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## INTRODUCTION

Every day throughout the United States, children are being shut out of the education system through the application of Zero Tolerance Policies. These policies require that children in kindergarten through 12<sup>th</sup> grade receive harsh punishments, often for minor infractions that pose no threat to safety, and yet cause them and their families severe hardship.<sup>1</sup> A strong body of compelling research indicates that these “get-tough” disciplinary measures often fail to meet sound educational principles and, in many cases, their application simply defies commonsense. More alarming than the punishment meted out in schools is the tracking of children into the juvenile justice system for minor misconduct in school. Often African-American, Latino, and disabled children bear the brunt of the consequences of these policies. Policymakers, educators, and parents should be very concerned with the long-term implications of denying educational opportunities to millions of children, particularly when the effectiveness of these policies in ensuring school safety is highly suspect.

School safety is a critically important issue. Recent tragedies have heightened the public’s fear and led to legitimate calls for stronger preventive measures. However, we must remember that “schools remain one of the safest places for children and youth.”<sup>2</sup> Yet, the evidence gathered in this Report makes clear that efforts to address guns, drugs, and other truly dangerous school situations have spun totally out of control, sweeping up millions of schoolchildren who pose no threat to safety into a net of exclusion from educational opportunities and into criminal prosecution.

In a move to reduce the incidents of violence in public schools, several state legislatures, and subsequently Congress,<sup>3</sup> passed laws implementing school disciplinary sanctions that became known as “Zero Tolerance Policies.” These laws originally focused on truly dangerous and criminal behavior by students, requiring mandatory expulsion for possession of guns on school property. Many states later extended these laws to include other weapons and possession or use of drugs. School districts throughout the country quickly expanded Zero Tolerance Policies to include many more types of behavior and, significantly, to cover infractions that pose little or no safety concerns. Some of these policies employ sweeping interpretations of the federal law by including violations not intended to be covered by the laws. Aspirin, Midol, and even Certs have been treated as drugs, and paper clips, nail files, and scissors have been considered weapons. Other policies apply the theory of “Zero Tolerance” to a broad range of student actions that have absolutely no connection to violence and drugs. (Appendix I is a compilation of summaries of new stories demonstrating the evolution of Zero Tolerance.) For example, last year Maryland schools (not including Baltimore City, the largest district) suspended 44,000 students for the non-violent offenses of “disobeying rules,” “insubordination,” and “disruption.”

In the strictest sense, these policies provide nondiscretionary punishment guidelines.<sup>4</sup> However, they have become much more. Zero Tolerance has become a philosophy that has permeated our schools; it employs a brutally strict disciplinary model that embraces harsh punishment over education. As a result of this approach to discipline, students are losing out on

educational opportunities. Case studies of middle schools in Miami-Dade County, contained in this Report, demonstrate that where the zero tolerance philosophy is invoked, regardless of incidences of crime and violence, suspension rates are higher. The Report also indicates that even where schools experience repeated violations of codes of conduct, they can successfully employ solutions other than suspensions and expulsions. Of greater concern, this Report indicates that children are not only being treated like criminals in school, but many are being shunted into the criminal justice system as schools have begun to rely heavily upon law enforcement officials to punish students.

School districts throughout the country are experiencing intense pressure to “keep learning in and trouble out.”<sup>5</sup> This pressure explains the comments made recently by Thomas Payzant, Superintendent of Boston Public Schools, justifying the suspension of a student for writing a horror story assigned by the teacher. “While school officials may not have the right answer, they have to err on the side of caution.... Maybe in the context of three or four years ago there wouldn’t have been concern that embedded in this piece is perhaps a threat.”<sup>6</sup> Pedro Noguera, Professor of Education at the University of California, Berkeley, writes that these measures are “premised on the notion that violence in school can be reduced and controlled by identifying, apprehending and excluding violent or potentially violent individuals.”<sup>7</sup>

