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U.S. COMMISSION ON CIVIL RIGHTS

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BUSINESS MEETING **UNEDITED/UNOFFICIAL**

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FRIDAY, DECEMBER 8, 2017

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

PRESENT:

CATHERINE E. LHAMON, Chair

PATRICIA TIMMONS-GOODSON, Vice Chair

DEBO P. ADEGBILE, Commissioner

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

KAREN K. NARASAKI, Commissioner

MICHAEL YAKI, Commissioner*

MAURO MORALES, Staff Director

MAUREEN RUDOLPH, General Counsel

** Present via telephone***NEAL R. GROSS**

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STAFF PRESENT:

TERESA ADAMS

ROBERT AMARTEY

SUSAN BAKER

LASHONDA BRENSON

MARIK XAVIER-BRIER, Ph.D.

PAMELA DUNSTON, Chief, ASCD

LENORE OSTROWSKY

ALFREDA GREENE

SARALE SEWELL

MICHELE YORKMAN-RAMEY

BRIAN WALCH

JOHN RATCLIFFE

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART

JASON LAGRIA

CARISSA MULDER

AMY ROYCE

RUKKU SINGLA

ALISON SOMIN

IRENA VIDULOVIC

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P-R-O-C-E-E-D-I-N-G-S

(9:03 a.m.)

OPENING REMARKS

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

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

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

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

STAFF DIRECTOR MORALES: I am. Thank you.

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1 CHAIR LHAMON: Thank you. I welcome
2 everyone here to our briefing titled, The School-
3 to-Prison Pipeline: The Intersections of Students
4 of Color with Disabilities.

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

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

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

21 The Commission's receipt of these
22 Advisory Committee reports informed our own
23 decision to conduct an investigation onto this
24 issue, and I'm very grateful to the State Advisory
25 Committees for their work.

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1 In addition, in 2011 the Commission
2 published a unanimous commission report on school
3 discipline and disparate impact, looking
4 particularly at racially diverse school district's
5 responses to the education department's disparate
6 impact work.

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

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

21 This repeated attention to the civil
22 rights implications of school discipline is a
23 snapshot reminder that concern about this topic,
24 has persisted over time. In fact, the very first
25 desegregation agreements at the Office for Civil

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1 Rights that the Department of Education monitored
2 when Congress created the office, included
3 discipline as a component of desegregation
4 promises.

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

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

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

24 OCR noted in that resolution, for
25 example, that a Native American elementary school

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1 girl, who had had 43 behavioral incidents, of which
2 the school listed 38 as major, and whose teachers
3 noted she had problems focusing and repeated
4 behavioral issues, was not evaluated for
5 disability.

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

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

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

23 The salience of civil rights concern on
24 this topic over decades, together with findings
25 just two weeks ago that a California District

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1 violated students' civil rights precisely at the
2 intersection of race and disability, and as it
3 happened, sex, confirms the critical importance of
4 today's briefing, leading the way for the
5 Commission to make recommendations to the
6 President, Congress and the American people, about
7 appropriate civil rights policy on this issue.

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

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

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

25 Panel two includes researchers and

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1 experts on special education and the school-to-
2 prison pipeline.

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

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

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

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

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

25 After my special assistant Jason Lagria

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1 and I talked with several experts, we found that
2 students of color with disabilities face
3 disproportionate impact from school discipline
4 practices.

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

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

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

22 As the Chair mentioned, the Commission
23 has held briefings on different aspects of school
24 discipline over the past decade. During that time,
25 our understanding of what many refer to as school-

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1 to-prison pipeline has continued to grow, in part
2 because of the efforts of the Department of
3 Education and the Department of Justice to provide
4 guidance and collect data.

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

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

19 We heard testimony outlining the lack
20 of sufficient funding for school counselors, school
21 nurses, manageable class sizes, compensation to
22 retain and attract the most experienced teachers
23 and necessary training for teachers. All of which
24 is relevant to the ability of our communities to
25 address the challenges that we will be discussing

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1 today.

2 I think that we can all agree that
3 every school should be equipped to provide every
4 child, regardless of abilities, color, gender or
5 orientation, with the tools that they need to
6 thrive and learn and that teachers have a very
7 challenging and important job.

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

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

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

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

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

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

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

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

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

23 These policies have overly
24 bureaucratized school discipline, and resulted not
25 in more equitable school discipline, but in chaotic

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1 classrooms.

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

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

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

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

25 Finally, teachers hear the directive

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

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

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

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

18 **PANEL ONE: FEDERAL EDUCATION POLICY**

19 CHAIR LHAMON: First, deep thanks to
20 our Commission staff who researched and brought
21 today's briefing into being, including Marik
22 Xavier-Brier, LaShonda Brenson and Maureen Rudolph,
23 in addition to Teresa Adams, Pam Dunston, Latrice
24 Foshee, Abir Hamid, Lenore Ostrowsky, Sarale
25 Sewell, Brian Walch, and Michele Yorkman-Ramey, for

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1 making travel and logistical details for today,
2 work.

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

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

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

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

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

23 For any member of the public who would
24 like to submit materials for our review, our public
25 record will remain open until Tuesday, January 16,

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1 2018. Materials can be submitted by mail to U.S.
2 Commission on Civil Rights Office of General
3 Counsel, 1331 Pennsylvania Avenue, N.W., Suite
4 1150, Washington, D.C. 20425 or by email to
5 schooldiscipline@usccr.gov.

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

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

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

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

25 Please be mindful of the other

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1 panelists' time so you don't risk my cutting you
2 off. And my fellow Commissioners and I will do our
3 part to keep our questions and comments precise.

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

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

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

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

23 And finally, James Scanlan, an attorney
24 who specializes in the use of statistics and
25 litigation.

1 Ms. Bhargava, please begin. Oh, and I
2 should say, that if you can turn your mic off when
3 not you're not speaking then everyone's mic will
4 work. Here you go. Thanks.

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

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

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

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1 experience related to racial violence.

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

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

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

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

25 These are all examples from recent

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1 federal investigations of the use and exclusionary
2 and punitive discipline practices in schools.
3 Unfortunately, the use of exclusionary practices,
4 suspensions, expulsions, referrals to law
5 enforcement or placement in alternative schools and
6 punitive discipline practices like restraint and
7 seclusion are prevalent and widespread in schools
8 across the country.

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

15 Seventy-five percent of students with
16 disabilities had either been suspended or expelled
17 at least once and 83 percent of African American
18 male students, 74 percent Latino male students and
19 70 percent of African American female students had
20 been subject to discretionary disciplinary action.

21 We know that exclusionary and punitive
22 discipline practices are overused. Students are
23 being excluded from classrooms, referred to law
24 enforcement or subject to restraint and seclusion
25 largely for minor infractions that simply do not

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1 rise to the level of posing an imminent or
2 significant threat to the safety of students or
3 school employees.

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

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

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

25 We know that the use of exclusionary

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1 and punitive discipline practices do not make our
2 schools safer. Indeed, disciplinary rates, even
3 among schools with very similar student
4 populations, vary dramatically if there is no
5 evidence that schools with lower disciplinary rates
6 are any less safe.

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

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

23 In part because of the conversion --
24 the conversions of the widespread and pervasive use
25 of disciplinary practices and the improved

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1 understanding of what works, that all led to a
2 groundswell in this country. It was a call to
3 action and repeated request to the federal
4 government on how to best promote positive
5 discipline practices in accordance with federal
6 law.

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

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

22 And while these disparities alone do
23 not prove discrimination, the existence of such
24 disparities indicate that students of color and
25 students with disabilities are being

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1 disproportionately disciplined and raise questions
2 regarding whether schools are imposing such
3 discipline policies in a discriminatory manner, in
4 violation of federal civil rights laws.

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

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

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

22 The resolutions of consent decrees that
23 emerge have provided roadmaps for schools, a
24 contact specific and functional how to guide, for
25 all schools who engage in positive disciplinary

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1 practices --

2 CHAIR LHAMON: Thank you, Ms. Bhargava

3 --

4 MS. BHARGAVA: Thanks.

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

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

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

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

21 And I think we need to all agree that
22 the long-term consequences of discriminatory use of
23 exclusionary and criminal discipline is shockingly
24 negative, not just for educational outcomes but for
25 employment, for health, for earnings and for

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1 housing.

2 We can't afford to ignore this problem.
3 The former administration, including the Justice
4 Department where Anurima and I worked, took a
5 systemic approach to racial and disability
6 discrimination in school discipline.

7 We issued guidance, we issued
8 regulations, best practices and worked
9 collaboratively across the government and with
10 outside entities. We hosted convening's and
11 participated in public meetings to get the
12 information, to review the data and to make sure
13 that our proposed solutions were useful and
14 workable within the systems that we were working
15 with.

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

20 At times, we would investigate beyond
21 the individual incident to see if the incident was
22 a part of a pattern or practice, or a policy or
23 whether school discipline policies and practices
24 were having a disparate discriminatory impact on
25 students of color and students with disabilities.

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1 And we adopted systemic remedies for
2 such problems for schools, such as consulting with
3 experts, identifying the root causes of
4 disparities, identifying discipline policies and
5 training staff to ensure that they could respond
6 effectively to behavior issues, and adopting
7 research based supports and interventions, such as
8 PBIS, to respond to those and to help students meet
9 the expectations that our schools set for them.

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

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

23 In addition, the systemic remedies of
24 PBIS and other interventions for students, were
25 designed to avoid the educational harm of

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unnecessary exclusion from school, and to ensure that our students could meet our expectations.

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

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

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

And, this is an important approach, because although the federal laws recognize disparate impact as a form of discrimination and a way of proving discrimination, only the federal

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1 government can take that enforcement approach.
2 Individuals can only deal with the individual,
3 often only explicit discrimination.

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

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

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

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

24 As a national economic issue, this is
25 essential. Federal budget cutting measures are

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1 already cutting the safety net that people who
2 can't graduate from high school and can't get jobs
3 would rely on.

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

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

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

25 In a system that's clearly applying

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1 discipline more to students of color and students
2 with disabilities, plain justice requires us to
3 respond, both to the discriminatory application of
4 discipline and to the stunningly negative effects
5 of the exclusionary forms of discipline to our
6 children and our communities.

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

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

16 CHAIR LHAMON: Thank you, Ms. Hill.
17 Ms. Harper.

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

24 Previously, I served as an advisor in
25 the U.S. Department of Education, including in the

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1 Office of Special Education and Rehabilitative
2 Services. It is an honor to share with this body
3 Child Trends' perspective on how to safeguard child
4 of color with disabilities with the school-to-
5 prison pipeline.

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

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

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

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1 twice as likely to be identified with emotional
2 disturbance.

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

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

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

24 Under this provision, Section 618(d),
25 states are required to cite districts with

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1 significant disproportionality, large, racial and
2 ethnic disparities in the identification, placement
3 or discipline of children with disabilities.

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

9 In our work to safeguard children of
10 color with disabilities, the importance of Section
11 618(d) cannot be overstated. This provision puts
12 resources on the table to drive reforms in the
13 communities that need it most. And it is unique in
14 that it allows us to address the intersections of
15 race and disability, discipline and disability
16 identification.

17 Historically, the utility of Section
18 618(d) has been extremely limited. For many years
19 states were allowed broad authority to define
20 significant disproportionality and to utilize
21 criteria that kept District citations to a minimum.

22 However, in 2016, the U.S. Department
23 of Education issued new regulations, the equity in
24 IDEA rule, to require all states to utilize a
25 standard approach to identify significant

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1 disproportionality among school districts.

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

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

12 These reports seem to be more than
13 rumor, as reporters have identified a draft Federal
14 Register notice that would invite public feedback
15 on a delay of the rule. It must be understood that
16 the equity and IDEA rule already offer states
17 plenty of time to get this right. They do not have
18 to use the standard approach until the spring of
19 2019.

