



**Testimony of Judith A. Browne Dianis
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**Hearing on Ending the School-to-Prison Pipeline
Before the Subcommittee on the Constitution, Civil Rights, and Human Rights, Senate
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Chairman Durbin, Ranking Member Graham and Members of the Subcommittee on the Constitution, Civil Rights and Human Rights, thank you for the opportunity to testify today about the School-to-Prison Pipeline, the process by which students are forced out of our educational system and into the criminal justice system by overly harsh disciplinary policies and practices, and to share with you the Pipeline's devastating effect on young people's opportunity to succeed. Mr. Chairman, having testified before you in 2011 on voting rights issues, I wanted to recognize your leadership on a vast array of civil rights and racial justice issues including ensuring educational opportunity, protecting voting rights, and protecting the rights of immigrants.

My name is Judith Browne Dianis. I serve as Co-Director of Advancement Project—a national, civil rights organization that advances universal opportunity and a just democracy. For almost 20 years, I have been a civil rights litigator and racial justice advocate in the areas of voting, education, housing, and immigrants' rights.

Advancement Project is a next generation, multi-racial civil rights organization, founded in 1999 by a team of veteran civil rights lawyers. With offices in California and a national office in Washington, DC, we exist to fulfill America's promise of a caring, inclusive, and just democracy, rooted in the great human rights struggles for equality and justice. We use innovative tools and strategies to strengthen

social movements and achieve high-impact policy change. Locally, we provide strategic policy, legal, and communications support to grassroots organizations, increasing their capacity to identify and address racial injustices in their communities. On the national level, we extend and replicate lessons learned on the ground, through the use of trainings, networking, media outreach, and public education.

We all want safe, high-quality schools that care about our youth and give them real opportunities to succeed, and, no one would dispute that keeping kids safe sometimes requires schools to take appropriate disciplinary action. However, across the country, students are being suspended, expelled, or even arrested for minor misbehavior like being late or violating a dress code. Students who should be sent to the guidance counselor to find out what is really wrong end up at the police station. We are facing a discipline crisis, one that is pushing students of color out of school, by either kicking them out of school or causing them to drop out, and one that is disproportionately impacting lesbian, gay, bisexual, transgender, and queer (LGBTQ) students and students with disabilities.

In recent years, we have seen increased rates of suspension, expulsion, and arrest because adult – and not student – behavior has changed. Adults are treating young people like criminals, and are responding to typical student behavior that has no bearing on safety with discipline that defies common sense. Schools have redefined developmentally appropriate behaviors as crimes. Pushing and shoving in the schoolyard is now a battery, and talking back is now disorderly conduct.

In all the years I have done this work, one case in particular stands out. Ja'eisha Scott was a five-year-old kindergarten student in Pinellas County, Florida. When her teacher ended a jelly bean counting game, Ja'eisha didn't want to stop the game. Like many five-year old children would have done, Ja'eisha, got upset and started acting out. Soon, this turned into a full blown temper tantrum. When the school staff couldn't get her to calm down, they decided that their next best option was to call in law enforcement. When the three police officers entered the room, they found Ja'eisha sitting quietly in a chair. Two of them pulled her up, pushed her against a table and put little Ja'eisha under arrest, as if she were a hardened criminal. Her wrists were too tiny for the handcuffs to fit, so they handcuffed her arms instead. They took her to a police cruiser, where they shackled her ankles and left her crying until her

mother came to the school. The images of Ja'eisha that day, and of her family and her community's pain, are seared in my memory.

These overly punitive disciplinary policies and practices, often called "zero tolerance policies" lead to high dropout rates, low academic achievement, and too many young people pushed onto a pathway to prison. This is the School-to-Prison Pipeline. The Pipeline is the result of various practices including zero tolerance policies, high-stakes testing, suspensions, expulsions, and school-based arrests.

The School-to-Prison Pipeline is a product of the War on Drugs, as "get-tough" law enforcement strategies made their way from the streets to the schools. Although school violence was actually in decline, a handful of highly publicized juvenile crimes led to new laws and policies intended to punish youth offenders more severely.¹ In 1994, Congress passed the Gun Free Schools Act, requiring states to enact laws mandating expulsion of students found with firearms on school grounds. School districts went further, embracing the strategies of the War on Drugs, and coming up with their own versions of "three strikes" laws (automatically expelling students for their third offense) and instituting mandatory sentencing laws (policies requiring a minimum suspension for some behaviors regardless of circumstances, even for something as minor as insubordination).² At the onset of these changes, Advancement Project saw the potential for discrimination. We tracked it, documented it, and, with our community partners, began to address it. We have supported the growing national movement to dismantle the School-to-Prison Pipeline for over thirteen years.

