



WRITTEN STATEMENT OF
THE AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

“Ending the School-to-Prison Pipeline”

**Submitted to the Senate Judiciary Subcommittee
on the Constitution, Civil Rights and Human Rights**

December 12, 2012

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I. Introduction

On behalf of the American Civil Liberties Union (ACLU), its over half a million members, countless additional supporters and activists, and fifty-three affiliates nationwide, we applaud the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights for holding this groundbreaking hearing concerning school discipline practices and ending the school-to-prison pipeline. We are pleased to submit this written statement for the record.

The ACLU is a nationwide, non-partisan organization working daily in courts, Congress, and communities to defend and preserve the civil rights and liberties that the Constitution and laws of the United States guarantee everyone in this country. The ACLU has long worked to end the school-to-prison pipeline through federal and state legislative advocacy and litigation aimed at reducing overly punitive and discriminatory school discipline practices, such as corporal punishment, suspension, expulsion and referrals to law enforcement, that push students of color and students with disabilities into the criminal justice system.

The ACLU's Washington Legislative Office (WLO) represents the interests of the ACLU before Congress and the executive branch of the federal government, and has been a leader on the Hill and with the Administration on the importance of dismantling the school-to-prison pipeline. In particular, ACLU has spearheaded efforts in developing federal legislation such as the Ending Corporal Punishment in Schools Act¹ and the Positive Behavior for Safe and Effective Schools Act,² and other legislation that would work to ban or reduce destructive punishment practices and help schools build environments that enable students to thrive. We have also been at the forefront of advocacy with the Administration successfully making the case that agencies must collect data and create policies around reducing punitive school discipline.

The ACLU's Racial Justice Program (RJP) aims to preserve and extend constitutionally guaranteed rights to people who have historically been denied their rights on the basis of race, and is committed to combating racism in all its forms, through litigation, community organizing and training, legislative advocacy, and public education to address the broad spectrum of issues that disproportionately and negatively impact people of color. To that end, RJP challenges discriminatory school discipline practices in court. The ACLU's current docket includes a case challenging, along with the New York Civil Liberties Union and law firm of Dorsey & Whitney

¹ The Ending Corporal Punishment in Schools Act, H.R. 3027, 112th Cong. (1st Sess. 2012), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3027ih/pdf/BILLS-112hr3027ih.pdf>; see also Deborah J. Vagins, *Making School a Safe Place for All Students*, Huffington Post, Sept. 27, 2011, http://www.huffingtonpost.com/deborah-j-vagins/corporal-punishment-in-schools_b_983041.html [hereinafter "A Safe Place"]; Deborah J. Vagins, *An Arcane, Destructive -- and Still Legal -- Practice*, Huffington Post, June 30, 2010, http://www.huffingtonpost.com/deborah-j-vagins/an-arcane-destructive_b_631417.html [hereinafter "Arcane, Destructive"].

² Positive Behavior for Safe and Effective Schools Act, H.R. 3165, 112th Cong. (1st Sess. 2011), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3165ih/pdf/BILLS-112hr3165ih.pdf>; see also Deborah J. Vagins, *Teach (and Treat) Our Children Well*, Huffington Post, Dec. 3, 2009, http://www.huffingtonpost.com/deborah-j-vagins/teach-and-treat-our-child_b_378794.html [hereinafter "Teach and Treat"].

LLP, the unconstitutional policies and practices of the NYPD's School Safety Division, where public school students have been arrested for minor violations of school rules and subjected to excessive force and other serious violations of their rights.³ RJP has fought a range of legal battles on behalf of students whose rights are violated at school.⁴

In addition, our affiliates across the country tackle these challenges both in court and in the state legislatures. Several of their successes are detailed in this statement and provide important examples in support of many of the federal proposals currently pending in the House and Senate.

II. The School-to-Prison Pipeline

The "school-to-prison pipeline" is a disturbing national trend wherein children are pushed out of schools and into the juvenile and criminal justice systems. Students of color and students with disabilities tend to be most affected because of an overreliance on discriminatory punitive school discipline policies, lack of resources and training within schools, and ignorance regarding disability behaviors. The increased use of zero tolerance policies and other exclusionary practices, like suspensions, expulsions, and referrals to law enforcement, decrease academic achievement and increase the likelihood that students will end up in jail cells rather than in college classrooms.⁵ In many schools that employ zero tolerance policies, minor misbehavior is criminalized and police are called in to handle problems that should properly be handled by teachers or administrators. This misguided model of school security has serious negative implications for youth, impacting not only their immediate lives but also their futures by increasing the likelihood that they will drop out and/or experience future criminal justice involvement.⁶ As a result, far too many of the most at-risk students end up incarcerated instead of educated.

The burden of this trend falls disproportionately on students of color and students with disabilities, who are punished more harshly and more frequently for the same infractions that

³ Amended Complaint, *B.H. et al v. City of New York*, No. CV 10-0210 (E.D.N.Y. June 11, 2010), available at <http://www.nyclu.org/case/bh-et-al-v-city-of-new-york-challenging-nypds-school-safety-policies-and-practices>

⁴ See, e.g. Amended Complaint, *Boyer v. Jeremiah*, No. 2010-1858 (R.I. Super. Ct. May 12, 2010), available at <http://www.aclu.org/racial-justice/boyer-v-jeremiah> (challenging unconstitutional practices of the state's truancy court, and the ways in which public school officials refer students to the truancy court system); Complaint, *Harris et. al. v Atlanta Independent School System*, (N.D. Ga. Mar. 31, 2009), available at <http://www.aclu.org/racial-justice/complaint-harris-et-al-v-atlanta-independent-school-system> (challenging practices of an alternative school which violated students' constitutional rights to an adequate public education by providing no functional curriculum and little instruction to the already at-risk students).

⁵ See *Disparate Impact in School Discipline Policies: Briefing before the U.S. Comm'n on Civil Rights* (March 11, 2011) (statement of the civil rights coalition), available at http://www.aclu.org/files/assets/Civil_Rights_Sign-On_Statement_for_USCCR_Record_on_School_Discipline_Briefing.pdf

⁶ See, e.g. TONY FABELO ET AL, *BREAKING SCHOOLS' RULES: A STATEWIDE STUDY ON HOW SCHOOL DISCIPLINE RELATES TO STUDENTS' SUCCESS AND JUVENILE JUSTICE INVOLVEMENT*, Council of State Governments Justice Center and The Public Policy Research Institute, Texas A&M University (July 2011); LINDA M. RAFFAELE MENDEZ, *Predictors of Suspension and Negative School Outcomes: A Longitudinal Investigation*, NEW DIRECTIONS FOR YOUTH DEVELOPMENT (No. 99 Fall 2003); Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, *Justice Quarterly* 23:4 (2006).

other kids commit.⁷ In fact, for example, there is no evidence that racial disparities in school discipline can be explained through higher rates of misbehavior by African American students.⁸

