



EQUAL JUSTICE SOCIETY



National Center for Youth Law



August 15, 2013

The Honorable Edmund G. Brown, Jr.
Governor
State Capitol, Suite 1173
Sacramento, CA 95814
Phone: (916) 445-2841
Fax: (916) 558-3160

Re: **Sign AB 420 to Support Civil Rights**

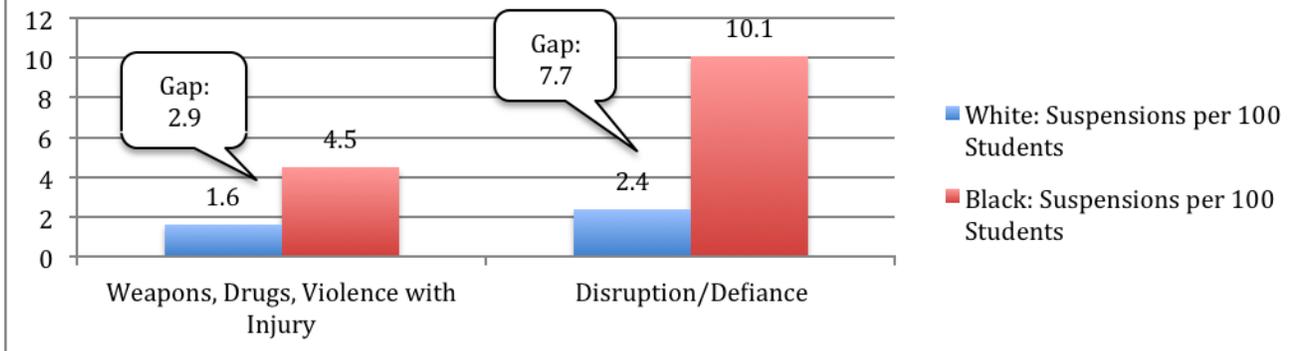
Dear Governor Brown:

In the interest of protecting the civil rights of children of color and children with disabilities, we the undersigned state and national civil and disability rights leaders call for you to sign AB 420 (Dickinson), which will help ensure that out-of-school suspension is a measure of last resort in response to minor offenses, and specifically, will eliminate disruption/willful defiance as a grounds for expulsion for all grades and as grounds for suspension for children in grades K-5.

Background: California Code permits the use of suspensions for a vast array of school offenses. There are 24 separate categories in all, including harassment, obscenity, vulgarity, threats, bullying, stealing, attempting to steal, attempting to damage and damaging school property, use or possession of weapons, drugs, tobacco or alcohol, and violence with and without injury. When districts report the reasons for suspensions, they are required to identify and certify the most serious category. The offense “disrupted school activities or otherwise willfully defied the valid authority” is a catch-all category covering a wide range of less serious misbehavior (including not paying attention, failing to do homework, talking back). This broad and highly subjective category accounts for almost half of all suspensions meted out to students in the state.

Why frequent out-of-school suspensions for “disruption/willful defiance” are a civil rights concern: Suspensions based on disruption/willful defiance are imposed disproportionately against students of color and students with disabilities, with higher disparities compared to their peers for disruption/willful defiance than for other more serious and less subjective categories.¹

Figure 1: Frequent and Disparate Use of Suspension* for Minor Offenses under Disruption/Defiance Compared with Serious Offenses by Race



*Includes only out-of-school suspensions

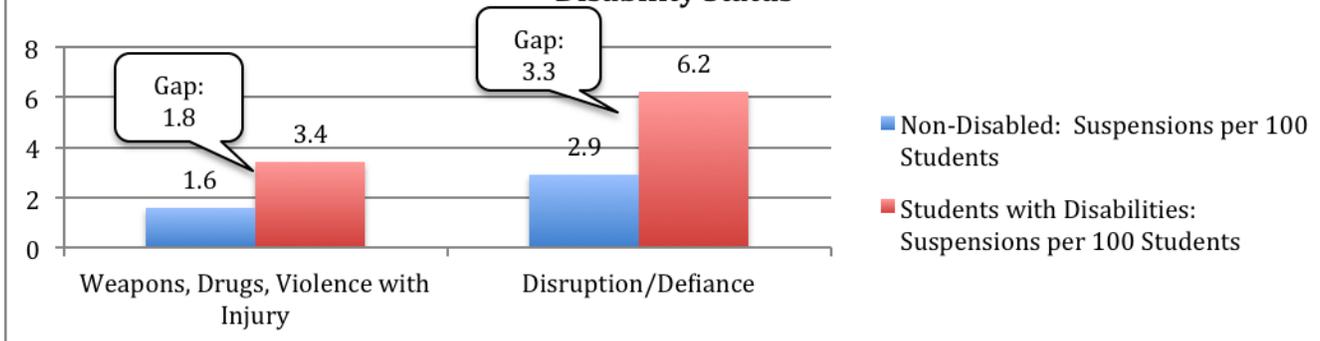
Source: Analysis of CALPADS data from the California Department of Education, 11-12