Youth, parents, local groups and their organizers, other community leaders, and coalitions have been at the forefront of this movement since its inception. Through their tireless work, and the support of national research, education, juvenile justice organizations, and civil rights advocacy organizations, many of whom have also submitted testimony for this hearing, the tide is starting to turn away from ineffective, exclusionary discipline and towards common sense policies that actually work. As part of this movement,

¹Test, Punish, and Push Out: How "Zero Tolerance" and High-stakes Testing Funnel Youth into the School-to-Prison Pipeline 9-12. (January 2010) [hereinafter Test, Punish, Push Out], available at http://b.3cdn.net/advancement/d05cb2181a4545db07_r2im6caqe.pdf.

² Id. at 10.

we and our partners and allies have collaborated with juvenile court judges, public defenders, and the U.S. Departments of Justice and Education. With our community partners, we have also successfully advocated for statewide legislative reform of zero tolerance policies and practices, and worked closely with school districts to implement common sense discipline, rewriting their discipline codes and developing alternatives to suspensions and criminalization practices.

I am honored to have the opportunity to inform this committee about what is happening on the ground across the county and to highlight ways of reversing the School-to-Prison Pipeline. In this testimony, I will discuss why harsh disciplinary practices do not work: they are ineffective, inefficient, and discriminatory. I will then discuss common sense discipline policies and practices that are proven alternatives to zero tolerance that keep schools safe, engage students in the learning process, and reduce racial disparities. Finally, I will recommend how the federal government – and this subcommittee in particular – can end the School-to-Prison Pipeline and get students on the track to success.

I. Suspension, Expulsion, and Arrest Lead to Less Safe Schools and Less Successful Students

Millions of students throughout the country are routinely facing excessive, overly punitive school discipline. This includes out-of-school suspension, expulsion, arrests, and referrals to law enforcement agencies – collectively, what I will refer to as “exclusionary discipline.” According to the most recent data from the United States Department of Education’s Office for Civil Rights (OCR), each year over three million students are suspended and over 100,000 students are expelled.³ This rate has nearly doubled in the past thirty years.⁴ School disciplinary matters are also increasingly handled by law enforcement, and today, students are more likely to be arrested for minor in-school offenses.⁵ This zero tolerance approach where adults often over-react to youthful behavior by removing them from the classroom, kicking them out of school, and referring them to the police is having a devastating effect on

³Department of Education, Office for Civil Rights, Civil Rights Data Collection, available at <http://ocrdata.ed.gov/>.

⁴ Id.

⁵ Federal Advisory Committee on Juvenile Justice, 2010 Annual Report 9 (2010), available at <http://www.facjj.org/annualreports/00-FACJJ%20Annual%20Report-FINAL%20508.pdf>.

our youth. Students lose valuable education time, disengage from school, and are pushed into the criminal justice system. These negative results are not necessary: we know that exclusionary discipline does not work. It has not made our schools safer; it has not improved the quality of schools; and it is a significant contributor to the dropout crisis and student achievement gap.⁶

The overuse of zero tolerance discipline policies is fueled by the high-stakes testing world of education today.⁷ Because of the focus on test scores and the severe consequences (or incentives) attached to them, including termination of school staff, it is no longer in educators' interest to address a student who acts up in class by assessing the student's unmet needs or treating the incident as a "teachable moment."⁸ It is much easier to simply remove the child from class through punitive disciplinary measures.⁹

Many schools have also abdicated their responsibility to correct minor misbehavior to law enforcement and the courts. This criminalization of young people has led to dramatically larger security and school police forces, increased use of metal detectors, surveillance cameras, pat-downs, drug-sniffing dogs, and tasers, and a significant jump in the number of school-based arrests and citations.¹⁰ The prison-like atmosphere created in schools significantly affects students. As students in Philadelphia explained, "It creates a hostile environment. It makes it seem as though they expect us to be negative. I feel violated. I shouldn't have to go through a metal detector . . . and upon entering [a particular school for the first time] I had to take off my shoes and they searched me like I was a real criminal. . . [after that] I was making up every excuse not to go to school."¹¹ Around the country, we see rampant use of law enforcement to respond to typical childhood behavior. In May of 2012, an honors student in Houston, Texas was forced to spend a night in jail when she missed class to go to work to support her family. In

⁶ See generally Test, Punish, Push Out, *supra* note 1.

⁷ *Id.*

⁸ *Id.* at 28-29.

⁹ *Id.*

¹⁰ See, e.g. Advancement Project. Derailed! The Schoolhouse to Jailhouse Track. (May 2003), available at http://b.3cdn.net/advancement/c509d077028b4d0544_mlbrq3seg.pdf.

