanding of safety and our need to critically
examine that.

CHAIR LHAMON: Thank you. Commissioner Kladney?

COMMISSIONER KLADNEY: Thank you, Madam Chair. I would like anybody who wants to answer this question to answer this question. I think I'm specifically looking at these two gentlemen, but I don't know if anybody else wants to chime in.

But both Mr. Losen and Mr. Eden, these studies that you cited, I looked at your little presentation and I listened to it, and I looked at the footnotes. And it looks like you just went through the numbers -- is that right -- of these school districts that you say have gotten worse --

MR. EDEN: Yes, I --

COMMISSIONER KLADNEY: -- since they instituted this policy?

MR. EDEN: I have --

COMMISSIONER KLADNEY: I just --

MR. EDEN: Sure.

COMMISSIONER KLADNEY: Okay. So I just wanted to know that. I'm not going to be critical or anything. But in looking at these studies and the studies that you all have used, have you taken into account the types of training and the
differences in training between school districts --
because we have so many school districts, they don't
use the same type of training and institute the same
level of command like you were speaking about in New
York I think with the -- whatever.

And that's not every school district.
So how can you -- is it fair to compare just numbers
without looking at what school districts do inside
themselves to effectuate training on how to
institute discipline and how teachers respond, and
principals and administrators and the school cops?

MR. LOSEN: I think it's important to
frame this issue in terms of students' rights to
educational opportunity. So, if there are some
schools with the same resources that are kicking
students out right and left, and right around the
corner there are schools with the same resources
that are not, and those students are engaged, and
there isn't a safety problem -- in fact, most of the
time, those schools have higher achievement and
higher graduation rates. Then it really behooves us
to say there is a right to access -- to equal access
to educational opportunity, and we should prompt the
schools that are really doing an inefficient job.

And I point out we have other studies to
show that there's a huge economic cost when we kick kids out of school because it does contribute -- it predicts a much higher dropout or lower graduation rate. So to answer your question --

COMMISSIONER KLADNEY: That doesn't answer my question.

MR. LOSEN: Well, so the resources can be spent differently, and that's something that -- is that what you're asking about? Or --

COMMISSIONER KLADNEY: No. I'm trying to get at when you look at these numbers, you have to look behind the numbers to see -- you have how many school districts in the country, two, three thousand, five thousand?

MR. EDEN: Fourteen.

COMMISSIONER KLADNEY: Thousand? Okay, 18,000 police departments, 14,000 school districts.

COMMISSIONER ADEGBILE: A lot of Commissioners have questions.

COMMISSIONER KLADNEY: But my question is do you look behind those numbers to see in those 14,000 school districts -- or however many have instituted or looked at this guidance letter and tried to institute this program of less suspensions and less expulsions -- the training and how it has
affected people. I mean, some districts may be able to train their -- may have a better program than other districts. There may be a model program.

MR. LOSEN: Yes.

COMMISSIONER KLANDEY: That's what I'm looking for. And I'm not hearing anything.

MR. LOSEN: So, I think the Texas study looked -- tracked every middle school student for six years. And they looked at school effects. And they found that what schools do make a difference.

In other words, it's not an external problem that schools can't control. I hope that addresses what you're saying, that there are things schools can do -- and some do it well, and some do it very poorly -- that contributes to whether there are large racial disparities. Leadership matters a great deal.

So you can train principals to be, you know, competent in terms of cultural awareness and cultural competency, and to really address discipline as an educational issue, to help kids, you know, prevent the misbehavior and keep kids in school as much as possible.

That doesn't mean they don't suspend students when there's a safety issue. And those
differences make a huge difference. Those school
level differences do drive a lot of the racial
disparities. So the idea that there's a less
discriminatory alternative, it is often the school
next door.

MR. EDEN: So, given that the subject of
this panel is in large part relevant to federal
policy, I think it is entirely fair to try to
examine every instance where we have data where that
federal policy has shifted practices and see what
has happened in those districts.

And the results of this, as I have said,
have been to my -- best of my knowledge uniformly
bad. Now, what happens when you look under the hood
to kind of figure out what's going on and, like, try
to assess any differences we see between districts?

There's some of that out there. Right?

One thing that we see, almost invariably -- perhaps
invariably -- is that this notion that we need to
phase out exclusionary discipline and implement
restorative practices, or positive behavioral
intervention supports.

This kind of doesn't actually happen.

Right? A tool from teachers is taken away rather
instantly, or severely limited rather instantly.
And then over a long period of time in a select group of schools, additional supports are given.

In LA, after the first two years I think it was ten percent of schools. In New York, after two years I think it was six percent of schools. In Philadelphia, after four years I think it was five percent of schools.

So what is happening in districts that I believe is driving the uniform decline is --

CHAIR LHAMON: I'm sorry, can you pause for just --

MR. EDEN: Sure.

CHAIR LHAMON: I didn't understand what was not happening.

MR. EDEN: A rollout of district supported --

CHAIR LHAMON: Thank you.

MR. EDEN: -- funded positive behavioral intervention support programs. A tool is taken away across the board, and a replacement is given to ten or less -- ten or -- ten percent or fewer schools within that district.

And we do not have great studies on what happens in those schools versus that. A study in Philadelphia that just came out a few weeks ago does
not paint a nice picture.

MR. LOSEN: I would like to point out that --

CHAIR LHAMON: Your microphone.

MR. LOSEN: -- in Los Angeles, in fact if you follow what happened in four years after the changes were implemented, they have the highest sense of safety ratings that they've ever had. They have higher graduation rates, achievement improved across the board, and if we look at multiple indicators rather than cherry-pick one or two that went down for one year, if we really look at the whole set of indicators, we get a very different picture, one of mostly success.

Now, Los Angeles is the second largest school district in the country. There -- within Los Angeles there are problem schools, no doubt. But the general picture is one of success and not failure.

CHAIR LHAMON: Thank you. Commissioner Heriot?

COMMISSIONER HERIOT: Thank you, Madam Chair. Mr. Eden, when you came up and introduced yourself over the break, I said I would like to ask you a question on disability and discipline. It's
actually the question that I didn't get a chance to answer -- didn't get to ask in the previous panel.

Since then, Dr. Morgan has also spoken on this issue, and he may want to comment too. But my point was going to be that one of the panelists had said that disabled students have much higher levels of discipline than other students.

And I think what people think when they hear that is that students in wheelchairs are getting disciplined more often than other students. But I think there's actually different kinds of disability involved here. So could you comment on that?

MR. EDEN: So, we need to kind of not look at raw aggregate numbers. If there's one thing we learn from James and from Dr. Morgan, it's that aggregate numbers aren't always revealing.

The Center for State Government Justice Center issued a report in 2011 which is pretty comprehensive, and it tried to break down suspension rates, controlling through various demographic factors by the type of disability.

And it found -- and it's in my testimony, and I'm going to be approximate here -- students with physical disabilities were 50 percent
less likely to be suspended. Students with autism were 30 percent less likely, students with significant developmental disabilities were about 15 percent less likely.

Students with learning disabilities were about 2.1 percent more likely, and students with emotional disturbance were about 20 percent more likely. Now, emotional disturbance is a category catchall for problems that cannot be medically diagnosed, but there seems to be something wrong here because there is bad behavior.

So when we see that there are a higher rate of students with emotional disturbance who are being disciplined, it is entirely opaque as to the extent to which that involves discrimination or the fact that students who are more likely to misbehave and misbehave often are more likely to be punished for misbehavior.

MR. LOSEN: If I could also respond to that. So it is true if you look at the data that students with emotional disturbance are more likely than other students -- if you look at all the others about twice as likely.

But the law says we're not allowed to suspend students because of their disability. And
so I think what we're really seeing is a likelihood that students with disabilities that have emotional disturbance are not having their educational and their emotional needs met the way they're supposed to.

So they can be in a more restrictive placement, if that's necessary. But what you can't do is kick kids out because of their disability. That's unlawful.

But I would also point out that students with emotional disturbance are less than ten percent of all kids with disabilities. And what we're seeing -- and you know, I would point out that there are states such as Nebraska where students with disabilities who are black lost over 200 days of instruction due to disciplinary removal compared to I think it was 46 for white students.

And so there is a federal law -- IDEA requires that we look at not just state level, but actually at district level. And I guarantee you that in Nevada, there will be districts that those disparities and those high rates are even higher because, you know, the state is an aggregate average.

So it's really important to keep that
policy in place because all its saying is to look at the data, and when there are these really large differences, require some comprehensive, coordinated, early intervening services.

And the other thing that the regulations do, it says we can use the funds to address the problem. So the kids that are getting kicked out unnecessarily in those districts, the funds can be used for kids with disabilities. It made that clear, and that's a really important clarification.

And I would point out also that these regulations -- 238 districts were identified because of racial disparities in discipline in special-ed. That was the highest number of districts. So it wasn't mostly about identification or restrictiveness of placement.

We're seeing this phenomenon, you know, where states attend to it, it's gone through the roof. There are many districts -- but unfortunately of the places where the racial disparities are the largest, in those ten states, only four of them identified any districts.

That means six states with these huge racial disparities -- including Nevada and Nebraska, Ohio -- identified no districts, none whatsoever.
And so the regulations were also intended to help make sure that we -- the monitoring of this problem is done better than it had been.

CHAIR LHAMON: Mr. Eden, I want to make sure you have a chance just to respond to the point that Mr. Losen was just making about federal law and discipline of students with disabilities.

MR. EDEN: Yes, no. I mean, he is -- still on, sorry about that. No, he is absolutely correct on the law. I think that the question here for us to consider as we try to figure out ways to interpret the law and to execute the law from an administrative function, right, is how much of what we're seeing is discrimination and how much we're seeing are the -- how much of those numbers are inflated by other factors.

And depending on our relative estimate of how much is real and how much is conflated, that should certainly inform the executive functions of enforcing US law.

CHAIR LHAMON: Thank you. Ms. Morris?

Dr. Morris?

DR. MORRIS: So, I think it's important for us to elevate in this conversation how oppression manifests.
structurally, individually, culturally, and in internalized ways.

Knowing that, we cannot say that schools, as institutions, cannot be biased. Knowing that, we know that there are tools, that there are ways for us to support the capacity of educators, of districts, of institutions and their partners to respond the way that we think that they should be responding based upon the data and research that we have been engaged in, and as practitioners -- and with students as I said before -- able to construct something that is much more responsive to these underlying issues that researchers tend to point to but never clearly identify as being -- or as impacting the capacity of our institutions to provide services for young people with disabilities.

The importance of developing structured decision-making tools to help engage educators so that they can be responsive to the specific needs of students does help to improve the outcomes, to allow for them to be responsive when there are acts -- conflicting acts on campus, to respond to incidents of trauma, to engage their own capacity to ask questions in ways that will be responsive to children.
I am personally less interested in how we parse numbers to see if students are being disproportionately impacted as much as I am concerned that all students are receiving equitable treatment in these institutions, and that the outcomes reflect that.

So when we look at how we are able to engage in this work, it's important for us to think about one student being too many. And if one student is too many, then that means that we have to do something differently.

