

Civil Rights and the School- to-Prison Pipeline in Oklahoma

A Report of the
Oklahoma Advisory Committee to the
U.S. Commission on Civil Rights

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

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

**Oklahoma Advisory Committee to the
U.S. Commission on Civil Rights**

The Oklahoma Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding the civil rights impact of school discipline and juvenile justice policies in the state, which may lead to high rates of juvenile incarceration in what has become known as the “school to prison pipeline.” The Committee submits this report as part of its responsibility to study and report on civil rights issues in the state of Oklahoma. The contents of this report are primarily based on testimony the Committee heard during a web conference on August 28, 2015 and a hearing on September 11, 2015 in Oklahoma City.

This report details civil rights concerns raised by panelists with respect to school discipline disparities, particularly for students of color, throughout the state of Oklahoma. It discusses the roles of exclusionary school discipline, implicit biases, and poverty in funneling students of color into the school-to-prison pipeline. From these findings, the Committee offers to the Commission recommendations for addressing this problem of national importance.

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⁺*Committee Member Michael Barlow passed away on November 28, 2015. Mr. Barlow was an active member of the Committee for many years, and made significant contributions to the present study. The Committee is grateful for his involvement.*

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I. EXECUTIVE SUMMARY

In 2014, the U.S. Department of Justice and the U.S. Department of Education issued a joint letter offering guidance to elementary and secondary schools on meeting their duties under federal law to administer student discipline without discriminating on the basis of race, color, or national origin.¹ In its data collection, the Department of Education Office for Civil Rights found that students of color and students with disabilities are disciplined at higher rates than their white peers and students without disabilities. In their Dear Colleague letter, the departments acknowledged that school discipline disparities may be caused by various conditions and factors in schools, and do not necessarily indicate intentional discrimination. However, current disparities are not explained by differences in the severity or frequency of misbehavior alone. Rather, facially neutral discipline policies in schools may have an adverse, disparate impact on some groups; violating their civil rights and causing them to lose important instructional time. This in turn has negative effects on educational outcomes and juvenile justice involvement.² In March of 2015, the Oklahoma Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) voted to study these disparities and their related civil rights impact in the state of Oklahoma.

The Committee held public hearings on August 28, 2015 (via web conference) and September 11, 2015 (in Oklahoma City). These discussions focused largely on the role of exclusionary school discipline, such as expulsion and suspension, on juvenile justice involvement. Testimony focused particularly on the potential for disparate impact of these policies on the basis of race, color, and sex.

Several prominent themes arose from these discussions:

1. Poverty

In Oklahoma, there are disproportionately more students of color who are in poverty compared with white children. Therefore, Oklahoma students of color are disproportionately affected by the adverse effects of poverty, which may include the following:

- a. Children in poverty may experience delays in cognitive development due to high-stress situations created by poverty such as lack of food, shelter, or stability. This can subsequently lead to delays in academic performance or acting out in class.

¹ U.S. Department of Education & U.S. Department of Justice, *Joint Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline* (Feb. 4, 2014), Available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>.

² U.S. Department of Education & U.S. Department of Justice, *Joint Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline* (Feb. 4, 2014). *Id.*

- b. Schools where students in poverty are enrolled are tasked with providing for students' basic needs not being met at home in order to make classroom learning effective. However, due to current public school funding structures, schools with the highest-need students often have the fewest resources with which to support them.
- c. Students not receiving support may act out in the classroom, and educators who face many conflicting demands on the job may use exclusionary disciplinary measures to make classroom environments more productive for other students.

2. Implicit Bias

- a. Implicit bias is defined as the unconscious attitudes or beliefs held by an individual. Research shows that behavior and actions resulting from this cognition are more likely to occur when individuals are fatigued and must make decisions quickly under great pressure. This could include a teacher needing to abruptly stop a lesson to manage disciplinary issues in a classroom full of students or a school resource officer attempting to de-escalate a potentially dangerous situation.
- b. Black children are often perceived as older and more dangerous than their white peers. Subsequently, black students may not be afforded the same understanding from teachers, administrators, or juvenile justice workers that their white peers are. Panelists testified that this could lead to these students being overrepresented in juvenile justice systems despite presenting similar behaviors as white students.
- c. The Committee heard testimony about how implicit bias affects response to behaviors of black students versus the behavior of white students. While white students are more frequently disciplined for engaging in objective behaviors such as smoking or graffiti, black students are more often punished for objective behaviors such as class disruption or dress code violations.
- d. While implicit bias is by definition unconscious, panelists suggested that school officials and teachers should receive implicit bias training to mitigate the disparate effects of these biases on various student populations.

3. Exclusionary disciplinary policies

- a. Harsh disciplinary practices such as expulsions and suspensions may lead to high rates of juvenile involvement in the criminal justice system, particularly for youth of color and youth with disabilities. Experts testified that students who are excluded from their learning environments disengage from schools.

- b. These practices that disproportionately exclude youth of color and youth with disabilities could result in students struggling to find opportunity for achievement or a career path. Students instead may engage with harmful or unproductive activities, funneling them into the school-to-prison pipeline.

4. Students With Disabilities

- a. The suspension rate for students with disabilities is double the rate of the suspension rate for all students. Youth with disabilities, whether learning disabilities or emotional disabilities, are disproportionately represented in the juvenile justice system.
- b. Inmates in the nation's prisons have a much lower level of literacy than the general public. Ensuring that students with learning disabilities are reading at an appropriate grade level can be a protective factor for youth, helping to prevent them from being funneled into the criminal justice system.

5. American Indian Students

- a. Native American students are 1.7 times more likely to be referred to law enforcement than other students of color and 2.6 times more likely than white students. The committee heard from panelists who expressed concern that native students are pushed out of school through harsh discipline policies and exclusionary practices that are not culturally relevant and do not make use of traditional supports. This continues the cycle of despair, poverty, and trauma that has already deeply impacted native communities, and increases mistrust of the public education system.
- b. Discipline policies and school services are not coordinated between tribal leaders and schools. An increase in tribal involvement in native students' education could help them to feel more connected to their school and lead to improved academic outcomes.

In response to these concerns, the Committee offers the following recommendations to the Commission:

1. The Commission should issue the following formal recommendations to the U.S. Department of Education:

- a. The Department's Office of Civil Rights should conduct a national study on the impact of poverty on disparities in educational outcomes on the basis of race or color.

- b. If law enforcement officers are working in schools, the Department should establish uniform licensing requirements to ensure that all law enforcement officers working in schools are properly trained and equipped to respond in an age appropriate manner with children. Applicable training should include strategies for recognizing and overcoming implicit bias.
 - c. The Department should require that states impose mandatory reforms to disciplinary policies for schools that demonstrate significant disparities in disciplinary actions on the basis of race, color, or disability, according to the Office of Civil Rights, Civil Rights Data Collection. Such reforms may be based on the Department's 2014 Guiding Principles Resource Guide for Improving School Climate and Discipline.
 - d. The Department should require that districts engage in continuous, shared educational planning between alternative schools or juvenile detention facilities and a child's home school, to ensure that students receive an education of similar quality even if sent to an alternative school.
 - e. The Department should examine and recommend an expansion of evidence-based restorative justice and other alternative disciplinary models to reduce exclusionary discipline without creating a school disciplinary climate where no discipline occurs to avoid public censure.
 - f. The Department's Office of Indian Education should provide guidance on how school districts can effectively consult with tribal governments to serve Native American students.
 - g. The Department should require ongoing anti-bias and cultural competency training as a condition of licensure for teachers and school administrative personnel.
- 2. The Commission should issue the following formal recommendations to the U.S. Department of Justice:**
- a. The Department's Office of Juvenile Justice and Delinquency Prevention should examine educational outcomes and disparities on the basis of race, color, sex, and/or disability among youth who reside in juvenile detention and correctional facilities.
 - b. The Department should require mandatory, all-staff training on recognizing and overcoming implicit bias in its juvenile detention and correctional facilities.

II. INTRODUCTION

In March 2015, the Oklahoma Advisory Committee to the U.S. Commission on Civil Rights voted to take up a proposal to study what is known as the “School-to-Prison Pipeline.” Specifically, the Committee sought to examine the extent to which the application of school disciplinary and juvenile justice policies in the State of Oklahoma may have a discriminatory impact on students on the basis of race, color, and/or sex—leading to a disproportionate incidence of law enforcement contact and criminal, rather than administrative, penalties for students of color, and males.

As part of this initiative, the Oklahoma Advisory Committee to the U.S. Commission on Civil Rights received testimony from government officials and experts through a public web hearing on August 28, 2015. These panelists’ testimony focused on federal data regarding key education and civil rights issues at the country’s public schools, as well as discipline disparities faced by American Indian students across the nation. The committee also heard about alternative policies and practices that could lessen the use of harsh, exclusionary discipline concerns in schools.

The Committee then hosted an in-person hearing in Oklahoma City on September 11, 2016. During this meeting, the Committee heard testimony from a series of five panels, including educators and school personnel, child advocates, academics, and juvenile justice officials. Testimony included information regarding the ways some disciplinary policies and practices may result in a disparate impact on youth of color and contribute to the disproportionately high involvement of such youth in the juvenile justice and eventually the adult justice systems.³

The following report is divided into three sections. First, it defines the phenomenon known as the “School-to-Prison Pipeline” and the policies and practices that may contribute to it, as well as related civil rights concerns. It then provides an overview of key themes and factors contributing to the school-to-prison pipeline, according to panelists and stakeholders who testified at the online and in-person meetings, and those who offered written statements and testimony during open comment periods. The report concludes with a series of specific findings in Oklahoma and recommendations to the Commission to address civil rights concerns related to the issue of school discipline disparities.

³ See Appendix A for hearing agendas

III. BACKGROUND

Oklahoma is similar to the rest of the nation for percentage of youth suspended⁴ but it ranks 1st for rate of expulsion – 104 students for every 10,000.⁵ The second-ranked state is Louisiana with 83 per 10,000 students. The Oklahoma Institute for Child Advocacy defines the school-to-prison pipeline as “a social phenomenon where legal policies, education policies, and social constructs funnel struggling children from schools to jails and prisons.”⁶ The Institute explains the connection between juvenile incarceration and school discipline policies as follows:

Students may be struggling with learning disabilities, coping with unhealthy behavioral problems caused by abuse or neglect, and just trying to get by in poverty. Instead of receiving the education and support needed, students fall behind academically, begin acting out in the classroom and are expelled under zero-tolerance policies that punish students for the smallest infractions. Once suspended or expelled from school, idle students are easily pulled into the prison pipeline.⁷

Current K-12 education research shows that the greatest predictor of a student’s involvement in the juvenile justice system is his or her history of disciplinary referrals in school. The impact a suspension or expulsion can have is demonstrated in one study which found that students who were suspended, expelled, or referred to an alternative school were 23.4 times more likely to be referred to the juvenile justice system.⁸ In her book, *The New Jim Crow*, author Michelle Alexander illustrates how youth of color are tracked for the criminal justice system while in school, placed behind bars, and once they re-enter society, have few options for productive employment. She writes that these youth are “shuttled from their decrepit, underfunded inner-city schools which failed to prepare them for the workforce, and once they have been labeled criminals, their job prospects are forever bleak.”⁹

Current data suggest that school discipline policies have a disparate impact on students based on the following protected classes:

⁴ KidsCount Data Center, The Annie E. Casey Foundation, *Children Who Have Been Suspended From School*. <http://datacenter.kidscount.org/data/tables/8831-children-who-have-been-suspended-from-school?loc=1&loct=1#detailed/1/any/false/1021/4825,4826/17699,17700> (Last accessed April 20, 2016).

⁵ KidsCount Data Center, The Annie E. Casey Foundation, *Children Who Have Been Expelled From School* Available at: <http://datacenter.kidscount.org/data/tables/8832-children-who-have-been-expelled-from-school?loc=1&loct=1#detailed/1/any/false/1021/any/17701,17703> (Last accessed April 20, 2016).

⁶ Oklahoma Institute for Child Advocacy, *Improving Juvenile Justice Practices*. Available at: <http://oica.org/improving-juvenile-justice-practices/> (last accessed June 10, 2016)

⁷ Sarah Ashmore, *Improving Juvenile Justice Practices*. Oklahoma Institute for Child Advocacy. Available at: <http://oica.org/improving-juvenile-justice-practices/> (last accessed April 15, 2016).

