Briefing Report

Disparate and Punitive Impact of Exclusionary Practices on Students of Color, Students with Disabilities and LGBTQ Students in Pennsylvania Public Schools

A Report of the Pennsylvania Advisory Committee

to the U.S. Commission on Civil Rights

(April 2021)

Advisory Committees to the U.S. Commission on Civil Rights

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Letter of Transmittal

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U.S. Commission on Civil Rights

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The Pennsylvania Advisory Committee, as part of its responsibility to advise the Commission about civil rights issues within the state, submits this report titled, *The Civil Rights Impacts of Disparate Exclusionary and Punitive Discipline on Students of Color, Students with Disabilities and LGBTQ Students in Pennsylvania Public Schools*. The report was adopted on July 22, 2020, by 10 of the 11 members present when the Committee voted in support of the report to the agency. The members voting yes: Marcus Allen, Christopher F. Armstrong, Juan M. Baez, Patricia Hopson-Shelton, Steven D. Irwin, Julia E. Kernan, Deborah Gordon Klehr, Romana S. Lee-Akiyama, Angela McIver and Riya S. Shah. The member voting no: Stewart M. Wiener.

Sincerely,
Patricia Hopson-Shelton

Patricia Hopson-Shelton, Chair
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*At the time of her 2020 internship, Emily Zanoli was a rising second year graduate student at Columbia University School of Social Work focusing on contemporary social issues and policy. With roots to the Central Coast of California, she received her BA in History from San Francisco State University and remained in the Bay Area for the next several years working as an educator in a variety of capacities. Members of the Pennsylvania Advisory Committee appreciated Emily's knowledge and professionalism and considered her a valued team member.

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e. Harold Jordan, Police and Pennsylvania's Schools: What Education Leaders Need to Know, American Civil Liberties of Pennsylvania, (October 2019), https://www.aclupa.org/sites/default/files/field_documents/police_and_pennsylvania_schools_report_digital_10.14.2019.pdf.

f. *Brown v. Board of Education at 65: A Promise Unfulfilled: Testimony before the H. Committee on Ed and Labor*, 116th Congress, (April 30, 2019), (statement of Daniel Losen), (transcript not yet published), https://edlabor.house.gov/imo/media/doc/LosenTestimony043019.pdf.

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h. Rosenbaum, J.E., "Educational and Criminal Justice Outcomes 12 Years After School Suspension." Youth & Society 52, no. 4: 515–47 (January 2018), doi:10.1177/0044118X17752208

i. Poteat, P., Scheer, J. R., & Chong, E.K., *Sexual orientation-based disparities in school and juvenile justice discipline: A multiple group comparison of contributing factors*, Journal of Educ. Psych, (2016), http://dx.doi.org/10.1037/edu0000058.

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j. Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline, Catherine E. Lhamon and Jocelyn Samuels, *Joint Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline*, Department of Education, Office for Civil Rights and Department of Justice, Civil Rights Division, (Jan. 8, 2014), tthps://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html#skipnav2.

k. Dear Colleague Letter on the Inclusion of Behavioral Supports in Individualized Education Programs, Ruth E. Ryder and Sue Swenson, *Joint Dear Colleague Letter on the Inclusion of Behavioral Supports in Individualized Education Programs*, Department of Education, (Aug. 1, 2016), https://sites.ed.gov/idea/files/dcl-on-pbis-in-ieps-08-01-2016.pdf.

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REPORT

Overview

Out of fear of increasing violence in schools in the 1980s, school districts across the country adopted zero-tolerance and other harsh discipline policies. The disproportionate imposition of these policies on students of color, students with disabilities, and students who identify or are perceived as lesbian, gay, bisexual, transgender, and/or queer (LGBTQ), coupled with expanded security measures and the presence of police in schools, have contributed to the grave disparities in our education system today. The Gun-Free Schools Act of 1994 mandated minimum disciplinary procedures meant to deter potentially violent student conduct. This law, however, was interpreted broadly at the state level, leaving room at the local level for determinations of dangerous conduct based on implicit and explicit biases. This has resulted in students being suspended or expelled for misbehavior in schools, including throwing a pencil or talking back to a teacher. And, relatedly, school administrators turn to police in schools to manage misconduct, leading to increased numbers of youth from underserved communities being referred to the juvenile or criminal justice system. Meanwhile, research shows that loss of school time through exclusionary discipline has multiple negative effects for students and communities.

Current research shows that zero tolerance policies that exclude students from school, including suspension and expulsion, have a disproportionate impact on students of color, students with disabilities, and LGBTQ youth. Nationally, Black students are expelled or suspended at three times the rate of white students and students with disabilities are more than twice as likely to receive an out-of-school suspension than students without disabilities. Moreover, research confirms that the presence of school police does not reduce the number of behavioral incidents nor contribute positively to teachers' sense of security on campus. Rather, investment in security results in more arrests for low-level offenses and higher rates of suspension, particularly for Black students.[1] These disparities are the result of different treatment, not different student behavior.

The current call to defund police and reallocate funds to preventative and supportive community services have prompted some school districts to discontinues their contracts with local enforcement. Minneapolis, Denver, Portland, and Milwaukee no longer allow police in schools to manage student misconduct on a daily basis. New York City and Oakland, California have similarly taken measures to follow suit.[2] In the Commonwealth, similar advocacy efforts are underway in Pittsburgh and Philadelphia.[3] This effort to minimize the use of police in schools complements other efforts to limit the use of exclusionary discipline on students.

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[1] Daniel J. Losen and Paul Martinez, *Is California Doing Enough to Close the School Discipline Gap?* (Los Angeles: UCLA Center for Civil Rights Remedies at Civil Rights Project/Proyecto Derechos Civiles, 2020), p. 29 (hereafter Is California Closing the Disciple Gap?).

[2] Ibid., pp. 1-71.

[3] Goldstein, Andrew, "Pittsburgh community voices strong emotions on school police," Pittsburgh Post-Gazette, June 22, 2020, https://www.post-gazette.com/news/education/2020/06/22/Pittsburgh-Public-Schools-board-hearing-

Against this backdrop, the Pennsylvania Advisory Committee undertook a study investigating the School-to-Prison pipeline and the impact exclusionary discipline has on students of color, LGBTQ students, and students with disabilities. The Committee's findings indicate that police presence in schools is and has historically been inextricably linked to exclusionary discipline.[4] The adverse effects exclusionary discipline practices have on excluded students, the student's classroom, and the school community are harmful and well-documented. Students who are suspended become at risk for future forms of exclusionary discipline, significant loss of instruction exacerbating any pre-existing academic difficulties, and an increased likelihood of becoming incarcerated. These students are highly susceptible to school discipline due to a lack of culturally competent school policies, often displayed in student codes of conduct, which perpetuate a narrow definition of expected and acceptable student behavior.

The Committee's inquiry found disparate exclusionary discipline is a result of:

- District and principal discretion in implementation of disciplinary practices, whether punitive or restorative, leading to implicit and explicit biases and disparate responses.

- State legislative actions, which prioritize and fund school policing over social workers, positive behavioral supports, and other restorative alternatives.

- Codes of conduct that focus more on complying with school rules than promoting positive learning environments and include subjective causes for suspensions based on "insubordination," leaving teachers and administrators vulnerable to biased decision making about students of color, LGBTQ students, and students with disabilities.

- Lack of trauma-informed responses to meet the needs of students. Racial/ethnic minority groups and LGBTQ youth are at greater risk for having experienced four or more types of Adverse Childhood Experiences (ACEs). The impact of trauma is far reaching and affects every aspect of health in schools across Pennsylvania. The data suggest that school staff in challenging neighborhoods need a framework of wellness that produces improved outcomes.

- Lack of consistent and/or required district-level data collection and publication of exclusionary discipline and supportive services disaggregated by race, gender and sexual identify, and disability.

- Pennsylvania's inadequate and inequitable school funding system.

Oakland-removal-police-officers-district/stories/202006220112. *See also*, Mezzacappa, Dale, "Movement for police-free schools reaches Philadelphia," WHYY-NPR, June 12, 2020, https://whyy.org/articles/movement-for-police-free-schools-reaches-philadelphia/; Graham, Kristen A., "No more 'police' in Philly schools; 'safety officers' in new uniforms coming this fall," The Philadelphia Inquirer, June 25, 2020, https://www.inquirer.com/news/school-police-philadelphia-safety-officers-district-kevin-bethel-hite-20200625.html.

[4] Exclusionary discipline includes out-of-school suspensions, expulsions, and transfers to disciplinary schools.

To limit exclusionary discipline and ultimately eliminate disparate discipline, the Committee issues the following key recommendations for implementation at the federal, state, and/or local levels:

- Expand the use of positive interventions in place of exclusionary practices such as Positive Behavior Intervention and Supports (PBIS) and restorative practices focusing on trauma-informed relational repair rather than punishment,
- Ban the use of exclusionary discipline for non-violent offenses and limit the use of exclusionary discipline generally,
- Limit opportunities for the imposition of disparate discipline,
- Improve the collection of robust, verifiable, and intersectional data on students and the use of exclusionary discipline, and
- Commit funding to districts so schools have the resources to create positive school climate, eliminate disproportionalities in school discipline, and elevate alternatives to exclusion.

Introduction

The Pennsylvania State Advisory Committee to the U.S. Commission on Civil Rights examined the civil rights implications of public-school disciplinary policies and practices in the Commonwealth of Pennsylvania over the course of two public briefings held on November 17 and 21, 2019, as well as via public comments, submitted written testimony, and available national, state, and local data. The research and testimony focused on the disparate discipline of students of color, students with disabilities and LGBTQ students in Pennsylvania schools. The Committee also examined alternatives to exclusionary school discipline and the disproportionate referrals to criminal and juvenile justice systems.

Data show that students of color, students with disabilities, and students who identify or are perceived as lesbian, gay, bisexual, transgender, and/or queer (LGBTQ) are more likely to face exclusionary school discipline (such as suspensions, expulsions, or disciplinary transfers) and/or contact with law enforcement. These practices place children in the "school-to-prison pipeline", a term which refers to the "collection of policies, practices, conditions, and prevailing consciousness that facilitate both the criminalization within educational environments and the processes by which this criminalization results in the incarceration of youth and young

adults."[5] Research has consistently shown that the unequal application of exclusionary discipline is a function of different treatment, not different student behavior. [6]

The Advisory Committee heard testimony from five panels of subject-matter experts, including national experts on civil rights, children and youth, and law and policy, as well as educators, researchers, and representatives of the justice system. Like the Committee, the speakers were diverse in age, race, ethnicity, gender, and viewpoints.

In addition to a panel featuring national perspectives, Pennsylvania-specific panel topics that focused on the impact of disparate and punitive exclusionary practices; what perpetuates the use of exclusionary discipline and its disparate impact; the pathways to dismantling the school-to-prison-pipeline.

Based on its review, the Committee concludes that the disproportionate use of school discipline poses significant civil rights concerns for students of color, students with disabilities, and LGBTQ students. The public comments submitted written statements, and other available information and data sources, inform the Committee's findings as well as federal, state, and local recommendations to eliminate discipline disparities and improve school climate in Pennsylvania schools.

Background

National Perspective

The first panel consisted of national experts presenting an overview of the school-to-prison pipeline and its disparate impact. As of Fall 2017, 31 states had laws limiting the use of suspension or expulsion, while 32 states had laws that encourage alternatives to disciplinary exclusion.[7] Suspensions lower graduation rates, and the economic impact in social and governmental costs over the lifetime of one cohort of non-graduates is an estimated 35 billion dollars.[8] No established body of research supports the implementation of harsh discipline policies to create effective

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[5] Monique W. Morris, *Race, Gender and the School-To-Prison Pipeline: Expanding our Discussion to Include Black Girls* (September 2012), p. 2, https://www.grantmakersforgirlsofcolor.org/resources-item/race-gender-and-the-school-to-prison-pipeline-expanding-our-discussion-to-include-black-girls/. Morris also discusses the limits of the "pipeline" metaphor. S*ee also,* School-to-Prison Pipeline described in Glossary of Terms at Appendix 6, of this report.

[6] Ibid. *See also,* Daniel J. Losen, Director, Center for Civil Rights Remedies, UCLA, Los Angeles, CA, Written Statement for the *Nov. 19 PA Briefing*, (hereafter Losen Statement), at 9; Losen and Skiba "Suspended Education: Urban Middle Schools in Crisis" (2010), https://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/suspended-education-urban-middle-schools-in-crisis. *But see,* Butcher Statement at 3 (stating that research on disproportionate rates of exclusionary discipline by race is mixed as to the presence of racial bias).

[7] Kristen Harper, Director for Policy Development, Child Trends, Bethesda, MD, Written Statement for the *Briefing Before the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights, briefing, Philadelphia, PA,* Nov. 19, 2019, (hereafter Harper Statement, *Nov. 19 PA Briefing*), at 3.

[8] Losen Statement, at 8; *see also,* Rumberger, R. W. and Losen, D. J., *The High Cost of Harsh Discipline and Its Disparate Impact* (2016).

learning environments.[9] The rate of school-reported out-of-school suspensions has been decreasing; however, disparities by race and disability persist or even increase.[10] Students lose hundreds of days of instruction each year from exclusionary discipline, and the number of lost days is higher for students of color and students with disabilities.[11] LGBTQ students are also suspended more often than their similarly-situated peers.[12] Recent research from the U.S. Department of Education's Civil Rights Data Collection (CRDC) combined with achievement data determined that the racial discipline gap was positively correlated with the racial achievement gap.[13] This can be explained by the reality that a suspension from school removes the child from the learning environment, denies access to teachers and instruction, often with little transition support when returning to school. In January 2014 guidance on the nondiscriminatory administration of discipline, the federal government cited the correlation between exclusionary discipline and the "potential for significant, negative educational and long-term outcomes" and reiterated the CRDC's evidence of schools disparately disciplining students of color and students with disabilities.[14] It also reminded school districts that they were engaging in "unlawful discrimination" based on race "if a policy is neutral on its face — meaning that the policy itself does not mention race — and is administered in an evenhanded manner but has a *disparate impact*, i.e., a disproportionate and unjustified *effect* on students of a particular race."[15] It is also important to remember the larger school environment when considering disparate discipline; efforts to address disparate discipline will be more effective when schools are simultaneously addressing underlying education inequities.[16]

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[9] Losen Statement, at 7.

[10] Harper Statement, at 2. *See also* Harper, K., Ryberg, R., Temkin, D., *Schools report fewer out-of-school suspensions, but gaps by race and disability persist*, Child Trends, 2018, citing U.S. Dep't of Education Civil Rights Data Collection.

[11] Losen Statement, at 2-3. At the high school level in Pennsylvania, there are 30 days of lost instruction per 100 enrolled students. Black students lost 80 more days, and Latinx students 40 days, than their white peers.

[12] Melanie Willingham-Jaggers, Deputy Executive Director, Gay, Lesbian, Straight Education Network, New York, NY, Written Statement for the *Nov. 19 PA Briefing*, at 3 (hereafter Willingham-Jaggers Statement); *see also,* Palmer, Neal A., Greytak, Emily A., and Kosciw, Joseph G., *Educational Exclusion: Drop Out, Push Out, and the School-to-Prison Pipeline among LGBTQ Youth*, GLSEN (2016) 11-15 (hereafter *LGBTQ School-to-Prison Pipeline*).

[13] Losen Statement, at 7, citing to Francis A. Pearman et. al., *Are Achievement Gaps Related to Discipline Gaps? Evidence from National Data*, AERA Open (2019) 1-18.

[14] Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline, Catherine E. Lhamon and Jocelyn Samuels, *Joint Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline,* Department of Education, Office for Civil Rights and Department of Justice, Civil Rights Division, (Jan. 8, 2014), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html#skipnav2 (hereafter Jan. 8, 2014 Joint U.S. ED/DOJ Dear Colleague Letter).

[15] Ibid.

[16] Harper Statement, at 5.

School funding inequities exacerbate existing societal inequalities, leading to a disproportionate number of already marginalized young people being suspended, punished, and in some cases swept into the criminal justice system for school infractions. Underfunded schools are more likely to resort to punitive discipline due to inadequate resources for more costly yet more effective social supports for students. Thus, we need to address inequitable and inadequate school funding. And to move forward equitably, a solution that addresses disproportionate punishment of students of color, students with disabilities, and LGBTQ identified students must be designed and implemented with student, community, and teacher input, so a wider range of approaches are available, and teachers and administrators are supported in turning to them in lieu of discipline.[17]

Many teachers have welcomed the opportunity to improve school climate through non-exclusionary practices.[18] In some cases, however, there has been confusion or pushback from teachers about how to incorporate these alternative practices.[19] Though schools may attempt to resolve disciplinary concerns without resorting to law enforcement, such protocols prove difficult where police officers patrol the halls, and few positive mechanisms are availed. Many students, parents, education advocates, and educators have long called for decriminalizing our children's learning environments by removing the regular presence of police officers from schools.[20]

One school district successfully limited police involvement in schools to ensure positive academic results for its students. In Clayton County, Georgia, the juvenile court had become so overwhelmed with school referrals that it made an agreement with schools and local police to restrict circumstances where police were allowed to arrest students in school or refer them to the court.[21] This agreement increased the high school graduation rate by 20% from 2004 to 2009.[22]

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[17] Harper Statement, at 5; *see also,* Butcher Statement, at 6.

[18] Kipp Dawson, Retired Teacher, Pittsburgh Public Schools, Prepared Written Statement, submitted for the *PA Briefing*, at 1-2 (hereafter Dawson Prepared Statement).

[19] Butcher Statement, at 3.

[20] Losen Statement, at 10. S*ee also,* Counselors not Cops initiative which includes model school policies. "Counselors not Cops," Dignity in Schools, (accessed August 20, 2020), https://dignityinschools.org/take-action/counselors-not-cops/; American Federation of Teachers' statement calling for separation of police and schools. "AFT Expands Anti-Racism Efforts, calls for separating police and schools," American Federation of Teachers, June 18, 2020, https://www.aft.org/news/aft-expands-anti-racism-efforts-calls-separating-police-and-schools.

[21] *See also,* Cooperative Agreement between The Juvenile Court of Clayton County, The Clayton County Public School System, The Clayton County Police Department", 2012, (accessed August 20, 2020), https://strategiesforyouth.org/sfysite/wpcontent/uploads/2012/11/School_Resource_Officer_Collab_Agreement.pdf.

[22] Teske, Steven C., *A Study of Zero Tolerance Policies in Schools: A Multi-Integrated Systems Approach to Improve Outcomes for Adolescents* (2011) 93. Judge Uhler explained the benefits of restorative initiatives; *see also,* Judge John C. Uhler (Ret.), Court of Common Pleas, 19th Judicial District, York County, PA, Written Statement prepared for Nov. 21 PA Briefing, at 1-5 (hereafter Uhler Statement).

Despite concerns about the ability of schools and teachers to effectively incorporate positive, restorative discipline practices[23], Texas provides an example of how drastically the inclusion of restorative models can improve school climate and student outcomes. Texas had become notorious for its use of police as school disciplinarians. In one year, 275,000 students were charged with "disrupting class" and other insubordinate offenses.[24] Nearly 60% of all students were suspended or expelled according to a 2011 study.[25] The discipline fell disparately on students of color.[26] The Chief Justice of the Texas Supreme Court talked to teachers and juvenile court judges and instituted new guidelines for reform, such as formal complaints with witness statements and simpler interventions like a referral to school counselor or a note home to the student's parents.[27] This created an atmosphere where families, schools, and students worked together. In 2013, when the new policies were implemented, charges for minor classroom disruptions dropped by 61%.[28] Arrests for serious disciplinary action, expulsions, and violent crimes also drastically declined.[29] This example demonstrates that community buy-in and enough school counselors are essential to workable solutions.

Moving forward, additional data are needed on the disparate discipline of students with disabilities, students of color, and LGBTQ students. Schools must report data on discipline and school-based arrests, but little is disaggregated by race, gender, and disability. There is a dearth of data on LGBTQIA[30] students. A significant lack of transparency around school arrest and policing data is compounded by the confusion over which entity (school, municipality, state) is accountable for police in school. Robust data requirements, with both intersectional and disaggregated metrics, would help track and address students' experiences.[31]

While other states have begun to look more closely at discipline and its disparate impact and alternatives to exclusionary discipline, Pennsylvania is behind. By implementing the recommendations in this report, Pennsylvania schools can improve and address school climate without resorting to punitive, exclusionary discipline that disproportionately impacts students of color, students with disabilities, and LGBTQ youth. Models in the Commonwealth as well as in

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[23] *See also,* Restorative Practices described in Glossary of Terms at Appendix 6, of this Report.

[24] Harper Statement, at 3.

[25] Losen Statement, at 7, citing Tony Fabelo, et.al, *Breaking Schools' Rules*, Council of State Governments Justice Center (2011) (hereafter *Breaking Schools' Rules).*

[26] *Breaking Schools' Rules,* at 40.

[27] Amanda Ripley, *How America Outlawed Adolescence*, The Atlantic (Nov. 2016) (hereafter *How America Outlawed Adolescence).*

[28] Ibid.

[29] Ibid.

[30] *See also,* LGBTQIA described in Glossary of Terms at Appendix 6, of this Report.

[31] Losen Statement, at 4, 6.

other states can help us learn how to create positive, safe, supportive learning environments for all our school communities.

Pennsylvania Perspective

Much of the testimony from school administrators, policy experts, academics, and representatives from the justice system highlighted the negative consequences of zero tolerance and the disparate impact of discipline policies on students of color, students with disabilities, and LGBTQ youth. The testimony and related research and reporting expose the incongruent actions, policies and behaviors across Pennsylvania's legislature, school districts, schools and individual classrooms aiming to solve for exclusionary disciplinary practices. For example, Dr. Damaris Rau, Superintendent of the School District of Lancaster, testified that in an equity design process meant to address the disproportionate suspensions of Black males in middle school, one of the biggest challenges in working with district employees to explore "concepts of equity inclusion, implicit bias, and competence," was moving beyond the "zero tolerance mindset and constantly being asked 'why can't we just suspend them?"[32] This mindset can be explained by the lack of supports available to meet students' needs. The pressure on teachers to improve graduation rates and test scores may contribute to a sense that out-of-school discipline is the only tool available to improve academic achievement. But research shows that high suspension rates hurt academic achievement for all students, even those who have not been suspended.[33]

In a 2015 update to its Pennsylvania school discipline report, the American Civil Liberties Union of Pennsylvania (ACLUPa) reported that schools issue 10 out-of-school suspensions for every 100 students in the Commonwealth.[34] Those rates are even higher for certain demographics. According to state and federally-reported data cited in that report, schools are more likely to suspend Black students, Latinx[35] students, and students with disabilities than their white and non-disabled peers.[36] Students of color with disabilities have an even greater likelihood of being suspended from school.[37] For example, 22 out of every 100 Black students with disabilities were suspended at least

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[32] Damaris Rau, Ed.D., Superintendent, School District of Lancaster, Lancaster, PA, *Briefing Before the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights,* Philadelphia, *PA,* Nov. 21, 2019, pp. 183-84 (hereafter Rau Testimony, *Nov. 21 PA Briefing*).

[33] Brea L. Perry, Edward W. Morris, "*Suspending Progress: Collateral Consequences of Exclusionary Punishment in Public Schools"* American Sociological Review 79, no. 6 (November 5, 2014): 1067-87, https://journals.sagepub.com/doi/10.1177/0003122414556308.

[34] ACLU, *Beyond Zero Tolerance: Discipline and Policing in Pennsylvania Public Schools* (Pennsylvania: ACLU, 2015), 12, https://aclupa.org/sites/default/files/field_documents/10497b_56b2ce93961c47eda1db0bfb6b3b3b58.pdf (hereafter ACLU, *Beyond Zero Tolerance).*

[35] Latinx is a gender-neutral term used to describe people of Latin American descent. The use of an 'X' rather than previously gendered endings, "O" in Latino or "A" in Latina, represents all gender identities. *See also*, Latinx described in Glossary of Terms at Appendix 6, of this Report.

[36] ACLU, *Beyond Zero Tolerance*, 21, 25.

[37] Ibid., 25.

once.[38] In the last 10 years, Pennsylvania has had high student arrest rates and referrals to law enforcement compared to other states and the District of Columbia.[39] For example, Pennsylvania school districts made up eight of the top twenty-five school districts with the largest school-related arrest rates for Black students nationwide.[40] Additionally, from 2011 onward, in the rate of student arrests, Pennsylvania has ranked no lower than eighth in the country.[41] Though disaggregated demographic state data on arrests are lacking, data collected by race indicate that Latinx students are three times more likely to be arrested and Black students are seven more times likely to be arrested than their white peers in school.[42]

Racial disparities in discipline and arrest replicate racial disparities in educational access and opportunity in elementary school and beyond. Paul Morgan, Director, Center for Educational Disparities Research at Pennsylvania State University (Penn State), testified that within the Commonwealth of Pennsylvania, in the fourth grade, about 80 percent of children in the lowest achievement decile who are white are receiving services for reading difficulty, whereas Black students receive disproportionately lower rates of special education services.[43] When comparing white male students to Black male students in fourth through eighth grades, research shows white males are more likely to receive services in contrast to Black males in the same grades, regardless of achievement level.[44] And the racial disparity in discipline is even wider for girls than boys nationally and in Pennsylvania.[45]

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[38] Ibid., 12.

[39] Harold Jordan, Senior Policy Advocate, ACLU-Pennsylvania, Philadelphia, PA, Written Statement for the *Briefing Before the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights, briefing, Philadelphia, PA, Nov. 21, 2019*, at 3 (hereafter Jordan Statement).

[40] Losen, D. J., & Martinez, P. (2020). Lost opportunities: How disparate school discipline continues to drive differences in the opportunity to learn. Palo Alto, CA/Los Angeles, CA: Learning Policy Institute; Center for Civil Rights Remedies at the Civil Rights Project, UCLA, pp. 37-38 (hereafter *Lost Opportunities*).

[41] Jordan Statement at 3.

[42] ACLU, *Beyond Zero Tolerance,* at 27.

[43] Paul Morgan, Ph.D., Professor of Education and Demography, Department of Education Policy Studies, Population Research Institute, Pennsylvania State University, University Park, PA, Written Statement for the Pennsylvania *Advisory Committee to the U.S. Commission on Civil Rights, briefing, City, State,* Nov. 21, 2019, at 4 (hereafter Statement, *Nov. 21 PA Briefing*); Morgan Power Point submitted for Nov. 21 PA Briefing, at 4, (hereafter Morgan Power Point).

[44] Ibid., 6.

[45] K. Crenshaw, J. Nanda and P. Ocen, "Black Girls Matter: Pushed Out, Overpoliced and Underprotected," *African American Policy forum* (2015), https://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/54d2d37ce4b024b41443b0ba/1423102844010/BlackGirlsMatter_Report.pdf. *See also,* https://www.usnews.com/news/education-news/articles/2017-05-09/black-girls-are-twice-as-likely-to-be-suspended-in-every-state citing to, https://nwlc.org/wp-content/uploads/2017/04/final_nwlc_Gates_GirlsofColor.pdf.

The panelists pointed to policies that perpetuate the systemic racism, ableism, and homophobia in school discipline practices and represent roadblocks that need to be removed to dismantle the school-to-prison pipeline statewide. They include:

- District and principal discretion in implementation of disciplinary practices, whether punitive or restorative, leading to implicit and explicit biases and disparate responses.

- Conflict with state legislative actions, which prioritize and fund school policing over socials workers, positives behavioral supports, and other restorative alternatives.

- Codes of conduct that focus more on complying with school rules than promoting positive learning environments and include subjective causes for suspensions based on "insubordination", leaving teachers and administrators vulnerable to biased decision making about student of color, LGBTQ students and students with disabilities.

- Lack of trauma-informed responses to meet the needs of students. Some children are at greater risk of having Adverse Childhood Experiences (ACES) than others. Racial/ethnic minority groups and LGBTQ are at greater risk for having experienced four or more types of ACEs. The impact of trauma is far reaching and affects every aspect of health in schools across Pennsylvania. The data suggest that school staff need a framework of wellness that produces improved outcomes.

- Lack of consistent and/or required district-level data collection and publication of race, gender and sexuality, and disability inequities in exclusionary discipline and supportive services.

- Pennsylvania's inadequate and inequitable school funding system.

Briefing Highlights

Data show that students of color, students with disabilities, and students who identify or are perceived as LGBTQ are more likely to face exclusionary school discipline (such as suspensions, expulsions, or disciplinary transfers), and/or law enforcement contact, despite evidence showing that those students do not misbehave at higher rates. Exclusionary discipline includes out-of-school suspensions, expulsions, and transfers to disciplinary schools. The Committee held public briefings to examine these realities and explore solutions.

The panelists reported that these exclusionary disciplinary practices are harmful, both to the student who is excluded and to the students who remain in the classroom. Furthermore, research shows such exclusionary practices do not have the deterrent effect that some might believe. In addition to causing disruption in the student's education, it can result in significant repercussions for the disciplined student, including placing children in the school-to-prison pipeline—a process wherein school-based discipline excludes a student from the classroom and increases the likelihood that the student will have contact with the juvenile or adult criminal justice system.

To discuss this issue, the Advisory Committee invited 19 panelists over the course of two days. The first panel presented on November 19, 2019: This panel provided an overview of the school-to-prison pipeline from national experts. The panelists included: Daniel J. Losen, Director, Center for Civil Rights Remedies at University of California Los Angeles (UCLA); Kristen Harper, Director for Policy Development, Child Trends.; Melanie Willingham-Jaggers, Deputy Executive Director, Gay, Lesbian, Straight Education Network (GLSEN); and Jonathan Butcher, Senior Policy Analyst, The Heritage Foundation.

Four panels presented on November 21, 2019: The first panel discussed the disparate and punitive impact of exclusionary practices. The panelists included: Harold Jordan, Senior Policy Advocate, American Civil Liberties Union of Pennsylvania (ACLUPa); Paul Morgan, Professor of Education and Demography, Pennsylvania State University (Penn State) and Director of Center for Educational Disparity and Research; Erica Smith, Sexuality Educator, The Children's Hospital of Philadelphia; and Judge John C. Uhler (Retired), Commonwealth of Pennsylvania Court of Common Pleas, 19th Judicial District of York County.

The second panel discussed what perpetuates the use of exclusionary discipline and its disparate impact. This panel also included testimony from a former student from Montgomery County, Pennsylvania, who shared his personal experiences. The panelists included: Dr. Nicole Hollins-Sims; Educational Consultant for the Pennsylvania Training and Technical Assistance Network (PaTTAN), part of the Pennsylvania Department of Education; Dr. Abigail Gray, Deputy Chief of Climate and Safety, School District of Philadelphia; Dr. Kelly Welch, Associate Professor, Villanova University, Department of Sociology and Criminology; and Tyrice Smith, a former student accompanied by his Big Brother, Brian Sloan, of Pennsylvania Big Brothers Big Sisters Independence Region.

The third panel discussed pathways to dismantle the school-to-prison pipeline. The panelists included: Edwin Desamour, Dean and Behavioral Specialist, John B. Stetson Charter School; Dr. Damaris Rau, Superintendent for the School District of Lancaster; Dr. Monika McHale-Small, School Psychologist and Vice President of Learning Disabilities Association of America; and Dr. James Huguley, Director of the Center on Race and Social Problems at the University of Pittsburgh.

The fourth panel continued the discussion of pathways to dismantle the school-to-prison pipeline. The panelists included: Dr. Kevin Bethel, Chief of School Safety Protocol for the School District of Philadelphia; Reynelle Brown Staley, Policy Director at the Education Law Center; and Dr. Derek Cohen, Director, Right on Crime, Texas Policy Foundation.

The Committee also received written testimony submitted from experts who could not present in person, including Professor Janet Rosenbaum of the State University of New York (SUNY) Downstate and Pittsburgh retired Public School teacher Kipp Dawson.

Findings and Recommendations

Among their duties, advisory committees to the U.S. Commission on Civil Rights are authorized to: (1) advise the Commission concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the federal government with respect to equal protection of the laws, and (2) initiate and forward advice and recommendations to the Commission upon matters the advisory committees have examined.[46]

Findings

The Pennsylvania Committee findings are set forth below.

Finding 1: Costs of Exclusionary Discipline

The costs of exclusionary discipline include academic loss, social-emotional loss, financial loss, and beyond. Experts report that exclusionary discipline practices are harmful, both to the student who is excluded and to the students who remain in the classroom.[47] Such discipline causes disruption in the student's education and has immediate adverse effects on learning for all youth in the classroom. For youth who are excluded, the academic impact is severe. They may lose a positive connection to school.[48] "They may drop out of school or develop a negative relationship with adults in schools."[49] Exclusionary discipline also deprives the child of participation in learning experiences and will make it more difficult for the student to participate in continued learning activities upon return.[50]

For students of color, the impact of exclusionary discipline is exacerbated. A 2018 report[51] described the amount of lost instruction across the country. Pennsylvania was among the states with the highest amount of lost instruction for Latinx students.[52] Pennsylvania has three of the

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[46] 45 C.F.R. § 703.2.

[47] *See also,* Jeffrey Lamont, et al., *Out-of-school Suspension and Expulsion*, 131(3) Pediatrics e1000-e1007 (2013) (describing the disadvantages of out-of-school suspensions and expulsions); Brea L. Perry & Edward W. Morris, Suspending Progress: Collateral Consequences of Exclusionary Punishment in Public Schools, 79 Am. Sociol. Rev. 1067 (2014) (finding that attending schools where students are often excluded from the classroom negatively impacts even those students who are not excluded).

[48] Jordan Statement, at 4.

[49] Ibid.

[50] Dawson Prepared Statement, at 1.

[51] Daniel J. Losen and Amir Whitaker, *11 Million days of Lost Instruction: Race, Discipline and Safety at U.S. Public Schools* Part I: A Joint Report by Center for Civil Rights Remedies and the ACLU of Southern California (2018): 1-15, https://www.aclu.org/report/11-million-days-lost-race-discipline-and-safety-us-public-schools-part-1.

[52] Losen Statement, at 2; *see also,* Latinx described in Glossary of Terms at a Appendix 6, of this report.

highest suspending districts nationwide for Latinx students.[53] During the 2015-16 academic year, Black secondary students lost 80 more days per 100 days enrolled than their white peers.[54] Latinx youth lost 40 more days.[55] Even in elementary school, the gaps were between 5 and 20 days. Across Pennsylvania, these rates differ from district to district, but the trend holds. In Sharon City, for example, Black students lost 449 days per 100 students, which was 307 days more than their white counterparts. And, Latinx students lost 260 days, which was 160 more than their white peers.[56]

Students with disabilities who rely on the supports provided at school, are at risk of upheaval in their growth and education caused by exclusionary disciplinary practices. Students with disabilities receive services at school, e.g., mental health services, physical therapy, occupational therapy, and/or other services, in addition to differentiated instruction. Thus, school exclusion may mean the students are losing multiple services.[57] Based on behaviors that are typically manifested by the disability, students with disabilities are at greater risk of lost instruction due to exclusionary discipline. In one Pennsylvania school district, for example, students with disabilities lost 350 days per 100 students enrolled.[58]

LGBTQ youth similarly encounter barriers if they have been subject to exclusionary discipline while in school. LGBTQ students may be more likely to drop out of school due to hostile school climates they may face, in addition to potential other challenges outside of school caused by discrimination and stigma. Similarly, these youth, who may have experienced harsh discipline, are less likely to graduate high school either because they may no longer feel welcome at school or because the disciplinary sanctions result in their removal from school through suspension or expulsion.[59]

Research also shows exclusionary discipline does not have the deterrent effect that some might expect but rather results in significant repercussions for the disciplined student—including increasing the student's risk of dropping out and decreasing the student's long-term earning

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[53] *Lost Opportunities* at 29-30.

[54] Losen Statement, at 2-3.

[55] Ibid.

[56] Ibid., at 3.

[57] Ibid., 4.

[58] Ibid.

[59] Willingham-Jaggers Statement, at 3.

potential.[60] Students who are suspended are less likely to graduate high school or college.[61] When followed into their 20s, Black students who were suspended were 94% less likely to have earned a bachelor's degree.[62] This impact on graduation rates has a corresponding economic impact.[63] Students who fail to complete high school may be limited in the vocational, and economic success potential.[64] Students who are suspended are less likely to graduate high school or college.[65] When followed into their 20s, Black students who were suspended were 94% less likely to have earned a bachelor's degree.[66] This impact on graduation rates has a corresponding economic impact.[67] Students who fail to complete high school may be limited in the vocational, and economic success they can achieve in later life.[68] One study found that suspensions lowered the graduation rate by seven percentage points and the economic impact of this reduction in social and governmental costs over the lifetime of this cohort of students who did not graduate high school would be an estimated 35 billion dollars.[69] "Economists also have calculated the economic burden of failing to

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[60] *See* American Psychological Association, Zero Tolerance Task Force Report, Are Zero Tolerance Policies Effective in Schools?: An Evidentiary Review and Recommendations, 63(9) AM. PSYCHOL. 852, 854 (challenging common assumptions about exclusionary discipline, researchers found that excluding children who exhibit problematic behaviors from school did not deter their future misbehavior, but rather predicted future misbehavior by those students); Jeffrey Lamont, *supra* note 8, at e1001–e1002 (describing the negative impacts of suspensions and expulsions).

[61] Losen Statement, at 8, citing Rosenbaum, Janet. "Educational and Criminal Justice Outcomes 12 Years After School Suspension." Youth & Society 52, no. 4 (January 2018): 515–47. doi:10.1177/0044118X17752208 (hereafter Rosenbaum, *Educational and Criminal Justice Outcomes*).

[62] Abigail Gray, Ph.D., Deputy Chief of School Climate and Safety, School District of Philadelphia, Philadelphia, PA, Written Statement for the *Briefing, at 2* (hereafter Gray Statement, *PA Briefing*), citing Rosenbaum, *Educational and Criminal Justice Outcomes.*

[63] Losen Statement, at 8.

[64] *See* American Psychological Association, Zero Tolerance Task Force Report, Are Zero Tolerance Policies Effective in Schools?: An Evidentiary Review and Recommendations, 63(9) AM. PSYCHOL. 852, 854 (challenging common assumptions about exclusionary discipline, researchers found that excluding children who exhibit problematic behaviors from school did not deter their future misbehavior, but rather predicted future misbehavior by those students); Jeffrey Lamont, *supra* note 8, at e1001–e1002 (describing the negative impacts of suspensions and expulsions).

[65] Losen Statement, at 8, citing Rosenbaum, Janet. "Educational and Criminal Justice Outcomes 12 Years After School Suspension." Youth & Society 52, no. 4 (January 2018): 515–47. doi:10.1177/0044118X17752208 (hereafter Rosenbaum, *Educational and Criminal Justice Outcomes*).

[66] Abigail Gray, Ph.D., Deputy Chief of School Climate and Safety, School District of Philadelphia, Philadelphia, PA, Written Statement for the *Briefing, at 2* (hereafter Gray Statement, *PA Briefing*), citing Rosenbaum, *Educational and Criminal Justice Outcomes.*

[67] Losen Statement, at 8.

[68] Willingham-Jaggers Statement, at 3.

[69] Losen Statement, at 8, citing Belfield, C; *see also*, Russel W. Rumberger and Daniel J. Losen, *The Hidden Costs of California's Harsh School Discipline: And the Localized Economic Benefits from Suspending Fewer High School Students,* http://blogs.edweek.org/edweek/rulesforengagement/CostofSuspensionReportFinal%20%281%29.pdf.

earn a diploma both on individuals and on society as a whole."[70] Based on predicted differences in outcomes between those who earn a diploma and those who do not, this burden includes nongraduates' lower earnings, the lower state and federal tax revenues resulting from these lower earnings, and higher health and welfare costs.[71] One study in 2000-01 estimated that suspensions would lead to 67,735 additional dropouts nationwide, which would cost U.S. taxpayers $11 billion in lost tax revenues over the lifetime of those individuals.[72]

Whenever a school executes exclusionary discipline on a student, it increases that child's likelihood of future discipline, truancy, and dropout—all of which are risk factors for contact with the criminal justice system.[73] A study of 7 million Texas children concluded that students who experience suspension or expulsion are at greater risk of drop-out, retaining in grade, or contact with the juvenile justice system.[74] These disciplined students are also more likely to be referred to the justice system for intervention. This "school-to-prison pipeline" refers to "both the direct and indirect pathways through which a young person becomes likely to have some form of justice system involvement."[75] In the Texas study, students who were suspended or expelled were likely to become involved in the juvenile justice system within the next year.[76]

Moreover, there is an economic cost to pushing students into the juvenile justice system through school-based referrals and zero tolerance policies. On average, incarcerating a child costs $407.58

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[70] Russel W. Rumberger and Daniel J. Losen, *The Hidden Costs of California's Harsh School Discipline: And the Localized Economic Benefits from Suspending Fewer High School Students,* http://blogs.edweek.org/edweek/rulesforengagement/CostofSuspensionReportFinal%20%281%29.pdf.

[71] Gray Statement, at 2.

[72] Russel W. Rumberger and Daniel J. Losen, *The High Cost of Harsh Discipline and Its Disparate Impact, at 20,* http://www.schooldisciplinedata.org/ccrr/docs/UCLA_HighCost_6-2_948.pdf, (2016), citing Belfield, C. (2014a) *The costs of high school failure and school suspensions for California. Los Angeles: The Center for Civil Rights Remedies at the Civil Rights Project* and Belfield, C. (2014b) *The costs of high school failure and school suspensions for Florida. Los Angeles: The Center for Civil Rights Remedies at the Civil Rights Project.*

[73] *See, e.g.,* American Civil Liberties Union of Pennsylvania, Beyond Zero Tolerance: Discipline and Policing in Pennsylvania Public Schools, at 7 (Feb. 2015) ("[Texas study] found that students who were suspended or expelled, especially repeatedly, were more likely to be held back a grade or drop out of school than other students."); Harold Jordan, What's Wrong with Criminalizing Our Early Learners? Nat. Black Child Development Inst. (2016), http://www.nbcdi.org/whats-wrong-criminalizing-our-early-learners.

[74] Harper Statement, at 3; Fabelo, T., Thompson, M. D., Plotkin, M., Carmichael, D., Marchbanks, M. P., & Booth, E. A. (2011). Breaking schools' rules: A statewide study of how school discipline relates to students' success and juvenile justice involvement. New York: Council of State Governments Justice Center, https://csgjusticecenter.org/wpcontent/ uploads/2012/08/ Breaking_Schools_Rules_Report Final.pdf.

[75] Jordan Statement, at 2.

[76] Jordan Statement, at 2. Discipline Policies in Pennsylvania's Public Schools, Report of the Advisory Committee on School Tolerance School Discipline Policies, October 2016, http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2016-10-27%20Final%20REPORT%20for%20WEBSITE%20updated%2011.16.16%20%20WB.pdf (hereafter *Discipline Policies in PA's Public Schools*).

per day or $148,767 per year per child.[77] Conversely, states fail to fully invest in rehabilitative and educational services for youth in the juvenile justice system. And of course, the cost of confining youth in the juvenile justice system is not purely economic. "Youth confinement imposes heavy burdens on family members, leaves confined youth vulnerable to assaults, exposes our communities to higher rates of recidivism, and impedes young people's transition to adulthood."[78] And, as in school discipline, referrals to the juvenile and adult criminal justice system fall disproportionately on students of color, students with disabilities, LGBTQ youth, and of course, intersectional students.[79] Additionally, youth suffer educational consequences. When involved in the justice system, children are less likely to complete high school. The U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention estimates that only 27% of youth in the juvenile justice system receive a high school diploma.[80] Students also stand the risk of experiencing long-term consequences, by having a record which endangers future job and educational opportunities.[81] Research shows that students who were suspended were 40% more likely to have been arrested.[82]

Even when students are not themselves subject to exclusionary discipline, they nevertheless are affected. Students who remain in the classroom when others have been excluded can suffer socially and academically. A three-year study of over 17,000 students found that the math and reading scores of students who were *not* suspended suffer when their classmates are removed from the learning environment.[83] Suspension also causes unstable and socially fragmented environments when suspended students enter and exit classrooms, negatively impacting students' feelings of connectedness school-wide.[84] The study concluded that negative outcomes for non-suspended students result from a culture of control where the threat of punishment hinders academic performance for all students.[85]

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[77] Justice Policy Institute, *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration* (December 2014), http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf (hereafter *Sticker Shock*).

[78] Ibid., 3.

[79] For example, Black girls are the fastest growing demographic of the juvenile justice system. Erin Killeen, The Increased Criminalization of African American Girls, Georgetown Journal on Poverty Law and Policy, April 2019, https://www.law.georgetown.edu/poverty-journal/blog/the-increased-criminalization-of-african-american-girls/.

[80] Office of Juvenile Justice and Delinquency Prevention, Education for Youth Under Formal Supervision of the Juvenile Justice System (January 2019), https://www.ojjdp.gov/mpg/litreviews/Education-for-Youth-in-the-Juvenile-Justice-System.pdf.

[81] Jordan Statement, at 4.

[82] Gray statement, at 1; Harper Statement, at 3, citing Rosenbaum, *Educational and Criminal Justice Outcomes.*

[83] *See* Brea L. Perry & Edward W. Morris, Suspending Progress: Collateral Consequences of Exclusionary Punishment in Public Schools, 79 AM. SOCIOL. REV. 1067 (2014).

[84] Ibid., p. 1083.

[85] Ibid.

Finding 2: Exclusionary Discipline—Disparate Impact on Students of Color, Students with Disabilities, and LGBTQ Students

a. Data show students of color, students with disabilities, and LGBTQ students have far higher rates of student discipline than their white/non-LGBTQ/non-disabled peers.

Students of color, students with disabilities, and LGBTQ students are disproportionately disciplined more frequently and harshly despite evidence showing that these students do not misbehave at higher rates than their white/non-LGBTQ/non-disabled peers.[86] A comprehensive national survey by the U.S. Department of Education (ED) showed that exclusionary discipline is disproportionately imposed on students of color and students with disabilities.[87] While data suggest that overall suspension rates have decreased nationally over the past decade, Black students (8.0%) are still twice as likely to be suspended out of school as white students (3.8%), and students with disabilities (8.6%) are twice as likely to be suspended as their non-disabled peers (4.1%).[88]

The national data trends hold true in Pennsylvania, where we also see, as in the national data, compounded disparate impact on intersectional students—students who have multiple marginalized identities. Specifically, students of color with disabilities and students of color who are LGBTQ receive disparate exclusionary discipline.[89] In Pennsylvania, 16.9% of Black students received out-of-school suspensions compared to 10.4% of Hispanic students, and 3.5% of white students;[90] 22% of Black children with disabilities received an out-of-school suspension compared

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[86] *See, e.g.,* Catherine P. Bradshaw, et al., Multilevel Exploration of Factors Contributing to Overrepresentation of Black Students in Office Disciplinary Referrals, 102 J. ED. PSYCH., 508, 513-14 ("Black students had greater odds of being referred to the office, even after controlling for the child's level of behavior problems and classroom-level covariates . . .. The fact that we still observed a significantly higher risk for [disciplinary referrals] among Black students, even after controlling for teachers' perceptions of the level of disruptive behavior . . ., lends support for the hypothesis that there is a bias against Black students in [disciplinary referrals]."); Russel J. Skiba & Natasha T. Williams, Are Black Kids Worse? Myths and Facts about Racial Differences in Behavior, The Equity Project, at 6 (Mar. 2014); Daniel J. Losen, Discipline Policies, Successful Schools, and Racial Justice, The Civil Rights Project at UCLA, at 6-7 (Oct. 2011), http://nepc.colorado.edu/files/NEPC-SchoolDiscipline.pdf.

[87] U.S. Department of Education, Office for Civil Rights, "Data Snapshot: School Discipline,", at, https://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf, March 2014, (hereafter cited as *OCR Data Snapshot*). The study did not collect data on LGBTQ students. (1/25: Accept)

[88] Harper Statement, at 2, citing Child Trends report on Civil Rights Data Collection, https://www.childtrends.org/schools-report-fewer-out-of-school-suspensions-but-gaps-by-race-and-disability-persist). (December 17, 2018).

[89] "Beyond Zero Tolerance," American Civil Liberties Union, p. 25, (last updated Nov. 1, 2016), https://aclupa.org/en/publications/beyond-zero-tolerance-discipline-and-policing-pennsylvania-public-schools, (hereafter *Beyond Zero Tolerance*); *see also*, Erica E. Smith, Sexuality Educator, The Children's Hospital of Philadelphia, Philadelphia, PA, Written Statement for *Nov. 21 PA Briefing*, at 2 (hereafter E. Smith Statement).

[90] *Beyond Zero Tolerance*, p. 12; Jordan Statement, at 2.

to 15.8% of Black children without a disability and 17.3% of Hispanic students with a disability received an out-of-school suspension compared to 9.1% of Hispanic students without a disability.[91]

As referenced below, in Finding 4, limited state or national data are collected on LGBTQ youth and exclusionary discipline through the U.S. Department of Education. However, anecdotally, multiple panel experts reported that students who identify as LGBTQ or are perceived to be LGBTQ are disproportionately subjected to exclusionary discipline.[92] And a study of a nationally representative sample of students self-reported data indicating that LGBTQ students are suspended at nearly twice the rate of the non-LGBTQ peers.[93]

b. Students of color, students with disabilities, and LGBTQ students are highly susceptible to school discipline because school practices, including conduct codes, disfavor them.

Codes of conduct punish students who engage in non-dominant cultural practices[94] as well as students with certain disabilities. Children of color are more likely to experience adverse childhood events, and codes of conduct may punish behaviors that are responses to trauma.[95] Relatedly, there is a failure among adults in schools to recognize and respond to the trauma of girls of color when symptoms manifest in the learning environment.[96] Schools do not provide curricula and environments that are culturally affirming to this subset of students, and educators do not reflect the diversity of the students they serve.[97] Black girls are adultified—seen as older and more

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[91] *Beyond Zero Tolerance*, p. 25.

[92] Willingham-Jaggers Statement, at 2, (noting a majority of LGBTQ students in Pennsylvania have experienced discrimination through school policies or practices in the past year); E. Smith Statement, at 2 ("I have also spoken to many youth, especially Black gender non-conforming youth, who felt they were singled out and antagonized by school police until a confrontation occurred, leading to their arrest."); *see also* Palmer, Neal A., Greytak, Emily A., and Kosciw, Joseph G., *LGBTQ Youth School-to-Prison Pipeline* (2016), *supra* note 12.

[93] Palmer, Neal A., Greytak, Emily A., and Kosciw, Joseph G., *LGBTQ School-to-Prison Pipeline*, 2016, at 11, *supra* note 12.

[94] "Many students identified as having learning disabilities come from non-dominant cultures. These students often come from low-income families, immigrant families, or families whose ethnicity is different from that of the dominant culture that our current educational system is based on. Dominant, for the purposes of this study, refers to the white middle-class cultural system that defines what is valued, taught, and assessed in the current United States education system. Non-dominant culture is representative of the disenfranchised, low-income, differing cultural values and experiences, and those who are considered other—for the purpose of this study those identified as having disabilities" from Margaret Cooley, How Students from Non-Dominant Cultures Perceive their Social and Cultural Experiences In Relation To School Success (Wayne State University Dissertations (2014), https://digitalcommons.wayne.edu/cgi/viewcontent.cgi?article=2086&context=oa_dissertations).

[95] Harper Statement, at 5; *see also,* E. Smith Statement, at 1.

[96] Monique Morris, Co-Founder and President of the National Black Women's Justice Institute, Written Statement for the U.S. Commission on Civil Rights, Briefing before the U.S. Commission on Civil Rights, Dec. 8, 2017, Washington, DC, at 3 (hereafter Morris Statement).

[97] Reynelle Brown Staley, Policy Director, Education Law Center-PA, Philadelphia, PA, Written Statement for the *Nov. 21 PA Briefing*, at 7 (hereafter Staley Statement).

culpable—and therefore not given the same level of leadership and mentorship opportunities.[98] Moreover, girls of color are pushed out of school through, for example, differential dress code enforcement.[99]

The disproportionately high rates of discipline for children with disabilities suggest the possibility that students are being illegally punished for manifestations of their disabilities, instead of being provided with appropriate individualized education plans and supports.[100] One former school administrator testified to students with disabilities not receiving needed supports, which leads to increased levels of disengagement from their education.[101] Large class sizes, under-resourced schools, and stark academic achievement differences between students with and without disabilities often cause increased frustration with learning and academics.[102] Black students in Pennsylvania are more likely to attend schools with inadequate Special Education Funding, making supportive services less accessible. The arrest rate for Black students with disabilities shows the greatest disproportionality in Pennsylvania and the United States.[103]

LGBTQ students also experience disproportionate discipline. Students report that school policies limit their expression, enforce gender norms, and limit their participation in curriculum and extracurriculars.[104] LGBTQ students may be disallowed from writing about LGBTQ issues, starting a gay student alliance, attending a school dance with a student of the same gender, or may be required to use a name or dress in a manner that does not align with their gender identity.[105] LGBTQ students who experience discriminatory school policies report rates of discipline nearly twice as high as LGBTQ students who do not experience discriminatory policies.[106]

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[98] Epstein, Rebecca and Blake, Jamilia and González, Thalia, Girlhood Interrupted: The Erasure of Black Girls' Childhood (June 27, 2017), https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2017/08/girlhood-interrupted.pdf. Adultification bias occurs when Black girls are perceived as "less innocent and more adult-like;" this perception "may contribute to harsher punishment by educators and school resource officers. Furthermore, the view that Black girls need less nurturing, protection, and support and are more independent may translate into fewer leadership and mentorship opportunities in schools." Ibid., at 1-2.

[99] Morris Statement, at 5.

[100] ACLU, "Beyond Zero Tolerance," 25. *See also*, Daniel J. Losen and Tia Elena Martinez, *Out of School and Off Track: The Overuse of Suspensions in American Middle and High Schools*, The Center for Civil Rights Remedies at the UCLA Civil Rights Project, April 8, 2013, at 26-27 (discussing the link between data disparities in exclusionary discipline and discriminatory bias against students with disabilities).

[101] Monica McHale-Small, Ph.D., Associate Professor, School Psychology, Temple University, Philadelphia, PA, Written Statement for the *Nov. 21 PA Briefing*, at 2 (hereafter McHale-Small Statement).

[102] Ibid., at 1.

[103] Ibid., at 2.

[104] Joseph G. Kosciw et. al., The 2017 National School Climate Survey, GLSEN (2018), 37-42.

[105] Ibid.

[106] Ibid., 49.

c. Concurrent factors make it more likely that school discipline results in justice system involvement for and data support a showing of over-representation of students of color, students with disabilities, and LGBTQ students.

Students with disabilities, LGBTQ youth, and students of color are disproportionately likely to receive exclusionary discipline and are over-represented in the juvenile justice system.[107] State and federal policies and related government grant opportunities incentivize funding for police and the hardening of schools over prevention initiatives.[108] The use of police as school disciplinarians results in an uptick of arrests for low level offenses.[109] And these arrests disproportionately impact students of color, students with disabilities, and LGBTQ youth.[110] As discussed above, in Finding 1, the presence of police within schools leads to criminalization of school discipline, especially when a school is under-resourced and forced to rely on police to address routine disciplinary issues.

d. Adult decision-maker bias also contributes to disproportionate discipline of students of color, students with disabilities, and LGBTQ students.

Marginalized students are over-represented in school discipline offenses that involve a teacher's or administrator's exercise of discretion. Disparate treatment may be a function of bias, not different behavior.[111] The adultification of Black girls and perceptions about the height of Black boys, for example, both result in negative disciplinary outcomes.[112] Black students are more likely than similarly situated white students to be punished, as are students with disabilities when compared to their non-disabled counterparts.[113] "Expulsion is also more frequently assigned for

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[107] Uhler Statement, at 2; *see also*, Harper Statement, at 2.

[108] Uhler Statement, at 4-6; *see also*, Jordan Statement, at 3.

[109] See Interbranch Commission Report referencing inappropriate use of police as school disciplinarians, at: http://www.pacourts.us/assets/files/setting-2032/file-730.pdf?cb=4beb87.

[110] E. Smith Statement, at 2; Jordan Statement, at 2; McHale-Smith Statement, at 2.

[111] Uhler Statement, at 7; Nikole Hollins-Sims, Pd.D., Educational Consultant, PA Department of Education, Harrisburg, PA, Written Statement for Nov. 21 PA Briefing, at 2 (hereafter Hollins-Sims Statement).

[112] Janet Rosenbaum, Assistant Professor of Epidemiology, School of Public Health, SUNY Downstate Health Sciences University, Brooklyn, NY, Prepared Written Statement, submitted for the *PA Briefing*, at 1 (hereafter Rosenbaum Prepared Statement). ("[M]ale adolescents who are taller are more likely to be suspended if they are Black, but height is not a risk factor for suspension for other populations, suggesting that teachers or administrators' decision to suspend may stem from how they react to Black male students' height."). *See also,* Epstein, Rebecca and Blake, Jamilia and González, Thalia, Girlhood Interrupted: The Erasure of Black Girls' Childhood (June 27, 2017), https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2017/08/girlhood-interrupted.pdf.

[113] Morgan's recognized that students of color are disciplined more frequently but suggests heightened levels of discipline can be attributed to children of color exhibiting different, punishable behaviors. Ibid at 4-5. His testimony does not consider the notion that educator perceptions of the behaviors underlying punishment can also be biased, an issue discussed by other panelists. Morgan Statement, at 3.

violations by Black and Latinx students. Importantly, students of color are less likely than white students to receive mild or restorative disciplinary alternatives."[114] Racial disparities in discipline still exist after controlling for other environmental factors.[115] LGBTQ students are disciplined for public displays of affection that do not result in discipline when displayed by straight, cisgender students.[116] And high variation of overall and disparate discipline between districts may be driven by principals' discretion.[117]

Finding 3: Benefits of Alternatives to Exclusionary Discipline

The Pennsylvania Department of Education recognizes that "research indicates that strategies like trauma-informed practices and restorative practices can play a role in reducing violence in schools, improving school climate, and addressing issues of disproportionality in student discipline."[118] Panelists testified to the benefits of positive and restorative models that could be used instead of and/or to reduce the use of exclusionary discipline. Pennsylvania is not an outlier in considering these alternatives; 31 states have laws limiting exclusionary discipline and 32 states have laws encouraging alternatives to exclusionary discipline.[119]

Research suggests that positive alternatives provide numerous benefits to both individual students and schools overall. Adolescent "work in progress" brains are receptive to rehabilitative approaches.[120] At the school level, positive climate initiatives result in improvements to both achievement and overall school climate.[121] Studies indicate that restorative justice may be effective

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[114] Kelly Welch, Ph.D., Associate Professor, Department of Sociology and Criminology, Villanova University, Villanova, PA, Written Statement for the Nov. 21 PA Briefing, at 8 (hereafter Welch Statement).

[115] Hollins-Sims Statement, at 1. *See also*, Losen Statement, at 7; Welch Statement, at 10; Skiba, R. J., Trachok, M., Chung, C. G., Baker, T., Sheya, A., & Hughes, R. (2015), Where Should We Intervene? Contributions of Behavior, Student, and School Characteristics to Suspension and Expulsion. In D. J. Losen (Ed.), *Closing the School Discipline Gap: Equitable Remedies for Excessive Exclusion.* New York, NY: Teachers College Press (finding principals' attitudes are the strongest predictor of both overall and disparate rates of exclusionary discipline, after controlling for other environmental factors).

[116] GLSEN, "2017 State Snapshot: School Climate in Pennsylvania," New York, 2019, https://www.glsen.org/sites/default/files/2019-11/Pennsylvania_Snapshot_2017_0.pdf.

[117] Losen Statement, at 9; *see also*, Welch Statement, at 9.

[118] Pennsylvania Department of Education, *Student-Centered Discipline*, (accessed October 15, 2020), https://www.education.pa.gov/Schools/safeschools/SchoolClimate/SCIP/ActionPlanning/Pages/StudentCenteredDiscipline.aspx.

[119] Harper Statement, at 3.

[120] Derek Cohen, Ph.D., Director, Right on Crime, Texas Policy Foundation. Austin, TX, Written Statement for *Nov. 21 PA Briefing*, at 3.

[121] Gray Statement, at 3.

in reducing truancy, for example.[122] Implementation of restorative justice practices also reduces levels of exclusionary discipline.[123] Schools that report higher levels of a trusting climate have higher safety ratings, even in high-crime areas.[124] The School District of Lancaster halved its suspension rate over a five-year period by shifting resources and support to restorative practices. This shift also impacted the district's disproportionate discipline rates for students of color; Black middle school boys are now 4% more likely to be suspended than their white peers, down from 12% the beginning of the initiative.[125]

Positive alternatives have specific benefits to students who have suffered adverse childhood experiences. As noted previously, some behaviors that result in exclusionary school discipline are responses to trauma.[126] Adverse Childhood Experiences (ACEs) can be addressed through supportive relationships.[127] School and district staff would benefit from training and access to information that emphasize an empathic response to student behavior, which builds trusting relationships.[128] By replacing exclusion with positive alternatives, negative effects of exclusionary discipline can also be ameliorated. For example, providing culturally competent services[129] for students of color, which likely involves training for staff and administration, and offering special education services for students with disabilities, may reduce the use of exclusionary discipline and result in more classroom instruction.

Finding 4: Need for More and Better Data

While some data exists on both who is excluded and what the impact of such disciplinary exclusion is, there is a need to collect additional data on the reasons for the removals and the reasons for school-based arrests. Panelists noted that data on referrals to law enforcement and school-based

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[122] Rosenbaum Prepared Statement, at 2, citing to Mazerolle, L., Antrobus, E., Bennett, S., & Eggins, E. (2017). Reducing truancy and fostering a willingness to attend school: Results from a randomized trial of a police-school partnership program. Prevention Science, 18, 469-480, https://doi.org/10.1007/s11121-017-0771-7.