If one classroom is not functioning with the degree of competence and engagement to be as responsive as it can to all children at the intersections of their identity, to reduce and mitigate racial, gender, and disability bias, then we're not doing enough.

So you know, I think there are tools that we know to be existing. We know that exclusionary discipline really does just displace the problem, and these kids come back into the classroom further aggravated from the conditions that they were exposed to in the street.

We see these kids show up in detention centers, we see these kids show up in other
conditions that reduce their capacity to return to
school, or that reduce their capacity to be engaged
as learners and scholars that we know they can be.
And that is problematic.

And so the extent to which we can engage
in the development of tools, guidance, training,
technical assistance, rigorous engagement of
participatory methods so that we include those who
are impacted by these conditions in the conversation
about these conditions are all important to our
development of a capacity to be as responsive as we
can.

CHAIR LHAMON: Thank you. Commissioner
Adegbile?

COMMISSIONER ADEGBILE: Thank you. Dr.
Morris, I'm interested that many people have
testified about the extent to which trauma affects a
fair number of our students in our educational
system. And I think it doesn't strain the
imagination to think that hurt people hurt people,
and may in fact act out in ways that are
manifestations of their lived experience.

And so I'm interested to have you lay
out for us in a little bit more granular detail
whether the positive behavioral interventions and
support, sort of how they work, whether they work, and whether or not these things are scalable in a way that can embrace our children to put them on a path to success rather than excluding them and putting them on a path to the criminal justice system.

DR. MORRIS: Thank you. In my review of positive behavioral systems -- intervention systems and supports, you know, I think there have been opportunities for us to look at tiers of intervention that are aimed to modify student behavior and to engage students in the practice of understanding how we support their capacity to behave in classrooms the way that adult expectations have been crafted for them to behave in classrooms.

A lot of that is reflective of our social norms around what we perceive to be acceptable behavior. And a lot of that has to do with how we want to prepare our young people to be active participants as learners in the classroom, and also ultimately active participants in society.

I think that positive behavioral interventions are limited in their capacity to address the structural biases that further exacerbate harms in the lives of young people. The
way that I talk about this, ultimately, is that
there have been institutions -- and sometimes
individuals, but if we think about this along the
structural framework, there have been institutions
that have been part of a tapestry of harm in the
lives of certain communities, and that -- given that
they have been part of this tapestry of harm, some
of the engagements and the way that they present in
the lives of young people can be problematic.

So there has been a historical legacy of
these institutions causing harm in a community or
not being responsive to a particular community when
that institution presents itself as being the
panacea to a crisis, there may be a limited trust in
the community being impacted to respond to these
interventions.

That's one of the reasons that I think
it's critically important to engage in partnerships
with those who do have the established trust to help
apply some of the structures and to engage in
measures of student performance, and -- particularly
around behaviors such that we're not measuring these
behaviors according to any personal bias, implicit
or explicit, that we may bring to these activities.

One of the things that I said in my
statements here to you today was that the behaviors -- particularly of black girls -- are misinterpreted as defiant and violent and disruptive, and sometimes those are just expressions of their critical thinking.

But based upon, you know, some of the ways in which we have portrayed black femininity in our society, the way those words come out or the very act of dissent is perceived as an act of defiance.

And so until we do that hard work to unpack what we're talking about when we say we want students' behaviors to improve or we want to set up a set of measures to engage, and there's some -- or to engage in the development of a uniform practice, I think that we've got more work to do to repair relationships, not just between individuals but between individuals and institutions.

So with positive behavioral interventions, my belief is that's one strategy that can be used to address the box, but we also have to understand that there are some individual things that need to happen within that box to help increase the capacity of these institutions to be more responsive to students who are particularly
vulnerable to exclusionary discipline and who are particularly vulnerable to other harms in connection with that exclusionary discipline.

CHAIR LHAMON: Mr. Eden?

MR. EDEN: In the earlier panel, I heard a lot of the federal experts say that we know what works, and we need to shift away from exclusionary discipline to positive behavioral intervention supports.

I unfortunately had an involuntary reaction to believe that we don't necessarily know it that much. I say that because the most comprehensive literature came to the conclusion that this can work, but it requires extensive buy-in from teachers, it requires outside funding, and it requires a lot of time.

So it is true that it can work. But that something can work does not mean that it will work. The record of it in the real world as it's trying to be implemented is mixed to negative.

A federal grant, the Safe and Supportive Schools Grant which gave high schools extra money to implement, it was mixed, some better, some worse. Wisconsin, kind of negative, California, pretty good.
But the record of this being implemented in the school districts as other forms of discipline are being taken away from teachers is, to my reading, quite negative.

A recent study of Philadelphia by the Center for Policy Research in Education found that again, 30 schools, three years into the reform, had actually received extra support for these services. Every other school was told you are on your own.

In these 30 schools, teachers were no more likely to say that their principal was better at handling discipline than in the other schools. They were no less likely to suspend students than the other schools.

There were a lot of anecdotal reports of teachers saying that they did not believe their administrators, teacher/administrator strife and dissent which is not a pathway to a productive and collaborative school climate.

And to me the most interesting thing was whereas 70 percent of teachers said that they had received a consistent message from their school administrators that suspensions do not work, 80 percent of teachers said that they do.

Sixty-five percent of teachers said that
they deter future misbehavior, which is in the
advocate and activist community established as a
pure falsehood, yet 65 percent of teachers believe
it.

So as we try to figure out what works, I
think we need to give a lot more credit to the
judgement of teachers as it has been informed by
years of practice and personal experience than
trying to take pilot studies that are not like the
situations we are looking at and say because that
works, this will.

CHAIR LHAMON: Ms. Morris? Dr. Morris?

DR. MORRIS: I would just like to offer
that every intervention requires teacher buy-in.
Every intervention requires student buy-in. So we
can't use that as the measure of understanding our
success, we have to understand that that's a
critical core component of intervention.

MR. LOSEN: And I would just like to
point out that both the NEA and the AFT support
taking measures and addressing racial disparities in
discipline, especially because of its disparate
impact on loss of instructional time.

We are talking about also, I remind
folks, the rights of students to educational
opportunity that differs dramatically, especially with black students compared to white students.

We're talking about hundreds of days of lost instruction in differences. And to me, we should start by agreeing 'that's unacceptable,' and then we'll figure out what works. And it's important to have good research and to continually improve what we're doing.

But the status quo is unacceptable. And I don't think we can just stand by and say well, we'll wait until, you know, X, Y, or Z happens before we prompt schools to do something differently because right now, students with disabilities who are black are having their educational opportunity denied.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Thank you, Madam Chair. This has been very stimulating and informative, and I appreciate all the hard work all of you put into it.

Our charters views consist on civil rights is to investigate and analyze disparities based on discrimination, based on discrimination, based on protected classes such as race, disability.

We are not a commission of best
educational practices. And so it strikes me, I've been sitting here for a couple of hours now, and I see Dr. Morgan's last two bullet points there.

And those really address what we're here for today. We do not observe that children with disabilities are more likely to be suspended, and we have not observed that among children with disabilities, those who are racial or ethnic minorities are more likely to be suspended.

Does anyone have any empirical data that refutes those two bullet points?

MR. LOSEN: Yes. So I would say all the wealth of the research definitely refutes that, including the findings that I presented today. So, absolutely.

And I would also point out that, you know, Dr. Morgan is using samples that, if anyone's done an ELS study, it's a survey of parents about whether, students were ever suspended. And so he's not actually using suspension data. He's using what, you know, a survey respondent said whether or not their child was suspended.

So, there's a big difference in terms of we know what the disparities look like. And another point is that Dr. Morgan's studies don't include a
single district. So we're seeing a huge range of what's happening at the district level.

And there are huge disparities that have been addressed by the Office for Civil Rights, by the Department of Justice. Sometimes it's intentional discrimination, sometimes there are structural factors. Oftentimes implicit bias may be one of the many factors.

But I really think that it's important to also look at what is sound educational practice, that is important to this question because if you are pursuing something that is unsound and counterproductive, and it also has a disparate impact on students with disabilities or black children or a confluence of those, or black boys or black girls, then it's imperative that we do something differently, that we don't accept the status quo when it's an unsound practice.

Now, an example in the guidance, for example, is suspending students for truancy. I don't see the argument that that's a deterrent. These students are not coming to school, yet they're being suspended for not coming to school. Now they're being told you can't come. It makes no sense. And dress code violations --
(Simultaneous speaking.)

CHAIR LHAMON: -- was responding to Commissioner Kirsanow's question which is empirical data, and I think you answered that.

MR. LOSEN: Yes, okay.

CHAIR LHAMON: I do want to say, I understand, Dr. Morgan, that you have been trying to get in, and this question seems to be about you. So I apologize for that. And if you want to --

MR. MORGAN: It's however I can be helpful. So in regards to our analyses, most of the available studies that have looked at, there's the disparities point and then there's the discrimination point. So we're not contesting the disparities point. We're wondering is it, what's the evidence of discrimination.

So if you look at children who observationally look similar, who is more or less likely to experience the outcome? When we look at disability identification, we consistently find that white children are more likely to be identified as having disabilities, despite being otherwise similar to racial and ethnic minorities displaying similar levels of academic achievement, family economic resources.
We also find this amongst children attending the same schools, so would have access presumably to the same level of school level resources.

In the last set of regressions which are preliminary, we are correcting for limitations in the prior empirical knowledge base. Many of the studies that I've looked at, identifies as having a disability in and of itself, do schools consider that kind of a red flag for suspending students, net of other potential explanatory factors.

Most of the available studies have not considered prior behavior. Or they haven't considered prior economic disadvantage, or the quality of the schools that the students are attending.

So in these preliminary regressions, we try to account for those alternative explanations. We do find that children who are black are more likely to be suspended compared to otherwise similar children who are white.

But we don't find that that extends to being identified as having a disability, and we don't find it extends to the interaction between being identified as having the disability and being
a racial and ethnic minority, in this case, black or
Hispanic.

And to an earlier point, we have also
looked at whether this risk is observed among
specific disability conditions. Those are behavior
disorders, learning disabilities, et cetera.

And we also failed to find elevated
risk, whether as measured by suspension yes or no,
or by the number of times being suspended in terms
of that interaction -- or in terms, excuse me, of
that identification label. The other thing I note
is --

CHAIR LHAMON: Can we pause on that for
just --

(Simultaneous speaking.)

MR. MORGAN: Yes, sure.

CHAIR LHAMON: -- a minute to make sure
I understand? So is it fair that your point is that
students should be compared like to like, and so the
degree to which they've had prior disciplinary
infractions should be part of the calculus, or am I
misunderstanding?

MR. MORGAN: It's in my understanding is
if we're looking at discrimination, we're looking at
comparing otherwise similar students who experience
different outcomes.

CHAIR LHAMON: Yes, thank you.

MR. MORGAN: Or we're looking at possibly disparate impact. So we're looking at here at children who are observationally similar, and including into their prior behavior about their likelihood of being suspended.

CHAIR LHAMON: Thank you.

MR. MORGAN: You're welcome.

CHAIR LHAMON: I think I cut you off as you were going to enter another point.