¹¹ Youth United for Change & Advancement Project. Zero Tolerance in Philadelphia: Denying Educational Opportunities and Creating a Pathway to Prison 14 (January 2011) [hereinafter Zero Tolerance in Philadelphia], available at http://b.3cdn.net/advancement/68a6ec942d603a5d27_rim6ynnir.pdf.

April, a kindergartener from Milledgeville, GA was handcuffed and arrested for throwing a tantrum. In 2007, a thirteen-year old from New York was handcuffed and removed from school for writing the word “okay” on her school desk. Data from Florida shows that during the 2010-2011 school year, 16,377 referrals were made of students directly to the juvenile justice system – an incredible average of 45 students per day.¹² Statewide, two-thirds of the school-based referrals were for misdemeanors.¹³ This means that two-thirds of the arrests were totally unnecessary, and in response to things like disruption of a school function, disorderly conduct, or minor school-yard fights.¹⁴ Our experience, which is confirmed by our data, tells us that schools are routinely using removal from school and arrest to respond to minor misbehaviors.

These stories show how overly harsh discipline hurts our youth. This should not obscure that the responsibility for this problem lies with adults. When school officials choose to make schools into prison-like atmospheres, they are making decisions that have lasting consequences for students. Every dollar that goes into police, metal detectors, and surveillance cameras is a dollar that could have been used for teachers, guidance counselors, school psychologists, and program supports for young people. Adults need to accept responsibility for creating school climates where young people are treated as dropouts and criminals.¹⁵

Let me be clear that in putting the focus on adults, I, in no way, want to contribute to the current culture in which teachers are unfairly blamed for all of the ills of our educational systems. Many teachers are faced with using harsh school discipline because they are neither being given the tools and training they need to appropriately respond to student behavior, including training in classroom management and cultural competency, nor do their schools provide the appropriate resources and programs for teachers

¹² Florida Department of Juvenile Justice, *Delinquency in Florida’s Schools: A Seven Year Study 3* (November 2011) [hereinafter *Delinquency in Florida’s Schools*], available at <http://www.djj.state.fl.us/docs/research2/2010-11-delinquency-in-schools-analysis.pdf?sfvrsn=0>.

¹³ *Id.* at 8-9.

¹⁴ ACLU of Florida, Advancement Project, and Florida State Conference of the NAACP. *Still Haven’t Shut Down the School-to-Prison Pipeline 6-8* (March 2011), available at http://b.3cdn.net/advancement/be89ef01bcb350c7fc_z5m6btbgo.pdf.

¹⁵ *Zero-Tolerance in Philadelphia*, *supra* note 11, at 3.

who want to do right by their students. Schools often lack resources for positive student interventions and supports to address the behavioral challenges teachers face in their classrooms. Moreover, teachers are just as much victims of high-stakes testing as their students. Teachers are often in a tough spot, turning to exclusionary discipline as a way to monitor student behavior because there are few alternatives available.

A. Zero Tolerance Discipline Is Not Common Sense Discipline

Responding to minor misbehaviors with exclusionary discipline defies common sense. Students who are struggling behaviorally need more supports, interventions, and structure – not less. Not surprisingly, the research shows that removing youth from their learning environment for extended periods of time is not an effective way to manage student behavior. The American Psychological Association (APA) Zero Tolerance Task Force, after evaluating school disciplinary policies for ten years, concluded that zero tolerance policies fail to do what they were designed to do. They do not make schools safer. In fact, the APA found that zero tolerance policies may make schools less safe, because schools with higher rates of suspension and expulsion “appear to have less satisfactory ratings of school climate, to have less satisfactory school governance structures, and to spend a disproportionate amount of time on disciplinary matters (internal citations omitted).”¹⁶ Zero tolerance hurts the relationship between teachers and students and doesn’t help students address their issues. Individual students, and the overall classroom, wind up worse off than before.

Schools with high rates of suspension and expulsion tend to have lower test scores and lower graduation rates.¹⁷ This evidence disproves the most common justification for these harmful discipline practices: that there are good kids and bad kids, and that the good kids can only learn if the bad kids are

¹⁶American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools?: An Evidentiary Review and Recommendations*, *American Psychologist*, 63 at 854 (Dec. 2008), available at <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>.

¹⁷Daniel Losen and Jonathan Gillespie. *Opportunity Suspended: The Disparate Impact of Disciplinary Exclusion from School 42* (August 2012), available at <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-ccrr-research/losen-gillespie-opportunity-suspended-ccrr-2012.pdf>

removed from the classroom. In fact, the use of school suspensions and expulsions is associated with lower school-wide academic achievement.¹⁸

Instead of creating safer schools, zero tolerance policies have created hostile and unhealthy school environments, damaging relationships between students, parents, teachers, administrators, and law enforcement. Students succeed, and behavior improves, when young people are in challenging and engaging classrooms and welcoming, nurturing schools.

