





TO: P-12 Education Committee

FROM: Jhone M. Ebert 

SUBJECT: Promoting School-Justice Partnerships to Keep Youth in School and Out of Courts

DATE: February 16, 2016

AUTHORIZATION(S): 

SUMMARY

Issue for Discussion

This is an item for discussion about the New York State Permanent Judicial Commission on Justice for Children's work in regard to the school-justice connection that results in too many school-aged children spending time in court, being suspended or expelled from school, or placed in juvenile justice facilities.

Reason(s) for Consideration

Review of policy.

Proposed Handling

This item will come before the P-12 Education Committee for discussion at the February 2016 Regents meeting.

Background Information

At the January 2016 P-12 Education Committee Board of Regents Meeting, the P-12 Committee discussed educational programs available to students who are incarcerated and detained for committing offenses determined by the criminal justice system to warrant removal from the community. As a follow-up to that discussion last month and at the Board of Regents' request to also discuss prevention strategies to keep youth in the community and avoid their being incarcerated or detained in the first place, Kathleen DeCataldo, Executive Director of the New York State Permanent Judicial Commission on Justice for Children (Commission), will provide highlights from

the Commission's report, released in May 2013, entitled *Keeping Kids In School and Out of Court*, by the New York City School-Justice Partnership Task Force. Ms. DeCataldo also will discuss other key strategies that enable children to become successful, productive adults. Ms. DeCataldo is also a member of the New York State Safe Schools Task Force and has been instrumental in helping guide the New York State Education Department's (the Department) work on promoting positive school climate, developing the school climate index, and revamping the Violent and Disruptive Incident Report (VADIR) to align with the collection of Dignity for All Students Act (DASA) data.

The Commission organized and convened the first National Leadership Summit on School-Justice Partnerships in March of 2012 and coordinated the New York State Leadership Summit on School-Justice Partnerships in April of 2013. In October of 2014, the Department and Commission staff assembled a team of educators, judges, community members and school administrators, led by former Chief Judge Judith Kaye, who attended the National Leadership Summit on School Discipline and Climate held in Washington D.C. In addition, over the past few years, the Commission has held several workshops and summits on such topics as school-justice partnerships, restorative practices, school arrest diversion, and promoting school climate..

The Commission is charged with improving life outcomes for children involved with New York State's courts and has long focused on educational outcomes for youth involved with the courts. Its current focus on promoting school-justice partnerships to keep kids in school and out of court is a natural outgrowth of the Commission's work, given the emerging research, national attention and grass-roots' calls for action. It is clear that the education and justice systems must partner to better define disciplinary policies and practices within the school environment. The links between these systems are critical and, unfortunately, a lack of coordination has had detrimental consequences for too many of our children's educational trajectories.

Summary of the Commission's Work

Zero Tolerance

School policies and disciplinary practices that discourage students from remaining in the classroom often lead to schools directly and indirectly "pushing" students out of school. "Pushout" policies and practices include zero tolerance and ineffective misbehavior prevention and intervention policies, as well as lead to student disengagement of school. Growing out of the now discarded drug interdiction policies of the late 1980s, zero-tolerance policies—meaning mandatory consequences applied to school rules violations without regard to individual circumstances—became widespread in schools with the passage of federal laws such as the Gun-Free Schools Act of 1994 (GFSA), itself a response to several widely publicized, tragic school shootings.¹ The GFSA required one-year school expulsion for any student caught bringing a gun to

¹ The Gun-Free Schools Act of 1994, Pub. L. No. 103-382, 108 Stat. 3907, reauthorized by § 4141 of the Elementary and Secondary Education Act of 1965 (ESEA), Pub. L. 89-10, 79 Stat. 27, as amended by the No Child Left Behind (NCLB) Act of 2001, Pub. L. 107-110, 115 Stat. 1425.

school. Gun cases are now the smallest category of school discipline cases, and students are being expelled, suspended and arrested for a variety of behaviors, including minor student behaviors and rule infractions.² An example of a zero tolerance approach is instituting a ban on hats; a student who violates the ban is immediately suspended for causing a school disruption.

The Commission's 2013 report, "Keeping Kids In School and Out of Court," found that with greater use of school resource and safety officers, criminal charges are more easily and more frequently brought against youth for things such as fighting, writing on desks, and other actions that in an earlier day would have resulted in only a trip to the principal's office.³ The criminalization of school behaviors -- also known as the School-to-Prison Pipeline -- has in some cases flooded the juvenile and criminal courts with cases that originated in school incidents.