MR. MORGAN: The other thing I was going to note is a notable contribution of our study is we look at the frequency of suspension. So suspension yes or no is a bad thing. But being suspended often is known to increase the likelihood of later arrest by a significant degree.

So that is a concern in terms, from the standpoint of the school to prison pipeline which I believe the hearing is on. So we find that to be the case for children who are African American, but we don't find it in regards again to disability or the interaction between the two.

CHAIR LHAMON: Dr. Morris? Thank you.

DR. MORRIS: Yes, I mentioned in my
comments, and it's provided in the written statement, that the National black Women's Justice Institute conducted a study, or took the data that were collected by the Department of Education to examine what was occurring among girls.

Oftentimes, what happens with girls with disabilities is obscured when they are included in larger bodies. What we did is compare just girls to other girls who are similarly situated to your point. And we found that among students served under IDEA, the Institute found that African American girls were four times as likely as white girls to experience one or more out-of-school suspension, and nearly three times as likely to experience one or more in-school suspensions, that African American girls with disabilities are two and a half times more likely than white girls to, with disabilities to be referred to law enforcement, and almost four times as likely to be arrested on campus.

There are important distinctions for us to understand what is leading to some of those interactions. But to answer your question about whether we have found differential impact of these practices, we have.

CHAIR LHAMON: Thank you.
MR. LOSEN: If I could just point out one concern about Morgan's analysis is when you control for prior behavior, it assumes that there was no racial bias, either structurally, or implicitly in those prior assessments, whether they're teacher evaluations, or whether they're actual discipline, you know, incidents of discipline.

So why would we think that in eighth grade, for example, there is a racial disparity that might be due to bias of some sort, but treat everything that happened before as if no bias existed?

That doesn't make sense. You're controlling for the thing you're trying to measure. So I would disagree with that analysis.

CHAIR LHAMON: I have multiple Commissioners with questions pending, but I see that you want to get in.

MR. EDEN: So again, the bias could certainly occur in previous things. We should also try to assess the degree to which we think that explains it, right?

The 2014 study by John Paul Wright found that previous behavior explained it. It also, that
is open to that criticism. It is entirely open to that criticism.

The interesting sub-point of that study which isn't remarked upon is that teacher reported misbehavior was a far weaker predictor of suspensions than parent reported misbehavior.

So I would just like to make another point that if we look at the relative contributions that parent perception and teacher perception make, I think it argues strongly against strong teacher bias.

MR. LOSEN: Just to quickly respond to that, so this Wright study was not based on actual suspension data. Again, it was asking parents, had their child ever been suspended. So these are eighth grade students, any time before eighth grade.

But the prior set of impressions, he ruled out the fact that a lot of black children are suspended in grades K through 3. So he has an assumption that this is all prior impressions of behavior, but not describing actual.

So he's really conflated the two, so it doesn't make any sense in terms of, you know, the validity. And again, he's not looking at eighth grade suspension rates, the question is was your
child ever suspended. So, and he is --

(Simultaneous speaking.)

CHAIR LHAMON: I'm going to stop us here and move on. Thank you. Vice Chair?

VICE CHAIR TIMMONS-GOODSON: Thank you very much. We began this briefing with words like with regard to discipline policy, schools must get it right. But where there seems to be some divergence of thought is whether federal policies help.

In fact, it was stated earlier that the Dear Colleague letter was wrong headed. Before we close, I thought it might be good for us to discuss what are the reasons that federal policy makers should stay the course on DOJ and OCR joint guidance, and include in any response, what do you think would result if we were to rescind current policy?

So I open that up. Dr. Morris, Dr. Losen?

MR. LOSEN: So, just quickly, one of the things, I've been going to schools and districts around the country to figure out what really works, applying mix methods, qualitative as well as quantitative.
And every single school in the district that is doing effective work where there is both order and students are doing well achievement wise, and very low suspension rates, and very low levels of disparities, they all start by looking at the data.

And this is what the guidance is really asking schools to do, is look at your data to see if there are large racial disparities. And if some of them are due to suspending kids for truancy, or for dress code violations, or unnecessary kinds of, you know, misbehaviors, you know, typical adolescent misbehaviors, that there are things you can do to stop that.

There are less discriminatory alternatives. It's just asking a question to prompt that investigation.

VICE CHAIR TIMMONS-GOODSON: Excuse me. When you say look to the guidance?

MR. LOSEN: So the guidance, the joint OCR DOJ guidance --

VICE CHAIR TIMMONS-GOODSON: Thank you.

MR. LOSEN: -- prompts every school and every district to look at their data and ask these questions. It does not direct them to do anything
more than that, and that's where the inquiry begins.

But if they can't justify what they're doing, and it's a large racial disparity, they should find alternatives, and then it provides a whole host of resources about a range of things they can do differently.

DR. MORRIS: Yes, I will add that the collection of data, particularly as it's desegregated in ways that are useful to schools to clearly understand where there are particular decision points that might inform practice, have inspired several courageous conversations, I will say, that are taking place in districts across the country.

Two have been moving through districts and looking at what schools are doing with the existing guidance, the previous guidance, and what they're doing with the growing body of research that has been showing, offering suggestions.

And a number of them are engaged in new conversations that were not previously there that have resulted in policy changes, including the elimination of suspensions for K through 2, including looking at how they can implement a more robust continuum of alternatives to suspension and
expulsion for younger kids, particularly for kids of color who are disproportionately impacted by decision making among educators and institutions that are reading behaviors in ways that reflect implicit biases.

And they're doing that hard work of examining what it is that is leading to some of these disparities. And without that guidance, I don't know that they necessarily would have been inspired to do so. I don't know that they necessarily would have felt that they had the support to do so, and I don't necessarily think that they would call upon people who are writing and investigating these issues, and really trying to seek solutions to be partners with them in their school districts to develop alternatives.

CHAIR LHAMON: Dr. Morgan?

MR. MORGAN: I was just going to add to the point about disability identification. Our IDEA was amended in 1997 and again in 2004. The focus was on relative percentages in terms of disparity which was taken as evidence of discrimination.

The equity in IDEA regulations expanded that. There's no accounting for differences in clinical need in those regulations. Schools aren't
asked to examine okay, let's look at these disparities once we take into account children who are displaying the same clinical need.

They much more operate as relative numbers. Keep track of this number, and let's tell us if you're going over it. Our analyses of this problem in regards specifically do disability identification for minorities, repeatedly indicates that's not the problem, that schools are instead systematically not identifying children who display similar clinical need based on their race and ethnicity.

And so that is much cleaner, clearer evidence of widespread discriminatory practice in the US, but is not addressed currently under federal legislation or regulation.

CHAIR LHAMON: I think you mean specifically under the IDEA.

(Simultaneous speaking.)

CHAIR LHAMON: Thank you. Okay, Mr. Eden?

MR. EDEN: Yes, the 2014 Dear Colleague guidance must be rescinded. To the extent to which the elements are collecting statistics for schools and letting them know that, that is going to stay.
The Trump administration has already cited that that is going to stay.

The extent to which the guidance was trying to collect and disseminate best practices, that is also going to stay. The question is to what extent will the federal government swoop into school districts and coerce them to change their practices. That is the element that must go.

There is a three part test that was used and spelled out in the guidance, does a disparity exist, is it absolutely necessary for an educational need, and are there other means available.

Now, that is the legal test for these kinds of things. And it is a legal test that is intended to be applied in a court of law by a judge, not by a federal bureaucrat who, as Ms. Heriot opened, the judgement of which we have no particular reason to trust.

All right, so these investigators came in, they made policy shifts, and they did not leave. At the close of the Obama administration, I think the numbers on the website, there were 307, 387 open cases by my count, which might not be accurate so I don't want to stand by it. I think that they closed 32 cases in the last four years.
So to the extent to which the guidance was federal investigators, swoop in, use their own judgement to second guess local educators, that is the element that must go.

VICE CHAIR TIMMONS-GOODSON: One more second, please, Madam Chair. I don't want to testify, I want other folks to testify. But for what I've read, there would be a good bit of disagreement with what you've just said.

Dr. Losen, if you would like, quickly, I just want to --

CHAIR LHAMON: Really quickly because Commissioner Narasaki and I both have questions. Thank you.

VICE CHAIR TIMMONS-GOODSON: Okay, just quickly.

MR. LOSEN: Yes. The bottom line is that the guidance prompts educators to do the right thing by kids, to do what works. And if something is unproductive, counterproductive, educationally unsound, and it has disparate impact based on disability and race that they have to change those practices.

And it's not actually, it's an administrative guidance, I would point out. It's
not for lawyers. You can't go to court using the disparate impact regulations. So it's not a court decision, and it shouldn't be. Educators need to be prompted to do this.

VICE CHAIR TIMMONS-GOODSON: We really do have to -- if you could follow that up with anything written you would like to submit. Thank you.

CHAIR LHAMON: Thank you. Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes, I wanted to make a point, and then I'll ask a question to be followed up in writing. My point is that actually it seems to me that the data that Dr. Morgan threw up that shows that in fact African Americans are being under-identified for disability actually is why we are here because if that is true, then that means that teachers dealing with these kids aren't taking into account that it may be coming from a disability from which this kid needs support.

And perhaps those behaviors would stop if those kids were identified and got the support they needed. Is that correct, Dr. Morgan?

CHAIR LHAMON: Your mic is off.

MR. MORGAN: That's correct. And there
is some empirical work to support that, that once you receive the disability identification and access treatment, it lowers your likelihood of entering the school to prison pipeline.

COMMISSIONER NARASAKI: Right. And I would ask this panel, as I did the previous panel, if you have ideas for how that can be fixed, how we can be better at identifying that would be great.

The second thing that I know we don't have time because I want the Chair to be able to ask questions, is many people identify that IDEA, that schools are not using their resources which blows my mind because schools are so under resourced.

So I haven't heard or seen anything about how can we get those schools, what's the federal government's role then in trying to get those schools to actually use those resources. And I would love to have you brief us in writing. Thank you.

MR. LOSEN: Can I just very quickly respond that it's important to note that Dr. Morgan's research does not look at any districts. And we're really talking about district --

(Simultaneous speaking.)

CHAIR LHAMON: -- any further. Thank
you. Thank you. So I have a point of privilege. My last question. I know that Commissioner, at least Commissioner Kladney also had another question, so I will just say to you all thank you very much. This was obviously a popular topic among us.

So far as I know, the research that all of you rely on does not include examining the climate surveys that are a standard feature of OCRs, resolution agreements.

And so, Mr. Eden, you asked at the beginning if there's other research that could answer the question of how schools are responding, how students feel after schools have implemented particular reforms.

I would invite you all to take a look at those climate surveys. I think that they are a rich data source. I looked before, coming today, to see how much of that is public, and not so much of it is publically reported, but it is FOIA-able. So, I invite you to try to access it.

But I did see that the Amherst County public schools' reports increase in student safety multiple years after OCR, assumed the perception of safety multiple years after OCR has implemented
resolution agreement.

I have not examined myself the rest of
them, so I'm not opining about what they do say.
But I do think that there's a data source available,
and it would be well worth our time to examine what
happen what happens as a result of OCR agreements
because there are now many.

