

December 10, 2012

Via Email: stephanie_trifone@judiciary-dem.senate.gov

U.S. Senate
Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Ending the School-to-Prison Pipeline

Dear Chairman Durban, Ranking Member Graham, and Committee Members:

Thank you for this opportunity to submit testimony for the December 12, 2012 hearing on "Ending the School-to-Prison Pipeline." The Lawyers' Committee for Civil Rights Under Law is a nonpartisan, nonprofit organization formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. Our principal mission is to secure equal justice under law by utilizing the skills and resources of the bar to address the factors that contribute to racial justice and economic opportunity. We seek to guarantee that all students receive equal educational opportunities in public schools and institutions of higher learning, and we believe that to do so, we must eliminate the opportunity gap between minority students and their non-minority peers. To that end, we share your commitment to ending the School-to-Prison Pipeline.

Public education is the cornerstone of our nation's deeply held belief that anyone can rise above his or her circumstances regardless of race or status. The U.S. Supreme Court attested to this in *Brown v. Board of Education*, acknowledging "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."¹ With the passage of the Civil Rights Act of 1964, Congress also recognized the importance of education in creating equal opportunity, specifically prohibiting discrimination in our schools and colleges.²

However, too many of our most vulnerable youth find themselves caught in the School-to-Prison Pipeline (STPP), which has transformed our schools into pathways to incarceration instead of places of learning.

¹ *Brown v. Bd of Education*, 347 U.S. 483, 493 (1954).

² 42 USC § 2000(c).

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To combat these inequities, we advocate that federal education reform (1) permit the use of Elementary and Secondary Education Act (ESEA) Title I funds to implement school-wide positive behavior supports; (2) prohibit ESEA funding for exclusionary discipline measures; and (3) improve accountability by mandating inclusion of school discipline data in ESEA state Report Cards.

Within the past two decades, many schools have increased their reliance on law enforcement officers and exclusionary policies, such as out-of-school suspension and expulsion, as a means of reducing school disruption. As a result, more students are arrested or referred to juvenile court for what might be viewed as common misbehavior. While incarcerated, many children do not receive an adequate education. Moreover, juvenile delinquency can lead to long-term barriers to many life opportunities, such as access to public housing, military service, student financial aid, and professional licenses.

Exclusionary and punitive student discipline policies implicate a fundamental civil rights issue. As of 2011, over three million students were suspended at least once, and over 100,000 were expelled, causing them to lose valuable instructional time.³ Students of color and those with disabilities are disproportionately impacted by such policies. According to the US Department of Education's Office for Civil Rights, Black students across the country are over 3 ½ times more likely to be suspended or expelled than their White peers.⁴ Latino students also suffer under these policies and are 1.5 times more likely to be suspended and twice as likely to be expelled as their White peers.⁵ Additionally, students covered under IDEA are over twice as likely to receive one or more out-of-school suspensions.⁶

I. The Inequities of the School-to-Prison Pipeline

Of the many troubling aspects of STPP, there are three we highlight: (1) the racial disparities in exclusionary school discipline policies are unjustified; (2) exclusionary discipline is ineffective and harmful; and (3) exclusionary student discipline policies perpetuate the cycle of incarceration within communities of color.

A. Racial Disparities in Exclusionary School Discipline Policies Are Unjustified

Despite strong evidence of disparities in school exclusion for students of color, research confirms that these students violate school rules at a rate equal to their White peers. In a study analyzing national discipline data, it was noted "research on student behavior, race, and discipline has found no evidence that the over-representation of Blacks in out-of-school

³ Daniel J. Losen and Jonathan Gillespie, *Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School*, The Civil Rights Project, 6 (2012).