⁸ Fowler, D. *School Discipline Feeds the Pipeline to Prison*. 93 Phi Delta Kappan 14 (2011).

⁹ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. 150 (2010).

- *Race/color:* The U.S. Department of Education also reports that nationally, black students are suspended and expelled at a rate three times greater than white students, while American Indian and Native Alaskan students are also disproportionately represented.¹⁰ Nationally, the Annie E. Casey Foundation reports that African American youth face nearly five times the likelihood of incarceration compared to their white peers across the country; Latino and American Indian youth face between two and three times the likelihood.¹¹ This disparity is visible in Oklahoma, where a quarter of out-of-school suspensions are administered to black students, even though African Americans make up less than 10 percent of the student population. While Latinos make up 13 percent of the student population, they receive 16 percent of the out-of-school suspensions administered.¹² American Indian students in the state are not overrepresented in suspensions but they are overrepresented in detention facilities at a rate of 119 per 100,000 compared to white children at a rate of 75 per 100,000.¹³
- *Disability status:* According to the U.S. Department of Education Office of Civil Rights, students with disabilities represent a quarter of students arrested and referred to law enforcement nationally, even though they are only 12% of the overall student population. Students with disabilities are also more than twice as likely to receive an out-of-school suspension (13%) than students without disabilities (6%).¹⁴ In Oklahoma, the Institute for Child Advocacy reports that “more than half of the youth enrolled in OJA [Office of Juvenile Affairs] education programs required special education services due to specific learning disabilities, emotional disturbances or other health impairments that impede the ability to learn.”¹⁵
- *Sex:* According to the U.S. Department of Justice, in 2014 the national arrest rate for boys was just over 4,000 per 100,000 males age 10-17, while the arrest rate for girls was less than half this number, at just under 2,000.¹⁶ Similarly, the U.S. Department of Education

¹⁰ U.S. Department of Education Office for Civil Rights, *Civil Rights Data Snapshot: School Discipline, Issue Brief No. 1* (March 2014), Available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>. (last accessed June 6, 2016)

¹¹ The Annie E. Casey Foundation, *Youth in Incarceration in the United States*, (2011). Available at: <http://www.aecf.org/m/resourcedoc/aecf-YouthIncarcerationInfographic-2013.pdf> (last accessed April 15, 2016)

¹² U.S. Department of Education, Civil Rights Data Collection, 2011-2012. *State and National Estimations, Enrollment and Discipline tables*. Available at <http://ocrdata.ed.gov/> (Last accessed May 4, 2016)

¹³ Kids Count Data Center, The Annie E. Casey Foundation, *Youth Residing In Juvenile Detention, Correctional And/Or Residential Facilities By Race And Hispanic Origin in Oklahoma* <http://datacenter.kidscount.org/data/tables/8391-youth-residing-in-juvenile-detention-correctional-and-or-residential-facilities-by-race-and-hispanic-origin?loc=38&loct=2#detailed/2/38/false/36,867,133,18,17/4038,4411,1461,1462,1460,4157,1353/16996,17598> (last accessed May 4, 2016)

¹⁴ U.S. Department of Education Office for Civil Rights, *Civil Rights Data Snapshot: School Discipline, Issue Brief No. 1*. (March 2014). Available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>. (last accessed June 6, 2016)

¹⁵ Oklahoma Institute for Child Advocacy, *Oklahoma Juvenile Justice At a Glance* (2014). Available at: <http://oica.org/wp-content/uploads/2014/01/JJ-Fact-Sheet.pdf> (last accessed April 15, 2016)

¹⁶ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Arrest Rate Trends 1980-2012 Statistical Briefing Book*, Available at: http://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05230. (last accessed June 6, 2016)

reports that beginning as early as preschool, boys represent 82% of school children suspended multiple times, while only representing 54% of the preschool enrollment.¹⁷

While the Oklahoma Committee is well aware of the disproportionate administration of school discipline to children with disabilities, the public hearing did not include formal testimony on this topic. Due to time constraints, the committee chose to focus formal testimony on the impact on students of color and the disparity between male and female students. However, several disability advocates and parents provided testimony during the open comment period as well as written materials which are included in this report.

The Kids Count Data Center of the Annie E. Casey Foundation reports that for youth age 10 and older in Oklahoma, the incarceration rate is 125 per 100,000 youth, which is below the national average of 173. Furthermore, between 1997 and 2013, the State of Oklahoma saw a 36% decline in youth incarceration rates; however the state still lags behind national trends, as the country as a whole saw a 48% decline in youth incarcerations during this same time frame.¹⁸ Although current federal data show a continued, significant decline in juvenile confinement rates in the United States since 1997,¹⁹ challenges remain. The country maintains the highest rate of juvenile incarceration of any developed nation in the world.²⁰

The American Civil Liberties Union suggests a number of specific policies and practices thought to contribute to this problem, including:²¹

- *Zero tolerance policies* that automatically impose harsh penalties such as suspension and expulsion regardless of circumstances. These practices often leave students unsupervised and without constructive activities at home, exacerbating academic difficulties as students fall behind in their coursework.
- *Police presence in school hallways* has shifted disciplinary responsibilities in many schools from teachers and administrators to police, resulting in an increase in school-based arrests, often for non-violent offenses such as disruptive behavior.
- *Disciplinary Alternative Schools* available in some jurisdictions as an alternative for students who have been suspended or expelled, reportedly lack the same educational

¹⁷ U.S. Department of Education Office for Civil Rights, *Civil Rights Data Snapshot: School Discipline, Issue Brief No. 1* (March 2014). Available at: <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>. (last accessed June 6, 2016)

¹⁸ KidsCount Data Center, The Annie E. Casey Foundation. *Youth Residing in Juvenile Detention, Correction and/or Residential Facilities*. <http://datacenter.kidscount.org/data/tables/42-youth-residing-in-juvenile-detention-correctional-and-or-residential-facilities?loc=1&loct=1#detailed/2/38/false/36,867,18,14,8/any/319,17599>

¹⁹ Pew Charitable Trust Infographic (2013). Available at: https://chiyouthjustice.files.wordpress.com/2013/09/pspp_juvenile_graphicv2.jpg (last accessed April 15, 2016)

²⁰ The Annie E. Casey Foundation, *No Place for Kids: The Case for Reducing Juvenile Incarceration*, (2011). Available at: <http://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf>. (last accessed April 15, 2016)

²¹ American Civil Liberties Union, *What is the School-to-Prison Pipeline?* Available at: <https://www.aclu.org/racial-justice/what-school-prison-pipeline> (last accessed April 15, 2016).

standards as traditional schools, and often result in students falling further behind, increasing the likelihood of contact with the juvenile justice system.

- *Juvenile Court Involvement* frequently results in “boilerplate” probation conditions for youth such as prohibitions against missing school or receiving even minor disciplinary infractions at school. Students are then often sent to secure detention facilities for violations of these strict terms.
- *Juvenile Detention* often results in a further decline in students’ academic progress, making it difficult, if not impossible, to re-enter traditional schools upon release, and increasing the likelihood of future law enforcement contact.

Testimony indicated that while the school-to-prison pipeline is definitely an urban issue, there has not been research on its effect in rural school districts. The Oklahoma Institute for Child Advocacy reports that in 2014 two-thirds (616,561) of Oklahoma Children under 18 years of age reside in counties that are considered urban metropolitan areas. More than one in five (21.7%) live in Tulsa and Oklahoma counties alone, and 34% reside in rural areas. Former Tulsa Schools Superintendent Keith Ballard testified that, in his experience in rural school districts, there was less racial diversity among the students and less of a problem with disciplinary issues such as school suspensions. He further testified that he believed the problem primarily exists in urban schools.²² Dr. Joy Thomas testified, “The rural communities, they had a lot of the high dropout rate, high pregnancy, things like that, but no school-to-prison pipeline. Because of the small community, they could just go down to a place in town, and someone would help them.”²³ However, Dr. Paul Ketchum testified, “Where it is a significant issue in rural areas are those with large minority populations, especially, tribal areas. We find that there is a representation in the juvenile system. How closely that’s tied to the school-to-prison pipeline, I don’t know yet.”²⁴

These concerns and potential alternative strategies to ameliorate disparities related to school discipline are discussed in greater detail in the following sections of this report.²⁵

²² Ballard Testimony, *September 2015 Transcript*, p. 59 lines 13-25, p. 60 lines 2-8.

²³ Thomas Testimony, *September 2015 Transcript*, p. 81 lines 9-14.

²⁴ Ketchum Testimony, *September 2015 Transcript*, p. 114 lines 18-23.

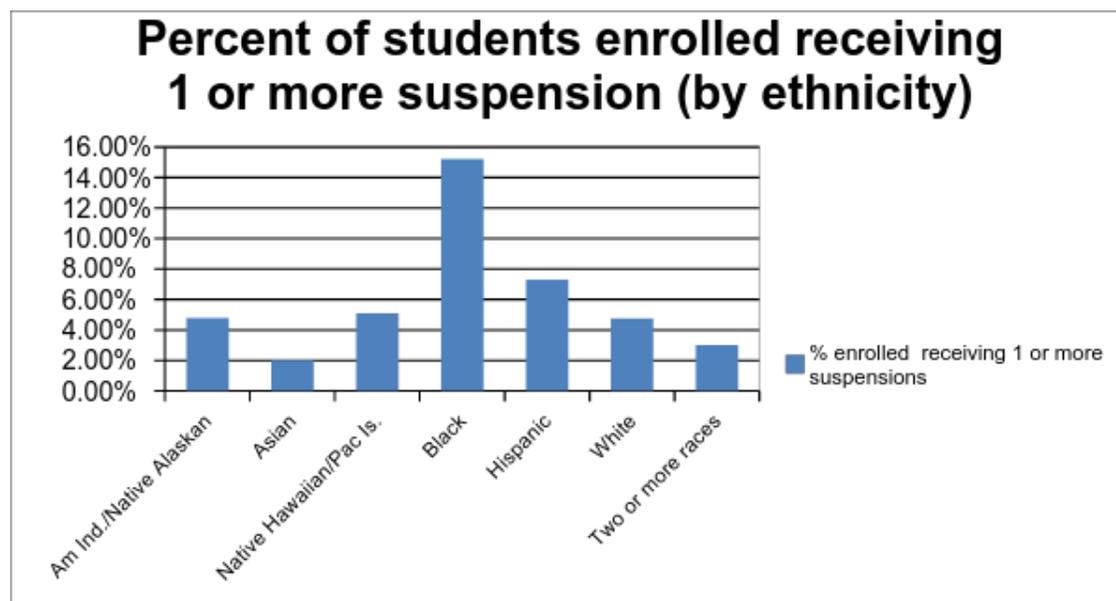
²⁵ At the time of this writing, the State of Oklahoma is experiencing serious budgetary shortfalls that may adversely impact the issues and remedies related to the school-to-prison pipeline phenomenon. Public school funding losses may lead to larger class sizes, fewer supplemental/support personnel (e.g., school counselors), and fewer opportunities for experimentation with alternative strategies for dealing with discipline (e.g., restorative justice models).

IV. SUMMARY OF TESTIMONY

1. School Discipline Data

According to the U.S. Department of Education Office of Civil Rights, during the 2011-12 school year, students of color, particularly African American students, were disproportionately suspended and expelled when compared with their white peers.²⁶ In Oklahoma, about 15% of African American and 7.3% of Latino students are disciplined with out-of-school suspension, compared to 4.7% for white students. These figures are similar in the rest of the country.²⁷

Though black students make up just 10% of Oklahoma's student enrollment, they make up a quarter of the total number of out-of-school suspensions. White students make up more than half of the state's public school enrollment and they make up 42% of the total number of out-of-school suspensions.²⁸



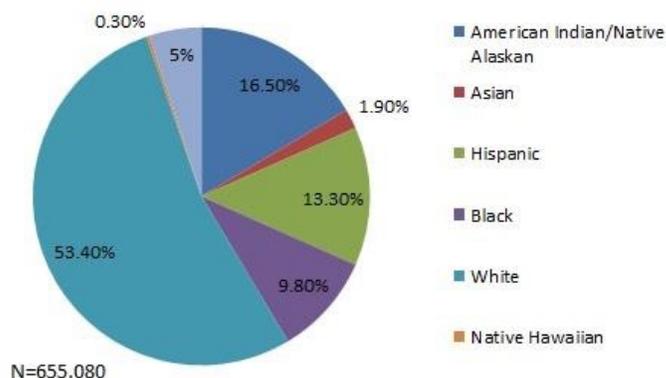
²⁶ Douglass Testimony. *August 2015 Transcript*. p. 4 lines 2-6

²⁷ Civil Rights Data Collection, 2011-2012. Available at:

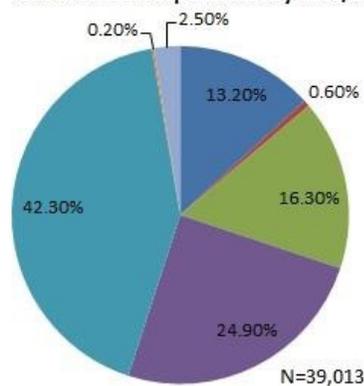
<http://ocrdata.ed.gov/DataAnalysisTools/DataSetBuilder?Report=2> Last accessed April 15, 2016.