[123] Morgan Power Point, at 6.

[124] Losen Statement, at 7.

[125] Rau Statement, at 1-2.

[126] E. Smith Statement, at 1.

[127] Harper Statement, at 5. Edwin Desamour spoke about the need for teachers and administrators to use emotional intelligence to develop meaningful, stable relationships with students. He started a school barbershop where students can earn the privilege to participate in a comfortable environment and talk about important concepts like self-esteem. Edwin Desamour, Dean, Stetson Charter School, Philadelphia, PA, Testimony, *Nov. 21 PA Briefing*, pp. 262-63 (hereafter Desamour Testimony).

[128] Staley Statement, at 7.

[129] Cultural competence is explained by the National Education Association as "having an awareness of one's own cultural identity and views about difference, and the ability to learn and build on the varying cultural and community norms of students and their families. It is the ability to understand the within-group differences that make each student unique, while celebrating the between-group variations that make our country a tapestry." *See also,* http://ftp.arizonaea.org/home/39783.htm.

arrests are often inaccurate or missing entirely, and there is broad consensus that parents and policymakers should know this information.[130] For example, there is evidence of underreporting of the district and state level data collected and provided to the U.S. Department of Education (ED) and then reported out by the ED, suggesting that the Pennsylvania district level rates reported are likely lower than actual.[131]

The Committee further learned that school districts do not keep track of removal and arrest information because it is believed that police departments have this information. Yet it was reported that police departments rarely keep records that accurately reflect information about school policing.[132] Rather the police departments usually maintain a database of arrest reports, which do not capture whether the arrestee was a student, or whether the arrest took place in a school.[133] Thus, it is not yet possible to find the exact correlation between student arrest data and out-of-school suspension data due to significant data deficits. In California, a state frequently known for progressive policies addressing exclusionary discipline, researchers fear a mounting pressure to decrease suspension rates may push districts to increasingly rely on law enforcement officials. Utilizing law enforcement in lieu of the principal's office would effectively remove the student and keep a school's suspension rate low.[134]

More data are needed that include the race and ethnicity of students with disabilities, and race and ethnicity along with gender.[135] Students are intersectional, but the data collected and provided often are not.

In addition, the Committee found a lack of data collection with respect to the experiences of LGBTQ students in Pennsylvania and their school experiences.[136]

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[130] Losen Statement, at 6; *see also,* Recommendation 4 in this Report.

[131] Losen Statement, at 5.

[132] Ibid., at 6.

[133] Ibid., at 6.

[134] A lack of school arrest data point to a serious issue for school districts aiming to reduce their suspension rates. Upon reviewing school policing data from over 397 districts in California with at least 3,000 enrolled students, UCLA's Civil Rights Project found 78% of districts reported zero school-based arrests and 45% reported zero referrals to law enforcement and zero school-based arrests.[134] Other school districts not reporting referrals and school-based arrests did so incorrectly. These discrepancies demonstrate unreliable data; until districts accurately report suspension rates and school-based arrests, the scope of the problem will remain misunderstood. Losen and Martinez, Is California Closing the Discipline Gap?, *supra* note 1, p. 38.

[135] Jordan Statement at 5; James Huguley, Ph.D., Assistant Professor and Interim Director, Center on Race and Social Problems, University of Pittsburgh, Pittsburgh, P, Written Statement, *Nov. 21 PA Briefing*, at 5 (hereafter Huguley Statement).

[136] Willingham-Jaggers Statement, at 4-5.

Finding 5: Need for Trauma Screening and Trauma-Informed School-Based or Community Services

One panelist who has spent a lot of time working with youth in a detention facility presented testimony based on her experiences with LGBTQ youth and in particular LGBTQ youth of color. Intensive one-on-one sessions revealed a pattern of children who end up adjudicated because they got in trouble at school and were very often living with undiagnosed and untreated trauma. The disruptive behavior in school is often a reaction to trauma. Thus, addressing the trauma and providing supports to students earlier in their school careers may reduce the reliance on exclusionary discipline and school-based arrests.[137]

The trauma students suffer as a result of marginalization based on sexual orientation, gender identity, race, or disability, may contribute to student behavior that results in suspension or expulsion.[138] Black, gender nonconforming youth, who felt singled out and antagonized by school police, were likely to be arrested. A child who spends time in the juvenile justice system is caught in a system that is traumatic by design, especially if the child identifies as LGBTQ. Detention removes the child from their family and community, which creates a sense of powerlessness, more exposure to violence, and bullying.[139] It also contributes to the potential of being harmed, exploited by detention staff, exposure to toxic stress, and continued interruption to their education.

Additionally, youth are admitted in the juvenile justice system without sufficient screening for trauma. The juvenile justice system, child welfare system, and school districts tend to miss the opportunity to screen students to provide them with the appropriate services.[140] Without appropriate identification of trauma experiences and without needed interventions at the school-level, some courts have developed programs to provide interventions. The York County Court of Common Pleas works to identify and provide supports through trauma-informed approaches and works to ensure that children are kept with their family and in the community and provided with needed services.[141]

Growing work is being done around trauma-informed approaches in education. Recently, the Pennsylvania Department of Education issued guidance. Additionally, many schools have insufficient psychologists to support their students, as well as inadequate numbers of social workers, nurses, and counselors. More needs to be done to provide these needed-supports to students and to expand trauma-informed approaches.[142]

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[137] Erica Smith, Sexuality Educator, The Children's Hospital of Philadelphia, Philadelphia, PA, *Nov. 21 PA Briefing*, p. 32 (hereafter E. Smith Testimony).

[138] Ibid., p. 34.

[139] Ibid., p. 36.

[140] Ibid., p. 66.

[141] Uhler Statement, at 2.

[142] Jordan Testimony, *PA Nov. 21 Briefing*, p. 70.

Exclusionary discipline further exacerbates trauma.[143] Children who are suspended find themselves on an adverse life trajectory, often because of preceding trauma or other factors. Once a child is sent out of the classroom, the child has limited access to instruction and may also lack adult supervision. The negative consequences of exclusion are enumerated above, in Finding 1.

Recommendations

Given the harms identified above, the recommendations in this section focus on ways schools can limit exclusionary discipline by actively taking steps to address student needs and adopting policy changes to reduce the use of exclusionary discipline. Schools should actively limit exclusionary discipline, while simultaneously developing alternatives to exclusionary discipline methods. Both approaches can happen concurrently, and schools should not wait until alternatives to exclusionary discipline methods are funded and implemented.

Set forth below, are the recommendations that the Pennsylvania Advisory Committee makes to the U.S. Commission on civil rights.

Recommendation 1: Limit Exclusionary Discipline

Federal

A number of federal initiatives seek to end zero tolerance and reduce juvenile justice involvement. Resourcing the U.S. Department of Education's Office of Civil Rights to ensure robust investigations into state complaints is one suggestion. Federal legislative initiatives, such as The Ending Punitive, Unfair, School-Based Harm that is Overt and Unresponsive to Trauma (PUSHOUT) Act,[144] aim to reduce the use of suspensions and expulsions, while acknowledging the disproportionate impact of exclusionary discipline, especially on girls of color.

State

Given the overwhelming evidence that exclusionary discipline harms students and does not make schools safer, the Committee recommends that Pennsylvania follow many other state legislatures in banning the use of suspensions, especially of our youngest students. California, Connecticut, Maryland, New Jersey, Oregon, Texas, and more have banned the use of suspensions for most elementary school students.[145] Recognizing the grave harm to students and communities and the

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[143] Perpetual Baffour, Counsel or Criminalize: Why Students of Color Need Supports, Not Suspensions, Center for American Progress (September 22, 2016), 5, https://cdn.americanprogress.org/wp-content/uploads/2016/09/21142816/SupportNotSuspensions-brief.pdf?_ga=2.180311910.319098319.1603154525-1246664913.1603154525.

[144] H.R. 702, 116th Cong. (2019-2020). *See also, End School Pushout for Black Girls and Other Girls of Color*, National Black Women's Justice Institute (2019), 2 (hereafter "*End School Pushout*").

[145] *See, e.g.*, CAL. EDUC. CODE § 48900(k)(1)(2); C.G.S.A. § 10-233c(g); N.J.S.A. § 18A:37-2a(a).

failure to create safer schools through suspensions, Pennsylvania's two largest school districts, Philadelphia and Pittsburgh, have banned the use of suspensions through second grade. It is time for the rest of the state to follow suit. The Pennsylvania General Assembly (General Assembly) should pass legislation banning the use of suspensions of elementary school students.

We must also provide districts, schools, and teachers with the resources to effectively improve school climate through the use of non-punitive supports and services for students, such as counseling and other health services.[146] The state must resource districts, schools, and teachers with the capacity, culture, and community partners they need to address students' social, emotional, mental, and physical health needs.[147]

Pennsylvania must provide districts with the resources they need to invest in preventative, supportive solutions to create positive school climate.[148] The Committee recommends increasing funding and supporting mental health professionals for mental health, behavioral health, and trauma-informed care.[149] These funds should be invested in social and emotional support for Pennsylvania students. The General Assembly could also expand Pennsylvania's State Medicaid Plan to allow schools to not only seek reimbursement for enrolled students with disabilities, but also to provide resources that could strengthen school health capacity.[150] As the state invests in these ways, however, it is essential that teachers and mental health counselors are trained and placed in schools across the Commonwealth. These counselors must be able to provide necessary resources and interventions for students facing adverse experiences inside and outside of the school setting.[151] Pennsylvania should also train teachers and administrators on non-punitive responses and trauma-sensitive responses.[152]

Additionally, to ensure exclusionary discipline is used rarely and appropriately, the different branches of government should support restorative efforts with investments of public and private funds.[153] The General Assembly should review funding for the Pennsylvania Department of Education (PDE) to determine what additional resources are needed to ensure positive interventions are in place as an alternative to exclusionary discipline. The state should redouble existing efforts to minimize the use of exclusionary discipline and law enforcement intervention

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[146] Harper Statement, at 7. *See also*, Gray Statement at, 3; Willingham-Jaggers Statement at, 5; T. Smith Statement at, 1-2.

[147] Harper Statement, at 7.

[148] *See also,* Recommendation 5 in this Report.

[149] Gray Statement, at 3. *See also*, Willingham-Jaggers Statement, at 5; T. Smith Statement, at 1-2.

[150] Harper Statement, at 7.

[151] Willingham-Jaggers Statement, at 5.

[152] Losen Statement, at 10.

[153] Gray Statement, at 4.

and move toward a system of evidence- or research-based alternatives.[154] The State has begun its investment in positive behavior alternatives but should ensure continued state investment and implementation across the Commonwealth.[155]

The PDE should also provide model language for districts' codes of conduct that focuses on restorative practices and creating positive school climates. Policymakers should change district codes of conduct to limit suspensions for minor misbehavior and shorten the length of suspensions. Furthermore, the PDE should clarify Pennsylvania's schools' obligation to report incidents to police, removing routine school disciplinary matters and typical day-to-day conflicts from the purview of officers. Existing state law prescribes that only specific major incidents be immediately reported; however, the Model Memorandum of Understanding (MOU) for agreements between districts and law enforcement listed in the state regulations also lists incidents where police notification is discretionary.[156] Administrators are confused and feel pressured to bring the police into a broad range of school incidents.[157]

The Committee recommends that the Commonwealth actively work toward ending the school-to-prison pipeline. This can be done by monitoring and limiting use of police in schools,[158] and clarifying and reducing requirements for police involvement.[159] Rather than investing in an increased presence of School Resource Officers (SROs) and police officers, Pennsylvania should incentivize school districts to divest funds from law enforcement and reinvest in students, including behavioral health and positive behavior supports.[160] Laws should also reduce or eliminate the imposition of summary offense citations and arrests on students to decrease school referrals to the justice system.[161]

The Commonwealth should also expand diversion programs. For example, the Philadelphia Police School Diversion Program is a citywide program that diverts students before school-based arrests are made. Instead of arresting students for minor school-based incidents, the program encourages diverting students from the criminal or juvenile justice systems and instead intervening with social services and counseling for students and their parents when the student first gets in trouble. The Committee recommends considering diversion models across the Commonwealth and instituting trainings that teach officers, both in and out of schools, how to support students, not criminalize young people's normal adolescent behaviors.[162] However, in order to effectively have diversion

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[154] *Discipline Policies in PA's Public Schools,* p. 7, *supra* note 72. *See also*, Jordan Statement, at 4.

[155] Gray Statement, at 3; *see also*, Uhler Statement, at 5.

[156] 22 Pa Code Chapter 10 (2012). 1/25: Accept.

[157] Jordan Statement, at 4; *see also,* Recommendation 5 from PA Joint Government Commission Report, p. 8.

[158] Losen Statement, at 10.

[159] Jordan Statement, at 4.

[160] Losen Statement, at 10.

[161] Jordan Statement, at 5.

[162] Bethel Statement, at 2.

programs, the Commonwealth should also properly train SROs or other types of security personnel to ensure they interact positively with all students, including (LGBTQ) students, especially LGBTQ students of color. To minimize the role of school police officers as school disciplinarians, a clear MOU between the school and law enforcement about the SROs' role, responsibilities, and jurisdiction is needed.[163]

Local

At the local level, school districts can continue to engage in positive behavioral supports and enforce local bans on suspensions of elementary school students. In the School District of Philadelphia, this change has resulted in fewer children, and fewer children of color, being subject to exclusionary discipline practices.[164]

Local school districts and individual schools can also invest in alternatives to exclusionary discipline. Schools should shift from punitive to positive discipline using restorative approaches. Educators can invest time and energy into developing positive behavior intervention systems and supports, which have a strong evidence base to suggest that such practices have a greater impact on improving school culture, decreasing student discipline issues, and increasing student academic achievement.[165] Districts should institute positive and restorative discipline policies.[166] Individual educators can continue to innovate to create alternatives to avoid punitive consequences,[167] and implement a restorative justice disciplinary framework or standalone techniques.[168]

The Committee recommends that schools continue to use Positive Behavioral Intervention Supports (PBIS)[169] in school environments,[170] which require growing and expanding corps of climate coaches in local districts and collaborating with university partners to implement evidence-based programs. Schools should have in place restorative practices such as peer mediation, mentoring, counseling, and other student-centered means of helping children return to their regular

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[163] Willingham-Jaggers Statement at, 4, citing GLSEN (2018). *Respect for All: Policy Recommendations to Support LGBTQ Students: A Guide for District and School Leaders.* Washington, DC, https://www.glsen.org/activity/respect-all-policy-recommendations-support-lgbtq-students.

[164] Gray Statement, at 3.

[165] Willingham-Jaggers Statement, at 4. GLSEN (2018) *Respect for All: Policy Recommendations to Support LGBTQ Students: A Guide for District and School Leaders.* Washington, DC, https://www.glsen.org/activity/respect-all-policy-recommendations-support-lgbtq-students.

[166] Willingham-Jaggers Statement, at 4.

[167] Gray Statement, at 3.

[168] Welch Statement at, 14-15.

[169] *See also,* PBIS described in Glossary of Terms at Appendix 6, of this Report.

[170] Gray Statement, at 4.

school settings;[171] schools should hire and train school-based counselors and social workers that can support these alternative methods of discipline. Having facilities and trained personnel at all schools to accommodate our children when situations arise where a child is not able to participate appropriately in a classroom or other school setting is also a key component to implementing these methods. It is essential, as well, that these discipline policies rely on positive and restorative approaches and do not disproportionately target LGBTQ youth, students of color, English Language Learners (ELL), or students with disabilities.

Finally, school districts should engage their community in limiting exclusionary discipline and finding alternatives. To truly effect positive change, districts should engage concerned community members, including teachers, other school personnel, parents, community partners, and of course, students, to ensure that the lived experiences of those impacted have a voice in the creation and reformation of these policies.

Recommendation 2: Eliminate Disparate Discipline

While Recommendation 1 above focuses on reducing exclusionary discipline overall to reduce harm overall, Recommendation 2 focuses on the specific need to reduce the disparities in school discipline. While there are numerous concerning findings regarding the disparate impact of exclusionary discipline, there are also clear and proven recommendations to address disparate discipline at the federal, state, and local levels. These recommendations generally fall into two categories: limit opportunities for the imposition of disparate discipline and replace the punitive model of school discipline with positive alternatives to improve school climate.

Federal

The Pennsylvania State Advisory Committee recommends the enforcement of existing federal laws and regulations and supports proposed legislation intended to address disparate discipline. The federal government should increase enforcement of anti-discrimination laws in schools.[172] U.S. Congress should also consider legislation designed to address disparities in school discipline, like the PUSHOUT Act.[173] Continued collection of detailed, long-term data at a national level are also important, because it allows for states and districts to be held accountable.[174] Thus, as the U.S. Department of Education continues its data gathering for the Civil Rights Data Collection, we recommend the collection of exclusionary discipline data both disaggregated and inclusive of intersectional data, e.g. number of Black girls suspended.[175] The federal government should reduce state subsidies for school police and other hardening measures that incentivize the use of exclusionary discipline in favor of increasing state subsidies for mental and behavioral health staff

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[171] Dawson Prepared Statement, at 4.

[172] Losen Statement, at 10; *see also*, Willingham-Jaggers Statement, at 5.

[173] H.R. 702, 116th Cong. (2019-2020); s*ee also, End School Pushout,* p. 2.

[174] *See, e.g.*, Jordan Statement, at 5; Losen Statement, at 10; Harper Statement, at 8; Welch Statement, at 12.

[175] Losen Statement, at 10; Harper Statement, at 8; Welch Statement, at 12.

and training.[176] Finally, we recommend the federal government reinstate the 2014 joint guidance from the U.S. Departments of Justice and Education entitled "Dear Colleague Letter on Nondiscriminatory Administration of School Discipline".[177] This document served a valuable purpose of providing guidance to states and districts to help address disparate discipline. Reinstating the guidance will assist states, districts, and schools in developing practices and strategies to enhance school climate and ensure those policies and practices comply with federal law. Notably, a June 2020 report from the United State Government Accountability Office found no causal link between exclusionary discipline like suspensions and expulsions and school shootings, disputing the reasoning used in the rescission of this federal guidance.[178]

State

The Committee recommends that Pennsylvania take some actions that parallel those of the federal government and some that are unique. In coordination with the federal initiatives, the Pennsylvania Department of Education (PDE) should continue to collect data from districts and require that districts report their data publicly. Pennsylvania already collects much of this data through the Safe Schools Report.[179] We recommend using this data to provide technical assistance to districts reporting high levels of disparate discipline.[180] For example, if a district shows a rate of students with disabilities at 14%, but of students receiving exclusionary discipline, 25% are identified as students with disabilities, PaTTAN (the technical assistance arm of the Bureau of Special Education within the PA Department of Education) or another provider ought to afford technical assistance so that district accurately utilizes manifestation determinations.

In addition, funding from the legislature and through the PDE's grant programs should incentivize positive supports and disincentivize the hardening of schools.[181] The state, through the PDE—

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[176] Losen Statement, at 10 (recommending the committee to "[e]ncourage local advocates and school boards to audit school funding for police and other security and compare it with student support personnel, and where appropriate to divest investment in policing in order to re-directing those funds to support, training for teachers and leaders, and personnel such as restorative justice coaches."). Numerous panelists spoke about the need to increase funding for mental and behavioral staff and training. *See also*, Willingham-Jaggers Statement, at 5; Gray Statement, at 3; Staley Statement, at 4; Rau Statement, at 2; Huguley Statement, at 4.

[177] Losen Statement, at 10; *see also*, Joint U.S. ED/DOJ Dear Colleague Letter, (Jan. 8, 2014), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf.

[178] See "K-12 EDUCATION Characteristics of School Shootings" GAO, June 2020, https://www.gao.gov/products/GAO-20-455.

[179] Pa Safe School Report, https://www.safeschools.pa.gov/Home.aspx?App=Empty&Menu=dbd39a1f-3319-4a75-8f69-d1166dba5d70.

[180] See Settlement Agreement Between the United States and the Pennsylvania Department of Education, https://www.justice.gov/opa/press-release/file/1147176/download.

[181] Under a grant program defined in the Safe Schools Act, the legislature allocates funding to districts for "safety" with some funds dedicated for increasing school security and some funds dedicated for prevention or restorative practices. The legislature originally set the allocation at 60-40 but changed it to 75-25 in 2019, reflecting a greater investment in hardening over preventative measures. PUBLIC SCHOOL CODE OF 1949, §1302-A(e)(1-2).

perhaps through a PennLink or Basic Education Circular (guidance to districts) or more individualized assistance—could provide technical support to help districts update their codes of conduct and other policies to address bias, be more inclusive, and help eliminate disciplinary practices that disparately affect students of color, students with disabilities, and LGBTQ students.[182]

And, as recommended in the section above, the state should follow what other state legislatures and the Commonwealth's two largest school districts have done and ban the suspension of K-2[183] students. Like Texas, Connecticut, California, Maryland, New Jersey, Oregon, and other states, Pennsylvania should ban the use of suspensions for K-2 students and consider expanding that ban for all elementary school students for discretionary offenses—the offenses most ripe for disparate treatment.[184]

Local

To address disparate discipline, educators and community members must be made aware of its widespread existence and impact. School boards should review district data and provide oversight should disparities exist.[185] These data should also be made available to the public in an easily accessible digital format.[186] Districts should then analyze and address inequality in discipline indicated by their own data.[187]

Districts generally review and revise their codes of conduct annually. This examination presents an important opportunity to make needed reforms to codes of conduct to remove purely punitive responses to student behavior.[188] When reforming existing policies, districts should elicit student

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[182] Rau Statement, at 2-3.

[183] *See also,* K-2 described in Glossary of Terms at Appendix 6, of this Report.

[184] Skiba, R.J., Michael, R.S., Nardo, A.C. et al. *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, The Urban Review, 317–342 (2002), https://doi.org/10.1023/A:1021320817372. As of 2019, laws in 31 states limit the use of suspension or expulsion under certain conditions, such as grade level. Harper Statement, at 3. S*ee also,* Cal. Educ. Code Ann. § 48900(k)(1)(2) (banning suspension for "willful defiance" for students in grades K-8, explicitly to combat disparate discipline; Md. Code Ann. Educ. § 7–305 (banning the suspension and expulsion of pre-kindergarten through second grade students, except where the student would create an imminent risk of serious harm); New Jersey SB 2081 N.J. Stat. Ann. § 18A:37-2a(a) (limiting expulsions and suspensions for students in preschool through grade 2 for conduct not imminently endangering other students); Ohio HB 318 (prohibiting out-of-school suspension or expulsion of students in grades pre-K through 3 for minor offenses); *see also*, Staley Statement, at 5.

[185] Losen Statement, at 10; Welch Statement, at 12.

[186] For example, Pittsburgh Public Schools has a dashboard on its website where it publishes suspension data by categories such as age, race, gender, and disability. This dashboard is currently limited to out of school suspensions but can provide an example of how a district can share data publicly, https://www.pghschools.org/Page/5070. *See also, End School Pushout.*

[187] Jordan Statement, at 4.

[188] Rau Statement, at 2.

participation in the co-construction of policies so that they are better aligned to student needs and limit room for bias.[189] Districts and schools can also ensure the language used in their policies support all students, including transgender and nonconforming students.[190] Districts should also set forth in their MOUs that law enforcement only be involved if a child is violating the law; districts should not use police as school disciplinarians.[191] These MOUs should be reviewed annually in response to data and changes in policy.[192]

Recommendation 3: Expand the Use of Positive Interventions

The testimony heard by the Committee as well as promising practices from states across the country provide helpful recommendations and a road map for how to reduce the disproportionate use of exclusionary discipline; instead of using exclusionary discipline, districts, Pennsylvania, and the federal government should support and implement the use of preventative, positive interventions to improve school climate. While some of these alternatives are not new ideas to Pennsylvania or our districts, they ought to be implemented more widely and with fidelity.

Federal

We recommend that the federal government encourage the expansion of positive supports through legislation, regulations, guidance, funding, and the encouragement of best practices. Federal funding, such as grants that subsidize the hardening of schools should be redirected so that school police are no longer a cheaper alternative to evidence-based resources, such as mental health professionals.[193] The federal government can also support and strengthen anti-bullying legislation, regulations, and guidance.[194] On the issue of discipline, the federal government should increase the range of intervention responses available to schools to ensure educators and administrators exhaust non-punitive practices before resorting to exclusionary discipline.[195] As mentioned above,

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[189] *End School Pushout,* at 4. For example, districts can co-create dress policies with Black girls so that policies and practices don't continue to punish Black bodies, non-dominant cultural practices, and gender non-conforming youth. *Let Her Learn: Stopping School Pushout*, National Women's Law Center (2017) 12. The Alliance for Girls recently coordinated a student-led initiative to updated Oakland Unified School District's sexual harassment code. *See* Valuing Girls Voices, Alliance for Girls (2016).

[190] Willingham-Jaggers Statement, at 5. And Pittsburgh Public Schools now uses gender-neutral pronouns in its code of conduct to correspond with its inclusive transgender/gender nonconforming students' policy, page 12, https://www.pghschools.org/site/handlers/filedownload.ashx?moduleinstanceid=1326&dataid=14484&FileName=PPS%20Fact%20Sheet%20Code%20of%20Conduct.pdf.

[191] *End School Pushout*, at 4. *See also*, Losen Statement, at 10; Bethel Statement, at 2.

[192] *End School Pushout*, at 4.

[193] Willingham-Jaggers Prepared Statement, at 5; *see also*, Gray Prepared Statement, at 3; (NBWJI Sept 2019).

[194] Willingham-Jaggers Statement, at 5.

[195] Derek Cohen, Ph.D., Director, Right on Crime, Texas Policy Foundation. Austin, TX, Written Statement for *Nov. 21 PA Briefing*, at 7 (hereafter Cohen Statement) said: "A holistic approach to stopping the school to prison pipeline is one that increases the tools available for school discipline to ensure that the choice is most appropriate for the individual."); Staley Statement, at 5, recommended that: codes of conduct require educators and school

in Recommendation 2, the federal government can address some of these recommendations by reinstating the 2014 guidance on school discipline and as highlighted in Recommendation 1, limit the use of punitive, exclusionary discipline generally.

State

The General Assembly should pass legislation that requires exhaustion of alternatives prior to the imposition of exclusionary discipline for non-violent offenses that data show have most disproportionality.[196] In addition, the dollars that the legislature currently allocates under the Safe Schools Act[197] for grant distribution should preference positive behavior intervention and supports, restorative practices, and mental health supports instead of the current preference in the grants for the hardening of schools.[198] Relatedly, the state should fund and encourage Intermediate Units (IUs) and PaTTAN to provide supports to districts around mental health and alternative interventions.[199] Further, the legislature should dedicate state funding for resources to specifically support marginalized students, such as students of color, LGBTQ, gender non-conforming, and non-binary students in school.[200]

In addition, the State Board of Education and the PDE should consider regulations and guidance instructing districts to respond to students' needs without criminalizing their mental health, disability, or particular normal childhood behavior. Districts should be supported by the state to develop safety plans that prioritize alternatives to school policing and limit when police are called.[201]

Local

The Committee recognizes the numerous recommendations made at the November hearings about ways that local school districts can expand the use of positive interventions and has grouped them into three sub-categories: codes of conduct, provision of programs and services, and training.

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administrators to exhaust all non-punitive, alternative disciplinary practices before exclusionary discipline is considered, as has been done in California).

[196] Staley Statement, at 5; *see also,* Cal. Educ. Code Ann. § 48900(k)(1)(2)]

[197] PA Safe School's Act, PUBLIC SCHOOL CODE OF 1949, §1302-A(e)(1-2)

[198] Losen Statement, at 10; Rau Statement, at 2.

[199] A number of participants testified to the need for the state to provide training and support to educators on mental health and positive interventions. *See, e.g.*, Willingham-Jaggers Statement, at 5; Rau Statement, at 2; Rosenbaum Prepared Statement, at 2; Dawson Prepared Statement, at 2.

[200] Willingham-Jaggers Statement, at 5. *See* GLSEN (2018), *Respect for All: Policy Recommendations to Support LGBTQ Students: A Guide for District and School Leaders*, Washington, DC, https://www.glsen.org/activity/respect-all-policy-recommendations-support-lgbtq-students. *See also,* Gender Non-conforming and Non-binary described in Glossary of Terms at Appendix 6, of this Report.

[201] Jordan Statement, at 4. *See also*, Be Her Resource, A toolkit about school resource officers and girls of color, Center on Poverty & Inequality, Georgetown Law and National Black Women's Justice Institute; NBWJI 2019.

a. Codes of Conduct: School districts must acknowledge that particular provisions of codes of conduct, even if neutral on their face, may reflect cultural bias and lead to disproportionate discipline of certain students. For example, dress code provisions have been found to result in disproportionate exclusionary discipline of Black girls.[202] School districts should innovate to avoid punitive consequences of discipline and reject the status quo where suspensions are frequent and discipline disparities wide.[203] Districts should first focus on reducing the use of exclusionary practices as a consequence for minor offenses.[204] Districts should recognize the need to invest in positive and restorative behavior alternatives.[205] Schools should develop a robust continuum of alternatives to exclusionary discipline and eliminate the use of suspension and expulsion.[206] Though a restorative justice disciplinary framework is preferred, districts can also immediately begin to implement standalone alternative techniques.[207] To achieve these goals, districts must be committed to developing a strong relational climate where students feel safe, supported and understood as opposed to punished.[208]

b. Provision of Programs and Services: Districts and schools should expand programs to support students and create classroom environments where students feel welcome and respected and see diversity celebrated.[209] Districts should continue to invest in mental health support services, with a focus on positive supports.[210] Some teachers, used to zero tolerance

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[202] *See e.g.*, Monique Morris, *Pushout: The Criminalization of Black Girls in Schools* (2016). This reality has led some school districts to include language in their codes of conduct banning the use of exclusionary discipline for dress code violations. See School District of Philadelphia's Code of Student Conduct at page 9, https://www.philasd.org/studentrights/wp-content/uploads/sites/67/2019/08/19-20-Code-of-Conduct.pdf. "A dress code violation shall not result in exclusion from the classroom environment." Districts should also amend the dress codes themselves to debias the language.

[203] Rau Statement, at 3; Losen Statement, at 10.

[204] Huguley Statement, at 4.

[205] Gray Statement, at 3; Willingham-Jaggers Statement, at 4.

[206] Staley Statement, at 4.

[207] Welch Statement, at 15. "Examples include restorative circles, student conferences, and peer mediation; all of these practices allow the victim, offending student, and school community members to understand the harm that occurred, focus on what can best address this harm, thoughtfully assign accountability and responsibility, and reintegrate all parties within the school community. These techniques often lead to solutions such as restitution, which requires the offending student to repay the school or a victim for damages or injuries, or community service, which allows students to simultaneously repair harms while observing the negative consequences of them." Regardless of whether schools still have zero tolerance policies, implementation of alternative practices has coincided with an overall decrease in suspension and expulsion.).

[208] Huguley Statement, at 3; E. Smith Statement, at 3.

[209] Uhler Statement, at 5; Dawson Prepared Statement, at 2; Staley Statement, at 6.

[210] Huguley Statement, at 6; Staley Statement, at 4; E. Smith Statement, at 1-2; Harper Statement, at 7.

frameworks, question restorative approaches and need support to make this shift.[211] Educators recognize the challenges that exclusionary discipline creates, but they also need support to help maintain the learning environment.[212] Schools should work to have a safe space and staff that can help a child refocus or de-escalate—sufficient facilities to accommodate children when they cannot participate in the classroom; this strategy is not the same as excluding them from school through punitive discipline.[213] They should couple this alternative with restorative practices to help return children to the learning environment.[214] In order to achieve these goals, districts should have staff dedicated to improving school climate and may also consider working with community partners to develop holistic solutions.[215]

c. Training: Educators can continue to be trained on fostering inclusive learning environments.[216] This training includes modules on consent, healthy relationships, and bystander intervention, with a focus on culturally-responsive instruction and supporting students experiencing harassment and bullying.[217] It is important for the success of these programs that there is shared buy-in from administrators and educators, in addition to students and parents.[218] Educators should be coached in developing empathy and understanding the existence and impact of adverse childhood experiences on students.[219] This emphasis on marginalized and intersectional students can help to bridge the gap between the backgrounds of educators and their students.[220] Educators should also be made aware of systemic implicit bias in discipline and trained in alternative, neutralizing routines.[221] Beyond the classroom, local districts can also provide training and resources to enable other school personnel to adequately support underserved students.[222] Low cost options, such as peer information exchange of promising practices, may also prove useful to districts, school, and educators. While training for educators is important to ensure they have the tools to create a positive school climate without resorting to punitive exclusionary discipline, it is also important that

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[211] Gray Statement, at 4.

[212] Dawson Prepared Statement, at 1-2.

[213] Ibid., 2.

[214] Ibid.

[215] Huguley Statement, at 5; Rau Statement, at 3.

[216] Willingham-Jaggers Statement, at 5.

[217] Gray Statement, at 3; Willingham-Jaggers Statement, at 4-5; Harper Statement, at 7; Huguley Statement, at 3; Staley Statement, at 6.

[218] Huguley Statement, at 3.

[219] Desamour Statement, at 2; Rau Statement, at 2.

[220] Willingham-Jaggers Statement, at 4.

[221] Hollins-Sims Statement, at 2.

[222] Staley Statement, at 6.

we not use lack of funds for training as an excuse to disregard and fail to implement the needed reforms mentioned throughout the Committee's recommendation.[223]

Recommendation 4: Improve the Collection of Robust and Verified Data

As Finding 4 enumerated, there is a need for improved and intersectional data collection. Data analyzing lost instruction shows that secondary students and students attending alternative schools experience profoundly disparate rates of lost instruction; when looking at K-12 data at large, these disparities are not visible.[224] More data could help us understand the depths of lost instruction that results from exclusionary discipline. K-12 data collected and reported by the federal government does not disaggregate data to reveal the impact of lost instruction for these groups. Moreover, exclusively analyzing out-of-school suspension through national trends does not accurately depict rising rates of exclusionary discipline in local districts and the subsequent widening of racial disparities. Data collected on school security officers shows that police presence in schools contributes to lost instructional time, especially for Black students, and school districts with predominantly Black student populations also have the highest percentage of missing policing data.[225] While federal law requires state and district-level data on the number of referrals and school-based arrests to be reported on an annual basis, failure to report this data is widespread. To address disparate discipline and the over-representation of students of color, students with disabilities, and LGBTQ students in the juvenile justice system, robust and reverifiable data are needed.

Federal

The Committee recommends data collection disaggregated by race/ethnicity, gender, ability, and available intersectionally (e.g. how many Black girls with disabilities were arrested in school in a particular district, reported to the state and then to the U.S. Department of Education's Civil Rights Data Collection).[226]

In addition, the Committee urges that federally collected data regarding days lost by reason for the out of school suspension be made available.[227]

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[223] *See* also, Recommendation 5 in this Report.

[224] *Lost Opportunities* pp.16-19.

[225] Ibid., p. 36.

[226] Losen Statement, at 10.

[227] Ibid., at 4.

State

More thorough data needs to be collected at the state level.[228] The Committee recommends that the Commonwealth improve data collection and public reporting of all the discipline data, days of loss instruction, referral to law enforcement, and school-based arrests.[229]

The Committee urges the Commonwealth to ensure that the data collection is thorough and accurate.[230] Nuanced, disaggregated data should capture all disciplinary incidents, including the number and nature of referrals, non-exclusionary interventions attempted, and any resultant in-school or out of school suspension, alternative school transfer or expulsion.[231]

Local

The Committee recommends that on a local level available publicly and reported to the state, there be data collection to measure and have a better understanding of who is getting disciplined and for what infractions, and whether alternatives are tried, and whether it is the same teacher or principal excluding particular cohorts of students.[232] More detailed data on discipline would also allow schools to better assess and address student needs and prevent misbehavior.[233]

School districts should also track restorative justice efforts to measure efficacy and share promising practices.[234]

Recommendation 5: Commit to Funding the Resources Needed to Eliminate Disproportionate Discipline

Throughout the recommendations section in this report, there are references to district need, e.g., counseling, and mental health support for students, teacher training on trauma-informed practices, etc., state need, e.g., state grants to districts re: prevention practices, and federal need, e.g., collection of data by the Civil Rights Data Collection within the U.S. Department of Education and related follow-up with districts. These recommendations come at a cost. And it is worth acknowledging that while we cannot wait for increased funding to implement reforms (e.g. we can ban suspensions of young elementary school students because we know it causes harm even before we have a perfect, scaled up training system in place), we must also think about the need to fund our schools adequately and equitably.

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[228] Welch Statement, at 12.

[229] Losen Statement, at 10.

[230] Jordan Statement, at 5.

[231] Huguley Statement, at 5.

[232] Welch Statement, at 12.

[233] Ibid.

[234] Ibid., at 14.

The gap between what our state's wealthiest and poorest school districts spend on schools has been growing, and U.S. Department of Education has flagged it as the worst such gap in the country.[235] Pennsylvania ranks 44th in terms of state share; meaning that most states in the country pay a larger share of education spending in their states than Pennsylvania does; the state contributes only 38% of the costs of K-12 education in the state, compared to a national average of 47%.[236] In Pennsylvania, we are overly reliant on local wealth to fund education. On a practical level, that means that one's ZIP code determines the quality of one's education. Addressing the inequitable and inadequate funding system in Pennsylvania would certainly impact the availability of funds to address disproportionate discipline and would help fund the implementation of alternative solutions, like increasing the counselor to student ratio.

Both Congress and the General Assembly should allocate adequate dollars to school districts to ensure the creation of positive school environments that support all students.

Conclusion

The Committee is grateful to the U.S. Commission on Civil Rights for the opportunity to provide findings and recommendations to dismantle the school-to-prison pipeline and address the disparate discipline of students of color, students with disabilities, and LGBTQ youth in the Commonwealth of Pennsylvania.

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[235] Graham, Kristen A., "Pa.'s school-spending gap widest in nation," The Philadelphia Enquirer, March 13, 2015, https://www.inquirer.com/philly/news/local/20150314_Pa__s_school-spending_gap_widest_in_nation.html.

[236] https://www.census.gov/data/tables/2018/econ/school-finances/secondary-education-finance.html, Summary Table 5.

Dismantling the School-to-Prison Pipeline: Addressing the Disparate Discipline of Students of Color, Students with Disabilities, & LGBTQ Students

Briefing Before the PA Advisory Committee
to
U.S. Commission on Civil Rights
November 19, 2019

AGENDA

12:00 pm Welcome and Introductions

12:05 pm Overview Panel of National Experts

Daniel J. Losen, Director
Center for Civil Rights Remedies
UCLA
Los Angeles, CA

Kristen Harper, Director for Policy Development
Child Trends
Bethesda, MD

Melanie Willingham-Jaggers, Deputy Executive Director
Gay, Lesbian, Straight Education Network (GLSEN)
New York, NY

Jonathan Butcher, Senior Policy Analyst
The Heritage Foundation
Washington, DC

AGENDA

Thursday, November 21, 2019

In-Person:
Temple University Center City
1515 Market Street, Room 222
Philadelphia, PA 19102

And Via Conference Call

9:00 am – 9:15 am	**Welcome from the Chair and Introductions of Committee Members**
9:15 am – 10:45 am	**Panel 1: Disparate and Punitive Impact of Exclusionary Practices** **Harold Jordan, Senior Policy Advocate** **ACLU-Pennsylvania** **Philadelphia, PA** **Dr. Paul Morgan, Professor of Education and Demography** **Department of Education Policy Studies** **Population Research Institute** **Pennsylvania State University** **University Park, PA** **Erica Smith** **Sexuality Educator** **The Children's Hospital of Philadelphia** **Philadelphia, PA** **Judge John C. Uhler (Ret.)** **Court of Common Pleas, 19th Judicial District** **York County, PA**

10:45 am – 12:15 pm	**Panel 2: Obstacles to Success: What Perpetuates the Use of Exclusionary Discipline and Its Disparate Impact** **Dr. Nikole Hollins-Sims** **Educational Consultant** **PA Department of Education** **Harrisburg, PA** **Dr. Abigail Gray** **Deputy Chief of School Climate and Safety** **School District of Philadelphia** **Philadelphia, PA** **Dr. Kelly Welch, Associate Professor** **Department of Sociology and Criminology** **Villanova University** **Villanova, PA** **Tyrice Smith** **Former Montgomery County Public School Student** **Philadelphia, PA**
12:15 pm – 1:00 pm	**Lunch Break**
1:00 pm – 2:30 pm	**Panel 3: Pathways to Dismantling the School-to-Prison Pipeline** **Edwin Desamour, Dean** **Stetson Charter School** **Philadelphia, PA** **Dr. Damaris Rau, Superintendent** **School District of Lancaster** **Lancaster, PA** **Dr. Monica McHale-Small, Associate Professor** **School Psychology** **Temple University** **Philadelphia, PA** **Dr. James Huguley, Assistant Professor and Interim Director** **Center on Race and Social Problems** **University of Pittsburgh** **Pittsburgh, PA**

2:30 pm – 4:00 pm	**Panel 4: Pathways to Dismantling the School-to-Prison Pipeline** **Panelists:** **Kevin Bethel** **Special Advisor and Chief of School Safety** **Philadelphia School District** **Philadelphia, PA** **Reynelle Brown Staley, Policy Director** **Education Law Center-PA** **Philadelphia, PA** **Dr. Derek Cohen, Director** **Right on Crime** **Texas Policy Foundation** **Austin, TX**
4:00 pm – 5:00 pm	**Open Public Comments**

Briefing Record
The briefing record will remain open for approximately 30 days after the hearing date. Written statements and documents – articles, reports, studies that will inform the Committee on this topic – received in the Eastern Regional Office (ERO) of the Commission by 5:00 pm, on Monday, December 23, 2019, will be included in the briefing record. Written statements and documents may be submitted by email, to attention: Corrine Sanders: ero@usccr.gov.

days, Black students lost 80 more days than White students and Latinx[4] students lost 40 more days than White students.[5]

The number of days lost based on a student's race or ethnicity is most apparent in two school districts in Pennsylvania. Black students in the Sharon City School District lost 449 days of instruction per 100 students enrolled, 307 more days than White students. In Beaver Falls School District, Latinx students lost 260 days of instructional time, per 100 students enrolled, 160 more days than White students. Middle and high school students with disabilities in William Penn District lost 350 days per 100 enrolled, this number reflects out-of-school suspensions alone and does not include in-school-suspensions, or expulsions.[6] Lost instructional time for students with disabilities also means limited access to mental health services. Many students with disabilities rely on their school site to provide mental health and academic support services. According to the ACLU, "students are 21 times more likely to visit school-based health centers for mental health than community mental health centers."[7] As a result, an out-of-school suspension for a student with a disability is a significant detriment to the student's academic and mental health.

Data from Massachusetts show most out-of-school suspensions result from minor behaviors. Often, school resource or police officers are involved in the disciplinary procedures resulting from these minor behaviors. While police officers are not utilized in all districts, the areas which do seek support from law enforcement agencies demonstrate significant racial disproportionalities. Pittsburgh has the highest rate of referral to law enforcement with 106 more referrals occurring for Black students than White students, per 1,000 students.[8] Over a quarter of students enrolled in the counties of Columbia and Montour were referred to law enforcement in the 2015-2016 school year; this rate was even higher for Black students and students with disabilities. Half of all Black students in Pennsylvania had been referred to law enforcement at least once.[9]

Mr. Losen asserts that the frequent use of suspension and disciplinary removal is unjustified. In order to address disparities in school discipline, he recommends three direct actions. First, urge Pennsylvania policy makers to support funding measures to train teachers and administrators in non-punitive and less discriminatory responses to student behavior. Improve data collection and public reporting of all discipline data, including instructional days lost, referral to law enforcement and school-based arrest, and the reason for the disciplinary action. And finally, require the Pennsylvania State Attorney General to increase enforcement of anti-discrimination law in regard to unjust and unnecessary disciplinary removal.[10]

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[4] Latinx is gender-neutral term used to describe people of Latin American descent. *See also,* Latinx described in Glossary of Terms at Appendix 6, of this report.

[5] Losen Testimony,p. 3.

[6] Ibid., p. 4.

[7] Ibid.

[8] Ibid., p. 5.

[9] Ibid.

[10] Ibid., pp. 5-6.

Kristen Harper, M.Ed., Director of Policy Development, Child Trends of Bethesda, Maryland

Kristen Harper is the Director of Policy Development with Child Trends, a national nonpartisan research institute devoted to improving the lives of children, youth, and their families. Ms. Harper describes the latest policy shifts related to school discipline practices and the implications of discipline disparities for schools. National trends demonstrate decreasing rates of out-of-school suspensions yet disparities by race and ability status continue. In an analysis of federal civil rights data pertaining to school discipline trends between 2012 and 2016, Child Trends determined that while schools are reporting decreases in out-of-school suspensions overall; Black students were twice as likely as White students to receive an out-of-school suspension and students with disabilities were twice as likely to be suspended than students without disabilities.[11] Child Trends examined changes over time in discipline data rates for schools with significant racial and ethnic disparities in their data. From the 2011-2012 school year to the 2015-2016 school year, out-of-school suspension disproportionalities decreased by only 2%.[12] Schools in Pennsylvania mirror these national trends.

Ms. Harper maintains that suspension is both excessively used and demonstratively harmful to student outcomes. A quasi-experimental study completed by Breaking School Rules in 2011[13] determined that students who experience suspension or expulsion are at greater risk for dropout, grade retention, and contact with the juvenile justice system.[14] Twelve years after receiving an out-of-school suspension, an individual is less likely to earn a diploma or a bachelor's degree, and is more likely to have been arrested or incarcerated.[15] A student's risk of suspension in any one year is roughly 5 percent, yet 35% of students, and 67% of Black students, experience at least one suspension between kindergarten and 12*th* grade.[16] The frequent use of suspension as well as the research indicating the harm which results should cause significant alarm. Ms. Harper states, "the use of suspension runs counter to the goals of education, equity, and achievement."[17]

Policy makers have sought to shape school discipline practices through changes in statute and regulations. Ms. Harper highlights a need for collaboration between researchers and policy makers to ensure policies target research-identified problem areas. Two early studies examined reform in

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[11] Kristen Harper, Director of Policy Development, Child Trends, Bethesda, MD, Testimony, *Nov. 19 PA Briefing*, p. 6 (hereafter Harper Testimony).

[12] Harper Testimony, p. 6.

[13] Fabelo, T., Thompson, M. D., Plotkin, M., Carmichael, D., Marchbanks, M. P., & Booth, E. A. (2011). Breaking schools' rules: A statewide study of how school discipline relates to students' success and juvenile justice involvement. New York: Council of State Governments Justice Center, https://csgjusticecenter.org/wp-content/uploads/2020/01/Breaking_Schools_Rules_Report_Final.pdf.

[15] Harper Testimony, *Nov. 19 PA Briefing*, p. 7.

[16] Ibid., p. 6.

[17] Ibid., p. 7.

Philadelphia. As a result, some school discipline policies have mandated alternatives to suspension for low-level behaviors. The first study found that schools using collaborative and non-punitive approaches to school discipline were more likely to serve communities with few low-income families and families of color.[18] The second study found 60% of schools partially complied with school discipline reform whereas 17% of schools did not comply and conversely increased suspensions during the course of the study.[19] Overall, the second study found significant differences in school compliance with Philadelphia's reformed discipline policy. These studies illustrate the complex layers contributing to successful discipline reform implementation. If a reform effort targets a policy issue without also addressing underlying educational inequity, Ms. Harper argues, improved outcomes for students of color will not result.[20] Moreover, these studies demonstrate that Pennsylvania's reform efforts were not effective in creating state-wide change.

Research indicates that adversity in childhood can lead to long-term health implications. According to a Child Trends analysis from 2016:

> 45% of children in the United States had experienced at least one of eight adverse early childhood experiences or ACEs.[21] In Pennsylvania, 46% of children had experienced at least one ACE, and 10% have experienced three or more ACEs. All exposure to ACEs is generally associated with poor educational outcomes, it is also associated with emotional and behavioral difficulties during the childhood years.[22]

Use of suspension and expulsion, Ms. Harper states, leads to potential re-traumatization and alienation for children already coping with trauma and toxic stress. For Black students in special education, school responses to student behavior are most extreme.

Special education services support students with learning and intellectual disabilities, behavioral disabilities, and emotional disturbances. The Individuals with Disabilities Education Act (IDEA) describes children with emotional disturbances as "those whose behaviors and inability to build interpersonal relationships (among other characteristics) adversely affect their educational performance."[23] A U.S. Department of Education review of IDEA in 2016 found "Black students

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[18] Ibid. *See also,* Gray, A., Sirinides, P., Fink, R., Flack, A., DuBois, T., Morrison, K., and Hill, K. (2017). *Discipline in Context: Suspension, Climate, and PBIS in the School District of Philadelphia.* CPRE, Research Reports, https://repository.upenn.edu/cpre_researchreports/106.

[19] Harper Testimony, p. 7. *See also,* Steinberg, M., and Lacoe, J. (2017). The academic and behavioral consequences of discipline policy reform: Evidence from Philadelphia. Washington, DC. Thomas B. Fordham Institute.

[20] Harper Testimony, p. 7.

[21] *See also,* Vincent J Felitti et al., "Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults," *American Journal of Preventive Medicine* 14, no. 4 (1998): pp. 245-258, https://doi.org/10.1016/s0749-3797(98)00017-8. *See also,* Adverse Early Childhood Experiences, described in Glossary of Terms at Appendix 6, of this report.

[22] Harper Testimony, *Nov. 19 PA Briefing*, p. 8.

[23] Kristen Harper, Director of Policy Development, Child Trends, Bethesda, MD, Written Statement for *Nov. 19 PA Briefing,* at 5 (hereafter Harper Statement). (1st reference to written statement.) *See also,* The Individuals with Disabilities Education Act (IDEA) *300 C.F.R. § 300.8 (c) (4).*

ages 6-21 were 40% more likely than all other racial and ethnic groups to receive special education services under IDEA. Further, Black students in this age group were twice as likely as their peers to be identified with emotional disturbance."[24] These disparities are exacerbated by systemic issues such as poor behavioral management and school segregation. Nationally, schools serving mostly White students are more likely to identify behaviors by Black students with disabilities as problematic. Data from the Government Accountability Office produced in 2015 showed "23% of Black students with disabilities experience out-of-school suspensions."[25] Additional data from the study found Black students with disabilities performed significantly below a basic reading level compared to students with disabilities in other racial or ethnic groups.[26] This research demonstrates a need for school environments that support a child rather than contribute to their experiences with adversity; thus, Ms. Harper stresses the importance of using evidence-based[27] research to inform policy to directly improve outcomes for students of color.

Melanie Willingham-Jaggers, M.A., Deputy Executive Director, Gay, Lesbian, Straight Education Network of New York (GLSEN)

Melanie Willingham-Jaggers is the Deputy Executive Director at the Gay, Lesbian, Straight, Education Network (GLSEN). GLSEN is the leading organization on lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ) issues in Kindergarten through 12*th* grade education. GLSEN believes all students deserve safe and affirming school environments and as an organization is concerned about the impact discipline policies have on educational attainment.

Ms. Willingham-Jaggers begins by referencing a viral video of Jordan Steffy, an out gay high school student in Indiana. In the video, another student harassed Steffy using anti-gay slurs and when Steffy fought back, he was suspended. GLSEN has spent the past 25 years focusing their research efforts on the experiences of LGBTQ students in school, many of whom are victims of bullying and harassment. GLSEN's 2017 national school climate survey overwhelmingly showed

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[24] Harper Statement, at 5. *See also,* U.S. Department of Education, Office of Special Education and Rehabilitative Services, Office of Special Education Programs. (2018). 40th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act. Washington, D.C.

[25] Harper Testimony, *Nov. 19 PA Briefing*, p. 8. *See also,* United States Government Accountability Office. (2018). K-12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities, GAO-18-258. Washington, DC, https://www.gao.gov/assets/700/690828.pdf.

[26] Harper Statement, at 5-6.

[27] Evidence-based practices (EBP) are defined as "the conscientious, explicit and judicious use of current best evidence in making decisions about the care of the individual patient. It means integrating individual clinical expertise with the best available external clinical evidence from systematic research" (p. 71). The concept of EBP originated in the medical field in the early 1990s and have since extended to many other areas. EBP center objective evidence to inform programing and practice. EBP can also be called data-based, or research-based. *See also,* Reid, Joanne, Jordan Briggs, Susan Carlisle, David Scott, and Claire Lewis. "Enhancing Utility and Understanding of Evidence Based Practice through Undergraduate Nurse Education." BMC Nursing 16, no. 1 (September 29, 2017), https://doi.org/10.1186/s12912-017-0251-1.

that LGBTQ students feel unwelcome and unsafe in their school environments.[28] The survey collected data from a national sample of over 23,000 LGBTQ students across the country in secondary schools, 815 of which were in Pennsylvania.[29]

For this study, Ms. Willingham-Jaggers analyzed data from students in Pennsylvania specifically. Students in Pennsylvania reported experiencing anti-LGBTQ remarks, hearing homophobic or transphobic comments from staff members, and encountering victimization based on religion, disability, or race/ethnicity. Three in five students reportedly experienced at least one form of anti-LGBTQ discrimination at school within the school year. Only 13% of students attended schools with comprehensive anti-bullying or harassment policies with specific protections for sexual orientation, gender identity, and gender expression.[30] In many cases, students could identify one supportive staff member, yet very few could identify six or more supportive staff.

Intentional, safe, and inclusive school policy combined with Positive Behavior Intervention Supports (PBIS)[31] and restorative practices[32] can minimize suspension rates and mitigate bullying and harassment for LGBTQ students.[33] Research indicates that LGBTQ students are disproportionately impacted by exclusionary discipline policies. GLSEN authored a report titled, "Educational Exclusion, Dropout, Pushout, and the School-to-Prison Pipeline, Among LGBTQ Youth."[34] This study found harsh and exclusionary discipline practices contribute to higher dropout rates and reliance on alternative educational settings with limited support, such as juvenile justice facilities. When exclusionary discipline is applied to LGBTQ youth, these youth experience life-long consequences: students will be less likely to graduate from high school, they will have limited vocational and/or economic success later in life, and an increased likelihood of becoming incarcerated.[35]

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[28] Melanie Willingham-Jaggers, Deputy Executive Director, GLSEN, New York, NY, testimony, *Nov. 19 PA Briefing,* p. 9 (hereafter Willingham-Jaggers Testimony); *see also,* https://www.glsen.org/sites/default/files/2019-10/GLSEN-2017-National-School-Climate-Survey-NSCS-Full-Report.pdf.

[29] "School Climate in Pennsylvania," 2017 State Snapshot, GLSEN, (accessed August 14, 2020), https://www.glsen.org/sites/default/files/2019-11/Pennsylvania_Snapshot_2017_0.pdf.

[30] Willingham-Jaggers Testimony, p. 10.

[31] Positive Behavioral Interventions and Supports (PBIS) is an evidence-based multi-tiered approach to social, emotional and behavior support. *See also,* PBIS described in Glossary of Terms at Appendix 6, of this report.

[32] Restorative practices in school settings borrow principles from restorative justice, an alternative approach to criminal justice originating in the 1970s. *See also*, Restorative Practices described in glossary of terms at Appendix 6, of this report.

[33] Melanie Williingham-Jaggers, Deputy Executive Director, GLSEN, New York, NY, Written Statement for the *Nov. 19 PA Briefing,* at 3 (hereafter Willingham-Jaggers Statement).(1st Reference to written statement) *See also,* GLSEN (2018), *Respect for All: Policy Recommendations to Support LGBTQ Students: A Guide for District and School Leaders: 6,* https://www.glsen.org/activity/respect-all-policy-recommendations-support-lgbtq-students.

[34] Neal A. Palmer, Emily A. Greytak, and Joseph G. Kosciw, "Educational Exclusion: Drop Out, Push Out, and the School-to-Prison Pipeline among LGBTQ Youth" (New York, NY: GLSEN, 2016), pp. 1-80, https://www.glsen.org/sites/default/files/2019-11/Educational_Exclusion_2013.pdf.

[35] Willingham-Jaggers Testimony, *Nov. 19 PA Briefing,* p. 11.

Jonathan Butcher, M.A., Senior Policy Analyst, The Heritage Foundation of Washington, DC

Jonathan Butcher of the Heritage Foundation offers an alternative area of focus in school discipline. Rather than centering his testimony on students experiencing exclusionary discipline, Mr. Butcher concentrates on students in classrooms with "disruptive students."[36] He references a particular study by Phi Delta Kappan (PDK), where a Delaware teacher said, "school discipline is too lenient because of political correctness that has now invaded the schools, along with government intrusion into the public schools. The teacher has very little control regarding classroom discipline."[37]

In a 2017 survey of Philadelphia teachers, 64% of respondents said the ability to suspend students from school "is useful as a deterrent to the suspended student's future misbehavior," and 85% of respondents said suspensions are "useful for removing disruptive students so that others can learn."[38] Mr. Butcher notes that the Philadelphia teacher survey is not unique, and the dominant narrative displayed in the survey data contribute to two areas of consideration for the PA Committee. First, research demonstrates that disruptive students who remain in the classroom put other students at risk and interferes with the class' learning. Second, policies limiting an educator's ability to "maintain order" in his or her classroom interferes with their responsibility to enforce student safety. Mr. Butcher argues that data on student discipline according to race are not conclusive as to whether the discrepancies are the result of bias. He notes that the same data highlighting discipline rates according to race also indicate such students are exhibiting different behaviors that help them to explain different rates of discipline.

Mr. Butcher encourages the Committee to examine differing rates of discipline not from the issue of race, but rather to see the issue as students exhibiting different behaviors that require different discipline.

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[36] Jonathan Butcher, Senior Policy Analyst, The Heritage Foundation, Washington D.C., Testimony, *Nov. 19 PA Briefing,* p. 11 (hereafter Butcher Testimony).

[37] Jonathan Butcher, Senior Policy Analyst, The Heritage Foundation, Washington D.C., Written Statement for the *Nov. 19 PA Briefing,* at 2 (hereafter Butcher Statement). *See also,* PDK Poll of the Public's Attitudes Toward the Public Schools, September 2019, p. K20, https://pdkpoll.org/wp-content/uploads/2020/05/pdkpoll51-2019.pdf.

[38] Butcher Statement, at 1.

Pennsylvania-Specific Panels – November 21, 2019 Briefing, Philadelphia, PA (*Nov. 21 PA Briefing)*

PANEL 1: Disparate and Punitive Impact of Exclusionary Practices

Harold Jordan, Senior Policy Advocate, ACLU-Pennsylvania, Philadelphia, PA

Harold Jordan is a Senior Policy Advocate with the American Civil Liberties Union of Pennsylvania (ACLUPa). Mr. Jordan spent the majority of his 12 years with the organization investigating exclusionary discipline practices and policies. His work has included analysis, policy revision, direct practice with students and families, and at times, the pursuit of legal action to ensure equity for all children. In recent years, Mr. Jordan's work with the ACLUPa has centered on school policing, an issue area he describes as "intimately linked to the problem of exclusionary discipline."[39] Pennsylvania, he argues, is one of the only states collecting accurate data on student arrest rates. A combination of accurate data collection and a lack of data nation-wide places the Commonwealth comparatively higher than many other states in the country when it comes to student arrest rates. From 2011 to 2019, federal data rank Pennsylvania's student arrest rate between first and eighth highest in the country.[40]

Mr. Jordan describes the relationship between school discipline and involvement in the criminal legal system[41] as a "whac-a-mole problem" for school districts. When suspensions go down, students are simply removed from schools through other means, such as transferring them to alternative schools.[42] Students most likely to be arrested or suspended out-of-school are Black, male students with a disability. The same patterns emerge in suspension data. The correlation between suspension and arrest patterns is especially concerning when it comes to the role of police in schools. These patterns, Mr. Jordan argues, are exacerbated when students are excluded from school.[43] Although many schools have stopped branding their discipline systems as zero-

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[39] Harold Jordan, Senior Policy Advocate, ACLU, Philadelphia, PA, Testimony, *Briefing Before the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights, briefing, Philadelphia, PA,* Nov. 21, 2019, p. 16 (hereafter Jordan Testimony, *Nov. 21 PA Briefing*).

[40] Jordan Testimony, p. 16.

[41] Language used to describe the criminal legal system is widely contested. Historically, the system including law enforcement officials, jails, prisons, and courts has been called the "criminal justice system." Many organizations and individuals working in criminal justice reform express a need to eliminate the term "justice" when referring to the legal system as it implies false objectivity. In the examination of disproportionalities in school discipline and the subsequent connection those disparities have to the legal system, this report will use the term "criminal legal system" to describe all forms of law enforcement, court, and prison systems. In direct quotations, some panelists may use the term "criminal justice system." The two terms will be used interchangeably throughout the report.

[42] Jordan Testimony, *Nov. 21 PA Briefing*, p. 17.

[43] Ibid., p.19.

tolerance[44], he states, "we are still living with the legacy of zero-tolerance," as students continue to be removed from classrooms at alarming rates. [45]

Pennsylvania was home to the "Kids for Cash" scandal which directly connected law enforcement, the juvenile court judges in Luzerne county, and a for-profit juvenile justice center.[46] Thus, Mr. Jordan states, "Pennsylvania has a serious problem with the use of the justice system as a disciplinarian in schools."[47] The Pennsylvania Interbranch Commission, a governing body appointed to study the incident, learned that school districts involved in the case were using the legal system as school disciplinarians.[48] Mr. Jordan fears an increase in police presence on school campuses will also expand officer's roles in addressing student behavior.

Numerous bodies have studied Pennsylvania's exclusionary discipline practices and come to similar conclusions. A state-appointed commission[49] looked at exclusionary discipline and recommended focusing efforts on minimizing the use of exclusionary discipline and police presence in schools. The memorandum of understanding[50] used by school districts combines discretionary and mandatory reporting offenses in the same document. This presents an issue for school administration. The document's ambiguity results in school administrators feel pressured to report incidents to the police that are not actually required by law.[51] In conclusion, Mr. Jordan reiterates a continued need for analyzing the patterns of race, gender, and disability exclusion from school, to collect accurate arrest data, and to reduce unnecessary student arrests all together.

