



New York City Department of Education Hearing on the School Discipline Code

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Good evening. My name is Rachel Kleinman. I am Assistant Counsel in the Education Practice at the NAACP Legal Defense and Educational Fund (“LDF”). I would like to thank the Department of Education for providing us with the opportunity to address the proposed changes to the discipline code for New York City public schools.

LDF is the nation’s premier human rights and civil rights organization. LDF was founded in 1940 to assist African Americans in securing their constitutional and statutory rights, as well as to provide legal services to persons suffering injustice due to racial discrimination. Through litigation, advocacy, public education, and outreach, LDF continually works to secure equal justice under law for all Americans, and to break down the barriers that prevent minority groups from realizing their basic civil and human rights.

LDF’s Education Practice brings together attorneys and grassroots advocates around key educational equity issues such as diversity in K-12 and post-secondary education, teacher quality, special education, and school discipline. We fight to ensure racial equity in education for African-American students and secure a safe, inclusive, and high quality education for all students.

Today LDF calls on the New York City Department of Education to join the nationwide movement away from Zero Tolerance and reliance on exclusionary discipline. While we are encouraged by some of the changes that the Department has proposed to the discipline code, we are still troubled by the wide discretion given to schools in using severe exclusionary disciplinary practices.

According to the U.S. Department of Education’s Office for Civil Rights (OCR), over 3 million students are suspended at least once each year and over 100,000 are expelled. U.S. public school discipline rates have never been higher—roughly double today what they were in the 1970s. And LDF is particularly concerned about excessive use of

exclusionary discipline because unusually severe forms of discipline and differences in treatment of students by race have long been used as both direct and indirect means of excluding African-American students from mainstream educational settings. Nation-wide data shows stark racial disparities, with African-American and Latino students being disproportionately subjected to suspensions, expulsions and school-based arrests. OCR data shows that African-American students are nearly three times as likely to be suspended and three and a half times as likely to be expelled as their white peers. Latino students are one and a half times as likely to be suspended and twice as likely to be expelled as their white peers. In New York City, Black students comprised only 33% of the student enrollment, but received 53% of the 73,000 suspensions in the 2008-2009 school year.

The over-use of these harsh forms of discipline is contrary to the Department's goal of providing a high-quality education to all students. And the racial disparities in imposition of discipline undermine attempts to close persistent gaps in student achievement and opportunity. As you have heard from the stories of the young people who have testified here today, reliance on Zero Tolerance policies and exclusionary discipline pushes students out of schools but does not improve school climate or promote academic success. In fact, the research has shown that exclusion from the classroom, even for a few days, disrupts a student's education and may escalate misbehavior by removing the child from the structured school environment. The American Academy of Pediatrics found that suspension and expulsion jeopardize children's health and safety and may exacerbate academic failure.¹ The Centers for Disease Control & Prevention found that out-of-school youth are more likely to be retained a grade, drop out of school, become teen parents, and engage in delinquent behavior. A 2003 study by Robert Balfanz of Johns Hopkins University found that school suspension is a top predictor for those students incarcerated by ninth grade.

And beyond impacting those individual students who are excluded, the American Psychological Association (APA) found that zero tolerance policies hurt all students. Not only do these policies fail to make schools safer, but schools with high suspension rates score worse on standardized tests.² And researchers are exploring the connections between excessive discipline and low graduation rates.

Encouragingly, the recent nationwide trend shows that school districts are moving away from Zero Tolerance policies and reliance on suspensions and expulsions towards more positive, research based disciplinary practices that aim to improve school climate, promote school safety, and keep students in school. We provide the following brief examples of school districts around the nation that have implemented system-wide

¹ American Academy Of Pediatrics, *Policy Statement: Out-of-School Suspension and Expulsion*, Pediatrics Vol. 112 No. 5 November 2003.

² American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, American Psychologist, December 2008

positive alternatives to Zero Tolerance with success and encourage New York City to take note of these examples:

- In Denver, a new disciplinary code in the public schools is premised on the principles of restorative justice—techniques for deescalating and resolving conflicts and strengthening bonds between students, their peers and their teachers. The code restricts the types of offenses for which students may be suspended. The school district also obtained a grant for professional development in restorative justice. As a result, the district’s arrest rate is down significantly and its suspension rate is down 44%. (See *Education on Lockdown*, a joint publication by Padres y Jóvenes Unidos and Advancement Project, for more information.)
- In Clayton County, Georgia, the district developed a “school offense protocol” to address spiraling school arrest rates. This protocol limits the types of arrestable infractions and provides alternatives to court referral for school officers. Both school safety and student achievement have improved since implementation of the protocol: Incidents of weapons possession are down 70% while the district’s graduation rate is up 20%.
- The Los Angeles Unified School District’s recently adopted a *Discipline Foundation Policy*. The L.A. discipline policy is built on human rights principles and calls for the district-wide implementation of Positive Behavior Supports (PBS). PBS implementation has led to significant reductions in exclusionary discipline in some L.A. schools. However, the district’s failure to implement and enforce the policy district-wide leaves many schools that could benefit most from the policy no different than they were before its adoption. While several schools in New York have recently begun experimenting with positive behavioral techniques, the lesson from L.A. is that in order to significantly reduce the suspension rates in New York City, these policies must be implemented on a district-wide basis, and must be given full support in dissemination and implementation. And this support must start with the discipline code.
- To address racially disproportionate placements in special education, Eau Claire Public Schools in Wisconsin combined Positive Behavioral Supports efforts with “beyond diversity” trainings and trainings in culturally responsive pedagogy. This has resulted in declining disciplinary rates and racial disparities.

As these examples demonstrate, evidence-based alternatives to suspension exist. But if these alternatives are not reflected in the discipline code, schools are likely to continue down the same, ill-fated path. So it is incumbent upon this body to lead the way in promoting the adoption of district-wide positive alternatives that will increase school safety, reduce racial and ethnic disparities and improve learning for all students.