Yet, even in these fearful times, reasonable steps to protect students from guns, violence, and illegal drugs in their schools can be taken without resulting in the mass exclusion of American children from the educational process, which Zero Tolerance Policies are exacting. This Report will highlight schools that are pursuing an alternative route to school safety. Recognizing that the vast majority of suspensions involve behaviors related to the interpersonal dynamics within the school, these schools are focusing on creating climates that facilitate “greater connections between adults and students.”<sup>8</sup> Rather than concentrate on weeding out students who pose problems, they believe that most behaviors that might warrant exclusion from school can be prevented if students perceive themselves as valued and respected members of a larger community that nurtures strong relationships between school adults and students, sets high behavioral and academic standards, and values fairness and consistency. In other words, their efforts are geared toward eliminating certain behaviors, rather than the students themselves. Parents, students, activists, and policymakers should encourage school systems to adopt these positive and effective strategies.

A zero tolerance story from the state of Mississippi exemplifies the extremely harsh disciplinary approach used in many school systems and the increasing invocation of the criminal justice system for minor school behavioral issues. At the beginning of this school year, students on a school bus were playfully throwing peanuts at one another. A peanut accidentally hit the white female bus driver, who immediately pulled over to call the police. After the police arrived, the bus was diverted to the courthouse, where children were questioned. Five African-American males, ages 17 and 18, were then arrested for felony assault, which carries a maximum penalty of five years in prison. The Sheriff commented to one newspaper, “[T]his time it was peanuts, but if we don’t get a handle on it, the next time it could be bodies.”<sup>9</sup> The young men lost their bus privileges and suspension was recommended. As a result of the assistance of an

attorney and community pressure, the criminal charges were dismissed. However, all five young men, who were juniors and seniors, dropped out of school because they lacked transportation to travel the 30 miles to their school in this poor, rural county in the Mississippi Delta. The impact of the punishment was underscored by one of the young men who stated, "I [would have] gone to college.... Maybe I could have been a lawyer." This story may be incredulous, but it is true; it epitomizes the recent overreaction to non-violent childish behavior, and the impact of senseless punishment.

### **"TAKE NO PRISONERS" DISCIPLINE**

Districts throughout the country have adopted a "take no prisoners" attitude toward discipline. As a result, more than 3.1 million students were suspended during the 1998 school year; another 87,000 were expelled.<sup>10</sup> Although record-keeping and data availability on suspensions and expulsions is inadequate and inconsistent, the numbers that are available paint an extremely troubling picture. Last year, in Jefferson County, Florida, a small, predominantly black school district, 43 % of the high school students and 31 % of middle school students were suspended at least once.<sup>11</sup> In Wisconsin, suspensions have increased 34% since 1991-92; 25.5% of African-American males and 19.75% of Native American males were suspended during the 1997-98 school year.<sup>12</sup> Chicago Public Schools have experienced a dramatic increase in the number of expulsions -- an increase from 14 in 1992-93 to 737 in 1998-99.<sup>13</sup> African-American students represent 73% of those expelled but only 53% of student enrollment; Latino students represent 20% of students expelled.<sup>14</sup> Despite this disturbing situation in Chicago, the school district set a goal of expelling even more students during the 1999-2000 school year, bringing the number up to 1,500 students.<sup>15</sup> In Florida, 3,831 students were referred to the Juvenile Justice system for conduct in school.<sup>16</sup> The exclusion of students from the educational process is a crisis of epidemic proportions; it has long-term implications not only for the students affected, but also for our society as a whole.

Statistics on the high number of students discarded from educational institutions do not fully tell the story of Zero Tolerance. These arbitrary, harsh rules are zealously applied to expel and suspend students -- some as young as four years old -- for trivial misconduct and innocent mistakes. While some of the most absurd of these stories have received media attention, thousands of others have not been exposed. The following is a sampling of reports from attorneys, advocates, and parents around the country that demonstrate the senselessness of zero tolerance and how these policies criminalize children.<sup>17</sup>