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[44] Zero-tolerance policies originated in the early 1990s when many U.S. schools sought safety reform following an increase in school shootings through the 1994 Gun Free Schools Act. *See also,* Zero-tolerance policies described in Glossary of Terms at Appendix 6, of this Report.

[45] Jordan Testimony, *Nov. 21 PA Briefing*, p. 19.

[46] In 2009, criminal charges were filed against two Luzerne County Justices, Judge Mark Ciavarella and Judge Michael Conahan, for helping a private juvenile detention center earn millions of dollars through county contracts. The scandal became known as "Kids for Cash," wherein the judges accepted over $2.5 million in payouts between 2000-2007. The Interbranch Commission appointed to investigate the case concluded that there was "'essentially… a collapse of the rule of law' in the Luzerne County juvenile court." *See also,* Gray, Cynthia. "Report and Recommendations Issued in "Kids for Cash" Scandal." *Judicature* 93, no. 6 (May, 2010): 255-255, 260.

[47] Jordan Testimony, p. 19.

[48] Ibid., p. 20.

[49] Joint State Government Commission: General Assembly of the Commonwealth of Pennsylvania, Discipline Policies in Pennsylvania's Public Schools, Report on the Advisory Committee on Zero Tolerance School Discipline Policies, October 2016. P. 1-186, http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2016-10-27%20Final%20REPORT%20for%20WEBSITE%20updated%2011.16.16%20%20WB.pdf.

[50] Pennsylvania Memorandum of Understanding between the Pennsylvania Department of Education and Law Enforcement, https://www.education.pa.gov/Documents/K-12/Safe%20Schools/Model%20Memorandum%20of%20Understanding%20with%20Law%20Enforcement%20Agency.pdf.

[51] Jordan Testimony, *Nov. 21 PA Briefing*, p. 21.

Dr. Paul Morgan, Ph.D., M.Ed., Professor of Education and Demography, Department of Education Policy Studies, Population Research Institute, Pennsylvania State University, PA

Dr. Paul Morgan is a professor of education and demography at Penn State University, where he also serves as the director of the Center for Educational Disparity and Research. Dr. Morgan's testimony highlights findings in contemporary empirical research assessing for the potential of differential treatment for students with disabilities.[52]

Findings from the American National Standards Institute demonstrate that "students of color are consistently less likely to be identified as having disabilities than similarly situated students who are White."[53] Additionally, White students are more likely to be identified as having a disability and to receive services accordingly than students in any other racial or ethnic group. Data also show that Black students are suspended more frequently than White peers.[54] These findings remain true in national data across all levels of education from elementary to high school. Data exploring the correlation between students with disabilities and discriminatory discipline usage is inconclusive and limited, Dr. Morgan says. There is no evidence demonstrating that students with disabilities experience differences in discipline when compared to other students displaying similar behaviors without disabilities.[55]

Dr. Morgan presents a bar graph showing the percentage of White, Black, and Hispanic fourth grade students in Pennsylvania displaying clinically significant reading difficulties and who receive support services accordingly. Dr. Morgan defines clinically significant difficulty as those who are achieving at the lowest percentile. Of fourth grade students displaying clinically significant reading difficulties nation-wide, 75% of students who receive services are White. In contrast, he states, despite displaying similar levels of academic difficulty, Black and Hispanic children are identified as having disabilities and receive supportive services at lower rates.[56] While these disparities are most visible in the lowest levels of achievement; racial disparities are apparent across all reading levels. Data collected in Pennsylvania displays the same general pattern.[57]

In Pennsylvania, 80% of White students in the lowest achievement percentile receive additional support through special education services; for Black and Hispanic students, that number is cut in

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[52] Paul Morgan, Professor of Education and Demography, Pennsylvania State University, State College, PA, Testimony, *Nov. 21 PA Briefing,* pp. 22-23 (hereafter Morgan Testimony).

[53] Ibid., p. 23. Additional findings can be explored in Dr. Morgan's report detailing disproportionalities in Special Education. *See also,* Morgan, Paul L., George Farkas, Marianne M. Hillemeier, and Steve Maczuga. "Replicated Evidence of Racial and Ethnic Disparities in Disability Identification in U.S. Schools." Educational Researcher 46, no. 6 (August 2017): 305–22. doi:10.3102/0013189X17726282.

[54] Morgan Testimony, p. 23.

[55] Ibid., pp. 29-30.

[56] Ibid., pp. 25-26.

[57] Ibid., p. 26; *see also,* data provided in Morgan Power Point, at 4 and at Appendix 4(e) of this report.

half.[58] Dr. Morgan extended data to eighth grade in order to compare access to services over time and the found the same outcome. "White male students are more likely to receive services than Black male students across the board," he explains.[59]

Dr. Morgan also analyzed suspension data as reported by parents. The findings of this survey mirror the findings in academic achievement data; "students who are male, Black, from lower-income households, who are displaying greater externalizing problem behaviors, and are attending schools where a greater percentage of the students are economically disadvantaged" are suspended more frequently.[60] Existing data do not explain why Black, male, low-income students are suspended more frequently, yet the disparities in achievement and access to services do suggest that Black students are receiving differential treatment.

Erica Smith, Sexuality Educator, The Children's Hospital of Philadelphia, PA

Erica Smith has extensive experience in juvenile justice, serving youth detained inside the Philadelphia Juvenile Justice Services Center (formerly known as the Study Center) for nearly 17 years. Ms. Smith worked as a sexuality educator and counselor in the Department of Adolescent Medicine at the Children's Hospital of Philadelphia. Ms. Smith's role focused on the prevention of unwanted sexual health outcomes through sexual health education and building trusting relationships with the youth.

Benefiting from her role as an educator outside of the legal system, Ms. Smith was able to engage openly and extensively with the youth. The young people she worked with were predominantly youth of color and of sexual and gender minorities. Through her exchanges, Ms. Smith learned intimate and personal details of their lives, she adds: "including their family backgrounds, their mental health and behavioral health histories, their trauma histories, and how they came to be involved in the system."[61]

Focusing specifically on Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) youth, Ms. Smith began to notice a pattern: "children who end up adjudicated because they got in trouble at school were very often living with undiagnosed and untreated trauma."[62] The disruptive behaviors often seen as "problem behaviors" in the classroom, she argues, are actually be a reaction to stressors in their personal life.[63] Additionally, lesbian, gay, bisexual, and transgender youth experience violence and bullying at home, in their communities, and at school making LGBTQ youth predisposed to trauma; Black transgender females experience a particularly high rate of

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[58] Morgan Testimony, p. 26.

[59] Ibid., p. 27. *See also,* data provided in Morgan Power Point, at 6, and at Appendix 4(e) of this report.

[60] Morgan Testimony, p. 28.

[61] Erica Smith, Sexuality Educator, The Children's Hospital, Philadelphia, PA, Testimony, *Nov. 21 PA Briefing,* pp. 31-32 (hereafter E. Smith Testimony).

[62] Ibid., p. 32.

[63] Ibid., pp. 32-33.

violence.[64] In school settings, this predisposition, increases their likelihood of displaying behaviors perceived as disruptive. Often, she continues, a LGBTQ student's reaction to repeated bullying may get them in trouble at school.

Ms. Smith describes a dominant narrative displaying this experience: "I have been bullied and harassed for being gay and transgender most of my life. I'm not safe at home or in my community because my family and others are often violent towards me. I then get bullied and harassed for being gay and trans at school, if I show up to school at all. When I finally fought back or freaked-out on someone, I was the one who got arrested."[65] Many Black and gender non-conforming youth felt personally antagonized by school police until a confrontation occurred which led to their arrest.[66] Once a child spends time in juvenile detention, she states, "they are caught up in a system that is traumatic by design, especially if they are LGBTQ."[67] Detention further exposes LGTBQ youth to challenges capable of causing lasting harm.

Ms. Smith's students shared countless challenges directly stemming from police presence in their schools. She recalls: "I have worked with young people who were away from their families for years, experienced sexual violence from juvenile detention staff, experienced racism from juvenile detention staff, were moved around to multiple placements as either delinquents or dependents [under care of the state], and almost never completed their high school education, all because their point of entry into the system was their school."[68] Ms. Smith denounces the criminalization of youth behavior, especially for already victimized and vulnerable youth. As an alternative, she advocates for identifying and treating the underlying problem to better serve all youth.

Judge John C. Uhler, J.D., Retired Judge, Court of Common Pleas, 19th Judicial District York County, PA

Judge John Uhler is a retired state judge from Pennsylvania with 25 years of experience as a juvenile court judge. Judge Uhler participated in two Joint State Government Commissions on truancy and youth courts, respectively, and served as a member on the Interbranch Commission for Juvenile Justice in Lucerne. Judge Uhler established a mental health court for juveniles in York County; he reiterates the import of the Juvenile Act[69] which outlines standardized, unbiased guidelines, assessments, and investigations for all youth. Judge Uhler recalls 95 percent of cases appeared to him due to truancy, an issue not in his typical jurisdiction.[70]

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[64] Ibid., p. 33.

[65] Ibid., pp. 33-34.

[66] Ibid., p. 34.

[67] Ibid., pp. 34-35.

[68] Ibid., pp. 35-36.

[69] § 6301, The Juvenile Act of 1972, https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/42/00.063..HTM.

[70] John Uhler, Retired Judge, Court of Common Please, York County, PA, Testimony, *Nov. 21 PA Briefing,* p. 37 (hereafter Uhler Testimony).

Judge Uhler established a truancy initiative for York County which has since achieved state and national recognition. York County's truancy court titled "Youth Court Alliance," has become a successful school-based truancy diversion program.[71] Part of Judge Uhler's work targeted discrepancies in policy between schools and school districts. "While a school district may not suspend or expel a child for attendance issues due to the most recent truancy act," he states, "the subjective term, disobedience and misconduct, remains the operative standard under the Education Code."[72] The Education Code is limited in that it enforces only in school suspensions, whereas out-of-school suspensions and expulsions are supervised by the school district.

The Interbranch Commission for Juvenile Justice focused on issues of zero-tolerance policies[73] which mandated the removal of students from their homes and schools and pushed them into detention.[74] Judge Uhler states his accord with findings from the Interbranch Commission for Juvenile Justice which concluded that the state allowed schools to use the justice system as its in-school disciplinarian.[75] While efforts have been taken to remove truancy from the legal system, he explains, "it appears clear that this disproportionate minority contact is more a function of [a] system of inequities and biases as opposed to a differential behavior patterns among minority youth or individual character and social history."[76]

Judge Uhler argues that stigma caused through involvement in the legal system also exists for students experiencing suspension or expulsion. Both forms of punishment and the resulting stigmatization inhibit a young person's potential for academic success. He states, "the child fails, falls behind, is stigmatized by suspension, resulting in falling further behind, and probable withdrawal from the school system all together."[77] When schools fail to address the academic needs of their students, students are more likely to experience frustration and act out. Police presence in schools combined with high levels of frustration can greatly increase a student's likelihood of court involvement. Using the legal system as an enforcement tool for student conduct has profound adverse repercussions, he expresses, and alternatives must be explored.[78] Judge Uhler concludes his testimony requesting an urgent call to recognize the dignity of our youth.[79]

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[71] Ibid., p. 38.

[72] Ibid., pp. 39-40.

[73] *Supra* note 46. *See also,* Zero-Tolerance Policies described in Glossary of Terms at Appendix 6, of this Report.

[74] Uhler Testimony, Nov. 21 PA Briefing, p. 41: *see also,* "Kids for Cash" scandal referenced by in Jordan Testimony, *Nov. 21 PA Briefing,* p. 20 and Jordan Statement, at 3-4.

[75] Uhler Testimony, p. 41.

[76] Ibid., pp. 41-42.

[77] Ibid., p. 42.

[78] Ibid., pp. 42-43.

[79] Ibid., p. 43.

PANEL 2: Obstacles to Success: What Perpetuates the Use of Exclusionary Discipline and its Disparate Impact

Dr. Nikole Hollins-Sims, Ed.D., Educational Consultant, Pennsylvania Department of Education, Harrisburg, PA

Dr. Nikole Hollins-Sims is an educational consultant for Pennsylvania Training and Technical Assistance Network (PaTTAN) and a special equity consultant to the Pennsylvania Department of Education (PDE). PaTTAN is responsible for all training under the Bureau of Special Education within the PDE. Dr. Hollins-Sims is the co-statewide lead for the behavior initiative which elevates the use and implementation of PBIS.

In her role, Dr. Hollins-Sims assists schools in evaluating their academic and behavioral data with a focus on equity and increasing access for historically marginalized students.[80] PaTTAN focuses resources on prevention in order to reduce the need for exclusionary discipline and their disproportionate use against students of color, students with disabilities, and students who are lesbian, gay, bisexual, transgender, queer, intersex, and asexual (LGBTQIA+).[81]

Citing a 2019 study conducted by Princeton University, Dr. Hollins-Sims explains the study's investigation of racial disparities in school-based discipline and their association with county-level rates of bias.[82] The study found Black students more likely to be seen as problematic and more likely to be punished than White students committing the same offense.[83] The study's focus on explicit and implicit biases point to a need for policy to reduce the disproportionate representation of students of color in school discipline data.

Most educators, Dr. Hollins-Sims reports, support examining their implicit biases, as most behavioral referrals for students of color rely on a subjective retelling of an incident. Disruption, disrespect, and defiance, terms used to identify problem behaviors on office referral forms, are highly ambiguous; in the words of Dr. Kent McIntosh, "ambiguity is disproportionality's best friend."[84] The ambiguous categories for behavioral incidents make room for implicit biases to arise and thus increases the likelihood of exclusionary practices for specific student groups.

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[80] Nicole Hollins-Sims, Educational Consultant, Pennsylvania Department of Education, Harrisburg, PA, Testimony, *Nov. 21 PA Briefing,* p. 95 (hereafter Hollins-Sims Testimony).

[81] The term "LGBTQIA+" is the most comprehensive term used to describe sexual and gender identities. *See also,* LGBTQIA, described in Glossary of Terms at Appendix 6, of this Report.

[82] Hollins-Sims Testimony, *Nov. 21 PA Briefing,* p. 96. *See also,* Travis Riddle and Stacey Sinclair, "Racial Disparities in School-Based Disciplinary Actions Are Associated with County-Level Rates of Racial Bias," Proceedings of the National Academy of Sciences of the United States of America (National Academy of Sciences, April 23, 2019), https://www.pnas.org/content/pnas/116/17/8255.full.pdf.

[83] Hollins-Sims Testimony, p. 96.

[84] Ibid., p. 97.

Dr. McIntosh identifies situations which can cause "vulnerable decision points." When making a decision, an individual's personal state, such as being hungry, may foster a situation where a subjective referral is likely to be made. To mitigate the bias that may arise during a vulnerable decision point, Dr. Hollins-Sims recommends simple solutions, such as delaying the referral or speaking to the student in private rather than in public. It is imperative for educators to understand their own escalation cycles and triggers in order to identify when they may be experiencing a vulnerable decision point. PaTTAN has implemented extensive training opportunities for educators, including a leadership course dedicated to administrators titled, "Equity in Education; Why Leadership Matters," with a specific module teaching equity in discipline.[85]

Dr. Abigail Gray, Ph.D., Deputy Chief of School Climate and Safety, School District of Philadelphia, PA

Dr. Abigail Gray is the deputy chief of climate and safety for the School District of Philadelphia where she oversees the district's creation of physically and emotionally safe environments for all children. Previously, she studied school climate and restorative alternatives to punitive and exclusionary discipline as a researcher at the University of Pennsylvania. Dr. Gray is also a parent of two school-aged children, both of whom attend Philadelphia public schools. Before pursuing her doctorate degree, Dr. Gray was a middle school teacher in Southwest Philadelphia.

Beginning in 1994 with the Gun-Free Schools Act,[86] zero-tolerance disciplinary policies were codified into state law.[87] The legacy of zero-tolerance created lasting and devasting effects on already disadvantaged student groups as the policies mandated harsh punishment for minor behaviors, massively increasing the number of students excluded from school by way of suspension or expulsion.[88]

The Philadelphia School District has taken active steps to minimize suspension and to positively reshape school climate. In 2012, the district revised the student conduct code, de-emphasized punitive disciplinary responses for minor offenses like uniform violations, and more recently, banned suspension for students in kindergarten, first, and second grade.[89] In an effort to positively

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[85] PaTTAN's training information is available online. "Equity in Education: Leadership, Awareness and Application," Pennsylvania Training and Technical Assistance Network, accessed August 14, 2020, https://www.pattan.net/Training/Conferences/Special-Education-Leadership-Academy/Session-Descriptions/Nikole-Hollins-Sims/N-Hollins-Sims-Equity-in-Education.

[86] H.R.987 - 103rd Congress (1993-1994): Gun-Free Schools Act of 1993, https://www.congress.gov/bill/103rd-congress/house-bill/987?s=1&r=82.

[87] Abigail Gray, Deputy Chief of School Climate and Safety, School District of Philadelphia, Philadelphia, PA, Testimony, *Nov. 21 PA Briefing*, p. 104 (hereafter Gray Testimony). *Supra* note 46. *See also, Zero-Tolerance Policies,* described in Glossary of Terms at Appendix 6, of this Report.

[88] Gray Testimony, p. 104. *See also,* "Student Code of Conduct 2019-2020," Philadelphia School District, accessed August 14, 2020, pp. 12-26, https://www.philasd.org/studentrights/wp-content/uploads/sites/67/2019/08/19-20-Code-of-Conduct.pdf.

[89] Gray Testimony, p. 105.

structure school climate, the district has implemented PBIS. Over the course of five years the district has expanded PBIS from 10 to 80 schools, implemented an evidence-based anti-bullying program, and hired personnel to teach schools to use youth courts[90] as an alternative to suspension.[91] The reforms led to such drastic decreases in suspension, the district can no longer rely on suspension data as accurate indication of school climate.[92]

As a former school climate researcher with Penn State, Dr. Gray understands the magnitude of Philadelphia's shift from punitive to positive discipline practices. Her research illuminated a slow process where already understaffed schools were overwhelmed by the severity and breadth of student needs.[93] Some teachers held an unsurprising perspective about using positive reinforcements to prompt good behavior. She reports, "After 25 years of mandatory zero-tolerance policies, is it any wonder that schools and teachers are struggling with this shift? The shift we are asking of them is nothing short of enormous."[94]

This tremendous task for educators, school administrators, and professionals like Dr. Gray often begs for more support than organizations like PaTTAN can provide. These challenges, she states, push educators to hold on to exclusionary discipline practices and policies, despite having been demonstratively ineffective and harmful for students.

To leverage these barriers, Dr. Gray proposes four criteria. First, a dramatic increase in mental and behavioral health support services for schools. In Philadelphia, this looks like an investment in trauma training and an increase in clinical services in schools. Second, she urges school leadership teams to seek innovative approaches to contractual limitations. In Philadelphia, innovation led to the creation of "Relationships First,"[95] a restorative justice intervention for conflict mediation. Third, Dr. Gray asks for evidence-based programs like PBIS to be implemented to their fullest extent before they are thrown out. Lastly, she asks for funding; public and private investment in education must become a priority to support mental and behavioral health, anti-bias and trauma training, and program expansion.[96]

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[90] Youth courts provide students with an opportunity to improve their behavior without being suspended. Youth Court is a student run restorative justice program in the Philadelphia School District. *See also*, https://www.philasd.org/schoolclimate/programs-services/youth-court/.

[91] Gray Testimony, p. 10.

[92] Ibid., p. 106.

[93] Ibid., p. 107.

[94] Ibid., pp. 107-108.

[95] Relationships First is Philadelphia School District's restorative justice program. Relationships First emphasizes the importance of positive relational connection through indigenous circle practices geared toward community building, harm and healing, and restorative re-entry. *See also,* "Relationships First (Restorative Justice Practices)," Office of School Climate and Culture, The School District of Philadelphia, accessed August 14, 2020, https://www.philasd.org/schoolclimate/programs-services/relationshipsfirst/.

[96] Gray Testimony, p. 111.

Dr. Kelly Welch, Ph.D., Associate Professor, Department of Sociology and Criminology, Villanova University, PA

Dr. Kelly Welch is an associate professor in the Department of Sociology and Criminology at Villanova University. Her doctoral research examines the association between race, ethnicity and school discipline, and further, the association between discipline and student involvement in the legal system.[97]

Dr. Welch states, "there is strong evidence that not only is harsh discipline harmful to students, schools, and communities, but it is being imposed in a racially and ethnically disparate manner."[98] Given the enrollment of Black and Hispanic youth in Pennsylvania schools, data from the U.S. Department of Education demonstrate significant disproportionalities in discipline. "Although only 15% of Pennsylvania K through 12 students are Black," she says, "43% of the out-of-school suspensions and 34% of the expulsions are Black youth."[99] Hispanic students account for 10% of Pennsylvania's students and 16% of suspensions and expulsions.[100]

There are many explanations for racial and ethnic differences in discipline. Some suggest Black and Latinx[101] students simply participate in more frequent delinquent activities and are disciplined accordingly. However, studies have shown that Black and Latinx students do not violate the law at higher rates than White students, which implies White students are not punished at the same rate as Black and Latinx youth when they display delinquent behaviors.[102] Socioeconomic differences also contribute to differences in behavior. Research indicates that low-income students are more likely to be suspended and expelled; because students of color disproportionately come from low-income families, some attribute their involvement in school discipline to their income status rather than their race or ethnicity. Dr. Welch states, "regardless of economic status, Black and Latinx students are still punished more often and more harshly by schools."[103] Research on criminal stereotypes suggests that educators' perceptions of behavioral displays from students of color are interpreted as more problematic than when White students exhibit the same behaviors.[104]

In addition to a child's economic status, a child's disability status can also determine how frequently the student will experience exclusionary discipline. Dr. Welch explains: "children with

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[97] Kelly Welch, Associate Professor, Villanova University, Villanova, PA, Testimony, *Nov. 21 PA Briefing*, p. 112 (hereafter Welch Testimony).

[98] Ibid., p. 112.

[99] Ibid., pp. 112-113.

[100] Ibid., p. 113.

[101] *See also*, Latinx, described in Glossary of Terms at Appendix 6, of this Report.

[102] Welch Testimony, p. 114.

[103] Ibid., p. 115.

[104] Ibid., p. 116.

special learning or emotional needs are also more likely to receive exclusionary discipline. Race and ethnicity compound this effect because minority youth are more likely to require special education and disability services yet remain undiagnosed and untreated."[105] In schools that predominantly serve students of color, exclusionary discipline intensifies in frequency and harshness. This correlation may be connected to internal biases associating crime, race, and ethnicity, Dr. Welch explains.[106]

There are three obstacles, which prevent an end to the school-to-prison pipeline: lack of data, ambiguous and inconsistent state policy, and poor funding. Without data to accurately display disparities, addressing them becomes challenging. Additionally, without longitudinal student data, it becomes impossible to know the impact school discipline could have on a student's future.[107] There is also a need for school-level and district-level data. These data could present information about school and district training practices for their teachers and administrators, how and when de-escalation is used, and the impact school discipline has on the community. While some argue that school climate improves when disruptive students are removed, research indicates exclusionary discipline has a degrading effect on the school community at large.[108]
Currently, there is a lack in state policy to promote and mandate PBIS training in schools. There is no policy which dictates a school resource officer's exact role in addressing student misbehavior, nor policy indicating when a school resource officer should intervene in lieu of a school administrator. Without explicit state-wide policies for school discipline, managing student behavior is left to an individual's discretion. This lack of consistency, Dr. Welch argues, "introduces the opportunity for bias and discrimination."[109]

Tyrice Smith, Former Montgomery County Public School Student, Philadelphia, PA

Tyrice Smith is a 19-year-old former student of the Montgomery County Public School System. Mr. Smith wanted to share his story because of its application to many young Black men with similar backgrounds. Mr. Smith experienced trauma at a young age, witnessing a loved one being killed in front of him. He harbored significant pain and anger, which, he recalls, made him act out in ways he couldn't control.[110] He remembers feeling misunderstood and judged for his behaviors without people taking the time to understand his background or consider the things that he had been through.

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[105] Ibid., p. 115.

[106] Ibid., p. 117.

[107] Ibid., p. 118.

[108] Ibid., p. 120. *See also,* "Suspension 101," School Climate and Discipline, U.S. Department of Education, updated January 4, 2017, https://www2.ed.gov/policy/gen/guid/school-discipline/index.html#suspension-101.

[109] Welch Testimony, p. 121.

[110] Tyrice Smith, Former Student, Montgomery County Public Schools, Philadelphia, PA, Testimony, *Nov. 21 PA Briefing*, p. 122 (hereafter T. Smith Testimony).

Mr. Smith attended predominantly White middle and high schools where he experienced racism, discomfort, and unfair treatment.[111] In eighth grade, while joking around with a White friend, he called a peer the N word. Another student overheard, the student reported him to school officials and Mr. Smith received a five-day suspension. In ninth grade, he and two White friends stole a few snacks from the cafeteria refrigerator. The idea was not his and he was reluctant to join; the incident was recorded on video. When a detective interrogated him and his friends, he told the truth and his friends blamed the incident on him. The White students were not given any consequences, Mr. Smith was charged with vandalism and suspended, this time with a charge on his record.[112]

That same year, a classmate brought a BB gun to school and let him take it home. On the way home, a White student on the bus repeatedly called Mr. Smith the "N" word. He took out the BB gun and shot the student in the neck. Mr. Smith asserts this was not the right thing to do, even in anger. The boy was okay, and he was suspended yet again; this final suspension resulting in a court appointment through which he was charged with assault. The incident also led to his transfer to Lakeside Disciplinary School where he was forced to write an apology letter to the other student who received no consequences for the verbal harassment used on the bus.[113]

The probation officer assigned to Mr. Smith recommended him for the Big Brother Big Sisters program where he was introduced to Brian Sloan.[114] Brian Sloan, a Big Brother with Big Brothers Big Sisters Independence, became much more than a mentor for Mr. Smith. He refers to Mr. Sloan as a father figure who helped him to find his self-worth, and to become the man his is today.[115] He attributes much of his success to the Big Brothers Big Sisters program, without which, he fears he would have been, "caught in the cycle of trouble."[116]

Many students are not believed or deprived the opportunity to be heard. Big Brothers Big Sisters and Mr. Sloan provided Mr. Smith with a second chance, something he believes every child deserves, regardless of bad decisions.

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[111] Ibid., p. 123.

[112] Ibid., pp. 123-124.

[113] Ibid., pp. 124-125.

[114] Big Brothers Big Sisters of America was founded in New York City in 1977 with the vision of uniting strong and supportive role models with children experiencing adversity. Big Brothers Big Sisters operates across the U.S. and in 12 countries around the world. *See also,* "Big Brothers Big Sisters of America," Big Brothers Big Sisters of America - Youth Mentoring, (accessed August 14, 2020), https://www.bbbs.org/.

[115] T. Smith Testimony, p. 125.

[116] Ibid., p. 126.

PANEL 3: Pathways to Dismantling the School-to-Prison Pipeline

Edwin Desamour, Dean of Stetson Charter School, Philadelphia, PA

Edwin Desamour is the behavioral specialist and Dean of Stetson Charter School in Philadelphia. Dean Desamour grew up in a neighborhood of North Philadelphia known as the Badlands. Being from "the Badlands," he maintains, makes children try to live up to an expectation that they too, are bad.[117] As Dean, he deeply believes good customer service principles should drive interactions between school administrators, staff, and families. If a parent is not welcomed upon their arrival to a school campus, the desire to advocate for their child can quickly turn into feelings of insecurity based on such treatment. Dean Desamour urges for these principles to also apply to the way educators discuss students.

Before becoming Dean, he often worked in partnership with schools to support students. Once, he received a call about supporting a student where the principal described the student as a "monster."[118] Appalled by that term, Mr. Desamour explains the stigmatization already tied to a student based on the educator's introduction alone. In this case, educators repeatedly framed the student in a negative light. Upon meeting him, Mr. Desamour took the student, G, out to lunch where he learned about G's immense challenges at home and in school. When Mr. Desamour took G home, his foster mother answered the door proclaiming, "what did this fat piece of "shi- " do now?"[119]

For Mr. Desamour, it was clear that the student was "dishing out what he's getting at home."[120] When he told the school about G's situation, everyone claimed they did not know what he was going through. This is a significant error for the school, he maintains. These 'difficult students,' Dean Desamour explains, are often "struggling in so many other areas, they have no idea how to not 'fight' when they are encountered with situations that are difficult for them."[121] Not taking time to understand a student's background poses a serious threat to the student's livelihood. In 1943, psychologist Abraham Maslow described the importance of understanding human need as a hierarchy with basic physiological needs forming the foundation, and self-actualization occurring at the top. Maslow's hierarchy of needs is often depicted as a pyramid where the first level must be satisfied in order for an individual to obtain the next. Dean Desamour urges schools to take a more complex role in addressing student's basic needs. According to Maslow, if children's basic needs are met through their environment, they are more readily able to succeed in an academic environment.[122]

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[117] Edwin Desamour, Dean, Stetson Charter School, Philadelphia, PA, Testimony, *Nov. 21 PA Briefing,* p. 174 (hereafter Desamour Testimony).

[118] Ibid., p. 175.

[119] Ibid., p. 177.

[120] Ibid.

[121] Edwin Desamour, Dean, Stetson Charter School, Philadelphia, PA, Written Statement for the *Nov. 21 PA Briefing,* at 1 (hereafter Desamour Statement). http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2016-10-27%20Final%20REPORT%20for%20WEBSITE%20updated%2011.16.16%20%20WB.pdf.

[122] Ibid., at 2.

G's experience deeply resonated with Dean Desamour as it was not dissimilar from the way he was perceived in his own youth. When he was just 12 years old, his father gave him a gun. At age 16, he was charged with first-degree murder and faced both life in prison and the death penalty. After serving eight and a half years in prison, he described having a bleak outlook on his life. On November 10, 2019, Dean Desamour celebrated his 22*nd* year outside of the legal system. Naming prison a "cemetery for the living," he recalls coming back to life after his release.[123]

This experience fostered a desire to mentor youth in similar situations. "There is no single storyline that guarantees a bad ending... everyone has the opportunity for redemption," Dean Desamour expresses.[124] As Dean, he focuses on implementing strategies that would have kept him out of prison in his own youth.[125] Disrupting the school-to-prison pipeline, he explains, means reframing the way educators conceptualize difficult students. Instead of pushing students out of schools and criminalizing their behavior, Dean Desamour advocates for "a whole new way of thinking about the 'monsters' in our classrooms," through empathetic and intentional approaches to the challenges they are experiencing.[126]

Dr. Damaris Rau, M.A., Ph.D., Superintendent, School District of Lancaster, PA

Dr. Damaris Rau is the superintendent of schools for the School District of Lancaster, a tier three urban district serving roughly 11,300 students. Ninety percent of students in the district financially qualify for free or reduced lunch.[127] Dr. Rau has over 35 years of experience in diverse school settings with various levels of funding where has observed an overwhelming theme; regardless of the school's resources, suspension is used to punish students, not to teach them.[128] Students of color are disproportionately suspended, she states, resulting in "disengaged youth who fill the school-to-prison pipeline."[129]

The Lancaster School District has spent the last three years actively combatting their high suspension rate by reflecting on institutional practices contributing to suspensions, particularly for

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[123] Ibid, p. 179.

[124] Desamour Statement, at 1.

[125] Desamour Testimony, *Nov. 21 PA Briefing*, p. 179.

[126] Desamour Statement, at 2.

[127] Damaris Rau, Superintendent, School District of Lancaster, Lancaster, PA, Testimony, *Nov. 21 PA Briefing Briefing,* p. 180-181 (hereafter Rau Testimony).

[128] Ibid., p. 180.

[129] Ibid.

Black males, and changing them to achieve equity for students.[130] As a result, Lancaster's suspension rate has been reduced by 50% since 2014.[131]
Careful collection and analysis of data illuminated a specific focus for the district's work. A Franklin and Marshall College study of Lancaster School District suspension rates found middle school students the most likely to be suspended with significant disproportionalities for Black males.[132] Data collection enabled the district to correlate middle school suspension rates for Black males with negative academic outcomes such as an overrepresentation in special education, under-representation in advance placement classes, and an increased likelihood of dropout.[133]

After implementing Equity Design Team[134] framework developed by Gary Howard, Dr. Rau reports, "suspensions of our middle school Black males had been reduced by 28%" in two years.[135] The framework enabled Dr. Rau and her colleagues to revise their student handbook, eliminating ambiguous language, daily monitoring of suspension rates, training staff on the impact of trauma, and allocating resources to support student's social and emotional needs.[136] Lancaster School District has also hired 20 social workers, adopted a restorative approach to conflict, and trained staff in de-escalation. The same equity research led to the creation of Middle School Black Males, a mentoring group set to begin in February 2020 focused on self-esteem and identity.[137]

Changing historical and institutional practices, Dr. Rau says, "takes courage to identify what is wrong in your own system that is getting in the way of student learning and to examine your own house."[138] In addition to courage, she names other contributing factors making change difficult. Most people feel uncomfortable talking about race and implicit bias, she states, making it difficult to move away from the zero-tolerance mind set.[139] Suspending students would be and has been far easier than investing time and resources into alternatives. Hiring staff of color and further ensuring teachers maintain high expectations for their students is another obstacle.

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[130] Ibid., p. 181.

[131] Ibid., pp. 181-182.

[132] Ibid., p. 182.

[133] Ibid.

[134] Gary Howard's Equity Institutes provide professional development and systemic change processes to leaders in education. *See also,* "Working Together for Inclusion, Equity, and Excellence," Gary Howard Equity Institute, (accessed August 20, 2020), http://www.ghequityinstitute.com/.

[135] Rau Testimony, p. 182.

[136] Ibid., p. 184.

[137] Ibid., p. 185.

[138] Ibid., p. 185.

[139] Ibid., p. 186.

In order to move forward, Dr. Rau places significant import on "having a vision for, and a commitment to, district-wide equity."[140] District-wide equity requires all stakeholders to work toward a common goal for student success. For Dr. Rau, using data to address inequities, allocating equitable funding and resources, working with mental health partners, and creating effective systems will be of the utmost importance.[141] "Suspension is the exact opposite of what our disconnected youth need. The research is clear on that," she concludes.[142]

Dr. Monica McHale-Small, Ph.D., Associate Professor, School Psychology, Temple University, Philadelphia, PA

Dr. Monica McHale-Small spent 27 years in Pennsylvania public schools where she worked as a school psychologist and held a variety of roles in administrative leadership, including superintendent of schools. She is an advocate for students with disabilities; she is currently the vice president of the Learning Disabilities Association of America and works as an independent evaluator. Dr. McHale-Small's career in education fostered concern about "the disenfranchising and demoralizing effects of suspension and expulsion on all students," specifically on students with disabilities.[143]

National data[144] indicate students with learning disabilities and those with emotional and behavioral disorders are at greatest risk for suspension, expulsion, and entrance into the juvenile system.[145] In the 2018-2019 school year, 49% of the nearly 300,000 students who receive special education services in Pennsylvania had either a learning disability or an emotional or behavioral disorder.[146]

The federal Individuals with Disabilities Education Act (IDEA)[147] requires schools to educate students with disabilities in the least restricted environment possible, which often places students

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[140] Ibid., p. 187.

[141] Ibid.

[142] Ibid., p. 180.

[143] Monica McHale-Small, Associate Professor, Temple University, Philadelphia, PA, Testimony, *Nov. 21 PA Briefing*, p. 188 (hereafter McHale-Small Testimony).

[144] Garwood, Justin D., and Abby A. Ampuja. "Inclusion of Students With Learning, Emotional, and Behavioral Disabilities Through Strength-Based Approaches." Intervention in School and Clinic 55, no. 1 (September 2019): 46–51. Doi:10.1177/1053451218767918.

[145] McHale-Small Testimony, p. 189.

[146] Ibid., p. 189. *See also,* "Special Education Data Report: School Year 2018-2019," Pennsylvania State Data Center, updated June 2019, https://penndata.hbg.psu.edu/penndata/documents/BSEReports/Data%20Preview/2018-2019/Speced_Quick_Report_State_Final.pdf.

[147] Pub. L. 101-476

with disabilities in general education classrooms. A number of studies[148] indicate that teachers feel unprepared to teach students demonstrating higher needs. Additionally, according to a 2019 National Assessment of Educational Progress report, "students with disabilities score significantly below the nondisabled peers they are educated alongside."[149] The academic performance disparities for disabled and nondisabled students are stark. A 2018 study found "students with emotional and behavioral disorders performed on average 1.3 standard deviations below their nondisabled peers in reading."[150] From her experience as an administrator, Dr. McHale-Small affirms these findings and recalls her experience witnessing frustration for teachers and students alike. When students feel connected to their school and their teachers, a student's risk of experiencing exclusionary discipline decreases. Large, under-resourced classes often result in insufficient support for students with disabilities, weakening their connection to school, increasing their feelings of frustration, and increasing the likelihood of acting out.

While the IDEA is meant to prevent frustration for students with disabilities and provide them with the support necessary to ensure their success, schools often incorrectly identify academic rigor as the source of student frustration and lower academic expectations accordingly. "This sends the message to students that they are not capable of acquiring the skills they are struggling with," Dr. McHale-Small reports.[151] This message furthers students' disengagement from the school environment. When a student with disabilities demonstrates negative behavior, the IDEA mandates the student's Individualized Educational Plan (IEP) team determine whether the student's behavior is a "manifestation of their disability."[152] The IEP team then develops a plan to address the student's behavior. This process would appear to protect the student from disproportionately experiencing exclusionary discipline, however, due to a lack of resources, not all schools can maintain the integrity of this process. If a student is left unsupported, Dr. McHale-Small states, "it is not uncommon for behaviors to escalate."[153] Under-resourced schools struggle to address the needs of students with disabilities; "access," she says, "is not simply having a desk in a classroom, it is having the tools and supports to make meaningful educational progress in that classroom."[154]

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[148] Ajuwon, Paul M, DeAnn Lechtenberger, Nora Griffin-Shirley, Stephanie Sokolosky, Li Zhou, and Frank E Mullins. "General Education Pre-Service Teachers Perceptions of Including Students with Disabilities in Their Classrooms." *International Journal of Special Education* 27, no. 3 (2012): 100–107.

[149] McHale-Small Testimony, *Nov. 21 PA Briefing*, p. 190. *See also,* McHale-Small Statement, at 1. "National Student Group Scores and Score Report," The National Assessment of Educational Progress, (accessed August 14, 2020), https://www.nationsreportcard.gov/reading/nation/groups/?grade=4.

[150] McHale-Small Testimony, *Nov. 21 PA Briefing*, p. 190. *See also,* Gilmour, Allison F., Douglas Fuchs, and Joseph H. Wehby. "Are Students With Disabilities Accessing the Curriculum? A Meta-Analysis of the Reading Achievement Gap Between Students With and Without Disabilities." Exceptional Children 85, no. 3 (September 14, 2018): 329–46, https://doi.org/10.1177/0014402918795830.

[151] McHale-Small Testimony, p. 192.

[152] Ibid.

[153] Ibid., p. 193.

[154] Ibid., pp. 193-194.

In addition, there are several recommendations that Dr. McHale-Small believes will benefit all students. While many parents believe police officers keep their children safe at school, there is no conclusive data to support that allegation. Without adequate resources, school administrators rely on discipline support from police officers which alternatively, leads to more arrests. If schools must use law enforcement officials, Dr. McHale-Small recommends establishing clear policy around their role and prohibiting their involvement in discipline. This policy, along with a solid understanding of student behavior, must be understood by school administrators to determine who gets sent to the principal's office, and who is pushed into the juvenile justice system.

Dr. James Huguley, Ed.D., Assistant Professor and Interim Director, Center on Race and Social Problems, University of Pittsburgh, PA

Dr. James Huguley is the director of the Center on Race and Social Problems (Center) at the University of Pittsburgh. The Center conducts research on national school suspension and expulsion trends, examines the extent and impact of exclusionary practices in the Pittsburgh region, and collects data on best practices used to reduce suspensions and support student achievement.[155] It explores the way exclusionary discipline facilitates a young person's involvement in the criminal legal system, a term commonly known as the "School-to-Prison Pipeline."[156]

Generations of civil rights violations, particularly in the 20th and 21st centuries, Dr. Huguley explains, set a precedent for the economic struggle, community violence, and under-resourced schools prevalent today.[157] These challenges inform the use of exclusionary discipline in schools which further violations, particularly for students of color. "Because African American and Latinx[158] students tend to be disproportionately and unjustly affected by these approaches, these exclusionary practices have been shown to exacerbate racial inequalities in education," he adds.[159]

Dr. Huguley emphasizes the need for intentional systems to correct this legacy of wrongdoing. When building positive school climate, he urges, school leaders must first focus on building relationships. For schools looking to change their policies and implement restorative justice, in the words of E. Hanover, "there must be something you want to restore."[160] Restorative practices are

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[155] James Huguley, Assistant Professor and Interim Director, Center on Race and Social Problems, University of Pittsburgh, Pittsburgh, PA, *Written Statement* for *the Nov. 21 PA Briefing*, at 1 (hereafter Huguley Statement).

[156] The School-to-Prison Pipeline describes educational policies and practices that push students out of schools and into the criminal legal system. *See also,* School-to-Prison Pipeline described in Glossary of Terms at Appendix 6, of this Report.

[157] James Huguley, Assistant Professor and Interim Director, Center on Race and Social Problems, University of Pittsburgh, Pittsburgh, PA, Testimony, *Nov. 21 PA Briefing*, p. 196 (hereafter Huguley Testimony).

[158] *See also,* Latinx described in Glossary of Terms at Appendix 6, of this Report.

[159] Huguley Statement, at 1.

[160] Huguley Testimony, p. 199.

meant to fix issues that occur when the original system fails; thus, success in restorative justice relies upon a functional system built on trusting relationships between staff and students.

Research from the Center determined several successful techniques which can alleviate the use of exclusionary practices. Schools often take an unsustainable approach to discipline reform as "too often," he explains, "they place the leadership of these additional programming tasks onto staff who already have full-time duties." [161] Schools with effective discipline reform have employed full-time coordinators specifically trained in relation building and restorative justice.

The Woodland Hills Intermediate School (WHIS) serves students in fourth through sixth grade; "75% of students are economically disadvantaged, 82% are students of color, and 31% receive special education."[162] Shawn Thomas, a social worker and expert restorative practitioner, has spent two years working with WHIS students and educators to reform their discipline policies and practices. "Mr. Shawn," as he's known to students, "provides ongoing professional development to faculty; responds to acute behavioral episodes; and mentors students experiencing more persistent challenges." [163] Educators at WHIS call Mr. Thomas' work a "saving grace," as his instrumental role offers critical support to students without over burdening teachers or school leadership.[164]

The National Association of Social Workers (NASW) recommend one school-social worker for every 250 students yet "only eight states currently have any student-school social work ratio requirements, and none are currently under 500 to 1."[165] School social workers, school counselors, and paraprofessionals offer critical support for students experiencing challenges at school. In schools unable to meet the national recommendation, teachers, who do not have the same training as mental health professionals, are left to fill in the gaps. Thus, Dr. Huguley recommends that supportive staffing provisions in schools adhere to national recommendations where schools with the highest need are allocated the most resources.[166]

In a review of the PDE's Safe Schools Reports from 2013-2016 the Center found the following: "overall suspension rates are exceedingly high in urban school districts" and "racial disparities in suspensions are higher in suburban districts."[167] This trend, Dr. Huguley emphasizes, is rarely

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[161] Huguley Statement, at 4.

[162] Ibid., at 3.

[163] Ibid., at 4.

[164] Ibid.

[165] Ibid., at 4. *See also,* "NASW Standards for School Social Work Services," National Association of Social Workers, p. 18, (accessed August 14, 2020), https://www.socialworkers.org/Practice/School-Social-Work.

[166] Huguley Testimony, *Nov. 21 PA Briefing*, p. 202.

[167] Huguley Statement, at 2. *See also,* Kerkstra, Patrick. "A Punishing Racial Disparity in Suburban Schools." The Philadelphia Inquirer, April 15, 2012, https://www.inquirer.com/philly/insights/20120415_A_punishing_racial_disparity_in_suburban_schools.html.

discussed and must be explored further to better understand the impact students of color face in all learning environments.
These findings show a demonstratable need for additional resources to correct what Dr. Huguley calls a "legacy of oppression," in Pennsylvania's school system.[168] Moving forward, focus must be placed on building the infrastructure to move resources to where they are most needed.[169]

PANEL 4: Pathways to Dismantling the School-to-Prison Pipeline

Kevin Bethel, MS, Special Advisor and Chief of School Safety, Philadelphia School District, PA

Kevin Bethel is the chief of school safety protocol for the Philadelphia School District and a former deputy commissioner with the Philadelphia Police Department. Born in West Philadelphia and raised by a single mother, Mr. Bethel shares that his story is not dissimilar from the experience of many youth in Philadelphia. His strong mother, his coaches, the community, and his godfather collaboratively created a support structure for young Mr. Bethel, he recalls. After leaving college in his second year, he became an officer in the Philadelphia Police Department where he served for 29 years.

Mr. Bethel notes that policing is "not without its flaws" and serious police reform is needed.[170] Priority must be placed on society's most vulnerable individuals; namely, the thousands of youth entering the criminal legal system each year through the school-to-prison pipeline. These youth are disproportionately African American and Latinx, and frequently involved in the system when their adolescent behavior becomes an arrestable offense.[171] While some offenses committed by youth should be prosecuted, he states, the majority of offenses are nonviolent. "I did not become a police officer to arrest, fingerprint, and put 10-year-old children in a dimly lit holding cell," Mr. Bethel stresses.[172] When a child is arrested, their future is put in jeopardy.

At the police academy he remembers being trained to make arrests. For officers working in schools and youth settings, this training is not sufficient and has the potential to cause significant harm. Youth are often criminalized because of an officer's lack of understanding of trauma, poverty, or other causes of adolescent behavior. For this reason, Mr. Bethel suggests that members of the policing community must take responsibility to change their perspectives about vulnerable youth in order to promote societal change. He concludes, "being a victim of trauma or poverty is not a criminal offense."[173]

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[168] Huguley Testimony, p. 203.

[169] Ibid.

[170] Kevin Bethel, Special Advisor and Chief of School Safety, Philadelphia School District, Philadelphia, PA, Testimony, *Nov. 21 PA Briefing*, p. 273 (hereafter Bethel Testimony).

[171] Ibid., p. 274.

[172] Ibid., pp. 273-274.

[173] Ibid., pp. 274-275.

After becoming more aware of the trauma many young people experience, Mr. Bethel began exploring alternative options to incarceration. In 2014, he began leading the Philadelphia Police Diversion Program, a city-wide alternative to arrest program for young people. Since its creation, youth arrests have decreased by 70%.[174] The program emphasizes coordinating support for students and their families, rather than arresting them. In partnership with the Department of Human Services, students are able to receive academic support, social and emotional competency building, access to recreation and work programs, and opportunities for community service engagement.

Mr. Bethel recommends training police departments to better understand normal adolescent behavior; connecting families with supportive services; and outlawing zero-tolerance in order to foster a community-based approach to school climate reform.

Reynelle Brown Staley, MPA, J.D., Policy Director, Education Law Center-PA, Philadelphia, PA

Reynelle Brown Staley is the policy director at the Education Law Center, a non-profit legal advocacy organization dedicated to ensuring access to quality education for all children in Pennsylvania. The Education Law Center has been a leader in the fight against exclusionary discipline practices for over 45 years.[175] Students of color, students with disabilities, and LGBTQ+[176] students are the frequent subject of discipline due to "federal, state, and district level policies that blur the line between school and prison," which, she urges, "need to be dismantled."[177]

Zero-tolerance policies were intended to "ensure that certain serious, and generally criminal student behavior, such as possession of guns or drugs at school, received strong and consistent disciplinary responses," Ms. Staley reports.[178] However, when laws such as "maximum allowable punishment" become the norm, it is clear that zero-tolerance policies have exceeded their intended purpose. [179] In order to effectively eliminate these policies from schools, they must be removed from all levels of education. "State and federal law have enabled, and in certain instances, encouraged school districts to impose maximum [punishments] for certain student conduct," she

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[174] Ibid., p. 276.

[175] Reynelle Brown Staley, Policy Director, Education Law Center-PA, Philadelphia, PA, Written Statement for the *PA, Nov. 21, 2019*, at 1 (hereafter Staley Statement).

[176] The "+" refers to sexual and gender identities not included within the LGBTQ acronym. *See also,* LGBTQIA+ described in Glossary of Terms at Appendix 6, of this report.

[177] Reynelle Brown Staley, Policy Director, Education Law Center-PA, Philadelphia, PA, Testimony, *Nov. 21 PA Briefing*, p. 279 (hereafter Staley Testimony).

[178] Staley Statement, at 1.

[179] Staley Testimony, p. 280.

explains further.[180] Ms. Staley asks educators to consider if actions used are appropriate to hold students accountable.

To limit the use of exclusionary discipline, schools must stop state legislatures from expanding police presence in schools. Their increased presence resulted from mass shootings occurring on school campuses in recent years. Ms. Staley notes that while mass shootings have occurred in predominantly White schools, schools with diverse demographics followed suit in increasing police presence on campuses. Police officers who are trained to make arrests tend to interpret behavior as criminal, even when it may not be. It is no surprise then, she says, that "when we increase the presence of individuals trained to arrest... there is an increase in arrests."[181] Over-policing is commonplace for many students of color; students are exposed to "significant police presence and high rates of punishment"[182] in their neighborhoods and in their schools, Ms. Staley states.

Rather than increasing police personnel, Ms. Staley advocates for an increased investment in mental and emotional health support, and for the professionals who provide them. Low-income students and students of color disproportionately attend under-resourced schools where she explains: "rather than getting the supports they need, they are more likely to interact with cops than counselors."[183] Nearly a quarter of students in Pennsylvania public schools attend schools with police but do not have a nurse, psychologist, social worker, or counselor.[184] Without mental health and behavioral health experts to offer support to navigating student behavior, what she refers to as, "ordinary age-appropriate student conduct," could become a law enforcement issue.

Ms. Staley calls for a "robust continuum of alternatives to exclusionary discipline."[185] Many states have shown leadership and success; Texas,[186] California,[187] Connecticut,[188] Maryland,[189] New Jersey,[190] and Oregon[191] have limited suspensions for elementary students; and three Pennsylvania

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[180] Ibid.

[181] Ibid., p. 281.

[182] Ibid.

[183] Ibid., pp. 282-283.

[184] Ibid., p. 283.

[185] Ibid., p. 284.

[186] Tex. Educ. Code Ann. § 37.0013 (limiting suspensions for students in grades 2 and below).

[187] Cal. Educ. Code Ann. § 48900(k)(1)(2) (limiting suspensions for students in kindergarten through third grade).

[188] Conn. Gen. Stat. Ann. § 10-233c (limiting suspensions for students in grades 2 and below).

[189] Md. Code Ann. Educ. § 7–305 (limiting suspensions for students in grades 2 and below).

[190] N.J. Stat. Ann. § 18A:37-2a(a) (limiting suspensions in pre-kindergarten through grade 2).

[191] Or. Rev. Stat. § 339.250 (limiting suspensions for students in fifth grade and younger).

school districts have banned the use of suspension for nonviolent offenses in kindergarten, first, and second grade.[192] In California, suspension is only imposed when alternatives have been exhausted or determined ineffective. Advocating for alternatives to exclusionary discipline practices does not mean educators should eliminate discipline, rather, Ms. Staley recommends replacing "ineffective and disproportionate exclusionary discipline with more effective data-driven, evidence-based strategies."[193]

While limited data exist for LGBTQ+ students, there is adequate data to understand that LGBTQ+ students are "profoundly impacted" by the school-to-prison pipeline, she explains.[194] Of LGBTQ+ students in the juvenile justice system, 90% report having been suspended or expelled at least once.[195] To create safe environments which celebrate diversity, she expresses, all school personnel must be trained to adequately support underserved students. She continues: "all school staff, including educators, administrative staff, and school-based law enforcement shall receive training and resources to understand and recognize signs of behavior that are connected to undiagnosed or diagnosed disability, and to develop culturally competent, age appropriate, empathic responses to student behavior."[196]

Ms. Staley states that in schools where police officers and school staff offer the only support, their training mandates using the criminal code when responding to student behavior; thus, making learning environments feel "less like schools," "and more like prisons."[197] She believes there is a need for change; schools need to invest in the holistic wellbeing of the child and divest from law enforcement.

Dr. Derek Cohen, Ph.D., Director, Right on Crime, Texas Policy Foundation, Austin, TX

Dr. Derek Cohen is the director of Right on Crime, a national campaign through the Texas Public Policy Foundation. The foundation is a free market think tank with a history of strengthening alternatives for nonviolent offenders. The foundation played a key role in Texas' 2007 criminal

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[192] Staley Testimony, *Nov. 21 PA Briefing*, p. 285. *See also,* Superintendent William R. Hite, The School District of Philadelphia Code of Conduct 2019-202016 (The School District of Philadelphia, 2019); Superintendent Anthony Hamlet, Pittsburgh Public Schools K-5 Code of Student Conduct Updated for 2019-20203 (Pittsburgh Public Schools, 2019); and Superintendent Alan Fegley, Phoenixville Area School District Elementary Student Handbook 2019-202016 (Phoenixville Area School District, 2019).

[193] Staley Testimony, p. 285.

[194] Ibid., p. 286.

[195] Ibid. *See also,* Shannan Wilber, Juvenile Detention Alternatives Initiative, A Guide to Juvenile Detention Reform: Lesbian, Gay, Bisexual and Transgender Youth in the Juvenile Justice System 9 (Annie E. Casey Foundation, 2015).

[196] Staley Testimony, p. 286.

[197] Ibid., p. 288.

justice policy shift which reduced the state's incarcerated population by more than 12 percent.[198] Right on Crime, launched in 2010, uses conservative principles to inform criminal legal policy recommendations with a focus on combating overcriminalization.
Texas' Failure to Attend School (FTAS) law mandated schools to file a complaint for any child receiving ten unexcused absences.[199] The law effectively made truancy a criminal offense. Punitive truancy legislation results from a concept Dr. Cohen calls, "the hammer," a belief that punitive measures are necessary to deter misbehavior and encourage compliance.[200] Dr. Cohen describes two programs where punitive responses failed to increase student attendance.

He begins in Florida where police led a program where "police stopped youth on the street during school hours and brought them to a 'truancy center' where calls were made to their parents and schools." [201] The program found no increase in attendance for truant youth sent to the center compared to truant youth who were not.[202] A second study randomly assigned middle and high school students exhibiting truancy into three different groups, each receiving different interventions. The first group experienced a traditional probation intake and family court hearing; the second was referred to a special court hearing occurring on school campus and was attended by mental health and community partners; and the third group received no intervention.[203] After tracking the student groups for one year, the study found the student groups that received a court intervention had "slightly worse attendance than the group that received no intervention."[204] Removing children from school, Dr. Cohen says, decreases their potential for academic success and increases feelings of isolation.[205]

During adolescence, Dr. Cohen says the brain is a "work in progress," as the brain has not yet developed impulse control, delayed gratification, and other executive functions which emerge in adulthood.[206] "Juveniles are not prudent decision-makers, " making displays of minor deviance

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[198] Derek Cohen, Director, Right on Crime, Texas Policy Foundation, Austin, TX, Written Statement for the *Nov. 21 PA Briefing*, at 1 (hereafter Cohen Statement).

[199] Ibid., at 1-2. *See also*, "Failure to Attend School" (FTAS) is a Class C misdemeanor applied to a student for failing to attend school under the age of 18. If convicted, a child could receive a fine up to $500 and a permanent reflection of the offense on their criminal record. *See also,* Texas Educ. Code Ann. § 25.094, https://youthlaw.org/wp-content/uploads/2015/01/Truancy-Research.pdf.

[200] Cohen Statement, at 2.

[201] Ibid.

[202] Ibid.

[203] Ibid.

[204] Ibid. For more information on the studies, *see also,* Fantuzzo et al., "Project Start: An Evaluation of a Community-Based, School-Wide Intervention to Address Truancy." *Psychology in the Schools*, 42.6, 2005.

[205] Cohen Statement, at 2.

[206] Ibid., at 3.

age-appropriate, he explains.[207] When youth are incarcerated in adult facilities, they experience higher rates of victimization, recidivism, and an increased risk of suicide.[208] Juvenile systems are better prepared to keep children in school and to solicit parental involvement to ensure success for the child. While it may appear to be more cost effective to house juveniles in adult facilities, their increased risk of recidivism makes juvenile court adjudication more cost-effective long term. Focusing efforts on prevention upon release is one of the most effective methods for controlling juvenile justice system costs.

Dr. Cohen recommends using community-based therapeutic models to support youth rehabilitation rather than relying on punitive consequences that lack results. "The most direct and effective way to intervene in the 'school-to-prison pipeline,'" Dr. Cohen concludes, "is to address the procedural structures that link the educational apparatus to the formal criminal justice system."[209]

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[207] Ibid.

[208] Ibid., at 4.

[209] Ibid., at 6.

Public Comments

Reverend Dr. Gene Gordon, Pastor at Capital Street Presbyterian Church

Reverend Dr. Gene Gordon provided a statement during the public comment portion of the hearing. He encourages mental health professionals to think about a collective suffering experienced by Black Americans rooted in the history of slavery. Rev. Gordon holds strong to the belief that Black people suffer from something called, "moral injury," which can manifest into anger, fear, and rage.[210]

The trauma caused by moral injury, he explains, is what young Black students are experiencing when they act out in school. The challenges faced by Black youth are the result of inter-generational harm, which has created a collective suffering for Black Americans for the past 400 years.[211] The nature of the problem, Rev. Gordon maintains, is not psychological as he explains "moral injury affects our souls, not our minds."[212] Rev. Gordon believes school-based social workers would benefit from viewing the experience of Black youth through the eyes of clergy members, rather than psychologists.

Darren Greenfield, Lead Pastor at Christ Center Church and Founder of Invert Strategies in Philadelphia

Darren Greenfield is the lead pastor at Christ Center Church in Philadelphia. Growing up in Philadelphia, he attended both public and private schools. After working as a pastor in schools across the United States for nearly eight years, he was inspired by a Chicago community church model. Pastor Greenfield planted[213] a similar model in a West Philadelphia's Overbrook High School where he aims for the church to become "part of the fabric" of the school community.[214]

Pastor Greenfield graduated from high school in 2003, a year where, he recalls, metal detectors were placed in schools for the first time. When a child has to walk through a metal detector in order to start their school day, "that doesn't do well for your dignity," he explains, "you are seen more as a criminal than a student coming to learn."[215] Overbrook High School's physical space is

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[210] Gene Gordon, Pastor, Capital Street Presbyterian Church, Harrisburg, PA, Testimony, *Nov. 21 PA Briefing*, p. 357 (hereafter Gordon Testimony).

[211] Ibid., p. 358.

[212] Ibid.

[213] Planting is a term used to describe the establishment of a new Christian church. *See also,* Planting described in Glossary of Terms at Appendix 6, of this report.

[214] Darren Greenfield, Pastor, Christ Center Church, Philadelphia, PA, Testimony, *Nov. 21 PA Briefing*, p. 360 (hereafter Greenfield Testimony).

[215] Ibid., p. 361.

an unappealing environment for students and teachers alike. He asks, "what student would feel like they are doing great things in a building that is falling apart."[216]

To combat these obstacles, he firmly believes children need opportunities to re-enforce their dignity every day.[217]

When he was attending high school, Pastor Greenfield recalls participating in a mentally gifted program. While the program provided him with excellent opportunities, he also felt it further divided the student community and had a negative impact on students not considered "gifted." To correct this divisiveness, he advocates for "collaborative and color-filled communities" where students of all levels hold an impactful role in the learning environment.[218] Under this model, a teacher also must see themselves as part of the learning environment rather than "someone who is there to instruct them from this point to that point, from eight a.m. to three p.m.," he adds.[219]

He asserts that funding barriers prevent students from realizing their potential. Of programs that are available to youth, many do not serve youth above the age of 14. "When kids are really trying to find themselves in high school," he expresses, "and are trying to figure out the next level, they don't have anything to help them out."[220] Diversion programs and advocacy programs could benefit from expanded to assure children have the support necessary to navigate high school and whatever may come next. An experience with a group of 50 high school students illuminated the need for greater support for high school students. When asked what the students needed most from the community to ensure their success, they responded: "you tell us that we can be doctors, we can be lawyers, we can be teachers...how am I supposed to believe that I can be that if you are not... exposing me to those who look like me."[221] Pastor Greenfield reiterates the necessity of supporting young people stating: "I feel as though our kids are left to go on by themselves and we are not a part of that journey alongside of them."[222]

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[216] Ibid., p. 362.

[217] Ibid., p. 361.

[218] Ibid., p. 362.

[219] Ibid., p. 363.

[220] Ibid., p. 365.

[221] Ibid., pp. 365-366.

[222] Ibid., p. 366.

Glossary of Terms

ACLUPa: American Civil Liberties Union of Pennsylvania

Adverse Early Childhood Experiences (ACEs): Between 1995 and 1997, Kaiser Permanente, in partnership with the Center for Disease Control, conduced one of the largest investigations of childhood adversity and later-life health outcomes. The study conducted physical exams and confidential inquiries into the childhoods of over 17,000 adults over the course of two years. The confidential surveys included questions about the participants' experiences with childhood adversity as well as their current states of health. ACEs include 10 potentially traumatic events such as violence, abuse, neglect, loss of a family member, living in a household with individuals misusing substances, living in a household with someone experiencing mental health issues, or instability due to parental separation or parental involvement in the criminal legal system. The study concluded that ACEs are extremely common, nearly two-thirds of participants reported at least one ACE. Social and economic factors can increase an individual's likelihood of experiencing ACEs; women and people of color are most at risk. And most importantly, as the number of ACEs increase, so does the risk for negative physical, mental, and professional outcomes later in life. *See also*, "About the CDC-Kaiser ACE Study," Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Division of Violence Prevention, updated April 13, 2020, https://www.cdc.gov/violenceprevention/acestudy/about.html.