According to national data released by the Department of Education, African American students are 3 1/2 times more likely than their white peers to be suspended—and while they represented just 18% of the students in the sample, they accounted for 39% of expulsions.⁹ Of the total students arrested or referred to law enforcement nationally, 70% were Latino or African American.¹⁰ Students with disabilities are also subjected to overly punitive discipline practices at far higher rates than their peers.¹¹ In fact, students with disabilities are more than twice as likely to receive one or more out-of-school suspensions.¹² They are also far more likely to be victims of corporal punishment.¹³ And although they made up only 12% of the students sampled by the Department of Education in their most recent data collection, they made up 70% of those subject to physical restraints.¹⁴ As a result, they are at greater risk for the physical injury, emotional harm, and long-term adverse educational outcomes that can result. Many of the students within this group are also students of color, as they are disproportionately represented in certain special education classifications.¹⁵

III. Impact of Punitive School Discipline Policies

The Department of Justice's (DOJ's) recent litigation reflects the severity of the school-to-prison pipeline problem. In October 2012, DOJ filed suit in Meridian, Mississippi, alleging that the Fourth, Fifth and Fourteenth Amendment rights of children in public schools there are being

⁷ Tamar Lewin, *Black Students Face More Harsh Discipline, Data Shows*, N.Y. TIMES, March 6, 2012, available at http://www.nytimes.com/2012/03/06/education/black-students-face-more-harsh-discipline-data-shows.html?_r=1&hp; see also AMERICAN CIVIL LIBERTIES UNION & HUMAN RIGHTS WATCH, *IMPAIRING EDUCATION* 27 (2009), available at <http://www.aclu.org/human-rights/impairing-education-corporal-punishment-students-disabilities-us-public-schools> [hereinafter "Impairing Education"]

⁸ See DANIEL LOSEN & RUSSELL SKIBA, *SUSPENDED EDUCATION: URBAN MIDDLE SCHOOLS IN CRISIS*, 10 (September 2010), available at http://www.indiana.edu/~equity/docs/Losen_Skiba_Suspended_Education.pdf.

⁹ See Lewin, *supra* note 7.

¹⁰ DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, *THE TRANSFORMED CIVIL RIGHTS DATA COLLECTION* 2 (2012), available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf> (offering a snapshot of 2009-2010 national data) [hereinafter "CRDC 2012"]

¹¹ *Id.* at 2.

¹² *Id.* at 3.

¹³ See DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, *CIVIL RIGHTS DATA COLLECTION 2006*, available at http://ocrdata.ed.gov/StateNationalEstimations/projections_2006 (The 2006 CRDC data is the most recent available, as national data on corporal punishment from the most recent CRDC has not yet been released) [hereinafter "CRDC 2006"].

¹⁴ *Id.* at 5.

¹⁵ U.S. COMM'N ON CIVIL RIGHTS, *MINORITIES IN SPECIAL EDUCATION: A BRIEFING BEFORE THE UNITED STATES COMMISSION ON CIVIL RIGHTS HELD IN WASHINGTON, DC, DECEMBER 3, 2007* 86 (April 2009) (statement of Hilary O. Shelton, Director of the NAACP Washington Bureau), available at <http://www.usccr.gov/pubs/MinoritiesinSpecialEducation.pdf>.

repeatedly and routinely violated.¹⁶ According to DOJ's investigation, Meridian students, particularly African American children and children with disabilities, have been systematically incarcerated for allegedly committing minor offenses, including school disciplinary infractions, with instances of children handcuffed and arrested in school, incarcerated for days at a time without probable cause hearings, and never advised of their *Miranda* rights.¹⁷ According to DOJ, they are punished "so disproportionately as to violate the constitutional right to substantive due process, and without constitutionally required procedural safeguards."¹⁸

Examples of over reliance on punitive school discipline and zero tolerance policies gone awry are too numerous to count. For example, by removing teachers' and administrators' discretion to make judgments about how to properly respond to student misbehavior, zero tolerance policies often result in punishments that range from the harsh, like the high school honors students suspended for singing in the cafeteria,¹⁹ to the absurd, like the six year old Cub Scout who faced a 45-day sentence at a reform school for bringing a camping utensil to lunch.²⁰ When such punitive policies like suspension and expulsion are used, students are removed from the classroom, causing them to lose valuable learning time. This approach puts already-troubled kids even further behind, and discourages students who had been performing well.

These tactics have only exacerbated the national dropout crisis. The latest national data released by the Department of Education²¹ indicates that just 60% of African American and 58% of Latino students graduated from high school in 2011,²² compared to 76% of their white classmates.²³

¹⁶ Press Release. U.S. Dep't of Justice, Justice Department Files Lawsuit in Mississippi to Protect the Constitutional Rights of Children (Oct. 24, 2012), available at <http://www.justice.gov/opa/pr/2012/October/12-crt-1281.html>; see also Julianne Hing, *The Shocking Details of a Mississippi School-to-Prison Pipeline*, COLORLINES, Nov. 26, 2012, available at http://colorlines.com/archives/2012/11/school_prison_pipeline_meridian.html; see also Julianne Hing, *DOJ Sues Mississippi for Its Egregious School-to-Prison Pipeline*, COLORLINES, Oct. 24, 2012, available at http://colorlines.com/archives/2012/10/doj_sues_mississippi_for_its_egregious_school-to-prison_pipeline.html

¹⁷ Press Release. U.S. Dep't of Justice, Justice Department Files Lawsuit in Mississippi to Protect the Constitutional Rights of Children (Oct. 24, 2012), available at <http://www.justice.gov/opa/pr/2012/October/12-crt-1281.html>

¹⁸ U.S. Dep't of Justice, Civil Rights Division, *Findings Regarding Dep't of Justice Investigation of Lauderdale County Youth Court, Meridian Police Dep't, and Mississippi Division of Youth Services* at 3-4 (Aug. 1 2012), <http://www.justice.gov/iso/opa/resources/2642012810121733674791.pdf>

¹⁹ Sarah Carr, *Do 'Zero Tolerance' School Discipline Policies Go Too Far?*, TIME MAGAZINE, May 22, 2012, available at <http://www.time.com/time/nation/article/0,8599,2115402,00.html>

²⁰ Ian Urbina, *It's a Fork, It's a Spoon, It's a ... Weapon?*, N.Y. TIMES, October 11, 2009, available at http://www.nytimes.com/2009/10/12/education/12discipline.html?_r=0

²¹ See Press Release, Dep't of Education, *States Report New High School Graduation Rates Using More Accurate, Common Measure* (Nov. 26, 2012), available at <http://www.ed.gov/news/press-releases/states-report-new-high-school-graduation-rates-using-more-accurate-common-measur>.

²² Kelly Chen, *Latest Release of U.S. High School Graduation Rates Still Preliminary*, PBS NEWSHOUR, Nov. 30, 2012, available at <http://www.pbs.org/newshour/rundown/2012/11/latest-release-of-high-school-graduation-rates-still-too-preliminary.html>.

²³ *High School Graduation Rates By State: U.S. Department Of Education Releases First-Ever National Data*, HUFFINGTON POST, Nov. 26, 2012, available at http://www.huffingtonpost.com/2012/11/26/high-school-graduation-ra_n_2194378.html.