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

24 I'll close with a note of caution and
25 highlight two emerging threats to our efforts to

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1 better support children of color with disabilities.
2 The first threat is a narrative that offers poverty
3 as an explanation for racial and ethnic disparities
4 in disability identification and in discipline.

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

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

14 In a recent piece that I co-authored
15 with Dr. Edward Fergus of Temple University, we
16 reminder policy makers of the dangers of drawing
17 conclusions about a child's characteristics based
18 on their income or signing traits to child based
19 off the circumstances of their birth. It evades
20 our collective responsibility to ensure that
21 education systems serving children of different
22 races, ethnicities and socioeconomic backgrounds
23 treat students fairly and equitably and work to
24 create a more equal playing field for those
25 arriving with different resources and privileges.

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1 A second threat is a narrative that
2 frames school discipline reform as a threat to
3 school safety. At a time when communities need our
4 assistance to identify and implement evidence based
5 practices that prevent conflicts before they start,
6 the best approach to improving school safety, we
7 have no time for narratives that present the goals
8 of school safety and education equity as a zero-sum
9 game.

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

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

22 I am, again, grateful for the
23 opportunity to share my perspective on these issues
24 and thankful for the Commissions effort to elevate
25 this important topic. Thank you.

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1 CHAIR LHAMON: Thank you, Ms. Harper.
2 Ms. Cokley.

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

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

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

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

22 As noted, I served in the Obama
23 Administration in the Office of Special Education
24 Rehabilitative Services at the administration
25 community living at HHS, and finally as the

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1 executive director of the National Council on
2 Disability, where we had issued a report on this
3 very topic.

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

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

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

25 He persisted in being my problem those

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1 entire four years. And he is why I do the work
2 today. So thank you, Mr. William Connell, wherever
3 you are today.

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

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

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

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

24 How many of you can tell me whose
25 standing next to Dr. King? I will show you whose

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1 standing next to Dr. King. It is a little person,
2 Kenny brown.

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

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

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

17 Flash forward to two years ago, July
18 27th, 2016, in celebration of the Americans with
19 Disabilities Act, David Johns and I convened a
20 meeting focusing on what it means to be young,
21 gifted, black and disabled. It was the first
22 discussion ever of its kind, and it was the first
23 time that the National Council on Disability had
24 teamed up with the white House Initiative on
25 Educational Excellence of African Americans.

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1 We centered the agenda around the
2 largest group in the room, which were 7 to 17-year-
3 old African American disabled kids. And we did
4 what you should never do to a room full of
5 children; we gave them the microphone.

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

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

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

25 Kids of color with disability start off

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1 with the same fundamental needs of all young
2 people. But it's the adults that tend to screw
3 things up, I find.

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

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

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

25 We've seen it with the #metoo

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1 campaigns. Society was quick to erase its roots in
2 the black community by activist Tarana Burke.

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

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

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

19 Part of what we need fundamentally need
20 to do, and in closing, and stop talking about IDEA
21 and Section 504, as indicators that there is
22 something wrong with children, and instead talk
23 about the most mechanisms for exercising one's
24 civil rights. I look forward to any additional
25 questions. Thank you.

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1 CHAIR LHAMON: Thank you, Ms. Cokley.
2 Mr. Scanlan. Ms. Cokley, if you could just turn it
3 -- thank you.

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

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

18 Next slide. Just for clarification, if
19 suspension rates are 15 percent from minorities and
20 5 percent for whites, the ratio of the minority
21 rate to the white rate is 3.0.

22 That is the minority rate is three
23 times the white rate. The relative difference is
24 200 percent. The minority rate is 200 percent
25 greater than the white rate.

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1 If minorities make up 20 percent of
2 students, they would make up 43 percent of
3 suspended students. Next slide.

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

8 At the higher cutoff, the pass rate is
9 80 percent for the AG, the advantaged group, and 63
10 percent for DG, the disadvantaged group. That is,
11 AG's pass rate is 1.27 times or 27 percent greater
12 than DG's pass rate.

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

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

25 It's also a reason that we generally

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1 think that stringent policies are harder on
2 disadvantaged groups than more lenient ones.

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

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

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

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

23 And I'll add here that, an important
24 thing that this particular table shows is that when
25 you reduce the adverse outcome rate and thus reduce

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1 the proportion of a group that experiences an
2 outcome, you tend to increase the proportion that
3 group makes up of persons who experience the
4 outcome.

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

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

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1 have found those relative differences to be
2 increasing.

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

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

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

22 In my written statement, I reference my
23 comments for the Commission on Evidence-Based
24 Policymaking. I think those comments would provide
25 a useful guide to the Commission, for it to

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1 undertake a study of these issues that if addressed
2 sensibly, would place the analysis of demographic
3 differences on a better footing than it's ever
4 been. Thank you.

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

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

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

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

23 In fact, there are reports that school
24 districts are adopting rigid quota systems with
25 respect to discipline.

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1 Minneapolis public schools, in
2 announcing their new discipline policy said,
3 Minneapolis public schools must aggressively reduce
4 the disproportionality between black and brown
5 students, and their white peers, every year for the
6 next four years. This will begin with a 25 percent
7 reduction in disproportionality by the end of this
8 school year, 50 percent by 2016, 75 percent by
9 2017, and 100 percent by 2018.

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

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

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

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

20 MS. HILL: What we --

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

23 MS. HILL: There we go.

24 CHAIR LHAMON: Okay, good.

25 MS. HILL: Okay. The Department of

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1 Justice would not have required quotas in that way.
2 I think probably what the Minneapolis school
3 district -- and I can't speak for them either -- is
4 trying to do is set goals to force people to engage
5 in the activities that will reduce the
6 discriminatory impact.

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

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

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

23 So, the Department of Justice wouldn't
24 have said, 'cut off exclusionary discipline.' They
25 would have said, 'provide the services and supports

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1 that surround students to allow them to meet the
2 expectations for behavior that we have for them,
3 and provide teachers support and training and
4 policies that help them determine when exclusionary
5 discipline should be applied consistently across
6 the board and not influenced by racial bias.'

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

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

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

16 COMMISSIONER KIRSANOW: Sure.

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

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

22 We had a hearing a couple of years ago
23 -- maybe three or four years ago -- on bullying and
24 the prevalence of bullying. And we've been focused
25 here on the exclusion or discipline imposed on --

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1 and justifiably so -- on students of color, on the
2 intersection of students of color, students of
3 disabilities. But there's a second cohort here,
4 that is, if students are expelled or suspended and
5 that is lessened, that means that certain students
6 will remain in class.

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

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

25 And it seems to me that the most

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1 vulnerable cohort would be students with
2 disabilities, as we found in our bullying briefing.
3 If disparities are reduced -- and probably
4 justifiably so -- in those who are expelled and
5 they remain in the classroom, have there been
6 studies shown as to the effect on others of those
7 remaining in the classroom, and what disparate
8 effects that may have on people of color and people
9 with disabilities. To anyone.

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

16 However, I would also very much caution
17 all of the Commission members against labeling a
18 child disruptive versus not disruptive. On any
19 given day, a child could walk into a classroom on a
20 Monday, after having suffering some form of trauma
21 out of, you know, in their home or out in their
22 community, a friend may have passed away, a close
23 member of the family may have moved away, any
24 number of things could happen, which means that on
25 any given day, coming into school, a child may have

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1 a behavioral incident that is due to trauma or due
2 to the circumstances that life may throw at them.

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

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

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

25 And once upon a time, that child would

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1 have been arrested and shipped off to a juvenile
2 detention center faster than you could blink.
3 Instead, that child was sat down by principals, by
4 people that could support her and they talked to
5 her, and they learned that she had been sexually
6 assaulted for weeks on end by her mother's
7 boyfriend.

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

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

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

23 And the idea here is not to have -- you
24 know, to not have the option of using things like
25 suspensions or expulsions or other kinds of

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1 disciplinary practices, to address what is violent
2 behavior in a classroom, classroom that threatens
3 the safety of students and employees. But what
4 we're seeing in large part in what's happening in
5 schools around the country, is that these practices
6 are being used for very minor disciplinary issues
7 for the most part.

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

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

20 And what we know is that excessive
21 exclusionary disciplinary does not work. What does
22 work are practices that can allow teachers and
23 administrators to understand the reasons why
24 students may be acting out in school, allow them to
25 engage with students to help them to learn how it

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1 is that they should be engaging in school and in
2 classrooms, and give them the opportunity to not
3 only reinforce those behaviors but have them be
4 ones that build a strong community among students.

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

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

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

25 And so I'll give you one study, which

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1 has looked at this issue from, in the State of
2 Kentucky, that is from Brea Perry and Edward
3 Morris. And what they found is that the adverse
4 effect of exclusionary discipline is strongest in
5 schools with high levels of discipline and low
6 levels of violence, but it's evident in even the
7 most violent and disorganized school environments.

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

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

19 But based on Department of Education
20 and CDC in 2014, I just recited stats that when you
21 add them all up come up to 17 million individuals
22 who are either in some type of fight, some kind of
23 altercation, some type of nonfatal violent
24 victimization, teachers physically attacked, but
25 the total number of those expelled was 130,000.

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1 Seventeen million, where somebody is getting
2 punched out, yet a 130,000 expulsions.

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

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

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

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

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

25 Some cohort of that 3,954,000 was

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1 probably, look, I kind of resemble this remark. I
2 was kind of a miscreant as a kid.

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

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

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

21 I don't know any sound, I'm not in a
22 position to appraise all that research, but I think
23 that's something that the Commission could very
24 seriously study to see really, what are the
25 effects. I don't really believe in the research

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1 that's out there, but the Commission can study it
2 and try and really find out, what are the effects
3 of varying levels of discipline on the educational
4 environment. And on educational achievement.

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

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

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

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

25 I will say this though, the vast

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1 majority of out of school suspensions are not for,
2 the vast majority of out of school suspensions and
3 school suspensions, they are not for violent
4 behaviors, they're for disruptive behaviors.

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

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

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

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

24 MS. BHARGAVA: Let me also just add to
25 that. This is not a numbers game. This is a game

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1 about how it is that we actually provide a more
2 effective way in which to manage misbehavior in
3 schools and to make sure that everybody in a school
4 building is safe.

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

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

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

22 Excessive is when you have situations
23 in which you may have a student who is manifesting
24 a disability and is punished for the manifestation
25 of the disability without identifying what that

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1 disability, why that disability may be there and
2 making sure that the students get services and are
3 not actually punished for what it is that might be
4 a manifestation of the disability.

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

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

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

21 But what we know, what we know is that
22 the vast majority of students who are being
23 excluded, who are being punished, are being
24 excluded and punished for things that teachers
25 across the board.

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1 So the American Federation for Teachers,
2 the National Education Association, have themselves
3 said, we don't want to engage in this kind of
4 discipline for those kinds of practices. It's not
5 making us more safe, it's not making our kids more
6 safe.

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

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

18 MS. HILL: It will take only one minute.
19 I would say, just in response to the numbers, if we
20 were to agree that discipline is actually not being
21 used enough, and yet we can see that discipline is
22 being used more on students of color and students
23 with disabilities, that would indicate that
24 discipline is not being used enough for white
25 students without disabilities.

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1 And I would say that's part of the
2 disproportion problem. The disproportion problem
3 may not be that we're not using discipline enough, I
4 doubt that, but it may be that we're just using it
5 more on certain students.

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

14 CHAIR LHAMON: Thank you, Ms. Hill.
15 Commissioner Adegbile.

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

19 I want first to direct a question to Ms.
20 Bhargava and Ms. Hill that will help me understand
21 some of the skepticism that some of my colleagues
22 have expressed about the federal role in this area.
23 And it's my understanding that there are several
24 federal laws, passed by the Congress of the United
25 States, that require the federal government to

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1 enforce them. Where there are factual bases to do
2 so. You've mentioned some of those laws today.