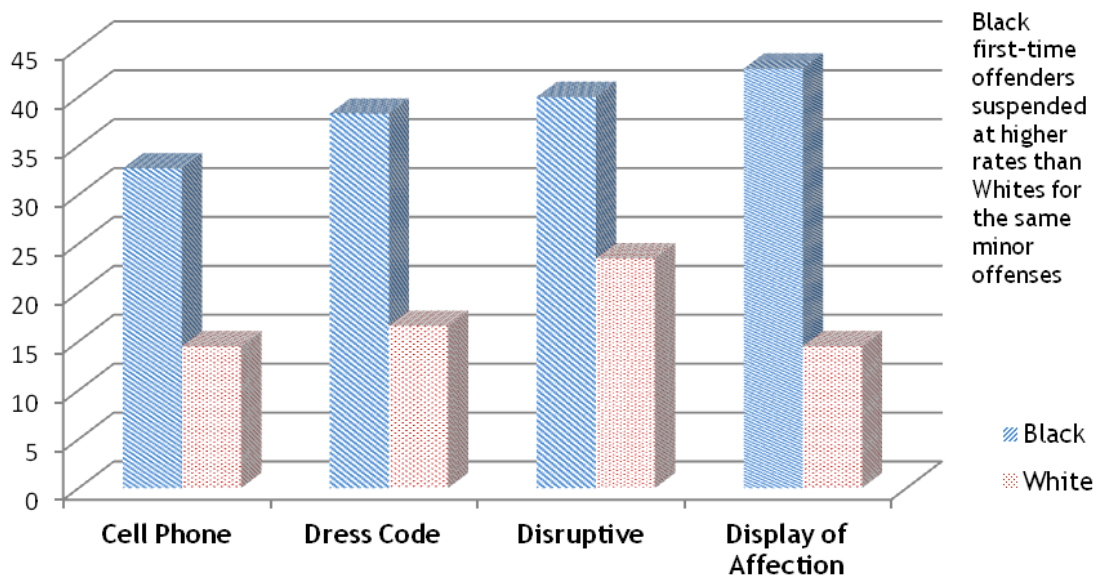
⁴ OFFICE FOR CIVIL RIGHTS (OCR), DEP'T OF EDUC., *Civil Rights Data Collection, Data Summary*, 2 (2012), available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf> (based on self-reported data covering approximately 85% of the nation's public school students).

⁵ NATIONAL COUNCIL OF LA RAZA, *School-to-Prison Pipeline: Zero Tolerance for Latino Youth*, 1 (2011)

⁶ OCR, *supra* note 4, at 3.

suspension is due to higher rates of misbehavior.”⁷ This conclusion is bolstered by The Council of State Governments’ analysis of Texas school districts in *Breaking Schools' Rules: A Statewide Study of How Discipline Relates to Student Success and Juvenile Justice Involvement*, which notes that Black students are “no more likely than students of other races to commit serious offenses that mandate that a student be removed from the campus.”⁸ A North Carolina study of first-time discipline violations further found that Black students were far more likely to be suspended for minor infractions than White students for the same offense:

North Carolina Black/White Suspension Rates⁹



These studies, and others like them, cast doubt on the theory that disparities in discipline are justified by differences in behavior between students of color and their White peers. Furthermore, the data from these studies highlight the harm suffered by students of color under vague discipline policies that allow immediate removal for violations such as being “disruptive” or engaging in a “display of affection.”

Exclusion should be permitted only for the most serious and dangerous offenses, where personal perceptions and cultural dissonance have no influence in the decision-making. Vagueness in school policies as to what triggers removals from the classroom, including under the zero-tolerance rubric, allow bias to infiltrate discipline decisions involving discretion.¹⁰ Research indicates that while White students are more likely to be excluded from school for violating mandatory policies, such as drug or weapon possession, the offenses at the root of the

⁷ Losen, *supra* note 3, at 40.

⁸ THE COUNCIL OF STATE GOVERNMENTS, *Breaking Schools' Rules: A Statewide Study of How Discipline Relates to Student Success and Juvenile Justice Involvement*, 46 (2011).

⁹ Losen, *supra* note 3, at 41.