B. Every Student Should Have an Opportunity to Succeed

Suspensions and expulsions are not just ineffective and inefficient – they have real and documented harmful effects on students.¹⁹ Suspensions and expulsions are associated with a higher risk of school drop-out, and suspended and expelled students are more likely to become involved with the juvenile or adult criminal systems.²⁰ Students who are pushed out of school may have decreased life opportunities, finding their way into criminal justice system and into a life in poverty. The Council for State Governments, in a 2011 report, documented the risk factors associated with suspension and expulsion when it tracked three cohorts of seventh graders in Texas. Students who were suspended from school had a significantly greater chance of being held back, dropping out of school, and coming into contact with the juvenile justice system.²¹ The study found that students who were suspended were *two times* more likely to repeat a grade and *three times* more likely to be involved with the juvenile justice system.²²

When students are brought into contact with the juvenile justice system, there can be severe and long-lasting effects. Students face serious consequences not only in the justice system, but also when

¹⁸American Psychological Association Zero Tolerance Task Force, *supra* note 16 at 854.

¹⁹ Advancement Project and the Civil Rights Project, Harvard University. Opportunities Suspended: The Devastating Consequences of Zero Tolerance School Discipline 13 (July 2002) available at http://b.3cdn.net/advancement/8d91c72205a1b9d955_ujm6bhguv.pdf.

²⁰American Psychological Association Zero Tolerance Task Force, *supra* note 16

²¹ Justice Center – The Council of State Governments and Public Policy Research Institute, *Breaking Schools' Rules, A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement* [hereinafter *Breaking Schools' Rules*] (July 2011), available at <http://justicecenter.csg.org/resources/juveniles>.

²² *Breaking Schools' Rules*, *supra* note 21, at 54-72.

applying for college, the military, or a job. One Maryland student was arguing with a classmate in the cafeteria. The student was suspended from school and arrested for assault, although the argument never came to blows. The student took a plea agreement on the delinquency matter, and was sentenced to 364 days. As a result of this unnecessary arrest, the student landed, and remains in, Immigration and Customs Enforcement proceedings, because he is an undocumented immigrant.

In Chicago, a middle school student was arrested just for walking past a fight that broke out after school. She reported, “the day after the fight, we were in lunch and six police officers came into the lunchroom. They came and grabbed us and handcuffed us and said whatever we said could be used against us. No matter how I cried and pleaded and told them I didn’t have anything to do with it, they wouldn’t listen. I was charged with third-degree battery.”²³ The student also recognizes that the arrest changed her entire school experience. “Even though I had good grades, my teachers treated me differently after that. They saw me as someone who got into fights and got arrested. They didn’t want to let me graduate, eat lunch with my class, or go on our class trip even though I hadn’t done anything. It showed me that the world wasn’t fair.”²⁴

The evidence from multiple national studies shows that when adults choose to use exclusionary discipline practices instead of common sense discipline, they are increasing the likelihood that students will disengage with school, drop-out all together, and become involved with the juvenile justice system.

C. Exclusionary Discipline is Unfair: The Rules are Different for Some Students

The harmful impact of school discipline is not distributed equally: suspensions and expulsions are borne disproportionately by students of color, students with disabilities, and LGBTQ youth. Nationally, Black students are three times more likely to be suspended and four times more likely to be expelled than

²³Voices of Youth in Chicago Education. The Time for Justice is Always Now: VOYCE Annual Report 2011-2012 [hereinafter VOYCE Annual Report] 5, available at [http://library.constantcontact.com/download/get/file/1104628315334-75/VOYCE+2012+report2+\(1\)+\(1\).pdf](http://library.constantcontact.com/download/get/file/1104628315334-75/VOYCE+2012+report2+(1)+(1).pdf).

²⁴ Id.

their White peers.²⁵ Students with disabilities are suspended at twice the rate as students without disabilities.²⁶ LGBTQ youth are more likely to be disciplined and arrested than peers.²⁷

The racial disparities in the national data reflect what is happening in the states. For example, according to OCR's Civil Rights Data Collection, in Charleston, South Carolina over 80% of suspensions in the 2009-2010 school year were given to Black students, despite the fact that they make up less than half of the student body. In Texas, the Council for State Governments found that, when isolating the effect of race on disciplinary actions by controlling for 83 different variables, Black students had a 31% higher likelihood of being suspended for a behavior for which suspension was not mandatory than statistically identical White students.²⁸