²⁸ U.S. Department of Education, Civil Rights Data Collection, 2011-2012. *State and National Estimations, Enrollment*. Available at: http://ocrdata.ed.gov/StateNationalEstimations/Estimations_2011_12. Last accessed April 15, 2016.

Enrollment by Race/Ethnicity



Make-up of students receiving 1 or more out of school suspensions by Race/Ethnicity



This is important to note because both suspensions and expulsions are exclusionary disciplinary actions that have numerous unintended consequences, said Joshua Douglass, attorney at the U.S. Department of Education, Office of Civil Rights:

Exclusion can lead to negative long term outcomes beyond merely missing that lesson. Studies have suggested a correlation between exclusionary discipline policies and practices and an array of serious educational, economic and social problems including social avoidance, diminished educational engagement, decreased academic achievement, increased behavior problems, increased likelihood of dropping out, substance abuse and involvement with juvenile justice systems.²⁹

In addition to the disparity between students of color and white students, significant disparities also exist on the basis of sex. According to Oklahoma’s state-wide data gathered in 2011-12, male students were more than 2.5 times more likely to be suspended than female students. Male students were also three times as likely to be expelled.³⁰

Former Tulsa Public Schools Superintendent Keith Ballard testified about similar trends in Tulsa during the 2014-2015 school year. About 19% of African American students were suspended that school year while 8% of students from all other races were suspended. About 14% of male students were suspended, twice the percentage of female students. “I will just say that in Tulsa Public Schools, we have some very serious statistics, particularly on our African-American

²⁹ Douglass, J. *August 2015 Transcript*. P. 4 lines 31-36

³⁰ U.S. Department of Education, Civil Rights Data Collection, 2011-2012. *State and National Estimations, Enrollment*. Available at: http://ocrdata.edu.gov/statenationalestimations/estimations_2011-12 Last accessed April 15, 2016

students,” he said.³¹ Tulsa is not alone in these disparities; many school districts’ data breakdowns are similar.³²

In his testimony, Mr. Douglass of the Office for Civil Rights recommended limiting use of exclusionary disciplinary policies in an effort address these disparities. He noted some schools and districts have created policies that ban automatic exclusionary discipline, instead encouraging tiered disciplinary actions, resorting only to suspension or expulsion in emergency situations “such as one involving a serious and immediate threat to students, school personnel, or public safety.”³³

While all panelists agreed on the need to ensure equitable treatment of students in the administration of discipline, some educators cautioned that solely focusing on reducing recorded disciplinary incidents without addressing underlying causes of related student behavior could lead to unintended consequences, jeopardizing classroom safety. For example, Mr. Benjamin Bax of the American Federation of Teachers noted the potential for such pressures to discourage teachers and school administrators from disciplining children in order to artificially manipulate data and improve the reputation of a school or district. During his testimony Mr. Bax recalled that after the U.S. Department of Education released their data about school discipline disparities, teachers were told they had to cut down on suspensions, without being given alternative resources -- a practice that had a negative impact on teachers’ classroom management.³⁴

Where problem behaviors were not simply ignored, former teacher John Thompson expressed concern that many students, rather than being suspended for serious behavior, were instead referred to law enforcement:

The principal felt like he or she did not dare process a disciplinary referral. If they suspend a child that would go on that administrator's grade. And it got to a point where it was so extreme, where a principal who would not want to have a suspension go on the school's record with — it’s hard to believe – that they would call the police and have them write a ticket for disturbing the peace, and send the child back to school, all angry and upset, and ready to get in trouble for the next day.³⁵

Oklahoma City Superintendent Robert Neu acknowledged that limiting suspensions for the sole purpose of improving statistics neglects the root of students’ inappropriate behavior — a lack of support or unmet needs. “We could lower those suspensions, but it would create chaos, and that's

³¹ Ballard, Keith. *September 2015 Transcript* p. 8 lines 13-23, P. 9 lines 2-4

³² Civil Rights Data Collection, 2011-2012, *School District Search*. Available at: <http://ocrdata.ed.gov/DistrictSchoolSearch#districtSearch> (Last accessed June 6, 2016).

³³ Douglass, J. *August 2015 Transcript* p. 5 lines 21-25

³⁴ Bax Testimony. *September 2015 Transcript*, p. 237 lines 1-6

³⁵ Thompson, John. *September 2015 Transcript*, p. 257 lines 24-25 and p. 258 lines 1-5

why much of my testimony was focused on solutions that we absolutely have to take a look at underlying conditions.”³⁶ A number of those underlying conditions are discussed in further detail below.

2. Poverty

According to Census data analyzed by the Annie E. Casey Foundation, the rate of poverty for children under 18 in Oklahoma is 25%. However, significant disparities exist within this group. While 16 % of white non-Hispanic children are considered impoverished by federal standards, 43% of African American children, 35% of Hispanic/Latino children, and 25% of American Indian children live in poverty.³⁷ Therefore, Oklahoma’s African American, Hispanic/Latino, and American Indian children are disproportionately more affected by the adverse effects of poverty, than white non-Hispanic children.

Panelists emphasized the role of poverty in contributing to the disparate impact of school discipline policies on these students of color. Black and Latino families have a poverty rate that is twice as high as non-Hispanic white families.³⁸ Black families have a median income less than 60% of white families while Hispanic families have a median income about 70% of white families.³⁹ Research shows that these figures have significant implications for educational attainment, employment, and other risks such as involvement with the criminal justice system.⁴⁰

Superintendent Neu stated that schools are tasked with educating all students to the best of their ability, regardless of poverty status. However, this task is challenging and is more difficult when factoring in the cumulative disadvantage faced by students of color. He described a 100-day study conducted when he first assumed his position, which showed “that, not only were [African-American students] struggling below poverty levels, but it was more of an indicator that you're worse off being an African American in Oklahoma City, than you are in poverty. When you're both, you really have a tough time.”⁴¹ Indeed, studies show that even middle-income black families tend to live in low-income neighborhoods where residents have fewer resources than

³⁶ Neu Testimony *September 2015 Transcript*, P. 48 lines 23-25 and p. 49 lines 1-2

³⁷ Kids Count Data Center, Annie E. Casey Foundation, Available at: <http://datacenter.kidscount.org/data/tables/44-children-in-poverty-by-race-and-ethnicity?loc=38&loct=2#detailed/2/38/false/869,36,868,867,133/10,11,9,12,1,185,13/324,323> on Oct. 23, 2015.

³⁸ National Poverty Center, University of Michigan, *Poverty in the United States*, (2016). Retrieved from: <http://www.npc.umich.edu/poverty/>

³⁹ Carmen DeNavas-Walt & Bernadette D. Proctor, *Income and Poverty in the United States*: 2014. Available at: <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf>. Last accessed April 15, 2016.

⁴⁰ Carlos Gradin, *Poverty among minorities in the United States: explaining the racial poverty gap for Blacks and Latinos*, 44 *Applied Economics* 3793 (2012).

⁴¹ Neu testimony. *September 2015 Transcript*. P. 16 lines 9-14

typical low-income white families.⁴² This means that many black families, though not low-income, often have less access to quality schools, safer streets, or social capital than poor white families.⁴³ Mr. Neu expanded on the scope of the problem and described how schools failing to serve their students who are impoverished can lead to a cycle of poverty. Such institutional failures result in large costs to society that could instead be better spent on providing students in poverty with opportunity. “If we don’t ensure student success, then we’re going to be paying for it through the system through their adult life. And we know that suspensions lead to failure of classes, which leads to dropouts, which leads to a life of poverty, incarceration, premature death,” he said, illustrating this “cycle of poverty.”⁴⁴

a. Poverty and adverse childhood experiences

Simply the experience of living in poverty qualifies as what psychologists refer to as an “adverse childhood experience.” According to the landmark ACE study conducted at Kaiser Permanente from 1995-1997, such experiences are considered a risk factors for illnesses and poor quality of life affecting the entire life trajectory.⁴⁵ According to Child Trends, a non-partisan research agency, Oklahoma ties with Montana for percent of children who have three or more adverse childhood experiences. In addition to poverty, these experiences include divorce, alcohol abuse and witnessing violence. These potentially traumatic events and economic hardship can all constrain a child’s learning abilities and academic achievement in the short run and negatively impact their health in the long run.

Panelists in Oklahoma City discussed the ways poverty and a volatile home environment can impact child health, and by extension, school behavior and academic achievement. Terry Smith, president and Chief Executive Officer of the Oklahoma Institute for Child Advocacy noted that students who live in poverty are often under great environmental stress at home and consequently do not receive the support necessary to develop at the same rate as other peers. “It actually affects your brain development, and it starts early with these kids. It’s no wonder that they’re not able to be successful in school, because they don’t start off with the same things that our kids do,” Smith explained.⁴⁶ Several research studies Smith referred to illustrate such impacts. An article in *Pediatric Prevention* states: “The harms of poverty are much more than a matter of unidimensional material and financial shortage but, instead, are an encompassing and

⁴² Sean Reardon, et al. *Neighborhood Income Composition by Household Race and Income, 1990–2009*. 660 *The ANNALS of the American Academy of Political and Social Science* 78 (2015).

⁴³ David, Leonhardt “Middle-class black families, in low-income neighborhoods.” *New York Times*. June 24, 2015. Available at: http://www.nytimes.com/2015/06/25/upshot/middle-class-black-families-in-low-income-neighborhoods.html?_r=0

⁴⁴ Neu testimony. *September 2015 Transcript*. P. 19 lines 8-13

⁴⁵ The Centers for Disease Control and Prevention, *Injury Prevention & Control: Division of Violence Prevention*. Retrieved from <http://www.cdc.gov/violenceprevention/acestudy/> (Last accessed April 15, 2016)

⁴⁶ Smith T. testimony. *September 2015 Transcript*. p. 88 lines 14-19

unremitting experience of disadvantage, trauma, and disease.”⁴⁷ One of the most prevalent adverse childhood experiences is economic hardship,⁴⁸ which studies have shown negatively affects physical health and emotional well-being. When a child is deprived of necessities like food or shelter or watches a parent struggle to make ends meet, the child’s physical and emotional health and development are adversely impacted.⁴⁹ “Not only are you more susceptible to chronic disease, you are also more susceptible to psychopathological experiences, especially during adolescence,”⁵⁰ testified Sarah Parks during an open comment period. “So think about how that is then affecting their ability to sit in the classroom and learn.”⁵¹ Findings by researchers have found that differences in brain growth “perhaps due to stress tied to growing up in poverty, might partially explain differences in long-term memory, learning...and modulation of emotional behavior.”⁵² Millwood Public Schools Superintendent Cecilia Robinson-Woods illustrated this issue of poverty as a stressful experience during her testimony: More than 30% of Hispanic and African American children “wake up poor,” nationwide, she said. “They lost the birth lottery...and so they have to show up to school already behind.”⁵³ Students who begin kindergarten struggling to keep up with their peers have trouble reading, completing class work, or performing executive functioning and non-cognitive skills such as following directions or self-control. Consequences include being held back, placement in remedial classes, or disciplinary measures.⁵⁴

Poverty also limits parents’ ability to support their children in their academic, social, and emotional development. Former teacher Benjamin Bax illustrated how children coming to school hungry or with little support from family can impact the job of an educator. “These kids have food insecurities. They don’t feel loved. They are not going to get up to the ... level where they are worrying about mastering something that I’m teaching in U.S. History. So you have these needs that need to be met first and foremost.”⁵⁵ Some panelists also raised concern that when students are disciplined, it could be difficult for their parents to advocate for them to appeal an inappropriate punishment or seek resources to address academic struggles or behavior. Parents in poverty, struggling to provide for their children’s basic needs, may not have the time,

⁴⁷ Adam Schickedanz, et al., *Childhood Poverty : Understanding and Preventing the Adverse Impacts of a Most-Prevalent Risk to Pediatric Health and Well-Being*, 62 *Pediatric Prevention* 1111 (2015).

