

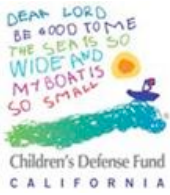


February 28, 2012

The Honorable Tom Torlakson  
State Superintendent of Public Instruction  
California Department of Education  
1430 N Street  
Sacramento, CA 95814



Re: Addressing the Excessive and Disproportionate Use of Suspension and Expulsion



Dear Superintendent Torlakson:

We write to you as community-based groups, anti-crime organizations, education activists, advocates for youth, public interest law firms, and civil rights organizations concerned about the overuse and disproportionate use of harsh disciplinary measures in California schools. We appreciate your recent statement raising awareness about the importance of common sense school discipline policies during the National Week of Action on School Discipline. We also applaud your recent request to all county superintendents to identify best practices, at the site and district levels, of behavioral intervention approaches and options used to minimize the number of suspensions and expulsions, and identifying the impact of these practices on minority students.



Another opportunity to engage on this critical issue is coming soon with the upcoming release of national and California data on suspension and expulsion rates by the U.S. Department of Education's Office for Civil Rights (OCR). We are requesting that you issue a public statement about this new data and take steps to help address both the **excessive and disproportionate** use of suspension and expulsion.



OCR previously issued similar data in 2006. It confirmed that students of color are disproportionately impacted by harsh school discipline policies. In California, for example, Black male (23%) and Hispanic male (11%) students were significantly more likely to receive out-of-school suspensions than white male students (9%) or white students in general (6%).<sup>i</sup> Other national data reveal that students with disabilities are suspended more than nondisabled students.<sup>ii</sup>



OCR's new suspension and expulsion data from California and the nation's largest school districts and their schools will be released soon. We anticipate that the 2012 release will show that excessive and disproportionate use of suspension and expulsion continues nationally and in California. (In 2013, OCR will release similar data for every district and every school in California and across the nation, and it plans to continue to release data from the largest school districts every other year.)



**Addressing this issue is critical because suspension and expulsion policies too often are used to “push out” students, especially students of color, and result in increased dropout rates, without any benefit to school safety or student achievement.** Students who are suspended or expelled are at greater risk of dropout than their peers and are more likely to repeat a grade. It is not a coincidence that graduation rates for Blacks and Hispanics are far lower than for white students in California.<sup>iii</sup> While disproportionate school discipline policies are by no means the sole cause of the dropout crisis, they are certainly a significant contributor.<sup>iv</sup> Research confirms that high rates of out-of-school suspensions correlate with lower achievement scores, even after controlling for race and poverty.<sup>v</sup>

Below is more detailed information about school discipline practices of concern to us, followed by recommendations for suggested actions that we believe would improve the use of school discipline in California schools, and result in improved academic achievement.

### **California’s Use of Suspensions and Expulsions is Excessive**

California’s annual suspension rate exceeds the national average.<sup>vi</sup> In 2009-2010, California schools issued over 750,000 suspensions.

Unfortunately, school discipline policies that emphasize harsh punishment often work to the detriment of students and fail to make schools any safer, given research showing that suspensions do not improve student behavior or school environments. Despite a general consensus among experts on this point, there has been a proliferation of ineffective and harsh discipline policies in response to extreme examples of school crime and violence.<sup>vii</sup> The use of suspension and expulsion nearly doubled between 1974 and 2006.<sup>viii</sup>

High-profile incidents of extreme violent crime on school campuses, though heavily covered in the press, are neither commonplace nor representative of the majority of discipline issues on California’s K-12 public school campuses. In fact, the majority of suspensions in California are not for violent offenses. Studies have shown that nationally, too often school discipline is directed at minor instances of misbehavior, such as not bringing the right items to class, using inappropriate language or other “insubordinate” acts that “call for a subjective judgment of such behavior” on the part of school personnel.<sup>ix</sup> Such behavior may be distracting or disruptive but falls short of a safety threat. According to recent unofficial data obtained from the California Department of Education (CDE), it is estimated that “disrupted school activities, or otherwise willfully defied” the authority of teachers, etc. (EC § 48900(k)) was identified as the most “severe” grounds for 42% of all suspensions in 2010-2011.<sup>x</sup>