Defunding the Police: The death of George Floyd on May 25, 2020 reignited a national conversation about police use of force and a call to defund the police. Defunding the police refers to decreasing the proportion of money allocated to police departments and redistributing the funds into social programs focused upon prevention; potential programs include affordable housing, substance use prevention, food security, and violence prevention initiatives. Thirteen local city councils across the country have pledged to cut their police department budgets, including Los Angeles and New York City, the two largest cities in the U.S., who voted to cut 150 million and one billion dollars respectively.

ED: U.S. Department of Education

Gender Non-conforming: Gender non-conforming, sometimes referred to as GNC, is a term used to describe an individual's identity or gender expression that does not conform to typical societal expectations of gender or gender presentation.

GLSEN: Gay, Lesbian, Straight, Education Network

K-2: Kindergarten through second grade levels. These grades are often grouped by the notation "K-2" to represent lower levels of elementary education for curriculum or programming purposes.

K-12: Kindergarten through 12th grade education levels. The notation "K-12" typically is used as an inclusive term to describe all levels of education proceeding higher-education (college and beyond).

Latinx: A gender-neutral term used to describe people of Latin American descent. The use of an 'X' rather than previously gendered endings, "O" in Latino or "A" in Latina, represents all gender identities.

LGBTQIA+: The acronym stands for Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Asexual; the plus symbol is added to include additional identities not represented in the acronym. LGBTQIA+ is the most comprehensive term used to describe sexual and gender identities. Other terms used in this report include LGBTQ+ and LGBTQ.

Non-binary: Non-binary is a gender identity where the individual does not singularly identify with one gender within the gender binary (i.e. girl/boy or woman/man). Non-binary identities exist on a spectrum of identities where people may identify with components of both genders, neither gender, nor as transgender.

PaTTAN: Pennsylvania Training and Technical Assistance Network

PDE: Pennsylvania Department of Education

Planting: Planting is a term used to describe the establishment of a Christian Church.

Positive Behavioral Interventions and Supports (PBIS): PBIS is an evidence-based multi-tiered approach to social, emotional and behavior support. The broad purpose of PBIS is to improve the effectiveness, efficiency and equity of schools and other agencies. PBIS is funded by the U.S. Department of Education's Office of Special Education Programs and the Office of Elementary and Secondary Education. For more information from PBIS.org, *See also,* "Tiered Framework," Center on Positive Behavioral Interventions & Supports, accessed August 20, 2020, https://www.pbis.org/pbis/tiered-framework.

Restorative Practices: Restorative Practices in school settings borrow principles from restorative justice, an alternative approach to criminal justice originating in the 1970s. Relationships are at the center of restorative practices, when harm occurs, restorative practices aim to repair the relationship between the offender and the victim. Restorative practices are used in a variety of settings including the criminal justice system, school settings, and professional environments. Restorative practices commonly use "talking circles," restorative conferences, and peer-to-peer mediation to correct wrongdoing and facilitate reconciliation. *See also,* "What Is Restorative Practices?" International Institute for Restorative Practices, IIRP, accessed August 20, 2020, https://www.iirp.edu/.

School-to-Prison Pipeline: The School-to-Prison Pipeline is a term used to describe educational policies and practices that push students out of schools and into the criminal legal system. The term describes schools' role in either directly or indirectly involving students with law enforcement most commonly through zero-tolerance discipline policies, suspension,

expulsion, and school-based arrest. Students of color, students with disabilities, and LGBTQ students are disproportionately impacted by the School-to-Prison Pipeline. *See e.g.,* "School-to-Prison Pipeline," American Civil Liberties Union, American Civil Liberties Union, accessed August 20, 2020, https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline.

SROs: School Resource Officers/Officials

UCLA: University of California at Los Angeles

Zero-tolerance policies: The policy's quite literal name meant certain offenses, specifically those involving weapons, were not to be tolerated and mandated expulsion for anyone bringing a weapon onto a school campus, regardless of circumstance. Zero-tolerance policies are criticized for the lack of regard taken to understand the nature of the situation. While zero-tolerance policies originally applied only to extreme circumstances, many schools adopted zero-tolerance policies for minor offenses such as uniform violations or truancy. *See e.g.,* "Combating the School-to-Prison Pipeline," End Zero Tolerance, ACLU of Pennsylvania, updated August 18, 2020, www.endzerotolerance.org.

Testimony

Kevin J. Bethel
Special Advisor-Chief of School Safety Philadelphia School District
Philadelphia Police Department Deputy Commissioner (Retired-2016)

First, I want to thank the PA Advisory Committee to the U.S. Commission on Civil Rights for the opportunity to speak today

My upbringing is very similar to many boys and girls in this city. I was born in West Philadelphia. My three brothers and I were raised by a single mom. Like most moms, she poured everything she had into us. Occasionally we fell on hard times. We were evicted a few times. Sometimes we went without gas or electricity. But, she fought to keep us on the straight and narrow. And she was successful.

Did I do knuckle headed things in my youth? Like most of us -- of course, I did! However, along with my mom, my community – teachers and coaches – supported me. My godfather gave me a part time job to teach me hard work and responsibility. They believed in second chances.

I enrolled in college, but was asked to leave my sophomore year. I received another second chance when I learned the Philadelphia Police Department was diversifying its ranks. I passed the exam, became an officer, and would serve with the bravest men and women I know for 29 years. Eleven years ago, I was promoted to deputy police commissioner for the fourth largest police department in the fifth largest city in this country.

I had a great career and recently given an incredible opportunity to continue to serve as Chief of School Safety for the Philadelphia School District. My proudest accomplishments: meeting and marrying my beautiful wife and the birth of my three daughters. I have formed great relationships with public servants across the city, and I give back to a community that shaped the man who stands before you today.

But, policing is not without its flaws. I am the first to admit that we need serious reform in this country. And, a priority must be how we treat our children and our youth, especially our most vulnerable, who are often poor and of color.

I did not become a police officer to arrest, fingerprint, and put 10-year-old children in dimly lit holding cells. Yes, some offenses committed by youth should be prosecuted. However, the majority of offenses committed by juveniles are nonviolent. Every year thousands of children, children who are disproportionately African American and Latino, are entering the criminal justice system through the school to prison pipeline because adolescent misbehavior is now an arrestable offense. Those arrests mean those children's graduation rates, job prospects, and mental health statuses are now at risk.

I began asking more questions and learning more about the causes of adolescent misbehavior.

The police academy trains us to make arrests. 85 percent of people's introduction to the criminal justice system is through police. But, being a victim of trauma or poverty is not a criminal offense. This is the reality for many of our young people. So, for change to happen in how the system treats our most vulnerable youth, it must start with me and other members of the policing community.

Five years ago, I began leading the Philadelphia Police School Diversion Program. This citywide program is an alternative to arresting our young people. We intervene with social services and counseling for students and their parents when they first get in trouble. Four years ago, I decided to retire from the police department to oversee this program full time.

I am not suggesting to anyone listening that I am an expert in the field of juvenile justice. I am a cop, who after 29 years in policing, began to see things differently. As I became more exposed to the trauma many of our young people face in their community, and often times in their home, I increasingly came to recognize that we have to develop alternatives to arresting juveniles.

Since the implementation of program in 2014 the PPSDP program has:

- Reduced arrests by 71 Percent (A system that used to arrest 1600 a year);
- The recidivism for arrested youth is 27% and the Diverted Youth is 14%;
- Department of Human Services provides services to students and their families to help them turn their lives around.
- Diverted over 2200 Students to Services

Students under the DHS, Intensive Preventive Services Model provides: Academic Support, Social/Emotional Competency Building, Mentoring, Recreation, Work-Ready Programming, Community Service, Engagement with Parental Involvement.

As I became more informed on the subject matter, I would also come to understand that many of our youth arrested in the city are for minor offenses. I would learn that youth who come into the system often remain in the juvenile system because they cannot pay their fines/fees to satisfy their debt.

So I submit the following:

- We need to strongly consider diversion models in department and instituting trainings that teach officers, both in and out of schools, how to help facilitate counseling, not criminalization of our young people's normal adolescent behaviors;
- Strategizing how to best connect services to our students and families that are most in need; and

- engaging concerned community members, the educators, moms, dads, grandmothers, pastors, we need you to help demand the outlawing of the zero – tolerance policy in your school districts and advocate for an alternative and community-based approach, like PPSDP, to help create a school environment where both students and teachersfeel safe.

Let us all send a clear message to our children that we are committed to their education not incarceration.

A second chance, not an arrest, is what they need.

Parents, Teachers, and School Discipline:
Helping Every Child Succeed Inside and Outside of the Classroom

Testimony before

Pennsylvania Advisory Committee, U.S. Commission on Civil Rights

November 19, 2019

Jonathan Butcher
Senior Policy Analyst
The Heritage Foundation

My name is Jonathan Butcher. I am a Senior Policy Analyst in the Center for Education Policy at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

In a 2017 survey of Philadelphia teachers, researchers found that 64 percent of respondents said the ability to suspend students from school "is useful as a deterrent to the suspended student's future misbehavior," and 85 percent of respondents said suspensions are "useful for removing disruptive students so that others can learn."[1]

As I will explain in this testimony, such findings are not unique—nor are these opinions representing just one side of the political debate about student suspension and expulsion (commonly known as "exclusionary discipline"). However, the results of this survey bring into focus two important areas of consideration for school safety policy:

1. Research demonstrates that leaving disruptive students in the classroom puts other students at risk and interferes with student learning.

2. Policies that limit an educator's ability to maintain order in his or her classroom interfere with a teacher's responsibility to keep students safe.

Furthermore, data on student discipline according to race are not conclusive as to whether the discrepancies are the result of bias. The same data highlighting different discipline rates according to race also indicate such students are exhibiting different behaviors that help to explain different rates of discipline.

Studies have found negative outcomes for the peers of offending students when disruptive students are left in the classroom, especially in schools that serve "more disruptive students."[2] In Philadelphia, where researchers say school compliance with policies to limit exclusionary discipline varies widely across the district, a Fordham Institute study found either no changes in academic achievement or negative effects among the peers of students involved in discipline-related incidents.[3] The authors write, "One reasonable interpretation of these results is that a policy change prohibiting the use of conduct suspensions has more negative consequences for peers in schools that serve more disruptive students—perhaps because the marginal student who returns to the classroom is more disruptive."

A study conducted by RAND of the Pittsburgh school system found that teachers in schools that limited exclusionary discipline reported an "improved school climate," but the student achievement in those schools declined.[4] Furthermore, the policies did not make the schools safer. According to the RAND report, there was "no reduction in the number of incidents of violence or arrests." Researchers wrote, "This study did not demonstrate that restorative practices can be effective in curbing the most violent behavior, at least within a two-year implementation period."

A study of Chicago schools found that shortening the duration of student suspensions led to "worse climate" and did not affect test scores, demonstrating that the effect that limiting exclusionary discipline has on school climate is, at the very least, inconsistent from one school to another.[5] Researchers cannot say conclusively—or cite consistent evidence—that that limiting exclusionary discipline results in an improved school climate.

In each of these studies, the research from Philadelphia, Pittsburgh, and Chicago researchers found reports of either a worse school climate or measured negative academic outcomes when educators limited exclusionary discipline.

In a study of Kentucky schools, researchers say high levels of suspension can have negative outcomes for the peers of disruptive students, which seems to contradict the Philadelphia study. [6] However, the authors write that their findings on the negative outcomes from suspension are not generalizable to other areas of the country and "suspension used in moderation does not have an adverse impact on non-suspended students."[7] This research does not support the elimination of student suspensions. Schools should not rely on singular approaches to exclusionary discipline—that is, either always suspending and expelling students or never doing so. Policymakers should allow educators, those adults that see students in the classroom every day, to make decisions in the best interests of their students. This conclusion will reappear in more detail at the end of this testimony.

As for the offending students, University of Arkansas research finds that teachers were more likely to make ninth-grade students repeat a grade if those students had been suspended and expelled earlier in their education career. However, other work by some of these same researchers finds that exclusionary discipline was related to positive achievement outcomes for suspended and expelled students in some cases.[8]

Nationally representative surveys find consistent opposition to the idea of limiting schools' responses to student behavior. In the latest Phi Delta Kappan (PDK) poll, 51 percent of parents say that school discipline is not strict enough.[9] The poll quoted a Delaware teacher who said, "School discipline is too lenient because of political correctness that has now invaded the schools, along with government intrusion into the public schools. The teacher has very little control regarding classroom discipline." Sixty-four percent of district school teachers say discipline in their own school is not strict enough.[10]

Minority parents in the survey favored harsher punishment at higher rates than their white peers for "common school situation(s)," such as bringing a folding knife to school.[11]

While a majority of respondents was in favor of mediation as a resolution technique for misbehavior, a majority of respondents also said that police should handle incidents involving drugs, weapons, and sexual assault in school.

This latter finding is notable because school and district decisions to limit exclusionary discipline are often adopted in tandem with law enforcement policy to limit their interaction with students. Such policies are an undeniable part of the explanation for the tragedy in Broward County, Florida, at Marjory Stoneman Douglas High School in February 2018.

In Broward County, school officials and law enforcement signed an agreement to limit student interaction with law enforcement.[12] Parents, local media, and even Florida Governor Ron DeSantis (R) criticized the lenient culture that resulted.[13] Broward County's school discipline policy may not have been the only contributing factor to the shooter's actions last year, but the bureaucratic red tape created by discipline data mining and administrators' conscious decisions to limit school discipline are undeniably causal factors.

The PDK poll is not an exception. The 2019 Education Next poll, another nationally representative survey, finds that 49 percent of respondents from the general public oppose policies that limit exclusionary discipline (just 28 percent are in favor). The survey found similar results for parents (46 percent oppose and 28 percent in favor) and teachers (48 percent oppose with 30 percent in favor) in opposition to federal policies that limit exclusionary discipline.[14] The survey also found similar results in 2015 2016, and 2018.[15]

Teacher surveys also find opposition to policies that limit an educator's ability to maintain control of a classroom. A survey of a nationally representative sample of teachers from around the country found "two-thirds of teachers say discipline policy (in areas that limit exclusionary discipline) is inconsistently enforced, and almost half say they put up with offending behavior in the classroom due to a lack of administrative support" and the "underreporting of 'serious incidents' is rampant." [16]

In addition to the negative academic outcomes and worsening school climates that can result from limiting or abolishing exclusionary discipline, school administrators have also manipulated their discipline numbers. After the Obama Administration sent its "Dear Colleague Letter" in 2014 and threatened to investigate schools with high rates of minority student discipline, the *Washington Post* found examples of District of Columbia schools that expelled students "without calling it a suspension and in some cases even marked them present."[17] Data manipulation was uncovered in Newark, New Jersey, and Miami, Florida.[18]

Other research on disproportionate rates of exclusionary discipline by race is mixed as to the presence of racial bias and has uncovered important findings unrelated to race. For example, in a study that examined factors that "may contribute to the overrepresentation of minority students" in reports of office disciplinary referrals (sending a student to the principal's office), researchers found that educators were more likely to discipline boys—regardless of race—in this way.[19] Furthermore, this research did not find that minority students receive more discipline on subjective measures. The authors wrote, "In contrast to prior work by Skiba et al. (2008), we did not find that Black students were more likely to receive an ODR for defiance, which is likely a more subjective assessment of the student's behavioral infraction."[20] This finding also calls into question the American Psychological Association's "Zero Tolerance Task Force" report from 2006 that said that "African American students may be disciplined more severely for less serious or more subjective reasons."[21]

The assumption underlying data that show minority students are disciplined at higher rates than their peers is that these students are behaving the same way in class. (The Manhattan Institute's Heather MacDonald has also raised this point.)[22] In fact, every child is different and has different needs, so we cannot assume they will all behave the same way in school.

The Zero Tolerance Task Force of the American Psychological Association mentioned above says there is no "data supporting the assumption that African American students exhibit higher rates of disruption or violence that would warrant higher rates of discipline," yet the U.S. Department of Education has a wealth of data to refute this claim.[23]

For example, as MacDonald explains, while the number of black male teenagers that commit a homicide is small, they still "commit homicide at nearly 10 times the rate of white male teenagers of the same age."[24]

Using the Education Department's "Indicators of School Crime and Safety," MacDonald and others have pointed to indicators demonstrating differences in student behavior according to race or socioeconomic background.[25] Thirty-three percent of black students in grades nine through 12 reported being in a physical fight in school or outside school in the past year compared to 21 percent of white students.[26] Again, a figure that MacDonald cited in the 2017 "Indicators" remains true for the 2018 edition of the report: The percent of black students who reported being in a fight on school property was more than double the figure for white students (15 percent versus 6 percent).[27]

Nearly twice as many black students (7 percent) reported being "afraid of attack or harm at school" compared to white or Hispanic students (4 percent each).[28]

The findings are similar for gang activity. Seventeen percent of black students ages 12–18 reported gangs at school compared to 12 percent of Hispanic students and 5 percent of white students.[29]

This report also found that that "a higher percentage of gay, lesbian, or bisexual students (28 percent) reported having been in a physical fight anywhere during the previous 12 months than did heterosexual students (23 percent)."[30] A higher percentage of gay, lesbian, or bisexual students reported using marijuana (31 percent) in the past 30 days than heterosexual students (19 percent).[31]

Higher percentages of black (19 percent) and Hispanic (25 percent) students said "illegal drugs were made available to them on school property" in the past year than white students (18 percent).[32]

These figures demonstrate that different students from different backgrounds, growing up exposed to different influences make different choices, and educators must administer discipline accordingly to keep all children safe. Rates of student discipline are misleading when reported apart from student behavior.

Behavior and incident-related data are not the only evidence that is crucial to understanding disproportionate discipline rates. As noted by the U.S. Department of Education and researchers such as the University of San Diego Law School's Gail Herriot, minority students are truant from school at higher rates than their peers.[33] Black students account for approximately 15 percent of enrollment in

public K–12 schools but make up 20.5 percent of chronically absent students, while white students account for 14.5 percent of chronic absences.[34] Hispanic students are still a smaller proportion of total enrollment than their white peers, but these students account for 17 percent of chronically absent students. The figures are worse when reported by grade level. Black and Hispanic high school students account for approximately half of all chronically absent high school students.

If we are concerned about minority students missing school, then parents, educators, and policymakers should make schools a place that students consider safe. Disciplinary decisions may require the removal of a dangerous or disruptive student, but that student's removal allows for 15 other students to have a better learning experience.

Minority students come from different backgrounds, affecting their behavior in and outside school. One of the authors of the Fordham Institute study of Philadelphia schools mentioned above, Dr. Matthew P. Steinberg of the University of Pennsylvania, says, "Much of the differences in school discipline meted out to minority students…is explained at the school level."[35] He says the evidence that "can lend itself to causal conclusions" on the causes and consequences of exclusionary discipline is "thin." Instead, he says, "We really need to think about targeted responses at the school level" and

> [m]uch of what we know about that school-level effect, has to do with the fact that it has long been known that the ways in which we sort students into schools tends to be based on residential location. Particularly in urban schooling contexts, we know that residential location, particularly for minority students, means that these students are coming from neighborhoods with higher crime rates, higher poverty, quite a bit more life trauma and what we are doing is sorting these students into the same schools and really concentrating disadvantage and therefore likely concentrating behavioral issues within the same school, and, as a result we may be seeing higher rates of school discipline.

Researchers that conducted the Chicago study mentioned above drew similar conclusions. The authors wrote, "Because residential segregation leads schools in Chicago to be very segregated by race, differences in suspension rates across schools lead to differences in suspension rates by race" and "the concentration of many low-achieving students from high-poverty neighborhoods…seems to increase the likelihood that a school will have high suspension rates."[36]

A study demonstrating the presence of disproportionate discipline rates according to race—and cited in both the 2014 "Dear Colleague Letter" and in Herriot's research—admitted, "In and of itself, however, disproportionality in school discipline is not sufficient to prove bias in the administration of discipline."[37]

School officials have few effective ways to identify and prevent discipline incidents caused by bias. In an essay on school discipline, Herriot and Alison Somin suggest that no governing authority could reduce just the incidents of discipline caused by racial bias. What policies would reduce only these incidents without a host of unintended consequences, including harming the peers of disruptive students? Herriot and Somin write,

> Would unleashing OCR [the Office of Civil Rights] and its army of lawyers cause those schools to act carefully and precisely to eliminate only that portion of the discipline gap that was the result of

> race discrimination? Or—more likely—would schools react heavyhandedly by tolerating more classroom disorder, thus making it more difficult for students who share the classroom with unruly students to learn?[38]

Herriot also cites a 2014 study that uses longitudinal data of more than 21,000 students that directly refutes the claim that disproportionate discipline rates are due to racism. Published in the *Journal of Criminal Justice*, the researchers write, "The inclusion of a measure of prior problem behavior reduced to statistical insignificance the odds differentials in suspensions between black and white youth."[39] Notably, some of the behaviors included in the study were objective measures such as cheating, stealing, and fighting. Herriot simplifies the findings and says the researchers "found that once prior misbehavior is taken into account, the racial differences in severity of discipline melt away."[40]

In a congressional hearing, Education Secretary Betsy DeVos cited these findings, and Representative Katherine Clark (D–MA) criticized the research, accusing Secretary DeVos of saying that "black children are just more of a discipline problem."[41] However, the lead researcher of the study in question, J. P. Wright, told *U.S. News & World Report*, "I would never say that black children are, categorically, more of a discipline problem than other students." Similar to the analyses from Steinberg and others cited in this testimony, Wright said "many African-American youth remain socially and economically disadvantaged" and "broad-based, one-size-fits-all policies can generate some fairly negative consequences when applied broadly across districts."[42]

Finally, policies that limit exclusionary discipline also limit a teacher's ability to protect his or her students. Last year, the Federal Commission on School Safety's final report wrote, "Teachers are best positioned to identify and address disorderly conduct," adding later, "[teachers] have an understanding of the students entrusted to their care and can see behavioral patterns on an ongoing basis."[43]

Some lawmakers on the other side of the aisle have arrived at similar conclusions. On at least two occasions, former California Governor Jerry Brown (D) vetoed proposals that would have added requirements on teachers in that state to further limit exclusionary discipline.[44] In his 2018 veto letter, Brown wrote, "Teachers and principals are on the front lines educating our children and are in the best position to make decisions about order and discipline in the classroom." (These requirements were later signed into law by Brown's successor, Governor Gavin Newsom (D).)

Even the aforementioned Zero Tolerance Task Force from the American Psychological Association says, "Teachers and other professional staff who have regular contact with students on a personal level should be the first line of communication with parents and caregivers regarding disciplinary incidents" and say that "school safety" should be a consideration as schools consider student disciplinary policies.[45]

Research from the Fragile Families dataset, a longitudinal dataset of 5,000 children with an oversampling of children born to unmarried parents, agrees that parent involvement is important.[46] In a study of school discipline, Jayanti Owens and Sara S. McLanahan write that "punishment early in schooling has consequences for long term achievement, criminal justice interaction, and wellbeing," but that "it would be over simplistic to say that policy efforts should focus on a single mechanism." On parental engagement, they write, "facilitating school involvement from minority parents may be the most efficacious way to reduce racial disparities in suspension." Notably, the authors said that future

work is needed to determine the presence or influence of racial bias among teachers—indicating that the existing literature on the subject has not done so.[47]

Again, parents and teachers should be able to make decisions about student safety. The Federal Commission on School Safety's report is correct, the solution should not come from Washington and be promulgated nationwide:

> Local approaches and priorities are most important. Because teachers, in partnership with principals and other school leaders, know their schools, students, and classrooms best, they should be able to make decisions about school discipline without unnecessary worry about undue federal repercussions.[48]

Outside Washington and based on the research evidence, data gathered on student discipline from around the country, and survey results, lawmakers should allow educators to use their best judgment to maintain order in the classroom. No parent or teacher wants students to be suspended, but if the choice is between keeping students safe and removing a disruptive, even dangerous students from the classroom, student safety must come first.

If a student has been threatened or physically harmed in school, parents should have the ability to choose another school for their child. Florida law offers such choices today through Hope Scholarships that allow bullied students to attend private schools, and Arizona lawmakers considered a similar proposal earlier this year.[49]

If taxpayers and families are going to trust traditional public schools to educate children, then state lawmakers should be prepared to put reasonable provisions in place to make these institutions transparent to taxpayers. Likewise, lawmakers should review such policies over time to determine which laws and rules are helping students succeed and eliminate the policies that are not doing so. While zero-tolerance policies create a set of rigid rules that limit teacher decision making, so, too, does limiting—or more draconian, eliminating—exclusionary discipline.

Teachers and principals should be able to make decisions in the best interests of the students in their care. Parents should be empowered to make choices based on those decisions.

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Texas Public Policy Foundation

Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights
"Dismantling the School-to-Prison Pipeline"
Derek M. Cohen, Ph.D.

About the Texas Public Policy Foundation & Right on Crime

Since 1989, the Texas Public Policy Foundation has served as the state's free-market think tank, and in 2005, we launched our Center for Effective Justice. Our work in Texas, which included research, data analysis, and legislative testimony, helped shape Texas' historic shift in criminal justice policy in 2007 away from building more prisons to instead strengthening alternatives for holding nonviolent offenders accountable in the community, such as drug courts. Since making this shift, Texas has achieved a drop in its incarceration rate by more than 12 percent and, most importantly, a drop in its crime rate by more than 24 percent, reaching its lowest level since 1967. Taxpayers have avoided spending more than $2 billion on new prisons.

Building on the Texas success, we launched Right on Crime in 2010. Our Statement of Principles, signed by conservative leaders such as Jeb Bush, Newt Gingrich, Rick Perry, Bill Bennett, Grover Norquist, and J.C. Watts, as well as leading experts in the field such as John DiLulio and George Kelling, explains how conservative principles such as personal responsibility, limited government, and accountability should apply to criminal justice policy. Our focus areas include: 1) maximizing the public safety return on the dollars spent on criminal justice, 2) giving victims a greater role in the system through restorative justice approaches and improving the collection of restitution, and 3) combating overcriminalization by limiting the growth of non-traditional criminal laws. Right on Crime does not endorse or oppose legislation, but continues to highlight how these principles can be applied at all levels of government.

First Steps: Severing the Direct Connection

In the winter of 2015, Texas treated Failure to Attend School is as criminal conduct. Of the entirety of the United States, only Texas and Wyoming had a formal, criminal mechanism to address truancy. When handled in Justice of the Peace or Municipal Courts, a child convicted of FTAS was given the two penalties allowed for a Class C Misdemeanor: a fine up to $500 (with the potential of assessed court costs) and the offense permanently reflected on their criminal record.

Further, FTAS runs parallel to (and often supplants) the offense of "Truancy" in the Texas Family Code.[1] Therefore, a repeal of the Education Code's provision criminalizing truancy would not require a replacement statute. Sanctions emanating from the Juvenile Court are often more commensurate with the offense and conducive to allowing the child to stay in school, continue work, and remain a productive young citizen, to say nothing of the legal protections afforded delinquent youth.

[1] Texas Family Code §54.021

A municipal or justice of the peace court which handles Class C misdemeanors typically has the option of a fine, which because it was likely to be paid by the parent and occurs so far after the actual truancy violation, often has little impact on the youth's behavior. In contrast, juvenile courts that handle the Family Code provision that includes truancy among the CINS (Child In Need of Supervision) offenses can better address the underlying issues in the home that typically lead to truancy through appropriate interventions.

The Myth of "The Hammer"

As in most juvenile justice discussions, opponents of reform often invoke the need for a "hammer;" a punitive sanction to deter misconduct and encourage compliance. Not only does this run afoul of child psychology – the rubric that well-adjusted use to make rational decisions does not apply to children in many cases – it has not be supported by the literature.

A Florida program in which police stopped youth on the street during school hours and brought them to a "truancy center" where calls were made to their parents and schools and social workers made referrals to community services. The evaluation concluded that there was no increase in attendance for youth who were truant and sent to a truancy center compared to truant youth who were never picked up. In fact, thirty days after the intervention period, truant youth who received no intervention had a slight improvement in attendance when compared to youth who had gone to the truancy center.[2]

Another study looked at truant middle and high school students in Philadelphia who were either referred to a traditional probation intake and family court hearing, referred to a special court hearing which occurred in the student's school and was attended by service providers and community members, or received no intervention. Truant students were randomly assigned to each group and attendance was tracked for one year after the intervention.

Students referred to a traditional probation intake and family court hearing increased their attendance in the two months after the hearing. A year after the hearing, however, the students who had been to court had worse attendance records than they had prior to being referred to court. A year out, the attendance of this group was actually slightly worse than the group that received no intervention.[3]

Once a child is removed from school, he or she stands little chance of staying current on the material. Further, the child may begin to feel isolated from the other students and teachers, complicating reintegration after the punishment is over. These problematic outcomes are compounded when one considers the cost imposed on local courts, the per-day funding the school must forgo during the period of punishment, and the harm done to the child's future.

Under the former scheme of mandatory filing, Texas schools were required to file a criminal FTAS complaint on a child after he or she reaches ten unexcused absences. Some 115,756 such cases were filed in FYI 2013 alone, well over twice the filings seen cumulatively in

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[2] Bazmore et al., "Scared Smart or Bored Straight?" *Justice Quarterly,* 21:2, 2006.

[3] Fantuzzo, et al. "Project Start: An Evaluation of a Community-Based, School-Wide Intervention to Address Truancy." *Psychology in the Schools,* 42:6, 2005

all other states.[4] In FY 2012, FTAS cases accounted for over one-third of all Class C Misdemeanors that year. Many of these students and their parents desperately struggle to comply with the accompanying fines and court costs.

Some municipalities have created "Truancy Courts" in order to process the glut of cases generated from the mandatory filing requirement. The courts subsist – in part or wholly – on the levying and collection of fines and court costs associated with the penalties. For example, in 2013 Dallas's truancy court issued over 25,000 FTAS convictions, nearly one quarter of those filed in Texas. This emphasis on caseload processing versus the results of each case creates the perverse incentive to adjudicate more and more FTAS cases, not on fixing the underlying problem.

Passage of HB 2398

During the 2015 Legislative Session, omnibus truancy reform was amended onto HB 2398, a small bill allowing the judiciary to establish trust accounts for dealing with the needs of truants.

Finishing the Fight: Addressing the Age of Juvenile Court Jurisdiction

Juveniles are not prudent decision-makers.

For most individuals, the human brain has not reached full development until about 25 years of age. This latent development is not problematic *per se*, though the disparate rate different regions of the brain develop is. The two *nucleuses accumbens* (one in each hemisphere) are more substantially developed in early adolescents. The *nucleus accumbens* facilitates reward response (i.e., provides a dopaminergic release) when certain behaviors are undertaken. However, this outpaces the development of the prefrontal cortex, the brain area associated with impulse control, delayed gratification, and other executive-level "adult" functions. Simply put, the average adolescent brain has an unfortunate structure that demands reward, though lacks the ability to regulate reward-seeking behaviors. As such, it is not uncommon to see minor deviance amongst youth, though that deviance often stops in the individual's early twenties.[5]

Further, studies have shown that traumatic experiences (those reasonably expected to be experienced in secure incarceration with an adult facility) have an extremely detrimental effect on the developing brain. Future deviance, aggression, and low self-control are correlated with having experienced trauma earlier in life.

Similarly, the adolescent brain as a "work in progress" bodes well for rehabilitative approaches. The brain's malleability at this stage makes the individual prime for appropriate

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intervention. However, this nuance underscores the need for appropriate risk classification and program assignment. Assigning low-risk youth to interventions intended for and attended by high-risk offenders can be just as damaging as the incarceration experience.

Adult correctional facilities are not conducive to juvenile rehabilitation.

It is difficult to identify a specific causal link between contact with the criminal justice system and long-term outcomes. Those who come in contact with the criminal justice system have, by their very definition, an elevated risk than those who do not. However, differences in outcomes between individuals who come into contact with the criminal justice system – but are adjudicated differently – is rather telling.

The bulk of the scientific literature on the matter has shown that when compared to similarly-situated offenders, youth who are transferred into the jurisdiction of the adult court routinely have worse outcomes than do those who are not. These studies look at youth via *post hoc* comparison or quasi-experimental design and identify the aggregate differences in outcome between the two groups. Youth handled by the adult criminal court and in adult correctional facilities routinely have higher rates of victimization while incarcerated, higher recidivism rates upon release, and even an elevated risk of suicide.

In addition to the divergent outcomes from the two jurisdictions, 17 year-olds are still subject to compulsory attendance laws. Juvenile probation, with its close relationship to the schools, is better arrayed to keep the offender in school and on a path to success. Further, the juvenile system is more adept at interfacing with parents. A 17 year-old processed in the adult system precludes parental involvement, whereas the juvenile courts, juvenile probation, and even juvenile secure facilities encourage and solicit parental involvement, a key element in reforming the child.

There is a panoply of community-based rehabilitative modalities that target young offenders and at-risk youth. Functional Family Therapy and Multi-systemic Therapy are promising avenues for dealing with at-risk youth.[6] In dealing with youth post-adjudication, cognitive-behavioral therapies (CBT) (those which target "criminal thinking errors" and other criminogenic risk factors) have shown broad success. It is important to note that CBT programs, just like other forms of rehabilitation, are most effective with high-risk offenders. Care should be taken not to over-sentence (and by extension over-treat) low-risk youth as doing so often leads to negligible or counterproductive outcomes.

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[6] For an overview and meta-analysis of family-based programs, see: David Farrrington and Brandon Welsh, "Family-based Prevention of Offending: A Meta-analysis." *The Australian and New Zealand Journal of Criminology*, 36:2 (2003). For an overview of multisystemic therapy, see: Scott Henggeler, "Treating Serious Anti-Social Behavior in Youth: The MST Approach." *Juvenile Justice Bulletin* (May, 1997).

Adherence to the status quo opens the State to additional compliance costs and liability exposure.

Under the provisions of the Prison Rape Elimination Act (PREA), additional restrictions are placed on the housing of juveniles (statutorily defined as anyone 17 years of age or younger) in adult facilities. These restrictions mandate that juveniles in adult facilities:[7]

- May not be placed in a unit that would permit "sight, sound, or physical contact with any adult inmate."
- Must be given additional, direct supervision if outside of the housing unit and if separation of sight and sound is not possible.
- Cannot be placed in solitary confinement as a means of achieving separation from adult inmates.
- Must be supervised at a staff ratio not to exceed 1:8 during waking hours.
- Cannot be searched by members of the opposite sex.
- Must be granted reasonable accommodation for disabilities and language proficiency.

Compliance with PREA standards greatly minimize any gains in efficiency assumed in housing youth (as defined by federal law) in an adult facility. Further, failure to comply can be punished with the withholding of 5 percent of Department of Justice-awarded prison-related grant dollars from the state as a whole. This is to say nothing of the manifold liability the state would face if a juvenile is injured while improperly housed under civil rights litigation.[8]

Reforms offer potential long-term savings

A case handled in the juvenile justice system is almost universally more expensive in terms of upfront costs than one handled in the adult system. This is largely due to the relatively robust economy-of-scale that exists in adult corrections. Nationally, juvenile justice systems have lower guard-to-inmate ratios, more rehabilitative programing, fewer inmates per facility, and oftentimes individual rooms. Adult criminal justice institutions are optimized for cost efficiency. As more juveniles who fall under the jurisdiction of the adult court are adjudicated in the juvenile court, there will likely be a minor increase in raw costs, though the per-juvenile cost trend will likely bend downward rapidly.

These upfront costs mask the long-term fallacy of prioritizing immediate, superficial saving over long-term benefits. One of the most effective methods for controlling criminal justice system costs is to ensure that offenders avoid recidivating, or re-offending, upon release. The immediate cost-savings enjoyed by processing a case through the adult court versus the juvenile court is quickly diminished if that individual is brought back before the court multiple times. Taken in tandem with the routinely lower recidivism rate exhibited by juvenile offenders

[7] 28 C.F.R. pt. 115, "Prison Rape Elimination Act," (2012).

[8] Violations of established civil rights and liberties by a state entity are subject to provide damages under 42 U.S.C. § 1983 and 18 U.S.C. § 242.

handed in the juvenile justice system, it makes better long-term financial sense to adjudicate youthful offenders in the juvenile court. With dwindling juvenile probation caseloads, these low-risk youth will not likely strain existing capacity.

A recent cost-benefit analysis assessing potential fiscal impacts of this type of reform estimates that raising the age of the juvenile court jurisdiction will produce a net savings of $88.9 million per each cohort of 17 year-olds moved into the juvenile system.[9]

These reforms would not eliminate punishment for juvenile offenses

A common misconception of "Raise the Age"-style legislation is that adjudicating youth in the juvenile court will lessen the severity of punishment; that the deterrence effect of punishment would be squandered. Juvenile facilities nationwide are often as austere as their adult counterparts. Routines are nearly always as tightly regimented, if not more so. Given the lower staffing ratio, youth are more closely monitored and not permitted as much unstructured free time as adults.

Experiences in Other States Underscore the Effectiveness of These Reforms

In Connecticut, prior to 2010 the jurisdiction of the juvenile court extended only to an adolescent's 16th birthday, after which they would fall under the jurisdiction of the adult criminal court. Similar to the current debate, lawmakers anticipated a massive swell in caseload. A 44 percent growth in juvenile caseloads was expected. However, the roll barely grew by half that much. The 22 percent growth, while still notable, cost the state nearly 12 million less than was expected. In 2012, the jurisdiction was extended again to cover 17 year-olds.[10]

Also in 2010, Illinois sought to raise their juvenile court's jurisdiction to cover 17 year-olds convicted of both misdemeanors and felonies. Even with this new group of delinquents, caseloads shrunk as juvenile arrests fell. Illinois has since been able to shutter three juvenile detention facilities.[11]

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[9] Deitch, Michele, Rebecca Breeden, and Ross Weingarten. "Seventeen, Going on Eighteen: An Operational and Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas." *Am. J. Crim.* L. 40 (2012): 1.

[10] Justice Policy Institute, "Juvenile Justice Reform in Connecticut: How Collaboration and Commitment Have Improved Public Safety and Outcomes For Youth," (2013). Available at: http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi_juvenile_justice_reform_in_ct.pdf

[11] Illinois Juvenile Justice Commission, "Raising the Age of Juvenile Court Jurisdiction," (2011). Available at: http://ijjc.illinois.gov/sites/www.ijjc-illinois.gov/files/assets/IJJC%20-%20Raising%20the%20Age%20Report.pdf

Similar legislation is currently being considered in North Carolina, raising the jurisdiction of their juvenile court to cover low-level 16 and 17 year-olds. While this legislation is currently under review, initial independent estimates forecast the net benefit of integrating 16 and 17 year-old delinquent youth conservatively at 45 million dollars per cohort.[12]

Conclusion

The most direct and effective was to intervene in the "school-to-prison pipeline" is to address the procedural structures that link the educational apparatus to the formal criminal justice system. While some interventions seek to target children of certain demographic, racial, or socioeconomic characteristics, those factors are largely imageable and only correlated with – not causal of – variation in disciplinary outcomes. A holistic approach to stopping the school-to- prison pipeline is one that *increases* the tools available for school discipline to ensure that the choice is most appropriate for the individual. This must be complimented by thorough training so on selecting the best intervention.

[12] Christian Henrichson and Valerie Levshin, "Cost-Benefit Analysis of Raising the Age of Juvenile Jurisdiction in North Carolina." Report from the Vera Institute of Justice, (Jan. 2011). Available at: http://www.vera.org/files/cost-benefit-analysis-of-raising-the-age-of-juvenile-jurisdiction-in-north-carolina.pdf

Statement
of
Edwin Desamour, Dean
Stetson Charter School
Philadelphia, PA
Before
PA Advisory Committee to USCCR

November 21, 2019

Imagine you meet a kid for the first time; young guy who is from north Philadelphia. You start to learn about his background before you speak to him and find that his father is a drug dealer, uncle is a drug dealer; he has cousins who are drug addicts, gangsters, thugs. This young man's father even handed him his first gun at the age of twelve. Before you have even met this young man, what are his chances at success? What does his future look like? Would you count him out?

Now let's say this same young man is convicted of murder at the age of sixteen. He is found guilty and sent to an adult prison; he even spent some of his time in the same cell with his father. This young man serves eight and a half years before he is released from prison. What kind of life do you think this man will live now? Would you count him out?

Many people would have counted this kid out in the first scenario, just based on his family and background... if you did not count him out there, you may have said he would not be successful after coming home from prison. How could he? He had every single odd stacked against him from a very young age... many of you may have thought, "there is no way this kid is going to stay out of trouble... there is no way this kid will be a success." I was that kid and I came back, became a mentor, became a community activist and an advocate for young people who are being counted out. The moral of the story is this: there is no single storyline that guarantees a bad ending... everyone has the opportunity for redemption.

For many of my adult years, I worked as a consultant supporting young men who were struggling in school. There were many occasions when a school would call me in to support with a particularly difficult student and tell me they were at the end of their proverbial ropes; I was told, "the kid is a monster." Imagine being called a "monster" by the same people who are supposed to be helping you succeed and move forward in your life. Imagine knowing that the safest place you knew- a place where were warm and fed, a place where you were kept safe from watching drug addicts shooting up and people selling drugs on the corner- this safe place was full of people who had already counted you out. On one of these occasions, I heard the staff saying many derogatory things about this student before I met him; he was having a difficult time, to be sure, but I insisted on meeting him before I listened to any more stories. In my one on one time with this young man I asked him questions about his life; what did he do when he went home at night, what is the walk home like for him, and who he lived with. I came to find that his life was filled with traumatic experiences and he had nobody at home rooting for him or showing him the attention or love that every human requires. I came out of my meeting with him

knowing that he had much more going on in his life than any one person should have to deal with; let alone a child. When I met with the principal and shared with him what I had learned I kept hearing the same thing, "I didn't know."

So, what are schools able to do with the lives of young people who are struggling? The biggest thing we have to do is begin to think "outside of the box" and move beyond the typical reactions we have to students who are struggling with behaviors. Oftentimes, these "difficult" students are struggling in so many other areas, they have no idea how to not "fight" when they are encountered with situations that are difficult for them. Schools present extremely challenging environments because they have the expectation that all students should be successful, all students have to graduate, all students have to pass the test... when presented with this type of "fight or flight" moments in life, many kids who are used to struggling immediately turn to "fight" because what they are being asked to do is hard for them and nobody has ever taught them how to struggle and persevere.

Schools also need to be ready to meet students where they are when they come in. If a student has not eaten anything, how can they learn? If a student has not slept more than two or three hours the night before, how can they stay awake in class? If a student has no place to go home to, how can they cometo school in complete uniform? A school has to be a safe haven for its students and has to recognize that they are responsible for so much more than reading, math, science, and social studies; schools and teachers sometimes become counselors, caregivers when the students are sick or hungry, listeners when the kids need to be comforted, family when the kids need the advice of an adult. We have to make sure we get into their world and "know" what we need to know so we can give them the opportunity to be successful with academics.

In 1943, Maslow released a psychological study that said human needs are organized into groups; these groups are organized into a pyramid, with the most basic needs of food, water, shelter, warmth, etc. are labeled as "physiological." He argued that, in order to move up the pyramid hierarchy, the needs at the bottom had to be met first. The bottom three levels that, arguably, lead us to have the ability to be successful include our physiological needs, safety needs and the need for love and belonging. Understanding this through the lens of a school means we have to make sure our students have these needs met before we expect them to engage successfully in anything academic related; and yet, many schools and teachers do not acknowledge this at all, labeling difficult students as "monsters," or counting them out because of their background. It is interesting to consider what might happen if schools started to help their students to meet these basic needs before expecting them to engage in the acts of "school." I argue that we need to do more digging into the needs of our students that are not being met outside of school so we can figure out how to get them to a point where they can learn.

Disrupting the school to prison pipeline means a whole new way of thinking about the "monsters" in our classrooms... it means looking closely at what they are suffering with and being more empathetic in our approach to solving problems. Many times, a teacher cannot sympathize with all of the students because they do not have any of the same experience with, which to base their sympathy. Empathy becomes the goal for a teacher... making sure that you know what they truly need and being willing to help them fill in the gaps so they can be successful in school. Ultimately, it will be the feeling of success that will engender further success with our students.

Statement Presented to the Pennsylvania Advisory Committee
U.S. Commission on Civil Rights

Abigail Gray, Ph.D.
Deputy Chief of Climate and Safety
School District of Philadelphia

November 21, 2019

I am the Deputy Chief of School Climate and Safety for the School District of Philadelphia. In this role, I oversee the district's work to create school environments that are emotionally and physically safe for all children and conducive to maximal personal and intellectual growth for students and staff alike. I oversee teams of professional coaches who support schools in creating and sustaining a positive climate, in navigating very real climate challenges, and in working to adopt best practices in school climate. I am responsible for selecting or creating and overseeing the implementation of programming that aligns with the growing evidence in this area.

I have been in this role for just three months. For the 10 years prior, I was a researcher at the University of Pennsylvania where I led research teams to study school climate via large-scale experimental and quasi-experimental research as well as qualitative inquiry. Restorative alternatives to punitive and exclusionary discipline were major focus of my work. During the final part of my tenure at Penn, I was a Stoneleigh Fellow, and my project focused on rigorous study of evidence-based school climate programming in the School District of Philadelphia. I am a parent of 2 children attending Philadelphia public schools. I am also a former school teacher. Prior to pursuing my PhD, I taught middle school in a very challenged public school in southwest Philadelphia. The struggle to help young people see and love and value themselves and each other within a system that was, at that time, very quick to kick them out the door was my daily reality.

As the prior panel demonstrated, the harms of exclusionary discipline are well understood. I would refer anyone with lingering doubts about the grave impacts of school exclusion on young people to the work of Dr. Janet Rosenbaum (2018), an epidemiologist at the State University of New York Downstate. In an important paper, she detailed her longitudinal research comparing the outcomes of students who were never suspended with those who were suspended at least once, controlling for 60 pre-suspension characteristics, including behavior and delinquency, academics, poverty and familial factors, and impulsiveness and other psychological traits known to predict criminality. By the time they reached their mid 20s, the two cohorts—which, again, resembled each other in all ways except for one group's members having been suspended from school one or more times—looked very different. Young people who had been suspended from school were three times as likely to have been expelled from school; 40% more likely to have been arrested; and, if they were black, 94% less likely to have earned a bachelors degree. These trends continued into their 30s. We don't have to imagine the long-term costs to society of this mass derailment: As economist Clive Belfield's work demonstrates, they are staggering.

It is impossible for me to discuss this issue without mentioning these incontrovertible facts. However, that is not the case I am here to make. The case I am here to make is that undoing the negative unintended consequences of the Gun-Free Schools' Act on school climate and disciplinary practices in a way that does not sacrifice learning and order is an achievable goal, but that schools—and particularly those facing great challenges as we do in The School District of Philadelphia – need help to get there. I am here to make the case that there is a role for the federal government, along with state governments, municipalities, and private funders, in making this a reality. And that in rising to this challenge we have the opportunity to fundamentally change schools—and in doing so, our children's lives—for the better.

While punitive disciplinary practices certainly predate this, the Gun Free Schools Act of 1994 was a pivotal moment in the history of school disciplinary policy, as it ushered in an era of exclusion in American schools. The measure, which was ostensibly intended to make schools safer during the height of anti-drug sentiment in politics, spawned the "zero tolerance" disciplinary policies were ultimately codified in many states' laws. These policies mandated swift and harsh punishment for even relatively minor behavioral infractions in school, resulting in massive increases in the numbers of students who were excluded from school via out-of-school suspension or expulsion. The effects of this, we now know, were lasting and devastating, and particularly concentrated in groups of students already at a disadvantage, including racial minorities, English language learners, and students with disabilities.

The School District of Philadelphia is on the forefront of efforts by large urban districts to adjust their climate and disciplinary practices in response to what we now know about the harms of exclusionary discipline. Serving some 130,000 students in 218 schools, SDP is the eighth largest public school district in the country and one of the most diverse. It is among the nation's most financially and academically challenged school districts (Steinberg & Quinn, 2014; Cornman, 2013; Wills, Karakus, & Wolford, 2017): Nearly 90% of SDP students qualify for free lunch, most are historically underserved racial minorities[1] (Wills, Karakus, & Wolford, 2017), and two-thirds have experienced traumatic events like poverty, violence, familial instability, or abuse (Hardy, 2014).

In the past few years, SDP has taken sweeping steps on both policy and programmatic fronts to minimize suspension and improve school climate. In 2012, the district revised the Code of Student Conduct to de-emphasize punitive disciplinary responses and ban school exclusion for minor offenses like uniform violations. More recently, suspension of students in grades K-2 was banned altogether. At the same time, the district invested in evidence-based climate initiatives like Positive Behavioral Interventions and Supports (PBIS), which has expanded from an initial 10 to 80 district schools now supported by district coaches (Gray et al., 2017). Grant and district funds have supported school-level programs like PlayWorks, an evidence-based socialized recess program, and a full-time coach was hired in 2019 to support schools' implementation of youth courts. Schools implementing PBIS and other positive climate initiatives have seen small, gradual improvements in climate and academics (Karakus & Wolford, 2017). Suspension rates have declined—so much so that suspension is losing its meaning as a key metric of climate. These results resonate with national research revealing that positive climates yield results in student achievement, graduation, attendance, teacher retention, and nearly all critical success metrics (Yiede & Kobrin, 2009).

However, shifting schools from punitive to positive has proven slow and difficult. In our 2017 study of school climate and disciplinary practices in the School District of Philadelphia, my Penn research team found that many district schools have struggled to assimilate the District's shift with their own practices, and that as a result programs like PBIS have been slow to penetrate (Gray et al., 2017). Our study and others have highlighted key challenges: Schools are overwhelmed by the profound mental and behavioral health needs of students from impoverished backgrounds marked by trauma. Without sufficient school-based staff to address this need and

[1] SDP reports that in 2016-17 its student body was 50% black/African American; 20% Hispanic, 14% white, 8% Asian, and 7% multi-race.

without the option of removing the most difficult students from schools and classrooms, teachers and school leaders feel abandoned and overmatched. Further, we found, many district teachers question the principles underlying restorative approaches; they ask, for instance, why students should need positive reinforcement to behave properly. After 25 years of mandatory zero tolerance policies, is it any wonder schools are struggling? The shift we are asking of them is enormous. In response, school leaders and their staffs seek solutions in the form of new programs or approaches, only to find that while these strategies help them reach more students, too much need still remains. Frustrated principals ask our office for more far more help—more coaching, more training, more support staff—than we have the capacity to provide. Frustrated teachers report at once that they need more tools for managing student behaviors and that climate programming can be overwhelming--just one more thing they must manage.

From where I sit, these challenges are very daunting. Yet giving up on the work of supporting schools in embracing positive, restorative, pro-child climate practices is not an option. I believe that our challenge as a society is four-fold: First, we must dramatically increase the supports schools can provide for students' mental and behavior health. In Philadelphia, this effort includes a growing focus on trauma-informed care, and increased focus on hiring and training school-based counselors and social workers, and on strategic partnerships with providers who can serve the students with the greatest needs. We are making progress on all these fronts, but the need is tremendous.

Second, we must innovate, continually seeking new ways to address the challenges our context presents. In Philadelphia, we innovate with new initiatives like the STEP program, which provides schools with up to four additional support personnel, including clinical staff and case managers. We innovate with homegrown programs like *Relationships First*, a three-tiered restorative circles intervention that, in its first year in one school, led to the peaceful resolution of 100% of 182 student conflicts. In every case, agreements reached by participants were upheld and never broken. In every case, a punitive consequence was avoided.

Third, we must continue to problem-solve tried-and-true approaches—like PBIS—into our most challenging school environments. In Philadelphia, this means growing and expanding our corps of climate coaches in order to provide the sustained, embedded coaching support real school change requires. It means collaborating with university partners to look hard at our implementation of evidence-based programs—our goal is to do them better, not to cast them aside.

Fourth, we must support this work with investments of public and private funds. This means holding up our successes and being transparent about our failures, and enlisting government and philanthropy in our efforts to continually improve. We must not allow our policymakers to prioritize investments in prisons, or in guns for school staff who don't want them, over approaches that are slowly making a difference. Instead, we must urge them to invest in mental and behavioral health personnel for schools, and lots of them. To invest in trauma training, and in expanding the programs that have shown promise into schools that need them. To invest in research focused less on finding the next magical solution and more on how practices like PBIS, like restorative practices, like socialized recess, like small-group interventions, can be most successful in schools that serve students with many challenges.

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PENNSYLVANIA ADVISORY COMMITTEE TO THE UNITED STATES COMMISSION ON CIVIL RIGHTS

DISMANTLING THE SCHOOL-TO-PRISON PIPELINE: ADDRESSING THE DISPARATE DISCIPLINE OF STUDENTS OF COLOR, STUDENTS WITH DISABILITIES, & LGBTQ STUDENTS

November 19, 2019

Statement of Kristen Harper, Director for Policy Development

"The Need for a Comprehensive Approach to Address School Discipline & Discipline Disparities by Race & Disability in Pennsylvania"

Child Trends

I. INTRODUCTION

Good morning, members of the Advisory Committee. My name is Kristen Harper, and I am director for policy development at Child Trends, a national, nonpartisan research institute devoted to improving the lives of children, youth, and their families through rigorous research, unbiased analyses, and clear communications to improve public policy and child-serving institutions. I'm honored to have the opportunity to share with this esteemed group the latest research and policy shifts related to school discipline practice, and to explain their implications for state and community efforts to address discipline disparities by race and discipline and dismantle what is known as the "school-to-prison" pipeline.

I will focus my remarks on the following main points:

- First, the latest data and research make clear that a high percentage of children continue to experience exclusionary discipline, and that this experience increases a child's risk of future juvenile justice and criminal justice involvement.
- Second, preliminary research on policies limiting the use of suspension has yielded mixed results, highlighting some potential for positive outcomes even as schools face clear difficulties with implementation.
- Third, irrespective of early findings on the promise of policy reform, efforts to shift school discipline practice should address broader challenges influencing school responses to youth behavior.
- Fourth, in the aftermath of the 2018 school shooting at Marjory Stoneman Douglas High School in Parkland, Florida, many policymakers seeking to improve school safety are turning to policy options that may do more harm to school environments than good.

Drawing on these points, Child Trends offers suggestions to improve school discipline practice in the state of Pennsylvania and to guide the work of the Advisory Committee in completing its findings and recommendations.

II. THE SCHOOL-TO-PRISON PIPELINE: WHAT RESEARCH TELLS US

National trends in school discipline show decreasing annual rates of out-of-school suspension, but persistent disparities by race and disability. In recent years, the prevalence of school-reported out-of-school suspensions has been decreasing; however, disparities by race and disability persist. In 2018 and 2019, Child Trends published analyses of the federal Civil Rights Data Collection, examining trends from the 2011-2012 school year until the 2015-2016 school year.[1,2] We found that schools were reporting decreases in overall rates of out-of-school suspension (from 5.6% to 4.7%), as well as decreases for White students (from 4.7% to 3.8%), Black students (from 9.7% to 8.0%), Hispanic students (from 5.0% to 3.5%), and students with disabilities (from 10.2% to 8.6%). However, Black students (8.0%) are still twice as likely to be suspended out of school as White students (3.8%), and students with disabilities (8.6%) are twice as likely to be suspended as their non-disabled peers (4.1%).

Child Trends also examined discipline data at the school level. We attempted to determine the proportion of schools with racial and ethnic disparities in discipline and explore how this proportion changed over time. Here are our findings:

- During the 2011-2012 school year, 25 percent of schools serving both Black and White students suspended Black students out of school at disproportionately higher rates. Little has changed since: Four years later, 23 percent of schools continued to have such disparities.
- As of the 2015-2016 school year, 6.6 percent of schools serving both Hispanic and White students suspended Hispanic students at disproportionately higher rates, and 39 percent of schools serving children with and without disabilities suspended children with disabilities at disproportionately higher rates.

Trends in Pennsylvania largely mirror what we see at the national level. The average Pennsylvania school suspended 5.7 percent of students out of school during the 2011-2012 school year and suspended 5.2 percent of students out of school during the 2015-2016 school year. The proportion of Pennsylvania schools with discipline disparities is somewhat similar to what we see at the national level:

- Of Pennsylvania schools serving both Black and White students, 28 percent suspended Black students at a significantly higher rate during the 2015-2016 school year.
- Of Pennsylvania schools serving both Hispanic and White students, 13 percent suspended Hispanic students at a significant higher rate during the 2015-2016 school year.
- Of Pennsylvania schools serving both students with and without disabilities, 43 percent of schools suspended children with disabilities at disproportionately higher rates.

While these data help to illuminate a child's risk of experiencing suspension within a single school year, they heavily underestimate the risk of exposure over the entirety of a child's school experience from preschool through the 12th grade. Based on Child Trends' analyses of the Civil Rights Data Collection, an individual child's risk of suspension in any one year is roughly 5 percent.

However, other studies have found that 35 percent of students, and 67 percent of Black students, experience at least one suspension from kindergarten through 12th grade.[3]

New research continues to show the short- and long-term detrimental effects of suspension, including an increased likelihood of contact with the juvenile and criminal justice systems. Given the data showing widespread use of suspension, we should be alarmed when research indicates that suspension causes students harm.

Back in 2011, the Council of State Governments Justice Center released groundbreaking research that clearly conveyed the risks of suspension and expulsion.[4] This longitudinal study of 7 million Texas school children found widespread use of suspension and expulsion—31 percent of students experience at least one out-of-school suspension from 7th grade through 12th grade. Further, the study found that students who experienced a suspension or expulsion were at greater risk of drop-out, being retained in grade, and contact with the juvenile justice system.

Today, we have access to new research that elevates policymaker concerns regarding disciplinary exclusion. A quasi-experimental study featuring a nationally representative sample of students has shown that, 12 years after receiving an out-of-school suspension, disciplined students are less likely to earn a diploma or bachelor's degree and more likely to have been arrested or incarcerated.[5]

III. EARLY RESEARCH ON THE PROMISE OF SCHOOL DISCIPLINE POLICY REFORM

Over the past decade, states and school districts have been responsive to research findings that the use of suspension runs counter to the goals of education equity and achievement. Legislatures, as well as state and local boards of education, have worked hard to shift school discipline practices through changes in statutes and regulations. Given this policy churn, and wide variation in state approaches, there is now an urgent need for research that identifies best practices in policy design and implementation.

States continue to pass school discipline policies restricting the use of out-of-school suspension, with recent efforts focusing on early childhood discipline. Child Trends and other organizations have been tracking shifts in school discipline policy. As of fall 2017, 31 states have laws limiting the use of suspension or expulsion, while 32 states have laws that encourage alternatives to disciplinary exclusion.[6] These new policies feature a wide array of approaches, including, but limited to, limitations on disciplinary exclusion for specific grade levels (e.g., preschool); limitations for specific types of offenses (e.g., willful defiance and insubordination); and requirements that exclusion be an option of last resort, absent threats to school safety.

Early studies examining discipline policy reform present a possibility of improved student outcomes, but with significant implementation challenges. Due to significant policy changes over the last decade, officials interested in advancing school discipline legislation or regulations have many templates from which to choose. However, there is precious little research available to help them determine which policy approaches have been most successful. What studies exist provide an early glimpse of the promise and challenge of using policy mandates and restrictions to shift discipline practice.

Two studies examine reforms in Philadelphia, which shifted its school discipline policy to mandate alternatives to suspension—such as school detention and parent notification—for low-level

offenses. In the first study, which looked at elementary and middle schools, authors found that studied schools could be categorized into three groups with differing school climates: 1) under-resourced schools with limited staff and resources and low teacher morale (41%); 2) schools using punitive approaches to discipline, where teachers receive little support from administrators (28%), and 3) schools using collaborative and non-punitive approaches to school discipline, where teachers are supported by school administrators (31%).[7] The last type of school was more likely to serve communities with fewer low-income families and families of color. The study also found wide variation in how school administrators interpreted district communications regarding school discipline practice: Some administrators understood that suspensions should be used "as a last resort," while others understood that suspensions should be used "only when necessary" and in accordance with policies and procedures.

In the second study, authors found wide differences in how schools complied with Philadelphia's new discipline policies.[8] Of studied schools, 5 percent had no need to implement the new policies as they did not use suspensions, 18 percent fully complied with the new policies (eliminating all suspensions for low-level offenses), 60 percent only partially complied (reducing suspensions for low-level offenses), and 17 percent did not comply (and actually increased suspensions). Schools in this last category tended to be academically lower-achieving and had larger populations of students of color. While the authors found a temporary decrease in suspensions for low-level offenses, including a reduction for Black students, they also found that suspensions for serious offenses for Black students increased; these increases were found mostly in schools that did not comply or only partially complied with new discipline policies.

These two studies should give us pause, as they illustrate how differences in school climate and inequities in school capacity will heavily influence how shifts in policies fall on schools and students. They also suggest that, where initiatives to address school discipline address policy without addressing the underlying education inequity, we should not expect improved outcomes for children of color. Similarly, these studies make clear that policymakers must consider what implementation supports—for school leaders and teachers alike—should accompany shifts in discipline policy. At the same time, these are early studies that both examine policy and policy implementation within a single school district. While Philadelphia may not be unique among school districts, we do not know whether (or how) the school district's policy context or particular approach to implementation may have influenced these findings.