⁴⁸ Vanessa Sacks, et al., *Adverse Childhood Experiences: National and State Level Prevalence*, *Child Trends* (2014). Available at: http://www.childtrends.org/wp-content/uploads/2014/07/Brief-adverse-childhood-experiences_FINAL.pdf.

⁴⁹ Roy Wade Jr., et al., *Adverse Childhood Experiences of Low-Income Urban Youth*. 134 *Pediatrics* 13 (2014). Available at: <http://pediatrics.aappublications.org.proxy.uchicago.edu/content/pediatrics/134/1/e13.full.pdf>

⁵⁰ Parks, testimony. *September 2015 Transcript*. p. 314, lines 3-6.

⁵¹ Parks testimony. *September 2015 Transcript*, p. 316, lines 20-21

⁵² Jamie L. Hanson, et al., *Association between Income and the Hippocampus*, 6 *PLOS One* (2014). Retrieved from: <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0018712>

⁵³ Robinson-Woods testimony. *September 2015 Transcript*. P. 24 lines 17-18, 19-20

⁵⁴ Robinson-Woods testimony, *September 2015 Transcript* p. 26 lines 1-14

⁵⁵ Bax Testimony. *September 2015 Transcript* p. 238. Lines 6-12

information, or resources to advocate for their children in educational settings, compared to more affluent parents who are more knowledgeable about the system. This can further the disparate and arbitrary administration of discipline.⁵⁶ “They have so many stressors in their lives. If their kid is not doing well in school, they can't take off work and go and talk to the teacher; they can't go to teacher conferences. And so they just don't have the resources to advocate for these kids, and the children need somebody to advocate for them in school.”⁵⁷

b. Schools tasked with meeting the needs of students who are living in poverty.

Several panelists noted that basic needs not being met at home often manifest themselves in schools. Teachers often step in to provide students with food or referrals to alleviate meal gaps, assist students with hygiene issues, and advocate for them in the juvenile justice system.⁵⁸ Many schools that step in to try to provide for vulnerable children are located in areas of concentrated poverty and are unable to keep up with the needs of students because of a lack of funding. Teacher Benjamin Bax said that many schools do not have counselors or social workers on site, and teachers fill in as “proxy psychologists, counselors, social workers. The district that I served in and the teachers that I served with in the district I work in, it doesn't employ counselors, psychologists, social workers.”⁵⁹ Former Tulsa Public Schools superintendent Keith Ballard expressed concern in his testimony that many schools that have any counseling services have a high student-counselor ratio, and counselors are charged with college guidance, preventative programming, as well as mental health counseling. “Bringing counselors up to actually do counseling work...of course that does require funding,” he said, emphasizing that schools that could benefit most from counseling and mental health services are those that have the least amount of funding to hire the appropriate amount of qualified staff.⁶⁰

School funding is primarily determined by property taxes from the surrounding community. With many low-income communities facing blight, “We're going to have greater needs. When I don't receive the same level or equitable funding to meet the needs of those kids, you set us up for failure,” Millwood Superintendent Cecilia Robinson-Woods testified. She illustrated further, adding that funding is “based on the income of the area, the ad valorem tax, the tax that we generate from a community. So when you were in a small ten-square-mile school district...where we have to base our income on what we get from our area, in ten square miles, you don't get a lot of money.”⁶¹ Many impoverished school districts receive Title I funding⁶² from the U.S.

⁵⁶ Waldron testimony. *September 2015 Transcript*. p. 245-247.

⁵⁷ Smith, T. Testimony. *September 2015 Transcript*. p. 87, lines 10-16

⁵⁸ *September 2015 Transcript*. See Robinson-Woods testimony p. 42, lines 13-24; Thomas testimony, p.77 lines 17-25; and Bax testimony, p. 241, lines 16-23 for examples.

⁵⁹ Bax Testimony. *September 2015 Transcript* p. 235 lines 21-25

⁶⁰ Ballard Testimony. *September 2015 Transcript* p. 11 lines 15-25

⁶¹ Robinson-Woods, Cecilia. *September 2015 Transcript*. P. 30 lines 5-10

⁶² 20 U.S.C. Section 6301 et seq.

Department of Education, which attempts to channel more resources to school districts that comprise many low-income households through this program. Robinson-Woods expressed that this funding is not enough to meet the needs of students and is restricted for specific programs that do not address needs such as mental health services or nutrition programs. The superintendent said, “It cannot be used to address the mental issues of kids. It can't be used to address the housing issues of kids, the clothing issues of kids, the health issues of kids, so that you can even get to reading.”⁶³

Research shows inadequately funded schools can have implications for equality of opportunity, leaving students who reside in poor communities with fewer options for advancement compared to their peers at higher-funded schools. “Without an adequate education, students in low[-funded] schools face an extremely difficult, uphill battle to become productive members of society.”⁶⁴ Funding disparities are notable in the following data reported to the Department of Education Office of Civil Rights Data Collection: Millwood Public Schools and Oklahoma City schools reported spending about \$4,600 per pupil in the 2011-2012 school year while Tulsa Schools reported spending \$2,573 and Norman Public Schools reported spending \$3,064.⁶⁵

Inequitable and insufficient funding leaves gaps in services such as counseling or additional academic help for students who need those services most. This can lead to teachers becoming overburdened with managing classroom behavior, as well as instructing and providing emotional support to their students. The fatigue can leave them vulnerable to making quick decisions in high-stress situations while not cognitively in control of biases or prejudices that may adversely affect students of color, as discussed in the next section.⁶⁶

3. Implicit Bias

a. Implicit bias and decision making and behavior

Implicit bias refers to unconscious attitudes or stereotypes that affect understanding, decision making, and behavior, often in ways unknown to the actor.⁶⁷ Researchers who have examined the cognition have learned that all people hold implicit, often irrational associations that are formed through early life experiences, social environmental influences, repeated messages, and

⁶³ Robinson-Woods, Cecilia. *September 2015 Transcript*. P. 30 lines 19-23

⁶⁴ Rachel R. Ostrander, *School Funding: Inequality in District Funding and the Disparate Impact on Urban and Migrant School Children* 15 B.Y.U. Educ. & L.J. 271 (2015).

⁶⁵ Department of Education Civil Rights Data Collection, *Civil Rights Data Collection*, Available at <http://ocrdata.ed.gov/Page?t=d&eid=29907&syk=6&pid=736> (Last accessed June 6, 2016).

⁶⁶ Cheryl Staats, et al., *State of the Science: Implicit Bias Review*. The Kirwan Institute at The Ohio State University 9, 21 (2015).

⁶⁷ Jerry Kang, et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124, 1128 (2012).

media.⁶⁸ “Residing deep in the subconscious, these biases are different from known biases that individuals may choose to conceal for the purposes of social and/or political correctness,” the Kirwan Institute writes.⁶⁹ Implicit racial biases can influence decisions of doctors who may select different treatments for patients with similar symptoms based on unconscious attitudes about ethnicities⁷⁰; judges who may apply harsher sentences to offenders of color than to white offenders⁷¹; or police officers who may perceive young African American students as more adult-like and threatening.⁷²

Research shows that high cognitive loads, stressful environments, and decision fatigue can cause people to act based on implicit biases⁷³ they may not normally act on if they were in a more relaxed environment where they could engage fully in decision-making processes.⁷⁴ Cheryl Staats, researcher at the Kirwan Institute for the Study of Race and Ethnicity writes in an issue of *American Educator* that teachers likely face many situations in which they have incomplete or ambiguous information, time constraints, and fatigue. “How an educator interprets a situation can affect whether the behavior merits discipline and if so, to what extent.”⁷⁵ If educators must quickly address the behavior of a student while under time constraints and ambiguous information, he or she may utilize a punishment that is based on implicit attitudes. Staats writes that “implicit attitudes toward specific racial groups can unconsciously affect disciplinary decisions” such as linking young African American males with stereotypes of aggression or criminality.⁷⁶

b. Race and assumptions of innocence

Black youth are often perceived as older and more dangerous than their white peers, according to research by Psychologist Phillip Goff. Goff writes that the history of association between African Americans and apes has contributed to the dehumanization of black children, which is predictive of disparate treatment of black children.⁷⁷ In his research, Goff find that white children are seen as less culpable for their actions and may face less harsh punishment for similar behaviors. For

⁶⁸ Kirwan Institute for the Study of Race and Ethnicity, *Understanding Implicit Bias*, Last Accessed May 9, 2016. <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>

⁶⁹ *Id.*

⁷⁰ Aidan Byrne & Alessandra Tanesini, *Instilling New Habits: Addressing Implicit Bias in Healthcare Professionals*, 20 *Advances in Health Sciences Education* 1255 (2015).

⁷¹ Jennifer K. Elek & Paula Hannaford-Agor, *Implicit Bias and the American Juror*, 51 *Court Review* 116, 120 (2015).

⁷² Phillip A. Goff, et al, *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 *Journal of Personality and Social Psychology* 526 (2014).

⁷³ Staats, C. Et al., *supra* note 64.

⁷⁴ Marianne Bertrand et al., *Implicit Discrimination*. 95 *American Economic Review* 94 (2005).

⁷⁵ Cheryl Staats, *Understanding Implicit Bias: What Educators Should Know*, 39 *American Educator* (2015).

⁷⁶ Staats, *supra* note 64.

⁷⁷ Goff, *supra* note 70.

example, black boys may face more serious punishment such as being charged for a crime as an adult, while a white peer may not be. Black boys may be “prematurely perceived as responsible for their actions during a developmental period where their peers receive the beneficial assumption of childlike innocence.”⁷⁸ Dr. Paul Ketchum, a criminal justice professor who has extensively studied the school-to-prison pipeline, explained in his testimony: “We don't have this group -- we don't have the mythical super predators of black and brown kids. We have kids, and kids do the same rate of stupid and smart and everything else, regardless of racial and ethnic groups.”⁷⁹ Self-report data, he said, shows very little difference in the rate of criminal and deviant activity between racial and ethnic groups, with white youth being slightly more likely to illegally use drugs and non-white youth slightly more likely to commit acts of violence, however, those differences are minor and do not support the rate of minority over representation in the juvenile justice system.

Ketchum cited Goff's work, expressing that much of the school-to-prison pipeline phenomenon is based on the misperception of black youth as more dangerous. Goff's research shows that black juvenile crime rates are similar to white juvenile crime rates, but the two groups are treated very differently. Ketchum's findings show that there is a subtle bias on the part of decision makers within the juvenile justice system, which may lead to these disparities in outcomes.⁸⁰

School discipline data show that black students are more likely to be referred to the principal's office for subjective behaviors such as “disrespect” or “disruptive” behavior, while their white peers are more likely to be referred to the office for objective violations such as smoking or vandalism.⁸¹ Researcher Russell Skiba's studies suggest that this could be because educators believe that students of color and students of low socioeconomic status are a greater risk for problem behavior -- thus they impose more control and supervision in the classroom, and harsher punishments once students are referred to the offices. It is also suggested that as black students make up a greater population of a school, more punitive behavioral measures are utilized throughout the school.⁸² Ketchum offered the subjective example of talking back to a teacher. “If you're treated as if you're the problem, you're more likely to mouth off. Mouthing off should not

⁷⁸ *Id.* at 540.

⁷⁹ Ketchum Testimony. *September 2015 Transcript*. P. 95 lines 22-25, P. 96 lines 1-2

⁸⁰ Ketchum, P. et al. *Analysis of DMC in Oklahoma, Updated with the Inclusion of Self-report Student Surveys. Prepared for the Office of Juvenile Affairs and the State Advisory Group on Juvenile Justice and Delinquency Prevention* (2013). Retrieved from [https://www.ok.gov/okyouth/documents/DMC_school%20survey%20Final_Report_2013-07-01\(1\).pdf](https://www.ok.gov/okyouth/documents/DMC_school%20survey%20Final_Report_2013-07-01(1).pdf)

⁸¹ Russell Skiba, et al., *Parsing Disciplinary Disproportionality: Contributions of Infraction, Student and School Characteristics to Out-of-School Suspension and Expulsion*. 51 *American Educational Research Journal* 640 (2014).