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

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

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

19 And so if you could speak specifically
20 to what the feelings of trust would be for families
21 of students that are either having discrimination
22 targeted at them because of their race or disability
23 or an intersection of those two, what trust would
24 families have if the federal government advocates
25 its responsibility in this area?

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1 MS. BHARGAVA: So thank you,
2 Commissioner Adegbile. You're are correct, the
3 guidance that was issued in January of 2014 was
4 really to put out information on the administration
5 of fair and effective discipline.

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

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

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

23 And what we're talking about today is
24 the ways in which multiple investigations, the
25 information that we're getting in terms of data,

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1 shows that students of color and students with
2 disabilities are being disproportionately
3 disciplined. In a myriad of ways in schools.

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

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

23 The goal is not to have a situation in
24 which the relationship between parents and students
25 and schools is one in which students are out of

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1 class, they're out of school and they're not finding
2 ways in which we actually reinforce the kinds of
3 behaviors that were talked about in the guidance,
4 that were talked about in the larger school
5 discipline package.

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

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

23 And so what we see from what got us here
24 and what's happened afterwards, in terms of the
25 engagement by the federal government on school

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1 discipline, is that it has been a uniformly, almost
2 uniformly positive one, in terms of there's a range
3 of resources out there for students and teachers who
4 are able to use, and for parents to actually be able
5 to restore the trust that they had lost in schools
6 where six out of ten students are being suspended or
7 expelled. That's just not something that we need in
8 terms of how we actually interact in schools today.

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

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

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

23 And I was wondering if you elaborate on
24 that? And in doing so, tell us exactly how you see
25 the role of school resource officers in schools

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1 today, and if you could, touch upon whether these
2 resource officers are aggravating or alleviating the
3 zero tolerance policies that often push children
4 out.

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

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

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

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

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1 don't have a clear understanding of their role.

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

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

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

25 COMMISSIONER YAKI: Thank you very much,

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

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

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

24 MS. BHARGAVA: Commissioner Yaki, I
25 think we'll just say that there are, there have been

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1 really extensive federal grants and resources that
2 have been provided to schools, to school resource
3 officers and to others to really support these kinds
4 of practices that have made our schools much safer
5 and educationally sound. And so, the ability to
6 have those resources has been incredibly important
7 to schools.

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

12 MS. HARPER: I'll just quickly add that
13 there are glimmers of hope in terms of access to
14 resources that can help address this issue. It's
15 important to realize, in 2009, 2009 was the last
16 year in which states received Title 4 ESEA dollars
17 under the safe and drug free schools and communities
18 act.

19 I mean, it was dollars went to every
20 single state to support issues of student health and
21 safety and it stopped abruptly in 2009.

22 In 2017, for the first time since then,
23 all states, you know, states received \$400 million
24 under the student support and academic enrichment
25 program, which, while it has to be divided up under

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1 a few priorities, includes formula dollars to
2 address student health and safety. So that's a
3 critical source of funding that can address the
4 issues that we're talking about today.

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

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

14 CHAIR LHAMON: Thank you. Commissioner
15 Heriot.

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

19 One of them is aimed primarily, I think,
20 to you, Ms. Bhargava, but may be to everybody as
21 well. A couple of times in your testimony, in the
22 answers to questions, you've used the phrase, what
23 we know. And when you do, I have seen members of
24 the audience nodding this way in vigorous
25 disagreement with what we know here.

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1 And I'm wondering if it isn't time for a
2 little bit more modesty in terms of federal presence
3 in this issue. There's a long history here.

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

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

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

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

22 COMMISSIONER HERIOT: Yes, I know. A
23 whole different series of social justice warriors
24 created sexual harassment policies that ended up
25 creating incentives for schools to expel, not expel,

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1 but suspend kindergartners. Which, again, turned
2 out to be a bad policy.

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

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

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

14 COMMISSIONER HERIOT: Nope, nope.

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

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

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

24 MS. BHARGAVA: I can't see behind me
25 unfortunately. I'm sorry, I don't know what people

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1 are doing behind me, but I can say that we're
2 speaking to research, experience. What schools,
3 what teachers in themselves and education of
4 organizations across the country have said is, what
5 is more effective and educationally sound to try to
6 make schools safer.

7 CHAIR LHAMON: Commissioner Narasaki.

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

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

25 So what's happening there that's not

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1 happening now and what could be done?

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

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

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

21 I do not doubt that under-identification
22 exists. But while we can look at over-
23 representation in the numbers and say, you know
24 what, there's an issue here that's going on and we
25 need to find ways to understand why we are seeing

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1 such wide disparities such that children of color
2 are over-represented, it's completely impossible to
3 use that sort of, that same sort of analysis to
4 identify under-identification.

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

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

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

24 COMMISSIONER KLADNEY: My question is
25 pretty quick. Ms. Bhargava.

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1 MS. BHARGAVA: Bhargava.

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

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

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

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

19 CHAIR LHAMON: Okay, in the interest of
20 time I'm going to ask my question. And to say that,
21 Mr. Scanlan, in his testimony and in his written
22 testimony, attributed a set of beliefs to federal
23 discipline policy.

24 And for the three Panelists who were
25 participant in generating federal discipline policy,

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1 I'd be interested in having you respond about
2 whether you believed that the generation of that
3 policy would tend to reduce relative percentages of
4 racial differences in rates of experiencing
5 discipline. And I don't think we have time for a
6 response now, so I would welcome a written response
7 if you'd be willing.

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

11 (Whereupon, the above-entitled matter
12 went off the record at 10:36 a.m. and resumed at
13 10:45 a.m.)

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

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

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

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

25 Monique Morris, founder and President of

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1 the National black Women's Justice Institute.

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

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

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

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

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

20 However, more rigorous research
21 published since has largely undermined both of those
22 assumptions. And evidence is mounting that efforts
23 to fight the school-to-prison pipeline is creating a
24 school climate catastrophe and has, if anything, put
25 at risk students at greater risk.

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1 Now, back when Arne Duncan made his
2 declarations, there was some plausible evidence.
3 Not for the notion that teacher discrimination
4 caused 100 percent of the gap, that was an absurd
5 slander against the most companionate professionals
6 in America. But the notion that it played some
7 part.

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

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

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

22 It's notable though that all these
23 studies, including the one by Tom Loveless this
24 year, has found a consistent pattern that schools
25 with higher percentages of African American students

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1 have higher suspension rates. This could be
2 perceived as troubling and could be interpreted as
3 systemic discrimination or systemic bias.

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

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

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

23 They estimate though that if black
24 students were taught by all black teachers, it would
25 reduce their odds of receiving a suspension by about

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1 two percent. Now, that's not nothing, but it's not
2 100 percent.

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

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

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

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

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

22 And it should be noted for the purpose
23 of intersectionality of this Panel, students with
24 disabilities became 12 percent less likely to be
25 held back.

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1 The other study found a statistically
2 significant, though practically not large,
3 improvement in the next year on reading and math
4 scores. If we are willing to revise our assumptions
5 based on better evidence, then the fairest statement
6 becomes, teacher bias does not play a substantial
7 role in the overall disparities and being
8 disciplined does not have a significant military
9 effect on students.

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

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

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

24 And if you look at the student surveys,
25 it is very, very bad. It has done substantial

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1 academic harm to students in Los Angeles, Oakland
2 and Philadelphia, where truancy rose by 16 percent
3 after reform.

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

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

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

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

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

25 I appeal to everyone in this room, who

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1 believes this to be a good idea, to direct me
2 towards that research as I am trying to conduct a
3 comprehensive national study of this question.

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

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

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

24 CHAIR LHAMON: Thank you very much. Mr.
25 Losen.

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1 MR. LOSEN: Yes. Thank you. My name is
2 Dan Losen, I'm the director of the Center for Civil
3 Rights Remedies at UCLA's Civil Rights Project. And
4 I've been doing research on this particular area
5 since 1999.

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

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

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

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

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

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1 kicking kids out.

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

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

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

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

23 So there's a lot that can be done. And
24 there are things that are proven effective. I would
25 point out that none of the studies in this book

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1 involve racial quotas. Not a single one.

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

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

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

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

23 I mean, I don't think any member of the
24 Panel would say that missing school somehow wouldn't
25 likely impact your achievement. If you're not there

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1 the days of instruction and then you're tested in
2 algebra on something you missed, obviously it's
3 going to impact your learning.

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

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

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

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

22 And I would point out that students with
23 disabilities are receiving more. They're receiving
24 OT, PT, they're receiving extra counseling. A whole
25 range of special education and services.

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1 So when they are removed, if you remove
2 two students for a dress code violation, one with
3 disabilities and one without, the impact is going to
4 be greater on the student with disabilities, if it's
5 for the same length of time, because they're getting
6 more when you're in the school. They're also losing
7 more when they're out of school.

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

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

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

24 I don't think anyone on this Panel would
25 say that we should accept that as the status quo.

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1 Compare that to white students who missed 43 days,
2 white students with disabilities missing 43 days.

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

7 And our studies in Massachusetts, where
8 we had the breakdown by why students were removed,
9 60 percent of the students with disabilities in
10 Massachusetts, who lost instruction because of
11 discipline, 60 percent were for non-violent, non-
12 criminal, non-drug related offenses. A catch-all
13 Category 18.

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

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

22 Commonsense practice, improving
23 instruction, reducing unnecessary suspensions. And
24 when you do that, sometimes the risk ratios don't
25 change, but the racial gap narrows. And that's what

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1 this slide shows.

2 I have no more time. That's it. Thank
3 you very much.

4 CHAIR LHAMON: Thank you, Mr. Losen.
5 Dr. Morris.

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

16 The National black Women's Justice
17 Institute and organization, for which I am cofounder
18 and president, recently released an analysis of
19 2013/2014 school data collected by the U.S.
20 Department of Education Office for Civil Rights.

21 The report details the prevalence of
22 African American, Latino and white girls along the
23 school continuum. In this report and data shared in
24 my written statement, the institute found that black
25 girls with and without disabilities,

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1 disproportionately experienced discipline across the
2 continuum.

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

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

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

22 Overall, my work is found that for black
23 girls with and without diagnosed disabilities,
24 critical pathways to school push out include, a
25 reliance on school discipline and response to non-

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1 violent student behavior.

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

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

25 What we do know is that the removal of

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1 girls from school renders them vulnerable to
2 participation in underground economies. According
3 to the Human Trafficking Pro Bono Legal Rights
4 Center and the National Disabilities Right's
5 Network, girls with disabilities are particularly
6 vulnerable to sexual predators and traffickers who
7 seek girls and young women with cognitive or
8 developmental disabilities by stalking group homes
9 and other facilities serving people with
10 disabilities.

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

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

25 PBIS has shown some positive impact on

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1 the behaviors of students with disabilities, but it
2 is important to understand that being responsive to
3 trauma also means developing strategies to address
4 the institutional harms that trigger feelings of
5 distrust and lack of safety. Particularly among
6 black girls whose bodies and modes of expression are
7 routinely misinterpreted as violent, as defiant or
8 as a disturbance to the school.

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

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

19 I also recommend that school districts
20 reduce policing, school policing, and reinvest in
21 educators and be her resource, a toolkit developed
22 by the Georgetown Law Center on poverty and
23 inequality and the National black Women's Justice
24 Institute, we call for a specific activities,
25 protocols and training, to increase law enforcement

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1 capacity, to engage effectively with girls of color,
2 accounting for their layers of identity, including
3 their ability, race, ethnicity, gender identity and
4 sexual orientation to the extent that they are
5 present in schools.

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

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

20 It is worth noting that a trauma
21 informed practice understands that for a person who
22 has experienced a severe or extremely harmful event
23 or series of events, there are certain behaviors,
24 words and conditions that trigger in her or him, a
25 negative reaction. Reactions that are often

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1 responses to past abuses or neglect.

