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December 19, 2012

The Honorable Richard Durbin
United States Senate
Chair

Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
711 Hart Senate Building
Washington, D.C. 20510

Dear Senator Durbin:

We are writing to provide the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights with the views of the Anti-Defamation League (ADL) as part of the Subcommittee's December 12 hearing, Ending the School-to-Prison Pipeline. We would ask that this statement be included as part of the briefing record.

ADL is a leading civil rights organization that has been working to secure justice and fair treatment for all since its founding in 1913. As part of that mission, ADL has a long and proud history of supporting quality public education for all. ADL believes that harsh disciplinary policies in schools that lead to out-of-school suspensions and expulsions for even minor infractions of school conduct codes undermine the goal of quality public education for all.

When schools suspend or expel students, those students are more likely to drop out of school and ultimately become incarcerated. A student who has been suspended from school is more than three times more likely to drop out in the first two years of high school than a student who has never been suspended.¹ Students who drop out of school have more difficulty finding gainful employment and ultimately are more likely to become involved with the criminal justice system. One study found that rates of incarceration for young adults who dropped out of high school were more than 63 times higher than rates of incarceration for young adults with college degrees.²

Even when students do not drop out of school, school disciplinary procedures that remove students from classrooms and take them away from valuable learning time impede academic success. In a study about how time out of school affects students' academic performance, researchers found that third graders' reading and math state exam scores were three percent lower when students missed five academic school days because of snow-related school closings than when the school had no closings during the academic year.³ It is unsurprising, then, that when students spend days out of the classroom due to out-of-school suspensions or expulsions their academic performance suffers. A comprehensive study in Texas found that nearly one third of students who were suspended one or more times had to repeat a grade at least once.⁴ Research has shown that schools that have high rates of suspensions and expulsions perform less well academically than schools that use those discipline methods less, even when controlling for socioeconomic status and demographics.⁵

¹ Schott Foundation for Public Education, The Urgency of Now: The Schott 50 State Report on Public Education and Black Males 2012, 32 (2012), available at <http://blackboysreport.org/urgency-of-now.pdf>.

² Andrew Sum, et. al., The Consequences of Dropping Out of High School: Joblessness and Jailing for High School Dropouts and the High Cost for Taxpayers (Oct. 2009), available at http://www.northeastern.edu/clms/wp-content/uploads/The_Consequences_of_Dropping_Out_of_High_School.pdf.

³ The Urgency of Now at 31.

⁴ In contrast, only one in 20 students who were not disciplined had to repeat a grade. Tony Fabelo, et. al., Breaking School Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement, Justice Center the Council of State Governments, 56 (July 2011).

⁵ See, e.g., American Psychological Association Zero Tolerance Task Force, Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations, 854 (Dec. 2008), available at <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>.

Harsh school discipline policies disproportionately impact students of color, students with disabilities, and students who identify as lesbian, gay, bisexual or transgender (LGBT). During the 2009-10 school year, nationally nearly one in every six black students received at least one out-of-school suspension, compared with one in twenty white students.⁶ Students with disabilities are almost twice as likely to be suspended from school as nondisabled students.⁷ For black male students with disabilities the statistics are astounding. In one county in Virginia, almost 92 percent of black male students with disabilities were suspended from school at least once during the 2009-10 academic year.⁸ Additionally, studies have found that LGBT youth are much more likely than their heterosexual peers to be suspended or expelled.⁹

To be sure, schools have a duty to maintain a safe environment and a right to discipline students whose actions impede others' ability to learn. Many of the out-of-school suspensions and expulsions, however, are for minor school conduct code infractions. One student, for example, was suspended because her school uniform shirt became untucked.¹⁰ Another was suspended for violating the school's no cell phone policy to talk to his mother who was stationed in Iraq.¹¹ Zero tolerance policies that suspend or expel students for minor infractions and take them away from valuable time in the classroom do not lead to better learning environments. To the contrary, they harm millions of students each year and exacerbate educational inequities in public schooling.