- A six year-old African-American child was suspended for ten days for bringing a toenail clipper to school. A school board member said, "This is not about a toenail clipper! This is about the attachments on the toenail clipper!" (Harrisburg, PA)<sup>18</sup>
- A kindergarten boy in Pennsylvania was suspended for bringing a toy ax to school as part of his Halloween costume.<sup>19</sup>

- A 14-year-old boy mistakenly left a pocketknife in his book bag after a Boy Scout camping trip. At his hearing, the boy's Scout Master testified on the boy's behalf. The student was expelled under the district's Zero Tolerance Policy, which requires expulsion for possession of knives. As a result of an appeal by Legal Aid Society of Greater Cincinnati, the student was readmitted to school, but had already missed 80 days of school. (OH)
- A 4<sup>th</sup> grade ten-year-old African-American girl was charged with defiance of authority for failing to participate in a class assignment. She was suspended for three days. Soon thereafter, she was charged with "defiance of authority" for humming and tapping on her desk. She was again suspended for three days. She was subsequently suspended for five days for "defiance of authority" for talking back to her teacher and for "drug-related activity," namely, wearing one pants leg up, although there was no indication of any drug involvement. She was recommended for alternative school. The alternative school could not accept her because the alternative education system provides instruction for grades 5-12 only. The School District promoted her, despite her failing grades, in order to get her out of the mainstream school. Requests for a due process hearing have been denied. (MS)
- An African-American 9<sup>th</sup> grader was expelled for one year from a predominantly white school district and sent to an alternative school because she had sparklers in her book bag. She had used them over the weekend and forgot they were in her bag. (East Baton Rouge Parish, LA)
- An African-American male 7<sup>th</sup> grader bet a schoolmate on the outcome of a school basketball game. The schoolmate, who lost the bet, accused the boy of threatening him for payment. The school district conducted no investigation and instead notified law enforcement officials. The 7<sup>th</sup> grader was charged with felony extortion and expelled. (San Francisco, CA)
- A 10<sup>th</sup> grade honors student, who was President of the Black Student Union, was expelled for assaulting a teacher during a fight. The student had been continually harassed by a white student. On this occasion, the two girls argued and as the black student walked away, the white student hit the black student. A fight then ensued, and in attempting to break up the fight, a teacher was hit. Despite witness statements that the assault on the teacher was an accident, the black student was expelled. The student had never been suspended prior to this incident and had no record of behavioral problems. (Dublin, CA)
- Five African-American female students, who were best friends, were suspended five days for fighting. Only two of the girls actually fought; the three others attempted to break up the fight. The five made-up later that day. In addition to the five day suspensions, three of them were kicked off the cheerleaders' squad

(and cannot try out again for 2 years), two were not permitted to play on the girls' basketball team, and none were allowed to run for homecoming court. Further, after their suspensions were served, the girls were required to appear in Youth Court where they were fined \$150 - \$200, given 40 - 80 hours community service, placed on curfew for six months, and assigned to probation for one year. The girls had no prior suspensions or record of behavioral problems. (Prentiss, MS)

- A four-year-old African-American child was suspended for one day because he allegedly pushed and shoved his classmates on the playground. The kindergartner's mother complained that she was not notified of this behavior and thus was not given an opportunity to correct his behavior.<sup>20</sup>
- On his way to school, an African-American male (5<sup>th</sup> grader) was shown two razor blades by a classmate who stated that she planned to use the blades to hurt two girls who were bullying her. The male student took the blades from his classmate and hid them in order to prevent a potential tragedy. Another student notified school officials that the boy had hidden the blades. Although the boy took steps to ensure the safety of others, he was suspended from school for one year. The District refused a request for a due process hearing. During that year, he was provided with no alternative education. As a result, he was required to repeat the fifth grade. (Winona, MS)
- An African-American honors student attending school in a predominantly white school district was suspended from school indefinitely for fighting. This was her first disciplinary referral. (SC)
- Recently, during a white substitute teacher's attempts to maintain discipline in a classroom, a fifteen-year-old African-American female told the teacher "I'm going to whip you." The child was expelled for the remainder of the school year and charged with assault. (Under Florida criminal codes, Fl. St. §784.081, assault against school personnel is a first degree misdemeanor.) (Quincy, FL)
- Under a Zero Tolerance Policy, an Ohio school district recommended expelling a 7<sup>th</sup> grade student for allegedly sniffing white-out that she was using in class. The student denied the allegation. Legal Aid Society of Greater Cincinnati verified with drug experts that white-out is not a drug. The student was ultimately suspended for nine days; her school records indicate suspension for drug abuse. (OH)
- An African-American high school student was referred for expulsion for assaulting a teacher. The teacher was hit accidentally while breaking up a fight between two students. (Both students were arrested.) Based on the allegation that the student assaulted the teacher, despite any evidence that it was intentional, the student remained out of school for three months. As a result of an appeal to

