



February 27, 2015

Mr. Aaron Schuham, Chief
U.S. Department of Justice, Policy Section
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Recommendations to the Law Enforcement Equipment Working Group

Dear Mr. Schuman:

I write on behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF) to the Law Enforcement Equipment Working Group (the “Working Group”) in the hopes that this submission will help to inform the Working Group’s recommendations to the President regarding the character, nature, and use of equipment acquired by law enforcement agencies. Founded 75 years ago by Thurgood Marshall, LDF has advocated since its inception for racial justice and equality. Intrinsic to this work is ensuring lawful policing practices and preventing law enforcement actions that stigmatize, unfairly target, and harm people of color. As detailed below, among the concerns we address in our work is the presence of military-style weapons and equipment in our nation’s schools.

The events in Ferguson, Missouri, including the killing of unarmed African-American teenager Michael Brown by police officer Darren Wilson, and the interaction between local law enforcement and community protestors in the wake of Mr. Brown’s killing, raised the specter of the increased militarization of our nation’s police forces and discriminatory policing practices impacting communities of color. Mr. Brown’s death and the tragic shooting death of 12 year old African-American youth Tamir Rice in Ohio, among many other incidents of excessive force at the hands of police officers, also highlighted the dangers inherent in law enforcement interactions with youth of color.



Critically, these kinds of racially fraught interactions occur not only on community streets, but also within our nation’s classrooms, with students of color among the most likely to be subjected to overly punitive discipline practices, including excessive use of force by police in schools. Arming police in schools with military weapons only exacerbates tense school climates and intensifies distrust between youth of color and police in schools. Therefore, LDF recommends that the Working Group act immediately to end the practice of donating and lending military weapons through the Department of Defense’s (DOD) Excess Property Program (the “1033 Program”) to law enforcement agencies (LEAs) operating within K-12 schools. We understand that much of the of the equipment transferred to LEAs under the 1033 Program—approximately 88 percent is considered “non-tactical” equipment, such as chairs, generators, or other office equipment.¹ However, the remaining 12 percent of equipment is considered “tactical,” including weapons, night vision equipment, and tactical vehicles.² That “tactical” equipment—particularly weapons and armored vehicles—and the use of such equipment by police in schools, is the focus of our recommendations.

Reports show that police officers in K-12 schools across the country have been receiving “tactical” equipment through the 1033 Program, including weapons like grenade launchers, AR-15s, and M-16s, tools, and other military supplies.³ For example, the Granite School District in Utah received twelve AR-15s and two MR-16s through the Program.⁴ Bibb County School District’s campus police in Macon, Georgia, received five M-14 rifles through 1033.⁵ Additional states receiving equipment through the 1033 Program for school police include Texas, California, Florida, Georgia, Kansas, Michigan, and Nevada.⁶ Los Angeles Unified School

¹ Bailey Crasso, Valerie, Specialist in Defense Acquisition, *Defense Surplus Equipment Disposal, Including the Law Enforcement 1033 Program*, Congressional Research Service, RS20549, September 5, 2014.

² *Id.*

³ Carlisle, Nate, *Granite District Using Military M-16s to Defend Schools*, Salt Lake Tribune, February 23, 2014, available at <http://www.sltrib.com/sltrib/news/57563036-78/police-johnson-rifles-granite.html.csp>.

⁴ *Id.*

⁵ Mike Stucka, *Ex-military Guns, Vehicles in Hands of Midstate Police*, The Telegraph, August 24, 2014.

⁶ See Rezvani, Arezou, et. al, *MRAPs and Bayonets: What We Know About the Pentagon’s 1033 Program, List of Agencies Receiving Equipment*, National Public Radio, Sept. 2, 2014, available at www.npr.org/2014/09/02/342494225/mraps-and-bayonets-what-we-know-about-the-pentagons-1033-program (detailing states and districts receiving equipment and providing source data at <https://drive.google.com/folderview?id=0B03IIavLYTovdWg4NGtzSW9wb2c&usp=sharing>). Reported states and districts receiving equipment through the 1033 Program include: California



District, San Diego, Detroit, and Palm Beach County, all recipients of military surplus, are among the 50 largest districts in the nation.⁷ Because police in schools are most often deployed to handle minor non-violent misbehavior, LDF is particularly concerned about placing these weapons in the hands of police departments that patrol or otherwise staff K-12 schools.⁸

