

Written Testimony of
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before the

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Subcommittee on the Constitution, Civil Rights and
Human Rights**

for the hearing record on

“Ending the School-to-Prison Pipeline”

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INTRODUCTION: THE SCHOOL-TO-PRISON PIPELINE

The Open Society Policy Center (OSPC)¹ thanks Chairman Durbin, Ranking member Graham, and the full Committee for holding this important hearing on, *Ending the School to Prison Pipeline*.

More than three million students are suspended and over 100,000 students are expelled from school each year. In addition to denying children that time to learn in school, suspensions and expulsions are a leading indicator of whether a child will drop out of school, and out-of-school suspensions increase the risk of future incarceration.²

The nation's growing discipline rates in both traditional public schools and charter schools continue to widen the disparities for disenfranchised youth and systemically push students—especially those who are non-white, and of different language abilities, religions or perceived sexual orientation—out of school.

Research shows that the spike in suspensions, expulsions and arrests produces serious and adverse long term consequences and those schools, by relying on pushing students out of school, inadvertently have created a new pathway to prison. This is the school-to-prison pipeline (STPP).

Schools send students into the pipeline in several ways. First, schools routinely misapply “zero tolerance” policies, which lead to police involvement in minor incidents. Police involvement frequently can lead to arrests, juvenile detention referrals and even incarceration. Second, schools overuse suspensions and expulsions for minor infractions. These extended absences from school discourage students from continuing their education and increase the likelihood they will turn to criminal behavior.

Putting an end to the STPP is critical, not only because the spike in suspensions, expulsions, and arrests is occurring in the face of significant research on the educational and social harms of these practices, but because exclusionary discipline and school policing practices have resulted in entire cohorts of students moving through the STPP and into the juvenile and criminal justice systems.

AN EDUCATION ISSUE AND A CIVIL RIGHTS ISSUE

On the surface “zero tolerance” policies and suspensions and expulsions apply equally to all regardless of race, class and gender. But a growing body of research suggests these policies and practices are applied unevenly. Zero tolerance and policies to “suspend and expel” rule breakers have hit Blacks and Latinos the hardest.

¹OSPC is a non-partisan and non-profit 501(c)(4) organization that engages in advocacy on domestic and international issue including civil rights and liberties, criminal justice reform, immigration, multilateralism, development assistance, health policy and promotion of human rights, transparency and accountability.

² Losen, D., and Gillespie, J. (2012) *Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School*, The Center for Civil Rights Remedies at the Civil Rights Project/Proyecto Derechos Civiles. See <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>

Greater percentages of Black students are suspended and expelled from school than their peers across all races. In 2006, about 15 percent of Black students were suspended, compared with 8 percent of American Indian/Alaska Native students, 7 percent of Hispanic students, 5 percent of White students, and 3 percent of Asian/Pacific Islander students.³ Studies also have shown that students with disabilities are suspended at higher rates than their non-disabled counterparts. And many of these students tend to be black males, who are disproportionately overrepresented in special education and identified as “mentally retarded” or students with significant cognitive disabilities.⁴

The most recent national suspension rates have remained relatively stable. National suspension rates show that 17 percent, or 1 out of every 6 Black schoolchildren enrolled in K-12, was suspended at least once. That still is higher than the 1 in 13 (8 percent) for Native Americans; 1 in 14 (7 percent) for Latinos; 1 in 20 (5 percent) for Whites; or the 1 in 50 (2 percent) for Asian Americans.⁵ Moreover, while African American students make up 17% of all school age youth, they account for 37% of suspensions and 35% of all expulsions and receive harsher discipline than their peers for similar offenses.

These disparities cannot be explained by the simple notion Blacks and Latinos students are inherently bad or violate rules at a greater rate than White students. The disparities can be better explained by the tendency of teachers, principals and administrators, who have biases and negative perceptions of minority students, to respond to disruptive White students with alternative interventions rather than punitive disciplinary consequences.

Black males are also disproportionately and unfairly subjected to policing policies, which includes school based arrests, misdemeanor tickets, referral to law enforcement and juvenile courts and or placement in juvenile detention facilities. Too often, for minor offenses such as truancy, classroom disruption, disobedience, and simple horseplay, which is much too frequently characterized as assault or “terroristic threatening.”⁶

MORE POLICE IN SCHOOLS DOES NOT INCREASE SAFETY

Federal funding compounds the school-to-prison pipeline problem because schools have greater access to federal funding, and districts are willing to move school discipline into the courts and under law enforcement’s jurisdiction. The incentive for more federal funding has exacerbated schools’ reliance on school resource officers (SRO) and policing in schools. While policing in schools is not a new trend, their increasing roles, responsibilities, and daily functions have led to greater incidences of minority student contact with the juvenile and criminal justice systems, and

³ U.S. Department of Education IES National Center for Education Statistics report, *“The Condition of Education”*