A third study, focusing on a different type of policy change in Chicago, presents a different picture. Researchers examined the impact of school shifts in the use of suspensions for severe behaviors and found increases in academic achievement and attendance. While schools serving Latino students saw declines in school climate and student perceptions of safety, schools serving mostly Black students saw improvements in both measures.[9]

IV. CASTING A WIDER NET: SCHOOL RESPONSES TO STUDENT BEHAVIOR

While state and local policy initiatives to restrict the use of suspension may be an important and necessary step to spur shifts in practice, these are unlikely to be sufficient. School discipline and school discipline disparities are manifestations of broader challenges our school systems contend with when responding to student behavior. To help schools develop the cultures, processes, and

practices necessary to ensure fair and effective responses to student needs, policymakers must look beyond discipline policy.

Research on the prevalence, risks, and long-term implications of child adversity highlights the need to create school environments that emphasize support over exclusion. Child Trends has published state and national estimates of childhood exposure to adversity.[10] In 2016, 45 percent of children across the United States had experienced at least one of eight adverse childhood experiences, or ACEs.[11,12] The picture is similar in Pennsylvania, where 46 percent of children have experienced at least one ACE, and 10 percent have experienced three or more ACEs. We also found that Black children (61%) and Hispanic children (51%) are more likely to experience ACEs than either White children (40%) or Asian children (23%).

While exposure to ACEs is generally associated with poorer education and adult employment outcomes, it is also associated with emotional and behavioral difficulties during the childhood years.[13] However, childhood responses to adversity can vary wildly. Supportive relationships with adults and caregivers and strong social and emotional skills can protect children from the negative effects of childhood adversity.[14,15]

Where schools use suspension and expulsion as a measure of first resort—rather than the last—to respond to student behavior, they risk retraumatizing and alienating children that may struggle to cope with trauma and toxic stress.

Nationally, and within Pennsylvania, Black students are overrepresented within special education, especially among students identified with emotional disturbance, and face disparate rates of placement in separate settings. Nowhere do we see greater disparities in school responses to student behavior than at the intersection of race and disability—particularly for Black children in special education. In general, most referrals to special education are due to reading or behavior challenges.[16] This is particularly the case for high-incidence disabilities such as specific learning disabilities, intellectual disabilities, and emotional disturbance. The emotional disturbance category is most strongly associated with behavior challenges: Per the Individuals with Disabilities Education Act's (IDEA) implementing regulations, children with emotional disturbance are those whose behaviors and inability to build interpersonal relationships (among other characteristics) adversely affect their educational performance.[17]

In 2016, Black students ages 6-21 were 40 percent more likely than all other racial and ethnic groups to receive special education services under IDEA.[18] Further, Black students in this age group were twice as likely as their peers to be identified with emotional disturbance. Research suggests that there are systems-level factors influencing these disparities, including biased educator beliefs and poor behavior management practices, among others.[19,20] Two recent studies found a relationship between school segregation and disparities in disability identification: Schools serving mostly White students are more likely to identify Black students with disabilities, while schools serving mostly Black students are less likely to identify disabilities.[21,22]

In recent years, there has been some debate as to whether the overrepresentation of Black students among students with disabilities is cause for alarm. However, one thing is certain: Given this degree of overrepresentation, IDEA's protections and services for students with disabilities and guarantee of a free appropriate public education have proven inadequate for Black students. According to the Government Accountability Office, Black students with disabilities (23%) have

among the highest rates of out-of-school suspension of any student subgroup (White students with disabilities face rates of 8%, and Black students without disabilities face rates of 13%).[23] Academic achievement level, as represented by the National Assessment of Educational Progress, presents an even bleaker picture. In 2015, only 18 percent of Black students with disabilities performed at or above basic for grade 12 reading, compared to 41 percent for White students with disabilities, 56 percent for Black students without disabilities, and 83 percent for White students without disabilities.[24]

V. EMERGING CHALLENGES

While policymakers across the country have worked to improve school discipline practice, the policy and political contexts in which they pursue this goal are constantly shifting. As the public gains access to discipline data—and public accountability grows around discipline and discipline disparities—schools face numerous pressures to show improvement. Meanwhile, high-profile events such as active shooter incidents and bullying can leave parents and communities demanding action from policymakers to keep students safe.

Unintended shifts in discipline practice and reporting. Research highlighting the detrimental impacts of suspension—as well as shifts in federal, state, and local policy—make clear that school communities should seek ways to reduce their reliance on suspension. Stronger public and administrative accountability for school discipline, made possible by the federal Civil Rights Data Collection (which provides school-level discipline indicators) and Every Student Succeeds Act (which requires states to publish report cards with indicators of school quality), has created a strong focus on discipline data to gauge whether schools are improving.

With such a strong focus on discipline data, particularly out-of-school suspension, one emerging challenge has been to ensure that shifts in discipline trends are actually indicative of intended shifts in practice. Ideally, reductions in reported suspensions would indicate a shift from punitive or exclusionary discipline toward more supportive alternatives. However, there are initial signs that some schools may be reducing the number of suspensions they report by changing record-keeping practices or swapping one type of punitive discipline for another type. In Washington state, officials have issued new regulations clarifying that informal disciplinary removals (e.g., sending children home with parents) must be recorded as suspensions.[25] In a preliminary study by Child Trends, we found that schools that reported decreases in out-of-school suspension from the 2011-2012 to 2015-2016 school years were more likely to also report increases in school-based arrests than schools reporting increases or no change in suspension.[26]

Pressures on policymakers to shift from *prevention* to *school hardening* and *criminalization*. In the aftermath of the Parkland shooting, policymakers have pursued a range of policy options in the hope of strengthening school safety, including new investments in school policing, active shooter drills, physical security features (e.g., metal detectors and cameras), and threat assessment. These approaches vary widely with respect to their grounding in the research, and some—like school policing and threat assessment—have the potential to aggravate challenges with disciplinary exclusion.[27] Research examining the potential for school policing to improve school safety has been mixed, and tragic active shooter incidents have taken place on school campuses where school police were present.[28,29] However, the research does clearly indicate that greater use of school police is associated with increases in school arrests.[30] Threat assessment has stronger

grounding in the research: Used well, this approach provides schools with a process to identify, assess, and intervene when a child may be considering violence.[31] However, used improperly and without oversight, threat assessment can become one more mechanism by which schools continue to exclude children improperly.[32]

This shift is particularly concerning given emerging narratives that malign children with disabilities and children with mental health needs as subgroups at higher risk of extreme violence. In fact, children and youth with mental health challenges are more likely than their peers to be victims of crime.[33]

VI. RECOMMENDATIONS

Child Trends recommends that Pennsylvania pursue a comprehensive and integrated approach that goes beyond school discipline policy reform to address the following: 1) school capacity to support student health; 2) inequity within both general and special education; and 3) the availability of high-quality discipline data that allows state and local officials to monitor for improvement and identify inequity.

Recommendation 1: Improve coordination between education and health officials to create schools with the capacity, culture, and community partners they need to address students' social, emotional, mental, and physical health needs. Pennsylvania has a strong foundation for starting this work with its longstanding focus on building community schools and implementing integrated student supports. As of 2017, Pennsylvania statutes and regulations addressed multiple dimensions of student and school health to a greater extent than other states, including counseling, psychological and social services, health services, physical environment (including school safety and security), and health education.[34] Still, there are areas of policy where Pennsylvania schools may face obstacles: As of 2018, Pennsylvania's State Medicaid Plan only allowed schools to seek reimbursement for enrolled students with disabilities, limiting access to resources that could strengthen school health capacity.[35] Given its fairly robust policy infrastructure, Pennsylvania should focus its efforts on implementation support. This means working with school leaders and educators to create school climates and cultures that are supportive for children with a range of behavioral needs, including children with a history of adversity.

Recommendation 2: Advance a concerted effort to reduce resource inequity in general education and racial and ethnic disparities within special education. As the Pennsylvania studies showed, there are wide differences in school culture and capacity between schools serving communities, with children of color more often in schools with fewer resources and more punitive approaches to discipline. These inequities will complicate efforts to implement new school discipline policies and must be addressed at their source. Further, Pennsylvania should address head-on disparities by race and ethnicity within its special education system and should leverage new federal IDEA requirements to manage this process. Under Section 618(d) of IDEA, all states must identify school districts with "significant disproportionality"—large racial and ethnic disparities in the identification, placement, and discipline of students with disabilities. However, federal law leaves it to states to determine when disparity warrants state intervention. Historically, Pennsylvania has been among those states that has defined its threshold for "significant disproportionality" so high as to avoid any intervention.[36] This must change. During

the 2013-2014 school year, Pennsylvania had 56 school districts that identified Black students with emotional disturbance at rates three times as high as all other students.[37]

Recommendation 3: Maintain an ongoing focus on data collection, with attention to improving data quality, examining discipline disparities, and capturing emerging practices. As of 2017, 27 states had laws requiring some form of monitoring for discipline disparities by either race or disability.[38] While continued attention to reducing discipline and discipline disparities necessitates ongoing access to data, investments in data collection and reporting should be matched with initiatives to ensure that the data accurately reflect school practice. This may entail clarifying for schools that suspensions include informal removals (such as shortened school days or asking parents to either pick up students early or keep them at home) and any time spent away from school pursuant to the decisions and deliberations of a threat assessment team. It would also include developing new strategies to audit school records and reporting practices for accuracy and completeness. Further, such a focus requires remaining vigilant for new formal practices—such as threat assessment—and ensuring regular data collection and reporting for such practices to help Pennsylvania communities assess whether students of color and students with disabilities are treated equitably.

VII. RECOMMENDED QUESTIONS FOR THE ADVISORY COMMITTEE TO INVESTIGATE

1. In Pennsylvania, what is a child's risk of receiving an out-of-school suspension over the course of their school career, kindergarten through 12th grade?
2. What risk ratio threshold will Pennsylvania use to identify school districts with significant disproportionality by race and ethnicity in the identification, placement, and discipline of students with disabilities? What supports will the state provide school districts identified with significant disproportionality?
3. How should the Pennsylvania Department of Education and its school districts audit schools to identify when reductions in reported out-of-school suspension are due to informal removals (e.g., shortened school days, asking parents to pick up students or keep students' home) or unintended tradeoffs between types of discipline (e.g., using referrals to law enforcement and school-based arrests in place of out-of-school suspension)?

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Brief Written Opening Statement

November 21, 2019

Dr. Nikole Hollins-Sims, Educational Consultant

Pennsylvania Training & Technical Assistance Network (PaTTAN)

Special Equity Consultant to the Pennsylvania Department of Education

Panel 2: Obstacles to Success: What Perpetuates the Use of Exclusionary Discipline and Its Disparate Impact.

As an educational consultant for PaTTAN, I am the co-statewide lead for the behavior initiative. PaTTAN is considered the training arm of the Bureau of Special Education (BSE) under the guidance of PDE. As part of the behavior initative, I also support the statewide implementation of positive behavior interventions and supports (PBIS). National data has supported the need for Pennsylvania to evaluate and problem-solve around disproportionate discipline. In my role at PaTTAN and on special assignment to PDE, I am charged with helping intermediate units, districts, and schools to evaluate their academic and behavioral data with a focus on equity and how to increase the access and opportunity for historically marginalized students to be successful in school. In an effort to improve school culture and climate, PaTTAN supports schools and districts in using preventative practices to reduce the need for exclusionary discipline.

Exclusionary disciplinary practices are not a new phenomenon in education, however the current use of these practices have had disparate outcomes reflecting an overrepresentation of students of color, students with disabilities, as well as students who are LGBTQIA+. In particular, recent research from Princeton University examined the racial disparities in school-based disciplinary actions and their associations with county-level rates of bias (Riddle & Sinclair, 2019). They discuss how black students are "more likely seen as problematic and more likely to be punished than white students for the same offense (p. 8255)." In particular, the research they conducted speaks directly to a school-to-prison pipeline and the need for policy around how to reduce these outcomes related to bias, explicit or implicit.

In my work supporting schools across the commonwealth around equitable practices, particularly in discipline, the approaches that seem to resonate with most educators are related to examining implicit bias. Although this topic may cause some hesitation or even resistance, it appears that in most situations, many of the behavior referrals doled out to students of color, in particular, have been subjective in nature. In my training and technical assistance, I often refer to the work of Dr. Kent McIntosh from the University of Oregon, who often says that, "ambiguity is disproportionality's best friend." Subjectivity (typically the 3 D's: Disruption, Disrespect, and Defiance) can be interpreted in a variety of ways dependent upon the receiver. When the behaviors are subjective and defined in

ambiguity, the likelihood of specific student groups receiving the exclusionary practices tends to increase.

As we discuss what perpetuates the use exclusionary discipline, this concept has to be at the core. The educators, who ultimately make the office discipline referrals, and those who determine the level of consequence, each have to have an understanding or awareness of implicit bias as it relates to discipline. Dr. McIntosh speaks to the concept of Vulnerable Decision Points (VDPs) and how a situation combined with a decision state (hunger, fatigue, lack of familiarity with a student, bias) results in hasty or ambiguous decision-making. Most people, in a moment of quick reaction, often depend on their most immediate response to eliminate the situation and return to a normal state. An example would be, if a teacher has had a family with siblings who have been difficult to engage or behavioral concerns, unfortunately, the teacher or administrator's bias when the youngest sibling enters the school, immediately sets up the situation for a VDP to take place. In this example, if the student does anything remotely similar to what has been experienced previously, the tolerance or grace shown will be minimal, and the consequence immediate.

Later, another panel will discuss solutions, however in relation to VDPs, neutralizing routines are recommended. Any adult could engage these brief, if-then, doable, and realistic routines when they are in the midst of a VDP. It is recommended that individuals select their own neutralizing routine, or agree with a team of staff members on their established routine in response. Examples may include delaying an office discipline referral, or speaking to the student in private after class. This may sound easier said than done, but if educators use this approach and practice it while taking personal inventory of their own biases or "triggers", current research has shown some positive results. These strategies alone are not sufficient, but starts to set a foundation on addressing potential root causes of disparate disciplinary outcomes.

Our state system of support in partnership with the 29 regional intermediate units across the commonwealth have engaged in professional learning around equity in discipline and continue to provide training and technical assistance to schools and districts requesting support. Additionally, there are act 48 online courses offered through the PDE SAS portal around equitable practices at the classroom level to hopefully reduce these disparate outcomes. Finally, there is a PIL course dedicated to administrators: "Equity in Education – Why Leadership Matters" with a specific module around equitable discipline. These resources as well as the ongoing support provided by the department of education and training arms dedicated to effective practices recognize that disproportionate disciplinary outcomes are of major concern and are not supporting our most vulnerable students in obtaining the opportunity and access needed for overall student academic, behavioral or social-emotional success.

Understanding and Dismantling the School to Prison Pipeline: Evidence from Greater Pittsburgh

A Comprehensive Written Statement to the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights

James P. Huguley, Ed.D
Interim Director, Center on Race and Social Problems
Assistant Professor, School of Social Work
University of Pittsburgh

For decades, there has been concern in the educational and criminal justice communities around what has been called the "School-to-Prison Pipeline"—a phenomenon whereby school discipline policies lead to an increase in children's involvement in the juvenile and criminal justice systems. Emerging research has also compellingly shown that over-reliance on exclusionary discipline practices like out-of-school suspensions and expulsions is detrimental to both the penalized students and the schools that overuse them.[1] Further, because African American and Latinx students tend to be disproportionately and unjustly affected by these approaches, these exclusionary practices have been shown to exacerbate racial inequalities in education.[2]

Here at the University of Pittsburgh's Center on Race and Social Problems and School of Social Work, with the financial support of The Heinz Endowments, we have been conducting research and leading school discipline interventions that 1) details the national rise in school suspensions and expulsions, along the way describing how these practices can facilitate youth contact with the criminal justice system (i.e. "the school to prison pipeline"); 2) examines the extent and impact of exclusionary discipline practices in traditional public districts and charter school networks in our region; 3) has calculated the actual costs of school suspension use in our region in terms of diminished academic and economic productivity; and finally, 4) has collected and tested a set of best practices in school discipline and climate transformation that has been successful at reducing suspensions and referrals and supporting higher achievement. Below we detail this work and present recommendations for policy and practice.

The School-to-Prison Pipeline: A Brief History[i]

The school-to-prison pipeline is the process whereby disciplinary experiences in school increase students' likelihood of interaction with the juvenile justice system. This interaction is in turn associated with devastating personal, educational, and economic consequences for the youth affected. Historically, three developments have made the most substantial contributions to the pipeline's growth into a large-scale, racially disproportionate phenomenon. First, there has been a dramatic rise in zero-tolerance practices in school discipline, which have doubled the percentage of students being suspended since the 1970s. In the same time span, the suspension rate for African American students has nearly tripled because of disproportionate use on members of that group.[3] Second, a parallel rise in increased police presence in schools has meant that non-safety-related offenses that were once handled by school staff might now be handled by law enforcement. This shift has resulted in more frequent school-based arrests and justice system contact.[4]

Finally, tests of unconscious, or "implicit," biases have shown that as many as 80% of Whites and 40% of Blacks are negatively biased against Blacks, consistently associating them with antisocial constructs such as aggression and laziness.[5] Such biases have been demonstrated in school discipline, where African American and Latino students receive more frequent and harsher penalties for the same behaviors as their White counterparts with similar backgrounds.[6] Because of societal racial biases, Black youth suffer the most deleterious consequences of the pipeline given their overexposure to its mechanisms. Taken together, these three factors serve as the cornerstones of the dramatic rise of harsh discipline in schools, and ultimately create a highly racialized school–to-prison pipeline.

Important Patterns in the Use and Impact of School Suspensions: Lessons from Greater Pittsburgh

To examine suspension use in Greater Pittsburgh and its impact on academic and economic outcomes locally, we reviewed Pennsylvania Department of Education's Safe Schools Reports data from between 2013 and 2016 for 51 Allegheny County traditional public districts and charter networks serving mainstream students. Findings suggest substantial challenges in over 80% of local school districts and networks, with two preeminent patterns:

1. **Overall suspension rates are exceedingly high in urban school districts.** Of the 51 traditional public districts and charter networks in Allegheny County, just over one-third (18 of 51) were above the state average in suspension rates. In general, urban districts in Allegheny County—those serving majority African American and low-income students—tended to have the highest rates. This finding confirms national research on school suspensions, which often focus on urban schools for their higher overall suspension usage.
2. **Racial disparities in suspensions are higher in suburban districts.** Our findings on racial disparities in local suspension use indicated that in over 70% of Greater Pittsburgh districts, suspension rates for Black students were at least double the rate for their non-Black counterparts. Overall Black students in our region are subject to suspension rates that were 7.3 times higher than the rate of non-Black students (the PA statewide disparity was 5.5 to 1). Moreover, while urban districts in greater Pittsburgh where Black students are concentrated tended to have higher suspension rates overall, we also found exceptionally high racial disparity rates in suburban, mostly White districts. This trend in racial disparities being higher in suburban districts is rarely discussed in the broader literature, but also has been observed in Greater Philadelphia, PA.[7] As such we urge national policy makers to not only consider the overall suspension rates of schools and districts, but racial disparity rates as well, which may cast more light on problems in suburban schools. Indeed, in these venues Black, Brown, and White students may be having qualitatively different school discipline experiences.

The Local Impact of Exclusionary Practices

To date, there is essentially no research evidence to suggest that the large-scale use of exclusionary discipline practices are associated with positive outcomes for students or schools. Meanwhile, an extensive body of research has demonstrated that there are serious negative consequences for the overuse of suspensions and expulsions at the individual, school, and community levels. Locally, our examination of discipline rates and achievement in Allegheny

county districts suggests that districts with higher suspension rates on average have *lower academic performance* compared to districts with similar populations and lower suspension rates. Academic consequences of suspension rates include a 10-point difference in suspensions per 100 students being associated with an approximately 3% difference in graduation rates across demographically similar districts. Our examination of high schools across Pennsylvania has yielded similar results. Economically, because of the connection between suspensions and dropping out, we estimate that school suspensions cost the region approximately $30,000,000 per annual graduating cohort, mainly due to lost consumer and tax revenue and increased social costs over each cohort's working-age time span.[ii]

Solutions: Alternatives to Zero-Tolerance and Exclusionary Policies

In response to the negative effects of over-reliance on suspensions, our collaborative work with successful practitioners has yielded an integrative approach to school discipline and climate that acknowledges the challenges and resources needed for successful school and district-wide disciplinary culture transformation (Figure 1). Below we describe each core model component in detail, in the process offering practice and policy recommendations from the case example of the Woodland Hills Intermediate School (WHIS): a nearly 600-student school in Greater Pittsburgh serving grades 4-6. At WHIS, 75% of students are economically disadvantaged, 82% are students of color, and 31% receive special education. In this context, the university-school district collaboration described below has in two years demonstrated substantial improvements in discipline, climate, and achievement outcomes.

School Community Buy-In. Sustainable discipline and climate reforms need to start with shared buy-in from school administrators, teachers, students, and parents—with the principal's support being especially essential. From early on, vigorous efforts must be made to communicate to the larger community the urgent need to jettison the overreliance on exclusionary discipline, and then to invite stakeholders to co-construct a new approach. At WHIS, we started working with the principal to present the basic model to teachers, welcoming their feedback in the process. From the beginning the teachers acknowledged the status quo was ineffective, and they were willing to try something different provided the training and resources were adequate. Two groups of student and teacher leaders also contributed to the program development and formative feedback. Consensus building efforts like these must ensure that all constituents have a voice from the beginning, particularly so that the work does not feel like just another top-down mandate.

Relational Climate Focus. A second foundational element is a commitment to a strong relational climate across the school community. Too many discipline-reform efforts focus exclusively on how schools respond to infractions, when actually you must first establish strong relational norms that can be drawn on when an action rends the community fabric. As one educator told us, in order for a restorative approach to work, "you actually have to have something you want to restore."[8] At WHIS, our work on the relational climate was built fundamentally around *community circles*, whereby teachers and staff hold weekly discussions and personal sharing sessions in their classrooms that build relationships and help process community events. In turn, we build on this relational foundation when we respond to conflicts within the community. Our relational work at WHIS also has included a school wide "WHIS Pride" series of events, where good citizenship and participation in fun and academic activities earn group-level rewards, such as a pizza or ice cream parties. Much of this work was carried out

by a group of student leaders who are themselves trained in restorative practices. This relational work makes students less inclined to engage in behaviors that would compromise the bonds formed, while also helping adults understand the personal context behind a student's behavior. Relational cultures are fundamental to effective school discipline, and strategies focused solely on responding to unwanted behaviors will likely fail.

Just Discipline Policies. Much of the problem with the overuse of suspensions lies in their being levied in response to minor infractions like dress code violations, or in response to discretionary and ambiguous offenses like "insubordination."[9] At WHIS, the superintendent and principal set the tone in communicating the goal of reducing the use of exclusionary practices as a consequence for minor offenses, which one teacher described as having the effect of forcing them to "learn to fight their battles" in the classroom rather than simply sending kids away. Yet as described below, this shift in reactive policy should be accompanied by corresponding proactive investments from school boards and state legislatures in specialized staff to support teachers in utilizing more relational and restorative approaches.

Full-Time Staff for Discipline and Climate Programming. When schools embark on discipline reform, too often they place the leadership of these additional programming tasks onto staff who already have full-time duties. This approach is not sustainable, nor is providing only one-off initial teacher trainings with little to no ongoing supports. Rather, schools that effectively transform discipline and climate employ specially trained, full-time coordinators to lead relational and restorative efforts. Our work at WHIS has been led by Shawn Thomas, an expert restorative practitioner, who designs and implements school-wide activities; provides ongoing professional development to faculty; responds to acute behavioral episodes; and mentors students experiencing more persistent challenges. "Mr. Shawn's" presence at WHIS has been absolutely instrumental, with his work being called a "saving grace" in tough times by one teacher. His presence helps make reform efforts a relief to faculty rather than another administrative burden.

In addition to a restorative practice coordinator, it is imperative from a policy perspective that schools in under-resourced settings have the support staff necessary to be effective in the challenging work they are undertaking. Capacity challenges with student supports limit even high-functioning urban schools' potential to meet students' wellness and social service needs. In fact, while the national recommendation for student to school-social worker ratio is 250 to 1, only eight states currently have any student-school social work ratio requirements, and none are currently under 500 to 1. With such large ratios, the quality of mental health services schools can be expected to provide is questionable, and teachers and school leaders are left to make the best of very difficult situations. Support staffing provisions in schools should adhere to national recommendations from requisite organizing bodies (e.g. School Social Workers of America, American School Counselor Association, etc.). Further, state school funding formulas should enforce needs-based approaches to resource distributions.

Integrated Behavioral Systems. It is quite common for schools contemplating discipline reforms to already have one or more programs in place related to student behaviors, such as social emotional learning, tiered behavioral interventions, or positive classroom management guidelines. We believe that these programs should be seen as distinct and complementary components to school climate reforms: socio-emotional learning teaches students the inter- and intra-personal understandings that undergird behaviors; tiered behavioral interventions present clear expectations and rewards for desired individual behaviors; and classroom management practices like positive reinforcement and narration impact the core of the behavioral climate of

the school. Meanwhile, restorative practices have the dual purpose of proactively cultivating caring interpersonal and community-wide relationships, and then leveraging those relationships in response to conflict or harm. At WHIS, the restorative practice programming we introduced bolstered an existing tiered behavioral intervention program, which when employed in tandem provided both individualized student reward systems alongside the relationship-building and empathic skills that are the foundation of school climate transformation. Wherever possible schools should use multiple, integrated programs to simultaneously strengthen the curricular, individual, and relational contributors to positive school climates.

Attention to Race and Social Context. Although these transformational approaches can benefit all students, when these efforts do not attend to the pervasive effects of systemic racism, interpersonal discrimination, and implicit biases, schools and districts can reduce their suspension and expulsion rates without corresponding changes in racial disparities.[10] Our approach to race and social context was multifaceted. First, we chose WHIS in part because it was a majority student-of-color school in a racially integrated district; thus it was a location where students of color would most strongly benefit, in the process addressing district-wide disparities. From there, our professional development efforts included helping educators understand how experiences with racial subordination in the United States have created adverse social conditions that impact Black and Brown students' needs, expectations, and opportunities in schools. Our program staff also helped shape the district's strategic planning around youth development supports, in the process advocating for what would eventually become a district wide intensive trainings around cultural competence and implicit biases. At the individual student level, Mr. Shawn, a trained social worker and African American man with similar life experiences as many of the students, helped bridge the gap when teachers and staff needed a better understanding of how a student's environmental circumstances yielded behavioral manifestations. Ultimately, in order to assure an effective relational approach that supports equity efforts, attention to race and social context must be integral at every level of design and implementation.

Structural Supports: Data and Collaboration. The essential infrastructure of effective discipline and climate reform comprises data systems and collaborative opportunities between teachers. Nuanced, disaggregated data should capture all disciplinary incidents, including the number and nature of referrals, non-exclusionary interventions attempted, and any resultant in-school or out-of-school suspensions, alternative school transfers, or expulsions. These data tools can help school and district leaders identify hot spots and demographic trends that require the judicious allocation of supports. Also, making schools more relational communities is as much about scheduling, professional groupings, and environmental design as it is about values and theory. Organizing students into small learning communities should be a priority, so that teachers, social workers, and support staff can work cohesively to best serve the students they share. At WHIS, to date we have had success in developing robust discipline data systems and in encouraging teacher collaboration spaces for relational and restorative work through paired circles and grade-level planning times. Structural shifts toward smaller learning communities within a school should also be a priority.

Intensive Supports. Lastly, while school personnel are often optimistic about the potential of relational approaches for the vast majority of their students, many also acknowledge a significant number of students who have unmet mental health, social service, or environmental needs that inhibit children's potential in ways that exceed what even the best behavior and

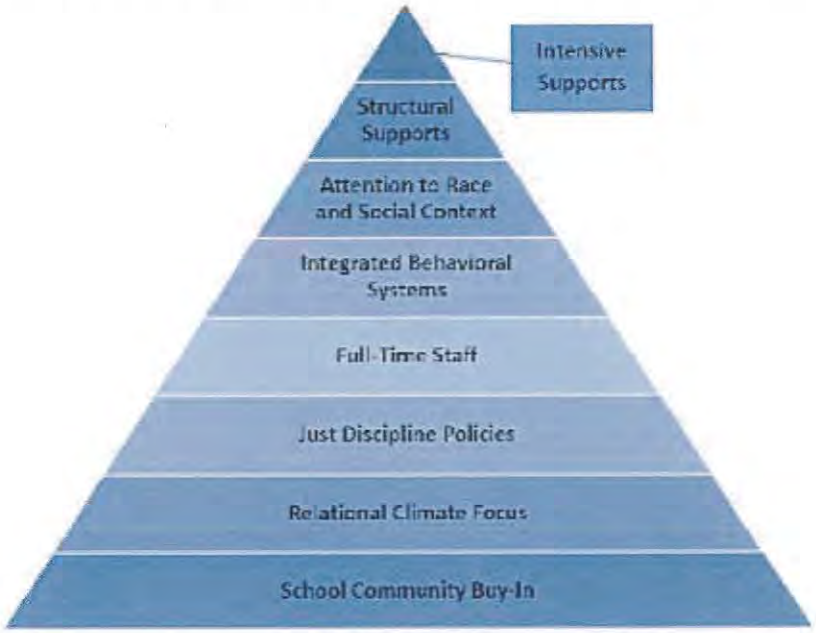
climate approaches can address. Such challenges are especially pronounced in schools where social worker and counselor ratios greatly exceed the professional standards of 1 of each for every 250 students (prior to our arrival, WHIS had only one social worker for 600 students, and no school counselor at all). Unmet challenges among a small group of students can have major consequences for the overall school climate, so adequate in-school mental health and social service supports are crucial to overall transformation. Teachers overwhelmingly agree on this unmet need in the schools we have worked with, and the procurement of such supports are critical components of both the policy and programmatic efforts of school climate reform.

Conclusion

The successes and challenges documented here in Greater Pittsburgh are representative of much of what we see nationwide: schools are in a struggle to revitalize antiquated discipline approaches, and to find the resources necessary to do so sustainably. Through the support of The Heinz Endowments, the collaborative work on school climate reform that we have undertaken in partnership with Woodland Hills has had very encouraging results. Over the two full years of the program, we have seen a 28% drop in the number of students suspended and a 30% drop in office referrals, with 85% of disciplinary reductions benefiting African American students. In terms of climate, there has been a 19% increase in students' perceptions of school safety, and 91% of teachers want the program continue. These improvements have been accompanied by increased proficiency in math, science, and language arts. We have seen similar results in other collaborating school sites, and the transformative power of relational and restorative approaches to school discipline and climate are becoming increasingly convincing. This progress at WHIS and other schools speaks strongly to the potential of what can happen when policy-makers, school leaders, teachers, social workers, families, and the students collectively embrace relational and restorative approaches. The extant literature is clear: exclusionary discipline

negatively impacts student achievement, drains our economic resources, and contributes to racial disparities in academic and criminal justice outcomes. The overuse of these harmful approaches in schools is unjust on multiple fronts, and it is imperative that we insure that schools have the resources and practices necessary to be places where we maximize rather than limit our children's potential.

Figure 1: The Just Discipline Model for climate transformation.



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ACLU
AMERICAN CIVIL LIBERTIES UNION
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Pennsylvania Advisory Committee to the United States Commission on Civil Rights

DISMANTLING THE SCHOOL-TO-PRISON PIPELINE: ADDRESSING THE DISPARATE DISCIPLINE OF STUDENTS OF COLOR, STUDENTS WITH DISABILITIES, AND LGBTQ STUDENTS

Statement of Harold Jordan, Senior Policy Advocate

November 19, 2019

The American Civil Liberties Union of Pennsylvania has a long history of work on issues affecting students and their families. For almost two decades, we've published *Know Your Rights: A Handbook for Public School Students in Pennsylvania*,[i] and we have provided legal services to students to ensure that they are treated fairly in accordance with the law.

Our work on school discipline issues is extensive. In 2008, we began to address problems stemming from the implementation of zero tolerance in Philadelphia schools. Eventually, we expanded our focus to address statewide issues. We examined statewide data as well as school discipline and policing practice in our 2012 and 2015 reports, *Beyond Zero Tolerance: Discipline and Policing in Pennsylvania Public Schools*.[ii]

In February 2019, we co-authored a national study, *Cops and No Counselors: How the Lack of Mental Health Staff is Harming Students*.[iii] This study was based on an analysis of nationwide data from the US Education Department's Civil Rights Data Collection (CRDC). A key finding of this report is that schools are under-resourced, and too many rely on police and the justice system for discipline.

Our dialogues with Pennsylvania Education leaders are represented in our newest report, *Police and Pennsylvania's Schools: What Education Leaders Need to Know*, October 2019.[iv] The report highlights how education leaders can make informed decisions about school climate and the role of police.

In the past four years, our focus has switched from work on the traditional forms of exclusionary discipline in schools – such as out-of-school suspensions (OSS), expulsions, and placement in disciplinary programs – to focusing on the impact of school policing on students.

The Disparate and Punitive Impact of Exclusionary Practices: Pennsylvania Trends

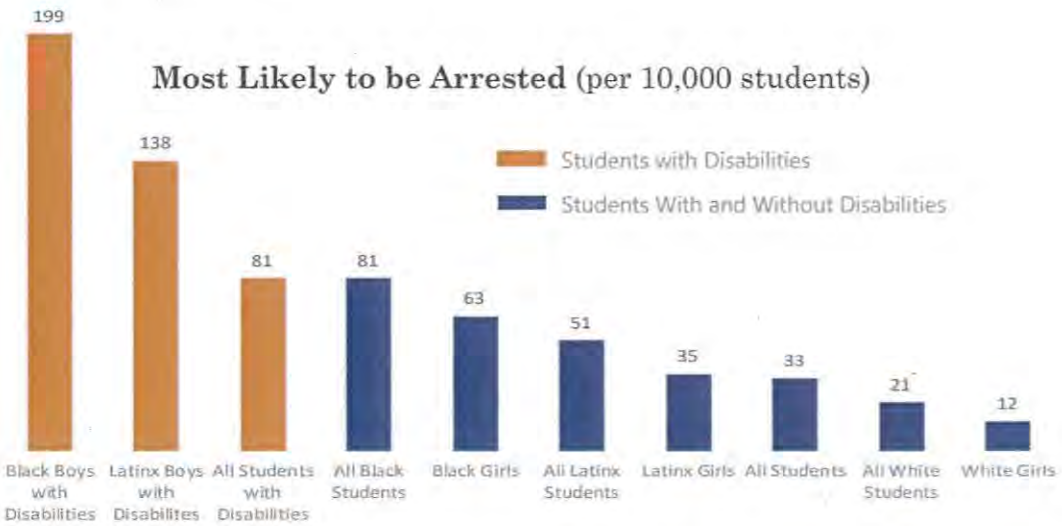
Exclusionary discipline takes many forms: suspensions, expulsions, removal to alternative programs, and involvement with the justice system. While most research studies focus on disparities in the use of out-of-school suspensions, the most widely used form of exclusionary discipline, all forms of discipline resulting in school removal must be examined if we are to understand the full impact on students.

The "school-to-prison pipeline," as it is known, refers to both the direct and indirect pathways through which a young person becomes likely to have some form of justice system involvement. It is well known that students who or suspended or expelled are at high risk of system involvement. For example, a study of more than a million public school students in Texas found that suspension (especially repeated) or expulsion increased the likelihood of students becoming involved in the juvenile justice system *the very next year*.[v] Also, they are more likely to be held back a grade or drop out than other students. In other words, exclusionary discipline can throw students' lives off-track, educationally and job-wise, in addition to leading to contact with the justice system.

Patterns of punishment of students in Pennsylvania public schools are strikingly similar to overall national patterns, both in terms of out-of-school suspensions and arrests. (The partial exception is when Pennsylvania is compared to states where there are a substantial number of Native students.)

Key Pennsylvania Trends[vi]

- The student who is most at risk of OSS and or arrest is a Black male student with a disability. For example, these students face arrest at a rate that is six times that of all students combined.
- Black students have the greatest likelihood of receiving out-of-school suspensions, as well as the greatest likelihood of being arrested out of any racial/ethnic group. For example, these students face arrest at four times the rate of white students.
- In 2015-16, Pennsylvania had the third highest student arrest rate in the country, a 24% increase over the previous two years.
- Students with disabilities, who make up 16.9% of PA public school students, receive OSS at twice the rate of other students, and they are arrested at 2.5 times the rate of all students combined (disabled and non-disabled combined).
- Black girls are five times more likely to be arrested in schools than white girls.
- Pennsylvania ranks second in the nation in the arrest rates for Latino students and Black students alike.



In 2016, the Commonwealth of Pennsylvania's Joint State Government Commission, released the results of a one year study of discipline policies in Pennsylvania's schools.[vii] The Commission was tasked by the Pennsylvania House (2015 House Resolution 540)[viii] to conduct the study. Consistent with our findings, the Commission found that Pennsylvania's rates of out-of-school suspension and expulsion rates were higher than the national average and recommended that measures be taken to lower exclusionary discipline rates.

Issues for Today

Over the past decade, there have been significant efforts nationwide to address the overuse of exclusionary discipline, with mixed results. The US Education Department announced that OSS rates fell 20% between the 2011-12 and 2013-14 school years.[ix] However, more recent data from the Department indicates that student arrests increased by 3% nationwide, and by a striking 24% in Pennsylvania, between the 2013-14 and 2015-16 school years.[x]

A contributing factor in these continuing high rates of exclusionary discipline has been the existence of policies and practices that encourage the removal of a child from school under a broad range of circumstances. Often, school removal is permitted or encouraged under circumstances that pose no significant threat of injury.

A broad reliance on exclusionary discipline may be the lasting legacy of "zero tolerance" policies, even when the term "zero tolerance" is removed from formal school policies (such as codes of student conduct) and when school removal policies shift in the direction of permitting more discretion by administrators.

Indeed, Pennsylvania's Joint State Government Commission concluded that, "The problems arising from zero tolerance are largely attributable not to the language of the law, but to the application of the law from school district to school district…Similarly, the definition of offenses that can result in expulsion and out-of-school suspension vary widely from school district to school district and are frequently applied subjectively."

In our experience, problems stem both from the language of written policies and how school and related justice system policies are applied to students.

A second major problem is that too many schools still use the justice system as the school disciplinarian. The harms of having schools use the justice system as disciplinarian are best illustrated by Pennsylvania's "kids for cash" scandal. Between 2003 and 2008 in Luzerne County, about 2,500 young people were removed from school, adjudicated delinquent for minor offenses, and detained in privately run facilities.[xi]

Pennsylvania's Interbranch Commission on Juvenile Justice, which was set up by the state legislature to examine the lessons of this scandal and make recommendations to legislators about needed reforms, concluded in its 2010 report that: "[S]chool referrals made under zero-tolerance policies were integral to the overall scheme as they provided an easy removal of children from their homes and schools and a constant stream of children to be placed into detention. The commission believes that zero tolerance and allowing schools to use the justice system as [a]

school disciplinarian [are practices that have] no place in the educational process or in the juvenile court system."[xii]

The reforms that have been made in the functioning of our juvenile justice system since "kids for cash" are being undermined by an increasing role and presence of police in schools. In fact, this enhanced use of police in schools might explain why arrest rates continue to be high in many school districts.[xiii] This is a problem both in schools where police are stationed on campus and where outside police are frequently called to school.

As mentioned earlier, students affected by exclusionary discipline lose a positive connection to school. They may drop out of school, or develop a negative relationships with adults in schools. Those involved in the justice system stand the added risk of experiencing long-term consequences, by having a record which endangers future job and educational opportunities.

Even the most minor involvement with the justice system, as when students are issued "summary citations" (like tickets for disorderly conduct, alcohol violations, or vaping) by police in schools, typically without being arrested, can have a lasting impact. Students receiving such citations *are placed in the adult justice system*, despite their age, where they have fewer protections.

Summary citations are adult criminal offenses, regardless of age, even though a minor cannot be jailed for a summary offense.[xiv] (Unpaid fines, however, can result in a warrant.) Unlike juvenile adjudications, summary convictions must be disclosed by young people if they are asked on a job or college application. One investigation found that some 370 citations were issued by police in schools in Lancaster County (central Pennsylvania) over an 18-month period.[xv] While statewide data about the issuance of summary citations in schools is not available, we have observed a strong pattern of these citations being issued disproportionately to Black and Latino students in several Pennsylvania school districts.

Recommendations

The ACLU of Pennsylvania offers the following recommendations:

- Redouble existing efforts to minimize the use of exclusionary discipline and law enforcement intervention and move toward a system of evidence- or research-based alternatives. (We join in this recommendation from PA's Joint State Government Commission study).
- Clarify Pennsylvania's reporting requirements for schools' obligation to report incidents to police, removing routine school disciplinary matters and typical day-to-day conflicts from the purview of officers. Existing state late prescribes that only specific major incidents be immediately reported; however, the Model MOU for agreements between districts and law enforcement approved by the Pennsylvania School Board also lists incidents where police notification is discretionary. Administrators are confused and feel pressured to bring the police into a broad range of school incidents. (The PA Joint State Government Commission also made this recommendation.)
- Analyze and address patterns of racial, disability and gender disparities in Pennsylvania school discipline.

- Make concerted efforts to reduce unnecessary student arrests.
- Ensure that student arrest data is accurate. At present, there are major inconsistencies between what is reported to various public agencies.[xvi]
- Reduce or eliminate the use of summary citations as a form of punishment.

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[xiv] Students and the Justice System: Collateral Consequences, American Civil Liberties Union of Pennsylvania, July 2019, https://drive.google.com/file/d/1U_rBQ0d96-9MupB_VczuSIdofoctIYEi/view

[xv] Student citations at Lancaster County public schools can have lasting consequences, Lancaster News, April 8, 2019, https://lancasteronline.com/news/local/student-citations-at-lancaster-county-public-schools-can-have-lasting/article_3345895c-57e1-11e9-a0dd-bfde9921829a.html

[xvi] Note that federal CRDC arrest data differs from that released by the Pennsylvania Department of Education (PDE), reported at https://www.safeschools.pa.gov/. We have reason to believe that some districts have underreported arrests to PDE. So we tend to rely on the federal CRDC data. In several jurisdictions, arrest numbers reported to federal and state education agencies do not match the data that comes from the juvenile court system.

The Center for Civil Rights Remedies

at The Civil Rights Project | Proyecto Derechos Civiles

Briefing before the PA Advisory Committee to the U.S. Commission on Civil Rights
Written Testimony of Daniel J. Losen
Director, Center for Civil Rights Remedies (CCRR)
November 19, 2019

I would like to thank Ms. Ivy Davis and the members of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights for inviting me to testify on this important topic.

When school administrators remove students from the classroom in response to behavioral issues there can be a profound impact. The most immediate is the lost instructional time. In 2015-16, for the first time, ever, the U.S. Department of Education required every school and district in the nation to collect the data on days lost due to out of school suspensions, which it made public in 2018. These data provide the public with the most direct measure of the impact of school discipline on educational opportunity,[1] one that captures both the impact from lengthy suspensions as well as the impact from short but frequent suspensions.

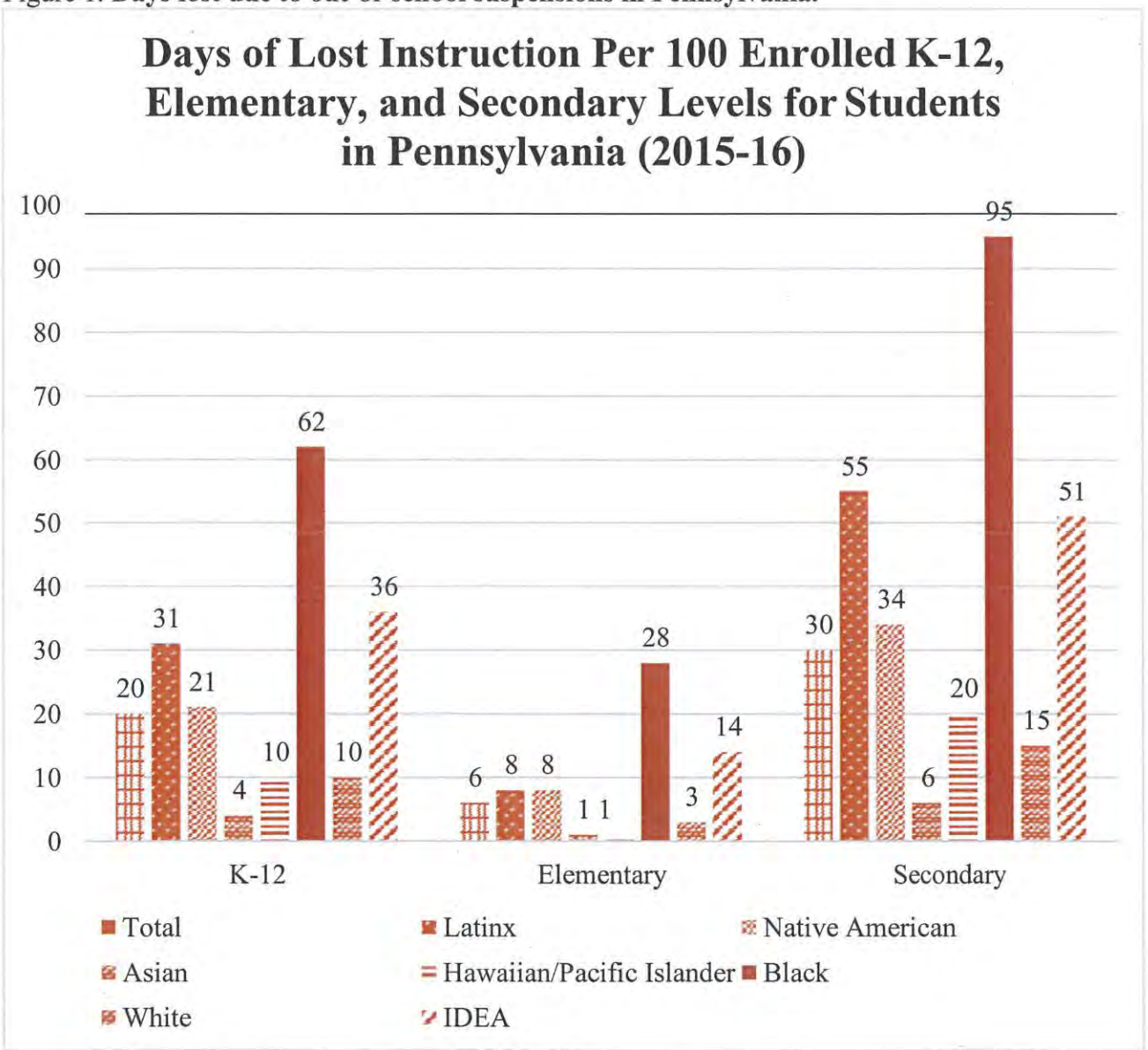
When researchers, policy advocates and educators discuss problematic discipline disparities that are readily observable in many school districts, the question shouldn't be whether removals from the classroom are ever justifiable but whether the school or district no longer reserves suspension from school as a measure of last resort. The central concern is that suspensions expose all children to harm when they are not used judiciously. Equally important is the inequitable impact on educational opportunity that can result from the frequent use of punitive exclusion. What is most troubling is that the data indicate that many schools and districts frequently rely upon out of school suspensions, or involve school resource officers, as a response to routine minor disciplinary issues. However, most do not. The issue I urge this committee to grapple with is that districts in Pennsylvania that use suspensions and other forms of disciplinary removal with high frequency are likely engaging in practices that are unjustified on educational or safety grounds. Further, although large disparities along the lines of race or disability status alone are not sufficient legal proof of discrimination, they should prompt further review as to whether discrimination is part of the problem.

My testimony begins with a presentation of the actual data on lost instruction due to out of school suspension in Pennsylvania. In the many forums in which I have testified, I have found that the discussions often overlook the sheer magnitude of the problem of frequent disciplinary removal and its impact on educational opportunity. I hope that my testimony, written and verbal, and especially these new descriptive research findings, will help keep the focus on the extent of the harm and the degree of the disparate burden as experienced by subgroups of students that have historically faced extensive discrimination in educational opportunity.

I believe that one of the core questions this commission should examine is, "What do we know about how the use of suspension impacts instruction?" I hope that after reviewing the evidence of the stark, excessive and disparate loss of instruction in Pennsylvania, all will agree that the status quo of reliance on suspensions by many PA districts, as well as frequently referring students to police in certain districts, are serious problems confronting our children, their families and communities throughout the state.

In 2018, the Center for Civil Rights Remedies, co-authored a report with the ACLU of Southern California called, "11 Million days of Lost Instruction: Race, Discipline and Safety at U.S. Public Schools," to provide a snapshot of the newly released K-12 data. That snapshot described the amount of lost instruction for each subgroup, aggregated across all grades, K-12, for each state and for the nation as a whole. Pennsylvania was among the states with the highest amount of lost instruction for Latinx students. However, when we break down the data further by grade configuration, we find much larger disparities in lost instruction due to discipline not covered in that report.

Figure 1. **Days lost due to out-of-school suspensions in Pennsylvania.**



The data described in this testimony is excerpted from soon to be published CCRR national report that describes the amount of lost instruction at the secondary level distinctly from the elementary school level and covers every state and nearly every district in America. The remainder of this testimony highlights the impact of out of school suspension at the secondary level for the state of Pennsylvania because, as one can see in Figure 1, the impact is radically higher at the secondary level. Very few schools in Pennsylvania serve all grade levels and judging from the data, it's safe to say the disciplinary policies and practices are likely very different in middle

and high schools than they are in elementary schools. For example, although the Black-White gap is large at both levels, when we consider days lost per 100 students enrolled, Black secondary students lost 80 more days per 100 than their White peers. The Latinx -White gap was also large in Pennsylvania as Latinx secondary students lost 40 days more than White students (per 100 enrolled). In elementary school these gaps were 20 days (B-W) and 5 days (L-W), respectively.

District disparities that may shock the conscience:
For this testimony, CCRR analyzed days of lost instruction disaggregated by race and disability for 583 Pennsylvania districts.[1] As one can see in Table 1, for ALL secondary students in Pennsylvania in 2015-16, there were 16 districts where at least 100 days of instruction were lost due to out of school suspensions per every 100 students enrolled. Those shocked by these high rates may want to assume they must all be errors, but they should keep in mind that these data were reported by school districts to a federal civil rights enforcement agency, and that district superintendents certified these data as accurate.

Table 1. Days Missed due to Suspension OSS Per 100 Enrolled in Selected Pennsylvania Districts

District Name	ALL Students	Latinx Students	Black Students	White Students	IDEA Students (SWDs)
Helen Thackston Charter School	224.1	196.0	278.3	213.3	
Sharon City SD	217.6		448.6	140.7	64.0
Steelton-Highspire SD	204.0	187.6	282.1	46.3	213.7
William Penn SD	189.1	64.4	193.3	110.8	358.5
Southeast Delco SD	179.9	94.3	210.2	88.6	210.4
Erie City SD	162.7	192.0	328.0	54.8	139.7
Reading SD	157.8	153.4	216.8	121.1	188.6
New Castle Area SD	137.2	63.3	240.0	88.6	189.8
Big Beaver Falls Area SD	128.8	260.0	172.1	100.0	133.0
KIPP DuBois Charter School	127.4	86.7	128.9		178.3
New Kensington-Arnold SD	125.5	30.0	287.3	62.8	164.2
Pittsburgh SD	116.1	73.5	172.2	42.4	114.4
East Allegheny SD	115.6	20.0	227.5	59.4	197.0
Philadelphia Electrical & Tech CHS	109.4	10.0	141.6	40.9	118.2
Upper Darby SD	100.6	70.6	162.4	44.7	151.9
Mastery CS-Gratz Campus	100.1		100.6	73.3	146.7

As disturbing as these high rates are for ALL students, perhaps more alarming are the racial disparities in districts like Sharon City, where Blacks lost 449 days per 100, which was 307 days more than their White peers. For Latinx students the Big Beaver Falls Areas school district disparities are exceptionally large as Latinx students lost 260 days per 100 enrolled, which was 160 days more than their White peers.

[1] As a safeguard against distortion due to the use of data that were rounded to protect student privacy, the analysis was limited to districts that had at least 500 secondary students. Please note that this testimony is based on findings from a larger report that is still undergoing some data cleaning and we anticipate some very slight changes to the data.

Similar concerns arise with regard to students with disabilities. While the fact that secondary students with disabilities in William Penn district lost 350 days per 100 enrolled is not sufficient proof of unlawful discrimination, it's hard to imagine that those high rates don't reflect a likelihood that some students with disabilities were suspended, unjustly, for behaviors caused by their disability.

Although these federally collected data do not enable a breakdown of the days lost by the reason for the out-of-school suspension, CCRR has examined similar data collected and reported in Massachusetts. There over half of all the days lost were due to suspensions where the most serious offense listed as the reason for the suspension was described as "non-violent, non-drug related, and non-criminal behavior." Furthermore, the proportion of days lost for these minor behaviors was consistently over 50% of the days lost in those Massachusetts districts with the greatest amount of lost instruction due to discipline. (Losen, 2018).

Additional Concerns Arise When Students with Disabilities Are Suspended at High Rates;
One important concern is that students with disabilities not only tend to receive greater academic supports than their non-disabled peers, but they often rely on schools for additional supports and services including mental health, occupational therapy and physical therapy. Therefore, even when suspensions are for non-disability caused behaviors, the burden of even a one-day suspension may be much greater when it removes a student with disabilities with mental health needs from school. According to an ACLU report, "Students are 21 times more likely to visit school-based health centers for mental health than community mental health centers."[2]

For each subgroup represented in Table 1, the 2015-16 the student suspension rates of lost instruction can be compared to just those with disabilities who are eligible pursuant to the Individuals with Disabilities Education Act, (IDEA). Although the comparison group is all students rather than students without disabilities, we know from prior studies that theh rates for students with disabilities are typically between two and three times higher than they are for their non-disabled peers (Losen, 2015). By law, school administrators may not suspend students with disabilities for behavior that they know, or should know, was caused by their disability. Excluding a student from school because they have a disability is unlawful discrimination. Therefore, denying a free appropriate public education because of a behavior caused by that disability is the equivalent of exclusion because of their disability. The IDEA provides a procedural protection against this form of discrimination by requiring a "manifestation determination hearing" before a school suspends a student for more than ten days (this can be cumulatively or from one suspension). If the hearing finds that the behavior in question was caused by the disability, then the school cannot suspend the student for even one additional day for that disability-caused behavior. However, it would still violate at least the spirit of the law if the school district knew from the outset that the behavior was disability caused yet suspended the student anyway.[3] As with the even larger differences in days of lost instruction, the large differences in student suspension rates between students with disabilities and others raise questions about whether schools and districts are meeting the legal and moral obligations of fundamental fairness to provide an equitable opportunity to learn to students with disabilities.

In addition to the procedural protections against discriminatory exclusion based on disability, in 2004, Congress was very concerned about racial disproportionality in special education identification, restrictiveness of placement and discipline, including suspensions lasting just one day. Therefore, when Congress reauthorized the IDEA that year it added a mechanism to address racial disproportionality and it applied to racially disparate rates of disciplinary exclusion among students with disabilities. Specifically, Congress added language in 20 U.S.C. Section 1418(d) that required each state review their district's racial disparities in discipline. If the district exceeds a state's created threshold, they must re-purpose 15% of their federal funds received pursuant to Part B of the IDEA. As described in CCRR's report *Disabling Punishment*, sometimes the racial disparities in discipline at the district level are overlooked by state educational agencies as each year, only about half the states identified any districts for racial disparities in discipline among students with disabilities.

In fact, Pennsylvania identified not one district in either 2014-15 or 2015-16 (see page 5, Table 2). Moreover, in 2015-16, when days of lost instruction for all forms of disciplinary removal were accounted for, not just out of school suspensions, but in-school suspensions, expulsions, and disciplinary transfers for grades K-12 combined, CCRR conservatively estimated that Black students with disabilities in Pennsylvania lost 111 days of instruction compared to 35 days for their White peers. A complete discussion of those data can be found in our report, *Disabling Punishment* (Losen, 2018).

REFERRALS TO LAW ENFORCEMENT AND SCHOOL BASED ARRESTS: In the wake of several school shootings, but most notably the murder of 27 at Marjory Stoneman Douglas HS in Broward County, Florida, the federal government convened a school safety committee which recommended using federal funds to add police to our public schools. However, both before and after that committee issued its recommendation there were several incidents of police in schools using abusive force on young children. In a recent video an eleven-year old girl was thrown to the ground and restrained by an officer even while school administrators repeatedly asked him to let the young child stand on her own and that she posed no danger to anyone. When the video of his excessive force went viral the officer resigned from his position. In Orlando Florida a school resource officer, who was an employee of the Orlando police department arrested two six-year-old Black girls in separate incidents and was eventually fired because he was arresting young children without the approval of a supervising officer. [4]In response to these and many other documented cases of abuse, the Leadership Conference on Civil and Human Rights' has called for ending police in schools.[5]

Whether or not one shares the perspective of civil rights advocates, there is general agreement that the data on referrals to law enforcement and school-based arrests are often inaccurate or missing entirely, and a broad consensus that parents and policymakers should know this type of information. The evidence of underreporting of the data, collected and reported by the U.S. Department of Education, suggests that the Pennsylvania district level rates reported in this testimony using those data, are likely too low. It is also possible that some of the data reported here represent reporting errors at the district level. On the other hand, CCRR has historically avoided working with the data on school-based arrests because of overwhelming evidence that the data reported, (including zero school-based arrests reported by New York City, and Los Angeles) are under-reported.

Table 2. Referrals to Law Enforcement (per 1000) in Selected Pennsylvania Districts

District Name	All Students Referral to Law Enforcement	Black Students Referral to Law Enforcement	White Students Referral to Law Enforcement	IDEA All Students Referral to Law Enforcement
Columbia-Montour AVTS	281.3	500.0	276.4	378.4
Northeastern York SD	134.3	258.1	129.2	340.0
Milton Area SD	104.1	181.8	96.0	315.8
Allentown City SD	100.2	146.5	45.7	167.2
Pittsburgh SD	85.0	132.6	26.3	140.9
Woodland Hills SD	82.6	114.2	18.9	109.6
Iroquois SD	76.2	0.0	76.9	100.0
Waynesboro Area SD	72.2	187.5	68.6	179.5
Keystone Central SD	70.1	0.0	69.4	109.8
Philadelphia City SD	69.3	90.6	38.4	93.8
Salisbury Township SD	63.2	142.9	49.3	111.1
Lebanon SD	60.6	71.4	28.8	123.3
West Mifflin Area SD	59.1	125.0	37.9	88.2
York City SD	57.3	81.6	0.0	105.3
Steelton-Highspire SD	57.1	87.7	0.0	105.3
Warwick SD	51.2	142.9	43.8	78.4

The data in Table 2 are based on the unduplicated counts of secondary students referred to law enforcement, per 1000 enrolled. This is an entirely different metric than the days of lost instruction, and these referrals are not reflected at all in the days of lost instruction. To create this entirely distinct rate one simply takes the number of students referred and divides that number by the group's total enrollment. That result is then multiplied by 1000 to create a rate that is easy to understand and to use for comparison purposes. In most districts in Pennsylvania and the nation the rates in this area fall below 1 per thousand, which is less than 1/10th of 1 percent. Another way to think about these data, especially when one looks at districts with higher than average rates, is, for example, that in Columbia-Montour Area Vocational Technical School (AVTS) the rate of referrals to law enforcement was 281.3 per 1000. this means the same thing as over 28% of the enrolled students in this district were referred to law enforcement in 2015-16 alone!

Readers should note that although this testimony provides this information on referrals to law enforcement for districts selected because they were the highest in Pennsylvania, there may be districts with higher rates that failed to report. Recently, the ACLU provided a fairly comprehensive descriptive report, with racially disaggregated data at the state level on the use of referrals to law enforcement and school-based arrests. The report called *Cops, No Counselors*, did not include a district level analysis. As the ACLU's report described:

Districts often do not keep track of this information because they see it as the police department's responsibility. This misconception is flawed, and police departments rarely keep records that accurately reflect information about school policing. The departments usually maintain a database of arrest reports, but those reports do not capture whether the arrestee was a student, whether the arrest took place in a school, ..."

Despite these data issues, according to the ACLU's report, (Table 6) Pennsylvania was among the highest states for both referral to law enforcement and school-based arrests. For the latter category, the state had the highest state-wide rate of referral to law enforcement in the nation. To put the district numbers in perspective for referrals to law enforcement, which includes every school-based arrest, Pennsylvania reported an average of 12.9 per 1000 which is the same as 1.29 percent. According to the ACLU's report, Pennsylvania had referral rates that were above the national average for every racial and ethnic group.

Although most serious incident data are kept by the school authorities, they do not necessarily keep the details on whether the student was subsequently arrested. One would think that given the severity of an arrest, that if it occurred for school-based behavior, the school district would keep track of these facts. These data are also required annual report card data points pursuant to the federal Every Student Succeeds Act, public reporting requirements. If any district in Pennsylvania failed to report their school-based arrest data, they would also be out of compliance with Title VI of the Civil Rights Act of 1964.

We must caution readers not to assume that either referrals or arrests were prompted by serious misbehaviors. CCRR has observed that the greatest disparities in suspension rates used tend to be for the least serious and most subjective category covering all forms of disruption and defiance. An October 2019 study demonstrated that despite declines in the use criminal disorderly conduct, there were large racial/gender disparities in school-based arrests for disorderly conduct (a misdemeanor) in Virginia. (Woolword, Deane & Ellis, 2019). We cannot draw conclusions without the data that includes the violation, but even those officially reported reasons may not accurately capture the reason for the referral or arrest. Ideally it would be even more helpful to know the nature of the incident that prompted law enforcement involvement. As we have seen from body-cam footage, in some cases the behavior that is listed as the reason for the arrest may not reflect those instances where inappropriate police conduct triggered or escalated a behavioral problem.

