



Testimony of the NAACP Legal Defense and Educational Fund, Inc.
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**United States Senate
Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights**

**Hearing on “Ending the School-to-Prison Pipeline”
Dirksen Senate Office Building
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I. Introduction

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), we are pleased to submit this testimony in connection with the Subcommittee's hearing on “Ending the School-to-Prison Pipeline.” We want to thank Chairman Durbin, Ranking Member Graham and Members of the Subcommittee for holding the hearing. This seminal event marks the first time that Congress has devoted a hearing solely to the alarming connection between schools, discipline policies, and the juvenile justice system. And it could not come at a better moment.

School discipline today bears little resemblance to the approaches of a generation ago. Today, far too many schools reflexively resort to harsh exclusionary discipline such as suspension, expulsion, assignment to alternative educational settings and even citations and arrest by law enforcement officers. Disciplinary rates are now more than double what they were in the 1970s. In fact, U.S. schools now suspend more students than at any time in our history. In the 2009-2010 school year, the most recent year for which data are available, over 3,000,000 students were suspended.¹ And some schools call police instead of parents to handle simple disciplinary matters, with students receiving summonses and tickets for non-criminal acts such as using profanity, missing class and running in school hallways.

The overwhelming weight of data and research demonstrates that such practices are counter-productive. They do not make schools safer; instead, they block students' pathways to success. And they often funnel students into the juvenile and criminal justice systems, thereby fueling the

¹ DANIEL J. LOSEN & JONATHAN GILLESPIE, OPPORTUNITIES SUSPENDED: THE DISPARATE IMPACT OF DISCIPLINARY EXCLUSION FROM SCHOOL 6 (The Center for Civil Rights Remedies at The Civil Rights Project, 2012).

School-to-Prison Pipeline. This is particularly true for African-American students, who are too often disproportionately impacted by these approaches.

With approximately a quarter of all high school students not graduating, and persistent achievement and opportunity gaps in our nation's schools, we must reckon with the impact of the School-to-Prison Pipeline. As the organization that litigated *Brown v. Board of Education*, we fully understand the stakes for African-American students and all students. For this reason, we urge this Subcommittee, as well as the full Judiciary Committee, to examine in depth the multiple causes of, and solutions to, the School-to-Prison Pipeline. We believe this hearing – and subsequent Congressional action – can help to dismantle the School-to-Prison Pipeline. We offer the following testimony in that spirit.

II. Excessive Discipline Yields Racial Disparities

According to the U.S. Department of Education, “across all districts, African-American students are over 3½ times more likely to be suspended or expelled than their white peers.”² And a widely-publicized study by the Council of State Governments showed that African-American students in Texas were 31 percent more likely to be disciplined for discretionary offenses in schools compared to their white or Latino counterparts, and over 80 percent of African-American male students had been suspended or expelled at least once during middle or high school.³ Such sobering data are not exclusive to the South: in New York City, more than 95 percent of the students arrested in the city's schools in 2011 were African-American or Latino.⁴

In addition to more frequent punishment, African American students are also more likely to be punished more harshly, even when engaging in the same conduct as white students.⁵ In this way, race has been shown to be a predictive factor for disciplinary action, as well as for the severity of the disciplinary sanctions.

III. Overreliance on Exclusionary Discipline Undermines Our Nation's Education Goals

While school safety is critical to ensuring that students are able to learn, excessive exclusionary discipline is counterproductive, both in terms of keeping students safe and promoting academic achievement.

² OFFICE FOR CIVIL RIGHTS, U.S. DEPARTMENT OF EDUCATION, CIVIL RIGHTS DATA COLLECTION SUMMARY 2 (2012). <http://ocrdata.ed.gov/Downloads/CMOCRTheTransformedCRDCFINAL3-15-12Accessible-1.pdf>. Despite being only 18% of students in the Civil Rights Data Collection sample, African-American students were 35% of students suspended once, 46% of those suspended more than once, and 39% of students expelled. Furthermore, the CRDC indicates that “Over 70% of students involved in school-related arrests or referred to law enforcement are Hispanic or African-American.”

³ TONY FABELO et al., BREAKING SCHOOLS' RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS' SUCCESS AND JUVENILE JUSTICE INVOLVEMENT, x, 40-46, (2011). http://knowledgecenter.csg.org/drupal/system/files/Breaking_School_Rules.pdf.