Historical racial disparities in school discipline continue today but have worsened. Between 1973 and 2006, data from OCR shows that the rate of suspensions for Black students has always been the highest, and that the rate of suspension for those students has increased exponentially. The racial gap between Blacks and Whites has grown from fewer than three percentage points to more than ten.²⁹ From 2003-2007, out-of-school suspensions for Black students increased by 8% and for Latino students by 14%, while out-of-school suspensions for White students decreased by 3%.³⁰ For Black students, the disparity increase for expulsions is even more shocking. Between 2003 and 2007, Black student expulsions went up by **33%**, compared with a 6% increase for Latino students and a 2% decrease for White students.³¹

Significantly, these disparities are not the result of students of color acting out more. Instead, adults are making the decision to characterize behaviors by students of color as punishable – often as a result of explicit or implicit bias. The research on student behavior has found no evidence that the over-

²⁵Department of Education, Office for Civil Rights, Civil Rights Data Collection, available at <http://ocrdata.ed.gov/>.

²⁶Id. See also Losen and Gillespsie, supra note 17 at 16-18.

²⁷ Kathryn E. W. Himmelstein and Hannah Brückner. *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*. (2010).

²⁸ Breaking Schools' Rules, supra note 21 at 45.

²⁹ Losen and Gillespsie, supra note 17 at 37.

³⁰ Department of Education, Office for Civil Rights, Civil Rights Data Collection, available at <http://ocrdata.ed.gov/>.

³¹ Id.

representation of Black students in school discipline is due to more misbehavior,³² and, even when controlling for socioeconomic status, students of color are being disproportionately impacted.³³ The Texas study, for example, found that Black students were far more likely than White students to be suspended for discretionary offenses, like disrespect or disruption.³⁴ As the Florida State Conference of the NAACP has reported, in Florida schools Black male students were most likely to be arrested for misdemeanor disorderly conduct, while their White male peers were subjected to arrest for objective offenses like drug or alcohol offenses.³⁵ Black students in Texas were also more likely to receive exclusionary discipline than White students for their first disciplinary violation.³⁶ Broad, discretionary offense categories like “disorderly conduct,” “disrespect of authority,” or “disobedience” – are mainly in the eye of the beholder – leave significant room for implicit and explicit racial biases to creep into the discipline process and exacerbate disparities.

These studies echo our partners’ lived experiences on the ground. Students of color are being disciplined more frequently and more harshly due to adult decisions, not student behavior. We see the same patterns in schools that we see in criminal justice –Blacks are imprisoned at higher rates and given more severe sentences than Whites for the same offenses. In schools, codes of conduct with discretionary offenses allow implicit racial bias to influence the decision of when to call a behavior an offense, and when to use punitive discipline instead of more instructive techniques.

LGBTQ youth are also disproportionately impacted by the School-to-Prison Pipeline and, despite engaging in less serious misbehavior, are more likely to experience school or criminal justice sanctions than their peers.³⁷ School policies, like dress codes that don't provide protections for gender expression or for gender non-conforming students, and a lack of training for school staff both contribute to alienation

³² Russell Skiba, *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment* 6, (June 2000), available at <http://www.indiana.edu/~safeschl/cod.pdf>; Losen and Gillespie, supra note 17 at 41.

³³ Skiba, supra note 33 at 6.

³⁴ *Breaking Schools’ Rules*, supra note 21 at 40-46.

³⁵ *Delinquency in Florida’s Schools*, supra note 12 at 12. See also *Still Haven’t Shut Down the School-to-Prison Pipeline*, supra note 14.

³⁶ *Breaking Schools’ Rules*, supra note 21 at 42.

³⁷ Himmelstein, Kathryn E. W., Brückner, Hannah, *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*, 2010, available at <http://pediatrics.aappublications.org/content/early/2010/12/06/peds.2009-2306.full.pdf+html>.

and students being kicked out or dropping out of school. Unrelenting harassment from peers and adults in their schools forces many LGBTQ youth to use self-defense and other survival techniques to protect themselves, which, in turn, causes them to be suspended, expelled, or arrested under strict zero tolerance policies.³⁸ When LGBTQ youth protest against bullying or dress code violations and are then disciplined for it, they can be inadvertently “outed” to their parents or peers when the reasons why they are protesting certain policies come to light. This can be both traumatic and dangerous for these young people. Student leaders have fought back against these trends by forming Gay Straight Alliance chapters and other such organizations to advocate for LGBTQ youth and speaking out on how their schools can create safe, inclusive school climates, but much more work remains to be done.

II. Spotlight on Chicago

What is happening in Chicago, Illinois exemplifies how zero tolerance policies and harsh school discipline are pushing students – particularly students of color – out of schools and into jails.