The School to Deportation Pipeline:

The concerns regarding increasing numbers of police, and their involvement in schools discipline raises additional concerns for English learners. Specifically, the addition of police in our schools increases the risk for

deportation because of the greater likelihood that non-English speakers are either undocumented themselves or are the children of undocumented parents. The fear that undocumented schoolchildren have of deportation if police are involved is well established. One recent example occurred in the Boston Public Schools and lead to the resignation of the Boston superintendent who had vowed not to assist police in rounding up undocumented schoolchildren. In that example, a scuffle between two students at a Boston high school was broken up, the conflict was de-escalated, and no suspensions were issued. However, one student involved was deported a full year later after the SRO opined in the police report he filed that the student might have a gang affiliation. The note in the record was flagged by the system and eventually triggered ICE involvement, even though no such affiliation was ever established.[6]

Discussion:

We all understand the importance of attending school. While educators in most school districts reserve disciplinary removal as a measure of last resort, (Losen, 2015) there are still thousands of school districts where local policymakers and educators promote harsh zero-tolerance discipline. Many believe that frequent disciplinary removals serve goals of ensuring that schools are safe and orderly. Although schools with numerous rules, strictly enforced with suspensions, may feel more orderly and students may appear to be highly obedient, research does not indicate that such environments are safer or more conducive to learning. To the contrary, research suggests that suspensions are not effective at deterring misbehavior (Raphael-Mendez, 2003). Further, similarly situated schools, serving predominantly children from high crime neighborhoods that reported a high level of trust in teacher-parent and teacher-student relationships had higher safety ratings and relied on out of school suspensions less often than similar schools with lower safety ratings and lower levels of trust. (Steinberg, 2015). Despite a long history of educators embracing harsh discipline, no established body of research supports the implementation of harsh discipline policies to create effective learning environments.

There is no logical reason to assume that out of school suspensions prompt effective interventions because none are required. The only thing we know for sure about an out of school suspension is that it denies the student access to education. In other words, an out of school suspension is a punitive response, but not, an intervention.

In an important recently published study that tracked every individual student in the state of Arkansas, *Understanding a Vicious Cycle: The Relationship Between Student Discipline and Academic Outcomes,* the authors wrote, "Using 10 years of student-level demographic, achievement, and disciplinary data....we find that exclusionary consequences are related to worse academic outcomes (e.g. test scores and grade retention) than less exclusionary consequences, controlling for type of behavioral infraction" (Anderson, Rittter and Zamarro 2019).[7] Importantly, the researchers found that the first suspension was associated with greater harm than subsequent discipline. Further, the more exclusionary the consequence the greater the negative impact on test scores. In other words, expulsions, referrals to an alternative learning environment, out of school suspensions and in-school suspensions were each independently associated with negative achievement impact and greater risk for grade retention, but the more exclusionary the consequence the greater the harm. They also found that "less exclusionary consequences (e.g. warnings, Saturday school) have a weaker association with negative academic outcomes." (at p. 256). The authors also found that for students from historically underserved backgrounds getting suspended had a noticeably higher negative impact on them academically than it did on their White peers and this in turn has "direct implications for the educational attainment gaps."

An equally noteworthy and robust recent study published by Stanford University researchers (2019), combined the CRDC data from every school in the nation with achievement data. The Stanford study determined that the racial discipline gap was positively correlated with the racial achievement gap, and this relationship was strongest when they analyzed the Black-White differences in outcomes (2019). Several rigorous studies in which additional factors that contribute to lower achievement were controlled for, including poverty, suggest that fewer suspensions would predict higher achievement. One such study found that school suspensions account for approximately one-fifth of Black-White racial differences in school performance (Morris & Perry,

2016). Meta-analyses have revealed a significant inverse relationship between suspensions and achievement, along with a significant positive relationship between suspensions and dropout (Noltemeyer, Ward, & Mcloughlin, 2015). While exploring school discipline and academic performance in the state, the West Virginia Department of Education found that "students with one or more discipline referrals were 2.4 times more likely to score below proficiency in math than those with no discipline referrals" (Whisman & Hammer, 2014).

Another recent study tracked many years of individual student level data from 2002 and administrative reports from Charlotte-Mecklenberg, NC, where half of the student body had their schools reassigned in 2002 due to a large and sudden boundary change, which created a natural testing ground for comparing discipline policies. The researchers found that students assigned to a school that had higher suspension ratess were 15 to 20 percent more likely to be arrested and incarcerated as adults.[9]

Despite serious resource shortages in some districts, many will decide to increase spending on police, especially if there are federal grants encouraging them to do so. Prior research (Osher 2015; Finn & Servoss 2015) has suggested that investment in security does little to improve school climate or the conditions for learning. One study (Finn and Servos, 2015) found that increases in school security correlated with higher suspensions and larger racial disparities. Another suggested that investing in social emotional learning, rather than increasing SROs and other security investments, did more to improve both the sense of safety and achievement, while reducing misbehavior (Osher, 2015).

Another recent study by the Texas Educational Research Center found "that receiving federal funding for school police in Texas was associated with an increase in disciplinary rates for middle school students by 6%. Most important to those concerned about safety was that the increase was "driven by a rise in disciplinary actions for low-level offenses or school conduct code violations, rather than serious offenses." While there was no similar impact on high school suspension rates the same study also found "suggestive evidence that exposure to a three-year federal grant for school police decreases high school graduation rates by approximately 2.5% and college enrollment rates by 4%."[10]

Long-Term Harms from Suspension: The long-term harms associated with suspension from school are well-established. One recent and particularly strong national study, controlled for 60 variables including socio-economic status and delinquency and found that compared to similar peers, students who had been suspended were less likely to graduate high school or college and more likely to have been arrested or on probation (Rosenbaum, 2018).[11] Further, recent economic analyses conducted by Dr. Russell Rumberger, looked at the economic costs that could be averted by reducing suspensions. Using individual student data and advanced statistical methods Dr. Rumberger produced conservative estimates of how much the use of suspension was lowering graduation rates, nationally, as well as for several states including California (Rumberger & Losen, 2016, 17) Once Dr. Rumberger quantified the impact of suspensions on graduation rates, he was able to use the established economic research on the costs associated with not graduating high school (Bellwether 2016) to estimate what the costs savings would be if we suspended far fewer students. Rumberger found that suspensions lowered the graduation rate by approximately 7 percentage points, nationwide, for just one cohort, and the economic impact in social and governmental costs over the lifetime of one cohort of non-graduates is an estimated 35 billion dollars. He further estimated that even if we reduced suspensions modestly, enough to increase graduation rates by 1 percentage point, we would avert billions in additional economic costs attributed to suspensions. When reviewing the data on discipline, we encourage readers to consider the current harm from the loss of instruction, as well as the potential for longer-term benefits if we implement effective alternatives.

If we agree that there is too much lost instruction, and that, despite the reductions and narrowing of the racial gap, the current disparities along the lines of race and disability depict a serious problem and a disparate economic burden, the core questions for educators and policymakers becomes, "What can we do about it?"

How we frame the problem will drive the types of solutions we explore. Several researchers and policy influencers have suggested that we need not take any actions until we learn more (Steinberg & Lacoe, 2018). Although this may seem reasonable at first blush, there are two types of problematic assumptions with this approach: a) the status quo is acceptable; b) we don't know enough about the remedy to change current policies and practices. Undergirding the latter approach is an unsupported assumption that the current frequent use of disciplinary removal is helping in some important way. The belief that kicking out the "disruptive" students is likely beneficial to the "good" students is based on a false dichotomy that students are either disruptive or nondisruptive, and that which category a student belongs to is based on some immutable deficit within the student. Findings from the Texas study (Fabelo, 2011) referenced earlier suggest that the distinction is false, as more than 60% of Texas middle school students were suspended at least once by the time they left school. This hard data on who gets suspended at some point during their schooling indicates that the majority of secondary students have, at one point or another, been counted among the "bad" or "disruptive." Therefore, if our responses to disruptive students are unjustified and harmful, it means that most students are being harmed, not helped. For example, another recent national study published in July 2019, used the National Longitudinal Survey of Youth from 1997 and determined that school suspensions contributed to the likelihood of committing an offense (Mowen, Brent & Borman, 2019).

Schools Make a Difference

Nobody benefits if an educationally unsound response to student misbehavior causes students to miss instruction. Moreover, if even one racial or ethnic group is observed to engage in minor disruptive or defiant behavior more often than others, it would never justify their receiving unsound punishment or a counterproductive response. Nor should we assume that just because the educators have good intentions that racial bias, or disability bias for that matter, plays no role in the patterns of high rates, and huge disparities in lost instruction due to out of school suspensions. Moreover, one should not accept these disparate patterns as necessary or buy into unsupported assumptions that the alternatives will create chaos or necessarily increase exposure of peers to disruptive youth. The heart of the civil rights concern about suspensions is that, once it is clear that an unsound policy or practice harms one group more than others, it becomes both a moral and legal imperative to replace the harmful policy with one that is sound and educationally justifiable. Faced with data showing the deep racial divide in instruction time lost due to discipline in Pennsylvania, even assuming that most teachers and administrators try to treat students fairly and to avoid the influence of negative stereotypes, we should *not* assume that they succeed in doing so.

Policies and Personnel Matter: A high degree of variation is often found between schools within the same district. Although districts typically have a districtwide student code of conduct, in many districts the individual school leaders have the autonomy to respond to student behavior according to their own beliefs and attitudes. A study by Dr. Russ Skiba that surveyed principals from every school in Indiana found that the principal's attitude on school discipline was not only the most powerful predictor of whether suspension rates were high or low, it was also the strongest predictor of whether racial disparities were large or small (after controlling for poverty and several other factors)(Skiba et al., 2015).

Ultimately, even those who argue that discipline policy should be left to local control tend to agree that whether or not a student loses instructional time because of behavior is determined by school leaders and teachers as well as other members of the school community that create the rules. The problem with the deference to school-based control it is that it perpetuates our failure to acknowledge that frequently suspending children for minor behaviors creates serious immediate as well as long-term problems with large associated economic costs that that could have been averted. Some proponents of the status quo incorrectly attempt to frame the issue as safety problem. But all the research suggests that finding ways to engage students and keeping them in-school is the most effective antidote to delinquency (Gottfredson,)

Even more important is that the data suggest that where there is excessive use of disciplinary removal, we also find the largest disparities along the lines of race and disability status. In some cases, these disparities reflect unsound policies that are unlawful because of their disparate impact. In other cases, disparities may reflect implicit or explicit biases. In still others the disparities may reflect longstanding inadequicies in resources that call for a deeper and more comprehensive approach than making adjustment to discipline policies or practices.

I believe that among the panelists, there is likely agreement with the principle that keeping our children safe includes protecting them from unsound policies and from discriminatory punishments that can alter their life chances. There is no rational basis to suggest we should sacrifice one kind of safety for the other. In many cases the large disparities likely have several causes that are difficult to untangle with precision. The fact that finding the best remedy for every context is not always simple does not mean that we should abrogate our responsibility to our children to pursue the remedy. I think there is consensus that our public-school systems should pursue the most effective policies and practices. Toward this shared goal, I hope my testimony has added to our collective understanding and will foster our efforts to protect all children from misguided, unjust, and harmful practices.

Recommendations: We encourage this advisory committee to:

1. Reject the status quo where suspensions are frequent and disparities are wide.
2. Issue a statement criticizing the rescission of the joint OCR/DOJ guidance on school discipline and call for its re-instatement.
3. Call for legislation and administrative initiatives to improve data collection and public reporting of all discipline data, disaggregated by race/ethnicity, and especially referral to law enforcement and school-based arrests.
4. Encourage our public-school educators and policy makers to scrutinize the data for differences along the lines of race, disability status and gender, and especially in terms of days of lost instruction.
5. Call upon policymakers to make changes to district codes of conduct to limit suspensions for minor misbehavior and limiting the length of suspensions.
6. Suggest that policymakers in Pennsylvania support funds for training of teachers and administrators on non-punitive responses and trauma-sensitive responses.
7. Ask that the state's attorney general adopt the federal guidance on school discipline especially the section on disparate impact (despite the federal rescission).
8. Encourage local advocates and school boards to audit school funding for police and other security and compare it with student support personnel, and where appropriate to divest investment in policing in order to re-directing those funds to support, training for teachers and leaders. and personnel such as restorative justice coaches.
9. Continue to monitor the use of police in schools for potential civil rights issues. reserving the enlistment of police as a measure of last resort. Add legislation limiting the role of police in routine school discipline.
10. Encourage state attorney generals to increase enforcement of anti-discrimination law in our public schools, especially with regard to unjust and unnecessary disciplinary removal.

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About the UCLA Civil Rights Project's Center for Civil Rights Remedies

The UCLA Civil Rights Project's Center for Civil Rights Remedies (CCRR) is dedicated to improving educational opportunities and outcomes for children who have been discriminated against historically due to their race or ethnicity and who are frequently subjected to exclusionary practices such as disciplinary removal, over-representation in special education, and reduced access to a college-prep curriculum. CCRR has issued numerous reports about the use of disciplinary exclusion in California's schools, including the 2015 report, "Closing the School Discipline Gap in California: Signs of Progress." CCRR is an initiative of the UCLA Civil Rights Project /Proyecto Derechos Civiles (CRP), co-directed by Gary Orfield and Patricia Gándara, researcher professors at UCLA. Founded at Harvard in 1996, its mission is to create a new generation of research in social science and law on the critical issues of civil rights and equal opportunity for racial and ethnic groups in the United States. It has monitored the success of American schools in equalizing opportunity and has been the authoritative source of segregation statistics. CRP has commissioned more than 400 studies, published more than 15 books and issued numerous reports from authors at universities and research centers across the country.

1 In addition, the data reported are not estimates but represent the actual number of days lost.
2 The ACLU report, Cops and No Counselors, cites to Juszczak L., Melinkovich P., and Kaplan D., Use of Health and Mental Health Services by Adolescents Across Multple Delivery Sites. Journal of Adolescent Health. Jun. 2003; 32(6 Suppl):108-118,5,
3 Any intentional denial of a free appropriate public education on the bais of disability unlawful discrimination. Technically, the structure of the IDEA's procedural protect would make it difficult to hold a school district liable for suspensions of less than ten days with regard to any individual student. However, if a district routinely suspended students for disability caused behavior, ignoring their own knowledge, this systemic discriminatory treatment would likely be challengeable.
4The story is available on line at https://www.cnn.com/2019/09/23/us/officer-arrested-children-6-8-suspended-orlando-trnd/index.html
5 LCCHR rights principles for safe, healthy, and inclusive school climates (http://bit.ly/crpfshisc), signed by more than 50 civil rights and education organizations, call for the elimination of school-based law enforcement. https://www.vox.com/identities/2019/10/24/20929397/police-officer-excessive-force-school-11-year-old-girl-new-mexico
6 See, A Minor Fight In a Boston School Landed One Student in Ice Custody, Advocates Fear, available at: wbur.org/news/2018/01/26/Boston-student-ice-custody. According to the Boston Police, it was the content of the School Resource Officer's report, suggesting gang involvement that the student's lawyers refute, that triggered notification of ICE. Nine months later, the student was picked up by ICE and was put in detention for 15 months before being deported to El Salvador in January, 2018. The original event was an altercation in an East Boston High School Public School cafeteria that almost led to a fight, yet didn't even wind as serious enough to warrant a suspension. Regardless, the incident was mentioned in the school police officer's report.
7 Some proponents of the "no excuses" approach had cited to a "working paper" (Anderson, Rittter and Zamarro 2017) by the same authors and with a similar title that originally found no statistically significant harm from suspensions, based on a review of many years of administrative discipline records from every school in the state of Arkansas. The authors took a closer look at their data and analyzed the impact of suspension on achievement in the same year the suspension occurred. The original working paper was criticized in a peer-reviewed published response for failing to examine the impact of suspension the same year it occurred (Losen &Perry, 2017) and for describing their findings in a manner that might lend the work to misinterpretation.
8 The higher rates were defined as one standard deviation above the average.
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PA Advisory Committee to the U.S. Commission on Civil Rights

Dismantling the School-to-Prison Pipeline: Addressing the Disparate Discipline of Students of Color, Students with Disabilities, & LGBTQ Students

Comprehensive Written Statement

Monica McHale-Small, Ph.D.

My perspective on this topic has been shaped by 27 years spent in Pennsylvania Public Schools, thirteen as a school psychologist and fourteen in a variety of administrative positions including superintendent. I currently advocate for students with disabilities at the policy level as Vice President of the Learning Disabilities Association of America and at the individual level as an independent evaluator. Throughout my career I have seen first-hand that exclusionary discipline has more harmful consequences than positive benefits.

I am concerned about the disenfranchising and demoralizing effect of suspension and expulsion on all students, including those who are not members of groups that have been disproportionately impacted. As a school psychologist and advocate, the needs of students with disabilities is my area of expertise and thus I will primarily focus my comments and recommendations on this population. It is important to note that for every research finding I share, I can share multiple real-life anecdotes that support those findings.

While students with disabilities are at a higher risk than students without disabilities to experience exclusionary discipline, national data indicate that within this group, students with Learning Disabilities and students with Emotional and Behavioral Disorders are at the greatest risk of suspension, expulsion and of entering the juvenile system[i]. In Pennsylvania 49 percent of the 297,644 students who received special education services during the 2018 -2019 school year fell into these two disability categories[ii].

IDEA, the federal law mandating special education, requires school districts to educate students with disabilities in the least restrictive environment. For students with Learning Disabilities and Emotional Disturbance this mandate increasingly means these students receive most of their education within the general education classroom. A number of studies have indicated that many general education teachers feel unprepared to have these students in their classroom.[iii] Research has also indicated that students with learning and emotional disabilities often experience academic failure and frustration with learning and academics. The recently released NAEP scores document that students with disabilities score significantly below the non-disabled peers they are educated alongside.[iv] I can attest from first-hand experience that these findings are accurate and that unprepared teachers and frustrated and overwhelmed students are a combination that often spells trouble.

Connection to school is an important predictor of school success and a protective factor that reduces the risk of a student experiencing exclusionary discipline and entering the juvenile system. Factors that lead to connection include positive relationships with teachers and peers and the experience of academic success. Our public schools have largely not recovered from the recession. Class sizes are larger and resources, including academic and mental health support, are often in short supply. Students with disabilities who are inadequately supported are more likely to experience frustration and disconnection stemming from their unmet academic, emotional and social needs. Frustrated and disconnected students act out.

The IDEA built in safeguards that should trigger the provision of additional services and supports for students who are not experiencing success and making meaningful progress. While academic failure alone should result in a reconvening of the IEP (Individual Education Program) team and the provision of additional supports, schools, especially under-resourced schools, often overlook academic struggles or address them by lessening academic requirements rather than increasing supports. Such actions often lead to increased disengagement and decreased persistence in students with disabilities.[v]

As previously noted, students who are unsuccessful disengage from the learning community and frequently act out. Disciplinary referrals should result in a manifestation determination as mandated by the IDEA. This process requires the team to come together to determine if the student's behavior is a manifestation of their disability. If it is, the IEP team must develop a plan to address these behaviors. Schools do not consistently apply this process with fidelity. Again, a lack of resources often results in little to no change in the services and supports provided to students despite escalating behaviors.

In order to decrease the number of students with disabilities experiencing exclusionary discipline, both my experiences and the relevant research support a need for more teacher training in understanding and addressing the needs of students with disabilities. Schools need more resources in order to provide this training as well as adequate academic, social and emotional supports. State monies to fund Special Education in Pennsylvania have not been adequately increased nor have they been equitably distributed.[vi] Pennsylvania, like the nation, sees the greatest disproportionality in the arrest rate of Black students with disabilities.[vii] Black students in Pennsylvania are more likely to be attending financially stressed districts that are hardest hit by our states' inadequate Special Education Funding.

IDEA mandates that schools provide the supplemental supports required for students to make meaningful academic progress. Ideally, the necessary supports should be provided within the regular education setting or in a manner that maximizes the student's participation in regular education. When proper evaluation, identification and support happens early, students are significantly more likely to be able to make meaningful progress in accessing the regular education curriculum.[viii] Far too often, students go unidentified, are misidentified, or are simply not provided with the level of support needed for academic and social success. For example, students identified as emotionally disturbed are often provided only emotional supports or they are educated in segregated settings where the priority is behavior management and not academics. A 2018 study revealed that students with Emotional and Behavioral Disorders perform, on average, 1.3 standard deviations below their non-disabled peers in reading[ix].

In order to truly experience the "educational benefit" that the Supreme Court affirmed is the right of students with disabilities, schools must provide students with the unique set of services and supports that will enable them to make meaningful educational progress.[x] Educators and policy makers must understand, that when the general education setting is unable to meet the needs of a student with a disability, then that setting ceases to be the least restrictive environment for that individual child.[xi] Access is not simply having a desk in a classroom; it is having the tools and the supports to make meaningful educational progress in that classroom.

Before concluding, I do want to make a few additional comments on some systemic issues that I believe lead put all students at risk of increased student contact with police. First, having police officers in schools, results in more student arrests. I understand that parents often believe that police in schools will keep their children safe. Unfortunately, the data does not support this belief[xii]. What the data does show is that police will do what they are trained to do; make arrests. Overworked building administrators are often more than willing to have extra help with discipline, and this only exacerbates the problem. When Student Resource Officers (SRO) and Police Officers are pulled into disciplinary activities, then student misbehavior becomes criminal behavior.

If schools must have Police Officers or School Resource Officers present, it is essential that their activities are clearly delineated and that they are, by policy, prohibited from becoming involved in disciplinary matters. Additionally, building administration must be well versed in the parameters defining the role of the SRO. More importantly, administrators must understand student behavior and how to differentiate what is a disciplinary matter versus what is a criminal matter.

In Pennsylvania we have a Model MOU (memorandum of understanding) that was developed to assist Pennsylvania School Districts to comply with the requirement of the Safe School Act to coordinate with local law enforcement. It is my contention that this document, as currently written, causes confusion and inadvertently leads school officials to report to the police disciplinary incidents that may meet the criteria to be categorized as one of the many incidents that are listed as 'discretionary' in terms of reporting requirements. In one district where I was employed, I noticed an alarming number of middle school students being referred to the district SRO for 'disorderly conduct'. In exploring the issue, I discovered that administrators were categorizing student behavior such as angry outbursts, mouthing off to teachers and using foul language as 'disorderly conduct' because the student information system being used had all of the mandatory and discretionary incidents listed in Pennsylvania Model MOU pre-loaded in the system. What was not in the system were codes for disciplinary incidents that describe middle school behavior that is unfortunately not all that atypical. The examples above would have been more properly codes as 'disrespect' or 'insubordination' and more properly handled as disciplinary incidents. Needless to say, I corrected this issue with our student information system codes.

Pennsylvania's Model MOU has many helpful components and links to useful resources provided by the Pennsylvania Department of Education. Ideally, school district officials will review and utilize these resources and tools focused on enhancing school culture and positively and proactively managing student behavior. It is essential however, that district officials carefully review the MOU and make the additions and revisions that will not only address school culture but which will also reduce the number of inappropriate contacts between students and police.[xiii]

I want to close by stating that perhaps the most effective strategy for decreasing exclusionary discipline is for school leaders to focus on school culture and create a climate that fosters positive relationships between and among students, teachers, administrators and other staff. From the top down, school and district leaders have the power to create an ethos of care by modeling a process that consistently puts what is best for the child or children involved at the core of every decision made. In my work in schools, I often quoted Haim G. Ginott and used his words to guide my actions as a leader pand to encourage teachers to do the same. I see no better way to end my comments than with my favoritequote.

"I have come to the frightening conclusion that I am the decisive element. It is my personal approach that creates the climate. It is my daily mood that makes the weather. I possess tremendous power to make life miserable or joyous. I can be a tool of torture or an instrument of inspiration, I can humiliate or humor, hurt or heal. In all situations, it is my response that decides whether a crisis is escalated or de-escalated, and a person is humanized or de-humanized. If we treat people as they are, we make them worse. If we treat people as they ought to be, we help them become what they are capable of becoming."[xiv]

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Written Statement to the Pennsylvania Advisory Committee, U.S. Commission on Civil Rights

The School-to-Prison Pipeline: Disparate Discipline of Students of Color, Students with Disabilities, and LGBTQ Students

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Dear Chair and Members of the Pennsylvania Advisory Committee:

Please find below my responses to four specific questions asked by the Advisory Committee as it examines the civil rights implications of school disciplinary policies and practices in the Commonwealth of Pennsylvania (i.e., *U.S. Commission on Civil Rights Approval Request-Pennsylvania Project Proposal*). I also include our recently peer-reviewed synthesis reporting on findings from an extensive search and review of the currently available scientific evidence examining whether U.S. schools are discriminating when suspending or otherwise disciplining students with disabilities including those of color.

Overall, our synthesis finds the current scientific evidence regarding whether U.S. schools are discriminating when disciplining students with disabilities is both limited and inconclusive. Very few empirical studies have contrasted similarly behaving students with and

without disabilities. Finding from these very few best-available studies are inconsistent. We were unable to locate any scientific studies contrasting the risk for exclusionary discipline among similar students with disabilities who differed in their race or ethnicity.

1. ***What data exists that indicates there is a school-to-prison pipeline in Pennsylvania that students with disabilities are disproportionately placed on that pipeline?***

To my knowledge, no data from Pennsylvania has been analyzed and reported on that credibly shows that students with disabilities are suspended or otherwise disciplined based on their disability status and not due to other explanatory factors. There is descriptive data available indicating that the disciplinary rates between students with and without disabilities in the Commonwealth do differ. For example, recent analyses of a sample of students attending Pittsburgh Public Schools found that students with and without disabilities averaged .80 and .59 days lost to suspension in 2014-2015, respectively. By 2016-2017, however, these rates were .53 and .52 for students with and without disabilities (Table 6.2, p. 50).

Mathematica recently reported on disparities in disciplinary removals in the state of Maryland. The investigators did so by analyzing the state's administrative data, which they linked with the U.S. Department of Education's Common Core of data. Mathematica's analysis indicated that exclusionary discipline rates had declined over time in Maryland. The investigators analyses of 858 Maryland schools indicated that students who are Black or have disabilities were suspended or expelled more often than students who are White or without disabilities (Exhibit C5, p. 21). The study's regression estimates were conditioned on infraction type, free or reduced-price lunch status, grade, migrant and English Language Learner status, and school fixed effects. Thus, the observed disparities were not explained by between-group differences in the types of infractions for which students were disciplined, school-level

resources, or other measured factors. Students who are Black or have disabilities were estimated to be 4% points more likely to experience a disciplinary removal.

As we report on in the attached best-evidence synthesis, infraction type has methodological limitations as a statistical control for in-school behavior. For example, and of two students similarly suspended for fighting, one student may have been more violent than the other. Such variation in behavior is not captured by control for infraction type. Student-level behavior is the most materially relevant factor in assessing whether similarly situated students are differentially treated in regard to school disciplinary practices. The U.S. Department of Education's Office of Civil Rights uses the standard of differential treatment of similarly situated students when considering possible civil rights investigations of racial discrimination in school discipline. We discuss and reference additional legal protections afforded to students with disabilities under the Individuals with Disabilities Education Act in the synthesis included below.

Is there any data that needs to be collected to determine what specific disproportionalities may exist in Pennsylvania with regard to school discipline and the school-to-prison pipeline?

The following data would help establish whether there are specific disproportionalities in Pennsylvania with regard to school discipline: (a) student disability status; (b) type of disability condition; and (c) school discipline received (e.g., in- or out-of-school suspension, length of suspension, expulsion). Collection of such data would allow for descriptive reporting of disparities in school discipline by disability status including by both the type of disciplinary action and specific disability condition.

The Commonwealth currently collects data that includes measures of school-reported expulsions or out-of-school suspensions. This is the Pennsylvania Information Management System (PIMS) database. Disciplinary data (p. 108) is reported by schools by infraction type

(e.g., academic reasons or conduct code violations) and by ethnicity or gender. This is school-level data, not student-level data. To my knowledge, disability status is not currently included in the disciplinary data collection by the PIMS.

Although helpful in many ways, descriptive data would not allow for strong causal inferences regarding whether the disparities result from differential treatment based on disability status. This is because the disparities may instead result from between-group differences in the incidence of problem behavior, which Pennsylvania schools may then be responding to through their disciplinary actions. Understanding whether Pennsylvania schools differentially treat similarly situated students based on their disability status would necessitate additional data collection on the in-school (or also to- and-from school) behaviors of students with and without disabilities. This is because between-group differences in in-school behavior is the most materially relevant factor in considering whether Pennsylvania schools are differentially treating similarly situated students in regard to school discipline. This would best be assessed through direct observation by well-trained observers of the in-school behaviors of individual students who vary in their disability status. Teacher-, administrator, parent-, or student-rated behavioral assessments might also be used, although these would have attending limitations and measurement error. Control for infraction type might also be used, but, as noted above, would also have attending limitations and measurement error.

Determining whether there are specific disproportionalities in Pennsylvania with regard to the school-to-prison pipeline would require similar types of data collection as described above. Examining the school-to-prison pipeline would also require additional data collection. This would include data collected from the juvenile and adult justice systems in regard to arrest, adjudication, and incarceration. Both the school discipline and school-to-prison pipeline datasets

should use longitudinal instead of cross-sectional research designs. Longitudinal data would allow for a better evaluation of potential discrimination in the extent to which students with disabilities are being disciplined as well as to what extent being disciplined increases their likelihood of future involvement with the justice system. This type of analyses should again adjust for student-level behavior as well as other possible confounds.

2. ***What are the adverse consequences on those students who experience disproportionate and exclusionary discipline, both in the short-term while in school as well as after they have exited the school system and later in life?***

Suspension is associated with lower academic achievement, school dropout, substance abuse, juvenile arrest, and adult criminality. This may occur because being suspended can result in less supervised time as well as greater interactions with criminal offenders. However, it is important to acknowledge that the existing scientific evidence is largely based on correlational designs. As a result, strong causal inferences often are not possible. It may be that students who are likely to engage in problem behaviors are in turn more likely to experience the aforementioned adverse consequences including juvenile delinquency and adult criminality, while also in turn being more likely to be suspended as they attend Pennsylvania schools due to their engagement in problem behaviors. Some of the available scientific work has attempted to match students including on measures of the extent to which they were engaging in problem behaviors. This work does continue to find negative associations of school discipline with life-course adversities.

There is some recent work that allows for stronger inferences regarding the adverse consequences of suspension. A recent peer-reviewed study analyzing data from the Philadelphia School District found that being suspended modestly decreased mathematics and reading

achievement of suspended students including for serious and less serious infractions. Estimates suggested a 2-9 percentage point decrease in the probability of reaching academic proficiency and an overall effect size of about -0.05 of a standard deviation.

3. ***What data needs to be collected to determine what policies and procedures could best address Pennsylvania's disproportionalities in school discipline?***

To answer this question causally would require use of random assignment to alternative policies and procedures as well as data collection on observed disproportionalities or a quasi-experimental design that would reasonably approximate the counterfactual. Random assignment was recently used by the Rand Corporation to assess whether restorative justice practices can be used to improve school climate while reducing suspensions in Pittsburgh schools. Use of restorative practices improved overall school climate as reported by teachers (e.g., whether the school was a safe environment, whether they understood conduct code policies, and whether they had better relationships with students). Use of the restorative practices reduced average suspension rates (e.g., 13% versus 15% of students suspended in the treatment and control schools, respectively, or a small but statistically significant effect size of -.06 in days suspended, Table 6.1) including disparities by race and family income. However, there was some indication that use of restorative practices lowered academic achievement including by Black students and resulted in neither fewer suspensions for students with disabilities nor in fewer arrests. Other work analyzing Philadelphia schools using a difference-in-difference quasi-experimental design found that ending zero-tolerance policies resulted in a small decline in suspension for nonviolent infractions, but no change in total suspensions and increase in serious misconduct incidences as well as increases in truancy as well as declines in academic achievement.

Alternatively, observational data might be used to report on the associations between alternative policies and procedures used in Pennsylvania schools and disproportionalities in school discipline. However, these observational data would not allow for strong causal inferences regarding which policies or procedures best address Pennsylvania's disproportionalities in school discipline. The observational data would be more rigorous if based on longitudinal designs and which included measures of potential confounds such as student-level measures of in-school behavior, academic achievement, biological sex, and family socioeconomic status. The data collection should include multiple dependent measures of in-school behavior using the alternative policies or procedures as well as measures of treatment fide

Are U.S. Schools Discriminating when Suspending Students with Disabilities? A Best-Evidence Synthesis

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In press, Exceptional Children

Abstract

We examined whether U.S. schools systemically discriminate when suspending or otherwise disciplining students with disabilities (SWD). Eighteen studies met inclusion criteria. We coded 147 available risk estimates from these 18 studies. Of four studies including individual-level controls for infraction reasons, over half of the available estimates (i.e., 14 of 24, or 58%) failed to indicate that SWD were more likely to be suspended than otherwise similar students without disabilities. Of the seven available estimates adjusted for the strong confound of individual-level behavior, most (i.e., 5 of 7, or 71%) failed to indicate that SWD were more likely to be suspended. The other two estimates indicating SWD were more likely to be suspended were from one study. We also examined whether SWD were less likely to be suspended than otherwise similar students without disabilities. There was no strong evidence of this. Whether U.S. schools discriminate when disciplining SWD is currently inconclusive.

Keywords: Students with disabilities, best-evidence synthesis, suspension, racial disparities, exclusionary discipline

Are U.S. Schools Discriminating When Suspending Students with Disabilities?

A Best-Evidence Synthesis

Students with disabilities (SWD) have been reported to be disproportionately suspended from U.S. schools (Achilles, McLaughlin, & Croninger, 2007; Losen & Gillespie, 2012; U.S. Department of Education Office for Civil Rights [OCR], 2014), including SWD who are of color (Achilles et al., 2007; United States Government Accountability Office [GAO], 2018; Krezmien, Leone, & Achilles, 2006; Losen & Gillespie, 2012). These reported disparities have led to suggestions that U.S. schools use discriminatory disciplinary practices (Kim, Losen, & Hewitt, 2010; Losen & Gillespie, 2012). Ensuring that SWD are not being unfairly suspended is important because of suspension's associations with lower academic achievement, school dropout, substance abuse, juvenile delinquency, and adult criminality (Katsiyannis, Thompson, Barrett, & Kingree, 2013; Mittleman, 2018; Morris & Perry, 2016; Mowen & Brent, 2016; Noltemeyer, Ward, & Mcloughlin, 2015). Being identified as disabled has been hypothesized to increase the risk for being suspended and so of entering the metaphorical school-to-prison pipeline (Behnken et al., 2014), although other work finds this not to be the case (Wright, Morgan, Coyne, Beaver, & Barnes, 2014).

U.S. schools may legally suspend SWD. However, the Individuals with Disabilities Education Act (IDEA) provides SWD with greater legal protections than are afforded students without disabilities (Rothstein & Johnson, 2014; Ryan, Katsiyannis, Peterson, & Chmelar, 2007). U.S. schools can suspend SWD as they would students without disabilities for a total of 10 or fewer school days per year. However, for suspensions exceeding 10 total school days, SWD are entitled to receive (a) continued access to special education services, (b) manifestation determination reviews to assess whether the suspension was related to their disabilities and/or for

failures by their schools to properly implement their Individualized Education Programs (IEP), and (c) functional behavior assessments and behavior implementation plans (Rothstein & Johnson, 2014; Ryan et al., 2007). The IDEA also requires local education agencies (LEA) to report whether there is significant disproportionality in the extent to which SWD who are of color are suspended or otherwise disciplined. The Equity in IDEA Rule (U.S. Department of Education [DoE], 2016) would, if implemented, further expand these requirements. The Rule's implementation was delayed to allow for further scientific study including whether the disciplinary disparities result from systemic bias or instead from alternative explanatory factors (DoE, 2018). A federal district court subsequently ordered implementation of the Equity in IDEA Rule to continue (Council of Parents, Attorneys, and Advocates, Inc. vs. DoE, 2019). The DoE (2019) is implementing the Rule while also appealing the district court's decision.

Using a Differential Treatment Standard to Assess for the Use of Discriminatory Disciplinary Practices

Because U.S. schools may legally suspend SWD, evidence of disparities in suspension between students with and without disabilities is insufficient to infer that the disparities result from the systemic use of discriminatory disciplinary practices. Instead, it may be that the disparities result from differences in the extent to which students with and without disabilities engage in disruptive or other types of behaviors that might reasonably result in suspension (e.g., fighting, threatening a teacher, bringing a weapon to school). A wide range of disability conditions, including the conditions for which most SWD in the U.S. are identified (e.g., learning disabilities, speech or language impairments, attention-deficit/hyperactivity disorders), are associated with impairments in impulse control and self-regulation, attentional difficulties, and more frequent externalizing problem behaviors (DuPaul, Gormley, & Laracy, 2013; Larson,

Russ, Kahn, & Halfon, 2011; Peyre et al., 2016) and so behaviors that might make suspension more likely. Students with disabilities may also be more likely to engage in disruptive behaviors as a result of experiencing academic difficulties (Goldston et al., 2007; Morgan, Farkas, & Wu, 2009). Academic difficulties increase the risk for self-reported feelings of anger and peer rejection (Morgan, Farkas, & Wu, 2012), teacher-rated externalizing problem behaviors (Morgan, Farkas, Tufis, & Sperling, 2008), and teacher-rated attention-deficit/hyperactivity and conduct disorder symptoms (Morgan et al., 2016).

Contrasts between students who are similarly situated including in regards to factors materially relevant to being suspended such as engaging in disruptive behavior would help establish whether and to what extent U.S. schools suspend or otherwise discipline SWD in ways that discriminate based on disability status (DofE Office of Civil Rights [OCR], 2016; National Research Council [NRC], 2004). The OCR states that "students are similarly situated when they are comparable (even if not identical) in all material respects" (p. 8). When evaluating for differential treatment in the use of disciplinary practices, the most materially relevant factor regarding whether students are directly comparable is their behavior in school (Huang, 2018; Wright et al., 2004), although additional factors may also help ensure that students are similarly situated. These additional factors might include age, grade, and other indicators of school performance including academic achievement (OCR, 2016). This standard of differentially treating similarly behaving students has been typically applied to test for racial discrimination in suspension (e.g., Kinsler, 2011; Wright et al., 2014). For example, Skiba et al. (2011) found that, among students engaging in minor misbehaviors, Black and Hispanic elementary students were more likely to be suspended. Among those engaging in disruptive behaviors, students of color were also more likely to be suspended or expelled. Skiba et al. (2014) found that, conditional on

individual-level behavior and other covariates as well as aggregate-level factors, Black students were more likely than White students to be expelled. Contrasting similarly behaving students accounts for the strong confound of differential involvement in behaviors that might reasonably result in suspension and so provides stronger evidence of the use of discriminatory disciplinary practices (Huang, 2018; Wright et al., 2014). The OCR (2018) uses the differential treatment standard when deciding whether to conduct civil rights investigations of whether U.S. schools are using discriminatory disciplinary practices.

Contrasting similarly situated students with and without disabilities would also allow for an evaluation of whether SWD are *less* likely to be suspended or, if suspended, to receive suspensions of shorter durations. Students with disabilities might be less likely than students without disabilities to be suspended or receive shorter suspensions because of federal monitoring and funding reallocation mandates in districts reporting significant disproportionality in discipline as well as IDEA's legal protections pertaining specifically to the total days of suspensions that SWD receive. In analyses using school fixed effects and conditioning on prior offenses, achievement, and economic disadvantage, Kinsler (2011) found that SWD received shorter suspensions than students without disabilities. Whether SWD including those who are of color are less likely to be suspended than otherwise similar students without disabilities has yet to be systematically evaluated.

Findings from a best-evidence synthesis of whether U.S. schools are more likely to suspend or otherwise discipline SWD than otherwise similar students without disabilities would help establish the strength of the empirical evidence base of whether schools systemically use disciplinary practices that discriminate against SWD. Such findings would also inform federal civil rights legislation and regulation. A best-evidence synthesis is particularly timely given the

DoE's (2018) request for further scientific study regarding whether significant disproportionality in discipline is resulting from systemic bias or instead from factors such as differential involvement in behaviors likely to result in exclusionary discipline.

Purpose of this Synthesis

We synthesized the best-available empirical evidence to evaluate whether and to what extent U.S. schools use discriminatory practices when suspending or otherwise disciplining SWD. We were particularly interested in establishing whether the well-documented greater risk of suspension of SWD is attributable to disability status and so possibly due to the use of discriminatory disciplinary practices by schools or instead to alternative explanatory factors including differential involvement in behaviors likely to result in suspension (Huang, 2018). To better inform federal legislation and policymaking, we also examined the extent to which the available studies analyzed nationally representative samples and so reported generalizable results. We examined the following three sets of research questions:

(1) What is the strength of the empirical evidence that SWD are more likely than otherwise similar students without disabilities to be suspended, particularly as increasingly strong confounds are accounted for including individual-level behavior? Is there consistent evidence that, among similarly behaving students, U.S. schools differentially suspend SWD? To better inform federal legislation and policymaking, we also examined to what extent the available evidence is based on nationally representative samples.

(2) What is the strength of the empirical evidence that SWD who are of color are more likely to be suspended than otherwise similar SWD who are White?

(3) What is the strength of the empirical evidence that SWD are instead *less* likely to be suspended?

Method

We searched for empirical studies published prior to June 2018 in four electronic databases (ERIC, Web of Science, Pubmed, and PsycInfo) as well as in Google Scholar. We used the following terms: *suspension, school discipline, expulsion, special education* or *disability.* We also included the terms *race* or *racial/ethnic minority* in our database search. Two doctoral students independently conducted two rounds of initial search and identified a total of 112 non-duplicated studies. Supplemental Figure 1 displays a PRISMA diagram of the search process. Following this initial search, a postdoctoral scholar independently completed a third search as an additional fidelity check. In this third round, we reviewed the reference lists of studies found via search terms as well as in prior reviews (e.g., Fenning & Rose, 2007; Gregory, Skiba, & Noguera, 2010) to identify other eligible studies. This identified four additional studies from the four databases and seven additional studies through reference lists, yielding a total of 123 empirical studies for initial inclusion consideration. In the second stage, we excluded studies examining disciplinary actions not including suspension risk or using only samples of students without disabilities. This removed 73 studies, leaving 50 studies reporting on some type of suspension risk for SWD.

The two doctoral students and the postdoctoral scholar independently judged the eligibility of the 50 studies using six-part inclusion criteria. We calculated an inter-coder agreement rate (i.e., the number of included and excluded studies that all members agreed upon divided by the total number of studies) of 92%. An inter-coder meeting led to the unanimous inclusion of 18 studies at the final stage of our best-evidence synthesis. Fourteen of the 18 studies examined risk factors for suspension specifically. Four additional studies examined risk factors for exclusionary discipline more generally (e.g., suspension but also expulsion), and so

were analyzed separately in the supplemental material.

Inclusion Criteria

We applied the following six-part inclusion criteria to the 50 studies identified across the first two rounds of search. First, did the study use a quantitative empirical design? Studies were excluded if they either qualitatively or theoretically examined suspension of SWD (e.g. Brobbey, 2018). Second, did the study report numerical estimates in the form of regression coefficients corresponding to suspension of SWD? This criterion excluded studies that provided no regression estimates in their results (e.g., Garnett, 2014; Losen & Gillespie, 2012; Miller & Meyers, 2010; Morrison & D'Incau, 1997; Skiba, Poloni-Staudinger, Gallini, Simons, & Feggins-Azziz, 2006; Whitford, Katsiyannis, & Counts, 2016). Third, we included peer-reviewed studies, working papers, and dissertations in our synthesis. Doing so helped limit potential publication bias (Joober, Schmitz, Annable, & Boksa, 2012; Pigott, Valentine, Polanin, Williams, & Canada, 2013). Fourth, did the study analyze a sample of students attending U.S. schools between kindergarten to 12th grade? This criterion excluded two studies conducted in the U.K. (i.e., Ford et al., 2018; Paget et al., 2018). Fifth, did the study's analyses include at least one covariate when estimating the risk attributable to disability status? We only included studies that used at least one covariate to synthesize estimates that were less ambiguously attributable to disability status. This fifth criterion excluded one study (i.e., Losen, Hodson, Ee, & Martinez, 2014). Sixth, did the study report risk estimates based on a reference group of students without disabilities? This last criterion excluded five studies that estimated the risk of suspension but only between students with specific disabilities (e.g., students with learning versus students with behavioral disabilities) (i.e., Achilles et al., 2007; Bowman-Perrott et al., 2011; Duran, Zhou, Frew, Kwok, & Benz, 2013; Goran & Gage, 2011; Sullivan, Van Norman, & Klingbeil, 2014).

We excluded these studies because they did not report estimates pertaining to whether SWD were more or less likely to be suspended than students without disabilities. A total of 18 studies were included in the best-evidence synthesis after applying the six-part criteria.

Best-Evidence Methodology

A best-evidence synthesis examines studies with the strongest internal and external validity (Slavin, 1986). Our minimal criterion for study inclusion was use of at least one covariate in analyses reporting on the risk of suspension associated with disability status. We then examined how the estimates reported in these studies fluctuated as both aggregate- and individual-level units of analysis and covariates were included. We were particularly interested in results from studies that used regression or other methods to approximate contrasts between students who were similarly situated including in regards to behavior and so the factor most materially relevant to being suspended. We also examined to what extent the results changed with the inclusion of covariates related either to the types of infractions committed by students or their assessed behavior. We considered estimates that controlled for directly assessed and individual-level behavior (e.g., self-reported or teacher- or parent-ratings of an individual student's behavior, but not school administrator surveys of the percentage of the school's students who had engaged in fights) as the best available. We also examined the extent to which these estimates were based on analyses of nationally representative samples and so generalizable to the U.S. school-aged population.

Analyses

Supplementary Table 1 reports on descriptive characteristics of the 18 studies. Tables 1 and 2 display our coding results. Table 1 displays estimates of whether SWD were more likely to be suspended conditional on an increasingly rigorous set of controls. Table 2 displays estimates

of whether SWD were less likely to be suspended conditional on an increasingly rigorous set of controls. For each study, we calculated the ratio of significant regression coefficients finding that SWD were more or less likely to be suspended relative to the total number of regression coefficients reported (see Tables 1 and 2, respectively). For example, Anderson, Howard, and Graham (2007) reported three estimates of the likelihood of suspension for SWD. Only one of these indicated that SWD were significantly more likely to be suspended than their peers. None of the estimates in Anderson et al. (2007) found that SWD were significantly less likely to be suspended than their peers. Therefore, estimates for Anderson et al. (2007) are reported as "1/3" in Table 1 and as "0/3" in Table 2, respectively.

We arranged the rows in both tables as follows. Row 1 displays results from studies analyzing only individual-level data and so without contextualizing the results within schools, districts, or states by also including aggregate-level covariates. Row 2 displays estimates from studies analyzing both individual- and aggregate-level data (e.g., multilevel models with both individual- and school-level controls or school fixed effects models) but without any type of adjustment for individual-level behavior. Row 3 displays estimates more distally adjusted for behavior by controlling for the type of school conduct code violation or type of infraction for which students had been suspended at the aggregate level (e.g., the schoolwide percentage of fighting incidents). Row 4 again displays estimates adjusting for the infraction type at the individual level. Row 5 displays estimates adjusted more proximally for a student's own behavior, whether as reported by students or teachers.

The coded studies were not always explicitly designed to investigate whether SWD were being inappropriately suspended. Of the 18 studies included in this synthesis, 14 studies examined risk factors for suspension separately from other types of exclusionary discipline (e.g.,

expulsion). Only three of the 14 studies reporting risk estimates for suspension explicitly stated a research question relating to SWD (i.e., Camacho, 2016; Krezmien et al., 2006; Krezmien et al., 2017). Three other studies investigated whether, more generally, individual-level socio-demographic factors related to the risk for suspension or other disciplinary practices (i.e., Anyon et al., 2014; Cholewa, Hull, Babcock, & Smith, 2017; Sullivan, Klingbeil, &Van Norman, 2013). The other eight studies investigated racial or ethnic disparities in disciplinary practices but included disability status as a covariate (i.e., Anderson et al., 2007; Anyon et al., 2016; Cornell, Maeng , Huang, Shukla, & Konold, 2018; Huang, 2018; Kinsler, 2011; Morris & Perry, 2016; Roch & Edwards, 2017; Wright et al., 2014). These studies best approximated contrasts between similarly situated students by including a range of covariates in the regression models.

Some studies reported multiple analyses. For example, four of the 14 studies included dependent variables that aggregated suspension with other types of exclusionary discipline (e.g., expulsion). We report estimates from these four studies separately in Supplementary Tables 2 and 3. We considered these estimates as indicating the risk for exclusionary discipline generally because they were not disaggregated for suspension specifically. Ten of the remaining 14 best-evidence studies that reported specifically on suspension used a dichotomous dependent variable of whether students were ever suspended. The other four studies analyzed rates of suspension (i.e., Camacho, 2016), number of days suspended (i.e., Kinsler, 2011), the percent of schoolwide disciplinary actions that were out-of-school suspensions (i.e., Roch & Edwards, 2017), or whether students were suspended once or more than once (i.e., Sullivan et al., 2013). We included these significant coefficients in Tables 1 and 2. For studies reporting several sets of analyses in which the level of analysis differed across models, we separated the estimates in Table 1 and 2's rows. For example, we included two coefficients from Huang's (2018) models

containing aggregate- and individual-level data in Table 1's Row 2 and two different coefficients that adjusted for individual-level behavior in Row 5. Figure 1 displays the average odds ratio (OR) effect sizes from the best-available studies. Figure 1's Row 1 displays estimates from studies controlling for infraction type but only at the aggregate level. Row 2 displays estimates from studies controlling for infraction type but at the individual level. Row 3 displays estimates from studies controlling for individual-level behavioral assessments. We viewed Table 1 and 2's Row 5 and Figure 1's Row 3 results as the best empirical evidence currently available of whether U.S. schools are suspending SWD in ways that may be discriminatory.

Results

Are SWD More Likely to be Suspended Following Controls for Aggregate- and Individual-Level Covariates but not Including Behavior?

Of studies using only individual-level covariates, 65 of 100 estimates (i.e., 65%) indicated that SWD were more likely to be suspended than students without disabilities. Across the risk estimates adjusted for individual- and aggregate-level covariates but not the strong confounds of differential behavioral functioning, 7 of the 7 available estimates (100%) indicated that SWD were more likely to be suspended. Adjusting for infraction type at the aggregate level (i.e., controlling for the schoolwide proportion of certain discipline code violations), 9 of the 9 estimates (i.e., 100%) indicated that SWD were more likely to be suspended. However, controlling for individual-level infractions resulted in over half of the estimates (i.e., 14 of 24 or 58%) failing to indicate that SWD were more likely to be suspended. Of the 7 available risk estimates adjusted for individual-level behavior, most (i.e., 5 of 7, or 71%) failed to indicate SWD were more likely to be suspended.

Table 1's Row 1 includes models that analyzed individual-level data but without

adjustment for behavior as well as without adjusting for school-level characteristics through regression adjustment or fixed effects models. Of the 100 available estimates, 65 (i.e., 65%) indicated that SWD were more likely to be suspended. Because these studies did not adjust the risk estimates for school-level factors, the estimates did not account for variability between schools in their use of "zero tolerance" disciplinary policies that may also be related to the risk of being suspended (Kinsler, 2011). That is, estimates from these studies were not adjusted for school contexts where suspension may be more likely to occur.

Row 2 includes estimates that were adjusted for both individual- and aggregate-level covariates including through school fixed effects (e.g., Huang, 2018) or multilevel modeling with school-level controls to account for clustering (e.g., Sullivan et al., 2013). Each of the 7 available estimates (i.e., 100%) indicated that SWD were more likely to be suspended. Only three of the 18 studies analyzed nationally representative data (Cholewa et al., 2017; Huang, 2018; Wright et al., 2014). Six of the 11 estimates (55%) from the three studies indicated SWD were more likely to be suspended than students without disabilities.

Do U.S. Schools Differentially Suspend SWD Among Similarly Behaving Students?

Table 1's Rows 3, 4, and 5 display risk estimates from studies that adjusted for behavior, either for the type of school conduct code infraction at the aggregate (i.e., Row 3) or individual level (i.e., Row 4) or for directly assessed individual-level behavior (i.e., Row 5). We considered Row 4's estimates as relatively more rigorous than Row 3's estimates because using aggregate-level data to make individual-level inferences often yields spurious results and so are subject to the "ecological fallacy" (Robinson, 1950). We considered estimates from the two studies in Table 1's Row 5 as the most rigorous evidence available regarding whether, among students who are similarly situated including on the factor most materially related to being suspended (i.e.,

directly assessed, individual-level behavior), SWD were more likely to be suspended. We considered Row 5's estimates to be more rigorous than Row 3 or 4's estimates because of the possibility of unaccounted-for heterogeneity in behavior that may have occurred within as well as between types of infractions. For example, among students suspended for the same infraction of fighting, some students might have behaved in ways that were more violent than others.

Of the 14 studies reporting risk estimates specifically for suspension, six reported results adjusted for infraction type. Controlling for school- or teacher-reported infractions helped isolate the risk of suspension among otherwise similar SWD. That is, this method controlled for inadvertently contrasting students disciplined for violent infractions like possessing a weapon to those suspended for non-violent infractions like disobedience. Two of these six studies adjusted for infraction type by controlling for aggregate proportions of disciplinary offenses across schools. Four included individual adjustments for specific school-code violations. For example, Roch and Edwards (2017) controlled for the number of incidents that occurred within schools while Anyon et al. (2016) controlled for the type of disciplinary referral. Similar to studies that included both individual- and aggregate-level data but without adjustments for individual-level infraction type, each of the estimates (i.e., 100%) including infraction controls but at the aggregate level indicated that SWD were more likely to be suspended in U.S. schools. Yet controlling for infractions at the aggregate level may have resulted in biased estimates (Robinson, 1950). As shown in Table 1's Row 4, adjustment for individual-level infraction type resulted in a 60% decrease (100%-42%=58%) in the percentage of estimates reporting that SWD were more likely to be suspended.

We also observed some external and internal validity limitations in Table 1's Row 3 and 4's six studies. None of the studies analyzed nationally representative samples. Therefore, the

results may not generalize to the U.S. school-aged population. Use of teacher-reported infraction reasons may also be biased due to subjective judgement of behavior. The reported estimates did not always replicate within the same study. For example, Cornell et al. (2018) conducted analyses of out-of-school suspension twice using the same variables but based on two different analytical samples, yielding one estimate for each analysis estimating the risk of suspension for SWD. The associated confidence interval included 1.0 for one of these estimates. The other was not statistically significant.

We identified only two studies assessing suspension that controlled for the strong confound of directly assessed, individual-level behavior. Only two of the 7 coefficients (29%) from these two studies indicated that SWD were more likely to be suspended. Both coefficients were from one study (i.e., Huang, 2018). None of the other five of 7 estimates (71%) indicated that SWD were more likely to be suspended than similarly behaving students without disabilities (Wright et al., 2014).

Figure 1 displays average ORs from studies (Table 1, Rows 4 and 5) that estimated the risk of suspension among students with and without disabilities similarly situated on the factor most materially relevant to being suspended (i.e., directly assessed, individual-level behavior). The averaged OR estimates from studies controlling for infraction types or directly assessed behavior ranged from 1.2-1.9 and 1.05-1.8, respectively. We briefly detail the methods and results from these two best-evidence studies.

Huang (2018) analyzed data from 10th graders in the National Education Longitudinal Study (NELS) (1988). The data included many student-reported variables including ratings of 18 delinquency-related attitudes and whether the students reported ever being suspended. Although Black students did not report more misbehavior or endorse more deviant attitudes than White

students after controlling for gender, SES, and family structure, the suspension rate of Black students was twice that of the White students. For SWD, the ORs for suspension were between 1.69-1.84 in the four reported logistic regression models.

Disability status was included as a covariate in Model 3 of a series of logistic regressions predicting receipt of an out-of-school suspension in 10th grade. The initial estimate of the risk for out-of-school suspension attributable to disability status after controlling for sex, race or ethnicity, and other covariates was an OR of 1.84. This coefficient was reduced to a statistically significant OR of 1.70 after controlling additional covariates in Models 4 and 5. These other statistically significant, self-reported covariates included having fought with students (OR of 4.0), disregarding rules (OR of 1.08) and having drank alcohol or smoked cigarettes (ORs of 1.25 and 1.42, respectively). The estimates were also adjusted for school fixed effects.

In contrast, Wright et al. (2014) analyzed the more recent Early Childhood Longitudinal Study-Kindergarten Cohort of 1998-1999 (ECLS-K) and found that the average of teacher-rated problem behavior from kindergarten to third grade fully explained racial disparities in suspension by eighth grade. The analyses also included measures of the school environment (e.g., school size, percent of students receiving free or reduced lunch, percent Black enrollment, and teacher race and ethnicity). Unlike Huang (2018) who controlled for student self-reported and concurrent behavior and attitudes, Wright et al. (2014) controlled for prior behavior using teacher ratings and several parent-reported measures concurrently assessed at eighth grade including delinquent behaviors, whether the school was of "good" or "bad" quality, and additional covariates. In contrast to Huang (2018), Wright et al.'s (2014) ORs for SWD across Models 1-3 ranged from .90 to 1.04. None of these were statistically significant. The OR for SWD declined from 1.04 to .90 when prior problem behavior was included as a control. Additional inclusion of an

interaction term for prior as well as contemporaneous behavior resulted in an OR for SWD of .93.

Both Huang (2018) and Wright et al. (2014) analyzed nationally representative, longitudinal datasets. Wright's analyses estimated the risk of suspension in eighth grade among students whose behavior was similarly rated by teachers in earlier grades. It is also possible that the parent-reported delinquency assessed in Wright's study may have better captured differences in behavior relative to Huang's (2018) student-reported attitudes and behaviors. Teachers and parents may have been relatively more objective when reporting delinquency than students.

Comparisons of the two studies were also limited by differences in behavioral measurement and sampling. In Huang's (2018) study, students may have been less likely to report delinquency or misbehavior. In Wright et al.'s (2014) study, parents may not have been fully aware of their children's misbehavior or delinquency. It is also unclear how accessible the self-report questions in Huang's (2018) study were to SWD. Huang (2018) analyzed NELS data of students who attended high school in 1990, and so data that were older than Wright et al.'s (2014) ECLS-K data. Wright et al.'s (2014) analyses estimated suspension risk across elementary to middle school but not high school. Huang (2018) estimated risk during high school but not elementary or middle school. Differences in the sampled time periods and age groups may explain the inconsistent findings reported by the two best-evidence studies.

Are Students of Color with Disabilities More Likely to be Suspended than SWD who are White?

We coded for statistically significant interactions between disability and racial or ethnic minority status for suspension risk. Only three of the 14 studies of suspension reported such interactions. None contrasted the suspension risk for SWD who are White to that of SWD who

are of color while also controlling for at least one covariate. The available estimated interactions instead were of the risk of suspension for SWD who are of color relative to (a) students of color without disabilities (Anderson et al., 2007) or (b) SWD who are White but without adjusting for covariates (Krezmien et al., 2006; Krezmien et al., 2017).

Are SWD Less Likely to be Suspended than Students without Disabilities?

We also examined the included studies for whether SWD were less likely to be suspended than students without disabilities. Table 2 shows that only 10 of 147 estimates (7%) indicated SWD were less likely to be suspended than students without disabilities. Studies including only individual-level data without accounting for the risks attributable to schooling environments yielded only 7 of 100 estimates (7%) indicating that SWD were less likely to be suspended. Among studies including both individual- and aggregate-level data but not infraction or behavioral controls, SWD were less likely to be suspended in 0 of 7 estimates (0%).

In Rows 3 and 4 of Table 2, 0 of 9 estimates (0%) and 3 of 24 estimates (13%) respectively indicated that SWD were less likely to be suspended than students without disabilities. Each of these three estimates were from Kinsler (2011), who found that SWD received shorter suspensions when controlling for individual infractions. Specifically, sixth and ninth grade students with physical disabilities attending new schools received suspensions of shorter duration than students without disabilities (the ninth grade estimate was non-significant in models with school fixed effects). However, in Row 5, 0 of 7 (0%) estimates conditioned on directly assessed and individual-level behavior indicated that SWD were less likely to be suspended than students without disabilities.

Are SWD More or Less Likely to Experience Exclusionary Discipline?

As an additional sensitivity check, we examined four studies that combined assessments

of suspension with other discipline-related indicators of exclusionary discipline (i.e., Anderson & Ritter, 2017a; 2017b; Theriot, Craun, & Dupper, 2010; Vincent, Sprague, & Tobin, 2012). Such discipline typically included out-of-school suspensions with other types of exclusion from the school environment such as expulsion or removal to an alternative education setting. As shown in Supplementary Table 2, only 6 of 25 (24%) of the estimates indicated that SWD were more likely to experience exclusionary discipline. Findings from Supplementary Table 3 show that only 7 of 25 (28%) of the estimates indicated that SWD were less likely to experience exclusionary discipline. None of the four studies controlled for the strong confound of directly assessed, individual-level behavior.

Discussion

We synthesized findings from 18 studies to examine the best-available empirical evidence of whether U.S. schools discriminate based on disability status when suspending SWD. These 18 studies included 14 studies reporting specifically on whether SWD are more likely to be suspended than students without disabilities. Four additional studies reported on exclusionary discipline generally but reported no disaggregated risk estimates for suspension specifically. We were especially interested in studies approximating contrasts between similarly situated students including in regards to their behavior in school. Although often unaccounted for in existing work, differential involvement in disruptive or other problem behaviors is a strong potential confound for between-group disparities in discipline (Huang, 2018; Wright et al., 2014). Accounting for this confound allows for contrasts between similarly behaving students and so provides stronger evidence of whether U.S. schools use discriminatory disciplinary practices (Huang, 2018; NRC, 2004; OCR, 2016; Wright et al., 2014).

