

April 8, 2020

The Honorable Gavin Newsom
Governor, State of California
State Capitol
Sacramento, CA 95814

Re: Support Students, Stop Expulsions!

Dear Governor Newsom:

Last September, you demonstrated great leadership by signing SB 419, a necessary reform that limits the negative impact of the school-to-prison pipeline. Today, we ask you to build on that leadership by issuing an executive order that places a moratorium on school expulsions.

Right now, every parent of a school-aged child is experiencing uncertainty about their child's future because of COVID-19. Students themselves don't know when they will be able to physically return to school and have been forced to adjust to a completely new and severely limited form of instruction. Parents and students alike don't know how this loss of instructional time will impact long-term educational and career opportunities. This precarious situation has certainly resulted in significant anxiety and mental anguish. This may be a new experience for many families, but it is all too familiar for the families we represent. We are a coalition of organizers, advocates, and attorneys who partner with and represent families who have been pushed out of schools. We respectfully request that you issue an order directing all school districts to withdraw any and all pending expulsion recommendations.

BACKGROUND: SCHOOL PUSH-OUT IS HARMFUL, DISCRIMINATORY, AND INEFFECTIVE

According to the United States Government Accountability Office (GAO), research conclusively establishes that "students who experience discipline that removes them from the classroom are more likely to repeat a grade, drop out of school, and become involved in the juvenile justice system."^[1] In other words, school push-out can drastically alter a young person's life trajectory.

To make matters worse, we know that already vulnerable students are the ones most likely to experience school push-out. Based on the GAO's analysis of discipline data collected by the U.S. Department of Education, Black students and students with disabilities are disproportionately disciplined in K-12 public schools.^[2] In addition, educators across the country know that LGBTQ, justice-involved, homeless and foster youth are also disproportionately disciplined.^[3]

Despite California's progressive reputation, the data demonstrates that our State is just as guilty as any other. According to the California Department of Education, in the 2018-19 school year, White students had an expulsion rate of 0.06%, but Black students had a rate over three times higher.[5] Moreover, homeless youth had an expulsion rate over twice the statewide average, and foster youth had an expulsion rate over four times higher than the statewide average.[6] National data also demonstrates that the more low-income Black students a school serves, the higher a students' risk of being suspended.[7]

While data is crucial, it fails to capture the lived experiences of families caught in the pipeline. As advocates, we know how upsetting school disciplinary proceedings can be. When parents advocate for their children to receive a second chance, they feel disrespected by the fact that their voices are often ignored. Many times, they had been pleading with school staff to offer their children more support, to no avail. Students often express to us that they feel like the person recommending them for expulsion never liked them and they were looking for a reason to push them out. Some students experience immense emotional pain during disciplinary proceedings, similarly upset about the fact that their principal will not give them a second chance. Although students are supposed to receive due process, we know that there is such deference to educators that students are presumed guilty when they walk into an expulsion hearing or manifestation determination meeting. As a result, advocates and attorneys feel compelled to step in by filing appeals with the County Offices of Education or the Office of Administrative Hearings, hoping that an independent agency will achieve a just result.

The school discipline system has roots in the 1950s and 60s, when schools were required to desegregate, so it is no surprise that the system has always produced discriminatory results.[8] While we understand that change takes time, we are also in a time of crisis and you have already taken incredible steps to place a moratorium on evictions and state debt collection. We now request that you take a similar action by issuing a moratorium on school expulsions.

RECOMMENDATION #1: ISSUE AN EXECUTIVE ORDER DIRECTING ALL SCHOOL DISTRICTS TO IMMEDIATELY WITHDRAW ANY PENDING EXPULSION RECOMMENDATIONS

We know your office is hard at work collaborating with educators and their representatives to respond to this crisis and to ensure that students continue receiving instruction. In that same spirit of collaboration, we request that you and your representatives also work directly with students, parents, and their advocates to make sure community voices are not ignored. Specifically, for the reasons below, we implore you to take immediate action against punitive discipline.