Not surprisingly, research shows that first arrests can have unintended negative consequences for school-age youth: a first arrest during high school almost doubles the odds of the youth dropping out of school compared to a youth with the same offense but no arrest. For youth who have a court appearance following the first arrest, the odds of dropping out are nearly quadrupled.⁴

Suspensions and Expulsions

Studies have demonstrated that out-of-school suspensions and expulsions can be equally as harmful as arrest in their longer-term effect on students.⁵ Suspension and expulsion are known to increase the propensity for school disconnectedness, academic problems, delinquency, criminal activity, and substance abuse--the opposite of the desired effect. Out-of-school suspensions are linked to students falling behind in school, failing a grade, dropping out of school, committing a crime, and becoming incarcerated as an adult.⁶ If students receive multiple suspensions, the effects are exacerbated. Students who are suspended three or more times by the 10th grade are five times more likely to drop out than students who have never been suspended.⁷ The long-term

² American Bar Association Juvenile Justice Committee, Zero Tolerance Policy (2001), available at <http://www.abanet.org/crimjust/juvjus/zerotolreport.html>; U.S. Human Rights Network Working Group on Juvenile Justice, Response to the Periodic Report of the United States to the United Nations Committee on the Elimination of Racial Discrimination (2008).

³ New York City School-Justice Partnership Task Force, *Keeping Kids In School and Out of Court: Report and Recommendations*, May 2013.

⁴ Gary Sweeten, Who Will Graduate: Disruption of High School Education by Arrest and Court Involvement, 23 *Justice Quarterly* 4, 462-80 (2006).

⁵ See Justice Center the Council for State Governments & Public Policy Research Institute, *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement*, July 2011, available at https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf

⁶ The Advancement Project, *Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline* (Jun. 2000); The Advancement Project Test, Punish, and Pushout: How "Zero Tolerance" and High-Stakes Testing Funnel Youth into the School-to-Prison Pipeline (2010).

⁷ M.E. Goertz, J.M. Pollack, & D.A. Rock, 1986. Who Drops out of High School and Why?: Findings From a National Study, 87 *Teachers C. Rec.* 3, 357-73 (1986).

consequences of suspensions and expulsions indicate higher rates of future antisocial behaviors and involvement in the justice system.⁸

Out-of-school suspension can also make the community less safe, leaving youth unsupervised in the community. A recent statement by Fight Crime: Invest in Kids, a non-profit organization of 5,000 police chiefs, sheriffs, prosecutors, and other law enforcement leaders, acknowledged the need to maintain school safety and remove truly dangerous students from the school environment but noted “suspension and expulsion often provide troubled kids exactly what they do not need: an extended, unsupervised hiatus from school that increases their risk of engaging in substance abuse and violent crime.”⁹

Studies have shown that suspension is often used for less serious offenses. Although school-time fights and aggressive acts by students are the leading causes for suspension, the next ranking causes include abusive language, attendance issues such as cutting class, tardiness, and truancy, followed by disobedience, disrespect and general classroom disruption.¹⁰ Research has confirmed that academic skill can be a strong predictor of school exclusion.¹¹ Perhaps more disturbing, studies have consistently demonstrated that children of color, in particular Black children, are referred for discipline more frequently and for less serious offenses, tend to be suspended for longer periods of time, and are more often subject to suspension and expulsion compared to their White peers.¹² Regardless of whether poverty and other demographic factors are considered in the analysis, racial, and ethnic disproportionality in disciplinary practices has consistently been observed.¹³

School administrators, parents and communities struggle with the need to balance the safety of students and staff with the appropriate effective interventions to create a safe and productive learning environment. One the goals administrators seek to achieve is to reduce bullying, violence, and disruptive behavior in schools; however,

⁸ C.A. Christle, K. Jolivet & C.M. Nelson, Breaking the School to Prison Pipeline: Identifying School Risk and Protective Factors for Youth Delinquency, 13 *Exceptionality* 2, 69–88 (2005); V. Costenbader & S. Markson, School Suspension: A Study With Secondary School Students, 36 *J. School Psych.* 1, 59–82 (1998); Sheryl Hemphill, John Toumbourou, Todd Herrenkohl, Barbara McMorris & Richard Catalano, The Effect of School Suspensions and Arrests on Subsequent Adolescent Antisocial Behavior in Australia and the United States, 39 *J. Adolescent Health* 5, 736–44 (2006).

⁹ Fight Crime: Invest in Kids, Comments Pursuant to Notice of Proposed Information Collection Request (Nov. 10, 2009).

¹⁰ D.J. Losen & R.J. Skiba, *Suspended Education: Urban Middle Schools in Crisis*, Southern Poverty Law Center (Sept. 2010).