⁸² *Id.*

get you into the juvenile system, but it does. That's that first step into it, sometimes direct to it. Openly defiant."⁸³

c. Impact of implicit bias on school policies and practices

Dr. Joy Thomas who has studied the school-to-prison pipeline said that implicit bias can often manifest itself in well-intentioned actions that are simply lacking in cultural competency. "Our teachers that are coming into the classroom, they mean well, but for our young white females, it is benevolence." She described a situation in which the mother of a black student was unable to get time off work to attend a parent teacher conference. The teacher then called the mother's supervisor to ensure that the mother would receive the necessary time off. "She really thought she was doing something to help. And that, there, in itself is implicit bias, because, 'let me save you; let me help you because you can't do it.'"⁸⁴ Dr. Thomas explained that despite this unsolicited "assistance" the student's mother did not show up for the parent-teacher conference. The student was then penalized for his mother's absence. This demonstrates cultural incompetence that may disproportionately affect students of color, Dr. Thomas said. The teacher did not realize that the parent had an hourly-wage job, and taking time off may have caused her to lose out on wages that may have helped in making ends meet.⁸⁵

Dr. Thomas also expressed concern that recent experiences of school violence may increase harsh disciplinary policies, likely disproportionately and unfairly targeted at students of color. She contrasted the Sandy Hook Elementary School shooting of 2012 in Newtown Connecticut, during which 20 school children were killed.⁸⁶ She said inner city and urban school systems dealt with the issue in a harsh manner. "...the educational policies as far as gun violence and dealing with children with guns, the policies were harsher for our inner city and urban schools. We saw harsher penalties or expulsion for our students, even though nothing happened like that."⁸⁷

4. School Policies

a. Zero-tolerance policies in schools

Zero-tolerance policies are severe automatic disciplinary actions like suspension and expulsion that punish students for engaging in perceived dangerous behavior such as drug possession or carrying a weapon to school.⁸⁸ These policies began under federal and state drug enforcement

⁸³ Ketchum Testimony. *September 2015 Transcript*. P. 98 lines 18-22

⁸⁴ Thomas, Joy Testimony. *September 2015 Transcript* P. 100 lines 2-5 and 10-12

⁸⁵ Thomas Testimony. *September 2015 Transcript*, p 100 lines 16-25

⁸⁶ James Barron, *Nation Reels After Gunman Massacres 20 Children at School in Connecticut*, The New York Times. December 15, 2012. Available at: http://www.nytimes.com/2012/12/15/nyregion/shooting-reported-at-connecticut-elementary-school.html?_r=0

⁸⁷ Thomas, Joy Testimony. *September 2015 Transcript* P. 99 lines 19-21

⁸⁸ Cherry Henault, *Zero-tolerance in Schools*, 30 J.L. & EDUC. , 547 (2001).

agencies in the 1980s as an attempt to curb the growing drug trade in the country.⁸⁹ In response to violence in schools in the 1990s, these policies were expanded into schools through the Gun-Free Schools Act of 1994.⁹⁰ The Act mandated that students found in possession of a gun on campus be expelled and referred to the juvenile or criminal justice system.⁹¹

Zero-tolerance policies have now been expanded to other less objective or serious offenses such as class disruption and minor drug offenses, in an inconsistent manner across the country.⁹² These automatic disciplinary measures are often administered without first warnings, consideration of students' past disciplinary records or situational context. Kris Steele, executive director of TEEM, a social service agency that serves low-risk offenders, expressed concern in his testimony that punishment prescribed under zero-tolerance policies can often be inappropriate in relation to the behavior. He noted the importance of considering the situational context and the root causes of the behavior. "I think we get in trouble when we paint with a broad brush and we think that incarceration may be the answer for everyone or that a certain discipline policy within a school system is best for everyone that gets in trouble."⁹³ Tulsa County Assistant Public Defender Renee Waisner echoed his Steele's statement, adding that zero-tolerance policies can be extremely harmful to vulnerable populations including children who are wards of the state or students who have little stability in their home life.⁹⁴ The policies do not "take into consideration the individuality... they don't look at who you are and take into consideration who you are and what you've done with your life; they just suspend you."⁹⁵ Steele added that often, emotions such as fear, distrust, or biases can influence policy and disciplinary decisions. "When we consider issues of policy in the way of discipline and, certainly corrections, sentencing guidelines and what have you, often those decisions are based on emotion and fear and anecdotes."⁹⁶

Zero-tolerance policies usually entail exclusion of the disciplined student from the classroom, which is by itself a major risk factor for involvement in the criminal justice system. Mr. Keith Wilson, from Oklahoma's Office of Juvenile Affairs (OJA) called zero-tolerance policies in schools requiring immediate suspension or expulsion "disastrous."⁹⁷ Wilson testified that the

⁸⁹ *Id.*

⁹⁰ 20 U.S.C. § 7961. (Prior to renumbering by Pub. L. 114–95, 129 Stat. 1802 (2015), the the Gun-Free Schools Act of 1994 was formerly in 20 U.S. Code § 7151)

⁹¹ *Id.*

⁹² Henault, *supra* note 86, at 548; See also Vera Institute of Justice, *A Generation Later: What We've Learned about Zero Tolerance in Schools* (2013). Available at: <http://www.vera.org/sites/default/files/resources/downloads/zero-tolerance-in-schools-policy-brief.pdf>. (Last accessed June 6, 2016)

⁹³ Steele Testimony, *September 2015 Transcript* p. 161 lines 11-16

⁹⁴ Waisner Testimony, *September 2015 Transcript* p. 227 lines 14-23

⁹⁵ Waisner Testimony, *September 2015 Transcript*, p. 231 lines 1-6

⁹⁶ Steele Testimony, *September 2015 Transcript* . P. 179. lines 21-25

⁹⁷ Wilson Testimony, *September 2015 Transcript*. P. 229 line 11

most prevalent commonality among youth in the OJA system is a volatile educational career. “At OJA, we find that the most common and consistent characteristic of a youth who enters the juvenile justice system is a failure of education. They have not been successful in their educational efforts.”⁹⁸ OJA data from 2013 showed that all youth involved in OJA had been suspended from school at least once, and more than half of them had been suspended five or more times. Two-thirds had been expelled, and 15% of the youth had not been to school regularly for more than two years.⁹⁹ “The kids we are seeing are simply not getting any education,” Wilson said.¹⁰⁰

In addition to increasing youth contact with the juvenile justice system, researchers have found that zero-tolerance policies disproportionately push students of color out of the classroom through expulsions and suspensions.¹⁰¹ The Committee heard from several panelists that despite the intention of zero-tolerance policies to create a safer environment for both students and school staff, the unintended consequences of exclusion are largely borne by minority students and their families.¹⁰² To illustrate: black students made up about 10% of Oklahoma schools’ enrollment, yet they make up 39% of expulsions under zero-tolerance policies. White students made up about 54% of the student population but only 28% of expulsions under zero-tolerance policies. This is despite extensive research indicating that their behavior does not significantly differ. There is also little research that shows that zero-tolerance policies actually make school safer.¹⁰³

⁹⁸ Wilson Testimony. *September 2015 Transcript* P. 211 lines 5-9

⁹⁹ Wilson Testimony. *September 2015 Transcript*. P. 212 lines 11-21

¹⁰⁰ Wilson Testimony. *September 2015 Transcript*. P. 212 lines 20-21

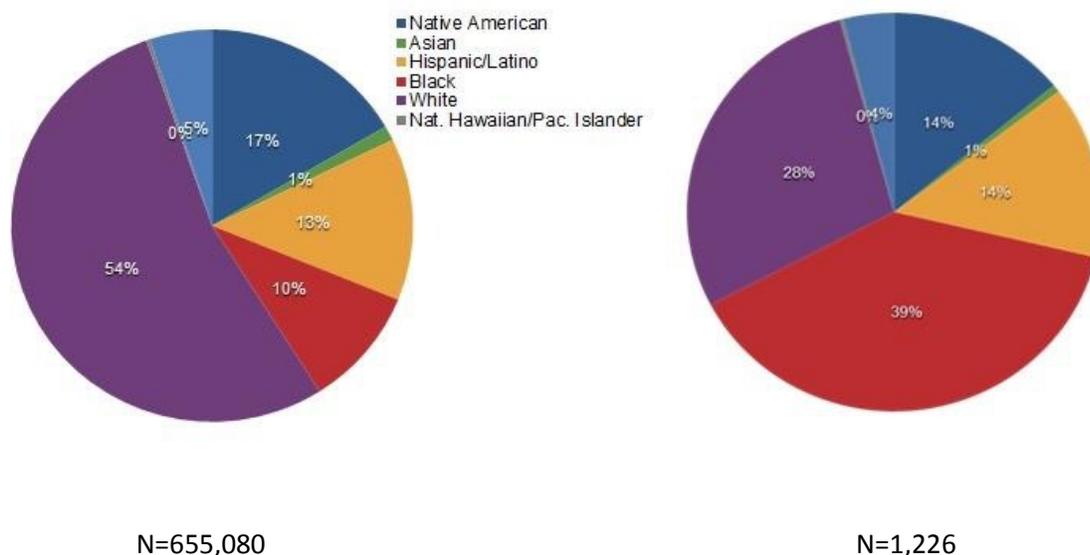
¹⁰¹ Adira Siman, *Challenging Zero Tolerance: Federal and State Legal Remedies for Students of Color*, 14 CORNELL J.L. & PUB. POL’Y 327, 333 (2005).

¹⁰² Waldron Testimony. *September 2015 Transcript*. P. 246 lines 20-25; see also Douglass Testimony, *August 2015 Transcript* P. 4 lines 3-26.

¹⁰³ Vera Institute of Justice, *A Generation Later: What We’ve Learned about Zero Tolerance in Schools* (2013). Available at: <http://www.vera.org/sites/default/files/resources/downloads/zero-tolerance-in-schools-policy-brief.pdf>. (Last accessed June 6, 2016)

Enrollment by Ethnicity

Expulsions under zero-tolerance by ethnicity¹⁰⁴



b. Police presence in schools

Over the past few decades schools have increasingly relied on police liaisons, security guards, or school resource officers to prevent school crime and promote safety.¹⁰⁵ Nationally about 43% of public schools had one or more full-time or part-time security personnel, school resource officer or sworn law officer on campus.¹⁰⁶ The majority of the tasks assigned to security personnel involve security enforcement and patrol, coordinating with local police, and maintaining school discipline.¹⁰⁷

Researchers have found that students’ first contact with police can influence their self-image, their attitudes about school, fairness, and social norms.¹⁰⁸ Because security personnel often aid educators in disciplinary issues with students, school disciplinary issues are sometimes redefined as criminal justice issues.¹⁰⁹ Behaviors once considered innocuous childhood behaviors such as dress code violations, unapproved science experiments, and doodling on a desk, lead to tickets

¹⁰⁴ Data from U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2011-12. Available at http://ocrdata.ed.gov/StateNationalEstimations/Estimations_2011_12

¹⁰⁵ Chongmin Na and Denise C. Gottfredson, *Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors*, 30 Justice Quarterly 619 (2013).

¹⁰⁶ National Center for Education Statistics, *Public Safety and Discipline: 2013-2014* p. 10. Available at: <http://nces.ed.gov/pubs2015/2015051.pdf>

¹⁰⁷ National Center for Education Statistics, *Public Safety and Discipline: 2013-2014* p. 13.

¹⁰⁸ Nicole L. Bracy, *Student Perceptions of High-Security School Environments*, 43 Youth & Society 365.