¹⁰ A zero tolerance policy refers to “a policy that assigns explicit, predetermined punishments to specific violations of school rules, regardless of the situation or context of the behavior.” THE COUNCIL OF STATE GOVERNMENTS *supra* note 8, at n.10.

majority of Black and Latino exclusions are subjective school code violations, such as defiance.¹¹

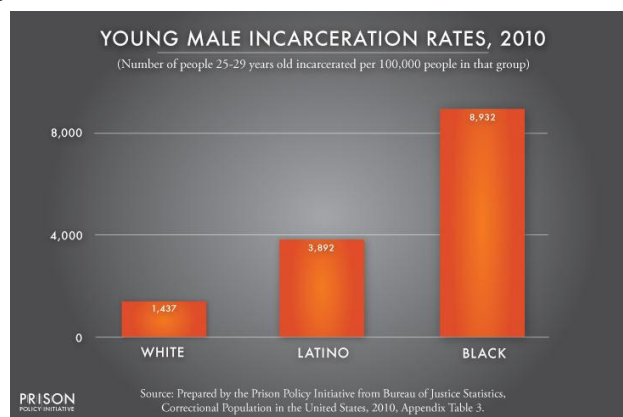
B. *Exclusionary Discipline Is Ineffective and Harmful*

Out-of-school suspensions, expulsions and arrests are not only ineffective at curbing school misbehavior; they may actually reinforce it. There is little evidence that school exclusion improves school climate, student behavior, or school safety. In fact, schools with law enforcement officers have disorderly conduct arrest rates at almost five times those of comparable schools without officers.¹² Instead, the “get tough” practices designed to ensure school safety often have the opposite effect of increasing feelings of school-wide rejection and isolation.

Exclusionary policies negatively impact the educational experience of all students. The Centers for Disease Control & Prevention revealed that suspension greatly increases the likelihood of retention, dropout, criminal involvement, and/or future incarceration. Furthermore, students at schools with high suspension rates tend to score worse on standardized tests because of missed instructional time.¹³ School-based arrests contribute to similar results.

C. *STPP Perpetuates Disproportionate Minority Contact with Justice System*

Exclusionary policies exacerbate the disproportionate incarceration of people of color. According to the Sentencing Project, more than 60% of the people in prison are racial and ethnic minorities.¹⁴ This mirrors juvenile incarcerations, where Blacks make up two-fifths and Latinos one-fifth of youth confined.¹⁵ School-based arrests increase the likelihood of adult arrests and incarceration.¹⁶ In fact, school suspension is a top predictor of those students who will be incarcerated by ninth grade.¹⁷



¹¹ See, e.g., Losen, *supra* note 3 at 40.

¹² JUSTICE POLICY INSTITUTE, *Education Under Arrest: The Case Against Police in School*, 14 (2011).

¹³ POVERTY & RACE RESEARCH ACTION COUNCIL, *Dismantling the School-to-Prison Pipeline: A Survey from the Field* (2011) available at http://www.prrac.org/full_text.php?text_id=1340&item_id=13096&newsletter_id=115&header=Race+%2F+Racism&kc=1.

¹⁴ THE SENTENCING PROJECT, *Racial Disparity*, <http://www.sentencingproject.org/template/page.cfm?id=122>.

¹⁵ Rachel Wilf, *Disparities in School Discipline Move Students Toward Prison*, THE CENTER FOR AMERICAN PROGRESS, <http://www.americanprogress.org/issues/race/news/2012/03/13/11350/disparities-in-school-discipline-move-students-of-color-toward-prison/>.

¹⁶ Dycus, *supra* note 12.

¹⁷ POVERTY & RACE RESEARCH ACTION COUNCIL, *supra* note 13.

II. Recommendations for Dismantling the School-to-Prison Pipeline

In order to combat the inequities of STPP and ensure equal educational opportunities for all children, the Lawyers' Committee advocates that federal education reform do the following: (1) permit the use of ESEA Title I funds to implement school-wide positive behavior supports; (2) prohibit ESEA funding for exclusionary discipline measures; and (3) improve accountability by mandating inclusion of school discipline data in ESEA state Report Cards.