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

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

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

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

20 The work that I'm presenting in regards
21 to disability identification has gone through a
22 series of peer review processes and high impact
23 journals across a range of different fields,
24 including in public health, sociology, and
25 education. Next slide, please.

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1 This, our findings have been reported on
2 a number of different bipartisan organizations,
3 Brookings, the Fordham Institute, New York Times,
4 National Affairs, others. Next slide, please.

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

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

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

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

25 We're therefore able to approximate

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1 contrasts between children who seem observationally
2 similar in regards to their likelihood of being
3 identified as having disabilities or their risk for
4 suspension. Next slide, please.

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

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

21 When we look at this across the
22 achievement distribution, this is the number, these
23 are the numbers I was just presenting. So what you
24 see here is as children's achievement goes up, their
25 likelihood of being identified as having

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1 disabilities in US schools goes down. That makes
2 sense.

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

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

21 We consistently find initial evidence of
22 over-representation similar to what Ms. Harper was
23 talking about when we don't do adjusted estimates.
24 But when we take into account potential explanatory
25 factors, including those identified by a National

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1 Research Council Report expert panel in 2002, and
2 correct the adjustments, the estimates for other
3 potential explanatory factors, we consistently find
4 that minority children in US schools are less likely
5 to be identified as having disabilities than
6 otherwise similar children who are white or English
7 speaking.

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

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

20 If we track this across time beginning
21 in 2003 up until the latest administration, the data
22 we're examining here, this top line represents white
23 children with their, amongst children, with the
24 estimates corrected for reading achievements at the
25 individual student level.

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1 And what you find here is with all the
2 other racial and ethnic groups, they're displaying
3 numbers below one relative to whites. What does
4 that mean? It means relative to similar children,
5 peers, again, racial and ethnic minority children in
6 the US have been less likely to be identified as
7 having disabilities beginning in 2003 when this data
8 began to be available up until the latest
9 administration of these data, which also includes
10 2015, the most recently available. Next slide,
11 please.

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

19 What you see here is that you see the
20 two lines. And what happens is as the school's
21 economic disadvantage increases, both groups, white
22 and blacks, displaying relatively similar levels of
23 academic achievement, experience declining
24 likelihoods of being identified as having
25 disabilities.

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1 But, you also always see a disparity
2 between white and black children in regards to the
3 relative percentage of children who are being
4 identified as having disabilities. Next slide,
5 please.

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

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

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

25 But children with disabilities are not,

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

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

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

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

24 CHAIR LHAMON: Thank you, Dr. Morgan.
25 Thank you. So I'll open up for questions from my

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1 fellow Commissioners. Commissioner Narasaki?

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

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

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

24 I would also point out that even Max
25 Eden's own report, if you look at Mayor Bloomberg's

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1 reforms, suspensions declined dramatically during
2 Mayor Bloomberg's control over the schools there.
3 And there was no change in school climate according
4 to Max Eden's own studies.

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

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

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

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

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1 long time.

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

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

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

22 Well guess what, that was a study of the
23 second highest suspending -- county in the state of
24 Florida. So during that period, that was a very
25 high suspending county where there was this cost

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1 associated with -- and the disruptive peers were
2 students who had domestic violence -- had been
3 exposed to domestic violence.

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

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

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

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

25 A study by the University of Chicago's

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1 Schools Consortium of the effects of lowering
2 suspensions from ten days to five found a causal
3 deterioration in student respect and teacher-
4 reported disruptive behavior.

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

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

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

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

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1 raise eyebrows.

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

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

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

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

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1 and unjust educational environments.

2 CHAIR LHAMON: Yes.

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

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

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

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1 examine that.

2 CHAIR LHAMON: Thank you. Commissioner
3 Kladney?

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

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

15 MR. EDEN: Yes, I --

16 COMMISSIONER KLADNEY: -- since they
17 instituted this policy?

18 MR. EDEN: I have --

19 COMMISSIONER KLADNEY: I just --

20 MR. EDEN: Sure.

21 COMMISSIONER KLADNEY: Okay. So I just
22 wanted to know that. I'm not going to be critical
23 or anything. But in looking at these studies and
24 the studies that you all have used, have you taken
25 into account the types of training and the

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1 differences in training between school districts --
2 because we have so many school districts, they don't
3 use the same type of training and institute the same
4 level of command like you were speaking about in New
5 York I think with the -- whatever.

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

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

25 And I point out we have other studies to

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1 show that there's a huge economic cost when we kick
2 kids out of school because it does contribute -- it
3 predicts a much higher dropout or lower graduation
4 rate. So to answer your question --

5 COMMISSIONER KLADNEY: That doesn't
6 answer my question.

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

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

15 MR. EDEN: Fourteen.

16 COMMISSIONER KLADNEY: Thousand? Okay,
17 18,000 police departments, 14,000 school districts.

18 COMMISSIONER ADEGBILE: A lot of
19 Commissioners have questions.

20 COMMISSIONER KLADNEY: But my question
21 is do you look behind those numbers to see in those
22 14,000 school districts -- or however many have
23 instituted or looked at this guidance letter and
24 tried to institute this program of less suspensions
25 and less expulsions -- the training and how it has

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1 affected people. I mean, some districts may be able
2 to train their -- may have a better program than
3 other districts. There may be a model program.

4 MR. LOSEN: Yes.

5 COMMISSIONER KLADNEY: That's what I'm
6 looking for. And I'm not hearing anything.

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

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

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

24 That doesn't mean they don't suspend
25 students when there's a safety issue. And those

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1 differences make a huge difference. Those school
2 level differences do drive a lot of the racial
3 disparities. So the idea that there's a less
4 discriminatory alternative, it is often the school
5 next door.

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

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

17 There's some of that out there. Right?
18 One thing that we see, almost invariably -- perhaps
19 invariably -- is that this notion that we need to
20 phase out exclusionary discipline and implement
21 restorative practices, or positive behavioral
22 intervention supports.

23 This kind of doesn't actually happen.
24 Right? A tool from teachers is taken away rather
25 instantly, or severely limited rather instantly.

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1 And then over a long period of time in a select
2 group of schools, additional supports are given.

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

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

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

12 MR. EDEN: Sure.

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

15 MR. EDEN: A rollout of district
16 supported --

17 CHAIR LHAMON: Thank you.

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

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

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1 not paint a nice picture.

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

4 CHAIR LHAMON: Your microphone.

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

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

20 CHAIR LHAMON: Thank you. Commissioner
21 Heriot?

22 COMMISSIONER HERIOT: Thank you, Madam
23 Chair. Mr. Eden, when you came up and introduced
24 yourself over the break, I said I would like to ask
25 you a question on disability and discipline. It's

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1 actually the question that I didn't get a chance to
2 answer -- didn't get to ask in the previous panel.

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

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

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

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

23 And it found -- and it's in my
24 testimony, and I'm going to be approximate here --
25 students with physical disabilities were 50 percent

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1 less likely to be suspended. Students with autism
2 were 30 percent less likely, students with
3 significant developmental disabilities were about 15
4 percent less likely.

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

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

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

24 But the law says we're not allowed to
25 suspend students because of their disability. And

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1 so I think what we're really seeing is a likelihood
2 that students with disabilities that have emotional
3 disturbance are not having their educational and
4 their emotional needs met the way they're supposed
5 to.

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

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

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

25 So it's really important to keep that

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1 policy in place because all its saying is to look at
2 the data, and when there are these really large
3 differences, require some comprehensive,
4 coordinated, early intervening services.

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

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

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

23 That means six states with these huge
24 racial disparities -- including Nevada and Nebraska,
25 Ohio -- identified no districts, none whatsoever.

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1 And so the regulations were also intended to help
2 make sure that we -- the monitoring of this problem
3 is done better than it had been.

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

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

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

21 CHAIR LHAMON: Thank you. Ms. Morris?
22 Dr. Morris?

23 DR. MORRIS: So, I think it's important
24 for us to elevate in this conversation how
25 oppression manifests. Oppression manifests

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1 structurally, individually, culturally, and in
2 internalized ways.

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

17 The importance of developing structured
18 decision-making tools to help engage educators so
19 that they can be responsive to the specific needs of
20 students does help to improve the outcomes, to allow
21 for them to be responsive when there are acts --
22 conflicting acts on campus, to respond to incidents
23 of trauma, to engage their own capacity to ask
24 questions in ways that will be responsive to
25 children.

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1 I am personally less interested in how
2 we parse numbers to see if students are being
3 disproportionately impacted as much as I am
4 concerned that all students are receiving equitable
5 treatment in these institutions, and that the
6 outcomes reflect that.

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

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

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

24 We see these kids show up in detention
25 centers, we see these kids show up in other

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1 conditions that reduce their capacity to return to
2 school, or that reduce their capacity to be engaged
3 as learners and scholars that we know they can be.
4 And that is problematic.

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

13 CHAIR LHAMON: Thank you. Commissioner
14 Adegbile?

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

23 And so I'm interested to have you lay
24 out for us in a little bit more granular detail
25 whether the positive behavioral interventions and

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1 support, sort of how they work, whether they work,
2 and whether or not these things are scalable in a
3 way that can embrace our children to put them on a
4 path to success rather than excluding them and
5 putting them on a path to the criminal justice
6 system.

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

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

22 I think that positive behavioral
23 interventions are limited in their capacity to
24 address the structural biases that further
25 exacerbate harms in the lives of young people. The

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1 way that I talk about this, ultimately, is that
2 there have been institutions -- and sometimes
3 individuals, but if we think about this along the
4 structural framework, there have been institutions
5 that have been part of a tapestry of harm in the
6 lives of certain communities, and that -- given that
7 they have been part of this tapestry of harm, some
8 of the engagements and the way that they present in
9 the lives of young people can be problematic.

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

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

25 One of the things that I said in my

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1 statements here to you today was that the behaviors
2 -- particularly of black girls -- are misinterpreted
3 as defiant and violent and disruptive, and sometimes
4 those are just expressions of their critical
5 thinking.

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

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

19 So with positive behavioral
20 interventions, my belief is that's one strategy that
21 can be used to address the box, but we also have to
22 understand that there are some individual things
23 that need to happen within that box to help increase
24 the capacity of these institutions to be more
25 responsive to students who are particularly

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1 vulnerable to exclusionary discipline and who are
2 particularly vulnerable to other harms in connection
3 with that exclusionary discipline.

4 CHAIR LHAMON: Mr. Eden?

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

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

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

21 A federal grant, the Safe and Supportive
22 Schools Grant which gave high schools extra money to
23 implement, it was mixed, some better, some worse.
24 Wisconsin, kind of negative, California, pretty
25 good.

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1 But the record of this being implemented
2 in the school districts as other forms of discipline
3 are being taken away from teachers is, to my
4 reading, quite negative.

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

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

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

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

25 Sixty-five percent of teachers said that

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1 they deter future misbehavior, which is in the
2 advocate and activist community established as a
3 pure falsehood, yet 65 percent of teachers believe
4 it.

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

12 CHAIR LHAMON: Ms. Morris? Dr. Morris?

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

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

24 We are talking about also, I remind
25 folks, the rights of students to educational

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1 opportunity that differs dramatically, especially
2 with black students compared to white students.

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

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

16 CHAIR LHAMON: Commissioner Kirsanow?

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

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

25 We are not a commission of best

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1 educational practices. And so it strikes me, I've
2 been sitting here for a couple of hours now, and I
3 see Dr. Morgan's last two bullet points there.

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

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

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

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

23 So, there's a big difference in terms of
24 we know what the disparities look like. And another
25 point is that Dr. Morgan's studies don't include a

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1 single district. So we're seeing a huge range of
2 what's happening at the district level.

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

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

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

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1 (Simultaneous speaking.)