Historically, Chicago has been an unfortunate leader in the School-to-Prison Pipeline, and Advancement Project has exposed Chicago Public School’s overuse of harsh discipline policy and shined a spotlight on the thousands of students who have suspended, expelled, and arrested.³⁹ For example, in 2005, Advancement Project issued a report detailing that 8,539 youth were arrested in Chicago public schools in 2003.⁴⁰

³⁸ Gay, Lesbian, and Straight Education Network (GLSEN). 2009 School Climate Survey 37 (2010), available at http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1675-2.pdf. (11.7% of students reported handling incidents of harassment and assault themselves); A.G. Carney, & K.W. Merrell, *Bullying in Schools: Perspectives on Understanding and Preventing an International Problem*, School Psychology International 22, 2001 at 368 (“Victims of bullying are far more likely to bring weapons to school to protect themselves”); Advancement Project, Alliance for Educational Justice and Gay-Straight Alliance Network, *Two Wrongs Don’t Make A Right: Why Zero Tolerance is not the Solution to Bullying*, June 2012, available at http://b.3cdn.net/advancement/73b640051a1066d43d_yzm6rkffb.pdf (June 2012).

³⁹ Advancement Project. Education on Lockdown: The Schoolhouse to Jailhouse Track 9 (March 2005), available at http://b.3cdn.net/advancement/5351180e24cb166d02_mlbrqgxlh.pdf.

⁴⁰ Id. at 32.

Despite this attention, the School-to-Prison Pipeline persists in Chicago. In the 2010-2011 school year, police arrested almost 5,000 students on Chicago Public School (CPS) properties.⁴¹ Because the Chicago Police Department and CPS do not keep (or make publically available)⁴² comprehensive data, it is impossible to know whether all of these arrests are for school-based offenses. The situation is similarly grim when it comes to out-of-school suspensions. On average, CPS suspends 364 students every day.⁴³

Like we are seeing around the country, the arrests and out-of-school suspensions in Chicago are largely for minor misbehaviors that shouldn't be characterized as crimes. In 2010-2011, over 80% of the arrests were for misdemeanors.⁴⁴ In one absurd case in November 2009, twenty-five middle school students were rounded up, arrested, and put into jail for participating in a cafeteria food fight.⁴⁵ Students are routinely arrested for things like disorderly conduct, vandalism, or fighting – incidents that don't threaten school safety and for which there are common sense responses.⁴⁶

There is also a clear racial impact. In Chicago, Black students are over four times more likely to be arrested at school than their White peers.⁴⁷ Black and Latino students in CPS are suspended three times more often than White students. Across all fifty states, Illinois has the highest rate of disparity between White and Black students suspended.⁴⁸

Students enrolled at charter schools in Chicago are also reportedly pushed into the School-to-Prison Pipeline. Despite their reputation for high academic performance, the Noble Street Charter Network is allegedly one of the worst offenders for applying extreme discipline practices. In addition to being suspended, students are reportedly fined for a wide array of minor disciplinary incidents such as

⁴¹ The arrest data from Chicago was acquired through VOYCE/Advancement Project FOIA requests to the Chicago Police Department and from CPS.

⁴² CPS reported zero arrests and only 165 referrals to law enforcement in OCR's CRDC, despite the evidence that thousands of arrests occur on CPS properties every year.

⁴³ The data was acquired through an Advancement Project FOIA request to the Illinois State Board of Education.

⁴⁴ The arrest data was acquired through VOYCE/Advancement Project FOIA requests to the Chicago Police Department.

⁴⁵ Test, Punish, Push Out, *supra* note 1 at 14.

⁴⁶ Voices of Youth in Chicago Education. Failed Policies, Broken Futures: The True Cost of Zero Tolerance Policies in Chicago 8 (July 2011), available at <http://voyceproject.org/sites/default/files/VOYCE%20report%202011.pdf>.

⁴⁷ The arrest data from Chicago was acquired through VOYCE/Advancement Project FOIA requests to the Chicago Police Department.

⁴⁸ Department of Education, Office for Civil Rights, Civil Rights Data Collection, available at <http://ocrdata.ed.gov/>.

having an untied shoe, having “flaming hot chips” (spicy Cheetos or other snacks) or violating the school’s “SMART” policy. This policy requires that students: Sit up straight; Make eye contact; Articulate in standard English, Respond appropriately; and Track the speaker with your eyes.⁴⁹ As a result of their elaborate system of fines and mandatory, prohibitively expensive behavior classes, the Noble network reportedly collected nearly \$400,000 over the last three years from mostly low-income families. Students have allegedly been left back or pushed out of the Noble network schools for failing to pay their fines or to pay for behavior class.⁵⁰ This practice is growing: Noble is reportedly being permitted to expand its schools and other charter networks in Chicago have started charging students for disciplinary infractions.