The highly subjective disruption/willful defiance category is not only the most frequent reason for suspension, it is also the category where the largest racial gaps are observed: Specifically, measured in terms of out-of-school suspensions per 100 students enrolled, Black children in California receive 7.7 more out-of-school suspensions than White children receive (see Figure 1). The size of the Black/White racial gap (7.7 suspensions per 100) for the minor disruption/willful defiance offense category is two-and-a-half times larger than the gap (2.9 suspensions per 100) observed in the most serious offense categories.ⁱⁱ

Latinos also tend to be suspended at higher rates than Whites in this category, although the Latino/White disparities are often smaller. Moreover, at the district level the frequency and size of the disparities in this category can be much larger than these statewide averages. For example, in Coalinga-Huron Joint Unified District in 2011-12, the rates for disruption/defiance are 44 out-of-school suspensions per 100 enrolled Blacks, 27 per hundred Latinos and 16 per hundred Whites.

The catch-all “disruption/willful defiance” category also yields a large disparity in suspensions between students with disabilities and their non-disabled peers:

Figure 2: Frequent and Disparate Use of Suspension* for Minor Offenses under Disruption/Defiance Compared with Serious Offense by Disability Status

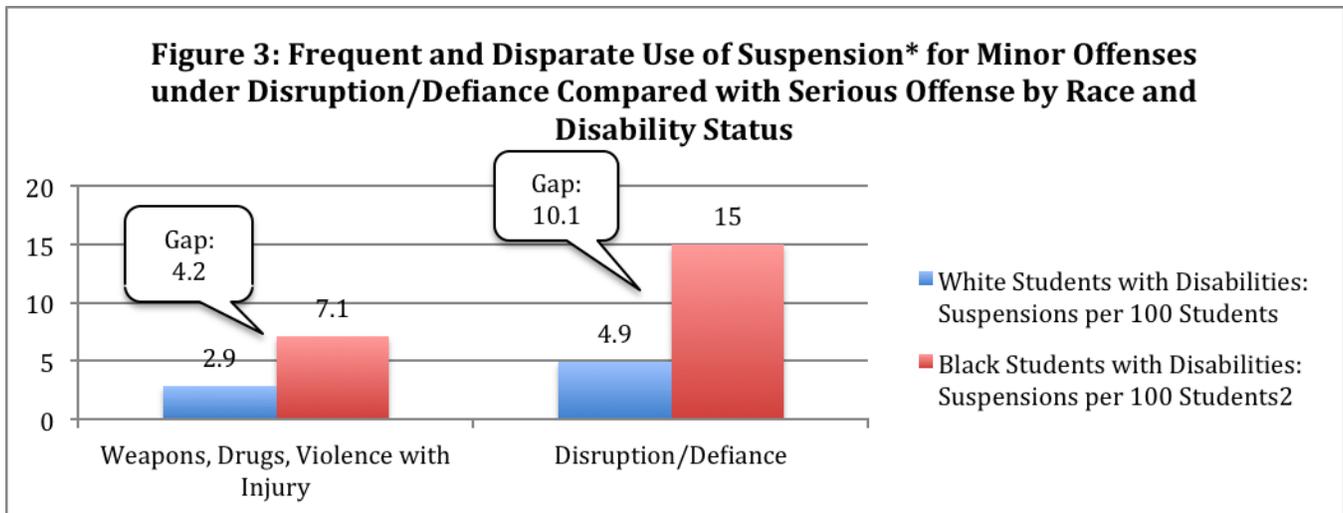


*Includes only out-of-school suspensions

Source: Analysis of CALPADS data from the California Department of Education, 11-12

The comparison in the graph above (Figure 2) shows that students with disabilities receive 3.3 additional out-of-school suspensions per 100 students in the disruption/willful defiance category, compared to a much smaller gap of an additional 1.8 per 100 students for the most serious offenses.

Black students with disabilities are harmed most: The largest racial gaps are noted between Black and White students with disabilities. As depicted in the graph below (Figure 3), compared to Whites, Black students with disabilities received 10.1 additional out-of-school suspensions per 100 students enrolled. The Black/White gap in this frequent and more subjective category is once again two-and-a-half times larger than the racial gap (4.2 suspensions per 100) in the serious offense category.