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

5 MR. LOSEN: Yes, okay.

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

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

17 So if you look at children who
18 observationally look similar, who is more or less
19 likely to experience the outcome? When we look at
20 disability identification, we consistently find that
21 white children are more likely to be identified as
22 having disabilities, despite being otherwise similar
23 to racial and ethnic minorities displaying similar
24 levels of academic achievement, family economic
25 resources.

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1 We also find this amongst children
2 attending the same schools, so would have access
3 presumably to the same level of school level
4 resources.

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

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

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

22 But we don't find that that extends to
23 being identified as having a disability, and we
24 don't find it extends to the interaction between
25 being identified as having the disability and being

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1 a racial and ethnic minority, in this case, black or
2 Hispanic.

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

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

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

15 (Simultaneous speaking.)

16 MR. MORGAN: Yes, sure.

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

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

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1 different outcomes.

2 CHAIR LHAMON: Yes, thank you.

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

8 CHAIR LHAMON: Thank you.

9 MR. MORGAN: You're welcome.

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

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

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

24 CHAIR LHAMON: Dr. Morris? Thank you.

25 DR. MORRIS: Yes, I mentioned in my

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1 comments, and it's provided in the written
2 statement, that the National black Women's Justice
3 Institute conducted a study, or took the data that
4 were collected by the Department of Education to
5 examine what was occurring among girls.

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

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

25 CHAIR LHAMON: Thank you.

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

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

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

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

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

24 The 2014 study by John Paul Wright found
25 that previous behavior explained it. It also, that

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1 is open to that criticism. It is entirely open to
2 that criticism.

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

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

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

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

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

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1 child ever suspended. So, and he is --

2 (Simultaneous speaking.)

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

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

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

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

21 MR. LOSEN: So, just quickly, one of the
22 things, I've been going to schools and districts
23 around the country to figure out what really works,
24 applying mix methods, qualitative as well as
25 quantitative.

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1 And every single school in the district
2 that is doing effective work where there is both
3 order and students are doing well achievement wise,
4 and very low suspension rates, and very low levels
5 of disparities, they all start by looking at the
6 data.

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

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

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

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

22 VICE CHAIR TIMMONS-GOODSON: Thank you.

23 MR. LOSEN: -- prompts every school and
24 every district to look at their data and ask these
25 questions. It does not direct them to do anything

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1 more than that, and that's where the inquiry begins.

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

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

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

20 And a number of them are engaged in new
21 conversations that were not previously there that
22 have resulted in policy changes, including the
23 elimination of suspensions for K through 2,
24 including looking at how they can implement a more
25 robust continuum of alternatives to suspension and

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1 expulsion for younger kids, particularly for kids of
2 color who are disproportionately impacted by
3 decision making among educators and institutions
4 that are reading behaviors in ways that reflect
5 implicit biases.

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

17 CHAIR LHAMON: Dr. Morgan?

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

23 The equity in IDEA regulations expanded
24 that. There's no accounting for differences in
25 clinical need in those regulations. Schools aren't

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1 asked to examine okay, let's look at these
2 disparities once we take into account children who
3 are displaying the same clinical need.

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

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

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

19 (Simultaneous speaking.)

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

22 MR. EDEN: Yes, the 2014 Dear Colleague
23 guidance must be rescinded. To the extent to which
24 the elements are collecting statistics for schools
25 and letting them know that, that is going to stay.

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1 The Trump administration has already cited that that
2 is going to stay.

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

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

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

19 All right, so these investigators came
20 in, they made policy shifts, and they did not leave.
21 At the close of the Obama administration, I think
22 the numbers on the website, there were 307, 387 open
23 cases by my count, which might not be accurate so I
24 don't want to stand by it. I think that they closed
25 32 cases in the last four years.

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1 So to the extent to which the guidance
2 was federal investigators, swoop in, use their own
3 judgement to second guess local educators, that is
4 the element that must go.

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

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

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

15 VICE CHAIR TIMMONS-GOODSON: Okay, just
16 quickly.

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

24 And it's not actually, it's an
25 administrative guidance, I would point out. It's

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1 not for lawyers. You can't go to court using the
2 disparate impact regulations. So it's not a court
3 decision, and it shouldn't be. Educators need to be
4 prompted to do this.

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

9 CHAIR LHAMON: Thank you. Commissioner
10 Narasaki?

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

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

24 CHAIR LHAMON: Your mic is off.

25 MR. MORGAN: That's correct. And there

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1 is some empirical work to support that, that once
2 you receive the disability identification and access
3 treatment, it lowers your likelihood of entering the
4 school to prison pipeline.

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

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

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

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

24 (Simultaneous speaking.)

25 CHAIR LHAMON: -- any further. Thank

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1 you. Thank you. So I have a point of privilege.
2 My last question. I know that Commissioner, at
3 least Commissioner Kladney also had another
4 question, so I will just say to you all thank you
5 very much. This was obviously a popular topic among
6 us.

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

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

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

22 But I did see that the Amherst County
23 public schools' reports increase in student safety
24 multiple years after OCR, assumed the perception of
25 safety multiple years after OCR has implemented

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1 resolution agreement.

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

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

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

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

22 (Whereupon, the above-entitled matter
23 went off the record at 12:06 p.m. and resumed at
24 1:05 p.m.)

25 CHAIR LHAMON: Welcome back, everyone.

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1 I'm going to reconvene us. I want to confirm first
2 that Commissioner Yaki is on the telephone. Are you
3 on?

4 COMMISSIONER YAKI: I am.

5 CHAIR LHAMON: Terrific. Thank you.
6 Thank you all for your continued attention to this
7 important topic. We're going to proceed with our
8 open comment period.

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

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

21 You'll have three minutes to speak which
22 will be measured by our timer. When the box here
23 with the three lights, when the light turns from
24 green to yellow, that means two minutes remain. And
25 when the light turns red, you should conclude your

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1 statement. And if you do not conclude, I will cut
2 you off in order to make sure that all of our
3 participants have an opportunity to use the open
4 comment period.

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

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

19 **OPEN COMMENT PERIOD**

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

25 This is my 11th year of teaching in a

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1 racially diverse urban environment. And currently I
2 teach in a Minneapolis public high school with
3 students who identify as approximately 50 percent
4 students of color and then about 50 percent students
5 as Caucasian. And of those, 18 percent have an IEP.

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

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

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

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

25 Furthermore, this type of discipline

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1 sends the message that they aren't welcome in the
2 classroom. And it can confer a stigma that
3 reinforces pre-existing stereotypes.

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

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

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

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1 All you get is a loss of motivation knowing you're
2 unwanted.

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

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

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

15 CHAIR LHAMON: Thank you.

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

24 This is especially true in districts
25 with large populations of students of color and

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1 students with special needs. The culture of over-
2 correction and the students' misbehavior it
3 reinforces often worsens in junior high school with
4 a society looking to lock them up by the time they
5 get to high school.

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

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

22 Had I skipped this conversation and
23 jumped to punitive discipline, people would have
24 looked at his IEP and past behaviors, and he almost
25 certainly would have been suspended or possibly

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1 expelled. This is not an isolated case. As
2 students with special needs are disciplined twice as
3 frequently as their peers.

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

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

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

21 We don't just abandon them in the
22 hallway or the detention rooms where they can escape
23 the harm and important work of reflecting on their
24 actions and repairing the harm they caused through
25 bad choices.

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1 Please keep the discipline guidance as
2 is written to give teachers, and students, and
3 learning communities the tools to become citizens in
4 the classroom and in the community. Thank you for
5 having me.

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

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

21 Today I stand before you and everyone in
22 this room as a black king, a black king who was
23 labeled with a disability, a black king who went
24 through hell in hopes of a successful education due
25 to a disability, a black king who was told he

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1 wouldn't amount to anything, a black king who
2 overcame and became victorious over this corrupt
3 education system that we have here in this here
4 United States of America.

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

20 To me, it seems that our students are
21 slaves, my people, our people, who are limited to
22 everything, including water -- oh, yes, google
23 Flint, Michigan -- because of these labels that
24 society had put on us, the labels of finance, and
25 gender, skin color, test scores, et cetera.

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1 It's not until we start to build
2 relationships with my people, our people, that
3 change will begin to come. It's not until my
4 people, our people, are sitting next to you change
5 will begin to come. It's not until my people, our
6 people, are at the table, then change will come.
7 It's not until my people, our people, are unlabeled
8 change will begin to come. It's not until you step
9 away from your titles and realize you can't get
10 nowhere, realize you couldn't get where you are
11 without my people, our people.

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

22 CHAIR LHAMON: Thank you.

23 MS. TAVALIN: Good afternoon. My name's
24 Kuna Tavalin, and I am here on behalf of the
25 National Center for Special Education in charter

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1 schools which is a non-profit ensuring that students
2 with disabilities have equal access to charter
3 schools and that charter schools are designed and
4 operated to enable all students to succeed. We're
5 the leading national voice regarding special
6 education in the charter sector.

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

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

24 Both charter schools and traditional
25 public schools disproportionately suspend students

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

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

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

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

25 Together, these practices help to create

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1 a consistent and student-focused school culture that
2 prioritizes creating relationships and classroom
3 environments that enable students with diverse
4 learning needs to succeed. This is the kind of
5 thinking and teaching we need.

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

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

20 CHAIR LHAMON: Thank you.

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

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1 assault in 2015.

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

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

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

21 From building-level administrations to
22 bus drivers, not excluding all support staff,
23 teachers, lunchroom staff, coaches, educational
24 aides, and more importantly the students, are
25 leaving the district because of the volatile nature

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1 in our district building.

2 My injuries have left me with many
3 physical, mental, and emotional effects that have
4 forced me out of my job. The district has blamed me
5 100 percent for my injuries. I feel that I am being
6 used. The district is bullying me and others to
7 intimidate out of any district that might --
8 employee that might threat with any kind of act of
9 violence or reporting to the police.

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

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

24 Our districts and administrative have
25 been offered bonuses for not suspending black

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1 students, rewarding them instead \$2500 bonuses. And
2 this is making our environment much more dangerous.

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

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

14 MS. TAVALLIN: Thank you.

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

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

21 I am a parent of three biological
22 children and two adopted undocumented children with
23 disability in Louisiana. I would like to add names.
24 I've heard a lot, and I was in tears in here a
25 little bit earlier. I would like to add names to

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1 some of these numbers that we've been talking about
2 because you're talking about my children.

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

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

16 Ryan, a nine-year-old, since pre-K has
17 been made to have silent lunch in his school
18 cafeteria and likes to sit next to his teacher a
19 lot, because he does have anxiety and feels more
20 comfortable being around his teacher. And the
21 teacher felt that it was inappropriate behavior and
22 that she felt unsafe because he wanted to hug her
23 too much. So then he was subsequently written up
24 for sexual misconduct when he hugged her without her
25 consent.

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1 Also, my adoptive son, 11-year-old
2 Fernando, he is undocumented. And he has not been
3 identified with special needs because the school
4 doesn't believe that the trauma that he faced coming
5 to this country is not enough to start a process to
6 identify him as a child with special needs. He
7 comes home and tells me that he is scared to cry,
8 because the school resource officer can deport him
9 back to his country.

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

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

21 I live in New Orleans, Louisiana, where
22 we are 100 percent charter. We don't have a school
23 board to report to. They are the all independent
24 board. So I don't have a system that you probably
25 can get a quota from, so my children are not here.

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1 These undocumented children that are
2 being targeted, when they get any kind of
3 disciplinary action that means they can no longer
4 apply for the status to become a legal citizen,
5 because now they have a criminal record.

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

10 CHAIR LHAMON: Thank you.

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

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

21 I'm a full-time mom, an employee, and
22 it's very hard juggling work along with trying to
23 navigate through resources which I am forced to find
24 on my own. When he became school age, starting at
25 kindergarten he began to get suspended rapidly.