A. Use ESEA Title I Funds to Implement School-Wide Positive Behavior Supports

We endorse proposed House Bill 2597 of the 111th Congress, and consistent with that bill, we recommend that the ESEA be amended to allow State educational agencies, local educational agencies, and schools to increase implementation of school-wide positive behavior supports.¹⁸ This should be done by permitting states to allocate school improvement funds under Title I of the ESEA for coordinated, early intervention services for all students and improve the school learning environment as described in the bill.¹⁹ Positive behavior supports utilize evidence-based practices that yield success in reducing student misbehavior. They include programs such as restorative justice (RJ) and Positive Behavior Interventions and Supports (PBIS).

RJ is guided by principles of accountability, community safety, and social competency development.²⁰ Under this framework, disciplinary incidents are used as an opportunity for students to recognize the impact of their behavior, take responsibility for their actions, and take steps towards making things right. This method not only prioritizes personal accountability, but also instills responsibility toward victims and the community.²¹ Schools with RJ have experienced reductions in exclusionary discipline. For example, Denver Public Schools' use of restorative justice practices resulted in a 40% reduction in out-of-school suspensions.²² In West Philadelphia High, RJ contributed to a 50% decrease in suspensions, along with a 52% reduction in violent and serious acts during the 2007-2008 school year.²³

PBIS is a framework to assist school personnel in adopting and organizing evidence-

¹⁸ H.R. 2597--111th Congress: Positive Behavior for Safe and Effective Schools Act. (2009) (last viewed December 4, 2012) <http://www.govtrack.us/congress/bills/111/hr2597>. We also support the proposal to amend the Department of Education Organization Act to establish, within the Department of Education, an Office of Specialized Instructional Support Services to oversee, implement, and ensure adequate evaluation of, the provision of specialized instructional support services in schools by school counselors, social workers, psychologists, and other qualified professionals.

¹⁹ *Id.* (requiring "improvements in school wide learning climates, including school wide positive behavior supports, to be a target of: (1) technical assistance provided by states to local educational agencies (LEAs) and schools, and by LEAs to schools identified as needing improvement; (2) school wide programs that allow LEAs to consolidate educational funds to upgrade the entire educational program of schools that serve a high proportion of low-income families; (3) professional development funding; (4) funding under the Safe and Drug-Free Schools and Communities program; and (5) elementary and secondary school counseling programs").

²⁰ ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY, *Implementing Restorative Justice, A Guide for Schools*, 6 available at www.icjia.state.il.us/.../SCHOOL%20BARJ%20GUIDEBOOK.pdf.

²¹ Mara Schiff & Gordon Bazemore, "Whose Kids Are These? Juvenile Justice And Education Partnerships Using Restorative Justice To End The "School-To-Prison Pipeline," JUSTICE SUMMIT available at http://school-justicesummit.org/pdfs/journal-web_paper_5.pdf

²² DIGNITY IN SCHOOLS, *Who's Getting Pushed Out?* available at www.dignityinschools.org/.../whos-getting-pushed-out-fact-sheet.

²³ INTERNATIONAL INSTITUTE FOR RESTORATIVE PRACTICES, *Improving School Climate: Findings from Schools Implementing Restorative Practices*, 7 (last viewed December 4, 2012), www.safersanerschools.org/pdf/IIRP-Improving-School-Climate.pdf.

based behavioral interventions into a tiered system of addressing behavior.²⁴ A team-based process is used for data review, data-based problem solving and intervention, ongoing planning, and monitoring of interventions.²⁵ This offers a range of interventions systematically applied to students based on a demonstrated level of need. PBIS is guided by four integrated elements: (1) data for decision making, (2) measurable outcomes supported and evaluated by data, (3) practices with evidence that these outcomes are achievable, and (4) systems that efficiently and effectively support implementation of these practices.²⁶ After applying school-wide PBIS, Jonesboro Middle School in Clayton County, Georgia decreased referrals from 1,252 office discipline referrals to 674 referrals.²⁷ Additionally, more than 6,000 schools that implemented PBIS nationwide reported reductions in behavior problems, improved perceptions of school safety, and improved academic outcomes.²⁸