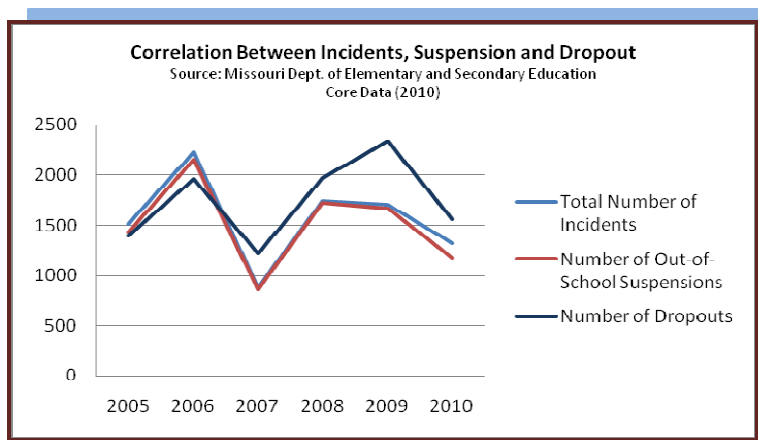
IV. Examples of ACLU School-to-Prison Pipeline Work and Success in the States

While the following is far from an exhaustive or comprehensive list of the ACLU's school-to-prison pipeline work in the states, reviewing a few of our affiliates' successes can help illustrate the national problem and provide helpful instruction for federal reform.

- **Missouri**

In the St. Louis Public School District, a forthcoming study by the ACLU of Eastern Missouri shows the effects of zero tolerance on discipline and drop-out rates, and demonstrated the turn-around that can result from the implementation of a more positive discipline policy.²⁴

As a result of the zero tolerance policies in place from 2004-2009, the rate of “significant incidents” (out-of-school suspensions of 10 days or more) rose by more than 600%.²⁵ Yet only 17% of these suspensions were for violent acts, and drug incidents raise that number to only 24%.²⁶ A full 76% were for relatively more minor incidents.²⁷ Significantly, drop-out rates follow the rise and fall of the suspension rates. Looking at 2005 through 2010, the last year that accurate revised drop-out numbers are available, the match-up is striking²⁸:



The data also shows that the problems caused by the zero tolerance approach fall disparately on those with disabilities and on people of color. In 2010, for example, the “significant incident” rate for students with an Individual Education Plan was 158%

²⁴AMERICAN CIVIL LIBERTIES UNION OF EASTERN MISSOURI, SCHOOL OR PRISON? DOCUMENTING THE SCHOOL-TO-PRISON PIPELINE IN ST. LOUIS (forthcoming 2013)

²⁵ Missouri Dep't. of Elementary and Secondary Education, Core Data (2010), available at <http://mcde.dese.mo.gov/quickfacts/SitePages/DistrictInfo.aspx?ID=bk8100130013005300130013005300>

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

higher.²⁹ The 2011 unrevised data shows a drop-out rate for blacks in the St. Louis schools that are more than double that of whites.³⁰ In the three all-black high schools “significant incident” rates have increased since 2004 by 569% up to 863%.³¹ The 2011 unrevised drop-out rates in those schools are all above 40%, compared to 24% for the district as a whole.³²

In 2010, the school district implemented a program entitled Response to Intervention, which aims to support rather than immediately punish children.³³ That program was reinforced in 2011 by a Positive Behavior and Intervention Support program. Out-of-school suspension rates were down a dramatic 30% in that time period.³⁴

St. Louis is not the only school system that has seen the negative impact of the school-to-prison pipeline on their own communities. Many districts have learned that in practice, zero tolerance policies have the opposite of their intended effect: alienating students, decreasing graduation rates, and making campuses less safe—and have begun to move away from policies that rely heavily on punitive discipline.³⁵

- **Northern California**

The ACLU of Northern California (ACLU-NC) has conducted extensive research, participated in statewide organizing efforts and litigation, and worked to promote educational equity and progressive school discipline policy at the state and local level. They have worked with many school districts on creating positive school climates and reducing the use of punitive disciplinary measures. The ACLU-NC is actively enforcing settlement agreements with four districts in which teachers, administrators, and/or school police conducted targeted harassment and discipline of students based on race, ethnicity, and sexual orientation. According to documents received pursuant to a settlement agreement with one of these districts, these efforts helped reduce the district’s suspension and expulsion numbers from 6,013 in 2009-2010 to 1,099 in 2011-2012.

To achieve this reduction, the settlement requires the district to integrate conflict resolution and cultural awareness into curricula, and implement programs that address peer harassment. The district also cut down on their discipline numbers by conducting trainings on anti-discrimination policies, discipline policies and practices, and cultural diversity issues to site administrators, teachers, and staff. To help assess where additional staff trainings needs to occur, the district provides suspension and expulsion data to school sites disaggregated by race, gender, offense, and teacher for review.

²⁹ Missouri Dep’t. of Elementary and Secondary Education, Core Data (2011), *available at* <http://mcde.dese.mo.gov/quickfacts/SitePages/DistrictInfo.aspx?ID= bk8100130013005300130013005300>

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ See AMERICAN CIVIL LIBERTIES UNION OF EASTERN MISSOURI, *supra* note 27.

³⁴ Missouri Dep’t. of Elementary and Secondary Education, *supra* note 29.

³⁵ See, e.g. Donna St. George, *More schools rethinking zero-tolerance discipline stand*, N.Y. TIMES, June 1, 2011, *available at* http://www.washingtonpost.com/local/education/more-schools-are-rethinking-zero-tolerance/2011/05/26/AGSIKMGH_story.html

Additionally, ACLU-NC's research and public education efforts have contributed to a positive state legislative climate for school discipline reform. During the most recent legislative session, a total of nine school discipline bills were introduced – five of which the Governor signed into law.³⁶ These new laws help reduce the use of punitive school discipline in California by giving administrators additional discretion to not expel or suspend students, aligning truancy laws with best practices, providing a comprehensive list of “other means of correction,” such as the use of restorative justice, positive behavior interventions and supports, and parent-teacher conference meetings.

- **Michigan**

The ACLU of Michigan has been working to turn around the school-to-prison pipeline in that state by collaborating with local school districts, the State Board of Education and members of the state legislature.

Michigan ranks fifth nationally in the gap between black student and white student suspension risks, at 15.9%, according to an August 2012 report from the Civil Rights Project at UCLA analyzing U.S. Department of Education Data. Comparatively, Illinois tops the list at 21.3%.³⁷ The ACLU of Michigan collected data from a sample of 40 districts diverse in size and demographics across the state for a report of its own in 2009, and found that black students were more likely to be suspended than other students, that white students were suspended less often for the same offenses, and that students suspended long-term or who were expelled, dropout.³⁸ Zero tolerance policies, lack of due process rights protection for students, and lack of disciplinary alternatives were primary drivers.

As a result of the ACLU of Michigan's campaign, the State Board of Education approved a resolution in June 2012 calling on districts to narrow the scope of their zero tolerance policies to weapons and safety so they are in line with federal guidelines. Subsequently, the Board “strongly urge[d] Michigan school districts to ... review existing zero-tolerance policies that are above and beyond those required in law, and limit the number

³⁶ See Press Release, Office of Governor Edmund G. Brown Jr., Governor Brown Signs Legislation to Improve Education in California (Sept. 21, 2012), available at <http://gov.ca.gov/news.php?id=17742>; see also Susan Frey, *Student discipline laws, though weakened, still will have an impact*, EDSOURCE, Oct. 14, 2012, available at <http://www.edsource.org/today/2012/student-discipline-laws-though-weakened-still-will-have-an-impact/21378#.UMFsPoWbAb0> (the bills were AB 2537, AB 2616, AB 1729, AB 1909, and SB 1088).