The presence of military weapons in schools is especially troubling in light of frequent reports of inappropriate and excessive use of force by school police on students, particularly students of color. In schools nationwide, school police already carry and use tasers and pepper spray in non-violent interactions with students when the use of such weaponry is wholly unwarranted.⁹ Each school year brings a new series of local news articles highlighting students tased or pepper-sprayed for little more than “clenching their fists” or “taking an aggressive stance.”¹⁰ LDF and several other civil rights organizations supported the filing of a complaint with the Department of Justice against Wake County Public Schools, the largest public K-12 school district in North Carolina, in light of reports of excessive use of force by school police against African-American students. In one reported incident, school police were called to respond to a water balloon fight, resulting in the arrest of seven students.¹¹

(Baldwin Park; Oakland Unified; Los Angeles; Stockton Unified); Florida (Washington; Bay; Palm Beach County); Georgia (Fulton County; Dooly County); Kansas (Auburn Washburn); Michigan (Detroit; Schoolcraft) Nevada (Washoe County); Texas (Ector County; Ennis; Spring Branch; Frenship; Aledo; Edinburg; San Antonio; Trinity; Beaumont); Utah (Granite). *Id.*

⁷ *Id.*

⁸ *Police in Schools Are Not the Answer to the Newton Shooting*, January 2013, at 4, Joint Brief of the NAACP Legal Defense and Educational Fund, Inc., Advancement Project, Dignity in Schools Campaign, and the Alliance for Educational Justice, available at [http://www.naacpldf.org/files/publications/Police in Schools are Not the Answer to the Newtown Shooting - Jan. 2013.pdf](http://www.naacpldf.org/files/publications/Police%20in%20Schools%20are%20Not%20the%20Answer%20to%20the%20Newtown%20Shooting%20-%20Jan.%202013.pdf).

⁹ CBS Evening News, *Don't Tase Students at School, Activists Say* (April 16, 2014).

¹⁰ *Id.*; See also *Cedar Creek Student in Coma Days After Being Tased by Deputy*, November 22, 2013, available at <http://www.myfoxaustin.com/story/24047726/cedar-creek-students-protest-following-tasing-of-student>; Gamiz, Jr., Manuel, *Judge: Jury Must Decide Tasing of Dieruff Student*, August 22, 2014, available at <http://www.mcall.com/news/breaking/mc-allentown-dieruff-student-taser-case-decision-20140822-story.html>; Marlene Kennedy, *Enough! Say Students Tasered In School*, Courthouse News Service, March 21, 2014, available at <http://www.courthousenews.com/2014/03/21/66358.htm>.

¹¹ The Center for Public Integrity, January 24, 2014, *North Carolina Complaint Alleges Excessive Force by Police in Schools*, available at <http://www.publicintegrity.org/2014/01/24/14158/north-carolina-complaint-allegesexcessive-force-police-schools>.



The use of these types of weapons in an educational setting is particularly troubling given the high risk that they will be disproportionately deployed against students of color. For decades, we have witnessed the increased criminalization of our nation’s youth, especially youth of color and students with disabilities, through the implementation of “zero tolerance” school discipline practices enacted after high-profile tragic school shootings.¹² These overly punitive discipline policies have criminalized normative adolescent behavior. And, instead of improving school safety, these practices have blurred the lines between school discipline and school safety, pushing students out of school¹³ and into the juvenile justice system, particularly through increased reliance on police in schools to handle routine discipline matters.¹⁴ Students impacted by these practices and policies, which included suspensions and expulsions, lose valuable instruction time, have trouble re-engaging in the classroom, and suffer from feelings of alienation and stigmatization.¹⁵

In light of these facts, LDF reiterates our strong concerns raised in our September 15, 2014 letter signed by 22 civil rights and education organizations to Vice Admiral Mark Harnitchek requesting an immediate end to the 1033 Program’s lending of military weapons to LEAs serving K-12 schools. We also raised the issue in testimony submitted during last year’s hearing before the U.S. Senate Committee on Homeland Security and Governmental Affairs, “Oversight of Federal Programs for Equipping State and Local Law Enforcement.”¹⁶ Increasing militarization within our nation’s schools, where considerable tension already exists between school police and students of color disproportionately targeted for overly punitive discipline, only exacerbates tense school climates. Simply put, military weapons have no place in our nation’s schools.

¹² *Police in Schools Are Not the Answer to the Newton Shooting*, January 2013, at 4, Joint Brief of the NAACP Legal Defense and Educational Fund, Inc., Advancement Project, Dignity in Schools Campaign, and the Alliance for Educational Justice, *available at* [http://www.naacpldf.org/files/publications/Police in Schools are Not the Answer to the Newtown Shooting - Jan. 2013.pdf](http://www.naacpldf.org/files/publications/Police%20in%20Schools%20are%20Not%20the%20Answer%20to%20the%20Newton%20Shooting%20-%20Jan.%202013.pdf).

¹³ *Id.* at 6.

¹⁴ *Id.*

¹⁵ *Id.* at 4.