Some alternatives to zero tolerance policies have been very successful in reducing students' contact with the criminal justice system, decreasing crime in schools, and improving graduation rates. In Clayton County, Georgia, juvenile court Judge Steven Teske pioneered a program that, instead of immediately sending students to court for minor misdemeanors, gave students warnings for first minor offenses, referrals to mediation or workshops for second offenses, and referrals to the juvenile court system only after the third offense. The program resulted not only in a drastic reduction in the number of school referrals to the juvenile court system, but also an 80 percent drop in serious weapons offenses on school campuses and a more than twenty percent increase in graduation rates over a period of seven years.¹² Programs seeking to replicate Clayton County's program in other jurisdictions have met with similar success.

We urge Congress to provide funding for programs like the one in Clayton County that use alternatives to zero tolerance policies and to study whether those programs could be replicated nationally. We further ask that Congress encourage the Department of Education to highlight Clayton County's program as a model program for other schools.

⁶ The Urgency of Now at 32.

⁷ Motoko Rich, Suspensions Are Higher For Disabled Students, Federal Data Indicate, The New York Times, A10 (Aug. 7, 2012).

⁸ Id.

⁹ Katherine E.W. Himmelstein & Hannah Bruckner, Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study, Official Journal of the American Academy of Pediatrics (Dec. 6, 2010), available at <http://pediatrics.aappublications.org/content/early/2010/12/06/peds.2009-2306>.

¹⁰ Texas Kids Suspended for Untucked Shirts, ABC News (Oct. 4, 2012), <http://abcnews.go.com/GMA/story?id=124717&page=1#.UMtN2G9IV2A>.

¹¹ Cell-Phone Student Back At School After Suspension, CNN (May 9, 2005), http://articles.cnn.com/2005-05-09/us/student.cellphone_1_cell-phone-ban-phone-on-school-grounds-cell-phone?_s=PM:US.

¹² Donna St. George, Judge Steven Teske Seeks to Keep Kids With Minor Problems Out of Court, The Washington Post (Oct. 17, 2011), http://articles.washingtonpost.com/2011-10-17/lifestyle/35280676_1_school-discipline-student-discipline-russell-skiba.

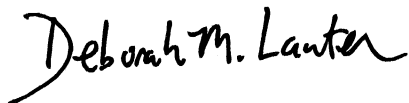
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The Department of Education's Office for Civil Rights (OCR) recently enhanced the capability of the Civil Rights Data Collection instrument to include statistics, broken down by race and ethnicity, regarding disciplinary methods for both students with disabilities and nondisabled students.¹³ Congress should ask the Department of Education to ensure that this data collection includes information not only about students' race and ethnicity, but also students' religion, national origin and sexual orientation. Furthermore, Congress should ask that the Department of Education make the results of the Civil Rights Data Collection readily available to the public.

Finally, OCR's mission is to "ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights."¹⁴ To that end, OCR conducts compliance reviews of schools and provides technical assistance to help schools comply with civil rights laws. OCR's website, however, fails to provide guidance to schools regarding suspensions, expulsions, or school discipline in general. It also fails to provide easily accessible information about its specific compliance reviews of schools and the outcomes of those reviews. We urge Congress to request that OCR alter its website to make that information easily accessible to schools and other interested viewers.

We commend the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights for holding the first hearing of its kind to address the school-to-prison pipeline. The extensive use of out-of-school suspensions and expulsions, which too often target students of color, those with disabilities, and LGBT youth harm not only those students directly affected but also undermine the goals of justice and fair treatment for all of society.

Sincerely,



Deborah M. Lauter
Director, Civil Rights

¹³ See Office For Civil Rights: Civil Rights Data Collection, <http://www2.ed.gov/about/offices/list/ocr/data.html>.

¹⁴ Office for Civil Rights: Overview of the Agency, <http://www2.ed.gov/about/offices/list/ocr/index.html>.