¹⁰⁹ Chongmin Na and Denise C. Gottfredson, *supra*.

from police.¹¹⁰ Paul Ketchum expressed concern that with police officers regularly on campus, even minor behavioral issues may be referred to police and affect how a child is treated if referred to the juvenile justice system. “The official contact with the police, if it’s not necessary, makes a difference between how they’re treated down the road.”¹¹¹ For students who become involved in the juvenile justice system, whether through school infractions or otherwise, added police involvement in the school system can put them back into the juvenile justice system, put them on probation, or escalate their punishment the next time a violation happens. Students who are first referred to the juvenile justice system under zero-tolerance policies often face a more minimum punishment. However, if they return to the system with another offense on their record, punishments become progressively more punitive. “Over time, this can lead to sanctions that are significantly more severe, even for offenses that are relatively minor on their own,” writes Aaron Curtis in the *Georgetown Law Review*.¹¹²

Some panelists were in support of having a police presence on campus. Former Tulsa Public Schools Superintendent Keith Ballard said the school district benefited from creating its own police department in 2008 that formed relationships in schools with students and staff.¹¹³ Mr. Tim Harris, a former prosecutor from Tulsa County, said that police presence in schools is helpful in situations that involve serious crimes in school or when a student brings a weapon to school, but he noted that individuals should be highly trained and understand their role in working with children.¹¹⁴ Nationally, the rate of violent incidents in public schools during the 2013-2014 school year was 15.8 per 1,000 students.¹¹⁵ Overall, the Committee found that police liaisons in school can be effective in maintaining order and ensuring school safety. However, officers must be carefully trained in developing rapport and relationships with children, and must be able to distinguish between behaviors requiring legal intervention, and those best addressed through administrative means. “It cannot be a punitive, very highly-structured, strict police department...It has to be one where all of the police officers are highly trained in forming relationships...the community policing concept.”¹¹⁶

¹¹⁰ Amanda Merkwae, *Schooling the Police: Race, Disability and the Conduct of School Resource Officers*, 21 *Mich. J. Race & L.* 147, 154 (2015).

¹¹¹ Ketchum Testimony. *September 2015 Transcript*. p. 73 lines 1-4

¹¹² Aaron J. Curtis, *Tracing the School-to-Prison Pipeline From Zero-Tolerance Policies to Juvenile Justice Disposition*, 102 *GEO. L.J.* 1251, 1270 (2014).

¹¹³ Ballard Testimony. *September 2015 Transcript*. P. 8 lines 8-12

¹¹⁴ Harris, T. *September 2015 Transcript*, p. 204 lines 4-17

¹¹⁵ National Center for Education Statistics, *Public Safety and Discipline: 2013-2014* p. 16. Available at: <http://nces.ed.gov/pubs2015/2015051.pdf>

¹¹⁶ Ballard Testimony. *September 2015 Transcript*. P. 13 lines 11-16

c. Curriculum content, high-stakes testing, and their impact on school climate

Research has shown that a focus on standardized testing can have both positive and negative effects on classroom instruction. A focus on testing can raise the standards of academic instruction. However, it can also divert attention away from important social-emotional development skills.¹¹⁷ Furthermore, education experts have found that standardized tests tend to measure abilities aligned with affluent, non-minority schools rather than low-income, high-minority enrollment schools.¹¹⁸ Particularly in the context of concerns regarding the cultural relevancy of many standardized tests, several statements from the Oklahoma teacher panel suggested that “teaching to the test” leaves little time for culturally-sensitive instruction, which can cause students to feel disengaged in the classroom. John Thompson, a former teacher, explained “they know that they're being disrespected when they're just being taught to the test.”¹¹⁹ Teacher Benjamin Bax noted that many of his students do not see their history reflected in today’s curriculum standards. “I had an incident where I had one [student] slam a book down on the floor and say, ‘hey, man, F this; this is the white man's history.’ And so when I look at these state standards, they do not speak to many of our students.”¹²⁰ Mr. Bax stated that according to his experience in the classroom, engaging students in lessons that appeal to them personally can be an effective tool in curbing discipline issues and helping students maintain interest in academic achievement.¹²¹

Many school districts use student performance on standardized tests to measure teacher and school effectiveness. The Committee heard testimony that this focus may detract from teachers’ ability to focus on student’s social emotional needs.¹²² “We see people cheating because they’re so in fear of what’s going to happen. What happens now is we’re not paying attention to the kids,” testified Superintendent Robert Neu.¹²³ Teacher surveys conducted by education researchers suggest that pressure for high test scores can increase stress and lower teacher morale.¹²⁴ Tulsa teacher John Waldron testified about the stressful consequence of losing resources for students due to underperformance on standardized tests:

¹¹⁷ John B. Diamond, *Where the Rubber Meets the Road: Rethinking the Connection Between High-Stakes Testing Policy and Classroom Instruction*, 80 *Sociology of Education* 285 (2007).

¹¹⁸ Madaus, G. et al. (2009) *The Paradoxes of High Stakes Testing : How They Affect Students, Their Parents, Teachers, Principals, Schools, and Society*. Chapter. 8. Charlotte, N.C.: Information Age Publishing.

¹¹⁹ Thompson, J. Testimony *September 2015 Transcript*. P. 256 lines 14-16

¹²⁰ Bax Testimony. *September 2015 Transcript* P. 242 lines 19-20, p. 243 lines 9-10

¹²¹ Bax Testimony. *September 2015 Transcript* P. 243 lines 12-19.

¹²² *September 2015 Transcript*. Keith Ballard, P. 10, lines 24-25 and p. 11 lines 1-3; Robert Neu, p 47 lines 3-20

¹²³ Neu Testimony. *September 2015 Transcript* P. 47 lines 14-15

¹²⁴ George Madaus & Michael Russell, *The Paradoxes of High Stakes Testing: How They Affect Students, Their Parents, Teachers, Principals, Schools, and Society*. Chapter. 8. Charlotte, N.C.: Information Age Publishing (2009).

I'm afraid what we've been doing is we've been running the schools with a hundred mile long screwdriver from Oklahoma City, or even a longer one from Washington, D.C. And we've been imposing mandate after mandate on the schools. We've turned us into test preparers, rather than what we thought it was going to be when we signed up. And it has increasingly robbed us of resources.¹²⁵

5. Alternative Policies and Solutions

a. Alternative discipline practices

Restorative practice has gained recognition among education experts for reducing disciplinary issues, and by extension, expulsions and suspensions. Restorative practice is the “social science that studies how to build social capital and achieve social discipline through participatory learning and decision-making.”¹²⁶ These processes include structured meetings between victims and offenders, family group decision making, and circles that give everyone involved an opportunity to speak and listen to one another. Keith Hickman, Director of Continuing Education at the International Institute for Restorative Practices, testified about the impact these practices have on school climate: “What we found is that schools that are implementing restorative practice...receive reduced rates of crime and violence ... We see it strengthening our civil society, service learning, participatory leadership in the community. It provides effective leadership, restores relationship and repairs harm.”¹²⁷ Some panelists described the effectiveness of restorative practice in building relationships and improving student behavior.¹²⁸ Joy Thomas, a panelist who has worked with incarcerated populations and taught pre-service teachers at the University of Oklahoma, testified that she encourages teachers to address topics of social justice:¹²⁹ “What I would like to see is to start the conversation as far as making changes, is to implement restorative practices in our public school system.”¹³⁰ Teachers often feel they are too busy to consider using this therapeutic model, she said, however, incorporating restorative practices can help students develop empathy for classmates and, in turn, improve the climate of the classroom, making the entire learning environment more effective.¹³¹

Another promising strategy for curbing behavioral and disciplinary issues is the Positive Behavioral Intervention and Support program (PBIS). Superintendent Neu of Oklahoma City testified that teachers and staff of the district were trained in PBIS, which emphasizes school-

¹²⁵ Waldron testimony. *September 2015 Transcript* P. 250 lines 3-11

¹²⁶ International Institute for Restorative Practices. Available at: <http://www.iirp.edu/what-is-restorative-practices.php>

¹²⁷ Hickman Testimony. *August 2015 Transcript*. P. 9 lines 29-34.

¹²⁸ Ballard Testimony. *September 2015 Transcript*, p 10 lines 7-16. Tulsa Public Schools has begun to incorporate some restorative practice. See also testimony by Thompson, *September 2015 Transcript*, p. 164 lines 13-24.

¹²⁹ Thomas Testimony. *September 2015 Transcript*. P. 107 lines 2-3

¹³⁰ Thomas Testimony. *September 2015 Transcript*. P. 106 lines 16-19

¹³¹ Thomas Testimony. *September 2015 Transcript*. P. 107 line 25 and p. 108 lines 1-6

wide systems of support and rewarding appropriate school behavior rather than reacting to problematic behavior. It makes use of social learning in schools and preventive rather than reactive strategies. The system allows for transparency and consistency in decision making about disciplinary matters Mr. Neu said.¹³² PBIS Research has shown that schools are increasingly adopting PBIS systems of discipline, and so far, results for many of these schools have been promising. Longitudinal randomized trials showed a reduction in student suspensions and office discipline referrals¹³³ and increased academic achievement.¹³⁴

Panelists also suggested ways to ensure education is not disrupted, even when disciplinary action is necessary. For example, bolstering in-school suspension services, as an alternative to out-of-school suspension ensures that students continue to learn in school with staff support, said teacher Patrick McGuigan.¹³⁵ District Judge Lisa Davis spoke of the importance of continuing education, even when youth become involved in the juvenile justice system and must be removed from school. She noted that children who go to Oklahoma County's Juvenile Center are required to attend classes and keep up with education so they do not lose credits.¹³⁶ This also offers some regularity and predictability even for students who have struggled in the traditional education system.

b. Assessing student needs and coordinating services

Educators and community members who work with at-risk youth discussed the importance of taking into account youth's needs, risks, barriers, and strengths when assigning behavioral interventions. One such example is OJA's use of a standardized risk/needs assessment and case management tool called the Youth Level of Service/Case Management Inventory.¹³⁷ The standardized assessment assists juvenile affairs personnel in treating all children fairly, regardless of race or ethnicity. It also helps staff to find appropriate placements or interventions for the youth while still considering risk factors and the context for their behavior. Offices within a school or district aimed at connecting families with resources such as referrals to social services can also help to alleviate some of the root causes of behavioral issues.¹³⁸ Teacher John Waldron emphasized that often times, student misbehavior stems from a need not being met in the home or school. "I think when there's a problem with an individual student, the solution, it

¹³² Neu Testimony. *September 2015 Transcript*. P. 21. Lines 19-25.

¹³³ Bryce Ward & Russell Gersten, *A Randomized Evaluation of the Safe and Civil Schools Model for Positive Behavioral Interventions and Supports at Elementary Schools in a Large Urban School District*, 42 *School Psychology Review* 317 (2013).

¹³⁴ Catherine P. Bradshaw, et al., *Examining the Effects of Schoolwide Positive Behavioral Interventions and Supports on Student Outcomes*, 12 *Journal of Positive Behavior Interventions* 133 (2010).

¹³⁵ McGuigan Testimony. *September 2015 Transcript*. P. 260 lines 8-19

¹³⁶ Davis Testimony. *September 2015 Transcript*. Pp. 190-191 lines 24-25 and lines 1-13

¹³⁷ Wilson Testimony. *September 2015 Transcript*. P. 215 lines 12-24

¹³⁸ Ballard Testimony. *September 2015 Transcript*. P. 10 lines 14-16 See also Neu Testimony, p. 21 lines 12-17

begins with a conversation. There's not a lot of problems that we can't begin to solve by talking it out and figuring what the student needs and what needs to happen. Sometimes that means bringing all the right people to the table."¹³⁹

John Thompson, a former Oklahoma City Schools teacher discussed the need for not just disciplinary interventions, but also for “wraparound” coordinated services for students and families. “We don’t need to just throw the services in. We need well-planned coordinated social and emotional services. We need to take the time, the energy, and the money that we spent aligning curriculum construction, testing, and take the same amount of coordination and alignment into organizing the social and emotional.”¹⁴⁰ Community members from the state offered examples of how community organizations can fill in gaps that are left by schools and districts. Valerie Thompson, President of the Urban League of Oklahoma City, described how the agency addresses needs in the community to ameliorate the effects of poverty. Youth programs, job training, and mentoring are all important ways to fill the voids caused by incarcerated parents, high drop-out rates, or lack of jobs that match the skills of the available workforce in the community.¹⁴¹ “[Services are] key to the community when you have a school system that has repeatedly had challenges with the population that we serve. And community organizations like the Urban League step up and fill that void in several different ways.”¹⁴² Raul Font, president of the Latino Community Development Agency (LCDA), echoed Ms. Thompson’s message. In response to the needs of Oklahoma City Schools, the LCDA offers family therapy, academic services, and anger management, in addition to other services.¹⁴³ “You have a system that has realized that they have a problem, they have collaborated and partnered with an agency that has the service for the benefit of the kids,” Mr. Font said.¹⁴⁴

c. Promoting teacher and staff diversity

Several panelists expressed concern about the lack of diversity of teachers in the classroom.¹⁴⁵ Schools with diverse teacher populations offer role models to students of color who may not have access to other role models in their communities.¹⁴⁶ Superintendent Robert Neu said Oklahoma City Public Schools has adjusted hiring practices to recruit high-quality educators of color who “can serve the kids they look like” and who understand the environmental context of

¹³⁹ Waldron Testimony. *September 2015 Transcript*. P. 277 lines 18-24

¹⁴⁰ John Thompson testimony. *September 2015 Transcript*. P. 254 lines 23-25, and P. 255 lines 1-4.