³⁷ DANIEL J. LOSEN AND JONATHAN GILLESPIE, OPPORTUNITIES SUSPENDED: THE DISPARATE IMPACT OF DISCIPLINARY EXCLUSION FROM SCHOOL at 7 (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>

³⁸ AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN, RECLAIMING MICHIGAN'S THROWAWAY KIDS: STUDENTS TRAPPED IN THE SCHOOL-TO-PRISON PIPELINE 11 (2009), available at <http://www.aclumich.org/sites/default/files/file/ACLUSTPP.pdf>

of offenses mandating suspension and referral to law enforcement to those directly related to the safety of students and school personnel.”³⁹

- **New York**

In New York City, the NYCLU has been documenting police and suspension practices in schools.⁴⁰ With more than 5,000 officers, the NYPD’s School Safety Division is larger than all but a handful of the country’s big-city police departments.⁴¹ New York City has approximately 5,000 police personnel patrolling public schools, but only approximately 3,000 guidance counselors and 1,500 social workers.⁴² As a result, last year police personnel arrested or issued a summons to more than 2,500 New York City public schoolchildren.⁴³ Ninety-four percent of the arrests made involved black and Latino students.⁴⁴

Aggressive policing is often coupled with zero tolerance suspension policies. The number of suspensions has more than doubled during the administration of Mayor Michael R. Bloomberg, and more than 50% of the 69,643 students suspended last year were black – though black students make up just 28% of enrollment.⁴⁵ Students with special needs comprise 12% of enrolled student yet more than 30% of suspensions.

The NYCLU has also highlighted the work of schools that serve at-risk populations yet maintain safety and attain higher academic achievement without relying on punitive practices.⁴⁶ One example is the Julia Richman Education Complex in Manhattan. The school was so full of violence in the 1980s and 90s (when the school had one of the lowest graduation rates in New York City) that administrators maintained a lock-up cage

³⁹Michigan Dep’t of Education, State Board of Education Resolution to Address School Discipline Issues Impacting Student Outcomes (June 12, 2012), *available at* michigan.gov/documents/mde/Final_Resolution_School_Discipline_Issues_Impacting_Student_Outcomes_389055_7.pdf

⁴⁰ *See generally* NEW YORK CIVIL LIBERTIES UNION, EDUCATION INTERRUPTED: THE GROWING USE OF SUSPENSIONS IN NEW YORK CITY’S PUBLIC SCHOOLS (2011), *available at* <http://www.nyclu.org/publications/report-education-interrupted-growing-use-of-suspensions-new-york-citys-public-schools->; NEW YORK CIVIL LIBERTIES UNION, ANNEBERG INSTITUTE FOR SCHOOL REFORM, AND MAKE THE ROAD NEW YORK, SAFETY WITH DIGNITY: ALTERNATIVES TO THE OVER-POLICING OF SCHOOLS (2009), *available at* <http://www.nyclu.org/content/safety-with-dignity-alternatives-over-policing-of-schools-2009> [hereinafter “Safety with Dignity”]; NEW YORK CIVIL LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION, CRIMINALIZING THE CLASSROOM: THE OVER-POLICING OF NEW YORK CITY SCHOOLS (2007), *available at* <http://www.nyclu.org/publications/report-criminalizing-classroom-2007>.

⁴¹ *Id.*; *see also* Udi Ofer, *Criminalizing the Classroom: The Rise of Aggressive Policing and Zero Tolerance Discipline in New York City Public Schools*, 56 *New York Law School Law Review* 1373 (2011/2012).

⁴² *Id.*

⁴³ New York Civil Liberties Union, *First Full Year of NYPD Data Shows Black Students Disproportionately Arrested at School* (August 14, 2012), *available at* <http://www.nyclu.org/news/first-full-year-of-nypd-data-shows-black-students-disproportionately-arrested-school>.

⁴⁴ *Id.*

⁴⁵ New York Civil Liberties Union, *New Data Shows Decrease in Suspensions, but Students, Parents and Teachers Say Numbers are Still Too High* (November 16, 2012), *available at* <http://www.nyclu.org/news/new-data-shows-decrease-suspensions-students-parents-and-teachers-say-numbers-are-still-too-hig>

⁴⁶ *See generally* *Safety with Dignity*, *supra* note 40.

for students who were thought to be out of control. Then new leadership came in, removed the cage, and changed the philosophy of the school to embrace a positive school climate and restorative justice practices. Today, the school has no violent crime, suspensions are rare, and it boasts a much higher graduation rate.

- **Pennsylvania**

In Pennsylvania, zero tolerance policies have also come under scrutiny. An October 2008 zero tolerance policy led to a dramatic rise in the number of expulsions (suspensions of more than 10 consecutive days) and a three-fold increase in the number of 10 day suspensions.⁴⁷ In the school district of Philadelphia, the largest district in the state, more than 10 out of every 100 students received an out of school suspensions according to federal civil rights data.⁴⁸ This data shows that there is great racial disparity in the administration of discipline. An African American student is 2.4 times as likely as a white student to receive an out-of-school suspension; 3.71 times as likely to be arrested; and 3.95 times as likely to be referred to law enforcement. Similar disparities exist in suburban school districts.⁴⁹

The ACLU of Pennsylvania joined with youth and advocacy organizations in a four-year campaign to change suspension practices and to press the district to adopt alternative approaches to improving school climate. Of special concern was the possibility that school exclusion practices might be contributing to an already severe dropout/non-completion problem. Only about 60% of public school students in the Philadelphia school district complete high school.⁵⁰ The district's African American and Latino Male Dropout Taskforce recommended a loosening of zero tolerance policies to "to strike a balance between providing schools that are safe and a range of appropriate sanctions for student misconduct."⁵¹

The result of this advocacy has been a shift in district practice and policies, including a revised expulsion process (2011) and a change in the student code of conduct (2012). Changes adopted include: a more careful review of proposed expulsions early in the process; an intervention matrix that is less reliant on the use of out-of-school suspensions; and a clarification that certain behaviors that may be considered disrespectful, but not violent, should not result in out of school suspension. While it is too early to tell the full

⁴⁷ THE ADVANCEMENT PROJECT AND YOUTH UNITED FOR CHANGE, ZERO TOLERANCE IN PHILADELPHIA: DENYING EDUCATIONAL OPPORTUNITIES AND CREATING A PATHWAY TO PRISON, (January 2011), available at http://b.3cdn.net/advancement/68a6ec942d603a5d27_rim6ynnir.pdf

⁴⁸ Harold Jordan, *What Federal Civil Rights Data Says About Philadelphia*, THE PHILADELPHIA PUBLIC SCHOOL NOTEBOOK, April 3, 2012, <http://thenotebook.org/blog/124692/whate-federal-civil-rights-data-says-about-philadelphia>

⁴⁹ Patrick Kerkstra, *A Punishing Racial Disparity in Suburban Schools*, THE PHILADELPHIA INQUIRER, April 15, 2012, available at http://articles.philly.com/2012-04-15/news/31345419_1_black-students-asian-students-suspensions-and-expulsions