⁴ See [Harvard Studies Find Inappropriate Special Education Placements Continue to Segregate and Limit Educational Opportunities for Minority Students Nationwide](#)

⁵ Ibid, *Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School*

⁶ See Delaware Unsafe School Choice Option schools law as an example of “terroristic threatening” language;

<http://attorneygeneral.delaware.gov/schools/laws/11delc621.htm>;

www.doe.k12.de.us/.../files/eSchDisciplineEntryManual.doc

<http://delcode.delaware.gov/sessionlaws/ga141/chp255.shtml>

<http://regulations.delaware.gov/AdminCode/title14/600/608.shtml>

the integration of criminal justice polices in schools. Crime statistics show that majority of arrests for pre-teens occurred in school. This data could suggest that one of the long-term effects of expanding the role of SROs is an increase in the numbers of younger children arrested while in school for fist fights, shoving matches, and other behaviors that rarely warranted police intervention in the past. This is a serious cause for concern. Currently, many, if not all, school discipline approaches are predicated on models of practice that rely on the deployment of police officers as strict enforcers of “student code of conduct” policies and disciplinarians of student misbehavior.⁷

Statistics show that more police are in more schools than ever before. For example, the number of SROs increased by 37 percent between 1997 and 2007.⁸ Some estimates have found that there are more than 17,000 officers who are permanently placed on school campuses.⁹ And some school districts boast a police presence that rivals that of small town forces.¹⁰

In a larger city like Chicago, police have made 2,546 school-based arrests between September 2011 and February 2012. Seventy six percent of those arrested were Black students. On average, 25 students were arrested every day in publicly-funded neighborhood and charter schools, and 19 Black students have been arrested every day this school year.¹¹ Beyond arrests, policing in schools is on the rise in Chicago. CPS recently spent \$6.8 million in taxpayer dollars to install high-definition police cameras at 14 high schools.¹²

Schools and districts have justified the deliberate focus on increased policing as a means of creating safer school environments and improving school climate. But, so far, evidence shows that these policies have been counterproductive in changing student behavior and improving school safety.¹³ There is nothing to show a correlation between policing in schools and the prevention of violence and student misbehavior. Moreover, policing policies and zero tolerance policies have no measureable impact on deterring misconduct or improving school safety, but are associated with a number of negative effects including racial disproportionality, expansion of the

⁷ “In the last decade, the punitive and overzealous tools and approaches of the modern criminal justice system have seeped into our schools, serving to remove children from mainstream educational environments and funnel them onto a one-way path toward prison...” For further reading see: Nancy Heitzeg, [*Education or Incarceration: Zero tolerance Policies and the School-to-Prison Pipeline.*](#)

⁸ Justice Policy Institute, *Education Under Arrest: The Case Against Police in Schools 1* (2011) [hereinafter *Education Under Arrest*].

⁹ Johanna Wald and Lisa Thureau, Charles Hamilton Houston Institute *First Do No Harm: How Educators and Police Can Work Together More Effectively To Keep Schools Safe and Protect Vulnerable Students 1* (2010). See, <http://charleshamiltonhouston.org/assets/documents/news/FINAL%20Do%20No%20Harm.pdf>

¹⁰ Texas Applesseed, *Texas’ School-to-Prison Pipeline: Ticketing, Arrest & Use of Force in Schools 47* (2010); *Education Under Arrest*, *supra* note 1.

¹¹ 2011-2012 arrest data for Chicago acquired through VOYCE/Advancement Project FOIA request to the Chicago Police Department.

¹² Information about 2012 CPS police camera installation available at http://www.cps.edu/News/Press_releases/Pages/04_05_2012_PR1.aspx.

¹³ See [*Final Report, Bi Partisan Working Group on Youth Violence.*](#) 106th Congress, February 2000 and see also, [*Racial Profiling and Punishment in U.S. Public Schools.*](#) p. 14.

achievement gap, increased dropout rates, bullying, violence, criminalization of student behavior, and multiple legal issues related to due process.^{14,15}

THE LONG-TERM CONSEQUENCES OF HARSH SCHOOL DISCIPLINE ARE DEVASTATING

The shift in how schools have decided to handle school conduct offenses with exclusionary discipline policies is setting a dangerous precedent and is widening the scope of collateral consequences, especially for Black and Latino males. Research has shown contact with the juvenile and criminal justice systems or removal from school for a significant period of time is directly correlated to criminal involvement or incarceration. Contact with the justice system as a result of policing in schools, suspensions and expulsion or zero tolerance policies, can lead to incarceration, denial of admission into institutions of higher education, and/or enhanced sentencing for offenses committed later in life during adulthood.^{16,17}