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1 I would, and I still do, actually today
2 get calls on a daily with someone asking me how I
3 can help them deal with him. He is now in fourth
4 grade, and he is 20 percent special-ed, 80 percent
5 general-ed, based on his behaviors, which means his
6 education is not being exercised to its full
7 potential.

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

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

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

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1 CHAIR LHAMON: Thank you.

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

4 CHAIR LHAMON: Your microphone's not on.

5 MS. YORK: Oh.

6 CHAIR LHAMON: Thank you. Better?

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

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

20 That assault required three major
21 surgeries, ending my 30-year career. And that
22 troubled little guy, the 85-pound student, is now in
23 his fourth school for special needs, emotionally and
24 behaviorally disturbed kids. We failed him, and I
25 think we failed all the other kids in that class

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1 too. We all know teachers can't teach and students
2 can't learn when they don't feel safe.

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

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

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

23 They have lost their authority to
24 control the classroom. They're told they'll be
25 coached what to say, with whom, about classroom and

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1 school disruptive behavior. They're told to shred,
2 delete computer documents showing student violence
3 that does not support the administrative agenda.

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

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

21 With the revision of the Dear Colleague
22 letter, teachers will be empowered to hold all
23 students accountable for unruly behavior, no matter
24 what color. And serious assaults like mine will, in
25 fact, be reported to the states.

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1 Please revise the Dear Colleague letter.
2 It will hold all the students to the same set of
3 behavior guidelines, and all districts no longer
4 will fear reporting the truth about what has
5 actually happened in states like Minnesota and
6 schools across the country. Thank you.

7 CHAIR LHAMON: Thank you. Go ahead.

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

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

24 NASRO, our mission as a non-profit since
25 1991, is to provide the highest quality of training

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1 to school-based law enforcement officers so they can
2 adequately make the transition from a regular police
3 officer to one that functions properly within the
4 school environment.

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

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

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

25 Without proper training, we do recognize

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1 that SROs can make serious mistakes that may cause
2 short-term difficulties or jeopardize the entire the
3 SRO program. We teach that there's a triad concept
4 to school-based policing which is the officer serves
5 as both a guest speaker in the classroom, informal
6 counselor or mentor, and of course there's their law
7 enforcement duties.

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

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

25 CHAIR LHAMON: Thank you.

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1 MR. SALICKI: Good afternoon, my name is
2 Gage Salicki. And I am a social studies teacher at
3 Buckley High School in Hartford, Connecticut.

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

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

22 However, when I started teaching in
23 Hartford, down in Connecticut, where I serve a
24 population which is 92 percent students of color,
25 and they predominantly come from low-income homes,

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1 this paradigm was completely turned on its head.

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

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

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

23 The guidance outlined in the 2014 Dear
24 Colleague letter gives both teachers and students a
25 better option. Rather than punishing and excluding

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1 these students, I use restorative practices similar
2 to those outlined in the guidance in my classroom.
3 I ask students questions to not only determine why
4 they acted out but to help them take ownership of
5 their behavior and understand how their behavior
6 affects themselves and others.

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

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

17 CHAIR LHAMON: Thank you.

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

22 As a woman of color, the data on
23 discipline disparity confirms what I already know
24 from experience as a student, as a mother, and as a
25 teacher. Over the years, I've seen unfair,

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1 primitive disciplinary practices applied to students
2 of color such as students thrown out of class for
3 not having their homework, while white students were
4 not. I've seen students of color misbehaving and
5 only given one chance while white students are given
6 second, third, fourth, fifth, sixth chances.

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

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

22 Before jumping to punishment, we have to
23 empathize and give them tools to heal and to make
24 good decisions. We need to have teachers that
25 reflect the student population and have trauma-

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1 informed teaching practices.

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

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

18 It is Ms. DeVos' responsibility as the
19 top education leader in our country to ensure
20 administrators and elected leaders share in this
21 responsibility by prioritizing this work and
22 providing teachers with the tools they need to
23 support our students. We can't do it alone. Please
24 show you care about our kids by upholding the 2014
25 School Discipline guidelines. Thank you.

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1 MS. MOORE: Good afternoon, I'm Ashley
2 Moore, a policy associate and staff attorney at the
3 Children's Defense Fund.

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

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

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

25 We found that, and I quote, out of

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1 school children share a common characteristic of
2 differentness, by virtue of race, income, physical,
3 mental, or emotional handicap, and age. They are,
4 for the most part, out of school not by choice but
5 because they have been excluded.

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

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

22 Some of the challenges begin at birth
23 and intensify as children are denied opportunities
24 to prepare for school in the early years and to
25 succeed once they start.

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1 The School to Prison Pipeline exists,
2 and it needs to be dismantled. There has certainly
3 been progress over the last four decades with the
4 passage of key laws and the ensuing regulations and
5 guidance. The framework is in place without
6 appropriate data to identify disparate treatment in
7 monitoring and enforcement to ensure that rules are
8 followed and progress is measured. Children are
9 denied free, appropriate public education to which
10 they are entitled.

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

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

20 To that end, CDF recently joined with
21 the Leadership Conference on Civil and Human Rights
22 in a letter to the U.S. Department of Education to
23 support racial equity in special education, the
24 robust enforcement of Individuals with Disabilities
25 Education Act provisions regarding significant

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1 disproportionality in identification, placement, and
2 discipline of students with regard to race and
3 ethnicity.

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

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

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

18 CHAIR LHAMON: Thank you.

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

24 And I also serve on various working
25 groups with the district on the code of conduct,

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1 disproportionality, and a number of problem-solving
2 groups. And I've had a chance to serve on a
3 committee, the Pennsylvania Developmental
4 Disabilities Council, which is looking at School to
5 Prison Pipeline issues.

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

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

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

25 Similar patterns of punishment are

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1 reflected in contact with law enforcement and
2 arrests. We have problems with over-identification,
3 under-identification, delayed identification,
4 misidentification of students of color.

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

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

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

19 Number two, urge local education
20 agencies to establish protocols that address
21 interactions between law enforcement and students
22 with disabilities. These should limit contact
23 between police and students with disabilities,
24 require any law enforcement working in schools to
25 get extensive training on how to de-escalate

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1 conflicts, on how to work with youth and youth with
2 disabilities.

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

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

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

16 CHAIR LHAMON: Thank you.

17 MS. TILLMAN: Good afternoon, my name is
18 Marilyn Tillman. I'm the executive director and co-
19 founder of the Gwinnett Parent Coalition to
20 dismantle the School to Prison Pipeline or Gwinnett
21 SToPP for short. And we're a parent organizing
22 group that focuses on pushing for and against
23 policies that impact the feeders into School to
24 Prison Pipeline.

25 And so I just want to caution us about

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1 using the very subjective word of disruptive
2 student. It means different things to different
3 people. The overwhelming majority of discipline
4 infractions for all students, including special ed,
5 is for non-violent offenses.

6 Discipline means to teach. I'll say
7 that again. Discipline means to teach. And I want
8 to take back that word, because it's been co-opted.
9 We're not teaching the things that we should through
10 that process. We're there to teach the children how
11 to do better and not just shove them out the door
12 and tell them to figure it out on their own. And so
13 I'm here to put a face on some of these numbers and
14 the issues at hand.

15 We place the fish in contaminated water.
16 And then we examine the fish to see why they got
17 sick. The fish that I want to lift in this
18 conversation, for one, is my own son who, as a
19 gifted student, a student with disabilities, was
20 sent out of the classroom for defiance. He's
21 extremely quiet and introverted. And yet he was
22 sent out because he continued to do his work, just
23 simply ignored the teacher.

24 When I did a surprise visit to the
25 classroom, he's the only black male in there, and

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1 there were several off-task very active white male
2 children all over the place. Teacher paid them no
3 mind but seemed to still focus on how my son quietly
4 went about his work.

5 I also want to talk about the sixth
6 grade student who was being labeled as AWOL from
7 class because he stopped between classes to go to
8 the bathroom. And we didn't find that out, what he
9 was doing, until, oh geez, somebody asked him. And
10 the student was leaving lunch. The teacher would be
11 late to the next class. He'd stop and go to the
12 bathroom. And they disciplined him for that.

13 The seventh grade special-ed student who
14 was sent to a disciplinary tribunal for theft of
15 school property. When we talk about these things we
16 have to dig deep. So theft of school property was
17 taking candy off of an opened candy dish on a
18 teacher's desk. So he was sent to a tribunal to
19 determine if he should continue in school.

20 The six-year-old black and brown
21 students who were placed in a class during their
22 instructional day to learn how to sit still, we
23 cannot ask parents to access this and do this work
24 all on our own. We need help. We need support. We
25 should not have to know about what IDEA is and all

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1 of its legal levers in order to get support for our
2 students. It is up to the system that erected the
3 structures that impact students.

4 CHAIR LHAMON: I'm sorry.

5 MS. TILLMAN: Did I go over?

6 CHAIR LHAMON: Yes, you've gone over.
7 Thank you very much. Thank you.

8 MR. HAIRSTON: Good afternoon. Thank
9 you, Madam Chair and to the members of the U.S.
10 Commission on Civil Rights for this opportunity to
11 present.

12 My name is Andrew Hairston, and I'm a
13 staff attorney at Advancement Project. Advancement
14 Project is a racial justice, non-profit organization
15 that was founded in 1999 by veteran civil rights
16 lawyers to use legal, policy and communications
17 tools to move forward the Civil Rights Movement and
18 unclaim - and reclaim, pardon, its unmet promises.

19 Advancement Project started soon after
20 its origin on writing a report that was published in
21 2000, called Opportunity Suspended, in collaboration
22 with the Harvard Civil Rights Project that really
23 honed in on the harms of exclusionary discipline,
24 particularly with regard to black and brown
25 children, girls, LGBTQ students, and students with

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1 disabilities. And we have continued that work to
2 dismantle the School to Prison Pipeline in our 18
3 years of existence.

4 In my remarks today, I want to give a
5 strong commendation to the youth and parent
6 organizers who have really moved this work forward,
7 folks like the Dignity in Schools campaign, who are
8 represented here today, Gwinnett StoPP of Georgia,
9 Family and Friends of Louisiana's Incarcerated
10 Children in Louisiana, and Racial Justice Now in
11 Ohio, just to name a few.

12 On this movement, it really has been
13 these impacted communities, these black and brown
14 committed organizers in the form of parents and
15 students who have moved this work forward. And as
16 we have seen, particularly in the 21st century,
17 various other education stakeholders have come
18 around on this issue, folks like superintendents'
19 unions, and teachers' unions, from the zero
20 tolerance policies of the 1980s to more restorative
21 justice and trauma-informed practices that we are
22 seeing pushed forward now.

23 There is still a great deal of work to
24 do, despite successes that we have achieved,
25 particularly in spaces like Denver, Rochester, and

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1 Buffalo. Although there have been revised codes of
2 conduct, there still are disproportionate effects on
3 black and brown children, children with
4 disabilities, and other marginalized communities
5 that the 2014 guidance from the Obama administration
6 intended to move forward.

7 We urge the Commission certainly to keep
8 that guidance to continue along the path that it
9 represents to ensure that all children have access
10 to a safe and supportive school environment. And
11 again, we thank you for this opportunity to present
12 today.

13 CHAIR LHAMON: Thank you.

14 MS. KING: Thank you, Commissioners, for
15 the opportunity to speak during this public forum on
16 this important topic. My name is Liz King, and I am
17 the Director of Education Policy for the Leadership
18 Conference on Civil and Human Rights in Washington,
19 D.C.

20 We are a coalition charged by our
21 diverse membership of more than 200 national
22 organizations to promote and protect the civil and
23 human rights of all persons in the United States.
24 Through advocacy and outreach to targeted
25 constituencies, we work toward the goal of a more

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1 open and just society, an America as good as its
2 ideals.