⁵⁰ *Focus on Dropouts and Jobs*, Philadelphia Public School Notebook, vol. 19, no. 4, February 2012, available at <http://thenotebook.org/sites/default/files/editionpdfs/notebook-feb-12-sm.pdf>

⁵¹ REPORT, THE AFRICAN AMERICAN AND LATINO MALE DROPOUT TASKFORCE 21 (Sept. 2, 2010), available at <http://www.phila.k12.pa.us/announcements/TaskforceReport090110.pdf>

impact of these new strategies, as the new intervention strategies remain a work in progress, expulsions have dropped dramatically.⁵²

Concerns have also been raised about the link between zero tolerance practices and the improper detention of youth. In August 2009, the Pennsylvania legislature established The Interbranch Commission on Juvenile Justice to investigate a highly-publicized juvenile justice scandal in Luzerne County and detention of thousands of juveniles in privately-run for-profit facilities. The Commission concluded that “schools in Luzerne County too quickly turned to the juvenile justice system as a vehicle to address school climate and learning conditions....The commission believes that zero-tolerance and allowing schools to use the justice system as its school disciplinarian has no place in the educational process or in the juvenile court system. To that end, it is recommended that the entities identified above develop and expand programs that would support at risk students and expand affordable and available diversionary programs, while at the same time reduce unnecessary and inappropriate school referrals.”⁵³

These local examples demonstrate that it is possible to improve educational outcomes through reforms that discourage punitive discipline and encourage more positive learning environments. Nationally, however, children continue to be funneled into the juvenile and criminal justice systems daily at alarming rates. When it comes to reforming our education system so that every child is treated with dignity and respect, the stakes could not be higher: not only is it the right thing to do, it is crucial to our nation’s economic success and ability to compete on a global scale. Individuals who do not complete high school face staggering unemployment rates and lifelong consequences in the form of drastically reduced earning potential.⁵⁴ Improving graduation rates, particularly among students of color, has the potential to help solve our economic crisis by adding billions in spending and investments to the economy.⁵⁵

Keeping students in school and out of the criminal justice system will dramatically benefit not only students and their families, but the country as a whole, and measures are needed at the federal level to reverse these trends nationwide and promote the use of positive behavior supports in all classrooms.

⁵² Pennsylvania Dep’t of Education Safe Schools Online Application, <https://www.safeschools.state.pa.us/> (last visited Dec. 10, 2012).

⁵³ REPORT, INTERBRANCH COMMISSION ON JUVENILE JUSTICE 58-59 (May 2010), available at http://www.pacourts.us/NR/rdonlyres/6A64EA29-B7FD-4468-8CD1-075548469ED9/0/ICJJFinalReport_100604.pdf

⁵⁴ See U.S. Dep’t of Education, National Center for Education Statistics, Fast Facts (2012), available at <http://nces.ed.gov/fastfacts/display.asp?id=77>; Claudio Sanchez and Linda Wertheimer, *School Dropout Rates Add To Fiscal Burden*, NPR, July 24, 2011, available at <http://www.npr.org/2011/07/24/138653393/school-dropout-rates-adds-to-fiscal-burden>; *Zero-Tolerance Policies Doing More Harm Than Good*, NPR, July 27, 2011, available at <http://www.npr.org/2011/07/27/138738435/zero-tolerance-policies-doing-more-harm-than-good>

⁵⁵ Alliance for Excellent Education, *Education and the Economy: Boosting the Nation’s Economy by Improving High School Graduation Rates*, March 2011, available at http://www.all4ed.org/files/NationalStates_seb.pdf; Calyssa Lawyer, *Closing the School-to-Prison Pipeline: Ending Overly Harsh School Disciplinary Policies that Lead to Dropouts*, Center for American Progress, Aug. 15, 2011, <http://www.americanprogress.org/issues/education/news/2011/08/15/10146/closing-the-school-to-prison-pipeline/>

V. Recommendations for Federal Reform

A. Congressional Reforms Are Needed to End the School-to-Prison Pipeline

Providing all students with equal access to quality education in a safe, supportive environment is one of the most important civil rights challenges currently facing us as a nation. More must be done. We urge the Senate to introduce new or companion legislation, as well as support the current proposals, discussed below. Swift action on them is necessary. The following legislative proposals would not only put an end to many overly punitive discipline practices, they would help to reduce the discriminatory application of these practices and advance reforms that promote a safe and healthy school environment for *all* students.

- ***The Positive Behavior for Safe and Effective Schools Act***

The Positive Behavior for Safe and Effective Schools Act (H.R. 3165), currently pending in the House, would give schools the tools they need to improve learning environments by allowing schools to dedicate Title I federal funds to the development of school wide positive behavior supports.⁵⁶ Positive behavior supports are evidence-based practices demonstrated to reduce disciplinary referrals, suspensions and expulsions, increase academic achievement, and improve school safety.⁵⁷

The bill would help to reduce reliance on suspensions, expulsions, and referrals to law enforcement, all of which contribute to the dropout crisis.⁵⁸ It would also enable the Department of Education to provide more training and technical assistance on effective school discipline practices and to support the development of alternatives to over-policing.⁵⁹ School climate, school safety and other grant programs should explicitly solicit applications from SEAs, LEAs and police agencies who wish to reduce reliance on law enforcement to handle student misbehavior by using non-punitive alternatives.

Over 16,000 schools across the country are already implementing school wide positive behavior supports (SWPBS).⁶⁰ For example, in Illinois, the number of schools that have implemented SWPBS is growing dramatically, according to the Illinois PBIS Network, an initiative funded by the Illinois State Board of Education.⁶¹ Data on reduction of

⁵⁶ Positive Behavior for Safe and Effective Schools Act, H.R. 3165, 112th Cong. (1st Sess. 2011), *available at* <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3165ih/pdf/BILLS-112hr3165ih.pdf>;

⁵⁷ *Teach and Treat*, *supra* note 2.

⁵⁸ Letter from the Dignity in Schools Campaign to Members of Congress (Dec. 18, 2009), *available at* <http://www.aclu.org/files/assets/PBSESA - Dignity in Schools Campaign HR 2597 Support Letter FINAL.pdf>

⁵⁹ Positive Behavior for Safe and Effective Schools Act, H.R. 3165, 112th Cong. (1st Sess. 2011), *available at* <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3165ih/pdf/BILLS-112hr3165ih.pdf>;

⁶⁰ Amy Norton, *Study gives school behavior program a good grade*, REUTERS, Oct. 16, 2012, *available at* <http://www.reuters.com/article/2012/10/16/us-behavior-program-idUSBRE89F17W20121016>.

⁶¹ Illinois PBIS Network, *FY12 End of Year Report 1* (2012), <https://fb873087-a-3ff7f351-s-sites.googlegroups.com/a/pbisillinois.org/il-pbis->

office disciplinary referrals (ODRs) is encouraging. For example, over the last three years, Gemini Junior High School in East Maine School District 63 has reduced ODRs by 58%, and has reduced the number of students receiving multiple ODRs by 62%—from 43 to 16.⁶²

A 2012 Johns Hopkins study of Maryland elementary schools also indicates that the techniques are working.⁶³ Researchers found that teachers at schools with PBS reported more positive behaviors among their students, like sharing and cooperating with each other, and less problem behavior, like disruptiveness and bullying, than teachers at other schools.⁶⁴ Students were also less likely to be referred to the principal for disciplinary problems.⁶⁵

The ACLU supports this legislation in the House and urges the Senate to introduce companion legislation to make school climates more conducive to learning. We feel this House bill is a good model for reform, and provides schools with the tools necessary to implement positive behavior supports.