### **School Discipline Policies Are Applied Disproportionately**

As noted above, the most recent OCR data revealed that students of color and those with disabilities are disproportionately affected by harsh school discipline policies. Research on why students of color are suspended and expelled in much greater numbers than white students reveals that students of color do not misbehave at greater rates than white students. Even when one controls for the socioeconomic status of the child, or other factors often correlated with race, significant disparities in the rates at which children of color are being suspended and expelled remain.<sup>xi</sup>

U.S. Secretary of Education Arne Duncan expressed his concern about racial disparities in school discipline, and joined Attorney General Eric Holder in announcing a joint Supportive School Discipline Initiative between their departments. One of the goals of the initiative is to “ensure that school discipline policies and practices comply with the nation’s civil rights laws.”<sup>xii</sup> California officials must similarly commit to initiatives that will affirmatively address disparities in discipline and the impact of push out on communities of color.

### **New Data Present Opportunity to Champion School Discipline Reform**

Given the above and the anticipated release of the upcoming data by OCR, your voice would add to the growing momentum for school discipline reform, both nationally and in California. The California Endowment and the California Teachers Association released a joint statement in 2011, published in the *San Diego Union Tribune*, in which they highlight the need for school discipline reform, specifically stating that “the rising rates of suspensions, expulsions and drop outs in California schools are cause for concern” and calling for strategies, such as teaching positive behavior, that reduce “the ‘school push out’ of boys of color due to disciplinary actions.”<sup>xiii</sup> Media attention on the subject grew in 2011, including op-eds published in the *Sacramento Bee*, *San Jose Mercury News*, and *Oakland Tribune*, and national coverage in the *New York Times* and *Washington Post*.<sup>xiv</sup>

### **What Can Be Done to Address the Problem**

- *Issue a statement on OCR Data.* Issue a statement commenting on the upcoming OCR data which characterizes the excessive and disproportionate use of suspensions and expulsion as a civil rights issue and clarifies the connection between discipline, the achievement gap and high dropout rates.
- *Ensure state collection and dissemination of better data and effective use by schools of state and federal data.* In order to meet the state's obligation to ensure equal educational opportunity and to meet its federal obligations regarding data collection and equal treatment of students, better data needs to be available at all levels. CDE should report more detailed suspension and expulsion data on DataQuest—including data disaggregated and cross tabulated by race/ethnicity, special education status, English learners (EL), socioeconomic status, and gender—and continue to do so every year. The grounds or basis for suspensions and expulsions should also be made available at the district, county and state level. Currently, the suspension and expulsion data found on DataQuest is not broken down by race/ethnicity and other factors and the grounds for suspensions/expulsions are only available at the site level. Data reports should be made publically available through DataQuest, or in some other fashion online, and in School Accountability Report Cards. Regular, comprehensive data will allow parents, state administrators and community advocates to monitor how schools and districts are progressing in improving their school climate and school discipline policies. Better, accessible data also will enable schools and districts to assess the impact of their own policies, measure results from policy improvements they implement, and develop accurate early warning systems to identify potential dropouts.
- *Promote the use of evidence-based schoolwide preventative programs to improve student behavior.* Districts need assistance from CDE to promote positive behavior as a

meaningful alternative to suspension and expulsion. CDE should provide technical support to districts by supporting and identifying the use of effective alternatives, like Positive Behavioral Interventions and Supports (PBIS). PBIS is a comprehensive system that employs school-level information about student behavioral and academic history to define and implement school-wide, classroom and individual-level systems of support and interventions aimed at improving social, emotional and academic success for all students. PBIS is already in use in many districts in California and across the nation and results in fewer suspensions, fewer office referrals, and an increase in the percentage of students scoring in the advanced and proficient range on state achievement tests.<sup>xv</sup>