3 The topic of today's hearing is of
4 particular interest to the civil and human rights
5 community, given our long struggle to ensure
6 educational opportunity, full inclusion, and
7 appropriate supports and services for children with
8 disabilities, students of color, women and girls,
9 English learners, and Native American, low income,
10 and LGBTQ students.

11 We recognize that often students are
12 members of multiple communities and experience
13 unlawful and unjust discrimination within the
14 intersections of these identities. We are committed
15 to the robust enforcement of our nation's civil
16 rights laws and education laws, and the freedom from
17 discrimination and access to educational opportunity
18 that they provide.

19 As advocates working to eliminate
20 discriminatory practices that undermine equal
21 educational opportunity, we know all too well that
22 students of color with disabilities are
23 disproportionately subjected to punitive discipline
24 practices relative to their white peers with
25 disabilities or their peers of color without

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1 disabilities.

2 Relatedly, we were recently joined by
3 more than 100 state and local civil rights and
4 education organizations in a letter to Education
5 Secretary Betsy DeVos, urging the preservation of
6 the significant disproportionality regulation
7 implementing the Individuals with Disabilities
8 Education Act, IDEA. We will provide that letter to
9 the Commission.

10 In addition to urging the preservation,
11 implementation, and enforcement of the significant
12 disproportionality regulation, we continue to urge
13 the U.S. Department of Education to preserve the
14 2014 Dear Colleague letter on the non-discriminatory
15 administration of school discipline.

16 Although both the regulation and the
17 guidance are important, the requirements to address
18 significant disproportionality under the IDEA and
19 protect the rights of children of color and children
20 with disabilities under Title 6, Section 504, and
21 the ADA, remain regardless of the actions of this
22 administration.

23 In addition to preserving policy and
24 enforcement guidance and regulation, we know that
25 easily accessible and user-friendly data are

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1 critical to identifying where schools and districts
2 may be identified as models for replication and
3 where children face barriers to educational
4 opportunity.

5 To that end, the Department of Education
6 must preserve the existing scope, frequency, and
7 public accessibility of the Civil Rights Data
8 Collection.

9 We stand committed to justice for
10 children, enforcement of our laws, and equal access
11 to educational opportunity in our nation's public
12 schools. We appreciate the Commission's attention
13 to this critical issue and hope to see further
14 opportunities for the Commission to hear testimony
15 from students and their families on this topic and
16 others. Thank you.

17 CHAIR LHAMON: Thank you.

18 MR. SHEPHERD: Good afternoon. I'm
19 sorry, okay. Hi, my name is Stephen Shepherd Jr. I
20 am an educator from Minneapolis, Minnesota. I've
21 been an educator for over 20 years. Seventeen of
22 those years have been in the classroom, three of
23 those years have been -- two years have been as an
24 administrator. I'm currently working at the
25 district level for Minneapolis Public Schools in a

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1 department called positive school-wide engagement.

2 Essentially, my function in that role is
3 to coach and support schools with their climate and
4 culture. In addition to that, I am charged with
5 helping fulfill the tenets that are set forth in our
6 OCR agreement with Minneapolis Public Schools.

7 And as doing such -- I've been doing it
8 for the last two years -- and as doing such, working
9 in that capacity, I've seen first-hand how the
10 tenets and the support that is provided from the
11 Office of Justice and OCR to put these pieces forth
12 is starting to work.

13 And what I really want to say is that
14 it's just the start that having the IDEA and the
15 discipline review piece is just the start. And I
16 suggest and I'm asking that it not be something that
17 we look to repeal but we just look to enhance on.

18 As an educator in a classroom, I've
19 written a total of three referrals in my time. I've
20 worked in various settings with all kinds of
21 students, all kinds of backgrounds. And the reason
22 is because of how I show up and how I engage
23 students, how I involve parents. No harm has come
24 to me. And I have only had to write three, because
25 students like coming to my classroom.

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1 And in being in the different classes
2 and the different buildings throughout Minnesota, in
3 particular Minneapolis and St. Paul in various
4 settings, once again, I've had the opportunity to
5 see where good is being done. And it's when
6 teachers show up, and we show up to serve and do
7 what is best for children.

8 So as time is running out, what I want
9 to suggest is that the biggest piece is dealing with
10 the problem and not being divisive. This isn't a
11 teacher or student thing. And there's a lot of
12 rhetoric that's pushing it to be teacher or student.
13 It's both.

14 And through the OCR tenets in
15 Minneapolis, for example, we've been able to push
16 for different resources, such as PBIS, restorative
17 practice, and being trauma-informed, that is moving
18 to support both teachers and students. So I'm
19 pleading that we would look at measures that are
20 going to support both teachers and students and not
21 be political or look to take one side or the other.

22 CHAIR LHAMON: Thank you very much.

23 MR. SHEPHERD: Thank you.

24 MS. MULDER: Good afternoon, my name is
25 Carissa Mulder.

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1 COMMISSIONER NARASAKI: Madam Chair?
2 I'm sorry. I apologize for interrupting, but I'm a
3 little surprised by this. And I feel it is not in
4 the spirit of which we had agreed to have public
5 testimony. My understanding is that --

6 MS. MULDER: It's not my own. It's on
7 behalf of people who could not be here today. This
8 isn't my own.

9 COMMISSIONER NARASAKI: We had a number
10 of people. We said we'd have 20 people. People had
11 to come. People traveled from far away to get here.
12 And I feel it's very unfair and disrespectful to the
13 people who took time off to come here. And then I
14 feel the rules have been subverted, and it's just
15 unfair. And it's not about you, and it's not about
16 what you're going to say. I just feel it's not
17 fair, it's not in the spirit of what the public
18 testimony was meant to be.

19 VICE CHAIR TIMMONS-GOODSON: I'm going
20 to -- - excuse me. I didn't mean to cut you off --

21 CHAIR LHAMON: No, go ahead.

22 VICE CHAIR TIMMONS-GOODSON: -- Madam
23 Chair. I think I join in that concern. Folks have
24 come, taken their time. I believe there's another
25 process or way that these statements can get in, I

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1 believe. Can they not be added in the public
2 comment section or we simply receive if, you know,
3 correct me if I'm wrong, but can't we receive those
4 statements?

5 I'm concerned about setting a precedent
6 here. I don't know that we've done this before.
7 And I don't want, in the future, individuals that
8 for whatever reason, some good, some bad, not be
9 able to appear, tender it, and have it read by
10 someone else.

11 CHAIR LHAMON: I appreciate the concern.
12 I want to make clear, for the record, that the
13 concern is that we have a special assistant for a
14 Commissioner reading a statement. I'm going to
15 allow us to proceed. This is our first time having
16 public comment. I appreciate that you are
17 presenting testimony from someone else. And I do
18 want us to move forward. But I appreciate having
19 heard the concerns.

20 VICE CHAIR TIMMONS-GOODSON: Can we at
21 least say that, by doing this this time, we are not
22 establishing a precedent, that it will not become
23 the policy and the routine of this Commission that
24 individuals that are unable to make it can tender
25 their statement to a Commissioner and it then be

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1 read?

2 CHAIR LHAMON: I will commit that we
3 will learn as we go, and I want to move us forward
4 today.

5 COMMISSIONER NARASAKI: I just have a --

6 CHAIR LHAMON: All right.

7 (Simultaneous speaking.)

8 COMMISSIONER NARASAKI: I just really
9 have a problem, because then it becomes if you know
10 a Commissioner, then you can get around the rules.
11 I feel that's a very unfortunate signal for the
12 Commission to be sending.

13 CHAIR LHAMON: I appreciate hearing
14 that. We will figure out what we're doing moving
15 forward. And please go ahead now.

16 MS. MULDER: Thank you, Madam Chair.
17 The first comment is from Katherine Kersten who is a
18 journalist in Minneapolis. She says, the underlying
19 premise of the 2014 Dear Colleague letter is that
20 students should be disciplined on the basis not of
21 their conduct as individuals but of their membership
22 in a racial or ethnic group.

23 This flawed premise has led to a host of
24 disastrous if unintended consequences in schools
25 where it has been applied. In St. Paul, for

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1 example, race- based discipline policies have
2 generated violence and disorder and produced an
3 environment where learning is often impossible. The
4 reason, the policies have created a segment of kids
5 who consider themselves untouchable, in the words of
6 one veteran teacher.

7 Supporters of the disparate impact
8 theory of school discipline claim bigoted teachers
9 are to blame for racial disparities and discipline
10 rates. They assume that students of all races and
11 ethnicities as groups will conduct themselves the
12 same way in school despite vast group differences in
13 socioeconomic background and family structure.

14 Racial ethnic differences in suspension
15 rates are attributed to discrimination by default.
16 But the data on which the 2014 guidance was based
17 reveal that across the nation the suspension rate
18 for white boys is more than twice that of Asian and
19 Pacific Islander boys.

20 According to disparate impact logic,
21 this must be because teachers are prejudiced against
22 white boys. But isn't it more likely that white
23 boys' rate is higher because as a group they
24 misbehave more often than their Asian peers? That
25 appears to be the case with black students. Their

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1 discipline rate is higher than other students
2 because, on average, they misbehave more.

3 In fact, a ground-breaking 2014 study in
4 the Journal of Criminal Justice found that the
5 racial gap in suspensions is completely accounted
6 for by a measure of the prior problem behavior of
7 the student.

8 In St. Paul, Asian students primarily of
9 Hmong and other Southeast Asian backgrounds, are
10 flooding out of district schools to escape the
11 violence and disorder that have followed the
12 districts' adoption of disparate impact-based
13 discipline policies.

14 Proponents of race-based discipline
15 policy say they seek justice for poor and minority
16 children. But it is poor and minority children
17 struggling to learn in anarchic classrooms who
18 suffer disproportionately from misguided equity
19 policies.

20 So long as disorder is allowed to
21 flourish in the name of statistical parity, our
22 nation's yawning racial learning gap will continue
23 to widen.

24 And the second comment is from Heather
25 MacDonald at the Manhattan Institute. She says, the

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1 Commission could provide an important public service
2 by calling for more observational studies of student
3 classroom behavior.

4 The claim that teacher bias lies behind
5 black student's higher discipline rates is based on
6 the hypothesis that black and white students act out
7 at equal rates but are treated differently by
8 teachers and principals.

9 All available evidence disproves this
10 hypothesis. Black males between the ages of 14 and
11 17 commit homicide at nearly ten times the rate of
12 white and Hispanic males ages 14 to 17. It strains
13 credulity to think that the lack of socialization
14 that produces that much higher homicide rate will
15 not also result in more aggressive classroom
16 behavior. Other crimes such as robbery and assault
17 are similarly disproportionate.

18 The black out of wedlock birthrate is
19 nearly three times higher than the white out of
20 wedlock birthrate. Social science research is
21 clear. Children raised by single mothers are at
22 higher risk of truancy, dropping out of school, and
23 criminal involvement. The higher rate of single-
24 parent homes in the black community will also
25 produce students who have less self-control and

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1 socialization skills in the classroom. Thank you.

2 CHAIR LHAMON: Thank you.

3 COMMISSIONER ADEGBILE: Madam Chair, I'd
4 like to associate myself with the objection of
5 Commissioners Narasaki and Vice Chair Timmons.

6 CHAIR LHAMON: Okay. But we're still
7 going to proceed. Thank you, go ahead.

8 MS. SOMIN: Thank you. Like Ms. Mulder
9 --

10 CHAIR LHAMON: Your microphone's not on.
11 Thank you.

12 MS. SOMIN: Thank you. Like Ms. Mulder,
13 I'm a special assistant and counsel at the
14 Commission. But I'm reading today two passages that
15 are not my own views but that are two passages
16 submitted on behalf of two teachers to my
17 Commissioners.