¹⁶ Statement by the NAACP Legal Defense & Educational Fund, Inc. Before the Senate Committee on Homeland Security and Governmental Affairs, September 9, 2014, *available at* http://www.naacpldf.org/files/case_issue/LDF%20Statement%20Oversight%20of%20Federal%20Programs%20for%20Equipping%20State%20and%20Local%20Law%20Enforcement%20Hearing.pdf

As detailed above, recipients of military surplus can be found among the largest school districts in the country. Following media reports of these military weapons received by LEAs for use in K-12 schools, several districts returned some of the equipment.¹⁷ However, some districts willing to return the equipment were unable to cover the costs of transporting and shipping the equipment. Therefore, we also recommend that the Working Group establish a mechanism to enable those LEAs working in K-12 schools that wish to return military weapons received through the 1033 Program to be able to do so without entailing additional costs.

In his October 17, 2014 response to the September 15, 2014 LDF and Texas Appleseed letter, Vice Admiral Harnitchek noted that state coordinators “determine that the items are suitable for use for law enforcement activities and approve the [LEA’s] request.” Because state coordinators are governor-appointed officials who are not required to have any law enforcement experience or knowledge of constitutional policing practices or civil rights compliance,¹⁸ we continue to be very concerned about the lack of federal oversight of the 1033 Program’s lending of military weaponry to LEAs serving K-12 schools.

Given the potential harm of permitting military weaponry in our nation’s schools, LDF submits the following recommendations to the Working Group and looks forward to working together to improve policies and practices to promote positive communities and school climates:

- End the lending or transfer of all “tactical” military equipment, including weapons, to LEAs working in K-12 schools through the 1033 Program.
- Establish a mechanism to enable LEAs wishing to return tactical equipment, including weapons, received through the 1033 Program to do so without entailing additional shipping or transportation costs.

¹⁷ Windsor, Genova, *L.A. Schools Police to Return Grenade Launchers, Keep Armored Car and M-16s*, Fortworth Local News, October 1, 2014, available at <http://www.localnewsfortworth.com/l-a-schools-police-to-return-grenade-launchers-keep-armored-car-and-m-16s/>.

¹⁸ Vice Admiral Harnitchek testified before the House Armed Services Subcommittee on Oversight & Investigation’s November 13, 2014 hearing *The Department of Defense Excess Property Program in Support of U.S. Law Enforcement Agencies: An Overview of DOD Authorities, Roles, Responsibilities, and Implementation of Section 1033 of the 1997 Defense Authorization Act* that the role and responsibilities of state coordinators are outlined in standard Memoranda of Understanding executed between LEAs and the Defense Logistics Agency (DLA). Vice Admiral Harnitchek admitted that state coordinators are not required to have law enforcement experience.



- Ensure that requests for non-tactical equipment through the 1033 Program for use in K-12 schools are reviewed through an inclusive process before submission to DOD, including community members, parents, and school administrators.
- Monitor the lending of non-tactical equipment, such as computers and desks, to ensure that they are being supplied to school districts in a nondiscriminatory manner, consistent with Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968, by requiring recipient law enforcement serving schools to provide racial demographic information of the school districts the equipment will serve.
- Ensure that equipment received through the 1033 Program by LEAs for use in K-12 schools is publicly available and accessible and audited quarterly.
- Ensure that equipment received through the 1033 Program by LEAs for use in K-12 schools is documented (including stated intended use of the equipment) and tracked through publicly-accessible means.
- Create an interagency council comprising representatives from the Department of Defense, Department of Justice, Department of Homeland Security, and the Department of Education that would be responsible for monitoring requests for military equipment from state and local law enforcement agencies and regularly convening to consider whether the state or local law enforcement agency requesting equipment:
 - Is currently under investigation by any federal agency for violations of Title VI of the Civil Rights Act of 1964, the Omnibus Crime Control and Safe Streets Act of 1968, and/or the Victim Crime Control and Law Enforcement Act of 1994. If so, the law enforcement agency's application should be delayed until the completion of the investigation, and denied if there are findings of violations of these statutes.
 - Has been suspended from a federally-funded program or has had a federal grant award terminated in the past three years. If so, then the council should collect additional information to determine whether the suspension or termination was due to violations of federal civil rights laws.



We thank you for the opportunity to offer recommendations to the Working Group. If you have any questions, please contact Janel George at jgeorge@naacpldf.org or [Monique Dixon at mdixon@naacpldf.org](mailto:mdixon@naacpldf.org). Thank you for your consideration.

Sincerely,

Sherrilyn A. Ifill
President and Director-Counsel

cc: Arati Naik Jain, Policy Section, Department of Justice
Nicole Ndumele, Policy Section, Department of Justice
Michelle Coles, Policy Section, Department of Justice