*Includes only out-of-school suspensions
 Source: Analysis of CALPADS data from the California Department of Education, 11-12

Research basis for civil rights concerns: Research has established that frequently suspending students out of school for minor offenses is educationally unsound. Based on the research, in 2013, the American Academy of Pediatrics issued a formal statement that urged schools to not resort to out-of-school suspensions, except for in extreme situations. The Academy concluded, “[O]ut of school suspension and expulsion are counterproductive to the intended goals, rarely if ever are necessary, and should not be considered as appropriate discipline in any but the most extreme and dangerous circumstances, as determined on an individual basis rather than as a blanket policy.” (AAP, 2013). The American Psychological Association has issued similar research-based statements against excessive disciplinary exclusion. (APA, 2008).

Two recent independent and robust longitudinal studies that tracked large cohorts of students for several years, one in Florida, the other in Texas, demonstrate the harmful and lasting side effects of suspensions:

- Recent research by Robert Balfanz of Johns Hopkins University which tracked all the 9th grade students in Florida over more than 6 years showed that being suspended just once in 9th grade was associated with a twofold increase in the likelihood of dropping out, from 16% for those not suspended to 32% for those suspended out of school, and being suspended twice was associated with a 42% risk for dropping out. (Balfanz, 2013).

- The Council of State Governments' Justice Center's study, which tracked all the middle school students in Texas and controlled for more than 80 student and campus characteristics, found that students who were suspended or expelled in a discretionary action were nearly three times more likely to have contact with the juvenile justice system the following year than similar students who were not suspended or expelled. (Fabelo, 2011).

The specter of race and disability based bias: The racial disparities in the rates of suspension in all of the offense categories described above raise questions about the influence of unconscious or intentional race or disability based discrimination. However, given that disruption/willful defiance has the largest race and disability disparities and is also the category for which highly subjective evaluation of less serious behavior drives the decision to suspend, there is added reason for alarm. In particular, several research studies have found that compared to Whites, Black children receive harsher punishments for minor and more subjective violations, even controlling for other contributing factors. (Skiba, 2013) (Finn, 2013) (Schollenberger, 2013) (Fabelo, 2011) (Bradshaw, 2010).

Strikingly, the aforementioned Texas study found that Black students were more likely to be disciplined for "discretionary" offenses, and that when poverty and other factors were controlled for, higher percentages of White students were disciplined on more serious nondiscretionary grounds, such as possessing drugs or carrying a weapon. (Fabelo, 2011).

There are effective alternatives to punitive approaches to discipline that hold students accountable and improve safety and academic outcomes: Research consistently shows that the safest school environments had: 1) high levels of student engagement; and 2) high quality relationships between teachers and students and teachers and parents.

- Chicago's safest schools had strong teacher-student and teacher-parent relationships and low suspension rates. (Steinberg, 2013). A district-wide study of Chicago found schools serving the least advantaged students - but with high-quality relationships - are as safe, on average, as the most advantaged schools with weak relationships. Controlling for differences in community and school context, the researchers also concluded, "High rates of suspension do not show any benefit for either students' or teachers' feelings of safety at school, and they may even have adverse effects on school climate by aggravating distrust between students and adults."
- Teacher training and improving student engagement lead to decreases in suspension rates. (Gregory, 2013). A randomized controlled study of the impact of My Teacher Partner Secondary, a teacher training program designed to improve teacher-student relationships and student engagement, showed clear benefits for all students, but especially for Black students, producing greater reductions in their rates of disciplinary referrals.

Finally there are numerous systemic alternative responses available: These include systems of positive behavioral interventions and supports, restorative justice and social and emotional learning that would help correct behavior and result in thousands of more hours of instruction and adult supervision, especially for Black children and those with disabilities. For example, a recent study by David Osher showed that district-wide investments in social and emotional learning strategies in the Cleveland

School District paid dividends even where resources were limited. (Osher, 2013). Following a school shooting, the Cleveland district initially invested in high security measures such as metal detectors and school police, without any benefits in perceptions of safety or achievement. However, drastic reductions in reported behavioral incidents - from 233 to 132 per school along with a 59% decrease in out-of-school suspensions district-wide - occurred when Cleveland's majority minority schools supported social and emotional learning, student support teams, and planning centers that replaced the suspension system with a learner-center approach between 2008-11.

Conclusion: AB 420 is a modest proposal to limit the use of out-of-school suspension and expulsion for minor offenses. *All teachers*, elementary and secondary, would still be able to suspend children from their classrooms for exhibiting “disruptive or willfully defiant” behavior for up to 2 days for any incident. Moreover, consistent with current law, administrators could still suspend children at the secondary level after other attempts to correct substantial misbehavior failed. Ultimately, signing AB 420 into law will translate into higher achievement and improved graduation rates for all children, but especially help the subgroups that are too often entirely excluded from school because of minor school code infractions.