18 VICE CHAIR TIMMONS-GOODSON: Excuse me.
19 Madam Chair, may I ask a question just so I can be
20 clear.

21 CHAIR LHAMON: Okay.

22 VICE CHAIR TIMMONS-GOODSON: So it's not
23 one statement that you're providing. You're
24 providing two statements, the statements of two
25 individuals?

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1 MS. SOMIN: Yes.

2 VICE CHAIR TIMMONS-GOODSON: Okay. How
3 many slots did we have for folks to speak?

4 CHAIR LHAMON: But we are taking our
5 time now. So they're doing it within the three
6 minutes. We have agreed to this. Please do
7 proceed.

8 MS. SOMIN: Thank you.

9 CHAIR LHAMON: I have agreed to this.

10 MS. SOMIN: The first set of remarks is
11 from Aaron Benner, an African-American teacher from
12 Minnesota. It is an excerpt from a speech. I have
13 a dream that my four children will one day be judged
14 by the content of their character but not by the
15 color of their skin.

16 I am here again because I believe we are
17 crippling our black children by not holding them to
18 the same expectations as other students. I am here
19 because black students can and should behave any
20 classroom regardless of race, gender, or ethnicity
21 of their teacher.

22 Cussing out your teacher is not black
23 culture. Refusing to do work is not black culture.
24 Not following directions is not black culture.
25 Hitting other students is not black culture. And

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1 assaulting your teacher is not black culture.

2 So I'm asking this school district to
3 ask the black community, my community, what is black
4 culture.

5 I will now turn to reading an excerpt
6 from the remarks of Simon whitehead who is a retired
7 high school teacher. He writes, I am very worried
8 about the direction some of our urban and suburban
9 schools are taking.

10 Over the past four to five years, there
11 have been strong expectations to discipline students
12 differently depending on their race. We were told
13 that too many students of color were being
14 suspended, and that this looked bad, especially in
15 the case of African-American boys. This was
16 definitely the case in Minneapolis.

17 However well-intended, this policy
18 actually disrespects a whole class of students by
19 lowering the expectations for their behavior, their
20 work ethic, and inevitably their academic progress.
21 When students walk through my classroom door, I have
22 high expectations for them no matter what they look
23 like.

24 Another great area of concern is that
25 students are now increasingly emboldened to get

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1 together and collaborate to, quote, get teachers in
2 trouble. Those teachers can lose their jobs and
3 their entire careers.

4 The teachers who tend to be targets are
5 those who have a more traditional way of teaching.
6 By this I mean holding all students to high
7 expectations such as punctuality, respectful
8 behavior, teamwork, good work ethic, following
9 school rules, politeness, meeting deadlines, and
10 providing consequences for not reaching those high
11 standards.

12 This has led, in my opinion, to a
13 generation of teachers who are, quote, walking on
14 egg shells, unquote, trying very hard to not say
15 anything or do anything that might remotely get them
16 reported. I believe that many teachers now turn a
17 blind eye to school policies not popular with
18 students. They inflate grades, ignore dress code
19 violations, don't give deadlines for handing work
20 in, and put up with bad behavior that would
21 previously have prompted disciplinary action.

22 It is a culmination of these little
23 expectations that has led to an erosion of the
24 overall school climate of academic rigor as well as
25 an erosion in student and staff safety.

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1 In addition, if there's a student
2 exhibiting significantly bad behavior, many teachers
3 feel helpless because they know that a behavior
4 referral will be fruitless. Assistant principals
5 will return that student to the same classroom that
6 day or the next day. Order in the classroom
7 deteriorates and learning suffers.

8 Thank you. And I also submitted written
9 copies of these for the record.

10 CHAIR LHAMON: Thank you.

11 COMMISSIONER ADEGBILE: Madam Chair, can
12 we clarify whether or not these statements were
13 submitted by actual persons or whether the
14 Commissioners identified these statements for
15 purposes of putting them in the record?

16 (Applause.)

17 MS. MOORE: Sorry, if you want me to
18 speak, yes, they did come from actual persons.

19 CHAIR LHAMON: Okay. We're going to
20 keep moving. I will say that there are a few people
21 who were waitlisted to try to speak today. I want
22 to make sure they have time also. We've already
23 moved off of what our original plan was. We want to
24 make sure that we have time for everyone to speak.
25 So please come on up, and I'll hear from the next

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1 person who's here.

2 MS. WOODY: My name is Claire Woody, and
3 I am a single parent of a black student with
4 disabilities. And I am forced to homeschool my son,
5 because they did not allow him to participate in
6 extracurricular activities.

7 And when I filed a complaint, he was
8 forced into a placement where they had high
9 disciplinary school incidents, so he was a victim of
10 bullying three times. And they put a ceiling on his
11 educational level.

12 And since I've been homeschooling him,
13 and I only wish I did it earlier, he has soared so
14 much. And he's on the autism spectrum. He is my
15 40th birthday gift. I felt some kind of way from
16 those testimonies that I just heard. He is well
17 disciplined. He loves learning, and I enforce that
18 every day.

19 So I was speaking to a young lady
20 outside who told me about the IDEA does not allow a
21 school system to put a ceiling on the education.
22 And I'm right here from Washington, D.C. So I am
23 forced to work full time as well as homeschool my
24 son. And it's hard. Thank you for allowing me this
25 opportunity.

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1 CHAIR LHAMON: Thank you.

2 MS. PRANGLEY: Good afternoon, Chair
3 Lhamon and Commissioners. My name is Erin Prangley,
4 and I am grateful to be here to submit a statement
5 on behalf of the National Association of Councils on
6 Developmental Disabilities.

7 NACDD remains concerned that states and
8 local education agencies are not fully meeting the
9 requirements of the Individuals with Disability in
10 Education Act, IDEA, to identify and address the
11 widespread disparities of treatments of students of
12 color with disabilities.

13 NACDD is a non-profit, non-partisan
14 organization that serves as the national voice for
15 the 56 state and territorial councils on
16 developmental disabilities. Because DD councils are
17 federally funded, governor-appointed entities with
18 memberships that are at least 60 percent persons
19 with developmental disabilities or their families,
20 they are in a unique position to provide critical
21 feedback concerning how students of color with
22 disabilities are treated in our education system.

23 NACDD appreciates the urgency of this
24 issue and timing of this hearing given the reports
25 that we hear from our DD councils that school

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1 districts are still struggling to put in place
2 practices that ensure the safety of students of
3 color with disabilities against discrimination.

4 This testimony and the written testimony
5 that I submitted is intended to provide a brief
6 snapshot of the work that the DD councils are doing
7 and what further action is necessary to ensure
8 students with disabilities have the right to attend
9 public schools free from harmful and discriminatory
10 disciplinary practices.

11 Georgia, the Georgia Council on
12 Developmental Disabilities has chosen to examine the
13 widespread racial disparities throughout the Georgia
14 school districts in the treatment of children with
15 disabilities, children of color with and without
16 disabilities, through exclusionary policy such as
17 zero tolerance, suspension, expulsion, and
18 reassignment to the Georgia Network for Educational
19 and Therapeutic Support systems that are part and
20 parcel of this School to Prison Pipeline that we're
21 talking about today.

22 GDD -- GCDD will fund a project this
23 year that will ensure that African American males in
24 special education have the equal access to the
25 quality education that can change their trajectory

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1 away from School to Prison Pipeline.

2 This Council takes seriously its
3 responsibility to make investments towards
4 confronting disparate treatment of students of color
5 with disabilities in schools and will continue to
6 provide a venue for policy makers and agencies to
7 listen to people with DD and their families.

8 Almost out, but really quickly, Hawaii,
9 one of the reasons why we need to lift up this
10 federal policy and make sure it's enforced
11 appropriately is it emboldens states like Hawaii.

12 The DD Council there in 2014, after the
13 guidance was released, went to their state
14 legislature. They had already recognized a problem
15 with discipline, and they asked for state
16 legislation to talk about the problem of seclusion
17 and restraint. And they were successful getting the
18 state legislature to do that.

19 CHAIR LHAMON: Thank you. You'll have
20 to stop there. Thank you very much.

21 MS. PRANGLEY. Thank you very much.

22 CHAIR LHAMON: And our last speaker.

23 MR. SINOCCHI: Hi. My name is Jim
24 Sinocchi. I am the managing director and head of
25 the Office of Disability Inclusion at JP Morgan

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1 Chase. I'm down this week to talk to -- I have
2 spoken with members of Congress about employment of
3 people with disabilities.

4 And I'm worried about the pipeline. And
5 that's why I came here today to implore the
6 Commission to do whatever we can to educate these
7 students with disabilities so we can bring them into
8 the workforce.

9 Companies like Cisco, JP Morgan Chase, Ernst &
10 Young, PricewaterhouseCoopers are all hiring people
11 with disabilities.

12 About 20 years ago when we discovered
13 children on the autism spectrum, we couldn't figure
14 out where to place them. I'm proud to say that
15 today we're hiring people on the autism spectrum as
16 fast as we can find them.

17 And the reason for that is they
18 outperform able-bodied people in their jobs. Go
19 figure, able-bodied people outperforming -- people
20 with disabilities outperforming able-bodied people.
21 It's not a bad thing. And we're also promoting
22 people. In the last year, we promoted at least two
23 people to vice president with disabilities.

24 And so it's important that the
25 Commission help in this matter in terms of providing

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1 or helping the government provide the services to
2 these schools.

3 I'm also a board member of the Viscardi
4 School of New York which educates students with
5 disabilities from grade school to high school. And
6 they're getting jobs. But that school has nurses on
7 staff, occupational therapists on staff, physical
8 therapists on staff to create a holistic environment
9 to move these kids from the school to viable
10 employment.

11 And so I wanted to be here to say there
12 is a light at the end of the tunnel if we could fix
13 this the right way and not let our children with
14 disabilities flounder in schools where opportunity
15 is difficult.

16 One of the reasons why we're having
17 trouble, as I've heard all morning here, is that
18 most able-bodied people around the world have a
19 visceral reaction to people with disabilities. They
20 don't know what to do with us. They don't know how
21 to approach us, they don't know how to talk to us.

22 And this is the same issue that I'm
23 facing at Chase, but in a good way. I'm at Chase to
24 do change management to get the company familiar
25 with people with disabilities. And so I wanted to

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1 pose that to all of you in this room to say there is
2 more than a negative dialogue. And we have to bring
3 it back to the positive.

4 Disability doesn't care about race.
5 When we become disabled, no matter what color we
6 are, we all face the same challenges that disability
7 leaves us with. I could say that I was -- I've been
8 paralyzed for 35 years due to a spinal cord injury.
9 I'm married to a woman for 30 years. I have two
10 children and two grandchildren. And I'm supporting
11 my family. This is the goal that I look for, for
12 people with disabilities, with all the folks talking
13 about their kids here. Thank you.

14 CHAIR LHAMON: Thanks very much. That
15 concludes our public presentations, but it doesn't
16 conclude the briefing, just a few last points. One,
17 I want to be clear on the record that everyone who
18 spoke today signed up on a first come, first serve
19 basis to be able to speak.

20 I appreciate my fellow Commissioners'
21 patience and the public's patience with us as we
22 begin the new process for us in the public comment.
23 I am very, very grateful to all who participated as
24 experts and as part of the public comment process
25 today.

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1 Each of you, and anyone else who would
2 like to submit further comment, further information
3 to us for our record, the record will remain open
4 until Tuesday, January 16, 2018.

5 And people can submit materials for
6 consideration to U.S. Commission on Civil Rights,
7 Office of General Counsel, 1331 Pennsylvania Avenue,
8 NW, Suite 1150, Washington, D.C. 20425, or email
9 them to schooldiscipline@usccr.gov.

10 Today has been tremendously informative.
11 We very much appreciate it. And we will now
12 conclude our briefing at 2:12 Eastern time.

13 (Whereupon, the above-entitled matter
14 went off the record at 2:12 p.m.)
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