⁴ NEW YORK CIVIL LIBERTIES UNION, SSA REPORTING ON ARRESTS AND SUMMONES, (2012). <http://www.nyclu.org/files/releases/School%20Safety%20Fact%20Sheet%202011-2012.pdf>.

⁵ RUSSELL SKIBA et al., RACE IS NOT NEUTRAL: A NATIONAL INVESTIGATION OF AFRICAN-AMERICAN AND LATINO DISPROPORTIONALITY IN SCHOOL DISCIPLINE, *School Psychology Review*, 2011 at 85. <http://www.nasponline.org/publications/spr/40-1/spr401Skiba.pdf>.

The American Psychological Association has found that there is no evidence suggesting that the use of suspension, expulsion, or zero-tolerance policies results in improvements in student behavior or increases in school safety.⁶ Indeed, such practices have *negative* effects on student academic performance: students who are suspended and/or expelled, especially those who are repeatedly disciplined, are far more likely to be held back a grade, drop out of school, or become involved in the juvenile or criminal justice system than are students who do not face exclusionary discipline.⁷ Students who are arrested are twice as likely to drop out as their peers.⁸

The harms of excessive use of exclusionary discipline are not limited to individual students. Research indicates that entire schools suffer when suspension, expulsion, or referral to law enforcement become the interventions of choice. Schools with high suspension rates score lower on state accountability tests than other schools, even when adjusting for demographic differences.⁹ In this way, over-reliance on exclusionary discipline threatens our educational goals. Put simply, when a student is not in school, she cannot learn, and we are pushing far too many children out of school.

There are also economic consequences to the ways in which exclusionary discipline and referrals to law enforcement inhibit graduation rates. For example, in 2011, approximately 1.2 million students did not graduate from high school; the estimated lost lifetime earnings for that class of dropouts is \$154 billion.¹⁰ Furthermore, school-based arrests have placed such a drain on state funds that fiscally conservative organizations, such as the Texas Public Policy Foundation, have begun calling for reforms to rethink school-to-court referral practices.¹¹ Clearly, pushing students out negatively affects America's bottom line.

IV. Recommendations to address the School-to-Prison Pipeline

Thankfully, there are proven solutions to securing school safety that do not rely on exclusionary discipline. Evidence-based frameworks such as School-Wide Positive Behavioral Interventions and Supports (SWPBS) and Restorative Justice Practices are being implemented in over 10,000 U.S. schools. Research indicates that effective implementation of SWPBS has reduced disciplinary rates and improved student attendance, academic achievement, and perceptions of

⁶ HOWARD L. TARAS et al., COMMITTEE ON SCHOOL HEALTH, AMERICAN ACADEMY OF PEDIATRICS – POLICY STATEMENT: ORGANIZATIONAL PRINCIPLES TO GUIDE AND DEFINE THE CHILD HEALTH CARE SYSTEM AND/OR IMPROVE THE HEALTH OF ALL CHILDREN, <http://www.cde.state.co.us/cdeprevention/download/pdf/1206.pdf>.

⁷ FABELO et al., BREAKING SCHOOLS' RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS' SUCCESS AND JUVENILE JUSTICE INVOLVEMENT, xi-xii, (2011).
http://knowledgecenter.csg.org/drupal/system/files/Breaking_School_Rules.pdf.

⁸ Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement* 23 JUST. Q. 462 (2006).

⁹ SKIBA & PETERSON, THE DARK SIDE OF ZERO TOLERANCE: CAN PUNISHMENT LEAD TO SAFE SCHOOLS?, Phi Delta Kappan Jan. 1999, at 372-376.
<http://www.jstor.org/discover/10.2307/20439450?uid=3739584&uid=2129&uid=2&uid=70&uid=4&uid=3739256&sid=21100974521363>.

¹⁰ ALLIANCE FOR EXCELLENT EDUCATION, THE HIGH COST OF HIGH SCHOOL DROPOUTS: WHAT THE NATION PAYS FOR INADEQUATE HIGH SCHOOLS, (2011).

¹¹ RIGHT ON CRIME, PRIORITY ISSUES: JUVENILE JUSTICE (2010) at <http://www.rightoncrime.com/priority-issues/juvenile-justice/>.

school safety.¹² Implementation of Restorative Justice Practices, another best practice in school discipline, resulted in a 40% drop in suspensions and a 60% drop in arrests in Denver Public Schools.¹³ Bi-partisan support from lawmakers, families, and educators for efforts to improve school discipline have resulted in significant changes in the school policies and practices of Baltimore,¹⁴ Los Angeles,¹⁵ Colorado,¹⁶ Florida,¹⁷ Louisiana,¹⁸ and Maryland,¹⁹ among others.