So with that, thank you very much for,
all of you, for what you have presented. I want to
say, we're going into our break now for an hour.
Couple things. One, someone left a cell phone at
the front desk. Please return and claim it if it is
yours.

And for those of you who signed up for
public comment, which will begin at 1 o'clock,
please re-check in at the registration desk to
confirm your participation and receive your ticket.
And there will be oral instructions given at 12:15
for that public comment.

Thank you very much. We look forward to
the rest of today.

(Whereupon, the above-entitled matter
went off the record at 12:06 p.m. and resumed at
1:05 p.m.)

CHAIR LHAMON: Welcome back, everyone.
I'm going to reconvene us. I want to confirm first that Commissioner Yaki is on the telephone. Are you on?

COMMISSIONER YAKI: I am.

CHAIR LHAMON: Terrific. Thank you.

Thank you all for your continued attention to this important topic. We're going to proceed with our open comment period.

A set of instructions, this is not a time for conversation with the Commissioners. We are hearing from you, and we appreciate it. I know you all have been provided the opening instructions, just going to repeat them, that we'd like you to tailor your topic to today's briefing which is the intersection of students of color with disabilities and discipline.

Please note that the US Commission on Civil Rights has a policy against defaming, degrading, or incriminating any person. And we ask you not to engage in those practices.

You'll have three minutes to speak which will be measured by our timer. When the box here with the three lights, when the light turns from green to yellow, that means two minutes remain. And when the light turns red, you should conclude your
statement. And if you do not conclude, I will cut you off in order to make sure that all of our participants have an opportunity to use the open comment period.

If you have not finished, or you would like to submit additional information to us for the Commission to consider, we will welcome that. And you can send us in the mail or email us written statements at the addresses provided on your sheets.

And while waiting for your turn, please sit in the numbered chair that corresponds with your number for speaking so that we can move along. And in order to reduce time between speakers, we ask that you move forward to the microphones before the speaker who is speaking in front of you completes speaking so that we can conserve the time. So with that, I'll invite our first speaker to speak. Thank you.

OPEN COMMENT PERIOD

MS. BENZ: Good afternoon. My name is Christina Benz. I'm here to share my story, my student's story in support of the 2014 guidelines. Today I'm asking for your commitment to move those efforts forward with all deliberate speed.

This is my 11th year of teaching in a
racially diverse urban environment. And currently I teach in a Minneapolis public high school with students who identify as approximately 50 percent students of color and then about 50 percent students as Caucasian. And of those, 18 percent have an IEP.

My students are smart, they're kind, they're resilient, and honest. However, they come to school with stress, anxiety, depression, and more problems than you and I can imagine. Even so, they continue to work hard, persevere, and advocate for themselves.

In a particular school where I worked, if students were not in class on time the doors were locked, and they were swept up by hall monitors who brought them into the in-school suspension room.

I always thought this was wrong. What if a student was sick in the bathroom, or taking a little brother or sister to school and came late. How is it helpful to students learning to keep them out of class?

I'm not condoning disregard for rules, but I want my students in class and learning directly from me rather than suspended and falling farther and farther behind.

Furthermore, this type of discipline
sends the message that they aren't welcome in the classroom. And it can confer a stigma that reinforces pre-existing stereotypes.

Can we instead find ways to turn rule-breaking into a positive teachable moment? Is it possible to help pre-service and current teachers in understanding their own biases, increasing relationship building skills and adopting tools for effective management? I believe the current federal guidelines give us opportunities to do that. Let's lean into those rather than roll them back.

Minnesota has one of the largest achievement gaps between students of color and their white counterparts. I believe that racial disparities in applying discipline makes those gaps in our educational system worse and is one of the roots of this problem.

My students are aware that students of color aren't always treated the same as their white peers in terms of discipline. I know this from the stories they share. I wanted to know what my students thought of the current policies, and this is what they had to say. Quote, black kids, specifically black boys, get suspended the most. You don't learn when you're out of the classroom.
All you get is a loss of motivation knowing you're unwanted.

Another student says, quote, as a white girl, no one gets suspicious of anything I do. Adults always assume I'm doing the right thing, unquote.

And lastly, teachers need to consider what could be going on in students' lives. Also, just telling them not to do something won't always work. Every kid is different. Kicking them out is not always a good thing to do.

My students and I appreciate the opportunity to present these views and suggestions. Thank you.

CHAIR LHAMON: Thank you.

MS. ALSTON: Good afternoon, I'm Tianitha Alston, and I currently teach at George Washington Carver Elementary School in Brooklyn. I have worked in elementary schools around New York City for the past 13 years. In that time, I've learned that punitive discipline creates a poisonous culture in which students become habituated to punishment even from the earliest age.

This is especially true in districts with large populations of students of color and
students with special needs. The culture of over-correction and the students' misbehavior it reinforces often worsens in junior high school with a society looking to lock them up by the time they get to high school.

Children make bad decisions, but that does not make them bad children. Some students come to school hungry after facing a family tragedy or with a lot of anger stemming from difficult home life. These amazing children must contend with a lot. These stresses, combined with impulsiveness of being a child make it difficult for them to deal with even the most innocuous situations which can lend to frustrated outcomes.

Sometimes our young people don't know how to appropriately behave in certain situations. Last month, one of my students, my second graders, with an IEP for emotional disturbance brought a razor blade to school. After a conversation, I learned that he had seen his mother use it on her eyebrows and he thought it was a comb.

Had I skipped this conversation and jumped to punitive discipline, people would have looked at his IEP and past behaviors, and he almost certainly would have been suspended or possibly
expelled. This is not an isolated case. As students with special needs are disciplined twice as frequently as their peers.

It is our job as educators to teach them not only academics but how to cope with these situations that no seven-year-old should have to face. And as well-rounded students, we hope to shape them into well-rounded people.

The school discipline guidance from the Department of Education has made these restorative practices more accessible for teachers. It encouraged teachers to build relationships with their students and leverage those relationships to deal with behavior before using exclusionary discipline as a last resort.

In this way, the guidance holds students to higher levels of accountability that punitive discipline alone ever could. We give students the skills to handle their emotions, and it is their responsibility to use and improve those skills.

We don't just abandon them in the hallway or the detention rooms where they can escape the harm and important work of reflecting on their actions and repairing the harm they caused through bad choices.
Please keep the discipline guidance as is written to give teachers, and students, and learning communities the tools to become citizens in the classroom and in the community. Thank you for having me.

MR. HARRISON: Thank you. First, I give unto God as the head of my life. I'm honored to support the Dignity in Schools campaign in NAACP [National Association for the Advancement of Colored People], LDF Legal Defense Fund. I also thank the Commissioners for the opportunity to come before you all.

I would have, could have, and should have stood before you as black juvenile delinquent, suicidal, or homeless or a fool, a mental health challenged student receiving special education services, IEP [Individualized Education Program], and another black student with a disability affected by a harsh discipline in their school system not made for students, black students to be exact.

Today I stand before you and everyone in this room as a black king, a black king who was labeled with a disability, a black king who went through hell in hopes of a successful education due to a disability, a black king who was told he
wouldn't amount to anything, a black king who
overcame and became victorious over this corrupt
education system that we have here in this here
United States of America.

I didn't, by no means, catch this flight
to DC to tell you what you want to hear in hopes of
facilitating a relationship and so forth. But
instead, I drove here, I mean, came here to
represent my people, our people who are afraid to
tell how it is, my people, our people, who are
losing their lives daily to either the streets or
the grave simply because of the system, my people,
our people who seem to have their voices muted when
folks are talking about or making decisions for them
while they can't get to the table. My people, our
people, who have the desire and passion for better
but can't move left or right because our schools are
pushing our students out but making sure every
student is there and count day.

To me, it seems that our students are
slaves, my people, our people, who are limited to
everything, including water -- oh, yes, google
Flint, Michigan -- because of these labels that
society had put on us, the labels of finance, and
gender, skin color, test scores, et cetera.
It's not until we start to build relationships with my people, our people, that change will begin to come. It's not until my people, our people, are sitting next to you change will begin to come. It's not until my people, our people, are at the table, then change will come. It's not until my people, our people, are unlabeled change will begin to come. It's not until you step away from your titles and realize you can't get nowhere, realize you couldn't get where you are without my people, our people.

We can continue to hold all the hearings, press conferences, public testimonies, meetings, and conferences that we want. But until we increase ourselves and increase reality in our lives, change will not come. Until relationships are built, families and youth are at the table, and have power, and for us to step out of the office and away from our titles into the community, we'll be doing the same thing over and over again. Thank you.

CHAIR LHAMON: Thank you.

MS. TAVALIN: Good afternoon. My name's Kuna Tavalin, and I am here on behalf of the National Center for Special Education in charter
schools which is a non-profit ensuring that students with disabilities have equal access to charter schools and that charter schools are designed and operated to enable all students to succeed. We're the leading national voice regarding special education in the charter sector.

More attention must be paid to the practices and policies that create systemic inequities that disproportionately impact students of color with disabilities. NCSECS believes that reducing significant disproportionality and ensuring students receive a free appropriate public education in the least restrictive environment can be accomplished through thoughtful and intentional action.

Today there are approximately 7,000 charter schools across 43 states serving 3 million students, 300,000 of which are students with disabilities. That's about 10.6 percent. An analysis of CRDC data shows that charter schools place relatively more students with disabilities in more inclusive settings than traditional public schools.

Both charter schools and traditional public schools disproportionately suspend students
with disabilities. Both charter schools and traditional public schools expel students with disabilities at greater rates than they do students without. Please refer to our written testimony for comparative data points.

While it's good news that charter schools place more students with disabilities in general education classrooms, both charter and traditional public schools continue to disproportionately suspend and expel students with disabilities at greater rates.

Schools frequently struggle to balance establishing a positive school culture while effectively disciplining students whose behaviors are disruptive of the learning environment.

There's a way to achieve balance and solve the problem. We've recently visited two noteworthy schools that I'd like to highlight, the Thrive Public School in San Diego and Haven Academy in the Bronx which proactively examine patterns of behavior to understand underlying causes, provide focus and appropriate academic support so students can experience success and leverage programming such as responsive classroom and restorative justice.

Together, these practices help to create
a consistent and student-focused school culture that
prioritizes creating relationships and classroom
environments that enable students with diverse
learning needs to succeed. This is the kind of
thinking and teaching we need.

Discipline is not the issue. It is a
symptom of the issue, and it certainly is not a
long-term answer to say more or less discipline.
That's a false choice. Rather than arguing about
discipline, we should commit to the goal of
optimizing school's learning environments and
assuring students achieve their academic goals.

We must work together to help school
leaders in ways that will stop the overuse of
disciplinary actions that we know lead to harmful
and devastating consequences for students with
disabilities. And NCSECS invites you to call on us
as a resource and a guide for policy and best
practices for serving students with disabilities.

CHAIR LHAMON: Thank you.

MS. STYRLUND: Hi, I'm Soni Styrlund.
I'm representing the voice of an anonymous teacher,
and here it goes. I was a teacher in the inner city
in Minneapolis in Minnesota. I was beaten and
choked after I was rendered helpless during an
assault in 2015.