Coordinated and sustained school-wide implementation of positive behavior supports requires targeted funding. Embedding these practices necessitates full-time employees to coordinate programs and shift school culture, ongoing training and technical assistance for staff, facilities to conduct programming, and consistent monitoring and data collection to track success.²⁹ Without such funding, it is difficult to provide adequate support to students and teachers.³⁰

Given that the schools most afflicted by STPP are more likely to be among the nation's under-resourced and under-performing "dropout factories," Title I funds are an appropriate means of supplying support for implementation of school-wide positive behavior supports.³¹ The purpose of Title I funds is:

to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments. This purpose can be accomplished by. . . meeting the educational needs of low-

²⁴ OSEP TECHNICAL ASSISTANCE CENTER ON POSITIVE BEHAVIOR INTERVENTIONS & SUPPORTS, <http://www.pbis.org/research/default.aspx>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Russell Skiba & Jeffrey Sprague, *Safety Without Suspensions*, 42, available at http://www.pbis.org/common/cms/documents/Coach_Trainer/Articles/Safety%20Without%20Suspensions.pdf.

²⁹ HIGH HOPES CAMPAIGN, *Restorative Justice in Chicago Public Schools*, 8 (2012) available at <http://www.suspensionstories.com/wp-content/uploads/2012/03/FromPolicyToStandardPractice.pdf>. See also, Heather Peshak George, Ph.D. & Stephanie A. Martinez, M.Ed., *How to Get PBS in Your School*, University of Florida, 4 PBIS Newsletter 3 (explaining that "[f]unding is needed for a variety of reasons and may include support for: (1) 'start-up' monies to kick-off school-wide activities (2) stipends for substitute teachers while team members are meeting or attending training, (3) printing materials (e.g. posters, minor forms), (4) purchasing school-wide incentives, including supplying a school store, and (5) paying for a data entry person, etc.") available at http://www.pbis.org/pbis_newsletter/volume_4/issue1.aspx.

³⁰ HIGH HOPES CAMPAIGN, *supra* note 29 at 10. See also, George, *supra* note 29 at 3–4.

³¹ See NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, LEGAL DEFENSE FUND, *School-to-Prison Pipeline* (explaining "racially isolated schools that primarily educate students of color are more likely to be among the nation's 'dropout factories' and also among those that utilize the harshest, most exclusionary means of discipline") available at <http://www.naacpldf.org/case/school-prison-pipeline>. See also Associated Press, *Dropout Factories* (explaining that a "'dropout factory' means the senior class is made up of 60% or fewer of the kids who entered as freshman. While some transferred, most dropped out. . . .The highest concentration of dropout factories is in large cities or high-poverty rural areas. Most of the schools have high minority populations") available at <http://hosted.ap.org/specials/interactives/wdc/dropout/index.html>.

achieving children in our Nation's highest-poverty schools, limited English proficient children, migratory children, children with disabilities, Indian children, neglected or delinquent children, and young children in need of reading assistance;. . . providing children an enriched and accelerated educational program, including the use of school-wide programs or additional services that increase the amount and quality of instructional time;. . . [and] significantly elevating the quality of instruction by providing staff in participating schools with substantial opportunities for professional development. . . .³²

To increase classroom time and academic performance, recipients of ESEA Title I funds should be permitted to allocate those school improvement funds for coordinated implementation of school-wide positive behavior supports and to improve the school learning environment through required additional services.