Below are several recommendations for federal legislation and administrative action that can address the alarming rates at which students are being pushed out of school through exclusionary discipline and referral to law enforcement.

Recommendations for federal legislation:

- 1) Require annual reporting of disciplinary indicators collected in the 2012 Civil Rights Data Collection (conducted by the U.S. Department of Education Office for Civil Rights). These school-level disciplinary and school climate data should be disaggregated by race, gender, disability, and English proficiency, and be collected from all schools and districts, including all charter schools and alternative schools. Such data should be publically reported in accessible formats.
- 2) Require that unusually high and/or racially disparate rates of exclusionary discipline trigger mandatory technical assistance and support. Schools and districts with significant excesses and racial disparities should be required to address the problem. But that can best be accomplished through support and assistance rather than punitive sanctions.²⁰ Schools and districts should be supported in adopting demonstrably effective, positive approaches to improving school climate and limiting the use of exclusionary discipline.
- 3) Provide additional federal funds to develop and implement inclusive approaches to school discipline. Congress can help school districts to replace exclusionary discipline methods with: (a) evidence-based and demonstrably effective school-based discipline frameworks that will be implemented in a culturally relevant manner, such as School-Wide Positive Behavior Support (SWPBS) and Restorative Justice Practices; and (b) increased reliance on school-based service providers such as mental health practitioners, school social workers, school psychologists, school counselors, and school nurses.

¹² ROBERT H. HORNER, et al., A RANDOMIZED WAIT-LIST CONTROLLED EFFECTIVENESS TRIAL ASSESSING SCHOOL-WIDE POSITIVE BEHAVIOR SUPPORT IN ELEMENTARY SCHOOLS, 11 J. POSITIVE BEHAVIOR INTERVENTIONS 133 (2009).

¹³ ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSHOUT: HOW “ZERO-TOLERANCE” AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE “SCHOOL-TO-PRISON PIPELINE” 36 (2010).

¹⁴ Liz Bowie, *Baltimore County School Board Eases Discipline Policy*. BALT. SUN (Jun. 12, 2012).

¹⁵ SCHOOL MASTER PLAN FOR DISCIPLINE, available at: http://lapositivebehavior.com/plan_detail.cfm?id=1

¹⁶ Colo. H.B. 1345 (2012).

¹⁷ Fla. S.B. 1540 (2009).

¹⁸ La. Act 136 (2010).

¹⁹ MD. REGS. CODE tit. 13A. (2012).

²⁰ A model for this approach is evident in the process required by the Individuals with Disabilities Education Act, which is designed to eliminate such disparities. 20 U.S.C. § 1412(a)(22).

- 4) Deemphasize standardized test scores. States can help to mitigate the perverse incentives that stem from test-based accountability by developing and implementing school, teacher, and student assessment mechanisms that rely on multiple sources of diverse evidence of learning. As demonstrated by our current national accountability framework, a focus on test scores as the primary measure of student, school, and district performance creates a direct and powerful incentive to remove students whose performance on the test may negatively affect a school's or district's statistics. By reducing the emphasis on test scores and incorporating additional measures of student learning and teacher practice, the incentives to push out students whose performance on tests is perceived to threaten school and staff evaluations will be drastically reduced.

Recommendation for administrative action:

- 1) Require recipients of competitive federal grants or waivers from compliance with the No Child Left Behind Act administered through the U.S. Department of Education to address high and/or disparate rates of discipline. We support the requirement included in the Race to the Top District-level competition (RTT-D), which calls for grant recipients to address disciplinary disparities. We urge that the Department of Education use the same approach to all grant and waiver programs, including waivers from federal education law provided through the Department's "flexibility package."

V. Conclusion

Our nation is based on the ideal of equal opportunity. Sadly, for many students, especially African-Americans, this ideal is absent from their educational experience. Millions of these students are pushed out of school each year through exclusionary discipline policies that not only fail to improve school safety, but also injure the academic performance of the school as a whole. These alarmingly high and racially disparate rates of suspension, expulsion, and referral to law enforcement must be addressed. And while we need to create safe and healthy learning environments, we must ensure that our schools implement evidence-based practices that support academic growth and improve school climate. The Subcommittee's hearing today is a critical first step in what will hopefully be a strong federal legislative effort to address our nation's harmful reliance on these counterproductive exclusionary discipline policies.