- ***The Ending Corporal Punishment in Schools Act***

The Ending Corporal Punishment in Schools Act (H.R. 3027) would prohibit the use of physical punishment at school⁶⁶—a practice still legal in 19 states.⁶⁷ The most recent national data available indicates that almost a quarter of a million students are the victims of this practice every year.⁶⁸ Aside from the infliction of pain and the physical injuries which often result from the use of punishments, these violent disciplinary methods also impact students' academic achievement and long-term well-being.⁶⁹ The use of corporal

web/publications/reports/FY12%20IL%20PBIS%20Short%20Rpt.pdf?attachauth=ANoY7cp1HtSxhkOGPvKRJ9j8JBlffyUxdweLQ6J6B11-Ji5ppBX5QZfaXnk0QhC2pYpFVIFZtzQBkQW3zrf1zNK7e39hGejlsqNjIeOhKE3_uosaMpIkntJqihUjsYmAljKqtK Pqn0ZkcEUQvS6kIfVQFwSnL2ygdQB-ppKfNr5zaDYZ_K0P5WKhfgymlZ4xawlhaIRedikspL1OLWh3MhrGPVRLi-TvsYr358f6v1cu6TSLc5dL_s9EUU6jxJIRN8j7dwKBDTMYXT3KDC6qYsSpQ7jJA9Otkw%3D%3D&attredirects=0

⁶² Katelyn Lamb, *Reductions in Students with Multiple ODRs*, Illinois PBIS Network, Oct 24, 2012, <https://sites.google.com/a/pbisillinois.org/il-pbis-web/publications/success-stories/teaching-learning-posts/ReductionsinStudentswithMultipleODRs>

⁶³ Norton, *supra* note 60.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ The Ending Corporal Punishment in Schools Act, H.R. 3027, 112th Cong. (1st Sess. 2012), *available at* <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3027ih/pdf/BILLS-112hr3027ih.pdf>

⁶⁷ Yunji DeNies, *Should Your Child Be Spanked at School? In 19 States, It's Legal*, ABC NEWS, March 16, 2012, *available at* <http://abcnews.go.com/US/spanking-school-19-states-corporal-punishment-legal/story?id=15932135#.UL6PkFFAUTA> (These states are: Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Wyoming).

⁶⁸ See CRDC 2006, *supra* note 13.

⁶⁹ See, e.g. IMPAIRING EDUCATION at 4-5; AMERICAN CIVIL LIBERTIES UNION & HUMAN RIGHTS WATCH, A VIOLENT EDUCATION 57 (2008), *available at* <http://www.aclu.org/human-rights-racial-justice/violenteducation->

punishment is not only ineffective when it comes to improving behavior, but it can also cause children to withdraw academically and socially, leading to fear, depression, and anger.⁷⁰

Furthermore, data shows that corporal punishment is applied at shockingly disproportionate rates against African American students and students with disabilities.⁷¹ For example, while African Americans made up 21.7% of public school students in states that allowed corporal punishment during the 2006-2007 school year, they accounted for 35.6% of those who were hit.⁷² Rates are also disproportionate for students with disabilities and evidence suggests that these students are often beaten for behavior that arises out of their disabilities themselves.⁷³

In a 2007 interview with ACLU and Human Rights Watch, a rural Mississippi schoolteacher described why African American students were hit more often: “I’ve heard this said at my school and at other schools: ‘This child should get less whips, it’ll leave marks.’ Students that are dark-skinned, it takes more to let their skin be bruised.”⁷⁴ ACLU strongly supports this legislation in the House and urges the Senate to introduce companion legislation to ban the use of corporal punishment in both public schools and private schools that serve students receiving federal services.⁷⁵ A federal prohibition on this destructive practice is long overdue.

- ***The Keeping All Students Safe Act***

The Keeping All Students Safe Act (S. 2020) restricts the use of harmful restraint and seclusion practices in schools.⁷⁶ Currently, no federal laws exist that restrict the use of restraint and seclusion in schools, and less than one third of states limit the use of restraint and seclusion to emergencies involving an imminent risk of physical harm.⁷⁷

corporal-punishment-children-us-public-schools [hereinafter A VIOLENT EDUCATION]; *Corporal Punishment in Schools and Its Effect on Academic Success: Hearing Before the Subcomm. on Healthy Families and Communities of the H. Comm. on Education and Labor*, 112th Cong. 2 (2010) (statement of the American Civil Liberties Union and Human Rights Watch), available at

http://www.hrw.org/sites/default/files/related_material/CorpPunishStatement_041510.pdf

[hereinafter “CP Statement”].

⁷⁰ See *A Safe Place*, *supra* note 1; *Arcane, Destructive*, *supra* note 1.

⁷¹ CP Statement at 3.

⁷² See CRDC 2006, *supra* note 13.

⁷³ IMPAIRING EDUCATION at 35-40; CP Statement at 4.

⁷⁴ A VIOLENT EDUCATION at 76.

⁷⁵ Coalition Letter to Rep. Carolyn McCarthy (June 28, 2010), available at <http://www.aclu.org/human-rights-racial-justice/sign-letter-supporting-ending-corporal-punishment-schools-act>;

Press Release, Office of Rep. Carolyn McCarthy, Bill Banning Corporal Punishment in Schools To Be Introduced in Congress (Sept. 21, 2011), available at <http://carolynmccarthy.house.gov/recent-news/rep-mccarthy-introducing-bill-banning-corporal-punishment-in-schools/>

⁷⁶ The Keeping All Students Safe Act, S. 2020, 112th Cong. (1st Sess. 2011), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112s2020is/pdf/BILLS-112s2020is.pdf>

⁷⁷ JESSICA BUTLER, AUTISM NAT’L COMM., HOW SAFE IS THE SCHOOLHOUSE? AN ANALYSIS OF STATE SECLUSION AND RESTRAINT LAWS AND POLICIES 4 (2012), available at <http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf>.

This is not an isolated problem; data indicates that in the 2009-2010 school year alone, there were over 40,000 incidents nationally of students subjected to the use of physical or mechanical restraint.⁷⁸ Of these, students with disabilities were grossly overrepresented, and students of color with disabilities even more so. Although African American students made up just 21% of students with disabilities under the IDEA, they made up 44% of students with disabilities who were subject to mechanical restraint.⁷⁹ There is no evidence that the use of these techniques solves behavior problems. In fact, there is evidence that they have resulted in severe injuries and death for the students against whom they are used,⁸⁰ like the heartbreaking story of an eighth grader who died after his breathing was cut off when his teacher restrained him—even though he had never behaved aggressively or violently.⁸¹

The Keeping All Students Safe Act would provide much-needed protections for all students, and particularly for students who are disproportionately impacted by these practices. It would prohibit the use of seclusion, mechanical and chemical restraint techniques, and physical restraints (with very limited exceptions). It would also require state-approved crisis intervention training and certification for school personnel, direct timing for debriefing sessions with parents, the involved students, and schools, and would provide grant funding for states to establish clear policies and procedures to meet these new standards, assist with data collection, and improve school culture by implementing school-wide positive behavior interventions and supports.⁸²

This bill pending before the Senate is a major step toward protecting America's students from physical, mental and emotional harm at school and fostering a supportive and engaging learning environment for both students and teachers.⁸³ We urge the Senate to move this important piece of legislation forward.

