

The ESEA Can Ensure That Discipline Serves an Educational Mission

School discipline policy should protect the safety of the school community and promote a productive learning environment, yet questions abound about how best to achieve this goal: Intended to protect students, the “tough love” practice of zero tolerance in school discipline has contributed to large increases in the use of suspension and expulsion. Yet, recent examinations have raised serious questions about both the effectiveness and fairness of this approach.¹ According to the American Psychological Association, “There is no evidence that frequent reliance on removing misbehaving students improves school safety or student behavior.”² Research also refutes as myth the adage, “You must kick out the bad kids so the good kids can learn.” One Indiana study, for example, found that schools with higher suspension rates performed worse on state accountability tests, even when controlling for demographic differences in student enrollment.³

The increase in the use of out of school suspension over the last 35 years has been dramatic, especially for children of color: According to U.S. Department of Education’s (ED) 2006 Civil Rights Data Collection, 3.5 millions students, or nearly seven percent of all students enrolled in K-12 were suspended at least once.⁴ While the risk for suspension has risen for all subgroups since the 1970s, Black students have seen their suspension rates increase the most, rising 9 percentage points, from 6 percent in 1972, to over 15 percent in 2006.⁵

The millions of *suspensions* meted out each year dwarf *expulsions* and rarely involve serious violence, or unlawful drug or weapon possession. Serious offenses typically result in *expulsions* pursuant to federal and state requirements.⁶ ED’s 2006 survey reported 102,077 expulsions.⁷ In contrast, the majority of suspensions are for minor violations such as truancy, dress-code violations, inappropriate language or disruptive behavior.⁸

As suspension’s use has increased, many urban middle schools now *suspend over one fifth of their enrolled students each year*: A more in depth analysis of ED’s 2006 data, drawn from over 9,000 middle schools across the country, found an overall suspension rate of 11 percent.⁹ Across these same schools the Black male suspension rate averaged over 28 percent. In a subset of 18 large urban districts the analysis revealed that suspension rates averaged over 22 percent for all students and had increased in most between 2002 and 2006.¹⁰

Inappropriate zero tolerance policies may also be contributing to rising expulsion rates: While strong responses to dangerous and illegal behavior are warranted, evidence also suggests a rise in the inappropriate use of expulsion for minor offenses.¹¹ In the worst cases, minor school issues are transformed by rigid policies and practices into expulsions, and can even result in arrest and prosecution.¹² For example, a Colorado law mandates expulsion if a student is suspended three times during a school year for causing a “material and substantial disruption.”¹³

Lost instructional time from discipline contributes to the risk of dropping out of school and winding up in jail:¹⁴ According to a Johns Hopkins study, the typical ninth grader who went to prison had previously attended school only 58 percent of the time, failed at least one quarter of their classes, and read at a sixth grade level at the end of 8th grade. Two thirds had been suspended at least once in eighth grade.¹⁵

Public reporting on the use of suspension and expulsion is seriously deficient. The Safe and Drug Free Schools and Communities Act only requires public reporting of suspensions and expulsions for the most serious offenses.¹⁶ ED's school and district level data collection covering all suspensions and expulsions can be disaggregated by race with gender, and by EL and disability status, is reported to the public, but is only available every other year, and covers less than half of the nation's schools and districts.¹⁷ Universal public reporting requirements pursuant to the IDEA include annual reporting on *all* suspensions of one day or more, and on the incidence and duration of suspensions, with analysis of disaggregated suspension and expulsion data, but only covers students with disabilities, and does not provide school or district level data.¹⁸

The ESEA should require *annual* public reporting of disaggregated data on school discipline based on the improved OCR data collection. Although it remains biennial and covers less than half of the schools and districts in the nation, the 2010 expanded collection will report on in and out-of-school suspensions, on the duration of discipline, and on school based arrests and referrals to law enforcement agencies. Parents have a right to know whether high percentages of students are being removed from school for disciplinary reasons, and whether students are missing large amounts of instructional time as a result. Therefore, the ESEA should require annual and public reporting at the school and district level by at least the data categories now collected by OCR.