The Dear Colleague policies that our district implemented that were preferential towards African American students were designed to shrink the education gap and School to Prison Pipeline.

The district contracted a diversity consulting firm and, as taxpayer money flowed out the window, the safety and security in our school district and buildings went out the window along with it, creating an environment that unleashed unsafe and dangerous environments for not just our staff but for all students that were going to school to get an education.

The policies of full inclusion in special education students into regular education classrooms and the non-suspension policies based on race emboldened the students that were choosing to repeatedly act out. The violence and the degree of violence continued to escalate and is still rising out of control.

From building-level administrations to bus drivers, not excluding all support staff, teachers, lunchroom staff, coaches, educational aides, and more importantly the students, are leaving the district because of the volatile nature
in our district building.

My injuries have left me with many physical, mental, and emotional effects that have forced me out of my job. The district has blamed me 100 percent for my injuries. I feel that I am being used. The district is bullying me and others to intimidate out of any district that might -- employee that might threat with any kind of act of violence or reporting to the police.

I suffered a traumatic brain injury, suffered a myriad of other problems that are directly associated for the beating that I was received. And I was trying to keep my students safe during that event. During the school year, I went in and witnessed 191 other assaults in our schools.

My injuries are directly associated with the melee that occurred in December 2015. The district's ensuing media coverage invariably lifted the proverbial rug, exposing just how unsafe and violent our schools have become. The district is not suspending students for fighting, theft, drugs, alcohol, or an effort to show the data that less students of color are being suspended.

Our districts and administrative have been offered bonuses for not suspending black
students, rewarding them instead $2500 bonuses. And this is making our environment much more dangerous.

The problem with no consequences for negative choices escalated the safety aspect to a fantasy portrayal that our schools were a safe place for parents to send their children to be educated. If a student assaults a teacher, it will not be reported to the police unless the teacher is permanently left with some residual effect from the incident. In my case, two students were charged with assault, but no attempted murder. Today, I --

CHAIR LHAMON: Thank you very much. We'll need to stop there. Thank you.

MS. TAVALIN: Thank you.

CHAIR LHAMON: We'll let you go ahead. Thank you very much.

MS. ROSALES-FAJARDO: Good afternoon. My name is Cristiane Rosales-Fajardo. I am a representative from FFLIC which represents Families and Friends of Louisiana Incarcerated Children.

I am a parent of three biological children and two adopted undocumented children with disability in Louisiana. I would like to add names. I've heard a lot, and I was in tears in here a little bit earlier. I would like to add names to
some of these numbers that we've been talking about because you're talking about my children.

You are talking about Tiago, a 13-year-old boy who was diagnosed with a learning disability that in a six-day period was in an in-school suspension 14 times, facing walls, not being engaged with his teachers or friends.

Why? Because he didn't have his shirt tucked in. And because when he did tuck his shirt in, the teacher thought that he did it in an aggressive manner and was then written up to the school resource officer where he could then be charged for aggression on the teacher for not tucking his shirt in. That's how that incident started.

Ryan, a nine-year-old, since pre-K has been made to have silent lunch in his school cafeteria and likes to sit next to his teacher a lot, because he does have anxiety and feels more comfortable being around his teacher. And the teacher felt that it was inappropriate behavior and that she felt unsafe because he wanted to hug her too much. So then he was subsequently written up for sexual misconduct when he hugged her without her consent.
Also, my adoptive son, 11-year-old Fernando, he is undocumented. And he has not been identified with special needs because the school doesn't believe that the trauma that he faced coming to this country is not enough to start a process to identify him as a child with special needs. He comes home and tells me that he is scared to cry, because the school resource officer can deport him back to his country.

Why isn't he diagnosed? I believe it's because of the inability, that the school is not looking at these children, my children. And as much as I'm a voice, and I support my community in letting the school know, and how can we work together, it's not happening.

I can share with you hours of testimony in reality and that I pray that we think about my children and the hundreds of thousands of other children that are facing and that are left without any type of support in our school system.

I live in New Orleans, Louisiana, where we are 100 percent charter. We don't have a school board to report to. They are the all independent board. So I don't have a system that you probably can get a quota from, so my children are not here.
These undocumented children that are being targeted, when they get any kind of disciplinary action that means they can no longer apply for the status to become a legal citizen, because now they have a criminal record.

I'm here representing those that are not even on those numbers that we've been talking about today. And I want to thank you all for the opportunity for letting me speak today.

CHAIR LHAMON: Thank you.

MS. REID: Hello, my name is LaToya Reid, and I'm from Minneapolis, Minnesota. And I have a nine-year-old African American boy who was born with three holes in his heart which, this is something that he has no control over.

When he was in daycare, he was removed from three of them. As you can imagine, this is very frustrating and heartbreaking. But that didn't deter me from finding the right daycare or the sufficient daycare.

I'm a full-time mom, an employee, and it's very hard juggling work along with trying to navigate through resources which I am forced to find on my own. When he became school age, starting at kindergarten he began to get suspended rapidly.
I would, and I still do, actually today get calls on a daily with someone asking me how I can help them deal with him. He is now in fourth grade, and he is 20 percent special-ed, 80 percent general-ed, based on his behaviors, which means his education is not being exercised to its full potential.

My son is the highest functioning child in his special education class. He has experienced and feels like he don't get treated the same. My son has experienced seeing another child, a Caucasian, with the same behaviors get treated with less disciplinary action.

I have called IEP meetings, but without proper support from the school, I cannot prevent poor performances for him. I talk to my son daily at school just to help him stay at school and not have to deal with suspensions.

My son is in fourth grade, but he is at a first and second grade level. I believe that he's at this level because -- due to the suspensions and not being active in school. I feel like I have to stay on top of the teachers to ensure that my son will be successful. I am simply looking for solutions. Thank you.
CHAIR LHAMON: Thank you.

MS. YORK: Hi, my name is Deborah York, and I'm honored to be here today for --

CHAIR LHAMON: Your microphone's not on.

MS. YORK: Oh.

CHAIR LHAMON: Thank you. Better?

MS. YORK: Sorry. I'm speaking up today for teachers at risk. Because, if today, being a licensed professional in this country means sacrificing your own safety for the protection of your students and staff, our profession is in serious trouble.

I'm just one master teacher left behind by the system. Teaching is my life. I decided to become involved by creating the Minnesota Teacher Protection Bill when my employer, my union, and ultimately the legal system failed me and my students after I was assaulted as I intervened to prevent further harm to students, to classmates.

That assault required three major surgeries, ending my 30-year career. And that troubled little guy, the 85-pound student, is now in his fourth school for special needs, emotionally and behaviorally disturbed kids. We failed him, and I think we failed all the other kids in that class.
too. We all know teachers can't teach and students can't learn when they don't feel safe.

But the Dear Colleague letter too many schools are not safe. Most teachers across the country have not heard about the Dear Colleague letter. But I can assure you, many have experienced the impact of the letter by the increase in abusive behavior.

The Dear Colleague letter runs in direct conflict with the bill which became law, my bill, in May 2016. And only recently did I learn of the conflict. No doubt, the intent of the letter was to help all students and to affirm and validate all students of diversity and special needs students. But in actuality, the letter has done the exact opposite.

School districts in Minnesota have had an increase in violent behavior with harm to teachers and students because of fear of federal investigations and defunding. Teachers have lost their voice today, and they're being silenced with gag orders.

They have lost their authority to control the classroom. They're told they'll be coached what to say, with whom, about classroom and
school disruptive behavior. They're told to shred, delete computer documents showing student violence that does not support the administrative agenda.

They're directed to tolerate students who disrupt by screaming, swearing, tormenting, bullying, hitting, kicking, using pencils and scissors to stab other classmates. They use laptops, desks, and chairs as weapons. And these all go unreported.

Teachers get assaulted and injured, and those injuries do not get reported as well. Teachers are disciplined for sharing observations and experiences with their colleagues because of the data privacy laws. Teachers are labeled as racists, branded as insensitive to students of color and culture after being assaulted, and investigated for reporting the event. Too often, they are perceived as annoying and unprofessional for reaching out just for intervention to union reps or administrative assistants.

With the revision of the Dear Colleague letter, teachers will be empowered to hold all students accountable for unruly behavior, no matter what color. And serious assaults like mine will, in fact, be reported to the states.
Please revise the Dear Colleague letter. It will hold all the students to the same set of behavior guidelines, and all districts no longer will fear reporting the truth about what has actually happened in states like Minnesota and schools across the country. Thank you.

CHAIR LHAMON: Thank you. Go ahead.

MS. WILLIAMSON: Good afternoon, my name is Kerri Williamson. And for the last five years I've served as the training director for the National Association of School Resource Officers. And that's who I'm representing here today. But I bring a unique perspective to that organization as a former teacher.

Anytime there's a conversation about school policy changes or the School to Prison Pipeline, we think it's very important that there's a clarification of exactly what a school resource officer is. A school resource officer, by the federal definition, is a law enforcement officer who's sworn, deployed in community-oriented policing, and assigned by that police department or agency to work in collaboration with a school.

NASRO, our mission as a non-profit since 1991, is to provide the highest quality of training
to school-based law enforcement officers so they can adequately make the transition from a regular police officer to one that functions properly within the school environment.

We have two components that we advocate for all the time which is proper selection and proper training. Just as one of the panelists earlier indicated that not all teachers need to be in the classroom, we clearly recognize that not every law enforcement officer needs to be in the classroom as well. So they have to be properly selected as someone who has a desire to work with kids.

They obviously have to be properly trained. If you talk about implications of federal policy, maybe we need some national standards as far as training requirements for school resource officers.

At NASRO we train on issues such as special needs, brain development, the impact of trauma, the ASIS report, Dragon Social Media trends, implicit bias, of course and then threat assessment, and emergency operation plans so we can make our schools safe.

Without proper training, we do recognize
that SROs can make serious mistakes that may cause
short-term difficulties or jeopardize the entire the
SRO program. We teach that there's a triad concept
to school-based policing which is the officer serves
as both a guest speaker in the classroom, informal
counselor or mentor, and of course there's their law
enforcement duties.

Our main goal in implementing SRO
programs is to bridge the gap between officers and
young people, thus reducing juvenile delinquency.
It has to be a collaborative effort with the
stakeholders and the community, especially with the
school, mental health agencies, and others. There
needs to be an MOU or written agreement in place
between the school district and the law enforcement
agency that provides proper guidelines. They also
implement diversion policies.

We do have data that shows that the
programs are effective and actually decrease school
crime. Some of the high-profile incidents that you
hear about, you look behind those, they were not
NASRO-trained prior to the incidents. I assure you
that these programs work. I'm out of time. Thank
you.

CHAIR LHAMON: Thank you.
MR. SALICKI: Good afternoon, my name is Gage Salicki. And I am a social studies teacher at Buckley High School in Hartford, Connecticut.

Although I have only been teaching for a short time, my experiences through student teaching in the suburbs of Massachusetts and then in Hartford later on in my teaching career, over the last three years in total, have provided me with a front-row seat to how pervasive and damaging the discipline disparities between students of color and their white peers truly are. And it has become clear to me how important the 2014 guidance is to ending those disparities.