⁷⁸ Letter from American Civil Liberties Union to Rep. Tom Harkin and Rep. Mike Enzi, Chairman and Ranking Member of the Senate Health, Education, Labor and Pensions Committee (July 11, 2012), *available at* http://www.aclu.org/files/assets/aclu_letter_for_senate_help_comm_hrg_s_2012_keeping_all_students_safe_act.pdf [hereinafter “Restraint and Seclusion Letter”]

⁷⁹ CRDC 2012, *supra* note 10, at 5.

⁸⁰ See GREGORY D. KUTZ, GOVERNMENT ACCOUNTABILITY OFFICE, SECLUSIONS AND RESTRAINTS: SELECTED CASES OF DEATH AND ABUSE AT PUBLIC AND PRIVATE SCHOOLS AND TREATMENT CENTERS 5 (2009), *available at* <http://www.gao.gov/new.items/d09719t.pdf>; *see also* Restraint and Seclusion Letter, *supra* note 78.

⁸¹ Maia Szalavitz, Time for a Time Out: Why Are 40,000 Children So Harshly Disciplined in Public Schools?, TIME, Sept. 10, 2012, *available at* <http://healthland.time.com/2012/09/10/time-for-a-time-out-why-are-40000-children-so-harshly-disciplined-in-public-schools/>

⁸² Restraint and Seclusion Letter, *supra* note 78.

⁸³ *Id.*

- ***Juvenile Justice Delinquency Prevention Act***

The Juvenile Justice Delinquency Prevention Act (JJDP) is the primary vehicle through which the federal government sets and enforces standards for state and local juvenile justice systems.⁸⁴

The JJDP recognizes the unique needs of youth in the criminal justice system and establishes core protections to protect incarcerated youth from victimization and abuse. The JJDP requires states to address the overrepresentation of youth of color in the justice system and also prohibits youth who are under the jurisdiction of the juvenile justice system from being held in adult jails and lockups, except in very limited circumstances, such as while waiting for transport to juvenile facilities. In these limited circumstances where youth are placed in adult jails and lock ups, the sight and sound separation protects the contact these youth have with adults. While the JJDP prohibits the detention of youth for status offenses (like truancy and running away from home), youth are still often detained for technical violations of court orders.⁸⁵

Reauthorization of the JJDP is more than five years overdue. We urge the Senate to reintroduce a JJDP reauthorization bill that would eliminate the valid court order exception to detaining status offenders.

- ***Youth PROMISE Act***

The Youth PROMISE Act (H.R. 2721) seeks to curb youth violence and gang involvement by providing federal funding and support to local stakeholders to identify underlying causes of violence and implement evidence based prevention programs intended to keep youth from ever entering the criminal justice system. The legislation provides support for local youth organizations to create a PROMISE advisory panel, which would work with parents, teachers, law enforcement officers and other community members to evaluate needs of the community and identify and implement programs designed to address the drivers of crime in that community.

Instead of funneling more young people – overwhelmingly African American and Latino – into the juvenile and adult criminal justice systems, we urge the Senate to introduce a Senate companion to H.R. 2721.⁸⁶

⁸⁴ Press Release, American Civil Liberties Union, ACLU Urges Senate Judiciary Committee to Close School-to-Prison Pipeline (July 31, 2008), available at http://www.aclu.org/racial-justice_drug-law-reform_immigrants-rights_womens-rights/aclu-urges-senate-judiciary-committee

⁸⁵ Press Release, American Civil Liberties Union, House Hears Testimony On Juvenile Justice Legislation (Apr. 21, 2010), available at <http://www.aclu.org/racial-justice/house-hears-testimony-juvenile-justice-legislation>.

⁸⁶ See Dan Zeidman, *Interrupting the Violence*, Washington Markup, July 25, 2012, <http://www.aclu.org/blog/criminal-law-reform/interrupting-violence>; Ian S. Thompson, *Two Men Named Wes and the Challenge to Fix the Juvenile Justice System*, Washington Markup, June 14, 2010, <http://www.aclu.org/blog/criminal-law-reform/two-men-named-wes-and-challenge-fix-juvenile-justice-system>

B. Administrative Reforms Are Needed to Shine a Light on and Help End the School-to-Prison Pipeline

In addition to federal legislation, the ACLU has several recommendations for action the Administration can take to reduce overreliance on punitive school discipline. We urge this Subcommittee to let the Administration know it supports the following reforms to end the school-to-prison pipeline and ensure that schools are held accountable for the success of all students.

- ***Civil Rights Data Collection***

The Office of Civil Rights (OCR) in the Department of Education has taken a proactive role in promoting equal opportunity in education by reinstating the Civil Rights Data Collection (CRDC), an effort that began in 1968 and was discontinued under the Bush administration.⁸⁷ At the urging of the ACLU and our coalition partners, OCR has not only reinstated, but expanded the CRDC to include additional data categories related to punitive discipline, such as multiple suspensions, referrals to law enforcement, school related arrests, and expulsions under zero tolerance policies.⁸⁸ When OCR released portions of Part Two of its 2009 CRDC in March 2012, the numbers provided much-needed insight into the serious disparities in punishments for students of color and students with disabilities.⁸⁹

While the new data categories on punitive discipline were extremely helpful in piecing together a national picture of school discipline, the CRDC's success was hampered by the failure of a number of school districts to report certain categories adequately, with particularly poor reporting on law enforcement referrals and school-related arrests.⁹⁰ In the future, OCR must ensure that all local education authorities (LEAs) understand and comply with mandatory reporting requirements, and are held accountable for failure to do so.⁹¹ This will require that OCR has the capacity to work with LEAs across the country to assist with compliance, and to provide consequences for those that continually fail to comply.

Additionally, we continue to await OCR's release of the 2009 CRDC projected state and national statistics relating to school discipline. This data is crucial because it projects a picture of the school discipline landscape for all schools—something that only data from

⁸⁷ Press Release, American Civil Liberties Union, DOE Releases New Civil Rights Data Exposing Harsh Discipline Measures Used In Schools (Mar. 6, 2012), *available at* <http://www.aclu.org/racial-justice/doe-releases-new-civil-rights-data-exposing-harsh-discipline-measures-used-schools>

⁸⁸ *Id.*

⁸⁹ See Lewin, *supra* note 7; Deborah J. Vagins, *Counting On Us: Release of New Civil Rights Data Is the First Step in Helping Our Kids*, Huffington Post, Mar. 9, 2012, <http://www.aclu.org/blog/human-rights-racial-justice-lgbt-rights-religion-belief-reproductive-freedom/counting-us>

⁹⁰ Letter from the American Civil Liberties Union to The Honorable Russlynn Ali, Assistant Secretary for Civil Rights at the U.S. Dep't of Education (Aug. 10, 2012), *available at* http://www.aclu.org/files/assets/aclu_letter_to_ocr_re_recommendations_for_upcoming_crdc.pdf

⁹¹ *Id.*

an effort on the CRDC's scale can do. It is imperative that OCR release them as soon as possible, while accounting for any serious gaps that exist in the data due to schools' failure to report.