¹¹ G.M. Morrison & B. D’Incau, The Web of Zero Tolerance: Characteristics of Students Who Are Recommended for Expulsions From School, 20 *Educ. & Treatment of Children* 3, 295–315 (1997); Skiba & Petersen, *supra* note 3.

¹² Russell J. Skiba, Robert S. Michael & Abra Carroll Nardo, The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment, 34 *Urban Rev.* 4, 317–42 (2002); The Advancement Project, *Education on Lockdown: The Schoolhouse to Jailhouse Track* (Mar. 2005).

¹³ American Psychological Association Zero Tolerance Task Force, Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations, 63 *Am. Psychol.* 9, 852–62 (2008); Skiba, Michael & Nardo, *supra*note 11; J.M. Wallace, Jr., S. Goodkind, C.M. Wallace & J.G. Bachman, Racial, Ethnic, and Gender Differences in School Discipline Among U.S. High School Students: 1991–2005, 59 *Negro Educ. Rev.* 1, 47–62 (2008).

some of the strategies most often used may be ineffective and could even exacerbate a student's disengagement with the school community. To keep all students engaged, administrators should avoid over-reliance on out-of-school suspension, which has so many unwanted consequences. Researchers have concluded that what is needed is a "strong but caring discipline that works to inculcate good behavior, while resorting to out-of-school suspension only rarely."¹⁴

School-Based Frameworks and Practices

There are also school-based frameworks and practices that can help inform this discussion. For example, the school-wide Positive Behavioral Intervention and Supports (PBIS)¹⁵ is a decision-making framework that incorporates the entire school culture. PBIS is premised on using data collection to guide decisions and identify issues; continuous monitoring of student progress and achievement to evaluate outcomes; development of evidence-based academic and behavioral interventions and supports; and changing the school teaching and learning environment to address current, and to prevent future occurrence of, problem behavior.

PBIS is grounded in a system that teaches and encourages pro-social skills and behaviors for both students and staff. When intervention for behavior issues is warranted, there is a three-tiered approach in which all children receive supports at the primary tier. When students do not respond, more intensive behavioral supports are provided at the intermediate tier, with the third tier of individualized intensive plans reserved for those students whose behavior warrants that approach. Throughout this school-wide system, the emphasis is to maximize academic engagement and achievement for all students.¹⁶ PBIS is a framework that integrates well with the Department's initiative to promote and measure school climate.¹⁷

The Department has been supporting development of PBIS in schools in NYS for several years through a PBIS State Technical Assistance Center (www.NYSPBIS.org) and 40 regional behavior positions in the Regional Special Education Technical Assistance Centers. These behavior specialists provide professional development and coaching to help schools develop systems of PBIS, particularly in schools whose data shows high rates of suspensions and/or disproportionality in disciplinary actions by race/ethnicity. In addition, the State Technical Assistance Center on Disproportionality¹⁸ partners on this work to support schools to develop positive systems of behavior support.

¹⁴ Losen & Skiba, supra note 9.

¹⁵ <http://nyspbis.org/WhatIsPBIS/AboutPBIS.cfm>

¹⁶ Positive Behavioral Intervention & Supports (PBIS), What is PBIS?, available at:

<https://www.pbis.org/school/swpbis-for-beginners> (last visited Feb. 4, 2016).

¹⁷ Texas Juvenile Justice Department, "Effectiveness of Positive Behavioral Interventions and Supports: A Report to the Texas Legislature," December 2012; *available at*

<https://www.tjjd.texas.gov/publications/reports/PBISLegislativeReport2012-12.pdf>

¹⁸ http://steinhardt.nyu.edu/metrocenter/center/technical_assistance/program/disproportionality

A School-Justice Approach

How can partnerships among school administration, law enforcement, the court system, and the community help to increase graduation rates while decreasing school suspensions, expulsions and arrests? As a community, we are charged with seeking the best outcomes for our children to enable them to become successful, productive adults. Together, we need to examine our school discipline policies and practices, and develop strategies that lead to a school climate that fosters youth development and learning, increases student engagement and provides positive child-centered strategies for remediation of individual student misbehavior.

Our course of action can benefit from the national, state and community organizations that are now challenging the systemic problem of pushout. For example, the Dignity in Schools Campaign – a national and community-based campaign – brings together educators, students, parents, advocates and others to reframe the school discipline discourse around a framework of human rights that respects every child’s right to an education and advocates for child-centered reform to keep children in school instead of school discipline that favors and relies on the punishment and pushout of children.