I did my student teaching in a middle-class, roughly 96 percent white community, again, in Massachusetts. Students were rarely suspended and almost never expelled, even students with disabilities. These students came from stable homes, had access to resources, had fewer stressors in their lives, and had been taught how to manage their emotions when issues did arise.

However, when I started teaching in Hartford, down in Connecticut, where I serve a population which is 92 percent students of color, and they predominantly come from low-income homes,
this paradigm was completely turned on its head.

Students suffering from traumas stemming from violence and poverty often struggled to focus on schoolwork or express their frustration through sudden outbursts. I've had innumerable students taken from my classroom and suspended for such minute infractions such as uniform violations or even cell phone usage. And teachers, without the support or training to explore less punitive alternatives, met this call for help by kicking them out of class or school entirely.

My students cannot focus on learning the history of the United States when they are dealing with such immense and immediate challenges in their lives, such as trauma, food insecurity, or poverty, all of which are completely out of their control.

Punishing these cries for help, instead of extending a helping hand, causing these students, like mine, to lose interest in school entirely, to escalate their behavior, and to head down a path that can lead to incarceration, are things that I don't want to see.

The guidance outlined in the 2014 Dear Colleague letter gives both teachers and students a better option. Rather than punishing and excluding
these students, I use restorative practices similar to those outlined in the guidance in my classroom. I ask students questions to not only determine why they acted out but to help them take ownership of their behavior and understand how their behavior affects themselves and others.

Through these strategies, we have forged meaningful relationships, and my students have begun to learn the skills necessary to identify their misbehaviors and self-correct. Teachers need your help to continue examining the data on discipline disparities and to implement the strategies and the guidance to close these gaps.

On behalf of my students and my colleagues, I urge you to maintain the guidance as it was written in 2014. Thank you for your time.

CHAIR LHAMON: Thank you.

MS. POTTINGER: Hello, my name is Stephanie Pottinger. And I've been teaching in Boston for the last ten years. Thank you for allowing teacher voice here today.

As a woman of color, the data on discipline disparity confirms what I already know from experience as a student, as a mother, and as a teacher. Over the years, I've seen unfair,
primitive disciplinary practices applied to students of color such as students thrown out of class for not having their homework, while white students were not. I've seen students of color misbehaving and only given one chance while white students are given second, third, fourth, fifth, sixth chances.

In most cases, these biases aren't as overt, and in many cases it's subconscious. They could even be micro-aggressions in the classroom from the tone of voice or the feeling of low expectation. But that's why we, as teachers, need to examine how these biases impact how we teach and how we discipline. Because our students deserve better.

As it is, the kids we teach are dealing with much more than learning and academics. They're facing traumas and stresses, and that's a lot for anyone to process, especially children. We see these symptoms of their traumatic experiences in our classes: anxiety attacks, unwanted outbursts, or even disengaging entirely.

Before jumping to punishment, we have to empathize and give them tools to heal and to make good decisions. We need to have teachers that reflect the student population and have trauma-
informed teaching practices.

In my classroom, students reflect upon their behavior to understand how it's impacting themselves and others in the community. We have check-in and check-out through advisory at the beginning and end of the day. We build relationships with the students and the families. We create spaces and have people where students can cool down when they're feeling strong emotions.

I teach them that we can reflect and learn from bad choices and that I'm there to support them in repairing the hurt that they may have caused. I will never shun them away. It is our responsibility as educators to take the lead in our classrooms and schools to ensure that schools are fair and supportive environments full of resources to put students on a path to success.

It is Ms. DeVos' responsibility as the top education leader in our country to ensure administrators and elected leaders share in this responsibility by prioritizing this work and providing teachers with the tools they need to support our students. We can't do it alone. Please show you care about our kids by upholding the 2014 School Discipline guidelines. Thank you.
MS. MOORE: Good afternoon, I'm Ashley Moore, a policy associate and staff attorney at the Children's Defense Fund.

CDF appreciates the opportunity to provide a short public statement to the U.S. Commission on Civil Rights concerning the School to Prison Pipeline, the intersection of students of color with disabilities with the pipeline and the importance of relevant laws, regulations, and guidance in protecting these children from the discriminatory disciplinary actions and policies.

The Children's Defense Fund has been advocating for more than 40 years about the importance of protecting children of color and children with disabilities from discrimination and exclusion from school.

In our early years, CDF published a landmark report pertinent to the rights of these children. CDF's first major report in 1974, Children Out of School in America, based on a door-to-door survey in select Census tracts around the country, documented that 2 million children were not enrolled in schools, 750,000 of them, children with disabilities.

We found that, and I quote, out of
school children share a common characteristic of
differentness, by virtue of race, income, physical,
mental, or emotional handicap, and age. They are,
for the most part, out of school not by choice but
because they have been excluded.

We also found at that time that the
denial of services for special-needs children are	en often compounded by the interplay of disability,
language, and race. Our analysis of the Office of
Civil Rights data at the time shows serious racial
disproportionality in special education placements
in the districts we surveyed.

Responsive discriminatory treatment of
children we identified and have continued to pursue
over decades. CDF launched the Cradle to Prison
Pipeline Campaign ten years ago to confront the
criminalization of children both in and out of
school, especially poor children, children of color,
children with disabilities, children in foster care,
and children already involved with the juvenile
justice and criminal justice systems.

Some of the challenges begin at birth
and intensify as children are denied opportunities
to prepare for school in the early years and to
succeed once they start.
The School to Prison Pipeline exists, and it needs to be dismantled. There has certainly been progress over the last four decades with the passage of key laws and the ensuing regulations and guidance. The framework is in place without appropriate data to identify disparate treatment in monitoring and enforcement to ensure that rules are followed and progress is measured. Children are denied free, appropriate public education to which they are entitled.

There also must be training and technical assistance in place to ensure that teachers and other staff know what is required and how to take special steps to ensure children's special needs are addressed.

We know so much more now than we did 40 years ago about meeting children's special needs. The tools are in place, and they must be used and progress monitored.

To that end, CDF recently joined with the Leadership Conference on Civil and Human Rights in a letter to the U.S. Department of Education to support racial equity in special education, the robust enforcement of Individuals with Disabilities Education Act provisions regarding significant
disproportionality in identification, placement, and
discipline of students with regard to race and
ethnicity.

It is essential that the regulation that
implements IDEA's significant disproportionality
requirements be vigorously enforced and that we
learn from data on its implementation experiences
that create barriers to effective implementation.

We strongly oppose any effort to
postpone the compliance date for the regulations,
given that states are already given adequate time
for compliance.

CDF remains committed to pursuing
justice for children, and we appreciate the
Commission's attention to all of our children. And
we thank you again for the opportunity to comment
today.

CHAIR LHAMON: Thank you.

MR. JOHNSON: Good afternoon, I'm Harold
Jordan, the senior policy advocate at the American
Civil Liberties Union of Pennsylvania. I'm also a
parent of two children who attended Philadelphia
public schools, K-12.

And I also serve on various working
groups with the district on the code of conduct,
disproportionality, and a number of problem-solving groups. And I've had a chance to serve on a committee, the Pennsylvania Developmental Disabilities Council, which is looking at School to Prison Pipeline issues.

The ACLU of Pennsylvania has reviewed discipline and law enforcement data, addressed relevant policy issues, and participated in discussions with school communities and education decision-makers.

Pennsylvania's patterns of punishment of students of color with disabilities parallels national trends. Black students with disabilities receive out of school suspensions at the highest rate of any group of students. Some 22 percent of black students with disabilities in Pennsylvania were suspended at least once.

In fact, the profile of a student who is most likely to be suspended in Pennsylvania is a black male student with a disability, who is classified as having a disability. Roughly a dozen districts suspend somewhere between 40 and 75 percent of black students with disabilities. That's extraordinary.

Similar patterns of punishment are
reflected in contact with law enforcement and arrests. We have problems with over-identification, under-identification, delayed identification, misidentification of students of color.

Also problematic is the failure of schools to conduct manifestation reviews and to provide appropriate individualized education supports.

Parents and guardians have had great difficulty exercising their rights under IDEA, the ADA, and the Rehabilitation Act. It’s challenging for them to ensure that their children are treated fairly and receive constructive supports and services.

We ask the Commission to, number one, urge the U.S. Department of Education to implement the equity in IDEA, also known as the Significant Disproportionality Rule, fully and on schedule.

Number two, urge local education agencies to establish protocols that address interactions between law enforcement and students with disabilities. These should limit contact between police and students with disabilities, require any law enforcement working in schools to get extensive training on how to de-escalate
conflicts, on how to work with youth and youth with disabilities.

Number three, protect the privacy rights of students with disabilities. They retain privacy rights.

And number four, also require the training of school staff on how better to work with students of color with disabilities and de-escalate conflicts instead of turning to law enforcement to force compliance.

And then finally, we ask the Commission to urge state and local education agencies to do more rigorous monitoring of the use of restraints and seclusion practices, and to make that information available to the public. Thank you.

CHAIR LHAMON: Thank you.

MS. TILLMAN: Good afternoon, my name is Marylyn Tillman. I'm the executive director and co-founder of the Gwinnett Parent Coalition to dismantle the School to Prison Pipeline or Gwinnett STopp for short. And we're a parent organizing group that focuses on pushing for and against policies that impact the feeders into School to Prison Pipeline.

And so I just want to caution us about
using the very subjective word of disruptive student. It means different things to different people. The overwhelming majority of discipline infractions for all students, including special ed, is for non-violent offenses.

Discipline means to teach. I'll say that again. Discipline means to teach. And I want to take back that word, because it's been co-opted. We're not teaching the things that we should through that process. We're there to teach the children how to do better and not just shove them out the door and tell them to figure it out on their own. And so I'm here to put a face on some of these numbers and the issues at hand.

We place the fish in contaminated water. And then we examine the fish to see why they got sick. The fish that I want to lift in this conversation, for one, is my own son who, as a gifted student, a student with disabilities, was sent out of the classroom for defiance. He's extremely quiet and introverted. And yet he was sent out because he continued to do his work, just simply ignored the teacher.

When I did a surprise visit to the classroom, he's the only black male in there, and
there were several off-task very active white male children all over the place. Teacher paid them no mind but seemed to still focus on how my son quietly went about his work.

I also want to talk about the sixth grade student who was being labeled as AWOL from class because he stopped between classes to go to the bathroom. And we didn't find that out, what he was doing, until, oh geez, somebody asked him. And the student was leaving lunch. The teacher would be late to the next class. He'd stop and go to the bathroom. And they disciplined him for that.

The seventh grade special-ed student who was sent to a disciplinary tribunal for theft of school property. When we talk about these things we have to dig deep. So theft of school property was taking candy off of an opened candy dish on a teacher's desk. So he was sent to a tribunal to determine if he should continue in school.

The six-year-old black and brown students who were placed in a class during their instructional day to learn how to sit still, we cannot ask parents to access this and do this work all on our own. We need help. We need support. We should not have to know about what IDEA is and all
of its legal levers in order to get support for our
students. It is up to the system that erected the
structures that impact students.