In future collections, OCR should also expand its collection to include all *incidents* of punitive school discipline.⁹² For example, while the recent expansion of the CRDC to include incidents of restraints and seclusion was a great step forward, OCR must collect corporal punishment data in the same way. By recording only the number of students subjected to corporal punishment, we are failing to capture important information about the number of times individual students are hit and brutalized in our nation's schools – both statistics are necessary.

Going forward, it will also be important to preserve the advancements that OCR has made to this valuable process. In particular, OCR must have the resources and support to make the CRDC an annual and universal collection from districts. We also support federal legislation to codify the CRDC and ensure that it is made permanent.

- **National School Discipline Guidance**

The importance of tackling the school-to-prison pipeline problem at a federal level has also spurred landmark collaboration between federal agencies. In 2011, Attorney General Eric Holder and Secretary of Education Arne Duncan announced the launch of the Supportive School Discipline Initiative (SSDI), a collaborative project between the Departments of Justice and Education aimed at supporting good discipline practices to foster safe and productive learning environments in all classrooms.⁹³ The mandate of the Initiative is that the agencies work together to ensure that school discipline policies and practices comply with the nation's civil rights laws, through guidance, public education, and research.⁹⁴ We applaud this Initiative, and urge the agencies to swiftly finalize and issue federal guidance on the use of punitive school discipline policies and to support positive alternatives to these practices in schools around the country.⁹⁵

The ACLU supports the release of guidance that does the following:

- instructs schools on applying a disparate impact analysis to disciplinary disparities and addressing them through Title VI, the Rehabilitation Act, IDEA, and the ADA;

⁹² *Id.*

⁹³ Press Release, U.S. Dep't of Justice, Attorney General Holder, Secretary Duncan Announce Effort to Respond to School-to-Prison Pipeline by Supporting Good Discipline Practices (July 21, 2011), *available at* <http://www.justice.gov/opa/pr/2011/July/11-ag-951.html>

⁹⁴ *Id.*

⁹⁵ Press Release, American Civil Liberties Union, ACLU Hails Obama Administration's Supportive School Discipline Initiative (July 21, 2011), *available at* <http://www.aclu.org/racial-justice/aclu-hails-obama-administrations-supportive-school-discipline-initiative>

- examines the disproportionate impact in detail by focusing on high and disparate rates of punitive and exclusionary discipline based on race and disability;
- promotes the implementation of positive behavior supports as alternatives to these severe practices;
- encourages strong enforcement of the laws banning corporal punishment and restraint and seclusion that are already in place in many states and voices support for a federal ban; and
- clarifies for school officials and police (including school resource officers) that police should be responsible only for serious criminal law matters, not for matters that may be minor violations best handled by schools as discipline issues. Guidance should emphasize that law enforcement intervention (including arrest, citation, summons, etc.) ought to be a last resort. Guidance should also be provided to law enforcement agencies about the proper role of police and SROs in schools.

C. Support the Departments of Justice and Education in Efforts to End the School-to-Prison Pipeline

As discussed above, the Departments of Justice and Education play important roles in ending the harmful school discipline practices discussed in this statement. We ask Congress to support these efforts and provide the resources necessary to further them.

- **Litigation**

The ACLU supports Departments of Justice and Education efforts to investigate and litigate discriminatory school discipline practices and encourages them to use all the tools at their disposal to challenge these practices. The agencies, as appropriate to their jurisdictions, should use Title VI and equal protection claims to address the racially disproportionate use of school discipline and use of law enforcement interventions in schools. They should also investigate the racially disproportionate use of arrests, citations and summonses against students of color and bring complaints where warranted.

The agencies should also investigate the disproportionate rates of discipline for students with disabilities, and consider using the Rehabilitation Act, IDEA, and the ADA to file complaints where necessary. They should also undertake independent actions and investigate complaints of the disproportionate disciplining of special education students, particularly when the disparity involves students of color or are for behavior associated with the student's special educational status.

- **Strengthen the Department of Justice's Office of Juvenile Justice and Delinquency Prevention**

Over the past decade, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has suffered depletion of funding and support. Funding levels for OJJDP have declined more than 90% since 2002.⁹⁶ The Juvenile Justice and Delinquency Prevention Act (JJDPA) is more than five years overdue for reauthorization. In addition, the lack of a permanent OJJDP Administrator has halted progress in advancing reforms, and slowed the reauthorization of the JJDPA, sending a message that federal leadership in juvenile justice is not a priority.

We urge the Administration to act quickly to appointment a strong permanent OJJDP Administrator and provide the clear direction and resources needed to help states create and sustain juvenile justice systems that are less costly, enhance public safety, and offer appropriate interventions for court involved youth.

- **Reduce Policing in Schools through Training and Funding**

The ACLU supports the inclusion of reduction of school discipline as a criterion for future federal funding. States and localities that currently receive federal grants should be required to develop non-punitive alternatives to exclusionary school discipline policies, including over-policing, and ensure appropriate training for school police and personnel in developmentally appropriate tactics. Both schools and police departments should understand that the overuse and/or the racially disproportionate use of law enforcement to respond to student misbehavior could lead to reductions in federal funds. Schools that receive school climate grants should be required to report on the use of law enforcement and their plans for reducing reliance on police as well as any racial disparities in arrests, citations, or tickets. Where the federal government identifies persistent overreliance or racial disparities, it should deny renewal grants until these problems are adequately addressed.

In 2004, in Clayton County, Georgia, the juvenile court, concerned about increases in school referrals from law enforcement they were seeing, convened leaders from the school district, community members, mental health professionals, and law enforcement. By making clear the appropriate use of law enforcement was in safety issues, as opposed to involvement in school discipline issues, Clayton County reduced court referrals of students by 70% and graduations rates increased 20%.⁹⁷

⁹⁶ See The Department of Justice, Office of Justice Programs Oversight: Hearing Before the Subcomm. on Crime, Terrorism and Homeland Security of the H. Comm. on the Judiciary, 110th Cong. 7 (2008) (statement of Shay Bilchik, former OJJDP Administrator), available at <http://judiciary.house.gov/hearings/pdf/Bilchik080918.pdf>.

⁹⁷ Donna St. George, *Judge Steve Teske Seeks to Keep Kids with Minor Problems Out of Court*, WASHINGTON POST, Oct. 17, 2011, available at http://articles.washingtonpost.com/2011-10-17/lifestyle/35280676_1_school-discipline-student-discipline-russell-skiba; see also Matt Cregor and Damon Hewitt, *Dismantling the School-to-Prison Pipeline: A Survey from the Field* 20 Poverty and Race 5, 6 (2011), available at

VI. Conclusion

The ACLU expresses its thanks to Chairman Durbin and the Subcommittee on the Constitution, Civil Rights, and Human Rights for holding this important hearing on ending the school-to-prison pipeline. All students have the right to be treated with dignity and to go to school without fear in a safe and healthy environment that promotes learning. Overly punitive and exclusionary discipline policies interfere with children's access to quality education, fueling the system that forces too many of our young people out of school and into the criminal justice system. By supporting legislative and administrative efforts to reduce overly punitive and discriminatory school discipline practices, Congress can help to end this cycle and give all of America's children the chance to succeed.