School-Justice Partnerships

School-justice partnerships springing up across the country are demonstrating benefits that are not only child-related but also school- and community-related. For example, in Clayton County (Atlanta), Georgia, the school-justice community developed a model protocol to address student school-based offenses. The protocol provides that arrest is reserved for only the most serious offenses and an array of options for discipline for lower level offenses is provided. Following these changes, Clayton County graduation rates rose 21 percent while juvenile felony rates decreased 51 percent. By reducing school referrals to the juvenile justice system, there was a 38 percent decrease in the number of youth of color referred to the juvenile justice system.¹⁹

Restorative Practices

Research has shown that positive approaches to discipline can improve student engagement, student academic performance, and teacher satisfaction, while also reducing violence and disciplinary incidents in schools.²⁰ Across the country, educators and communities are advocating for school-wide models for discipline such as Restorative Practices,²¹ which give teachers and students the tools necessary to build a positive school community and to prevent and respond to conflict in ways that address

¹⁹ The Annie E. Casey Foundation, *As Suspensions, Expulsions and Juvenile Arrests Grow, JDAI Sites Push Back*.

²⁰ American Psychological Association Zero Tolerance Task Force, *supra* note 12.

²¹ For more information about restorative practices, visit the U.S. Department of Justice website at <http://www.ojdp.gov/pubs/implementing/balanced.html> (accessed 2/3/16); for school example, see Illinois Criminal Justice Information Authority, *Implementing Restorative Justice: A Guide for Schools*. Chicago, IL.

students' social, emotional, and academic needs. Restorative Practices uses informal and formal processes that proactively build relationships and a sense of community that *prevent* conflict and wrongdoing as well as restorative justice practices, a subset of restorative practices that are *reactive*, consisting of formal or informal responses to crime and other wrongdoing after it occurs. Restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by misconduct by creating a process that promotes healing, reconciliation, and the rebuilding of relationships to promote mutual responsibility and constructive responses to wrongdoing within our schools. In response to disciplinary infractions or conflict, schools use a continuum of strategies that are restorative, rather than punitive, except for the most serious and dangerous offenses when exclusion from school is absolutely necessary to protect the safety of the school community.

During the 2015 school year, NYSED's funded PBIS Technical Assistance Center is promoting this research-based practice, delivering 12 regional sessions on "*Restorative Relationships with Students who Display Challenging Behavior.*" See <http://nyspbis.org/RegionalForum1516/RF1516Overview.cfm>

The Commission's Approach

The Commission is leading a multi-tiered strategy—national, state, regional and local—to promote school-justice partnerships. The goal is to reduce exclusionary school disciplinary practices and justice system involvement that disproportionately affect youth of color; ensure public safety; hold offenders accountable for their actions and develop competencies for the offender that avoid future offenses; and repair the harm caused by the offending behavior, while balancing the roles and needs of the victim, offender and community.

New York City Student Safety Act

In 2011, data on out-of-school suspensions and school-related summonses and arrests for the first time became publicly available in New York City as a result of the enactment of the Student Safety Act. The Student Safety Act mandates public quarterly reporting by the New York Police Department (NYPD) on arrests and summonses (akin to tickets) issued by NYPD school safety agents and officers in the School Safety Division. These data are broken down by Penal Code violation, patrol borough (not school), gender, race and age. The law also requires biannual reporting by the New York City Department of Education (DOE) on suspensions reported by school, discipline code infraction, age, race, gender, grade, special education status and English language proficiency. This unprecedented data helped inform the Report and Recommendations of the New York City Task Force on School-Justice Partnerships.

National Data Also Demonstrates Civil Rights Issue

Consistent with findings from the New York City data and the Texas study, the U.S. Department of Education Office of Civil Rights data further illustrates these disparities for students with disabilities and students of color at the national level. This

research further demonstrates that while students of color do not misbehave to a greater extent than White students, they are often treated more severely for subjective misbehaviors.

Next Steps

With the agreement of the Board of Regents, staff will take the following actions to improve outcomes for our students:

- Continue to engage with key stakeholders to promote school-justice partnerships;
- Develop recommendations and more comprehensively deliver technical assistance that will more clearly define uniform discipline policies and practices;
- Assist school districts to implement strategies to reduce the frequency that suspensions and expulsions are used throughout the school year, especially for youth of color, students with disabilities, and English language learners;
- Improve data collection processes to inform decisions on addressing youth-related issues;
- Build frameworks in schools and institute strategies that promote and measure school climate; and
- When funding becomes available, provide professional development for administrators, teachers and community.