Of the 14 studies reporting specifically on suspension, 6 adjusted the risk estimates for

school conduct code infractions. Of the 33 available risk estimates, 9 of 9 (100%) using aggregate-level controls but 10 of 24 (42%) using individual-level controls indicated that SWD were more likely to be suspended. Only two studies controlled for directly assessed, individual-level behavior. These studies reported seven risk estimates. Most of these (i.e., 5 of 7 or 71%) failed to indicate that SWD were more likely to be suspended. The five non-significant estimates conditioned on teacher-rated behaviors (Wright et al., 2014). The two statistically significant estimates indicating that SWD were more likely to be suspended conditioned on student self-reported attitudes and behaviors (i.e., Huang, 2018). The percentage of risk estimates indicating SWD were more likely to be suspended declined 71% (i.e., from 100% to 29%) following adjustments for individual- instead of aggregate-level confounds including directly assessed behavior. We found no evidence to indicate that SWD are less likely to be suspended than similarly behaving students without disabilities. Our supplemental analysis found no evidence to indicate SWD were more or less likely to experience exclusionary discipline than similarly behaving students without disabilities.

Limitations

Our synthesis has at least six limitations. First, we synthesized a limited number of empirical studies. This was especially true for those studies approximating contrasts between similarly behaving students and so accounting for the strong confound of differential involvement in behaviors that might reasonably result in disciplinary action (Huang, 2018; Wright et al., 2014). Additional empirical studies accounting for this strong confound, particularly if based on nationally representative samples, would better establish whether U.S. schools use discriminatory practices when suspending SWD. Second, we were unable to systematically analyze potential moderators of suspension risk. This included whether SWD who

are of color are more likely to be suspended than otherwise similar SWD who are White. It is currently unclear whether SWD of color are more likely to be suspended than otherwise similar SWD who are White. Third, we were unable to independently confirm the appropriateness of the specific disciplinary actions in the synthesized studies.

Fourth, we were unable to systematically examine whether students with specific disability conditions are more likely to be disciplined than similarly behaving students without the specific disability conditions. Although five studies disaggregated some results by disability type, each assessed distinct disability conditions. For example, Kinsler (2011) included covariates only for learning disabilities or physical disabilities. In contrast, Anyon et al. (2014) included separate covariates only for emotional or behavioral disabilities. It remains unknown whether and to what extent students with specific disability conditions are more likely to be suspended relative to students without the conditions while also accounting for directly assessed, individual-level behavior.

Fifth, our risk estimates may be conservative. We synthesized findings from studies including at least one covariate in the analyses. Although IDEA allows U.S. schools to discipline SWD as they would students without disabilities for 10 days or less (Rothstein & Johnson, 2014; Ryan et al., 2007), disentangling whether SWD engaged in behaviors that resulted in discipline actions because of their disabilities or instead because of other factors is challenging from both an administrative and a methodological perspective. Sixth, our synthesis was not designed to evaluate the effectiveness of the disciplinary practices being used by U.S. schools including for SWD. Other work has reported on alternatives to suspension that may more effectively manage disruptive or problem behavior including by students with or at risk for disabilities (e.g., Cook et al., 2018; Flannery, Fenning, Kato, & McIntosh, 2014).

Contributions and Implications

No prior synthesis has systematically evaluated the strength of the evidence regarding whether U.S. schools differentially suspended or otherwise discipline SWD than otherwise similar students without disabilities. An important contribution of our synthesis is to show that the strength of the evidence base regarding whether U.S. schools use discriminatory practices when disciplining SWD is currently limited as well as inconclusive due to inconsistent methods and sampling. To our knowledge, rigorous evidence that U.S. schools may discriminate when disciplining SWD is currently found in only one study (i.e., Huang, 2018), which itself is based on a sample of students who attended high school in 1990. Another study analyzing more recent data from an elementary and middle school sample found no evidence to suggest that U.S. schools are more likely to discipline SWD than similarly behaving students without disabilities (Wright et al., 2014). Federal legislation and regulations mandate that U.S. schools monitor the extent to which SWD of color are being disciplined. Another important contribution of our synthesis is to show that, despite these federal legislation and regulatory monitoring mandates, no empirical evidence is currently available indicating that SWD who are of color are more likely to be suspended than similarly behaving SWD who are White. Such contrasts have yet to be conducted.

Our findings suggest the need for further rigorous empirical study of disciplinary disparities for SWD, particularly studies that can account for differential involvement in behaviors that might reasonably result in being disciplined (Huang, 2018). Although such contrasts have more commonly been approximated by controlling for infraction type, such controls do not allow for an examination of "the sources of variance that may enter into the disciplinary procession prior to the administrative decision" (Skiba et al., 2014, p. 663). Bias

may be more evident for subjective rather than objective types of infractions (e.g., teacher referrals for defiance vs. fighting) (e.g., Girvan, Gion, McIntosh, & Smolkowski, 2017), but such bias is not modeled in controls for infraction type, especially when using aggregate-level controls. Studies that estimate the risk of discipline for SWD while controlling for directly assessed, individual-level behavior would provide stronger evidence regarding whether SWD are being disciplined in ways that are discriminatory (Huang, 2018; Wright et al., 2014). Empirical studies that condition the risk estimates on directly assessed classroom behavior by well-trained and independent observers, thereby limiting measurement error that may result from use of teacher or parent ratings or student self-report as statistical controls, would be especially valuable. Qualitative and mixed method studies investigating the decision-making processes of school practitioners when considering the use of exclusionary discipline for SWD would also advance the knowledge base.

Currently, methodological and sampling differences in the available empirical studies preclude strong inferences regarding whether disciplinary disparities between students with and without disabilities results from the systemic use of discriminatory practices by U.S. schools. Further research is needed to better establish the empirical evidence base including as might be used to justify the Equity in IDEA Rule's monitoring mandates (DoE, 2018). Other work analyzing nationally representative datasets finds no empirical evidence to support IDEA's monitoring mandates regarding whether significant disproportionality in disability identification results from systemic bias (Morgan et al., 2017a). Instead, students of color are repeatedly found to be less likely to be identified than similarly situated students who are White while attending U.S. schools (Hibel, Farkas, & Morgan 2010; Morgan et al., 2017b). These mandates do not account for between-group differences including differential involvement in behaviors that might

reasonably result in experiencing school disciplinary practices. Federal and state monitoring should make some attempt to account for differential involvement in problem behaviors as well as other explanatory factors when attempting to identify U.S. schools that may be using discriminatory practices when suspending SWD including those of color.

Conclusion

Suspension increases the risk of life-course adversities including felony arrest and incarceration and so should be used judiciously if at all. Descriptive evidence of disparities is insufficient to infer that U.S. schools systemically discriminate when suspending or otherwise discipling students based on their disability status or, for SWD of color, based on their race or ethnicity. Rigorous evidence of the use of discriminatory practices is obtained after accounting for alternative explanatory factors including differential involvement in behaviors that might result in disciplinary disparities (Huang, 2018). Yet such confounds have rarely been accounted for (Huang, 2018; Wright et al., 2014). The available empirical work is currently inconclusive regarding whether U.S. schools systemically discriminate based on disability status when suspending SWD.

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Table 1.

Characteristics of Studies Finding Students with Disabilities are More Likely to be Suspended.

Study Characteristics	*Studies Included*
Individual-level estimates only	Anderson et al. (2007) – 1/3 Cholewa et al. (2017)* – 1/1 Krezmien et al. (2006) – 19/38 Krezmien et al. (2017) – 36/48 Morris & Perry (2016) – 2/4 Sullivan et al. (2013) – 6/6 *Total: 65/100 (65%)*
Both individual and aggregate data (e.g., multilevel models or school fixed effects) but no adjustment for infraction types or behavioral assessments	Camacho (2016) – 1/1 Cholewa et al. (2017)* – 1/1 Huang (2018)* – 2/2 Sullivan et al. (2013) – 3/3 *Total: 7/7 (100%)*
Includes aggregate-level but not individual-level controls for infraction types	Roch & Edwards (2017) – 6/6 Sullivan et al. (2013) – 3/3 *Total: 9/9 (100%)*
Includes individual-level controls for infraction types but not individual-level behavioral assessments	Anyon et al. (2014) – 2/2 Anyon et al. (2016) – 4/4 Cornell et al. (2018) – 1/2 Kinsler (2011) – 3/16 *Total: 10/24 (42%)*
Includes individual-level behavioral assessments	Huang (2018)* – 2/2 Wright (2014)* – 0/5 *Total: 2/7 (29%)*

Note: *Nationally representative sample.

Table 2.

Characteristics of Studies Finding that Students with Disabilities are Less Likely to be Suspended.

Study Characteristics	*Studies Included*
Individual-level estimates only	Anderson et al. (2007) – 0/3 Cholewa et al. (2017)* – 0/1 Krezmien et al. (2006) – 5/38 Krezmien et al. (2017) – 2/48 Morris & Perry (2016) – 0/4 Sullivan et al. (2013) – 0/6 *Total: 7/100 (7%)*
Both individual and aggregate data (e.g., multilevel models or school fixed effects) but no adjustment for infraction types or behavioral assessments	Camacho (2016) – 0/1 Cholewa et al. (2017)* – 0/1 Huang (2018)* – 0/2 Sullivan et al. (2013) – 0/3 *Total: 0/7 (0%)*
Includes aggregate-level but not individual-level controls for infraction types	Roch & Edwards (2017) – 0/6 Sullivan et al. (2013) – 0/3 *Total: 0/9 (0%)*
Includes individual-level controls for infraction types but not individual-level behavioral assessments	Anyon et al. (2014) – 0/2 Anyon et al. (2016) – 0/4 Cornell et al. (2018) – 0/2 Kinsler (2011) – 3/16 *Total: 3/24 (13%)*
Includes individual-level behavioral assessments	Huang (2018)* – 0/2 Wright (2014)* – 0/5 *Total: 0/7 (0%)*

Note: *Nationally representative sample.

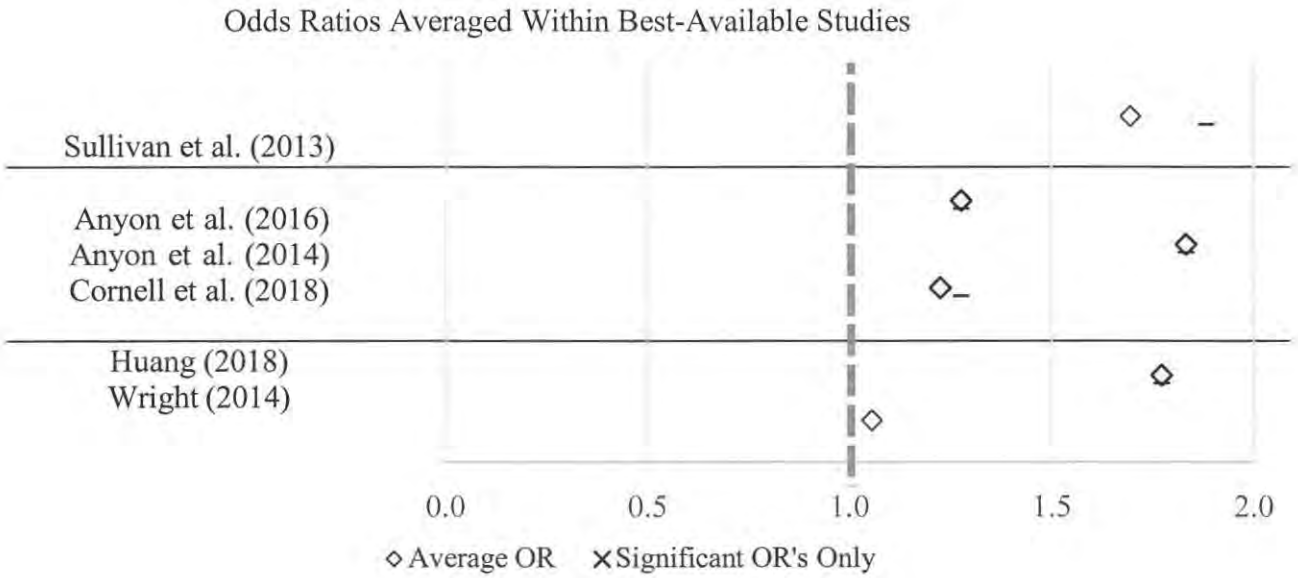


Figure 1. Average odds ratios (OR) reported within select best-available studies (using *ln* of each OR to put in additive form, averaging, and then exponentiating the average). Estimates from Sullivan et al. (2013) correspond to Row 3 of Tables 1 and 2 that condition on infraction type measured at the aggregate level. Estimates from Anyon et al. (2016, 2014) and Cornell et al. (2018) correspond to Row 4 of Tables 1 and 2 that condition on infraction type measured at the aggregate level. Estimates from Huang (2018) and Wright et al. (2014) correspond to Row 5 of Tables 1 and 2 that condition on individual behavioral assessments. Average OR represent the average value of all estimates within the study. The significant OR represents only the average value of the estimates that were statistically significant. Two studies (Kinsler, 2011; Roch & Edwards, 2010) did not report OR and so are not included in Figure 1.

Supplementary Materials

Supplemental Table 1

Descriptive Characteristics of the 18 Included Studies.

Study	*Sample Size*	*Grades/Ages*	*Sample*	*Disabilities*	*Discipline Outcome*	*Research Design*	*Nationally Representative?*	*Infraction Reasons/Behavioral Assessment Included*
Anderson et al., (2007)	Grade 6: *n*=211 Grade 7: *n*=201 Grade 8: *n*=172	Middle school	African Americans males in grades 6-8 from a large metropolitan school district in the southeastern region of the United States, 2001-2004	Unspecified	suspension (unspecified)	Cross-sectional	No	NA
Anderson & Ritter (2017a)	Number of observations = 1,243,555 Student *n* = 240,999	K-12	All K-12 schools in Arkansas (2008-09 through 2014-15)	Unspecified	ISS, OSS, expulsion, referral to an ALE, corporal punishment, no action, and other, number of days punished	Cross-sectional	No	17 categories (indicators for different groups of infractions: guns, drugs and alcohol, truancy, major violence or weapons, minor violence or weapons, and major non-violent)
Anderson & Ritter (2017b)	*n*=590,750	K-12	All Arkansas K-12 Schools (2010-11 through 2012-13)	Unspecified	ISS, OSS, expulsion, referral to an ALE, corporal punishment, no action, and other, number of days punished	Cross-sectional	No	Disorderly Conduct, Insubordination, Other (Non-specified), Fighting, Truancy, Bullying, Student Assault, Tobacco, Drugs, and Miscellaneous (including Vandalism, Knife, Staff Assault, Alcohol, Gangs, Guns, Club, Explosives)

Anyon et al. (2016)	Student n=9,921 School n=180	K-12	All students in Denver Public Schools who were issued one or more ODRs in the 2012–2013 school year	Unspecified; ED	OSS	Cross-sectional	No	Bullying, Destruction of school property, Disobedient or defiant, Other code of conduct violation, Detrimental behavior, Third-degree assault, Unlawful sexual behavior, Drug possession or distribution, Dangerous weapon
Anyon et al. (2014)	Student n=10,705 School n=183	K-12	All students in Denver Public Schools who were referred to the office for discipline problems during 2011-12 academic year	Unspecified; ED	OSS, expulsion	Cross-sectional	No	Bullying, Destruction of school property, Disobedient or defiant, Other code of conduct violation, Detrimental behavior, Third-degree assault, Unlawful sexual behavior, Drug possession or distribution, Dangerous weapon
Camacho (2016)	Data from middle schools (n=219), high schools (n=200), and combined middle and high schools (n=20)	Middle and high school	Maryland Report Card &Maryland Public School Suspensions by School and Major Offense Out of School Suspensions and Expulsion 2012-2013	Unspecified	OSS	Cross-sectional	No	NA
Cholewa et al. (2017)	n=11,860	11th grade	Public high school students who participated in HSLS:09's data collection in 2012	Unspecified	ISS	Longitudinal	Yes	NA

Cornell et al. (2018)	*n*=1,836	Elementary through high school	Threat assessment cases conducted in Virginia public schools during the 2014–2015 school year	Unspecified	OSS	Cross-sectional	No	Weapon, Higher level threat
Huang (2018)	*n*=8,604	10th grade	10th-grade students who attended public high schools in 1990 using Public-use NELS	Unspecified	OSS	Longitudinal	Yes	Attitudes supporting deviant behavior, Disregard for rules, Early substance use, Discriminatory attitudes, Misconduct, Fought with another student, Drank alcohol, Cigarettes/packs smoked, Smoked marijuana, Used cocaine
Kinsler (2011)	Schools: elementary school *n*=568 middle school *n*=226, high school *n*=208 Suspended Students: elementary school *n*=6,718 middle school *n*=18,999, high school *n*=20,902	Elementary through high school	Public schools in North Carolina	LD; Physical disability	OSS, Days suspended	Cross-sectional	No	Rule violation, Other offense, Undisciplined, Theft, Fighting, Truancy, Property Damage, Possession of controlled substance, substance abuse, possession of weapon
Krezmien et al. (2006)	not specified	Elementary through high school	All public-school students in Maryland from 1995 to 2003	Unspecified; LD, ED, Autism; MR/ID; SLI; OHI; Other	Suspension (unspecified)	Cross-sectional	No	NA
Krezmien et al. (2017)	not specified	Elementary through high school	All White and African Amer-ican public-school students in	ASD; AUT; MR/ID	Suspension (unspecified)	Cross-sectional	No	NA

			Maryland from 2004 to 2015					
Morris & Perry (2016)	number of observations: *n*=25,221 student *n*=16,248	Grade 6-10 (middle and highs school)	Students who were enrolled in a district public school over a three-year period from August 2008 to ending in June 2011	Unspecified	OSS	Cross-sectional	No	NA
Roch & Edwards (2017)	778 traditional middle schools and high schools	Middle and high school	Public schools in the state of Georgia for the 2008-2009, 2009-2010, and 2010-2011 school years	Unspecified	OSS	Cross-sectional	No	Five categories (Personal, Property, Weapons, Misdemeanors, Other minor) including 27 types of incidents
Sullivan et al., (2013)	*n*=17,837	Elementary and secondary schools	One diverse urban school district in Wisconsin	Unspecified	Suspension; Duration/Freq. Discipline	Cross-sectional	No	School-level: % incidents drug/weapons, % truant
Theriot et al. (2010)	Student *n*=9,706 School *n*=28	Middle and high school	All middle and high school students with at least one repor-ted disciplinary incident during the 2004–2005 school year in one medium-sized school district in the southeastern United States	Unspecified	Exclusion (OSS, expulsion)	Cross-sectional	No	Violent infraction, Zero-tolerance infraction
Vincent et	Disciplinary		2009-2010 data on		Disciplinary	Cross-		

al., (2012)	cases *n*=147,850	Prek-12	exclusionary discipline practices	Unspecified	exclusions	sectional	No	NA

	student n= 64,088 school n=1,195		from one state in the Pacific North-west of the United States					
Wright et al. (2014)	n=4,101	8th grade	Public school students in the 8th grade wave of ECLS-K: 1998-1999 dataset	Unspecified	OSS	Longitudinal	Yes	Prior problem behavior using Social Skills Rating Scale (SSRS)

Note: OSS = Out of School Suspension; ISS = In-School Suspension; ALE = Alternative Learning Environment

Supplemental Table 2

Characteristics of Studies Finding Students with Disabilities are More Likely to Experience Exclusionary Discipline.

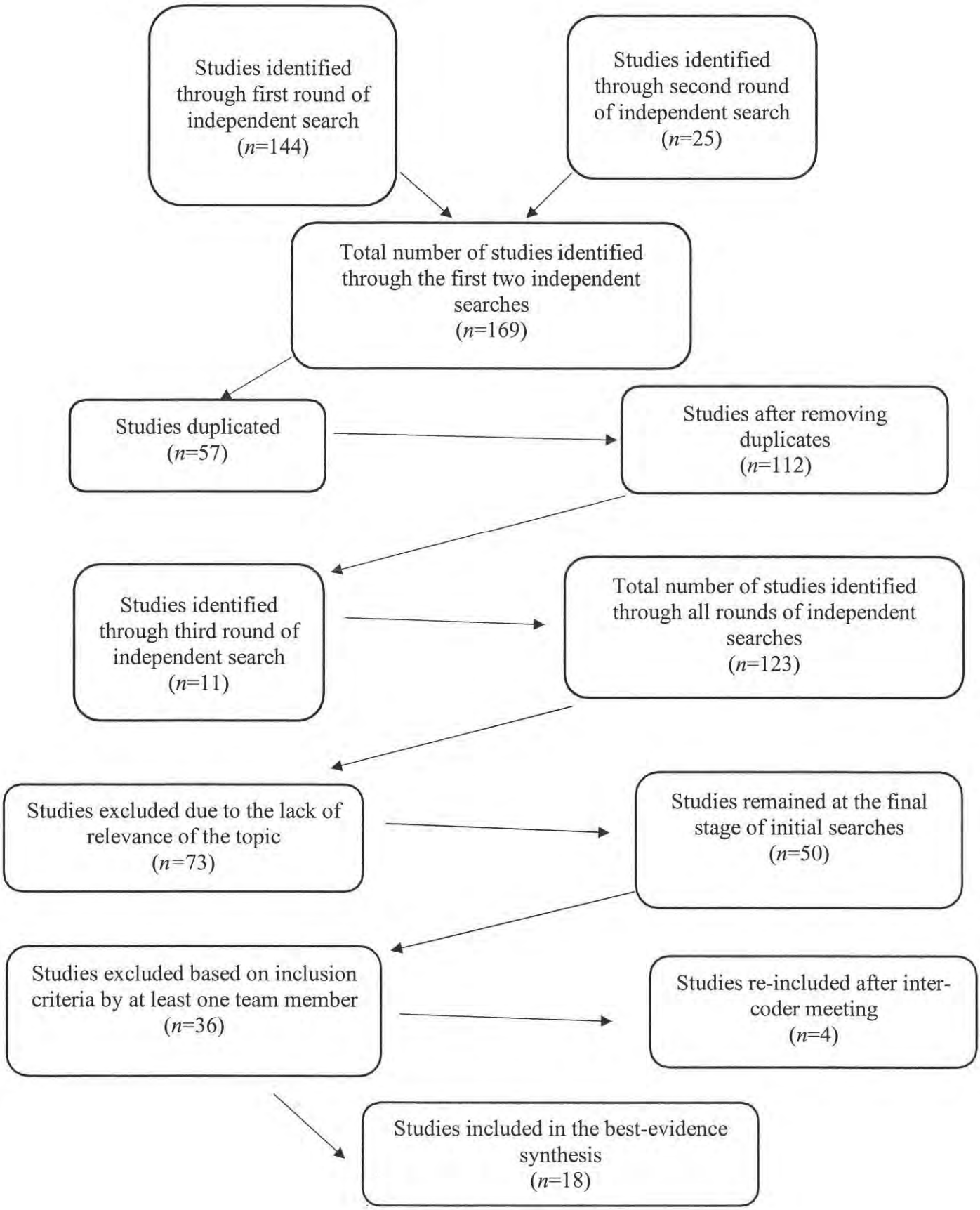
Study Characteristics	*Studies Included*
Individual-level estimates only	Anderson & Ritter (2017a) – 1/1 Vincent et al. (2012) – 1/2 *Total: 2/3 (67%)*
Both individual and aggregate data (e.g., multilevel models or school fixed effects) but no adjustment for infraction type or behavioral assessments	n/a
Includes aggregate-level but not individual-level controls for infraction types	Anderson & Ritter (2017a) – 0/8 *Total: 0/8 (0%)*
Includes individual-level controls for infraction types but not individual-level behavioral assessments	Anderson & Ritter (2017a)a – 4/4 Anderson & Ritter (2017b) – 0/9 Theriot et al. (2010) - 0/1 *Total: 4/14 (29%)*
Includes individual-level behavioral assessments	n/a

Supplemental Table 3

Characteristics of Studies Finding Students with Disabilities are Less Likely to Experience Exclusionary Discipline.

Study Characteristics	*Studies Included*
Individual-level estimates only	Anderson & Ritter (2017a) – 0/1 Vincent et al. (2012) – 0/2 *Total: 0/3 (0%)*
Both individual and aggregate data (e.g., multilevel models or school fixed effects) but no adjustment for infraction types or behavioral assessments	n/a
Includes aggregate-level but not individual-level controls for infraction types	Anderson & Ritter (2017a) – 1/8 *Total: 1/8 (13%)*
Includes individual-level controls for infraction types but not individual-level behavioral assessments	Anderson & Ritter (2017a)a – 0/4 Anderson & Ritter (2017b)a – 6/9 Theriot et al. (2010)a - 0/1 *Total: 6/14 (43%)*
Includes individual-level behavioral assessments	n/a

Supplemental Figure 1. PRISMA flow diagram of studies reviewed for the best-evidence synthesis.



STUDENTS WITH DISABILITIES AND SCHOOL DISCIPLINE

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Takeaways

- Students of color are *less* likely to be identified as having disabilities than similarly situated students who are White
  - *This is occurring in the U.S. and in Pennsylvania*
- We find students who are Black are suspended *more frequently* than similarly situated students who are White while attending U.S. elementary and middle schools
  - *We do not find an increased risk for SWD including those of color conditional on other measured risk factors*
- The scientific evidence for whether U.S. schools are discriminating when disciplining SWD is currently *limited and inconclusive*
  - *No empirical study has yet examined whether SWD who are of color are more likely to be disciplined than similarly situated SWD who are White*

Percentage of racial/ethnic group with IEP by achievement decile (4th grade NAEP 2013, U.S., reading, *N*=184,800)

	White	Black	Hispanic
Lowest 10%	74%	44% ***	43% ***
	34%	12% ***	13% ***
	20%	6% ***	8% ***
	12%	4% ***	5% ***
Middle 50%	8%	5% ***	3% ***
	6%	3% ***	3% ***
	5%	2% ***	3% ***
	4%	1% ***	3% **
	3%	2%	2% **
Highest 10%	2%	1%	1%
N with IEP	9,600	3,020	5,690

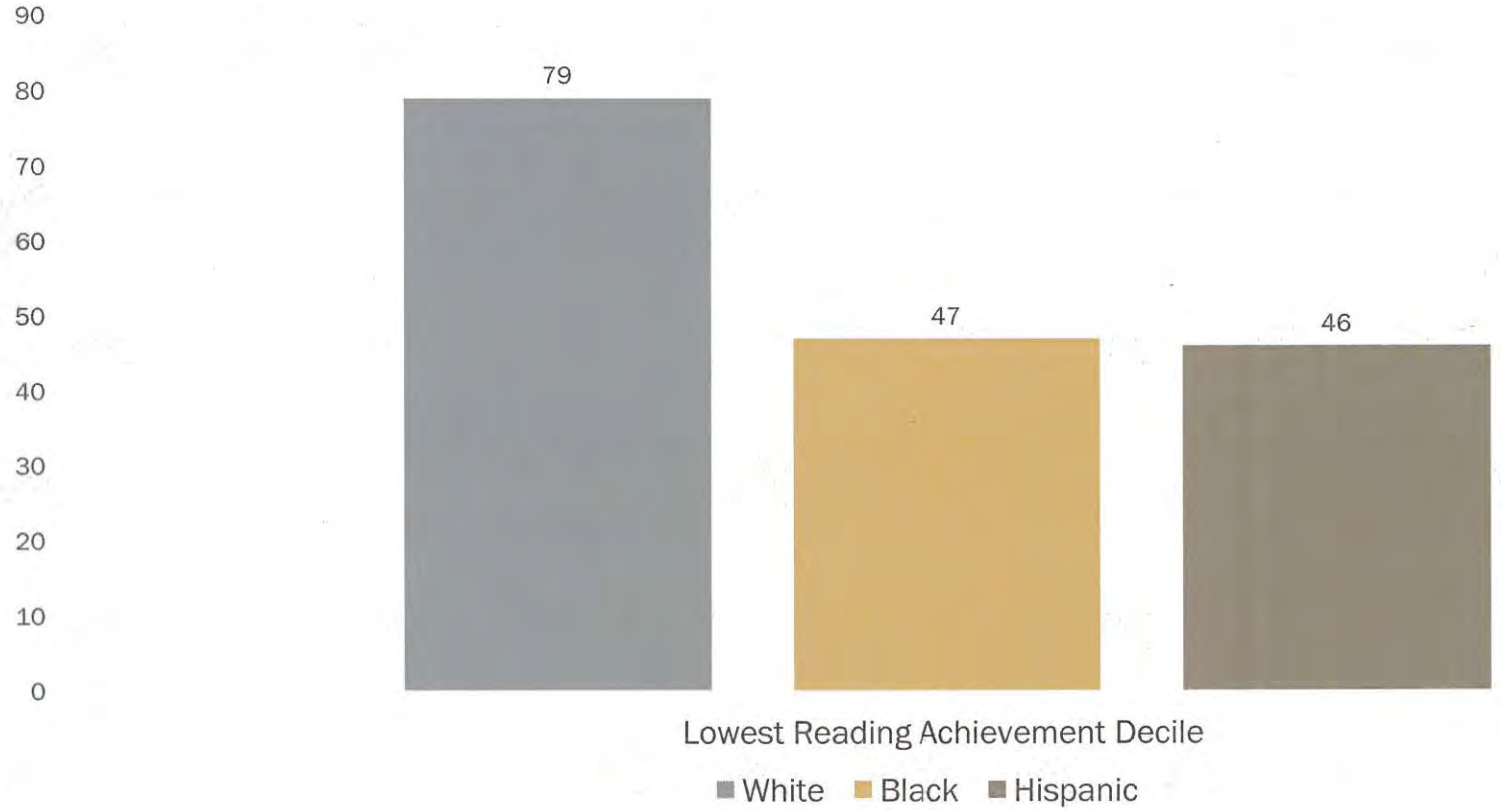
Note: *p< 0.05; **p<0.01; ***p<0.001 based on difference-of-proportions *Z*-tests in which each race/ethnic group is compared to White students In the same achievement decile. IEP = Individualized Education Program.

Percentage of racial/ethnic group with IEP by achievement decile (4th grade NAEP 2017, PA only, reading; *N*=3,230 students)

	White	Black	Hispanic
Lowest 10%	79%	47% **	46% ***
	44%	15% ***	18% ***
	26%	6% ***	12% **
	14%	7%	10%
Middle 50%	19%	3% **	6% **
Total N with IEP	*190*	*60*	*160*

Continuous variables standardized, *$p<0.05$; **$p<0.01$; ***$p<0.001$. *Source:* NCES, NAEP 2017, Reading; restricted-use data file.

Percentage of White, Black, and Hispanic 4th grade students in PA displaying clinically significant reading difficulties who are receiving services (IEP)



Percentage of White and Black males with IEP by reading achievement decile (4th & 8th grade NAEP, PA only)

	4th Grade		8th Grade	
Decile	*White Males*	*Black Males*	*White Males*	*Black Males*
1 (lowest)	76%	51% **	79%	61% *
2	54%	14% ***	51%	24% ***
3	38%	6% ***	35%	18% *
4	22%	4% **	13%	7%
5	14%	11%	21%	3% **
6	15%	0% *	13%	12%
7	5%	0% *	5%	0%
8	5%	0% *	2%	0%
9	8%	0% *	3%	0%
10 (highest)	2%	0% *	8%	0%

Note: Continuous variables standardized, *$p<0.05$; **$p<0.01$; ***$p<0.001$.

Negative binomial regression model of the number of times suspended by 8th grade (ECLS-K: 1998 data, parent report, *N*=6,740)	
Male	**0.96 *****
Black	**0.45 ****
Hispanic	-0.06
IEP	-0.01
IEP x Black	-0.56
IEP x Hispanic	-0.22
Family SES	**-0.29 *****
Externalizing problem behaviors	**0.32 *****
School's percentage receiving free lunch	**0.21 *****

Note: Multiple imputation, clustered standard errors, additional controls include age, Head Start enrollment, non-English-speaking household, behavioral self-regulation, academic achievement, school racial composition. IEP = Individualized Education Program. $^{*}p<0.05$; $^{**}p<0.01$; $^{***}p<0.001$.

Statistically significant regression coefficients indicating that SWD are *more* likely to be suspended relative to total number of coefficients reported, by select study characteristics (*k*=14)

Study characteristics	*Studies included*
Includes controls for individual-level infraction types but not individual-level behavioral assessments	Anyon et al. (2014) – 2/2 Anyon et al. (2016) – 4/4 Cornell et al. (2018) – 1/2 Kinsler (2011) – 3/16 ***Total: 10/24 (42%)***
Includes controls for individual-level behavioral assessments **nationally representative sample*	Huang (2018)* – 2/2 Wright (2014)* – 0/5 ***Total: 2/7 (29%)***

Statistically significant regression coefficients indicating SWD are *less* likely to be suspended relative to total number of coefficients reported, by select study characteristics (*k*=14)

Are SWD who are of color more likely to be suspended than SWD who are white?

- We coded for statistically significant interactions between disability and racial/ethnic minority status for suspension risk
- *Only 3 of the 14* studies of suspension reported such interactions
- *0* contrasted the suspension risk for SWD who are White to that of SWD who are of color while also controlling for at least 1 covariate
  - *The available estimated interactions instead estimated the risk of suspension for SWD who are of color relative to (a) SW/oD who are of color (Anderson et al., 2007) or (b) SWD who are White but w/o adjusting for covariates (Krezmien et al., 2006; Krezmien et al., 2017)*

Thank you

- Paul L. Morgan, Ph.D.
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Statement of Dr. Damaris Rau

Good afternoon. My name is Damaris Rau. I am the Superintendent of the School District of Lancaster (SDoL). I have served in this position for 4.5 years and have been an educator for over 35 years in districts ranging from the most poverty stricken like the South Bronx in New York, to the most affluent, such as Greenwich Connecticut. What is the same across regions and across time has been that suspensions are used to punish students, not teach them. Moreover, the results are the same: Students of color are disproportionally suspended resulting in disengaged youth who fill the school to prison pipeline. Punitive discipline like suspension leads to more crime and unhealthy behaviors. Suspension is the exact opposite of what disconnected youth need. The research is clear on this.

The School District of Lancaster is a tier three urban district. We serve an average of 11,300 students each year, 90% of our students qualify for free or reduced lunch. As an urban school district, we face many of the same challenges as larger urban districts. The School District of Lancaster has spent the last three and a half years working to reduce its high suspension rates. We have accomplished this by reflecting on our educational system and identifying the institutional practices that contribute to suspensions, especially for our black males.

Our work in the SDoL started with reviewing the data. Too often, organizations admire their data and do not take any actions to improve outcomes based on the data. Through an Equity Design Team process and a review of our own systems, we have changed our own practices to address racial inequalities – through purposeful and transparent desegregation of data.

To date: We have reduced our overall suspensions by 50% from 2014 to 2019.

A specific area of focus of our work is the disproportionality of suspensions of black males in our middle schools. A study on suspension data conducted by Franklin & Marshall College revealed that middle schoolers had the highest likelihood of being suspended in our district, and that **black males in middle school** are disproportionately suspended.

We found that disproportionate suspensions of our black males negatively affected their academic outcomes. These negative outcomes include:

- A disproportionate number of students of color in special education,
- The underrepresentation students of color in high level classes like Advanced Placement and Honors Classes,
- Fewer students of color accessing our college dual-enrollment programs, which provide college credit at no charge to the student, and
- A disproportionate number of our black males not graduating from High School

The disproportionality of suspensions of our Middle School black male students has been reduced by 28% over the last two academic years. Black males are now about 4 percentage points more likely to be suspended than male students overall, down from 12 percentage points a year ago.

My district worked through a framework called the Equity Design Team. The purpose and processes of the Equity Design Team, were developed by the Southern Education Foundation, the National Equity Project and the Learning Policy Institute. The district's Equity Design Team identified a specific equity challenge in our district and implemented a pilot strategy to address our equity issue, the disproportionate suspension of black males.

Some of the things we did to address our equity challenge and reduce suspensions and the negative outcomes of suspensions are:

- Revising the student handbook and eliminating ambiguous language like "respect" and "insubordination" as reasons for suspensions,
- Monitoring suspension rates – what you monitor gets done,
- Training staff on adverse childhood experiences and the impact on student brain development,
- Moving resources to provide additional social workers to support student social emotional needs,
- Adopting a restorative practices approach and training staff in de-escalation strategies, and
- Requiring evidence of a multiple tiered system of support for students with academic or behavior challenges.

As a result of the Equity Design Team's work over the course of the last year and a half, we are implementing Deep Equity work with all district employees. This framework, developed by Gary Howard, explores the concepts of equity, inclusion, implicit bias, and cultural competence. We are providing the training to every district employee. We have already begun this work. Since the beginning of this school year, all teachers and support staff have participated in the first of many sessions they will receive over the next 3 years. Based on our Equity Team research, we are also creating a formal mentoring program for middle school black males that will begin in February 2020 focused on self-esteem and identity.

Changing historical and institutional practices that negatively affect students of color is not for the faint hearted. It takes courage to identify what is in the way of student learning and examine your own house.

Our biggest challenges have been:

- Moving beyond the "Zero Tolerance" mindset,
- Talking about race – people are uncomfortable talking about race and implicit bias,
- Using the district's limited resources to involve the entire district staff in training for racial equity and implicit bias over the next 3 years. As a poor district, we had to make some tough decisions about where to allocate our resources,
- We continue to have difficulty hiring staff of color to reflect our student population,
- Dismantling Institutionalized practices such as discipline codes,
- Ensuring that teachers have high expectations for all students through rigorous instruction and curriculum (International Baccalaureate Program),
- Dealing with inequitable education funding (need to use the new Basic Education Funding formula).

Some recommendations for moving this work forward in districts include:

1. Having a vision and commitment for district wide equity,
2. Reaching the entire school district staff in training for equity and implicit bias,
3. Equitably allocating resources across and within schools that are sufficient and appropriate based on need,

4. Creating systems that collect, communicate, and use data to address racial inequalities - purposeful desegregation of data,
5. Working with partners across the community to support student success- including faith-based leaders and other community organizations,
6. Increasing social emotional supports for students,
7. Providing rich curriculum practices that support all students that are culturally relevant and appropriate and
8. Ensuring safe, healthy, and inclusive school cultures – that honor all types of diverse learners and staff.

The Equity Design Team is a feature of the Southern Education Foundation's Racial Equity Leadership Network fellowship. The Southern Education Foundation, National Equity Project and the Learning Policy Institute collaborated in developing this model.

Howard, G. (2015). *We can't lead where we won't go: An educator's guide to equity*. Thousand Oaks, CA: Corwin.

Dismantling the School-to-Prison Pipeline: Addressing the Disparate Discipline of Students of Color, Students with Disabilities, & LGBTQ Students

US Commission on Civil Rights

Prepared by Erica Smith, M.Ed.

November 21, 2019

Disparate and Punitive Impact of Exclusionary Practices

My name is Erica Smith. From 2002 until mid-2019, I worked directly with youth detained inside the Philadelphia Juvenile Justice Services Center, formerly known as the Youth Study Center.

I was employed by The Children's Hospital of Philadelphia Department of Adolescent Medicine as a sexuality educator and counselor. The goal of my job was to prevent unwanted sexual health outcomes, including HIV, in the lives of youth at highest risk for such outcomes. I did so not only by providing education, but also through building long lasting, trusting relationships with youth.

This intensive, one-on-one work allowed me to speak directly with hundreds of youth- mostly youth of color and sexual and gender minority youth- about some of the most intimate and personal details of their lives including their family backgrounds, mental and behavioral health, trauma histories, and how they came to be involved in the system. I had close relationships with many of these youth for years, as they came back in and out of detention. LGBT youth were a special focus of our program.

Children are often introduced to the juvenile justice system because they "misbehave" in school and are punished, including involving law enforcement in dealing with the incidents. It is critical to note that very often, the same behaviors that lead to trouble in school, such as difficulty regulating emotions and behavior, showing defiance, and aggression, and not forming relationships with teachers and peers, are actually responses to experiencing trauma.

As defined by the Substance Abuse and Mental Health Services Administration, trauma is "an event, series of events, or set of circumstances experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual's functioning and mental, physical, social, emotional, or spiritual well-being. According to the American Psychological Association, trauma can also be caused by "witnessing or indirectly learning about a close family member or friend being subjected to such events.

The Child Mind Institute notes that besides experiencing one frightening or upsetting event, many children experience trauma through *ongoing exposure*, throughout their early development, to abuse, neglect, homelessness, domestic violence or violence in their communities.

It's also important to note that the most critical time for brain development in a child's life is from birth to age five and that most youth who experience a traumatic event experience it within those first five years of life. This experience of trauma in childhood

alters the brain and nervous system in ways that increase stress reactivity, anger, and impulsivity while reducing a youth's ability to self-regulate. Chronic trauma can cause serious problems with learning and behavior.

Children who experience trauma have disproportionate contact with law enforcement and, in fact, the nation's most traumatized youth are found in the juvenile justice system. According to the Justice Policy Institute, between 75 and 93% of youth currently detained in juvenile correctional facilities have had at least one traumatic experience, including sexual abuse, war, community violence, neglect and maltreatment. For many of these youth, they've experienced poly-victimization- that is, prolonged or multiple exposures to traumatic events.

Poly-victimized youth are at highest risk of school absence, suspension, disengagement, and dropping out.

The longer I spoke to these young people, the more I saw a clear pattern emerge. And what I saw clearly over 17 years of working closely with youth in juvenile detention is that children who end up adjudicated because they got into trouble in school were very often living with undiagnosed and untreated trauma. What we see as disruptive or bad behavior in school may be a reaction to trauma—a child expressing anger and frustration over stressors in their lives—including exposure to violence in their homes and communities.

It's important to note that lesbian, gay, bisexual, and transgender youth frequently experience violence and bullying at home, in their communities, and in school- and their reactions to this may include behaviors that get them into trouble at school. LGBT youth, particularly black trans feminine youth, experience high rates of violence, discrimination, and victimization.

A narrative I heard constantly from LGBT youth in juvenile detention went like this: "I have been bullied and harassed for being gay and transgender all of my life. I am not safe at home or in my community, because my family and others are violent toward me. I then get bullied and harassed for being gay or transgender at school, if I go to school regularly at all. When I finally fought back or freaked out on someone, I was the one who got arrested."

This is a story I heard over and over- essentially the story of an already traumatized youth who experiences multiple marginalizations- being LGBT and most often a black or brown youth- who is mistreated by family, community, and peers due to their sexual orientation or gender identity, whose behavior is often a reaction to the trauma they've experienced, who lashes out in school and finds themselves as the one in handcuffs.

I have also spoken to many youth, especially black gender non-conforming youth, who felt they were singled out and antagonized by school police until a confrontation occurred, leading to their arrest.

I can tell you with certainty that once a child spends time in juvenile detention, they are caught up in a system that is traumatic by design, especially if they are LGBT. Detention equals removal from family and community, a sense of powerlessness, more exposure to violence and bullying, the potential of being harmed and exploited by juvenile detention staff, exposure to toxic stress that can cause lasting harm, and a major,

continued interruption to their education. Furthermore when LGBT students end up in the juvenile justice system, they become even more vulnerable to abuse and discrimination.

I have worked with young people who were away from their families for years, experienced sexual violence from juvenile detention staff, experienced racism from juvenile detention staff, were moved around to multiple placements as either delinquents or dependents, and almost never completed their high school education- all because their point of entry into the system was their school.

While a child's behavior in school may be disruptive, frequently it is not criminal, and very often it is the result of untreated trauma. Youth who are employing chronic survival coping tactics to counteract the trauma that they have experienced in their lives are impacted by a school's harsh punishments and the school's involvement of law enforcement. When punishing and criminalizing our most victimized and vulnerable youth rather than working with them to identify and treat the root of their learning and behavioral issues, we do all of us a great disservice.

Thank you.

Big Brothers
Big Sisters
INDEPENDENCE

Statement Presented to the Pennsylvania Advisory Committee
U.S. Commission on Civil Rights

Tyrice Smith, Former Little Brother at Big Brothers Big Sisters Independence

My name is Tyrice and I am 19 years old. I'm not a writer, but I want to share my story because it represents so many other young men who look like me and maybe who grew up like me. I experienced trauma at a young age. I witnessed a loved one being killed in front of me in my own home and it caused me to carry hurt and anger, and even had me acting out in ways I felt I couldn't control. I think people tend to judge people without truly understanding their background and considering the terrible things that might have happened to them. At least that's been my experience.

During middle and high school, I attended mostly all white schools. The kids weren't like me, and honestly I never felt comfortable there. I felt like I didn't fit in. I experienced racism on many levels. I was treated differently than my white classmates, sometimes singled out for what I would consider unfair punishment. In 8th grade I was joking around with one of my white school friends, and called him the "N" word. Another student overheard our conversation and reported me to school officials. I received a 5-day school suspension for that incident. I don't remember anyone else being punished so severely during my time there.

In 9th grade I made some bad decisions, but not alone. Two of my white friends came up with an idea to steal some snacks from the refrigerator in the school cafeteria. They asked me if I wanted to do it with them. I reluctantly went along with them after school where we ended up taking some chocolate milk, a few cookies, and some macaroni and cheese. Everything was captured on video, and two days later a detective came to ask us questions. I told the truth, and my two friends blamed the whole thing on me. My friends were let go with no punishment at all. I was charged with vandalism and suspended from school. This incident also went on my youth record, and I was continually made fun of at school afterwards.

Later that same year, a classmate brought a BB gun to school and gave it to me to play with. I was on the school bus riding home, and another kid (who was white) kept calling me and my friends the "N" word. In anger, I pulled out the BB gun and shot him in the neck. I know this wasn't the right thing to do, and take full responsibility for my actions – but anger got the best of me. The boy I shot in the neck was fine, but the next day I was suspended from school. I had to go to court, was booked for assault, and placed at Lakeside Disciplinary School. I was also forced to write an apology letter to the other boy who called me the "N" word. He received no punishment, no suspension.

Fortunately, my probation officer saw something in me and recommended me to the Big Brothers Big Sisters program. There I met my Big Brother, Brian Sloan. I'm especially grateful to him for stepping up as not only my big brother, but the father figure I never had. Through him I was able to find myself again. Brian has been there for everything important since being in my life. He has shown me how to grow into the young man I am today – strong, determined, honest,

loving, and able to express myself through the trials I've experienced. He helped me find my self-worth and potential again. I was never confident enough to do so because I've lost so many loved ones, including my Grandmom who was like a best friend to me.

But I think about all of the other kids who never had a Brian, or a program like Big Brothers Big Sisters to step in and provide support. Those kids all become another statistic. They get caught in the cycle of trouble, and people don't believe their side of the story, and they rarely get a second chance.

Today I am proud to have graduated from high school and see so many possibilities for my future. I feel I can grasp any star I reach for because my Big Brother Brian instilled that in me. He lifted me to grasp some of them, even when I felt I couldn't reach them. I think every kid deserves to have that chance in their life ... even when they make a bad decision, and especially when they are victim to racist individuals and institutional systems.

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Statement of the Education Law Center to the PA Advisory Committee to the US Commission on Civil Rights

Dismantling the School-to-Prison Pipeline: Addressing the Disparate Discipline of Students of Color, Students with Disabilities, & LGBTQ Students

Good afternoon, members of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights. Thank you for the opportunity to contribute to this important discussion about school discipline and the school-to-prison pipeline in Pennsylvania. My name is Reynelle Brown Staley, and I serve as Policy Director for the Education Law Center – PA (ELC), a non-profit statewide legal advocacy organization that focuses on education.

Our testimony today draws from our nearly 45 years of experience dedicated to ensuring that all Pennsylvania children have access to a quality public education. ELC has long been a leader in the fight against exclusionary discipline practices that push students out of school and into the juvenile and criminal justice systems. Our focus is on the devastating impact these practices have on educationally marginalized student populations, such as students of color, students with disabilities, and LGBTQ+ students. We know the negative and far-reaching impact of zero-tolerance policies, aggressive policing in schools, and other extreme discipline because we hear these stories from families every day.

We begin our testimony with a few representative stories to help frame how the recommendations we propose today actually matter to students' lives. The first story I offer is of Joshua, a 9-year-old Latin(x), gender non-conforming student. Joshua's classmates would constantly pick on him and mock him because they thought he was effeminate. None of his teachers or other adults in the building ever seemed to respond. One day, the teasing got too much for Joshua, and he threw his water bottle at a student, hitting the student in the stomach but not causing any serious injury. School personnel called Joshua's mother at the hair salon where she worked and demanded that she come pick her son up from school immediately. She told the school she couldn't leave her job because she would be fired, so the school called the police on Joshua and demanded that the police remove him from school. At 9 years old – before a child can even legally be adjudicated delinquent, Joshua was taken to the police station where he remained, for hours, handcuffed in a cell because his school pursued a zero-tolerance response to his behavior.

Or take the story of Jasmine, a black high school student with an Individualized Education Plan (IEP) and significant emotional and behavioral health needs that were not being met by her

school. As a result of her disabilities, Jasmine would leave class when she became overwhelmed or frustrated, which sadly happened often. To address Jasmine's needs and meet their legal obligations to her as a student with disabilities, the school was required to develop a Positive Behavior Support Plan as part of Jasmine's IEP to help teach her positive behaviors, ensure she was supported to stay in class, and make clear that she should not be punished for the district's failures to provide her with an appropriate program. Lacking a full-time psychologist, counselor, or social worker, the school created a plan that advised school staff to call the local police any time Jasmine was violating school rules, regardless of how minor the offense. This unsurprisingly led to Jasmine having repeated and traumatizing interactions with the police which impacted her ability to learn. School became a toxic place for Jasmine, a place where she didn't feel wanted, didn't want to be, and eventually stopped attending.

Joshua and Jasmine's stories are not just isolated instances; they are, in part, the product of federal, state, and district-level policies that promote school environments that are more like prisons than learning environments and push students into the school-to-prison pipeline. We believe that, through targeted investments and meaningful policy action, all levels of government can work together to foster school climates that are safe, positive, and inclusive for all students.

With those guiding principles, we recommend the following measures:

1. **Eliminate zero-tolerance policies at the state and federal levels**

Zero tolerance in schools was initially intended to ensure that certain serious, and generally criminal student behavior, such as possession of guns or drugs at school, received strong and consistent disciplinary responses. Since enactment of the federal Gun-Free Schools Act of 1994, it has gone far beyond its intended purpose. Over the past 25 years, new laws and district policies based on zero tolerance have imposed severe, mandatory disciplinary responses for minor rule infractions, such as dress-code violations and tardiness.[1] One student ELC served, who was living in emergency shelter, was punished with a month in after-school detention simply because he could not afford shoes that complied with his school's dress code.

Despite calls by the ACLU of Pennsylvania and the Pennsylvania Joint State Government Commission on Zero Tolerance School Discipline Polices to limit the use of zero tolerance in our state,[2] unfortunately the trend is to expand its use. ELC has been called upon to advise the family of a first grader who was expelled for throwing his lunch box in frustration and a second grader who was expelled for pulling on another student's jacket. We even had to litigate (successfully) in Commonwealth Court to overturn an expulsion because a school district attempted to apply Pennsylvania's zero tolerance statute banning weapons on school grounds to

[1] Jason P. Nance, Students, Police, and the School-to-Prison Pipeline, 93 WASH. L. REV. 919, 933 (2016) (discussing that states and localities have applied zero tolerance to a multitude of offenses).
[2] *End Zero Tolerance Combating The School-To-Prison Pipeline*, https://www.endzerotolerance.org/pennsylvania (last visited November 14, 2019).

a pencil.[3] It bears emphasizing that zero-tolerance laws and policies are ineffective and counterproductive.[4] They deprive educators of their ability to use their judgment to consider the circumstances and decide what actions are appropriate to hold the student accountable. They unnecessarily push students out of school and into the juvenile and criminal justice systems.[5] And they should therefore be eliminated.

2. End the enactment of state and federal laws encouraging the presence of law enforcement in schools

School shootings, like the 2018 deadly event at Parkland High School in Florida, have served as the rationale for increasing the presence of armed school security personnel despite any evidence of effectiveness as a deterrent.[6] For each of the past few legislative sessions, the Pennsylvania General Assembly has introduced legislation to increase the presence of adults with guns in schools. Current law, including Act 44 of 2018 and subsequent amendments, formally authorize three separate categories of armed individuals legally authorized to work in schools -

some with very minimal training in working with children or schools.

Although the rise in law enforcement and school security is being advocated as a way to prevent school shootings being predominantly committed by white males in suburban, majority white schools, it is students of color, students with disabilities, LGBTQ+ students, and students in poor districts with high percentages of students of color who are disproportionately impacted.[7] In the 20 largest school districts in Pennsylvania – generally poor districts with high percentages of students of color, black students are 7 times as likely to be arrested than their white peers. Latinx students are arrested at three times the rate of white students. Further, students with disabilities are twice as likely to be suspended than their non-disabled peers.[8]

The reality is that because school shootings and other criminal activity in school is rare, when law enforcement are present in schools, they become engaged in routine matters of school discipline – matters they are trained to respond to with highly punitive, criminalizing measures. This increase in law enforcement presence in schools has not only affected middle- and high school children; students as young as 5 or 6 have been arrested and taken out of school in

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[3] S.A. by H.O. v. Pittsburgh Pub. Sch. Dist., 160 A.3d 940 (Pa. Cmwlth. 2017).

[4]Cecil R. Reynolds et al., *Are Zero Tolerance Policies Effective in the Schools: An Evidentiary Review and Recommendations*, 63 Am. Psychologist 852, 860 (2008).

[5] Nance, *supra* note 1, at 927.

[6] Center for Schools and Communities, "School Resource Officer Evaluation, Phase One" September 2005, pp. 68–69.

[7] There is extensive evidence of disproportionate discipline of students of color and students with disabilities in Pennsylvania as well as across the country. Federal data show, for example, that compared to white students, Latinx students were twice as likely to be arrested in Pennsylvania. American Civil Liberties Union, *Cops and No Counselors: How the Lack of School Mental Health Staff is Harming Students* 24 (2019), https://www.aclu.org/report/cops-and-no-counselors. .

[8] Harold Jordan, *Beyond Zero Tolerance: Discipline and Policing in Pennsylvania Public Schools* Am. Civ. Liberties Union of Pa. (February 2015), https://www.endzerotolerance.org/read-our-report.

handcuffs by police officers for throwing a temper tantrum.[9] Ending the school-to-prison pipeline requires ending the disproportionate policing of students of color, students with disabilities, and LGBTQ+ students in schools.

3. Invest in mental and emotional health supports and professionals, not more police

Since June 2018, the General Assembly has invested $120 million into a new funding stream aimed at preventing and addressing school shootings. During that same time, the total new funding dedicated by Pennsylvania's legislature to supporting the most fundamental needs of the 1.7 million students in our state's public schools was less than three times that amount – money that is supposed to pay for a basic public school education, i.e., educator and other staff salaries, textbooks and technology, and the range of student instructional needs. These basic education needs are underfunded in Pennsylvania – by as much as $4 billion each year – leading many schools to provide inadequate climate supports to enable student learning. Yet because funding is more readily available for school security, both through this new funding stream and through the Safe Schools Targeted Grants program that the Pennsylvania Department of Education administers, school districts are incentivized to invest in metal detectors, police officers, and other security measures, but not in the mental health resources and supports that students need - and that would actually lead to safer schools.

This phenomenon disproportionately affects students of color and other historically marginalized students, as these students are more likely to attend underfunded schools and under-resourced communities.[10] 23% of Pennsylvania public school students attend schools with police but lack either a nurse, psychologist, social worker, or counselor. 90% of Pennsylvania public school students attend schools without enough counselors.[11] Even when schools do have mental health professionals, they are most often grossly understaffed. When schools lack counselors and administrators to handle routine matters of school discipline, ordinary, age-appropriate student conduct is more likely to escalate and result in law enforcement involvement. When communities invest in police rather than education for historically marginalized communities, schools may involve more students in the criminal justice system, even for low-level violations of school behavioral codes.[12]

4. Develop a robust continuum of alternatives to exclusionary discipline and eliminate the use of suspension and expulsion, especially for our youngest learners

School codes of conduct reflect both the regulatory framework established by federal and state policymakers and the local prerogatives of the school community. In addition to the changes to the federal and state context described above, local school districts need to revise their codes of conduct to ensure that school-level and district-level responses to student behavior are

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[9] Nance, *supra* note 1, at 922.
[10] American Civil Liberties Union, *supra* note 7, at 5.
[11] Report, Am. Civ. Liberties Union of Pa., Supporting Pennsylvania Students: The Choice (2015), https://static.wixstatic.com/ugd/10497b_eb811e23518d4b59b22f46280a25421a.pdf.
[12] Nance, supra note 1, at 949.

appropriate, proportionate, and likely to have a corrective effect on the student and the school community.

Codes of conduct should ban suspensions and expulsions for minor violations, especially for young learners like Joshua.[13] Such exclusionary discipline is an ineffective deterrent[14] and not only harms the student who is suspended or expelled,[15] but also the students who remain in the classroom,[16] creating a toxic school climate. Several school districts in Pennsylvania, including Philadelphia,[17] Pittsburgh,[18] and Phoenixville,[19] have successfully banned the use of suspensions for non-violent offenses in kindergarten through second grade to improve school climate. In addition, states including Texas,[20] California,[21] Connecticut,[22] Maryland,[23] New Jersey,[24] and Oregon[25] have all limited suspensions for elementary school students.

Codes of conduct should also require educators and school administrators to exhaust all non-punitive, alternative disciplinary practices before exclusionary discipline is even considered. California recently revised its Compilation of School Discipline Laws and Regulations to state that "[s]uspension, including supervised suspension…shall be imposed only when other means of correction fail to bring about proper conduct."[26] Pennsylvania could benefit from following this model.

Instead of exclusionary discipline, school districts should employ effective, data-driven, evidence-based prevention initiatives, such as:

- Positive Behavioral Interventions and Supports
- Social and Emotional Learning

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[13] Jeffrey Lamont, Policy Statement: Out-of- School Suspension and Expulsion, 131 PEDIATRICS e1000, (2013).
[14] Reynolds, *supra* note 4, at 854 (challenging common assumptions about exclusionary discipline, researchers found that excluding children who exhibit problematic behaviors from school did not deter their future misbehavior, but rather predicted future misbehavior by those students).
[15] Jordan, supra note 8, at 7 (reporting that students who were suspended or expelled, especially repeatedly, were more likely to be held back a grade or drop out of school than other students).
[16] Brea L. Perry & Edward W. Morris, *Suspending Progress: Collateral Consequences of Exclusionary Punishment in Public Schools*, 79 AM. SOCIOL. REV. 1067, PINCITE (2014).
[17] Superintendent William R. Hite, The School District of Philadelphia Code of Conduct 2019-2020 16 (The School District of Philadelphia, 2019).
[18] Superintendent Anthony Hamlet, Pittsburgh Public Schools K-5 Code of Student Conduct Updated for 2019-2020 3 (Pittsburgh Public Schools, 2019).
[19] Superintendent Alan Fegley, Phoenixville Area School District Elementary Student Handbook 2019-2020 16 (Phoenixville Area School District, 2019).
[20] Tex. Educ. Code Ann. § 37.0013 (limiting suspensions for students in grades 2 and below).
[21] Cal. Educ. Code Ann. § 48900(k)(1)(2) (limiting suspensions for students in kindergarten through third grade).
[22] Conn. Gen. Stat. Ann. § 10-233c (limiting suspensions for students in grades 2 and below).
[23] Md. Code Ann. Educ. § 7–305 (limiting suspensions for students in grades 2 and below).
[24] N.J. Stat. Ann. § 18A:37-2a(a) (limiting suspensions in pre-kindergarten through grade 2).
[25] Or. Rev. Stat. § 339.250 (limiting suspensions for students in fifth grade and younger).
[26] Child Trends & EMT Associates, California Compilation of School Discipline Laws and Regulations 17 (U.S. Dep't of Educ. 2019).

- Student conflict resolution programs
- Mentoring
- Cognitive behavioral therapy in schools
- Trauma-informed practices
- Restorative practices

To truly achieve their intended results, these strategies must be implemented with fidelity with a Multi-Tiered System of Support that is both academic and behavioral.

5. Make sure LGBTQ+ students are wholly supported

There is limited data on how the school-to-prison pipeline uniquely impacts LGBTQ+ students, however, we know anecdotally and from available data that these students are profoundly impacted. Ninety percent of LGBTQ+ youth in juvenile detention reported having been suspended or expelled at least once.[27] Verbal harassment by peers and school personnel, negative attitudes about gender expression, and stigmatizing dress code policies create hostile school climates for LGBTQ+ youth. The compounded impact of racially biased school discipline and anti-LGBTQ+ language and rhetoric in schools calls for an approach to advocacy and youth engagement that addresses the whole lived experiences of LGBTQ+ youth of color. In addition to the recommendations mentioned above, schools should actively create supportive school environments that celebrate diversity, including through expanding access to Gay Straight Alliance clubs and LGBTQ+ inclusive curriculum.

6. Provide training and resources to enable school personnel to adequately support underserved students

Biases, implicit and explicit, too often govern classroom decisions. Data shows that teachers and school administrators discipline students of color more often and more severely than they do white students for the same offenses.[28] During the 2015-2016 school year, Black male students represented 8 percent of enrolled students and accounted for 25 percent of students who received an out-of-school suspension. Black female students represented 8 percent of the student enrollment and accounted for 14 percent of students who received an out-of-school suspension. Similarly, students with disabilities represented 12 percent of students enrolled but 26 percent of students who received an out-of-school suspension.[29] Addressing issues of student discipline is not simply a matter of addressing student behavior; it also requires training adults to overcome their biases and respond consistently and appropriately to the behavior they see.