¹⁴¹ Valerie Thompson testimony, *September 2015 Transcript*. Pp. 126-129

¹⁴² Valerie Thompson Testimony *September 2015 Transcript* P. 129 lines 12-16

¹⁴³ Font Testimony, *September 2015 Transcript*. p. 143-144

¹⁴⁴ Font Testimony, *September 2015 Transcript*. p. 144 lines 22-25.

¹⁴⁵ *September 2015 Transcript*. Bax Testimony. P. 267 lines 4-11; Thomas Testimony. P. 76 lines 12-20; Neu Testimony P. 55 lines 4-7.

¹⁴⁶ Betty Achinstein, et al., *Retaining Teachers of Color: A Pressing Problem and a Potential Strategy for “Hard-to-Staff” Schools*, 80 *Review of Educational Research* 71 (2010).

the factors that contribute to behavioral issues.¹⁴⁷ These practices include recruiting students directly from Oklahoma City Public Schools and subsidizing their teaching degree through philanthropic efforts.¹⁴⁸ Superintendent Robinson-Woods of Millwood Public Schools described her staff as “culturally responsive,” with 70% of the district being African American¹⁴⁹ serving the student body 97% of which is African American.¹⁵⁰ The district draws much of their staff from Millwood alumni, she testified. “We’re able to keep a good staff that can identify with the kids but that’s not the case everywhere.”¹⁵¹ It may take time to recruit a staff that mirrors the student population in many communities, but this is not the only solution to helping students and teachers relate to one another. Panelists emphasized the importance of cultural competence when training teachers. Making teachers aware of their students’ various cultures and environments can foster greater understanding in the classroom. Dr. Thomas, who spoke about training pre-service teachers, explained: “You have to understand the students and their background, and you have to be culturally aware. And your classroom is a community, not your community and world view.”¹⁵² Mr. Bax testified about cultural competency in practice. He explained that he makes time for his students to teach him Spanish words and in return, he teaches them about culturally relevant history such as the Zoot Suit riots during World War II.¹⁵³ “These State standards, they do not speak to many of our students. And, as a teacher, we try to, and keep them more engaged, and they enjoy the lesson so much more.”¹⁵⁴

6. Students with Disabilities

As noted in background of this report, the Committee did not formally solicit testimony on the adverse impact of school discipline policies and practices on students with disabilities. Due to time constraints, the committee chose to focus on how discipline disparities impact students on the basis of color, ethnicity, race and sex. However, several members of the public provided both oral and written testimony on this topic, which is presented in this section of the report.

In Oklahoma, 6% of students without disabilities received out-of-school suspensions in the 2011-2012 school year, while the rate for students with disabilities receiving services under the Individuals with Disabilities Act was double that. This disparity is similar to the rest of the

¹⁴⁷ Neu Testimony. *September 2015 Transcript*. P. 22 lines 24-25 and P. 23 lines 1-3

¹⁴⁸ Neu Testimony. *September 2015 Transcript*. P. 56 lines 20-25

¹⁴⁹ Robinson-Woods Testimony. *September 2015 Transcript*. P. 32 line 9

¹⁵⁰ Robinson-Woods Testimony. *September 2015 Transcript*. P. 31 lines 6-7.

¹⁵¹ Robinson-Woods Testimony, *September 2015 Transcript*. P. 32 lines 12-15.

¹⁵² Thomas Testimony, *September 2015 Transcript*. P. 78 lines 7-11.

¹⁵³ Bax Testimony, *September 2015 Transcript*. P. 240-243

¹⁵⁴ Bax Testimony, *September 2015 Transcript*. P. 243 lines 9-12

country.¹⁵⁵ In written testimony, Kayla Bower, executive director of the Oklahoma Disability Law Center stated that disability status is a “powerful predictor of who gets caught in the school-to-prison pipeline” because classrooms or school staff may not be equipped to serve these students or do not make reasonable accommodations so that students can engage fully in their learning environment.¹⁵⁶ These practices can include a lack of mental health and behavioral support services available to students in school. The National Council on Disability addressed this issue in the agency’s June 2015 report on the school-to-prison pipeline: “When delivered appropriately, these services enable students with behavioral, emotional, and mental health needs to learn in general education classrooms, progress from grade to grade, and earn high school diplomas.”¹⁵⁷ Ms. Bower explained that when students who need these services are not provided with assistance they are often misunderstood and disciplined for acting out or not performing well in school. In this process, they are funneled into the juvenile justice system. Indeed, researchers have found that students with disabilities and emotional disturbances are disproportionately represented in juvenile corrections systems.¹⁵⁸ That fact has led many who work with students with disabilities to “characterize the juvenile justice as a default system for youth who can’t read or write well, who have mental health problems, and who drop out or are forced out of school.”¹⁵⁹

The connection between illiteracy and entry into the justice system is also well-established in research. The failure of schools to provide the appropriate services for students with dyslexia has also caused students to disengage from school or be pushed into the pipeline, too, according to staff attorney Joy Turner of the Oklahoma Disability Law Center. “We know that adults who can’t read, that’s one of the main reasons they end up in prison. And so, if we’re talking about a school-to-prison pipeline issue, reading is a huge area that needs to be addressed.”¹⁶⁰ Tiffany Jenkins, a parent of a student with dyslexia, testified that she was unable to receive services for her son’s reading disability and instead paid for services outside of school to help her son. She expressed concern that far too many parents do not have the time or resources to seek outside help. Many students with the same disabilities as her son may be disciplined, excluded from class, or denied a quality education because of their different learning styles and abilities.¹⁶¹ The National Center for Education Statistics reported that the reading proficiency of inmates is

¹⁵⁵ U.S. Department of Education Office for Civil Rights, *Data Snapshot: School Discipline (Issue Brief No. 1)*, March 2014. Available at: <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>. (last accessed June 6, 2016)

¹⁵⁶ Bower Testimony, *School's Role in School to Prison Pipeline*, Letter presented to Committee September 11, 2015.

¹⁵⁷ National Council on Disability. *Breaking the School-to-Prison Pipeline for Students with Disabilities*. p. 29. (June 2015). Available at: <https://www.ncd.gov/publications/2015/06182015> (last accessed June 10, 2016)

¹⁵⁸ Mary Magee Quinn, et al., *Youth with Disabilities in Juvenile Corrections: A National Survey*, 71 *Exceptional Child* 339 (2005).

¹⁵⁹ *Id.* P. 340

¹⁶⁰ Turner Testimony. *September 2015 Transcript, Public Comment*. P. 299 lines 10-15.

¹⁶¹ Jenkins Testimony, *September 2015 Transcript, Public Comment*. P. 4 lines 21-25.

substantially lower than the general adult population.¹⁶² According to their research, about half of the prison population earned a high school diploma compared with three-fourths of the household population overall. More than one-third of prisoners had at least one disability, including learning disabilities and emotional or mental conditions. This is compared to about a quarter of the household population.¹⁶³

7. Native American Students and Families

Native American students face a number of obstacles in the education system that stem from historical trauma, including education policy that has weakened ties between families and dismantled traditional native culture. According to panelist Vanessa Walsh, a researcher who studies the school-to-prison pipeline, American Indian students are more likely to be recipients of disciplinary action (other than school-related arrests) than their white peers.¹⁶⁴ Ms. Walsh demonstrated the disparity across the nation: During the 2011-2012 school year 14% of all white students received a school disciplinary action, while 22% of all American Indian students received some type of disciplinary action.¹⁶⁵ Ms. Walsh then added that nationwide, Native American students are 1.7 times more likely to be referred to law enforcement than other students of color and 2.6 times more likely than white students.¹⁶⁶ Dr. Star Yellowfish is the director of Native American Student Services at Oklahoma City Public Schools, and she testified on behalf of the Native American community in the area. She conveyed that conventional disciplinary measures and culturally unresponsive practices that make school unresponsive to students push Native American children out of their learning environments.¹⁶⁷

a. Destruction of traditional culture

Under federal policy in the 19th and 20th centuries, Native American children were removed from their homes on reservations and placed in boarding schools in an attempt to assimilate them into the mainstream American culture.¹⁶⁸ An Indian Law and Order Commission Report describes the removal, relocation, and boarding school policies in the history of U.S. relations with native people as traumatic, having devastating intergenerational effects on youth.¹⁶⁹ These effects include numerous adverse childhood experiences such as exposure to intimate partner violence, child abuse, community violence, and substance abuse. Leaders within Native communities

¹⁶² National Center for Education Statistics, *Literacy Behind Prison Walls: Profiles of the Prison Population from the National Adult Literacy Survey* (1994). Available at <http://nces.ed.gov/pubs94/94102.pdf>

¹⁶³ *Id.*

¹⁶⁴ Walsh Testimony, *August 2015 Transcript*. P. 7 lines 28-34.

¹⁶⁵ Walsh Testimony, *August 2015 Transcript*. P. 7, lines 30-32.

¹⁶⁶ Walsh Testimony, *August 2015 Transcript* P. 8 lines 29-31

¹⁶⁷ Yellowfish Testimony *September 2015 Transcript* P.

¹⁶⁸ Walsh Testimony, *August 2015 Transcript* p. 6 lines 34-42

¹⁶⁹ Indian Law and Order Commission, *A Roadmap for Making Native America Safer*, Chapter 6, p. 149, (November 2013).

estimate that all of their children are exposed to violence.¹⁷⁰ These youth experience Post Traumatic Stress Disorder (PTSD) at about triple the rate of the general population -- a rate that matches PTSD in U.S. military personnel who have served in the wars of the 1990s and 2000s.¹⁷¹ Dr. Yellowfish emphasized the role that the breakdown of traditional culture has played in the adversity native youth face.¹⁷² While children who went to boarding school learned a trade or reading and writing, they grew up without their tribes and extended families to provide role models, emotional support, and a sense of identity. “[They] ended up raising themselves with no extended family to help guide them. They learned what submission was and what whippings were. Discipline became less about learning and more about submission and conformity.”¹⁷³ Dr. Yellowfish explained that this generation went on to raise children who were exposed to hardship and various risk factors that were products of the dismantling of native traditions. Because of this cultural dismantling, current generations of native children now lack protective factors such as a strong sense of identity and connection to family and community.¹⁷⁴ Dr. Yellowfish described the despair she sees regularly in her students:

Today, the students I work with who are most troubled seem lost and without hope. They feel alone and abandoned. They don’t care about themselves, and they have no connection to what it means to be a native person. They don't have skills to cope with their emotions, and they see no purpose to have any motivations to live a better life.¹⁷⁵

b. School system coordination with traditional tribal supports

Dr. Yellowfish also explained that traditional methods of discipline within the Native American community often differ from conventional disciplinary measures used in schools today. Typically, extended family had roles in determining punishments for native children, she said. Osage and Cherokee tribes relied on aunts, uncles, and extended family to help raise children and determine disciplinary measures.¹⁷⁶ “Raising children was the responsibility of the entire tribe of the family,” she explained. “It was not simply left up to just the mother and father.” She added that in the tradition of these cultures, children are responsible for their younger peers, too, which fosters mentoring, responsibility, and accountability. Dr. Yellowfish testified that schools often do not consult with family when administering punishments, which compromises the cultural values families or other adults in children’s lives are trying to instill. This may contribute to native families’ mistrust of the school system.¹⁷⁷ She said that often, when child welfare agencies

¹⁷⁰ *Id.* at p. 151.

¹⁷¹ *Id.*

¹⁷² Yellowfish Testimony, *September 2015 Transcript*, P. 147 lines 23-25

¹⁷³ Yellowfish Testimony, *September 2015 Transcript*, P. 149-150, lines 19-25 and lines 1-4.