First and foremost, the well-being and mental health of students should take precedence over ineffective and discriminatory punitive discipline policies. Young people in this generation are experiencing higher rates of mental health and behavioral challenges, including anxieties, thoughts of and attempts of suicide, and depression.[9] This is no time to ignore such realities. According to the Los Angeles Times, calls to suicide hotlines have spiked as people are experiencing anxiety, stress, and isolation.[10] Additionally, many families are already suffering because of a loss of income, sick family members, and inequitable access to technology. It is clear that working families need compassion and stability during this crisis, not uncertainty. Issuing a ban on any new expulsions and a directive that all school districts withdraw any and all pending expulsion recommendations is one straightforward action you can take to relieve families of the stress associated with pending expulsion proceedings.

Second, there is simply no research-backed purpose to move forward with expulsions at this time, or ever. SB 419 was a great step towards effective disciplinary practices because it encourages school districts to use alternatives to expulsion, such as a research-based framework with strategies that improve behavioral and academic outcomes that are age appropriate and designed to address and correct a pupil's specific misbehavior.[11] Often, we hear educators tell families that they recommended a student for expulsion for safety reasons and to teach students about accountability, but there is absolutely no evidence supporting such conclusory justifications. That is especially true now because social distancing naturally limits student-to-student interactions, and thus resolves any student-related safety concerns. More importantly, SB 419 recommends the use of a Multi-Tiered System of Supports, which includes restorative justice practices, trauma-informed practices, social and emotional learning, and school-wide positive behavior interventions and supports that help students understand the impact of their actions and develop meaningful methods for repairing harm to their school community.[12] Using these alternative approaches is more likely to result in true accountability and community healing. Pushing students out of their school, especially in this moment, violates the intent of SB 419 and will only result in further distrust towards educators and disengagement from the learning process.

Third, it is becoming more apparent every day that unless action is taken now, several state agencies should expect mass filings from families for the foreseeable future. Specifically, the County Offices of Education will experience an uptick in expulsion appeals based on failures to comply with state and federal timelines, but also because of the inherent inequities in conducting video-conference hearings or postponing hearings to such a time that witness recall is unreliable. There is simply no way to afford clients with their due process rights in an expulsion hearing while conducting that hearing remotely and with limited access to student records. Similarly, the Special Education Division of the Office of Administrative Hearings can also expect a rise in due process complaints, many of which will be based on the misinterpretation of SB 117 by school district officials. As one example, SB 117 “encourages local educational agencies to respond as expeditiously as possible to [records and assessment] requests from parents or guardians received during the period of time a school is closed,” and we know many districts are honoring this language.[13] However, we also know that some school districts have either completely stopped communicating with families and their advocates, or have actively taken the position that they do not have to respond at all, even if they are capable of doing so. This inconsistent implementation of SB 117 is an invitation to legal challenges, which will predictably overwhelm our state agencies. For this reason, we also request that you advise all school districts to rescind any expulsions subject to an appeal to the County Office of Education.

RECOMMENDATION #2: ALLOW STUDENTS TO RETURN TO THEIR HOME DISTRICTS IF THE TERM OF THEIR EXPULSION ENDS DURING THE SCHOOL CLOSURES

When students are expelled from their districts, those expulsions last for a specified term, often one or two semesters. During that time, while attending a very small number of community schools, students must complete challenging “rehabilitation plans,” necessitating that they demonstrate near perfect school attendance, strong grades, and absolutely no behavioral infractions. If a student is late for class too often, swears at school, or is unable to pass a class, they may not complete their rehabilitation plan, making them unable to return to their home school. This is our current school discipline system, and it often results in students being kept out of their home school districts for years at a time.

The rehabilitation plan aspect of the discipline system is unfair and exacerbates an already biased system that harms our most vulnerable students. However, it could become even more unjust if school districts do not give students credit for the time they have been expelled during this time that our schools are closed. Students who are currently expelled need to be allowed to return to their home schools, regardless of their performance on their rehabilitation plans, if their expulsion terms were to end at any time during the school closure. Our school officials are interpreting already existing guidance in myriad different ways, and they need a clear directive from the State on this issue. Expelled students must be given credit for their rehabilitation plans during these school closures so they can return to their home schools when their classmates do.