Limited data on school based arrests and the lack of enforcement of its collection and reporting compounds the problem even further. While there are some data from the Department of Education's Civil Rights Data Collection (CRDC), national level data on school based arrests are based on small sample sizes. Few school districts collect arrest data and even fewer uses the data to improve schools, reduce disparities and identify practices that keep schools safe and students engaged without relying on suspensions, expulsions, and arrests. On top of that, it has been unclear who has the responsibility—schools or law enforcement—to collect and report data on how many students are arrested each year and whether arrests are rising or falling. Yet, from the limited data that are available, the Department of Education estimates that 70 percent of students arrested or referred to law enforcement, for the 2009-2010 school years, were Black or Latino.¹⁸ Insufficient data prevents useful analysis of why this is the case or whether these arrests are

¹⁴ Ibid, First, Do No Harm

¹⁵ Ibid, Education Under Arrest

¹⁶ "Relevant Conduct": Under certain portions of the "relevant conduct" guideline and its commentary, judges are required to calculate the guideline range based not only on the crime of conviction, but on separate crimes, comprised of their own elements, of which the defendant was acquitted, with which the defendant was never charged, or which were dismissed. The Commission advises judges to find these separate crimes by a preponderance of the "information," without regard to its admissibility under the rules of evidence, if there is sufficient indicium of reliability to support its "probable accuracy." The guideline range is then increased by the same number of months or years as if the defendant had been charged by indictment and convicted by a jury on proof beyond a reasonable doubt, limited only by the statutory maximum for the offense of conviction. See, *"An Introduction to Federal Sentencing,"* p. 7.

¹⁷ Juvenile conduct can be considered and accessed by a sentencing judge if the records are not sealed or if a juvenile is tried as an adult. "Since 1992, 45 states have passed laws making it easier to try juveniles as adults and thirty-one have stiffened sanctions against youths for a variety of offenses. Despite a drop in juvenile crime, the number of formally processed cases involving juveniles-most of them non-violent cases-increased, along with the number of youths held in secure facilities for nonviolent offenses." See, Johanna Wald and Daniel J. Losen, *"Defining and Redirecting a School-to-Prison Pipeline,"* New Directions for Youth Development 99 (Fall 2003): p. 9-15.

¹⁸ See Department of Education CRDC analysis: <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf>

warranted. This suggests not only a hidden crisis for historically disadvantaged subgroups, but also a widespread need for greater reporting and collection of data on school based arrests.

The process of institutionalizing negative consequences and perceptions for Blacks and Latinos, as well as students with disabilities, will perpetuate the use of harmful school discipline practices and policing in schools. Further marginalization of minority youth will continue to create inequitable opportunities and further stratification of society as the achievement gap widens and more youth make contact with the criminal justice system. This will make us, as a society, no closer to seeing the value in teaching and promoting achievement for these vulnerable populations. And will only lead to significantly large cohorts of dropouts among minorities, increased crime rates, intensified gang involvement, greater percentages of illiterate youth, deplorable school systems, high teenage unemployment rates, and a stagnated workforce. All of these factors threaten to set the United States back further globally; both educationally and economically.

RECCOMENDATIONS

The talents and skills of teachers, administrators, students, resource officers and juvenile court workers must be used effectively. The focus of discipline should be on the creation of fair and corrective action plans that provide resources for positive alternatives in addressing disciplinary issues, rather than punishment for the sake of playing politics or being tough. Reform moving forward should emphasize training and remediation along with corrective interventions that are holistic.

There has never been a more important time for federal action on the school to prison pipeline. Therefore, OSPC urges Congress to:

- Reduce school based arrests by placing meaningful requirements on the use of Community Oriented Policing Services (COPS) grants that staff school resource officers (SRO) and other law enforcement officials. These requirements should:
 - Define the role of the SROs and law enforcement in schools and provide assurances their role will not have a harmful or negative impact on school climate or student learning;
 - Provide a 1:1 match of mental health professionals for every SRO or law enforcement official in schools;
 - Train law enforcement officials to be staffed in the school on age appropriate responses to school based conflicts, mediation and conflict resolution;
 - Provide greater oversight of SROs and policing in schools
 - Mandate schools collect and report school based arrest data to the Department of Justice

- Require the Department of Education to annually collect and report school discipline and climate data for all schools
- Instruct the Justice Department’s Office of Civil Rights to enforce requirements on schools for collection and reporting of data on school based arrests disaggregated by race, gender, special education status, socioeconomic status and English proficiency and cross tabulated by law enforcement officials and schools.
- Eliminate arrests for truancy and chronic absenteeism.
- Evaluate the hidden costs of exclusionary discipline practices and policing and their effectiveness over less punitive alternatives.
- Pass the proposed Youth PROMISE Act to:
 - Provide resources for the development and implementation of multi-year, local plans to reduce punitive discipline policies;
 - Allow schools and communities to utilize youth-oriented police officers and evidence based training; and
 - Fund community based solutions that can reduce the number of youth entering the juvenile and criminal justice systems.