B. Prohibit Use of ESEA Funding for Exclusionary Discipline Measures

ESEA funds are in place to assist and improve public schools with a high percentage of students from low-income families. We recommend that states be precluded from using the federal dollars associated with the ESEA to fund exclusionary discipline policies. The ESEA and the funds attached to it are in place to *improve* academic achievement for our nation's most disadvantaged students and schools, not to facilitate the marginalization of our nation's most vulnerable youth. In line with this recommendation, we specifically suggest that no ESEA funds be used to pay for: (1) school resource officer or other security personnel salaries, metal detectors, security cameras, or other security-related salaries, equipment, or expenses; (2) drug testing programs; or (3) the development, establishment, implementation, or enforcement of zero-tolerance discipline policies, other than those required to prohibit possession of objectively dangerous weapons and illegal drugs. It is unconscionable that states be permitted to use these federal funds to employ discipline methods that are ineffective, discriminatory, and curtail the promise of equal educational opportunities for all students.

C. Include Disaggregated Discipline Data in ESEA State Report Cards

A state that receives assistance under ESEA must prepare and disseminate an annual ESEA state report card (Report Card) publicizing student achievement data and the progress of its schools in preparing students for college and career readiness.³³ We recommend that discipline data disaggregated by race be a required component of the Report Card. This public reporting will ensure that schools are held accountable for the systematic practice of excluding students from the learning environment and driving them into the justice system.³⁴

³² 20 USC § 6301.

³³ 20 USC § 6301.

³⁴ This is distinct from the Civil Rights Data Collection in that Report Cards are universal in the schools covered and annual in release.

Increased reliance on exclusionary discipline is linked to the high stakes testing attached to ESEA. To avoid the consequences associated with identification as a failing school, institutions in jeopardy of receiving that designation are incentivized to remove disruptive students from the classroom rather than discern the best way to teach them.³⁵ A consequence is that schools frequently push struggling students out of the classroom to increase test scores.³⁶ When drafting the most recent amendment to ESEA, Congress attempted to avoid such perverse incentives by requiring high schools to meet state-set graduation goals in order to attain gains sufficient to demonstrate adequate yearly progress (AYP).³⁷ Unfortunately, the measure for graduation rates has been neither consistent nor rigorous, and many pushed out students fall off the map.³⁸

A school should not be classified as making AYP if it drives difficult students out of the academic environment. As it stands currently, suspensions and expulsions are reported at the state's discretion, and there is no mention of reporting exclusion by arrest.³⁹ To hold states accountable for those students pushed out of school, disaggregated discipline data should be a mandatory component of the Report Card.

In closing, we urge the Committee to recognize the need for forceful action to end these policies and practices associated with STPP. The Lawyers' Committee welcomes the opportunity to consult with you further on reforms to make our school environments safe and conducive to learning for all. Please contact Tanya Clay House, Director of Public Policy, at (202) 662-8330 or tclayhouse@lawyerscommittee.org; or myself, Brenda Shum, Director of the Educational Opportunities Project, at (202) 662-8332 or bshum@lawyerscommittee.org with questions.

Respectfully,

Tanya Clay House, Director
Public Policy
Lawyers' Committee for Civil Rights Under Law

Brenda L. Shum, Director
Educational Opportunities Project
Lawyers' Committee for Civil Rights Under Law

³⁵ THE ADVANCEMENT PROJECT, *Test, Punish, Pushout: How "Zero Tolerance" and High Stakes Testing Funnel Youth into the School to Prison Pipeline* 28–29 (2010) available at b3cdn.net/advancement/d05cb2181a4545db07_r2im6cage.pdf.

³⁶ *Id.* See also, Linda Darling-Hammond, *No Child Left Behind and High School Reform*, 76 *Harvard Educational Review* 642, 668 (2008).

³⁷ ALLIANCE FOR EXCELLENT EDUCATION, *In Need of Improvement NCLB and High Schools*, 4 (2007) available at http://www.all4ed.org/files/NCLB_HighSchools.pdf.

³⁸ *Id.* at 5.

³⁹ 20 USC § 6301.