It is imperative that all school staff, including educators, administrative staff, and school-based law enforcement, receive training and resources to understand and recognize signs of behavior

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[27] Shannan Wilber, Juvenile Detention Alternatives Initiative, A Guide to Juvenile Detention Reform: Lesbian, Gay, Bisexual and Transgender Youth in the Juvenile Justice System 9 (Annie E. Casey Foundation 2015).
[28] Nance, *supra* note 1, at 924-25.
[29] U.S. Department of Education Office for Civil Rights, 2015-16 Civil Rights Data Collection: School Climate and Safety 14 (2019), https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf.

that may be connected to a diagnosed or undiagnosed disability. They should also receive training and access to information that emphasize an empathic response to student behavior – a response that builds trusting relationships with students by prioritizing, valuing, and understanding each student's individual experiences.[30] This is particularly critical in schools with large percentages of students of color and students in poverty where school staff may not reflect or understand their racial, cultural, or socioeconomic background.[31] Diversifying the teaching force as well as providing adequate and continuing training programs is imperative to providing all Pennsylvania students, and particularly students of color, with teachers who understand and value them.

Training is particularly critical for school-based law enforcement, who are almost exclusively trained and tasked with enforcing the criminal code. They do not complete extensive coursework in youth development or receive substantive training on age-appropriate behaviors for students. Their approach to students is not trauma-centered, yet roughly 60 percent of schoolchildren are likely to have suffered or witnessed some form of trauma within the previous year.[32] Until recently, Pennsylvania did not require school security personnel to undergo any training in dealing with children, and even now, that training is minimal. And even that minimal training would be deferred under pending legislation in the General Assembly that would allow armed security to work in Pennsylvania schools this entire school year without receiving any training on working with children.[33]

The reality for many students like Joshua and Jasmine is that they are being educated in spaces that increasingly feel less like schools and more like prisons. They are forced to pass by metal detectors, bulletproof glass, armed police officers, k-9 units, and other military-grade equipment before they enter their learning space.[34] They are subject to a host of harsh rules that are strictly enforced with severe consequences. They are not given the resources and opportunity to learn

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[30] Jason A. Okonofua et al., Brief Intervention to Encourage Empathic Discipline Cuts Suspension Rates in Half Among Adolescents, 113, Proc. Of the Nat'l Acad. Of Sci. of the U.S., 5221-22 (2016). 3

[31] Jason Fontana & David Lapp, Research for Action, A PACER Policy Brief: New Data on Teacher Diversity in Pennsylvania 1 (Research for Action 2018), https://8rri53pm0cs22jk3vvqna1ub-wpengine.netdna-ssl.com/wp-content/uploads/2018/09/RFA-New-Data-on-Teacher-Diversity-PACER-FINAL.pdf (noting that students of color account for 33% of all Pennsylvania students educators of color account 6% of all Pennsylvania teachers).

[32]David Finkelhor, Heather Turner, Anne Shattuck, Sherry Hamby, & Kristen Kracke, Children's Exposure to Violence, Crime, and Abuse: An Update, DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS JUVENILE JUSTICE BULLETIN: NATIONAL SURVEY OF CHILDREN'S EXPOSURE TO VIOLENCE, (Sept. 2015), https://www.ojjdp.gov/pubs/248547.pdf?ed2f26df2d9c416fbddddd2330a778c6=nnxrpdozn-nzubdzrr&utm_source=youth.gov&utm_medium=federal-links&utm_campaign=reports-and-resources &utm_source=youth.gov&utm_medium=federal-links&utm_campaign=reports-and-resources.

[33] H.B. 49, Reg. Sess. (Pa. 2019), https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=H&type=B&bn=0049.

[34] *"Do the Harder Work-Create Cultures of Connectedness in Schools": A Youth & Parent Organizer Response to the Federal Commission on School Safety*, COMMUNITIES FOR JUST SCHOOLS FUND, (Dec. 5, 2018), https://www.cjsfund.org/do-the-work.

and not provided adequate supports when they fail. Yet all students fail at some point, whether academically or through poor decisions in their interactions with others. Schools can and should take steps to support students while maintaining certain standards of community safety.

Dismantling the school-to-prison pipeline requires building a welcoming educational community, one where laws and policies support student learning and investments in students' holistic well-being. We believe the changing the legal framework and policy practices for schools to divest from policing and move towards embracing all students in an inclusive and supportive environment would play a significant role in dismantling the school-to-prison pipeline.

We thank the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights for addressing this important topic and inviting the Education Law Center to submit this testimony.

HONORABLE JOHN C. UHLER' S
PRESENTATION TO THE PENNSYLVANIA ADVISORY
COMMITTEE TO THE US COMMISSION ON CIVIL RIGHTS

First of all, allow me to thank Ivy L. Davis, Director of the Eastern Regional Office of the US Commission on Civil Rights for inviting me to present to the Pennsylvania Advisory Committee to the US Commission on Civil Rights. The focus of these remarks is the disparate discipline of students of color, students with disabilities, and LGBTQ youth, contributing to results described by many as the "school to prison pipeline" in Pennsylvania. With my history as a retired Pennsylvania Common Pleas Judge. I trust I can offer some perspective having devoted twenty-five years to the juvenile courts. I initiated the specialty courts in York County including the development of a mental health treatment court for Juveniles. I spearheaded the development of a county wide Truancy Prevention Initiative, and served as a member of the Interbranch Commission on Juvenile Justice,.

The Juvenile Act as amended 42 PA.C.S.Section 6301mandates that juvenile courts adhere to the principles of balanced and restorative justice with the following purposes:

1) To preserve the unity of the family whenever possible or to provide another alternative permanent family when the unity of the family cannot be maintained.

1.i)To provide for the care, protection, safety and wholesome mental and physical development of children coming within the provisions of this chapter.

2) Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.

3) To achieve the foregoing purposes in a family environment whenever possible, separating the child from parents only when necessary for his welfare, safety or health, or in the interests of public safety, by doing all of the following:

3.i)Employing evidence-based practices whenever possible and, in the case of a delinquent child, by using the least restrictive intervention that is consistent with the protection of

the community, the imposition of accountability for offenses committed, and the rehabilitation, supervision and treatment needs of the child, and

3.ii) imposing confinement only if necessary and for the minimum amount of time that is consistent with the purposes under paragraphs (1), (1.ii) and (2).

4) To provide means through which the provisions of this chapter are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

An invested Juvenile Court Judge needs to administer his or her court by assuring the implementation of standardized unbiased guidelines, assessment, and investigations. This would include uniformity in application with emphasis on the importance of overall intake and diversion policies. Indeed if a matter is perceived to have been erroneously pursued it is incumbent upon the Juvenile Judge with his oversight authority to unilaterally intervene and suggest that diversion options may have been overlooked.

I emphasize my Juvenile Court background and the mandate of the Juvenile Act in order to provide context to my long-standing focus on youth and my personal efforts to push back on the "school to prison pipeline". I firmly believe that the restorative goals of Pennsylvania's juvenile justice system promotes the achievement of low recidivism and opportunities for expungement.

Anecdotally, I found during my Juvenile Court career that approximately 95% of the thousands of youth appearing before me in juvenile delinquency court had significant truancy, suspension, and dropout histories. I resort to anecdotal history by reason that demographic data surrounding truancy (including suspensions and expulsions) and penetration into the juvenile justice system by truants has not been captured. Indeed, on a national scale truancy intervention programs as well have had few evaluations. Juvenile Delinquency courts do not have jurisdiction over truancy matters (suspension and expulsion), rather, it is the dependency courts which have direct jurisdiction over "habitually truant" youth. Notwithstanding my jurisdictional disconnect, my observations led me 20 years ago to launch the Truancy Prevention Initiative in York County. The Truancy Prevention Initiative seeks to support our youth in continuing to attend school regularly, to reach successful completion and become productive contributors to their community. Our award winning Youth Court Alliance has proved to be a successful school-based truancy diversionary program. Inevitably the Truancy Initiative operates to

reduce the likelihood of a student becoming a participant in juvenile delinquency court. It is clear that school truancy and delinquency reflect a high correlation.

In keeping with the Federal Juvenile Justice and Delinquency Prevention Act of 2002, the Commonwealth's secure CPCMS court docketing system has memorialized information on race and Disproportionate Minority Contact.. These statistics are invaluable for purposes of analysis and evaluation to the extent that the memorialized identification data is accurate. In general Delinquency and Dependency proceedings are generally closed to the public. The exception is those Delinquency hearings involving youth of 14 years of age or older charged with a felony, or the child is 12 years or older and is charged with one or more significantly more serious major felonies charges.. With the exception of the open public delinquency hearings, the juvenile's docket entries in both delinquency and dependency are closed to the public. Juvenile probation officers are constrained in the information which may be provided by them to the Schools under Rule 163 of the Juvenile Court Rules unless the child has been adjudicated of a felony offense. The shared information by a Juvenile Probation department with the schools must be maintained separate from the child's school record. Where the child's and the school's needs require disclosure necessary to protect public safety or to enable appropriate treatment supervision, or rehabilitation of the juvenile, additional information may be shared. The disclosure limitations are designed in part to mitigate against the potential of stigmatization of a child among his or her classmates and teachers.

The Education Department of the Commonwealth collects demographic data surrounding race, ethnicity, disability issues, in-school and out-of-school suspensions and expulsions, in addition to history of referrals to law enforcement and arrest.

Our 19th Judicial District of York County Pennsylvania has sixteen separate school districts, one County School Of Technology, one Intermediate Unit, four charter schools, and fifty-eight private schools. 100,903 students are enrolled in our public school system. More than 5800 students attend our private schools with a student population of a little more than 12% minority representation. The respective school districts are governed by school boards, elected by the voters within that School District. Consolidation of school districts, mergers and/or annexation requires a vote by the School Board, a petition of the electorate and ultimate approval by the State Department of Education.

One of the goals of York's Truancy Initiative was the establishment of the standard application of definitions under the prior attendance act on a county-wide basis. Definitions specified absences, such as unlawful absences, excused absences, medical excuses, tardy, parental notification issues, truancy intervention plans, as well as referral to Children Youth and Family and/or the Magisterial District Judge. This standardization was designed to assist us in identifying and labeling ongoing issues and challenges. Data was collected from the various school districts on an annual basis, and the consistency of definition enabled the Initiative to apply focus and assistance in the needed areas.

Our efforts were largely successful despite a few hiccups through coordination and cooperation with the York County School Districts, which annually adopted the standardized protocol of the Initiative. Some stumbling blocks were created by the independence of the respective school boards and at times buildings within the districts. It was learned that some schools, despite having adopted the standard protocols, deviated from them.

The recently adopted amendments to the School code addressing truancy has greatly assisted districts in clearing up the ambiguities found in the old act. Formalized family notice requirements, including the mandated development and employment of diversionary programs, were included in the new act. Student attendance improvement conferences are a precondition of referral to a MDJ or Children and Youth for either enforcement or intervention. The schools are required to document the outcome of any attendance improvement. Under the new attendance law, schools cannot expel, suspend, transfer, or reassign a child to disciplinary placement such as AEDY for truant behavior.

While a school district may not suspend or expel a child for attendance issues, the subjective term "disobedience and misconduct" remains the operative standard. The Education Code vests in the building principals the authority to enforce in-school suspensions; however, out-of-school suspensions and expulsions are under the purview of the school board. Zero tolerance policies and the practice of referral to the Juvenile Justice system (Delinquency or Dependency) are often a byproduct of disparate practice test policies of the respective school boards. These practices have reflected adversely with the disproportionality outcomes of minority penetration.

A number of our suburban school districts were a derivative "red lining", i.e. with restrictive covenants underpinned in part to race . These restrictions were later declared unconstitutional. Many of these earlier formed school districts depict a statically lower

percentage of minority constituency to that of the County and certainly distinct from that of the city.

Over ten years ago, I had the honor to serve on the Interbranch Commission on Juvenile Justice, which focused on the policies and procedures being practiced in the Luzerne County Juvenile Court. One of the areas of great concern was the issues generated by the schools in Luzerne county. The Commission found in part the following:

1. In Luzerne County, school referrals made under zero-tolerance policies were integral to the overall scheme as they provided an easy removal of children from their homes and schools and a constant stream of children to be placed into detention. The commission believes that zero-tolerance and allowing schools to use the justice system as its school disciplinarian has no place in the educational process or in the juvenile court system. To that end, it is recommended the entities identified above develop and expand programs that would support at- risk students and expand affordable and available diversionary programs, while at the same time reduce unnecessary and inappropriate school referrals;

2. During the course of the testimony, it was clear that the Department of Education and the schools were not thoroughly familiar with how the juvenile justice system operates. Nor did the department seem to understand that juvenile justice and traditional educational programs cannot be viewed as separate "silos". Even when youth are appropriately referred to the juvenile justice system, their connection to traditional schools is never severed. Probationers attend school and youth who are placed eventually return to their neighborhood schools. Similarly, law enforcement, the District Attorney's Office, and other key groups associated with the juvenile justice system, should be better informed of how schools appropriately deal with discipline issues when they arise on school campuses. therefore, the commission recommends these groups collaborate to create an educational program necessary to assure that all stakeholders are fully aware of how each of these organizations operate. Additionally, resources must be available to achieve the stated and aspirational goals of both the Department of Education and the juvenile justice system. It is suggested that the Department of Education consider partnering with the Pennsylvania Bar Association to assist in the creation and implementation of these programs, especially since the PBA has a focus on law-related education and has experience developing programs that protect, motivate and educate Pennsylvania's children;

3. It is further recommended that the above-stated groups work together to foster a relationship of cooperation, mutual support and the sharing of information and resources between their various organizations as they work together to maintain physical security and safety of schools in their districts as well as achieving the goals of the Pennsylvania juvenile justice system - holding youth accountable to victims, providing competency development for youth and ensuring community safety;

4. In addition, the commission heard testimony about Luzerne County students who were on probation being drug tested in school and having their juvenile justice status revealed to

the rest of the student body. These students were embarrassed and even ostracized by their classmates and teachers. The commission recommends that school districts develop protocols to keep the juvenile justice status of students confidential.

The findings of the Commission that schools were utilizing the justice system as its disciplinarian system regrettably appears alive and well today. At least 23?% of the students attend schools with police but lack other support personnel such as nurses , social workers and counselors . The demographic response for the years of 2013 to 2016 saw an increase in student arrest of 24% Compared nationally Pennsylvania was 3rd for arrest of Latin girls and disabled students and 2nd for Latin student arrest and 2nd for black student arrests.

It is recorded in the 2018 Delinquency dispositions that did not result in an out-of-home placement (Informal Adjustment, Consent Degrees, Probation)Black Non-Hispanic youth comprised a smaller proportion of cases, while White Non-Hispanic youth comprised a larger proportion of cases of all delinquency dispositions. For out-of-home dispositions, the proportion of both Hispanic and Black Non-Hispanic youth exceeded their representation in the total number of delinquency dispositions.

The number of Black Non-Hispanic youth (59.5%) within secure placement settings was disproportionate to the percentage of Black Non-Hispanic youth in all placement dispositions at (43.1%). Black-Non-Hispanic youth exceeded their representation in the total number of delinquency dispositions.

The number of Black Non-Hispanic youth (59.5%) within secure placement settings was disproportionate to the percentage of Black Non-Hispanic youth in all placement dispositions (43.1%). Black Non-Hispanic youth comprised 56.4% of all secure detention admissions in 2018.

White Non-Hispanic youth comprised a smaller proportion of cases transferred to criminal proceedings (29%) compared to the 45.7% represented in all Delinquency dispositions statewide. Black Non-Hispanic youth comprised a greater proportion of cases transferred in criminal proceedings (56.5) than what is reflected in all Delinquency dispositions (36.4)

Importantly delinquency placements have declined each year since 2014 by 29% statewide.

School related suspensions and expulsions mirror that of the Juvenile justice system.

For example: William Penn High School of York of the York City School district pursuant to 2017 published data is composed of approximately 1130 students with a reported composition of 43% black, 44% Hispanic. 10% white, 2% two or more races and 1% Asian.

Central School District High School an adjoining district is composed of approximately 1,800 students with 72% white, 11% black, 9% Hispanic, 4% two or more races, 4% Asian.

York Suburban School District is composed of approximately of approximately 867 students.7% black, 5% Hispanic, 77% white, 6% percent Asian, and 8 % two or more races. Sixty arrest were made

At Central High School –White students are 3.6 times more likely to be chosen for gifted programming an AP classes than Blacks and Hispanics courses and Blacks and Hispanics are more likely to be suspended, expelled and arrested with a discipline rate of Blacks and Hispanics 8.3 times more than whites. No whites were expelled 30 referrals for arrest were made with 5 arrests.

At York Suburban High School White students were 2.8 times as likely to be chosen for gifted and or AP classes while black students were 8. .4 times as likely to be suspended. Blacks constituted 100% of the expulsions .

Diversionary programs such as our Youth Court Alliance mirror the proportionality of the student population of the schools.

Youth Court Alliance Student Demographics from York City School District:

York City	Student
White (not Hispanic/Latino)	18.8%
Black/African American	43.2%
Asian	.6%
American Indian/Alaska Native	1.1%
Hawaiian/Pacific Islander	1.1%
Latino/Hispanic Origin	49.4%
Unknown/Refused	2.8%

Note : Youth Court Alliance only served 7th grade through age 16. Also, important to note that we collected demographics from 176 students to calculate the above percentages. We did receive another 549 referrals from York City however the remaining students did not enroll, so those demographics are not captured.

While school truancy has recently been statutorily removed from the disciplinary equation, it appears clear that the Disproportionate Minority Contact is more a function of a system of inequities and biases as opposed to differential behavior patterns among minority youth or individual character and social history.

The stigma within a peer group that arises from school suspensions and expulsions and arrests is not dissimilar to that raised through disclosure of a student's juvenile justice status. It does not take a leap of the imagination to connect school suspension to diminished academic horizons. The child falls behind, is stigmatized by suspension, resulting in falling further behind and probable withdrawal from the school system altogether. Failure to address the educational needs increases the risk of behavioral issues at school and future court involvement. Expulsions create a far greater impediment. The adoption of zero tolerance policies with severe consequences such as expulsion and referral to the court system should inspire school boards to look at the individual child's history rather than applying a "one size fits all" approach .The available school demographic data reflects a disproportionality in the racial makeup comprised of in and out of school suspensions, expulsions, and referral to law enforcement and arrest. This disproportionality is likewise reflected in the rate of minorities entering the juvenile justice system and those charged with summary offenses before the MDJ. The adverse repercussions of employing the criminal justice system as an enforcement tool for conduct which should be dealt with as a school disciplinary problem are numerous and profound.

Best practices alternatives to the criminal justice pipe line must be explored. The success of York County's Youth Court Alliance promotes strong consideration being given to the recommendations of the Advisory Committee to the Joint State Government Commission on the use and effect of Youth Courts. The foregoing makes an urgent call for the recognition of the dignity of our students and the pressing need to commit to action.

Statement Presented to the
Pennsylvania Advisory Committee
U.S. Commission on Civil Rights

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Background

The "school-to-prison pipeline" refers to various policies and practices that push children in kindergarten through twelfth grade—especially those who are most at-risk—out of school classrooms and into the juvenile and criminal justice systems. Ultimately, the school to prison pipeline metaphor suggests that students who are punished in school become disengaged and alienated, then either drop out altogether or are pushed out with the use of exclusionary discipline, such as suspension and expulsion. Then, when students are no longer in their schools, the likelihood of involvement in the justice system increases, a consequence that is most common among black and Latinx kids (particularly those who are poor) as well as those with special learning and emotional needs. There is additional evidence that schools are actually encouraging this process of ridding themselves of certain students in order to bolster test scores for their institutional benefit.

The pipeline reflects the expansion of student criminalization to the detriment of educational objectives. But, not only does exclusion from the classroom disrupt student education, the removal of students from the school's structured environment may foster misbehavior and provide more time and opportunities for getting into trouble. Research demonstrates that students who receive the harshest school discipline are more likely to repeat grades, drop out, commit crimes, and eventually be incarcerated. Further research specifically suggests that suspension causes those negative outcomes. Several policies and practices have contributed to this phenomenon of ushering students from the schoolhouse to the jailhouse track. Yet one particularly troubling aspect of this process is that because these harsh disciplinary practices have been disproportionally applied to students of color, black and Latinx students are more likely to experience the school-to-prison pipeline. In this report, I describe trends in school

discipline, detail the policies that contribute to the school-to-prison pipeline, and explain how these policies and practices have unequally targeted minority students. I address Pennsylvania-specific concerns where possible, but the limited publicly available data on school discipline within school districts and schools necessarily limits my what I can report here. I conclude by responding to the questions posed by the Commission and offer suggestions for decreasing disciplinary disparities in Pennsylvania.[1]

Trends in Punitive School Discipline

Aside from their primary educational objectives, schools have typically sought to protect youth from delinquency and criminal victimization. Schools continue to serve as an institution of social control, aiming to keep juveniles away from street crime, although the last couple of decades have seen a notable intensification of school-based social control. The discipline and punishment of students has become exceptionally harsh—a trend that mirrors the mounting punitiveness in the criminal justice system. And, as with falling crime rates, rates of student delinquency, student drug use, violent school victimization, and school-related death have declined since the early 1990s, despite perceived increases. While there is a tremendous range of possible responses to modern student misconduct by teachers and school administrators, some increasingly restrictive school practices are being used, including more teacher referrals to the principal, more exclusion from class time, more detentions, more suspensions, and more expulsions.

Some argue that the criminal justice approach to discipline is a direct consequence of the "moral panic" that followed high profile campus shootings and other notable instances of school violence. Media portrayals of growing violence, pervasive in the late 1980s and 1990s, may have

[1] For readability, citations are not embedded in the text. References are listed at the end of this report.

encouraged this moral panic, resulting in public and political support for punitive responses to a perceived mounting crisis. This effect seems plausible even though most schools reported no such crimes and overall school violence decreased or remained static after the early 1990s. One outcome of the anxiety about school violence is that various teachers' unions, parent groups, and policymakers united to enact harsh mandatory policies, like zero tolerance. However, even before the killings at Columbine and the school shootings that followed, the public was especially concerned about what they perceived to be an urgent situation among students.

Increased school accountability for academic performance is another explanation offered for the heightened application of criminal justice tactics in educational settings. Over the last few decades, many supported holding schools and teachers more responsible for deficient student academic outcomes. But instead of requiring better work from educators, many schools increased their suspensions and expulsions to facilitate the removal of those students responsible for the failing test scores that made those schools look bad. So it is not just mandatory discipline that expanded, but discretionary suspensions and expulsions as well. Many low-performing students have been pushed out of school as a result of discretionary disciplinary policies.

Others argue that the criminalization of student discipline derives from the concerns of teachers and principals about possible litigation for using exclusionary school punishments that did not fall under mandatory disciplinary structures. With greater legal attention being given to the standardization of student treatment and avoidance of arbitrarily applied suspensions and expulsions, school administrators now increasingly call on third parties, like law enforcement and juvenile courts, to handle matters of student delinquency. These disciplinary methods allow teachers and principals to continue responding to student misbehavior while reducing their own vulnerability to personal lawsuits.

Another explanation for how the school to prison pipeline developed pertains to general support for "getting tough" and expanding punitive controls in a variety of American institutions, including schools. Much like other governmental institutions, schools developed a crime-control approach to education. School reactions to delinquency mirror what had been occurring in the criminal justice system, as well as throughout other government operations. Rising crime rates and the challenge to the rehabilitative ideal in the late 1960s and 1970s led to an ardent focus on retributive punishment and treating juvenile behavioral problems with criminal justice responses. Student problems, such as illiteracy and poor academic performance, were redefined as analogous to crime, thus criminalizing students, teachers, and administrators who were subsequently viewed as accountable for these problems and absolving the political and economic system and its leaders for these failures.

Yet, another plausible explanation for the punitive discipline that contributes to the school-to-prison pipeline is that it provides a means to impose social control on youth of color. Many of the more punitive practices, like suspension and expulsion, that students experience are the direct result of the implementation of zero tolerance policies, which generally refer to federally mandated suspensions for bringing guns to school, but can also include mandatory consequences for a variety of other misbehaviors identified by individual institutions. Regardless of the ever-escalating severity in recent school disciplinary policies, school boards, school administrators, and parents continue to call for even harsher student treatment.

How Zero Tolerance Policies Contributed to School-to-Prison Pipeline

While zero tolerance is a policy position that many may associate with a particular school disciplinary ideology, it did not originate within educational institutions. The zero tolerance

concept was introduced as a deterrence-oriented philosophical approach to criminal justice in the 1980s, signifying that no "tolerance" of drug crimes—whether major or minor—would be permitted. Its first use in 1983 referred to 40 U.S. Navy submarine crewmembers who were suspected of using drugs and subsequently reassigned. The term was again used in 1986 when a U.S. attorney promoted a program that would impound sea vessels found to contain any amount of drugs. The popularity of this program prompted the U.S. Attorney General to apply an overall zero tolerance approach by mandating that customs officials seize the vehicles and passports of all individuals found to be crossing a U.S. border with any illegal drugs before prosecuting these offenders in court for a federal crime. The essence of zero tolerance meant that any violation of a drug law would be punished without regard for current or past circumstances and would not allow for judicial discretion of any kind.

A similar ideology that aimed to deter potential rule violation and to incapacitate known offenders was behind the implementation of zero tolerance policies in U.S. schools. This zero tolerance-style approach to drugs in public schools was institutionalized in Reagan's Drug Free Schools Act of 1986. Because of rising public concern about student safety and school violence, despite statistics indicating relatively stable school crime rates over time, the U.S. government passed the Federal Gun-Free Schools Act of 1994. This Act required that any student in elementary or secondary school who was in possession of a firearm on school grounds be automatically expelled for one year as well as be referred to local law enforcement. Although the Act expressly articulates that each district's superintendent is allowed the latitude to modify expulsions on an individual basis as needed, Pennsylvania schools that adopted zero tolerance did not officially make use of this contingency. This does not mean, however, that Pennsylvania

schools themselves did not use discretion—discretion that very likely has contributed to racial and ethnic disparities in school discipline.

The Gun Free Schools Act was the federal government's first attempt at influencing school discipline at the local level. Since the federal government does not have the authority to mandate school and district disciplinary action on behalf of states and school districts, it influenced school policy in other ways. This Act, as part of the Improving America's Schools Act of 1994, offered financial incentives for complying (and penalties for not complying) with this federal policy and for increasing safety in schools. Much of the financial support schools received for compliance went toward enhancing school security measures, such as hiring school resource officers (SROs), installing metal detectors, introducing drug sniffing dogs, and using electronic surveillance of students.

This Act is directly responsible for prompting a dramatic increase in the number of state-level zero tolerance laws, including those in Pennsylvania. The original Federal Gun-Free Schools Act of 1994 pertained solely to firearms. However, most states, districts, and schools expanded the reach of their zero tolerance programs to include provisions for automatic, discretion-free pre-determined punishments for a variety of additional violations of school rules, many of which are not considered illegal and some of which might be considered somewhat trivial. While specific school policies vary, in various Pennsylvania schools a zero tolerance philosophy has been voluntarily adopted toward alcohol, drugs, tobacco, bullying, fighting, swearing, disruptive behavior, and wearing certain clothing, thereby exponentially increasing the proportion of American students who have been subjected to punitive treatment that has excluded students from the classroom.

Expulsion was the disciplinary consequence attached to violations of the Federal Gun-Free Schools Act of 1994. Expelling students, whether indefinitely or permanently, removes them from a school and is the most extreme and punitive punishment available to academic institutions. With additional student behaviors increasingly being included in schools' zero tolerance policies, a range of other punitive forms of discipline were introduced, including out-of-school and in-school suspension. Both long- and short-term out-of-school suspensions, which temporarily remove students from schools, are methods that have been used to discipline unwelcome behaviors. In-school suspension removes students from the classroom for a set period of time and carries out the discipline on school grounds, while out-of-school suspension banishes students from the property. As with expulsion, both types of suspensions are exclusionary in nature, removing the student from the larger school community.

Prevalence of Zero Tolerance School Policies

Because school-based zero tolerance policies in the U.S. are implemented at the state and district levels, there is limited national data about how many and which schools have instituted this approach to addressing school violations. Publicly available data in Pennsylvania also do not make the prevalence or nature of zero tolerance punishments in the state clear. In addition, the lack of a singular definition of zero tolerance makes estimating its prevalence in schools problematic. It is apparent, however, that a zero tolerance approach to discipline has been firmly entrenched in American schools; the National Center for Educational Statistics and the Bureau of Justice Statistics report that about 94 percent of public schools in all fifty states adopted and used zero tolerance policies in response to the federal government's mandate regarding firearms. In addition, research indicates that zero tolerance policies had been voluntarily expanded by some

Pennsylvania districts and some schools for other types of weapons, drugs, alcohol, and fighting. Zero tolerance policies in the U.S. became even more prevalent than these statistics would suggest, however, since there are districts and schools that have elected to apply a zero tolerance approach to certain less dangerous or problematic behaviors, many of which implicitly target students of color.

Racially and Ethnically Biased School Discipline

It is important to understand how punitive school discipline was manifest in America's schools in order to appreciate how it has been used to disproportionately punish black and Latinx youth, including in Pennsylvania. The considerable overrepresentation of black and to a somewhat lesser extent, Latinx students receiving punitive consequences to problem behavior is particularly concerning. Research clearly documents that students of color experience more intense punishment in school than white students and receive punitive treatment more frequently for less serious offenses. Statistics indicate that black and Latinx students are more likely to be suspended than white students. In fact, minority students are suspended three times more frequently than white students. Expulsion is also more frequently assigned for violations by black and Latinx students. Importantly, students of color are less likely than white students to receive mild or restorative disciplinary alternatives.

Several explanations for disproportionate punitiveness toward black and Latinx students have been suggested in previous research.

The most obvious explanation for the racially and ethnically disparate discipline practices of schools would be that black and Latinx students are disproportionately involved in delinquency, thereby justifying their overrepresentation in punitive disciplinary practices.

However, studies have shown that, in fact, black and Latinx students have not misbehaved or participated in delinquency at a higher rate than whites and that racial and ethnic disparities in discipline, including mandatory discipline, are not attributable to differences in offending.

Using similar reasoning, some have argued that since zero tolerance policies presumably remove discretion from school control, black and Latinx students receive more punitive punishments because they more frequently engage in behaviors that result in mandatory sanctions. However, while minority students are more often punished as a consequence of zero tolerance measures, there is actually a considerable amount of individual-level discretion employed in determining which student behaviors are addressed by them. Research suggests that mandatory sanctions, like suspension, are actually preceded by a series of non-violent events that culminate in a singling out by the teacher for a single disruptive behavior. This finding is relevant because it indicates that harsher outcomes for students of color are not merely a reflection of more violations punishable by mandated suspensions, but also importantly involve the discretion of teachers and administrators in identifying and acknowledging those behaviors.

Another frequently cited explanation for disparities is that it may be attributable to socio-economic differences and that any relationship between race and punitive discipline is partially, if not completely, spurious. This would make sense, because statistics indicate that poorer students are, in fact, more likely to be targeted by harsh school practices. Because minority students disproportionately come from low-income families, some have reasoned that they are more likely to be subjected to punitive discipline—not because of race, but because of economic disadvantage; that the apparent conflation of race with poverty results because schools with greater percentages of poor students tend to exist in areas that have more minority students who encounter the negative consequences of economic deprivation. Although this argument may be

compelling, research indicates that black and Latinx students are still punished more often and more harshly by schools, regardless of their economic status.

Since students of color do not appear to be violating school policies at a greater rate than other students, yet are being treated more punitively than white students regardless of economic disadvantage, misbehavior, attitudes, academic performance, parental attention, or school organization, many have concluded that racial and ethnic bias or discrimination are to blame for their disproportionate involvement in school discipline. Of course, racial/ethnic disparity in itself is not an indicator of discrimination, but with delinquency being equal, harsher punishments have been attributed to racial and ethnic bias. There are certain indicators of bias in public schools, with white teachers having more negative attitudes than black teachers toward minority students. Since much discipline originates in the classroom, such as the number of disciplinary referrals made by teachers being very uneven, teacher racial bias could be responsible for racially disparate discipline. Minority students may be *perceived* by teachers and school administrators to disproportionally engage in delinquency—despite findings that they do not—and that these perceptions may lead to more severe punishments being imposed. Research suggests that this bias may come from the belief that black and Latinx students are engaged in more school delinquency, a possible result of the perceived "adultification" of minority boys, in particular. However, it is difficult to assess whether bias and discrimination contribute to disparate school discipline, because measuring it might require school teachers and administrators to explicitly reveal their biases, which they may not be inclined to do and which they may not even recognize.

There is also an evident school-level effect of student race and ethnicity on disciplinary disparities. Recent research has found that racial and ethnic composition of schools contributes to

the intensification of punitive school discipline. The studies that have examined how racial and ethnic composition of students in schools have predicted that the implicit connection between race/ethnicity and crime potentially made by teachers, administrators, and policymakers at the local level have found that harsher policies and practices are used in schools with more black and Latinx students, possibly in order to control what may be perceived as a growing threat to safety—a perception that is rooted in the criminal typification of race and ethnicity. Schools with a greater percentage of black students more often implemented punitive discipline (such as withdrawal of a privilege, detention, and in-school suspension), zero tolerance policies (requiring automatic suspension for the possession of items such as tobacco, drugs, or weapons), and extremely punitive discipline (such as expulsion and reporting to police) for student misbehavior. Research has found that schools with proportionally more black students were less likely to implement mild forms of discipline (such as referrals to a school counselor, parent conferences, and oral reprimands) and restitutive discipline (such as making repayments for harm caused and community service). These effects exist despite the effect of several important school level influences, including student body economic status, student delinquency and drug use, perceived lack of school safety, teacher victimization, concentrated disadvantage, urbanicity, student Latinx composition, percent of male students, principal and administrative leadership, and discipline training of staff. It is important to note that there is some race- and ethnicity-specific factor that persists in intensifying discipline, regardless of levels of delinquency and delinquency salience in schools. Further evidence of this effect is that the appeals process for disciplinary action is more powerful in schools with more middle-class white students; discipline is more easily contested and avoided by students in those schools.

Children with special learning or emotional needs are also more likely to be pushed from schools to the justice system. Some studies have suggested that kids who are eligible for additional support and services as required by federal law are often never identified, resulting in their acting out, which may lead to suspension, expulsion, or juvenile court involvement. One study reported that up to 85 percent of children in juvenile detention facilities has a disability that would make them eligible for special education services, yet fewer than 40 percent had actually received them from their schools before they were incarcerated. Racial attributes compound this effect, with black students with disabilities being four times as likely as whites to receive further education in a correctional facility.

Recommendations for Pennsylvania Advisory Committee

Given the negative consequences for students, schools, and communities detailed above, the value of harsh approaches to student misbehavior must be reconsidered. There are a number of policies that offer promising solutions to the school disciplinary problems the Pennsylvania Commission seeks to address. These solutions hold promise for reducing the school-to-prison pipeline, generally, but will also allow for Pennsylvania Department of Education to reduce the negative outcomes that are disproportionally experienced by students of color in the State.

First, better, more thorough data need to be collected in Pennsylvania with regard to student misbehavior, discipline, and race/ethnicity. With deeper knowledge about the dynamics happening in schools, we can attempt to remediate disparities. We need to know not only the race and ethnicity of the students suspended and expelled, but also how other student infractions are dealt with. What alternatives are available and used? How frequently are the same students being re-disciplined for the same or different behaviors? What is teacher/principal training like in

each Pennsylvania school? How are de-escalation methods being used by school staff? More detailed record-keeping—and budgetary/staff support of that record-keeping—would help. Although the Final Report of the Federal Commission on School Safety that was released in 2018 emphasizes not measuring or focusing on these disparities, Pennsylvania can and should go beyond new federal minimum requirements. With more detailed data, we would also be able to better assess student needs related to problems (personal or academic) that may precede misbehavior and discipline, and we can better assess how racial and ethnic disciplinary disparities in the State develop.

Further, it would be helpful for the State to collect both short-term and long-term data about disciplined students following their discipline in order to know to what extent this experience exacerbates the school-to-prison pipeline effect. This will enable the State to know if the discipline itself may be contributing to negative experiences like grade retention, decreased graduation rates, under-employment, and criminal justice involvement. Further, short- and long-term school-based data on school climate can help reveal the ways that school discipline is affecting the students who are *not* subjected to discipline, particularly as it relates to race and ethnicity. It is possible that productive school discipline strengthens the overall school community. But it seems more likely that it would degrade it. Without collecting relevant data, the Pennsylvania Department of Education is not in a position to make this determination.

Restorative justice disciplinary framework has been identified as a successful alternative to punitive discipline within schools. Restorative practices strive to repair harms caused by an offense while preventing further offenses from occurring; these practices are generally facilitated through reconciliation conferences involving offenders, victims, and community members. Although originally used as an alternative criminal justice remedy, some supporters contend that

restorative justice is best applied within educational institutions, wherein school community members interact day after day. As opposed to student exclusion facilitated by zero tolerance and other reactionary practices, restorative approaches focus on relationships within the school, shifting from the objectives of punishment and isolation for predetermined transgressions to reconciliation and community-building. Pennsylvania is currently using restorative practices, but these could be expanded and even mandated. Further, policy could be passed to endorse restorative discipline in lieu of (rather than in addition to) exclusionary discipline. As of now, complete information is unknown, since—as with some zero tolerance practices—many districts and schools do not track restorative justice efforts.

The underlying thesis of restorative practices is that individuals are far more successful in environments of social engagement rather than social control. Thus, the goal of restorative justice is to build empathy and enthusiasm and rid the school and neighborhood communities of the negativity, anger, and humiliation that are common within a zero tolerance climate. A restorative approach to discipline is more responsive to the needs of students, schools, and communities than zero tolerance policies, because they focus on restitution, resolution, and reconciliation rather than inflexible retribution, deterrence, and incapacitation, which create no productive path for a forward trajectory. Within the restorative justice model, student misbehavior is viewed as a violation of a relationship, either between the offender and a victim or between the offender and the overall school community. Thus, in order to restore the harm caused, the offending student and those individuals whose trust was violated must reconcile, thereby mending this relationship. As opposed to a zero tolerance framework, negative labels are not applied and students perceived as problematic are given a pro-social way to move beyond their misbehavior. The importance of building and maintaining positive relationships among all

members of the school community is continually stressed; community members will adhere to school rules and norms so as to avoid negatively impacting these valued relationships. Importantly, rather than punishing students for wrongdoings, a restorative justice approach works with these students, helping them understand how their behavior impacts others. This helps misbehaving students resist further violations, avoid compromising their educational attainment, and direct them away from the school-to-prison pipeline that exclusionary discipline has galvanized. Importantly, it would help reduce the possibility that racial and ethnic bias and discrimination negatively affect students. Any disparate use of restorative practices would be less detrimental to students and their school communities.

Other promising alternatives to exclusionary discipline include techniques that exemplify the restorative justice approach, yet may be used independently. Examples include restorative circles, student conferences, and peer mediation; all of these practices allow the victim, offending student, and school community members to understand the harm that occurred, focus on what can best address this harm, thoughtfully assign accountability and responsibility, and reintegrate all parties within the school community. These techniques often lead to solutions such as restitution, which requires the offending student to repay the school or a victim for damages or injuries, or community service, which allows students to simultaneously repair harms while observing the negative consequences of them.

Research on these disciplinary alternatives to zero tolerance in schools has illustrated the effectiveness of these approaches as a response to student misbehavior. Regardless of zero tolerance policies, schools that have implemented these alternative practices have experienced an overall decrease in the use of suspension and expulsion. Students in these schools experience fewer disciplinary infractions and office referrals and demonstrate lower levels of misbehavior

and deviance. These students also experience fewer incidents of victimization, including bullying victimization, and display a decrease in absenteeism and an increase in academic achievement. Several studies have found that these results remain strong across different racial and ethnic student groups, which is an important finding given the well-established disparities in school discipline. Morale and climate in schools that use alternatives to punitive policies improve as a result of these restorative approaches; students report more positive relationships with their teachers and perceive their teachers as more respectful and supportive.

Exclusionary discipline should be used only when absolutely necessary, if at all. By reallocating resources available to schools and districts for the facilitation of alternative behavioral programs, which would include additional teacher and administrator training, collaboration among students, parents, and school staff, attention to students' learning needs, and a special focus on fair and equitable application of discipline, schools can avoid the pipeline from school to prison.

This kind of reorientation would likely require a significant change in thinking with regard to student needs and school communities. While school safety and student accountability remain important priorities, addressing them without considering the larger context of race and ethnicity is counterproductive. This kind of transformation can be dramatic, but given the many benefits of using a restorative framework, schools and school districts have every incentive to facilitate policy reform.

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STATEMENT OF MELANIE WILLINGHAM-JAGGERS, DEPUTY EXECUTIVE DIRECTOR
Gay, Lesbian, Straight Education Network (GLSEN)
BEFORE
THE PENNSYLVANIA STATE ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS

November 19, 2019

I. Introduction and Background

My name is Melanie Willingham-Jaggers and I am the Deputy Executive Director of GLSEN. Thank you for inviting GLSEN to the briefing on your efforts to examine the civil rights implications of school disciplinary policies and practices in the Commonwealth of Pennsylvania. GLSEN is the leading national organization on lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ) issues in K-12 education. As an organization that believes all students deserve a safe and affirming school environment regardless of actual or perceived sexual orientation, gender identity or expression, we are also very concerned with the impact of discipline policies on educational attainment and the long-term wellbeing of students.

Volunteers in communities across the country have come together to form over forty GLSEN Chapters to advance our mission to make schools safer for all. Today, I want to acknowledge the service and leadership of GLSEN Philly and GLSEN Bucks County who are making a difference in the Commonwealth. GLSEN Chapters work with our Education and Youth Program to provide professional development, curriculum, and many other resources to educators. They work closely with GLSEN's Community Mobilization team to organize events and build the capacity of volunteers to support students and educators. Our Chapter leaders look to our Public Policy Office for ideas on state legislation and administrative policies that can make schools safer. GLSEN's Research Institute provides Chapter leaders with foundational knowledge on the experiences of LGBTQ students. Our research supports all of our work at the federal, state, and local levels in communities across the country.

I. State Snapshot on School Climate in Pennsylvania

For over 25 years, GLSEN has conducted research on the experiences of LGBTQ students, many of whom experience bullying and harassment at school. In 2017, GLSEN conducted the tenth National School Climate Survey, a biennial survey of the experiences of LGBTQ youth in U.S. secondary schools. The national sample consisted of 23,001 LGBTQ students from all 50 states, the District of Columbia, and all 5 major U.S. territories. A total of 815 respondents were attending schools in Pennsylvania. The data show that LGBTQ students across the Commonwealth attend school regularly in unwelcoming environments, at best, and unsafe, at worst. .[1]

A. The vast majority of LGBTQ students in Pennsylvania regularly (sometimes, often, or frequently) heard anti-LGBTQ remarks. Some also regularly heard school staff make homophobic remarks (19%) and negative remarks about someone's gender expression (36%).

[1] Kosciw, J. G., Greytak, E. A., Zongrone, A. D., Clark, C. M., & Truong, N. L. (2018). *State Snapshot: School Climate in Pennsylvania*: New York: GLSEN.

B. Most LGBTQ students in Pennsylvania experienced anti-LGBTQ victimization at school. They also experienced victimization at school based on religion (26%), disability (26%), and race/ethnicity (20%). Most never reported the incident to school staff (54%). Only 35% of students who reported incidents said it resulted in effective staff intervention.

C. Many LGBTQ students in Pennsylvania reported discriminatory policies or practices at their school. More than 3 in 5 (61%) experienced at least one form of anti-LGBTQ discrimination at school during the past year.

D. Many LGBTQ students in Pennsylvania did not have access to in-school resources and supports. For example:

1. Only 13% attended a school with a comprehensive anti-bullying/harassment policy that included specific protections based on sexual orientation, gender identity, and gender expression.

2. Only 13% had a policy or official guidelines to support transgender or gender nonconforming students.

3. Only 2 in 5 (41%) reported that their school administration was somewhat or very supportive of LGBTQ students.

4. The vast majority (97%) could identify at least one school staff member supportive of LGBTQ students, but fewer (61%) could identify 6 or more supportive school staff.

5. Fewer than 1 in 5 (18%) were taught positive representations of LGBTQ people, history, or events. Fewer than 1 in 10 (6%) reported receiving LGBTQ-inclusive sex education at school.

GLSEN applauds recent efforts in Pennsylvania to reduce incidents of bullying and harassment. A recent Equity and Inclusion initiative championed by Governor Tom Wolf and managed by the Pennsylvania Department of Education's Office for Safe Schools seeks to make schools safer for all students, regardless of race, ethnicity, sexual orientation, gender identity, or gender expression. The initiative's website houses information on the Commonwealth's Bullying Prevention Consultation Line. In addition, the site hosts resources created by GLSEN and other organizations on how to support the near-term and long-term educational attainment, health, and wellbeing of LGBTQ students. We welcome the opportunity to continue to work with students and educators in Pennsylvania to support and build on these efforts.

II. Civil Rights Implications of School Disciplinary Policies and Practices

Interventions to address bullying and harassment, create a positive and safe school climate, combined with evidence-based discipline policies and practices, such as Positive Behavior Interventions and Supports (PBIS), can minimize suspensions, expulsions, and other exclusionary discipline policies to

ensure that students are not "pushed-out" of schools and/or diverted to the juvenile justice system. The overrepresentation of Black/African American, Latino, and students with disabilities in the school-to-prison pipeline is demonstrated in a significant body of research. Emerging research suggests LGBTQ students are disproportionately impacted as well.[2] Therefore, GLSEN advocates for discipline policies that rely on positive and restorative approaches that do not disproportionately target LGBTQ students, students of color, English Language Learners (ELL), or students with disabilities.[3]

A. Research on LGBTQ Students and the School-to-Prison Pipeline

GLSEN authored a report titled *Educational Exclusion: Drop Out, Push Out, and the School-to-Prison Pipeline among LGBTQ Youth* to expand the existing body of literature on potential pathways that push youth out of school and potentially into the criminal justice system. Research contained in the report is based on surveys of a national sample of LGBTQ middle and high school students. Key findings[4] from the report include the following:

1. The use of harsh and exclusionary discipline policies has contributed to higher dropout rates as well as reliance on alternative educational settings where educational supports and opportunities may be less available, including alternative schools or juvenile justice facilities. These forms of discipline may be applied disproportionately to LGBTQ youth and deprive them of educational opportunities.

2. Students who fail to complete high school may be limited in the vocational, and economic success they can achieve in later life. LGBTQ students may be more likely to drop out of school due to hostile school climates they may face, in addition to potential other challenges outside of school caused by discrimination and stigma.

3. Youth who experience harsh discipline at school may be less likely to graduate from high school— either because they no longer feel welcome at school, or, perhaps, because the disciplinary sanctions resulted in them being removed from school (either through expulsion or involvement with the criminal justice system).

4. The increasing use of disciplinary approaches in school, aside from the consequences of pushing students out of school, also has had the unfortunate effect of increasing youth involvement with the juvenile and criminal justice systems.

B. Existing School Discipline Policies and Practices in Pennsylvania

GLSEN has not conducted in-depth research and analysis on school discipline policies in Pennsylvania. However, other organizations have published the results of their studies. In 2019, the Education

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[2] Palmer, Neal A., Greytak, Emily A., and Kosciw, Joseph G. (2016). *Educational Exclusion: Drop Out, Push Out, and the School-to-Prison Pipeline among LGBTQ Youth*. New York, New York.

[3] GLSEN (2018). *Policy Recommendations to Support LGBTQ Students: A Guide for District and School Leaders*: 6. New York: GLSEN. Available at https://www.glsen.org/activity/respect-all-policy-recommendations-support-lgbtq-students

[4] Palmer, Neal A., Greytak, Emily A., and Kosciw, Joseph G. (2016). *Educational Exclusion: Drop Out, Push Out, and the School-to-Prison Pipeline among LGBTQ Youth*. New York, New York.

Commission of the States authored a profile on the Commonwealth's current school discipline policies and practices across multiple areas of concern.[5]

Based on the Commission's profile, students in Pennsylvania have a mix of positive and punitive policies and some that need clarification to center the student educational experience. A student may currently be suspended or expelled for defiant or disruptive behavior. Corporal punishment is prohibited. Today, a student in Pennsylvania must be expelled for possession of a firearm or other weapon. Educators are required to involve law enforcement to address possession of a firearm or other weapon. Superintendents must report information on these incidents to the state Department of Education. Non-punitive alternatives to harsh discipline may be available through the Office of Safe Schools. The Office provides grants to support PBIS and other restorative practices. In addition, there are some alternative education programs available for students who have been disruptive.

C. GLSEN's Policy Recommendations

LGBTQ students who are absent because they feel unsafe in the school environment may be at greater risk for referral to law enforcement and the court system. Those who are victimized are more likely to come into contact with school officials especially when they attempt to address victimization incidents. School officials may then involve law enforcement in their disciplinary approaches. When LGBTQ youth violate school policies, they may ultimately be referred to law enforcement as a form of discipline or intervention.[6] To prevent and alleviate these and other harms discussed here, GLSEN recommends the Committee consider the following recommendations:

- Ensure that discipline policies rely on positive and restorative approaches and do not disproportionately target LGBTQ youth, students of color, English Language Learners (ELL), or students with disabilities. Educators should invest time and energy into developing positive behavior intervention systems and supports, which have a strong evidence base to suggest that such practices have a greater impact on improving school culture, decreasing student discipline issues, and increasing student academic achievement.[7]

- Ensure that any School Resource Officers (SROs) or other types of security personnel are properly trained to interact positively with all students, including LGBTQ students, especially LGBTQ students of color. Make sure that there is a clear memorandum of understanding (MOU) between the school and law enforcement about the SROs' role, responsibilities, and jurisdiction[8]

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[5] Education Commission of the States. School Discipline State Profile: Pennsylvania. Available at http://ecs.force.com/mbdata/mbstcprofgnc?Rep=SD18ST&st=Pennsylvania

[6] Palmer, Neal A., Greytak, Emily A., and Kosciw, Joseph G. (2016). *Educational Exclusion: Drop Out, Push Out, and the School-to-Prison Pipeline among LGBTQ Youth*. New York, New York: viii

[7] GLSEN (2018). *Respect for All: Policy Recommendations to Support LGBTQ Students: A Guide for District and School Leaders.* Washington, DC. Available at https://www.glsen.org/activity/respect-all-policy-recommendations-support-lgbtq-students

[8] GLSEN (2018). *Respect for All: Policy Recommendations to Support LGBTQ Students: A Guide for District and School Leaders.* Washington, DC. Available at https://www.glsen.org/activity/respect-all-policy-recommendations-support-lgbtq-students

- Adequately fund and support mental health professionals in schools so that they can provide necessary resources and interventions to students facing adverse experiences inside and outside of the school setting.[9]

- Adopt and implement clear, consistent, and comprehensive nondiscrimination legislation that protect and affirm students' sexual orientation, gender identity, and gender expression, among other important characteristics (e.g. race, religion), and prohibit discrimination against students, families, and educators on those bases.[10]

- Pass, fund, and implement enumerated[11] statewide anti-bullying and harassment legislation that protects all students, regardless of their actual or perceived sexual orientation, gender identity, gender expression, race, disability status, national origin, and religion.[12]

- Ensure that district and school policies are designed and implemented to support transgender and gender nonconforming students, who face even more hostile school climates than other students in the LGBTQ community.[13]

- Ensure that professional development and educator resources include a focus on creating inclusive learning environments in which all students, including LGBTQ students, feel safe and welcome.[14]

- Pass, fund, and implement legislation that establishes statewide collection and reporting of incidents of bullying and harassment.[15] Under this legislation, the state education agency would issue guidance to local education agencies on how to collect and report incidents. The state education agency would then be able to produce a statewide report to better inform bullying prevention efforts.

- Pass, fund, and implement statewide LGBTQ inclusive curricular standards legislation. Inclusive curricular standards that support creation of inclusive curriculum at the local level can help

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[9] GLSEN, ASCA, ACSSW, & SSWAA. (2019). Supporting safe and healthy schools for lesbian, gay, bisexual, transgender, and queer students: A national survey of school counselors, social workers, and psychologists. New York, New York.

[10] GLSEN (2018). *Respect for All: Policy Recommendations to Support LGBTQ Students: A Guide for District and School Leaders.* Washington, DC. Available at https://www.glsen.org/activity/respect-all-policy-recommendations-support-lgbtq-students

[11] Research conducted by GLSEN found that LGBTQ students who attended schools with an enumerated policy heard homophobic and racist remarks less often compared to students with no policy. They were less likely to feel unsafe in school compared to students in schools with generic or no policies. These students were also less likely to perceive bullying, name-calling, or harassment as a problem at their school compared to students in schools with a generic policy or with no policy. *See* Kosciw, J. G., Greytak, E. A., Zongrone, A. D., Clark, C. M., & Truong, N. L. (2018). *The 2017 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools*: New York: GLSEN.

[12] GLSEN (2019). Model State Anti-Bullying and Harassment Legislation. Available at https://www.glsen.org/sites/default/files/2019-10/GLSEN-Model-State-Anti-Bullying-Harassment-Legislation.pdf

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[14] GLSEN (2018). *Respect for All: Policy Recommendations to Support LGBTQ Students: A Guide for District and School Leaders.* Washington, DC. Available at https://www.glsen.org/activity/respect-all-policy-recommendations-support-lgbtq-students

[15] *See* Maryland State Department of Education. *Bullying Data Collection Manual.* Available at http://marylandpublicschools.org/about/Documents/DSFSS/SSSP/Bullying/BullyingGuidanceKPreview.pdf; Maryland State Department of Education. *Bullying, Harassment, or Intimidation in Maryland Public Schools.* Available at http://marylandpublicschools.org/about/Documents/DSFSS/SSSP/Bullying/BullyingHarassmentReport2019.pdf

strengthen educational attainment and health outcomes for LGBTQ students who see their full identities reflected in the classroom.[16]

- Establish a state task force on bullying prevention (or subcommittee to the existing school safety task force[17]) to further assess and make recommendations on additional efforts to make schools safer for all students, regardless of their sexual orientation, gender identity, gender expression, race, disability status, national origin, and religion.

III. Conclusion

Thank you again for the opportunity to provide testimony before the Committee this afternoon. GLSEN welcomes the opportunity to continue to support the efforts in the Commonwealth to make schools safer for all students, regardless of their actual or perceived sexual orientation, gender identity, gender expression, race, disability status, national origin, and religion. Our resources on professional development, curriculum, and more are available at www.glsen.org. For additional information on GLSEN's recommendations, please contact the Office of Public Policy in Washington, DC at 202-347-7780 or publicpolicy@glsen.org.

[16] GLSEN (2017). *Inclusive Curriculum Helps LGBTQ Youth*. New York, New York. Available at https://www.glsen.org/sites/default/files/Inclusive-Curriculum-Helps-LGBTQ-Youth-GLSEN-Inforgraphic-Poster.pdf

[17] *See* School Safety Task Force Report. Available at https://www.governor.pa.gov/wp-content/uploads/2018/08/20180827-Gov-Office-School-Safety-Report-2018.pdf

Kipp Dawson, Retired Teacher
Pittsburgh Public Schools
Statement Submitted for the Record
(on December 16, 2019)

One critical step we must take to plug and dismantle the school to prison pipeline, with its disproportionate impact on students of color, students with disabilities, and LGBTQA+ children, is to end out-of-school suspensions from our schools for any child, pre-K through 12th grade. Such suspensions begin almost all treks into and through this horrendous transition.

When a school sends a child home with an out-of-school suspension, it shoots itself, the child, and the child's teachers in the foot.

No matter the age or grade level of the child.

During my 25 years teaching, spanning pre-K through 8th grade, there were times when it had become impossible to conduct a class so long as a child who was having a difficult time remained in our classroom. This happens, for a variety of reasons, in every demographic area, among children of all ages. School administrators, school districts are (or should be) prepared for such eventualities – with responses that minimize the disruption of any child's participation in class(es) and school without resorting to and relying on suspensions.

Let us recognize that sending a child home with a suspension:

- Tells the child (and peers) that (s)he is no longer a member of the class and school community, even if only temporarily; and therefore
- Sets up an adversarial relationship between the child and the class/school community; and
- Sends a message to parents and guardians that the school is not capable of including the child in the class and school, if only temporarily; and
- Is an abnegation of the school's base-line responsibility of including and teaching the child, even if "only temporarily"; and
- Deprives the child of participation in the learning experiences which will be necessary for successful continuation with the work of the class(es); and, therefore,
- Makes it more difficult for the child to successfully participate in the class and school learning activities when (s)he returns; and, therefore,
- All but guarantees more issues and problems for the child; and

- Is a failure – and marks a failure – on the part of the school.

So should we turn a blind eye on children's actions which are disru1ptive to themselves and/or others in a classroom or school setting? Of course not.

It is our responsibility as a community, as a school district, and as a school, to be ready to meet all of our responsibilities to all of our children. This includes:

- Consciously working to make all of our classrooms and schools places where every child feels welcome, respected, and a necessary part of the classroom and school community; and

- Having facilities and trained personnel at all schools to accommodate our children when situations arise where a child is not able to participate appropriately in a classroom or other school setting; and
- Having in place restorative practices such as peer mediation, mentoring, counseling, and other student-centered means of helping children return to their regular school settings;
- Having an honest and collaborative relationship in place, and constantly built, between the school and parents/guardians, as well as community organizations working on behalf of the children and the schools.

All of our children deserve schools which treat them and their peers with this kind of respect. All of our teachers and other school workers deserve to work in schools and school districts which prioritize building this kind of teaching/learning community. Helping our schools move in this direction will require resources and practices that can only exist when our schools have the support of their communities which can ensure adequate funding, and the community oversight, which our children deserve and need. We can do this if we have the understanding and will to make it happen. Taking these steps will help to stop the criminalization of our children, and particularly our children of color, our children with disabilities, and our LGBTQA+ children. Doing these things can tear a big hole in that school-to-prison pipeline where it usually begins.

Testimony of Janet Rosenbaum, Ph.D.
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Testimony to Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights, November 21, 2019

During the hearing, issues were raised that my research directly addresses, and I want to speak directly to these issues.

1. Suspension further increases the likelihood of poor outcomes in young adulthood, 12 years after suspension.

One speaker noted that children or adolescents who misbehave in school are already on problematic trajectories, and suspension may only occur on the way to poor outcomes, such as non-completion of high school and criminal justice involvement. My research (Rosenbaum, 2018, also submitted to the briefing book) addressed this issue by matching adolescents (ages 12-18) who were suspended for the first time with similar adolescents who had not been suspended at all, and evaluating their outcomes at ages 18-25 and again at ages 25-32. Matching used an apples to apples comparison to make sure that suspended and non-suspended adolescents had similar characteristics: race, delinquency, grade averages, school attachment, household income, household compositions, and many other traits, a total of 60 characteristics. My research found that compared with non-suspended youth, suspended youth were less likely to graduate high school and more likely to have criminal justice involvement in the next 12 years. This matching design allows us to conclude that even though suspended youth would be likely to have poor outcomes even if they weren't suspended, suspension is an additional disadvantage.

My additional research using these methods has found suspended youth were more likely to test positive for a sexually transmitted infection 5 years later (trichomonas, detected by a urine sample) and also more likely to smoke both 5 and 12 years later, compared with matched non-suspended youth. These papers are currently under review.

2. Black students are treated adversely by suspension and truancy systems, even when systems appear to be objective.

My research has also shown that Black students are treated adversely compared to similar non-Black students, even when systems seem to have clear rules that appear to be objective. For suspension, male adolescents who are taller are more likely to be suspended if they are Black, but height is not a risk factor for suspension for other populations, suggesting that teachers or administrators' decision to suspend may stem from how they react to Black male students' height (Rosenbaum 2018). For truancy, Black students are more likely to have absences marked unexcused than White students. The criteria for suspension and unexcused absences appear to be objective, but they have disparate negative impact on Black students. As a panelist noted, teachers and administrators are more likely to perceive misbehavior by White students as a symptom of a medical or mental health problem, whereas teachers and administrators may perceive similar misbehavior by Black students as defiance and grounds for

punishment. The system of coding absences as excused versus unexcused also penalizes poverty: absences or tardies due to transportation problems, housing instability, or parents' unstable work schedules are coded as unexcused, whereas absences due to health care visits or college visits are coded as excused.

3. Preschool suspension continues despite New York State policy aiming to eliminate it by 2017-18: teachers and administrators require support to adapt to new policies.

New York State aimed to eliminate preschool suspension and expulsion by the 2017-18 school year. The NYC KIDS 2017 survey conducted by the New York City Department of Health and Mental Hygiene (NYC DOHMH) between July and December 2017, evaluates the level of suspension in daycare, preschool, and pre-K in NYC by asking parents whether they have been asked to pick up their child early or keep them home for at least one full day due to their child's behavior. The NYC KIDS 2019 survey will assess the same quantity. I am still awaiting permission from NYC DOHMH Communications Office to report the exact percentage estimates from this survey. However, I can report my conclusion from the estimates: policies to eliminate suspension by some target date will not on their own reduce the percentage to zero by the target date. As other panelists have said, teachers and administrators require support to adapt to new policies.

4. Court diversion programs for truancy do not reduce truancy, but restorative justice approaches may reduce truancy.

The Honorable John Uhler discussed the issue of truancy, and how court diversion programs may be able to reduce truancy. Court diversion programs are used in about 60% of school districts, but they have not been evaluated with a rigorous design that includes a comparison group. Unfortunately, our rigorous evaluation of a court diversion program for truancy in a large Midwestern county found that adolescents (grades 7-10) in the court diversion program did not improve in attendance over the next 2-4 years, compared with similar adolescents who were not referred to the program (McNeely et al, 2019). Our evaluation used two comparison groups: adolescents in the neighboring county, which did not have a court diversion program for truancy, and adolescents in the same county who were not referred. As in the previous study, the adolescents were matched on important characteristics, including free lunch status, child protective services involvement, Black race, Native American/American Indian status, attendance history, standardized test scores, and other characteristics, a total of 15 characteristics from administrative records including the state's Department of Education, Department of Child Protective Services, and other agencies. The evaluation suggests that a restorative justice program may be more effective in reducing truancy, as has been shown in a randomized controlled study of a program in Queensland, Australia (Mazerolle et al, 2017).

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