- *Encourage schools to rely on alternative means of addressing discipline problems and use suspension and expulsion only as a last resort.* Send a letter to alert school superintendents about the OCR data, the excessive and disproportionate use of suspension and expulsion, and the value of pursuing alternative means to address discipline problems. Districts need to be held accountable through state oversight and initiative for ensuring that alternative, less restrictive discipline measures are taken before any child is suspended or expelled, as current law requires.
- *Require monitoring of school discipline policies by CDE.* Because the California data suggest that there are significant disparities in the rates of discipline for children of color, when compared to the general school population, CDE should take affirmative steps to both identify problem districts and provide support for the implementation of neutral practices at the district and school site level. The following steps should be considered as part of the State's response to this problem:
  - *On-Site Reviews for Educational Equity.* Education equity includes the right to stay in school, and not be subjected to discipline policies or practices that directly or indirectly discriminate against students of color. Data reflecting a disproportionate rate of suspension, expulsion or alternative education assignment on the basis of race, ethnicity, EL status or other relevant sub-groups should be included in the criteria for selection of school districts to undergo an on-site review under CDE's compliance monitoring procedures. California should modify its Educational Equity Monitoring Instrument to include relevant compliance items related to school discipline issues or develop some other mechanism for periodically reviewing discipline practices.
  - *Improve the Uniform Complaints Process.* CDE should review the current Uniform Complaints Process (5 CCR §§ 4600-4687) to see how it can be modified so that it is more accessible to parents and a more effective vehicle for addressing discriminatory discipline practices.
- *During consideration of reform of state mandates, ensure that due process protections for students who are being suspended or expelled are maintained,* including the county board of education appeal process for expulsions and providing transcripts of expulsion hearings necessary for appeals of mandatory expellable offenses.

- *Request a Special Hearing on School Discipline before the State Board of Education. The State Board of Education should hold a special hearing on school discipline with the goal of examining how the suspension and expulsion rates in California can be reduced.*
- *Request a foundation-funded study of school discipline policies.* Join with other state leaders to request a study, to be funded by The California Endowment and conducted by the Council of State Governments, to analyze the use of student discipline policies statewide, with a focus on these policies' impacts on students of color and on dropout rates and juvenile justice involvement. The Council of State Governments released a similar study of Texas in 2011, which received national attention.<sup>xvi</sup>

We will notify you as soon as we know when the data will be released and look forward to having the opportunity to share our analysis of the data with you and to meet with you to further discuss our concerns.

We look forward to working with you to improve school discipline policies, promote positive behavior, and stem the push out of so many California students, especially students of color.

Thank you for your consideration.

Sincerely,



Barrie Becker  
State Director, Fight Crime: Invest in Kids *California*



Laura Faer  
Education Rights Director, Public Counsel



Bill Koski  
Professor of Law; Director of Youth & Education Law Project, Stanford Law School\*



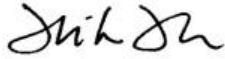
Susan Lee  
Director of Urban Peace, The Advancement Project



Ted Lempert  
President, Children Now



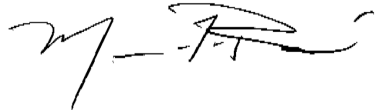
Francisco Lobaco  
Legislative Director, ACLU California Legislative Office



Michelle Newell  
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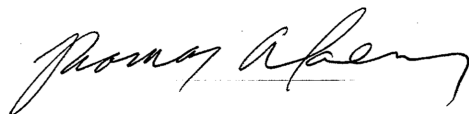
Maria Ramiu  
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Zoe Rawson & Manuel Criollo  
The Labor/Community Strategy Center



Cynthia Rice  
Director of Litigation Advocacy and Training, California Rural Legal Assistance