Chicago is in crisis, and stopping excessive arrests, limiting out-of-school suspensions, and abolishing fees for public education is critical to the success of Chicago’s young people. Voices of Youth in Chicago Education (VOYCE), which is a collaborative of six community-based organizations from around the city, has consistently advanced solutions to hold all schools in Illinois accountable for providing youth with a fair and free education. For example, in June of 2012, VOYCE pushed the Chicago Board of Education to approve a new Student Code of Conduct that reduces the maximum suspension time for all offenses. However, CPS officials consistently rejected additional research-based, community-driven reforms proposed by VOYCE that would have required robust, transparent reporting on the use of these practices and stronger limits on harmful measures like fines and arrests for all public schools, including charters. This local lack of public accountability clearly illustrates the need for Congressional reporting, incentives, and oversight.

⁴⁹Rosalind Rossi, ‘Flaming hot’ chips, gum, other ‘infractions’ costly at some schools, Chicago Sun Times, February 13, 2012, <http://www.suntimes.com/news/education/10626363-418/flaming-hot-chips-gum-other-infractions-costly-at-some-schools.html>.

⁵⁰ In response to public criticism, Noble has changed its policy for this school year, at least on paper, to say that promotion or graduation will not be denied on the basis of inability to pay. However, the impact of this policy change is not yet clear, as the consequences for a student not paying or not being able to pay fines under this new policy is not specified.

III. Accountability For All Public Schools

As we have seen in Chicago with Noble charter schools, charter schools can employ the same harsh and nonsensical discipline policies as traditional public schools. Increasingly, public charter schools – schools that are funded with public money but exempt from many state and local education regulations – are educating our young people. When discipline policies are created outside the bounds of state or local law, they are created with little guidance and few limits. Like all public schools, charter schools should be accountable to the young people, parents, and the communities they serve. In this arena, accountability means that charter schools should report data on school discipline and school climate, cease using zero tolerance policies that don't work, address racial and other disparities in discipline, and support all students on a path to success, not prison.

IV. Successful and Safe Schools: Best Practices for Handling Student Discipline

The best way to stop the School-to-Prison Pipeline is to stop the supply – that is, to limit the ability of schools to exclude students from school for minor misbehaviors. Districts and states that have begun to dismantle the School-to-Prison Pipeline have done so by limiting the use of out-of-school suspensions and referrals to law enforcement. A key element to ending the School-to-Prison Pipeline is a school discipline system that uses a non-punitive approach focused on preventing misbehavior and providing supportive and effective interventions when misbehavior occurs. Through the advocacy and leadership of student-led groups like Padres y Jóvenes Unidos in Denver, Youth United for Change in Philadelphia, and many others, school districts have started to use common sense discipline. These schools use a graduated approach to assigning consequences; place caps on the duration of suspensions, particularly for low-level infractions; limit suspensions for conduct that occurs away from school; and use in-school instead of out-of-school suspension. Baltimore Public Schools, which reformed their school discipline code to address the overuse of exclusionary discipline, divides inappropriate behaviors into four levels and ensures that many low-level offenses can never result in out-of-school suspension.

Revised school discipline codes narrowly define offenses, place an emphasis on handling minor misbehaviors in school, and limit school employee discretion to use the most serious consequences. Instead of removing students from school for misbehaving, schools can employ a host of other responses, including student/teacher conferences, restitution, or community service, referral to support staff, detention, and parental outreach. Districts can also adopt evidence-based programs that are designed to engage students and reduce reliance on suspension and expulsion, such as restorative justice, school-wide positive behavior interventions and supports, and social-emotional learning.

School districts can – and should – intentionally address racial disparities with systemic policies and practices. First, schools must comprehensively and systematically track their use of office referrals, suspensions, expulsions, and arrests. Second, schools must pledge to eliminate unfair disparities. Denver Public Schools and the Maryland State Board of Education have pioneered innovative ways of highlighting and addressing racial disparities. For example, in Denver Public Schools, at the insistence of grassroots advocates, the school discipline policy now requires the elimination of racial disparities and institutional racism and requires the building of cultural competence.⁵¹ Recently proposed regulations in Maryland would require schools to examine racial disparities in discipline, and address them head-on.⁵²

School districts that have worked with community groups to revise their school discipline codes have seen great results. Denver created a school code that matched low-level behaviors with low-level interventions and eliminated arrests as a response to minor misbehavior. As a result, from 2003-2009, out-of-school suspensions dropped by 38% and referrals to law enforcement dropped by 52%.⁵³ The Denver Superintendent cites discipline reform as the cause of higher attendance and a 30% higher graduation rate. In Baltimore, where the school district adopted similar reforms, suspension went down

⁵¹ Denver Public Schools. Parent/Student Policy Handbook Policy JK/JKR, available at http://www.dpsk12.org/parent_handbook/.