In the face of more effective alternatives, allowing schools to suspend elementary school children for disruption/willful defiance perpetuates the use of educationally unjustifiable punishments. Besides cases of intentional discrimination, the frequent and disparate harm from an unsound policy or practice raises serious civil rights concerns - and possible violations of civil rights law. Not only is there no educational justification for the disproportionate impact on Black students and students with disabilities, but these disparities could be avoided if schools employed alternative responses in place of out-of-school suspension and expulsion, the harshest of punishments.

Finally, given the civil rights implications of frequently suspending these subgroups, we feel that objections to these proposed limits based on deference to local control are unjustified. Local control has historically been an obstacle to civil rights protections. In light of these profound racial disparities, we urge your signature on AB 420 as the state has a constitutional and statutory duty to ensure equal application of the law and equal educational opportunity for all children.

Signed,



Rev. Jesse L. Jackson, Sr.
Founder and President
Rainbow PUSH Coalition



Eva Paterson
President
Equal Justice Society



Cruz Reynoso
Professor of Law
UC Davis School of Law



Dolores Huerta
President
Dolores Huerta Foundation

Sherrilyn A. Ifill
President and Director-Counsel
NAACP Legal Defense and Educational Fund, Inc.

Dennis Parker
Director, Racial Justice Program
ACLU National

Abdi Soltani
Executive Director
ACLU of Northern California

Hector Villagra
Executive Director
ACLU of Southern California

John Jackson
President
Schott Foundation

Jennifer Rodriguez
Executive Director
Youth Law Center

Barbara R. Arwine
President and Executive Director
Lawyers' Committee for Civil Rights Under Law

Professor John C. Brittain
David A. Clarke School of Law
University of the District of Columbia

Dan Losen
Director, Center for Civil Rights Remedies
The Civil Rights Project at UCLA

Susan Henderson
Executive Director
Disability Rights Education and Defense Fund

Hernan Vera
President/CEO
Public Counsel Law Center

Thomas Saenz
President and General Counsel
MALDEF

Charles J. Ogletree, Jr.
Director, Charles Hamilton Houston Institute
for Race & Justice
Harvard Law School

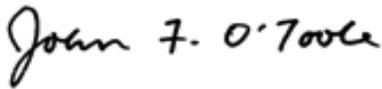
Marian Wright Edelman
President
Children's Defense Fund



Paula Pearlman
Executive Director
Disability Rights Legal Center



Stewart Koh
Co-Founder and President
Asian Pacific American Legal Center



John O'Toole
Director
National Center for Youth Law



Chris Edley, Jr.
Dean and Orrick Professor of Law, UC Berkeley
School of Law
Director, Chief Justice Earl Warren Institute on
Law and Social Policy

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ⁱ The grouping of offenses reported uses the categorization made available by the California Department of Education on their website (<http://data1.cde.ca.gov/dataquest/>) in the table entitled: "Suspension, Expulsion, and Truancy Report For 2011-12: Suspension by Federal Offense." The Violent Incident with Injury offense category includes the following California Education Code sections: 48915(c)(4) Sexual Battery/Assault; 48915(a)(1) Caused Physical Injury; 48915(a)(5) Committed Assault or Battery on a School Employee; 48900(a)(2) Used Force or Violence; 48900.3 Committed an act of Hate Violence; 48900(q) Hazing. The Weapons Possession Offense Category includes the following California Education Code sections: 48915(c)(1) Possession, Sale, Furnishing a Firearm; 48900(b) Possession, Sale, Furnishing a Firearm or Knife; 48915(c)(2) Brandishing a Knife; 48915(a)(2) Possession of a Knife or Dangerous Object; 48915(c)(5) Possession of an Explosive. The Illicit Drug Related Offense Category includes the following California Education Code sections: 48915(c)(3) Sale of Controlled Substance; 48915(a)(3) Possession of Controlled Substance; 48900(c) Possession, Use, Sale, or Furnishing a Controlled Substance, Alcohol, Intoxicant; 48900(d) Offering, Arranging, or Negotiating Sale of Controlled Substances, Alcohol, Intoxicants; 48900(j) Offering, Arranging, or Negotiating Sale of Drug Paraphernalia; 48900(p) Offering, Arranging, or Negotiating Sale of Soma. The Disruption/Willful Defiance Offense Category includes the following California Education Code section: 48900(k) Disruption/Defiance.

ⁱⁱ The size of the gap is derived by subtracting the rate of suspensions per 100 for Whites from the rate for Blacks.

ⁱⁱⁱ The Closing the School Discipline Gap: Research to Practice conference was held on January 10, 2013, at the Gallup Center in Washington, D.C., and was jointly sponsored by *Education Week*, Gallup, and the Equity Project at Indiana University. A draft of each paper can be found at www.civilrightsproject.ucla.edu.