School-wide positive behavioral supports (SWPBS) show great promise for improving school climate and achievement and deserve support in the ESEA: These programs reduce suspensions by adopting a system of school-wide positive behavioral supports.¹⁹ Schools that have implemented SWPBS have been shown to reduce disciplinary referrals while improving safety and achievement. IDEA enables districts to receive grants to adopt systemic positive behavioral interventions designed to reduce disciplinary referrals.²⁰ Legislative efforts to expand this type of assistance (currently underway) should be seriously considered as part of the ESEA's reauthorization.²¹ Moreover support for SWPBS as a transformation model for the lowest achieving schools is also found in *Race to the Top* and State Fiscal Stabilization Funds.²²

The questionable use of suspensions should trigger interventions: A school or district that annually suspends more than one fifth of their student body, or any subgroup therein should be considered for a constructive systemic intervention such as SWPBS. Research has suggested that these interventions are particularly beneficial at the middle school level as well as sustainable over time.²³ Finally, ESEA should provide incentives, to states, districts and schools that make substantial progress in lowering suspensions and expulsions through the development of positive alternatives.

¹ American Psychological Association Zero Tolerance Task Force. "Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations." *American Psychologist* 63 (2008): 852-862. ; R. J. Skiba & M. K. Rausch, "Zero Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness," in C. M. Evertson & C. S. Weinstein (eds.) *Handbook for Classroom Management: Research, Practice, and Contemporary Issues* (pp. 1063-1089). (Mahwah, NJ: Lawrence Erlbaum Associates, 2006).

² American Psychological Association Zero Tolerance Task Force, *Id.*

³ R. Skiba & M. Rausch, "Zero Tolerance, Suspension and Expulsion: Questions of Equity and Effectiveness," in C.M. Everston & C.S. Weinstein (eds.), *Handbook of Classroom Management: Research, Practice, and Contemporary Issues*, (Mahwah, NJ: Lawrence Erlbaum Associates, 2006).

⁴ 2006 Civil Rights Data Collection projects values for the nation based on a survey of over one third of the nation's districts at 3, 328,754 students suspended at least one time. This is an *unduplicated headcount* which means that if a student was repeatedly suspended they were only counted once.

⁵ See Daniel J. Losen & Russ Skiba, *Suspended Education: Middle Schools in Crisis*, (2010 in Press) (Report to be released as companion to a report by the Southern Poverty Law Center detailing effective interventions to replace zero tolerance practices). All the data were reported by the U.S. Department of Education's Office for Civil Rights. The 1972-73 data were taken from the Children's Defense Fund of the Washington Research Project, *School Suspensions: Are They Helping Children?* app. B (1975); the 1988 data are from the Office for Civil Rights' Time Series CD-Rom. 2006 Data came from OCR's 2006 civil rights data collection.

⁶ The Gun Free Schools Act requires expulsion for possession of a firearm. 20 U.S.C. 8921 et seq. (2009). Most states have state "zero tolerance" laws requiring expulsion for weapons or illegal drugs. See the Advancement Project, *Education on Lockdown: The Schoolhouse to Jailhouse Track*, (2005) available at <http://www.advancementproject.org/reports/FIANLEOLrep.pdf>

⁷ Possession of unlawful drugs or firearms elicit a mandatory expulsion of one year according to the Safe and Drug Free Schools and Communities Act.

⁸ Russell Skiba, et al. (2006). "Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations," American Psychological Association (APA) Zero Tolerance Task Force; See also, A. J. Imich, "Exclusions from School: Current Trends and Issues," *Educational Research* 36 (1), (1994): 3-11. ; S.C. Kaeser, "Suspensions in School Discipline," *Education and Urban Society* 11 (1979): 465-484. ; C. Morgan-D'Atrio, J. Northrup, L. LaFleur, & S. Spera, "Toward Prescriptive Alternatives to Suspensions: A Preliminary Evaluation," *Behavioral Disorders* 21 (1996): 190-200. ; L.M. Raffaele Mendez & H.M. Knoff, "Who Gets Suspended from School and Why: A Demographic Analysis of Schools and Disciplinary Infractions in a Large School District," *Education and Treatment of Children*, 26 (2003): 30-51. In an analysis of out-of-school suspensions in a single state, Rausch and Skiba (2004a) reported that "only 5 percent of all out-of-school suspensions were issued for disciplinary incidents that are typically considered serious or dangerous, such as possession of weapons or drugs. The remaining 95 percent of suspensions fell into two categories: disruptive behavior and other." *Excerpt from Losen & Skiba, Suspended Education: Middle Schools in Crisis*. (pending publication 2010).

⁹ See *Suspended Education* supra note 5.

¹⁰ *Id.*

¹¹ See e.g., Advancement Project, Report, *How Zero Tolerance and High Stakes Testing Funnel Youth into the School-to Prison Pipeline*, at page 14 (citing for example that according to Akron Ohio school code a student may be expelled for being late to class, having cigarettes, or uttering profanity) (2010).