CHAIR LHAMON: I’m sorry.

MS. TILLMAN: Did I go over?

CHAIR LHAMON: Yes, you’ve gone over.

Thank you very much. Thank you.

MR. HAIRSTON: Good afternoon. Thank
you, Madam Chair and to the members of the U.S.
Commission on Civil Rights for this opportunity to
present.

My name is Andrew Hairston, and I’m a
staff attorney at Advancement Project. Advancement
Project is a racial justice, non-profit organization
that was founded in 1999 by veteran civil rights
lawyers to use legal, policy and communications
tools to move forward the Civil Rights Movement and
unclaim – and reclaim, pardon, its unmet promises.

Advancement Project started soon after
its origin on writing a report that was published in
2000, called Opportunity Suspended, in collaboration
with the Harvard Civil Rights Project that really
honored in on the harms of exclusionary discipline,
particularly with regard to black and brown
children, girls, LGBTQ students, and students with
disabilities. And we have continued that work to dismantle the School to Prison Pipeline in our 18 years of existence.

In my remarks today, I want to give a strong commendation to the youth and parent organizers who have really moved this work forward, folks like the Dignity in Schools campaign, who are represented here today, Gwinnett StoPP of Georgia, Family and Friends of Louisiana’s Incarcerated Children in Louisiana, and Racial Justice Now in Ohio, just to name a few.

On this movement, it really has been these impacted communities, these black and brown committed organizers in the form of parents and students who have moved this work forward. And as we have seen, particularly in the 21st century, various other education stakeholders have come around on this issue, folks like superintendents’ unions, and teachers’ unions, from the zero tolerance policies of the 1980s to more restorative justice and trauma-informed practices that we are seeing pushed forward now.

There is still a great deal of work to do, despite successes that we have achieved, particularly in spaces like Denver, Rochester, and
Buffalo. Although there have been revised codes of conduct, there still are disproportionate effects on black and brown children, children with disabilities, and other marginalized communities that the 2014 guidance from the Obama administration intended to move forward.

We urge the Commission certainly to keep that guidance to continue along the path that it represents to ensure that all children have access to a safe and supportive school environment. And again, we thank you for this opportunity to present today.

CHAIR LHAMON: Thank you.

MS. KING: Thank you, Commissioners, for the opportunity to speak during this public forum on this important topic. My name is Liz King, and I am the Director of Education Policy for the Leadership Conference on Civil and Human Rights in Washington, D.C.

We are a coalition charged by our diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States. Through advocacy and outreach to targeted constituencies, we work toward the goal of a more
open and just society, an America as good as its ideals.

The topic of today’s hearing is of particular interest to the civil and human rights community, given our long struggle to ensure educational opportunity, full inclusion, and appropriate supports and services for children with disabilities, students of color, women and girls, English learners, and Native American, low income, and LGBTQ students.

We recognize that often students are members of multiple communities and experience unlawful and unjust discrimination within the intersections of these identities. We are committed to the robust enforcement of our nation’s civil rights laws and education laws, and the freedom from discrimination and access to educational opportunity that they provide.

As advocates working to eliminate discriminatory practices that undermine equal educational opportunity, we know all too well that students of color with disabilities are disproportionately subjected to punitive discipline practices relative to their white peers with disabilities or their peers of color without
disabilities.

Relatedly, we were recently joined by more than 100 state and local civil rights and education organizations in a letter to Education Secretary Betsy DeVos, urging the preservation of the significant disproportionality regulation implementing the Individuals with Disabilities Education Act, IDEA. We will provide that letter to the Commission.

In addition to urging the preservation, implementation, and enforcement of the significant disproportionality regulation, we continue to urge the U.S. Department of Education to preserve the 2014 Dear Colleague letter on the non-discriminatory administration of school discipline.

Although both the regulation and the guidance are important, the requirements to address significant disproportionality under the IDEA and protect the rights of children of color and children with disabilities under Title 6, Section 504, and the ADA, remain regardless of the actions of this administration.

In addition to preserving policy and enforcement guidance and regulation, we know that easily accessible and user-friendly data are
critical to identifying where schools and districts may be identified as models for replication and where children face barriers to educational opportunity.

To that end, the Department of Education must preserve the existing scope, frequency, and public accessibility of the Civil Rights Data Collection.

We stand committed to justice for children, enforcement of our laws, and equal access to educational opportunity in our nation’s public schools. We appreciate the Commission's attention to this critical issue and hope to see further opportunities for the Commission to hear testimony from students and their families on this topic and others. Thank you.

CHAIR LHAMON: Thank you.

MR. SHEPHERD: Good afternoon. I'm sorry, okay. Hi, my name is Stephen Shepherd Jr. I am an educator from Minneapolis, Minnesota. I've been an educator for over 20 years. Seventeen of those years have been in the classroom, three of those years have been -- two years have been as an administrator. I'm currently working at the district level for Minneapolis Public Schools in a
department called positive school-wide engagement.

Essentially, my function in that role is
to coach and support schools with their climate and
culture. In addition to that, I am charged with
helping fulfill the tenets that are set forth in our
OCR agreement with Minneapolis Public Schools.

And as doing such -- I've been doing it
for the last two years -- and as doing such, working
in that capacity, I've seen first-hand how the
tenets and the support that is provided from the
Office of Justice and OCR to put these pieces forth
is starting to work.

And what I really want to say is that
it's just the start that having the IDEA and the
discipline review piece is just the start. And I
suggest and I'm asking that it not be something that
we look to repeal but we just look to enhance on.

As an educator in a classroom, I've
written a total of three referrals in my time. I've
worked in various settings with all kinds of
students, all kinds of backgrounds. And the reason
is because of how I show up and how I engage
students, how I involve parents. No harm has come
to me. And I have only had to write three, because
students like coming to my classroom.
And in being in the different classes and the different buildings throughout Minnesota, in particular Minneapolis and St. Paul in various settings, once again, I've had the opportunity to see where good is being done. And it's when teachers show up, and we show up to serve and do what is best for children.

So as time is running out, what I want to suggest is that the biggest piece is dealing with the problem and not being divisive. This isn't a teacher or student thing. And there's a lot of rhetoric that's pushing it to be teacher or student. It's both.

And through the OCR tenets in Minneapolis, for example, we've been able to push for different resources, such as PBIS, restorative practice, and being trauma-informed, that is moving to support both teachers and students. So I'm pleading that we would look at measures that are going to support both teachers and students and not be political or look to take one side or the other.

CHAIR LHAMON: Thank you very much.

MR. SHEPHERD: Thank you.

MS. MULDER: Good afternoon, my name is Carissa Mulder.
COMMISSIONER NARASAKI: Madam Chair?
I'm sorry. I apologize for interrupting, but I'm a little surprised by this. And I feel it is not in the spirit of which we had agreed to have public testimony. My understanding is that --

MS. MULDER: It's not my own. It's on behalf of people who could not be here today. This isn't my own.

COMMISSIONER NARASAKI: We had a number of people. We said we'd have 20 people. People had to come. People traveled from far away to get here. And I feel it's very unfair and disrespectful to the people who took time off to come here. And then I feel the rules have been subverted, and it's just unfair. And it's not about you, and it's not about what you're going to say. I just feel it's not fair, it's not in the spirit of what the public testimony was meant to be.

VICE CHAIR TIMMONS-GOODSON: I'm going to-- excuse me. I didn't mean to cut you off--

CHAIR LHAMON: No, go ahead.

VICE CHAIR TIMMONS-GOODSON: -- Madam Chair. I think I join in that concern. Folks have come, taken their time. I believe there's another process or way that these statements can get in, I
believe. Can they not be added in the public comment section or we simply receive if, you know, correct me if I'm wrong, but can't we receive those statements?

I'm concerned about setting a precedent here. I don't know that we've done this before. And I don't want, in the future, individuals that for whatever reason, some good, some bad, not be able to appear, tender it, and have it read by someone else.

CHAIR LHAMON: I appreciate the concern. I want to make clear, for the record, that the concern is that we have a special assistant for a Commissioner reading a statement. I'm going to allow us to proceed. This is our first time having public comment. I appreciate that you are presenting testimony from someone else. And I do want us to move forward. But I appreciate having heard the concerns.

VICE CHAIR TIMMONS-GOODSON: Can we at least say that, by doing this this time, we are not establishing a precedent, that it will not become the policy and the routine of this Commission that individuals that are unable to make it can tender their statement to a Commissioner and it then be
CHAIR LHAMON: I will commit that we will learn as we go, and I want to move us forward today.

COMMISSIONER NARASAKI: I just have a --

CHAIR LHAMON: All right.

(Simultaneous speaking.)

COMMISSIONER NARASAKI: I just really have a problem, because then it becomes if you know a Commissioner, then you can get around the rules. I feel that's a very unfortunate signal for the Commission to be sending.

CHAIR LHAMON: I appreciate hearing that. We will figure out what we're doing moving forward. And please go ahead now.

MS. MULDER: Thank you, Madam Chair. The first comment is from Katherine Kersten who is a journalist in Minneapolis. She says, the underlying premise of the 2014 Dear Colleague letter is that students should be disciplined on the basis not of their conduct as individuals but of their membership in a racial or ethnic group.

This flawed premise has led to a host of disastrous if unintended consequences in schools where it has been applied. In St. Paul, for
example, race-based discipline policies have generated violence and disorder and produced an environment where learning is often impossible. The reason, the policies have created a segment of kids who consider themselves untouchable, in the words of one veteran teacher.

Supporters of the disparate impact theory of school discipline claim bigoted teachers are to blame for racial disparities and discipline rates. They assume that students of all races and ethnicities as groups will conduct themselves the same way in school despite vast group differences in socioeconomic background and family structure.

Racial ethnic differences in suspension rates are attributed to discrimination by default. But the data on which the 2014 guidance was based reveal that across the nation the suspension rate for white boys is more than twice that of Asian and Pacific Islander boys.

According to disparate impact logic, this must be because teachers are prejudiced against white boys. But isn't it more likely that white boys' rate is higher because as a group they misbehave more often than their Asian peers? That appears to be the case with black students. Their
discipline rate is higher than other students because, on average, they misbehave more.

In fact, a ground-breaking 2014 study in the Journal of Criminal Justice found that the racial gap in suspensions is completely accounted for by a measure of the prior problem behavior of the student.

In St. Paul, Asian students primarily of Hmong and other Southeast Asian backgrounds, are flooding out of district schools to escape the violence and disorder that have followed the districts’ adoption of disparate impact-based discipline policies.

Proponents of race-based discipline policy say they seek justice for poor and minority children. But it is poor and minority children struggling to learn in anarchic classrooms who suffer disproportionately from misguided equity policies.

So long as disorder is allowed to flourish in the name of statistical parity, our nation’s yawning racial learning gap will continue to widen.

And the second comment is from Heather MacDonald at the Manhattan Institute. She says, the
Commission could provide an important public service by calling for more observational studies of student classroom behavior.

The claim that teacher bias lies behind black student's higher discipline rates is based on the hypothesis that black and white students act out at equal rates but are treated differently by teachers and principals.