⁵² 39 MD Reg. 1456-1458 (November 2, 2012), available at <http://www.dsd.state.md.us/MDRegister/3922.pdf>. See also Maryland State Board of Education. A Safe School, Successful Students, and A Fair and Equitable Disciplinary Process Go Hand in Hand: A Study of School Discipline Practices and Proposed Regulatory Changes. (February 2012), available at http://msde.state.md.us/School_Discipline_Report02272012.pdf

⁵³ Publically available data from Denver Public Schools.

by 63%. In addition, from 2006 – 2010, in the years following the reforms, Baltimore had a 12.4% increase in graduation rates for Black students, and a 10% increase overall.⁵⁴

Beyond working with students and parents to reform codes of conduct, there are also opportunities to bring community stakeholders together to fight the School-to-Prison Pipeline. As we expect the Honorable Steven Teske will share with us during the hearing, multi-agency collaborative agreements tailored to an individual community's needs and challenges can be one of the most effective tools in this movement for change. By working together, community-based organizations, school districts, law enforcement and other stakeholders have limited the use of arrests for school misbehavior and seen huge improvements in their school communities. Judge Teske's successes in reducing arrests, improving school and public safety outcomes and increasing graduation rates in Clayton County, Georgia are spreading across the country. School districts in places like Broward County, Florida, with support from across the ideological and professional spectrum, are creating policies that give all students a chance to succeed.

V. Congressional Action Can Help Dismantle the School-to-Prison Pipeline.

Zero tolerance policies, exclusionary discipline, and the criminalization of minor, developmentally appropriate behaviors have led to students –and particularly students of color – being pushed out of school and into the juvenile and criminal justice systems. That said, OCR data showed that many school districts around the country are not funneling students into the School-to-Prison Pipeline, and are suspending fewer than 3% of their students.⁵⁵ The good news, therefore, is that the School-to-Prison Pipeline is not inevitable: there are best practices and evidence-based programs that guide adults to use common sense discipline and support and engage students.

⁵⁴ Dakarai I. Aarons, Fewer Black Males Drop Out in Baltimore Schools, Education Week, November 3, 2010, <http://www.edweek.org/ew/articles/2010/11/03/10baltimore.h30.html?print=1>.

⁵⁵ Losen and Gillespie, supra note 17 at 38.

Congress can encourage the use of best practices including data-driven reform to dismantle the School-to-Prison Pipeline. Therefore, we recommend that Congress take the following steps:

- Require the annual collection and reporting of discipline and school climate data for all public schools, including public charter schools, and increase oversight and accountability. The law should require that all schools report on in-school suspensions, out-of-school suspensions, expulsions, school-based arrests, referrals to law enforcement agencies, and referrals to alternative schools. The data should be disaggregated by race, gender, special education status, socioeconomic status, and English language proficiency.
- Include school discipline and arrest rates, rates of disparity in school discipline, and school climate data (such as teacher, parent, and student surveys, attendance rates, graduation rates, etc.), as part of the measure of a school's performance.
- Use unusually high school discipline rates, data indicating a negative school culture, and/or pronounced disparity rates to trigger assistance and support for schools that are struggling. The law's current accountability framework places punitive sanctions on schools who fail to meet benchmarks. Instead, the law should provide assistance – both financial and technical – to schools who are struggling with high rates of suspension, expulsion, and school-based arrest.
- Facilitate the re-enrollment, and proper education of students returning to school from suspension, expulsion, alternative placements, or juvenile justice system involvement.
- Provide incentives and funding for school districts and states that limit the use of out-of-school suspensions, expulsions, and arrests. For example, in the Race to the Top – District grant competition the Department of Education required that recipients of these funds develop a plan to address race and disability disparities in school discipline. This program – or others like it - can be expanded and strengthened to require recipients to report all data to the Department of Education, implement plans to reduce overall suspension and arrests rates, and use alternatives to exclusionary discipline policies.
- Provide incentives and funding for the implementation of evidence-based programs and curriculum that eliminate racial disparities in school discipline and reduce the rates of suspensions, expulsions, and arrests for all students.
- Increase the availability of federal funding for school staff that can address the root causes of low student engagement, such as school-based social workers, psychologists, nurses, and counselors.
- Provide greater support for research on interventions that appropriately respond to student behavior without excluding them from school.

Chairman Durbin, thank you for the opportunity to testify today on this critical civil rights issue.

Students flourish when they are in school, and when their schools are healthy, nurturing places where they can be safe and where they can learn. Thank you for ensuring that every student has the opportunity to stay on the pathway to success, and not become caught in the School-to-Prison Pipeline.