Thomas Saenz  
President and General Counsel, MALDEF



Shannan Wilber  
Executive Director, Legal Services for Children

\* For identification purposes only

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- <sup>i</sup> U.S. Department of Education Office for Civil Rights (2006). *Civil Rights Data Collection*. Retrieved on February 7, 2012 from [http://ocrdata.ed.gov/Projections\\_2006.aspx](http://ocrdata.ed.gov/Projections_2006.aspx).
- <sup>ii</sup> Data Accountability Center. (2008). *Individuals with Disabilities Education Act Data*. Retrieved February 7, 2012 from [https://www.ideadata.org/TABLES31ST/AR\\_5-15.htm](https://www.ideadata.org/TABLES31ST/AR_5-15.htm).
- <sup>iii</sup> Unless otherwise stated, all California student and discipline data references refer to data reports retrieved on February 7, 2012 from the California Department of Education DataQuest (2010). See <http://data1.cde.ca.gov/dataquest/>.
- <sup>iv</sup> A recent study of Texas students found that, for students with similar profiles, those who been involved in the school disciplinary system were five times more likely to drop out than those who had not been involved. The same study found that students with one or more suspensions or expulsions were six times more likely to repeat a grade level than students with no disciplinary actions. Conversely, research shows that high rates of out-of-school suspensions correlate with lower achievement scores, even after controlling for race and poverty. Fabelo, T., Thompson, M., Plotkin, M., Carmichael, D., Marchbanks, M.P., & Booth, E.A. (2011). *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement*. *Council of State Governments Justice Center*.
- <sup>v</sup> Losen, D. (2011). *Discipline Policies, Successful Schools, and Racial Justice*. *National Education Policy Center*.
- <sup>vi</sup> U.S. Department of Education Office for Civil Rights (2006). *Civil Rights Data Collection*, *supra*.
- <sup>vii</sup> Tate Vermeire, D. (2010). *Discipline in California Schools: Legal Requirements and Positive School Environments*. *ACLU of Northern California*.
- <sup>viii</sup> Fabelo, T., et al., *supra*.
- <sup>ix</sup> Losen, D., *supra*.
- <sup>x</sup> While official statewide data is not currently available, 2009-10 data for two school districts in California confirm that overreliance on EC § 48900(k) may be an issue statewide. DataQuest discipline reports show that Kern Union High School District had a total student enrollment of 37,928 with 13,916 suspensions during 2009-10. The district identified EC § 48900(k) (willful defiance) as the most severe grounds for 57% of its suspensions. The DataQuest discipline report for Clovis Unified reveals a total student enrollment of 38,002 with 5,279 suspensions during 2009-10. The district identified EC § 48900(k) (willful defiance) as the most severe grounds for 71% of its suspensions.
- <sup>xi</sup> Tate, D. (2008). *Schools for All Campaign: The School Bias & Pushout Problem*. *ACLU of Northern California*.
- <sup>xii</sup> U.S. Department of Education. (2011). *Secretary Duncan, Attorney General Holder Announce Effort to Respond to School-to-Prison Pipeline by Supporting Good Discipline Practices*. Retrieved on February 7, 2012 from <http://www.ed.gov/news/press-releases/secretary-duncan-attorney-general-holder-announce-effort-respond-school-prison-p>.
- <sup>xiii</sup> The California Endowment & California Teachers Association. (2011). *Creating Healthy Environments for California's Students*. Retrieved on February 7, 2012 from <http://www.calendow.org/Article.aspx?id=5959>.
- <sup>xiv</sup> Raymond, B. (2011, July 23). Viewpoints: Common-sense discipline needed in school. *The Sacramento Bee*; Braziel, R. (2011, August 1). Keeping kids in school works. *The Sacramento Bee*; Bunnett, D. (2011, October 22). It's time to rethink zero-tolerance suspensions as punishment in schools. *The Mercury News*; Stuhldreher, A. (2011, October 31). Start in early grades with strategies to avoid suspending students. *The Mercury News*; Ross, R. (2011, September 23). My Word: Rest of the state should emulate Oakland school innovation. *The Oakland Tribune*; Schwarz, A. (2011, July 19). School Discipline Study Raises Fresh Questions. *The New York Times*; St. George, D. (2011, July 18). Study shows wide varieties in discipline methods among very similar schools. *The Washington Post*.
- <sup>xv</sup> Bradshaw, C. (2008). *Using Positive Behavioral Interventions and Supports (PBIS) to Enhance the School Environment and Reduce Children's Disruptive Behavior Problems*. *John Hopkins Center for the Prevention of Youth Violence*.
- <sup>xvi</sup> Fabelo, T., et al., *supra*.