<http://www.advancementproject.org/sites/default/files/publications/01-EducationReport-2009v8-HiRes.pdf>

¹² *Id.*

¹³ Col.Rev. State Sec. 22-33-106 (1)(c.5)(II)(2008).

¹⁴ L. Lochner & E. Moretti, "The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self Reports," *The American Economic Review*, 94 (1) (2004): 155-189. ; R. Freeman, "Why Do So Many Young American Men Commit Crimes and What Might We Do About It?" *Journal of Economic Perspectives*, 10(1) 1996): 25 - 42.

¹⁵ R. Balfanz, et al., "High Poverty Secondary Schools and the Juvenile Justice System," in Wald & Losen (eds.) *Deconstruction the School to Prison Pipeline*, 77-78 (Jossey Bass: 2003).

¹⁶ The Safe and Drug Free Schools and Communities provisions of the ESEA (Title IV Part A Se 4112 (c)(3)(ii)) requires that States provide information on a school-by-school basis on: truancy rates; the

frequency, seriousness, and incidence of violence and drug-related offenses resulting in suspensions and expulsions in elementary schools and secondary schools in the State.

¹⁷ Even with the requisite protections against revealing personally identifiable information, a great deal of information that could be reported is not because reporting is not required of every school and district every year. Given the high frequency of suspension in some grades and schools, disaggregated data could be reported to the public at the district, grade, and school levels without violating student privacy.

¹⁸ See 20 U.S.C. Sec. 1418(a).

¹⁹ Research on SWPBS in elementary schools in Hawaii and Illinois indicated improvements in the proportion of third graders meeting or exceeding state reading assessments. Robert H. Horner, et al, "A Randomized Wait-List Controlled Effectiveness Trial Assessing School-Wide Positive Behavior Support in Elementary Schools," 11 J. POSITIVE BEHAVIOR INTERVENTIONS 133 (2009). Similarly, another randomized control trial found that implementation of PBS in elementary schools was related to (a) reduction in office disciplinary referrals, (b) reduction in suspensions, and (c) improved fifth grade academic performance: Catherine P. Bradshaw, et al, *Examining the Effects of School-Wide Positive Behavioral Interventions and Supports on Student Outcomes: Results from a Randomized Controlled Effectiveness Trial in Elementary Schools*, 0 J. POSITIVE BEHAVIOR INTERVENTIONS 1098300709334798 (April 2009). Further, a study of 28 K-12 schools and early childhood programs indicated that implementation of PBS resulted in a reduction of 6,010 office discipline referrals and 1,032 suspensions, with middle and high schools experiencing the most benefit. These reductions helped recover 864 days of teaching, 1,701 days of learning, and 571 days of leadership. Implementation was associated with academic gains in math for the vast majority of schools who implemented with fidelity. Improvements in reading/language arts were less pervasive. Howard S. Muscott, et al, *Positive Behavioral Interventions and Supports in New Hampshire: Effects of Large-Scale Implementation of Schoolwide Positive Behavior Support on Student Discipline and Academic Achievement*, 10 J. POSITIVE BEHAVIOR INTERVENTIONS 190 (2008).

²⁰ See 20 USC §§ 1461 -1466.

²¹ See HR 2597 The Positive Behavior for Safe and Effective Schools Act.; and S 2111 introduced by then Senator Obama. (110th Congress). In *Race to the Top* Compulsory Criterion (E), "Turning around the Lowest Achieving Schools," ED asks states to support LEAs' school-turnaround efforts through several possible reform models, including the "transformation model"

²² US DEP'T OF EDUC., RACE TO THE TOP: APPLICATION FOR INITIAL FUNDING, 45, 71-74 (2009) ED cites these programs as an example of a transformation model that states can include in their applications for both *Race to the Top* and Phase II State Fiscal Stabilization Funds, 74 Fed. Reg. 58436, 58488 (Nov. 12, 2009).

²³ Results of first cohort of 28 K-12 schools and early childhood programs implementing school-wide Positive Behavior Support as part of state initiative indicate that the overwhelming majority of schools were able to implement schoolwide positive behavioral interventions and supports with fidelity within two years and to sustain implementation over the course of the following year. Howard S. Muscott et al, *Positive Behavioral Interventions and Supports in New Hampshire: Effects of Large-Scale Implementation of Schoolwide Positive Behavior Support on Student Discipline and Academic Achievement*, 10 J. POSITIVE BEHAVIOR INTERVENTIONS 190 (2008).