SUPPORT STUDENTS, STOP EXPULSIONS!

Rather than postponing expulsion hearings until schools physically re-open, which will only prolong the fear and anxiety involved with such proceedings and increase the possibility of legal challenges in the future, we ask that you instead prohibit school districts from expelling any student that was already recommended for expulsion, or who will be recommended for expulsion as a result of actions before schools physically closed or actions that occur while schools are closed. We understand that you must balance the interests of several stakeholders at this moment and that some of your stakeholders may not support this recommendation, but we ask you to base your decision on all of the research that indicates that expulsions are ineffective, harmful to children and their families, and discriminatory. We also ask you to remind educators of the intent behind SB 419, which is to support students in times of need, rather than to push them away. Now more than ever, our young people and their families need comfort and support, and we should not allow social distancing to turn into social exclusion.

We are available to answer any questions you may have about this request and look forward to hearing from you. Please contact Oscar Lopez from the East Bay Community Law Center at olopez@ebclc.org if you have any questions. Thank you again for your leadership in supporting SB 419 and we hope you will continue to take bold steps against the school-to-prison pipeline.

Sincerely,

A Black Education Network
Alliance for Boys and Men of Color
Alliance for Children's Rights
American Civil Liberties Union-California
Bay Area Legal Aid
Center for Juvenile Law & Policy, Loyola Law School
Children's Defense Fund-CA
Community Asset Development Redefining Education (CADRE)
Dolores Huerta Foundation
East Bay Community Law Center
Education Trust-West
Equal Justice Society
Equity in School Discipline
Fathers and Families of San Joaquin
Law Foundation of Silicon Valley
Law Project of Los Angeles
Lawyers Committee for Civil Rights of the San Francisco Bay Area
Legal Services for Children
Our Family Coalition
Stanford Law School, Youth & Education Law Project
Youth Law Center
cc: Tony Thurmond, State Superintendent of Public Instruction

Senator Toni Atkins, President pro Tempore, California State Senate
Senator Connie M. Leyva, Chair, Senate Committee on Education
Senator Scott Wilk, Vice Chair, Senate Committee on Education
Assemblymember Anthony Rendon, Speaker of the Assembly, California State
Assembly
Assemblymember Patrick O' Donnell, Chair, Assembly Committee on Education
Assemblymember Kevin Kiley, Chair, Assembly Committee on Education

[1] *K-12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities*, March 2018, page 2.

[2] *Id.*

[3] *Id.* at page 29.

[4] *Id.* at page 10.

[5] California Department of Education,

<https://dq.cde.ca.gov/dataquest/dqCensus/DisExpRate.aspx?year=2018-19&aggllevel=State&cds=00> (last accessed April 5, 2020).

[6] California Department of Education,

<https://dq.cde.ca.gov/dataquest/dqCensus/DisExpRate.aspx?year=2018-19&aggllevel=State&cds=00> (last accessed April 5, 2020).

[7] Government Accountability Office, page 25.

[8] Lucy Harvey, *A Member of the Little Rock Nine Discusses Her Struggle to Attend Central High*, April 22, 2016, <https://www.smithsonianmag.com/smithsonian-institution/member-little-rock-nine-discusses-her-struggle-attend-central-high-180958870/>.

[9] Government Accountability Office, page 30.

[10] Brittny Mejia, *L.A. suicide hotline sees rise in coronavirus-related calls. Counselors feel the pain.*, April 5, 2020 (<https://www.latimes.com/california/story/2020-04-05/coronavirus-crisis-suicide-hotline-mental-health-counselor>)

[11] Cal. Ed. Code § 48900(v).

[12] Cal. Ed. Code § 48900(w)(2).

[13] Senate Bill 117, Section 8(d), 2019.