¹⁷⁴ Yellowfish Testimony, *September 2015 Transcript*. P. 150 lines 23-25

¹⁷⁵ Yellowfish Testimony, *September 2015 Transcript* P. 151 lines 4-16.

¹⁷⁶ Yellowfish Testimony, *September 2015 Transcript* P. 148 lines 10-25.

¹⁷⁷ Yellowfish Testimony, *September 2015 Transcript* P. 152 lines 8-17.

or juvenile justice agencies are called to intervene in children's lives, tribal leaders are not consulted, which can cause further damage to families and communities.¹⁷⁸ Researchers who have examined this issue within schools have recommended schools address the mistrust and gap in cultural understanding by training teachers and staff on tribal traditions. This can promote positive identity development and native students' sense of belonging in schools,¹⁷⁹ in turn, improving student behavior. Dr. Yellowfish gave examples of ways to incorporate more native culture into students' learning environment. These include mentoring circles between older native women and younger native girls, or boys participating in a gourd dance society that promotes exposure to song and dance that traditionally had healing powers.¹⁸⁰ Additionally, she suggested modeling disciplinary discretion after some of the traditional practices of native culture. This includes focusing on community-based interventions rather than applying harsh penalties such as referrals to law enforcement and considering youth's experiences of trauma as contributing factors to negative behavior. Harsh penalties without consideration of long-term effects on students could deny youth opportunities in the future, Dr. Yellowfish said.¹⁸¹

¹⁷⁸ Yellowfish Testimony, *September 2015 Transcript* P. 171 lines 20-25 and p. 172 lines 1-7.

¹⁷⁹ Jeffrey Sprague et al., *Preventing Disciplinary Exclusions of Students from American Indian/Alaska Native Backgrounds*, 51 FAM. CT. REV. 452, 456 (2013).

¹⁸⁰ Yellowfish Testimony, *September 2015 Transcript* P. 152 lines 18-25 and p. 153 lines 1-19.

¹⁸¹ Yellowfish Testimony, *September 2015 Transcript* p. 156 lines 2-10.

V. FINDINGS AND RECOMMENDATIONS

Among their duties, advisory committees of the U.S. Commission on Civil Rights are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.¹⁸² The Oklahoma Advisory Committee heard testimony and reviewed data that clearly demonstrate disparities in the administration of school discipline between white students and students of color. Students of color, and particularly male students of color, are more likely than their white peers to be excluded from their learning environment and subsequently disengage from school. Once a child becomes disengaged from school, contact with the juvenile justice system, and eventually the adult justice system appears all but inevitable. A summary of these and other related findings are listed below. Following these findings, the Committee proposes for the Commission's consideration several recommendations that apply both to Oklahoma and to the nation as whole.

Findings

1. Poverty

In Oklahoma, there are disproportionately more students of color who are in poverty compared with white children. Therefore, Oklahoma students of color are disproportionately affected by the adverse effects of poverty, which may include the following:

- a. Children in poverty may experience delays in cognitive development due to high-stress situations created by poverty such as lack of food, shelter, or stability. This can subsequently lead to delays in academic performance or acting out in class.
- b. Schools where students in poverty are enrolled are tasked with providing for students' basic needs not being met at home in order to make classroom learning effective. However, due to current public school funding structures, schools with the highest-need students often have the fewest resources with which to support them.
- c. Students not receiving support may act out in the classroom, and educators who face many conflicting demands on the job may use exclusionary disciplinary measures to make classroom environments more productive for other students.

¹⁸² 45 C.F.R. § 703.2

2. Implicit Bias

- a. Implicit bias is defined as the unconscious attitudes or beliefs held by an individual. Research shows that behavior and actions resulting from this cognition are more likely to occur when individuals are fatigued and must make decisions quickly under great pressure. This could include a teacher needing to abruptly stop a lesson to manage disciplinary issues in a classroom full of students or a school resource officer attempting to de-escalate a potentially dangerous situation.
- b. Black children are often perceived as older and more dangerous than their white peers. Subsequently, black students may not be afforded the same understanding from teachers, administrators, or juvenile justice workers that their white peers are. Panelists testified that this could lead to these students being overrepresented in juvenile justice systems despite presenting similar behaviors as white students.
- c. The Committee heard testimony about how implicit bias affects response to behaviors of black students versus the behavior of white students. While white students are more frequently disciplined for engaging in objective behaviors such as smoking or graffiti, black students are more often punished for objective behaviors such as class disruption or dress code violations.
- d. While implicit bias is by definition unconscious, panelists suggested that school officials and teachers should receive implicit bias training to mitigate the disparate effects of these biases on various student populations.

3. Exclusionary disciplinary policies

- e. Harsh disciplinary practices such as expulsions and suspensions may lead to high rates of juvenile involvement in the criminal justice system, particularly for youth of color and youth with disabilities. Experts testified that students who are excluded from their learning environments disengage from schools.
- f. These practices that disproportionately exclude youth of color and youth with disabilities could result in students struggling to find opportunity for achievement or a career path. Students instead may engage with harmful or unproductive activities, funneling them into the school-to-prison pipeline.

4. Students With Disabilities

- g. The suspension rate for students with disabilities is double the rate of the suspension rate for all students. Youth with disabilities, whether learning disabilities or emotional disabilities, are disproportionately represented in the juvenile justice system.

- h. Inmates in the nation's prisons have a much lower level of literacy than the general public. Ensuring that students with learning disabilities are reading at an appropriate grade level can be a protective factor for youth, helping to prevent them from being funneled into the criminal justice system.

5. American Indian Students

- i. Native American students are 1.7 times more likely to be referred to law enforcement than other students of color and 2.6 times more likely than white students. The committee heard from panelists who expressed concern that native students are pushed out of school through harsh discipline policies and exclusionary practices that are not culturally relevant and do not make use of traditional supports. This continues the cycle of despair, poverty, and trauma that has already deeply impacted native communities, and increases mistrust of the public education system.
- j. Discipline policies and school services are not coordinated between tribal leaders and schools. An increase in tribal involvement in native students' education could help them to feel more connected to their school and lead to improved academic outcomes.

Recommendations

In response to these concerns, the Committee offers the following recommendations to the Commission:

1. The Commission should issue the following formal recommendations to the U.S. Department of Education:

- a. The Department's Office of Civil Rights should conduct a national study on the impact of poverty on disparities in educational outcomes on the basis of race or color.
- b. If law enforcement officers are working in schools, the Department should establish uniform licensing requirements to ensure that all law enforcement officers working in schools are properly trained and equipped to respond in an age appropriate manner with children. Applicable training should include strategies for recognizing and overcoming implicit bias.
- c. The Department should require that states impose mandatory reforms to disciplinary policies for schools that demonstrate significant disparities in disciplinary actions on the basis of race, color, or disability, according to the Office of Civil Rights, Civil Rights Data Collection. Such reforms may be based

on the Department's 2014 Guiding Principles Resource Guide for Improving School Climate and Discipline.

- d. The Department should require that districts engage in continuous, shared educational planning between alternative schools or juvenile detention facilities and a child's home school, to ensure that students receive an education of similar quality even if sent to an alternative school.
 - e. The Department should examine and recommend an expansion of evidence-based restorative justice and other alternative disciplinary models to reduce exclusionary discipline without creating a school disciplinary climate where no discipline occurs to avoid public censure.
 - f. The Department's Office of Indian Education should provide guidance on how school districts can effectively consult with tribal governments to serve Native American students.
 - g. The Department should require ongoing anti-bias and cultural competency training as a condition of licensure for teachers and school administrative personnel.
- 2. The Commission should issue the following formal recommendations to the U.S. Department of Justice:**
- a. The Department's Office of Juvenile Justice and Delinquency Prevention should examine educational outcomes and disparities on the basis of race, color, sex, and/or disability among youth who reside in juvenile detention and correctional facilities.
 - b. The Department should require mandatory, all-staff training on recognizing and overcoming implicit bias in its juvenile detention and correctional facilities.



OKLAHOMA ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS

Public Meeting: Civil Rights and the School to Prison Pipeline

August 28, 2015
10:30am Central Daylight Time

Agenda

Welcome and Introductions (10:30-10:35am)

- Vicki Limas, Chair

Panel Presentations (10:35 – 11:20am)

- Joshua Douglass, U.S. Department of Education, Office of Civil Rights
- Vanessa Walsh, University of Utah College of Law
- Keith Hickman, International Institute for Restorative Practices

Committee Questions and Answers (11:20 – 11:40am)

- Vicki Limas, Chair

Open Forum (11:40am – 12:00pm)

- Public Participation



Civil Rights and the School-to-Prison Pipeline in Oklahoma

Hosted By:

The Oklahoma Advisory Committee to the U.S. Commission on Civil Rights

The Oklahoma Advisory Committee to the United States Commission on Civil Rights is hosting a public meeting to hear testimony regarding civil rights and the school-to-prison pipeline in Oklahoma. This meeting is free and open to the public.

Date:

Friday September 11, 2015

Opening Remarks and Introductions (8:00am-8:15am)

- *Panel 1: School Administrators (8:15am-9:30am)*
- *Panel 2: Academics (9:45am-11:00am)*
- *Panel 3: Community (11:15am-12:30pm)*

Time:

8:00am—5:00pm, CDT

Break (12:30-1:30pm)

- *Panel 4: Government (1:30pm-2:45pm)*
- *Panel 5: Teachers (3:00pm-4:15pm)*
- *Open Forum (4:15pm-4:45pm)*

Location:

Oklahoma City University
School of Law
Crowe & Dunlevy Commons
800 N. Harvey Avenue
Oklahoma City, OK 73102

Closing Remarks (4:45pm-5:15pm)

The Committee will hear public testimony during the scheduled open forum session, as time allows. Please arrive early if you wish to speak. This is the second in a two part series of public meetings on the topic. The first meeting is to take place on Friday August 28th at 10:00am CDT via web conference. For more information please contact the Midwestern Regional Office of the U.S. Commission on Civil Rights.

U.S. COMMISSION ON CIVIL RIGHTS

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State Advisory Committees to the U.S. Commission on Civil Rights are composed of state citizens who serve without compensation. The Committees advise the Commission of civil rights issues in their states, providing recommendations and advice regarding such matters to the Commission.

Agenda

Opening Remarks and Introductions (8:00-8:15am)

School Administrators Panel (8:15-9:30am)

- Mr. Robert Neu, Superintendent, Oklahoma City Public Schools
- Mr. Keith Ballard, Former Superintendent, Tulsa Public Schools
- Ms. Cecilia Robinson-Woods, Superintendent, Millwood Public Schools
- Mr. Tracy McDaniel, Principal, KIPP Reach College Preparatory Charter School

Academic Panel (9:45-11:00am)

- Dr. Paul Ketchum, University of Oklahoma, College of Liberal Studies, Criminal Justice
- Dr. Joy Thomas, University of Oklahoma, Educational Leadership and Policy Studies
- Mr. Terry Smith, Oklahoma Institute for Child Advocacy
- Dr. T. Elon Dancy, University of Oklahoma, Educational Leadership and Policy Studies

Community Panel (11:15am-12:30pm)

- Dr. Valerie Thompson, Urban League of Greater Oklahoma City
- Mr. Kris Steele, The Education and Employment Ministry (TEEM)
- Mr. Raul Font, The Latino Development Agency of Oklahoma
- Dr. Star Yellowfish, Oklahoma City Public Schools, Native American Student Services

Break (12:30-1:30pm)

Government Panel (1:30-2:45pm)

- Hon. Lisa T. Davis, District Judge, Presiding Judge of Oklahoma County Juvenile Center
- Ms. Renee Waisner, Assistant Public Defender, Tulsa County
- Mr. Tim Harris, Former Assistant District Attorney, Tulsa County
- Mr. Keith Wilson, State of Oklahoma Office of Juvenile Affairs

Teacher Panel (3:00-4:15pm)

- Mr. Benjamin Bax, American Federation of Teachers
- Mr. John Waldron, Tulsa Classroom Teachers' Association
- Dr. John Thompson, Education Writer and Former Teacher, OK City Public Schools
- Mr. Patrick McGuigan, Journalist and Social Studies Teacher, Justice Alma Wilson Seeworth Academy

Open Forum (4:15-4:45pm)

Closing Remarks (4:45-5:00pm)

Oklahoma Advisory Committee to the United States Commission on Civil Rights



U. S. Commission on Civil Rights Contact

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