All available evidence disproves this hypothesis. Black males between the ages of 14 and 17 commit homicide at nearly ten times the rate of white and Hispanic males ages 14 to 17. It strains credulity to think that the lack of socialization that produces that much higher homicide rate will not also result in more aggressive classroom behavior. Other crimes such as robbery and assault are similarly disproportionate.

The black out of wedlock birthrate is nearly three times higher than the white out of wedlock birthrate. Social science research is clear. Children raised by single mothers are at higher risk of truancy, dropping out of school, and criminal involvement. The higher rate of single-parent homes in the black community will also produce students who have less self-control and
socialization skills in the classroom. Thank you.

CHAIR LHAMON: Thank you.

COMMISSIONER ADEGBILE: Madam Chair, I'd like to associate myself with the objection of Commissioners Narasaki and Vice Chair Timmons.

CHAIR LHAMON: Okay. But we're still going to proceed. Thank you, go ahead.

MS. SOMIN: Thank you. Like Ms. Mulder --

CHAIR LHAMON: Your microphone's not on. Thank you.

MS. SOMIN: Thank you. Like Ms. Mulder, I'm a special assistant and counsel at the Commission. But I'm reading today two passages that are not my own views but that are two passages submitted on behalf of two teachers to my Commissioners.

VICE CHAIR TIMMONS-GOODSON: Excuse me. Madam Chair, may I ask a question just so I can be clear.

CHAIR LHAMON: Okay.

VICE CHAIR TIMMONS-GOODSON: So it's not one statement that you're providing. You're providing two statements, the statements of two individuals?
MS. SOMIN: Yes.

VICE CHAIR TIMMONS-GOODSON: Okay. How many slots did we have for folks to speak?

CHAIR LHAMON: But we are taking our time now. So they're doing it within the three minutes. We have agreed to this. Please do proceed.

MS. SOMIN: Thank you.

CHAIR LHAMON: I have agreed to this.

MS. SOMIN: The first set of remarks is from Aaron Benner, an African-American teacher from Minnesota. It is an excerpt from a speech. I have a dream that my four children will one day be judged by the content of their character but not by the color of their skin.

I am here again because I believe we are crippling our black children by not holding them to the same expectations as other students. I am here because black students can and should behave any classroom regardless of race, gender, or ethnicity of their teacher.

Cussing out your teacher is not black culture. Refusing to do work is not black culture. Not following directions is not black culture. And
assaulting your teacher is not black culture.

So I'm asking this school district to ask the black community, my community, what is black culture.

I will now turn to reading an excerpt from the remarks of Simon Whitehead who is a retired high school teacher. He writes, I am very worried about the direction some of our urban and suburban schools are taking.

Over the past four to five years, there have been strong expectations to discipline students differently depending on their race. We were told that too many students of color were being suspended, and that this looked bad, especially in the case of African-American boys. This was definitely the case in Minneapolis.

However well-intended, this policy actually disrespects a whole class of students by lowering the expectations for their behavior, their work ethic, and inevitably their academic progress. When students walk through my classroom door, I have high expectations for them no matter what they look like.

Another great area of concern is that students are now increasingly emboldened to get
together and collaborate to, quote, get teachers in trouble. Those teachers can lose their jobs and their entire careers.

The teachers who tend to be targets are those who have a more traditional way of teaching. By this I mean holding all students to high expectations such as punctuality, respectful behavior, teamwork, good work ethic, following school rules, politeness, meeting deadlines, and providing consequences for not reaching those high standards.

This has led, in my opinion, to a generation of teachers who are, quote, walking on egg shells, unquote, trying very hard to not say anything or do anything that might remotely get them reported. I believe that many teachers now turn a blind eye to school policies not popular with students. They inflate grades, ignore dress code violations, don't give deadlines for handing work in, and put up with bad behavior that would previously have prompted disciplinary action.

It is a culmination of these little expectations that has led to an erosion of the overall school climate of academic rigor as well as an erosion in student and staff safety.
In addition, if there's a student exhibiting significantly bad behavior, many teachers feel helpless because they know that a behavior referral will be fruitless. Assistant principals will return that student to the same classroom that day or the next day. Order in the classroom deteriorates and learning suffers.

Thank you. And I also submitted written copies of these for the record.

CHAIR LHAMON: Thank you.

COMMISSIONER ADEGBILE: Madam Chair, can we clarify whether or not these statements were submitted by actual persons or whether the Commissioners identified these statements for purposes of putting them in the record?

(Applause.)

MS. MOORE: Sorry, if you want me to speak, yes, they did come from actual persons.

CHAIR LHAMON: Okay. We're going to keep moving. I will say that there are a few people who were waitlisted to try to speak today. I want to make sure they have time also. We've already moved off of what our original plan was. We want to make sure that we have time for everyone to speak. So please come on up, and I'll hear from the next
person who's here.

MS. WOODY: My name is Claire Woody, and I am a single parent of a black student with disabilities. And I am forced to homeschool my son, because they did not allow him to participate in extracurricular activities.

And when I filed a complaint, he was forced into a placement where they had high disciplinary school incidents, so he was a victim of bullying three times. And they put a ceiling on his educational level.

And since I've been homeschooling him, and I only wish I did it earlier, he has soared so much. And he's on the autism spectrum. He is my 40th birthday gift. I felt some kind of way from those testimonies that I just heard. He is well disciplined. He loves learning, and I enforce that every day.

So I was speaking to a young lady outside who told me about the IDEA does not allow a school system to put a ceiling on the education. And I'm right here from Washington, D.C. So I am forced to work full time as well as homeschool my son. And it's hard. Thank you for allowing me this opportunity.
CHAIR LHAMON: Thank you.

MS. PRINGLEY: Good afternoon, Chair Lhamon and Commissioners. My name is Erin Prangley, and I am grateful to be here to submit a statement on behalf of the National Association of Councils on Developmental Disabilities.

NACDD remains concerned that states and local education agencies are not fully meeting the requirements of the Individuals with Disability in Education Act, IDEA, to identify and address the widespread disparities of treatments of students of color with disabilities.

NACDD is a non-profit, non-partisan organization that serves as the national voice for the 56 state and territorial councils on developmental disabilities. Because DD councils are federally funded, governor-appointed entities with memberships that are at least 60 percent persons with developmental disabilities or their families, they are in a unique position to provide critical feedback concerning how students of color with disabilities are treated in our education system.

NACDD appreciates the urgency of this issue and timing of this hearing given the reports that we hear from our DD councils that school
districts are still struggling to put in place practices that ensure the safety of students of color with disabilities against discrimination.

This testimony and the written testimony that I submitted is intended to provide a brief snapshot of the work that the DD councils are doing and what further action is necessary to ensure students with disabilities have the right to attend public schools free from harmful and discriminatory disciplinary practices.

Georgia, the Georgia Council on Developmental Disabilities has chosen to examine the widespread racial disparities throughout the Georgia school districts in the treatment of children with disabilities, children of color with and without disabilities, through exclusionary policy such as zero tolerance, suspension, expulsion, and reassignment to the Georgia Network for Educational and Therapeutic Support systems that are part and parcel of this School to Prison Pipeline that we're talking about today.

GDD -- GCDD will fund a project this year that will ensure that African American males in special education have the equal access to the quality education that can change their trajectory
away from School to Prison Pipeline.

This Council takes seriously its responsibility to make investments towards confronting disparate treatment of students of color with disabilities in schools and will continue to provide a venue for policy makers and agencies to listen to people with DD and their families.

Almost out, but really quickly, Hawaii, one of the reasons why we need to lift up this federal policy and make sure it's enforced appropriately is it emboldens states like Hawaii.

The DD Council there in 2014, after the guidance was released, went to their state legislature. They had already recognized a problem with discipline, and they asked for state legislation to talk about the problem of seclusion and restraint. And they were successful getting the state legislature to do that.

CHAIR LHAMON: Thank you. You'll have to stop there. Thank you very much.

MS. PRANGLEY: Thank you very much.

CHAIR LHAMON: And our last speaker.

MR. SINOCCHI: Hi. My name is Jim Sinocchi. I am the managing director and head of the Office of Disability Inclusion at JP Morgan
Chase. I'm down this week to talk to -- I have spoken with members of Congress about employment of people with disabilities.

And I'm worried about the pipeline. And that's why I came here today to implore the Commission to do whatever we can to educate these students with disabilities so we can bring them into the workforce.

Companies like Cisco, JP Morgan Chase, Ernst & Young, PricewaterhouseCoopers are all hiring people with disabilities.

About 20 years ago when we discovered children on the autism spectrum, we couldn't figure out where to place them. I'm proud to say that today we're hiring people on the autism spectrum as fast as we can find them.

And the reason for that is they outperform able-bodied people in their jobs. Go figure, able-bodied people outperforming -- people with disabilities outperforming able-bodied people. It's not a bad thing. And we're also promoting people. In the last year, we promoted at least two people to vice president with disabilities.

And so it's important that the Commission help in this matter in terms of providing
or helping the government provide the services to these schools.

I'm also a board member of the Viscardi School of New York which educates students with disabilities from grade school to high school. And they're getting jobs. But that school has nurses on staff, occupational therapists on staff, physical therapists on staff to create a holistic environment to move these kids from the school to viable employment.

And so I wanted to be here to say there is a light at the end of the tunnel if we could fix this the right way and not let our children with disabilities flounder in schools where opportunity is difficult.

One of the reasons why we're having trouble, as I've heard all morning here, is that most able-bodied people around the world have a visceral reaction to people with disabilities. They don't know what to do with us. They don't know how to approach us, they don't know how to talk to us.

And this is the same issue that I'm facing at Chase, but in a good way. I'm at Chase to do change management to get the company familiar with people with disabilities. And so I wanted to

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pose that to all of you in this room to say there is more than a negative dialogue. And we have to bring it back to the positive.

Disability doesn't care about race. When we become disabled, no matter what color we are, we all face the same challenges that disability leaves us with. I could say that I was -- I've been paralyzed for 35 years due to a spinal cord injury. I'm married to a woman for 30 years. I have two children and two grandchildren. And I'm supporting my family. This is the goal that I look for, for people with disabilities, with all the folks talking about their kids here. Thank you.

CHAIR LHAMON: Thanks very much. That concludes our public presentations, but it doesn't conclude the briefing, just a few last points. One, I want to be clear on the record that everyone who spoke today signed up on a first come, first serve basis to be able to speak.

I appreciate my fellow Commissioners' patience and the public's patience with us as we begin the new process for us in the public comment. I am very, very grateful to all who participated as experts and as part of the public comment process today.
Each of you, and anyone else who would like to submit further comment, further information to us for our record, the record will remain open until Tuesday, January 16, 2018.

And people can submit materials for consideration to U.S. Commission on Civil Rights, Office of General Counsel, 1331 Pennsylvania Avenue, NW, Suite 1150, Washington, D.C. 20425, or email them to schooldiscipline@usccr.gov.

Today has been tremendously informative. We very much appreciate it. And we will now conclude our briefing at 2:12 Eastern time.

(Whereupon, the above-entitled matter went off the record at 2:12 p.m.)