the school board and support from the NAACP, the District agreed to permit the student to return to the Adult High School. (Flagler County, FL)

In addition to these accounts, there have been many other stories in the media demonstrating overreaction of school administrators to children's behavior. The stories about suspension and expulsions for sharing Midol, asthma medication (in an emergency), and cough drops with classmates, and bringing toy guns, nail clippers, and scissors to school are not anomalies; these incidents happen every day. In some instances, school districts have interpreted the law to encompass these items under the definitions of drugs and weapons, even when all involved concede that the students intended no harm.

### **THE COLOR OF ZERO TOLERANCE**

Racial disparities in the application of school disciplinary policies have long-been documented.<sup>21</sup> The disparities are quite troubling. Most recent data from the Department of Education indicates that while African-American children only represent 17% of public school enrollment nationally, they constitute 32% of out-of-school suspensions. White students, 63% of enrollment, represent only 50% of suspensions and 50% of expulsions.<sup>22</sup> A recent study by the Applied Research Center shows that black children, particularly black males, are disciplined more often and more severely than any other minority group.<sup>23</sup> In fact, the U.S. Department of Education's report, *The Condition of Education 1997*, reveals that almost 25% of all African-American male students were suspended at least once over a four-year period. These statistics by themselves do not prove intentional discrimination, but they suggest that such discrimination may be widespread. And, regardless whether the disparities are intentional or unintentional, the numbers are nonetheless alarming.

Zero Tolerance Policies are more likely to exist in predominantly black and Latino school districts. During the 1996-97 school year, these districts were more likely to have policies addressing violence (85%), firearms (97%), other weapons (94%), and drugs (92%) than white school districts (71%, 92%, 88%, and 83%, respectively).<sup>24</sup> This disparity in the adoption of Zero Tolerance Policies may also account for some of the racial disparities, at least on a national level, in disciplinary actions taken.

Information on the types of conduct for which students of color are disciplined, when combined with the statistical disparities, produces stronger evidence for inferring discrimination. For example, in South Carolina, while black children represent only 42% of public school enrollment, they constitute 61% of the children charged with a disciplinary code violation.<sup>25</sup> In addition to representing a disproportionate share of disciplinary actions for serious offenses, black children in South Carolina were more likely than their white counterparts to be disciplined for minor acts of misconduct, such as possession of a pager or disturbing order (i.e. loitering, disturbing peace, interfering or disturbing in any way with education). Indeed, while black and white children were charged in equal proportions for weapon violations and white students had much higher drug charges, the discipline of black students soared in the most subjective categories, where the school official's determination that an infraction occurred may be tainted

with bias or stereotypes.

### **South Carolina Student Misconduct by Race<sup>26</sup>**

<u>Conduct</u>	<u>Percent charged - Black</u>	<u>Percent charged - White</u>
Disturbing Schools	69%	29%
Pager	59%	40%
Weapons	49%	49%
Drugs	32%	65%
Assault	71%	27%
Threatening School Official	69%	29%

In South Carolina, the consequences for the more minor offense of “Disturbing Schools,” with which black children were overwhelmingly charged, are still serious. Of the children charged with “Disturbing Schools,” 70% were referred to a law enforcement agency, 72% were referred for suspension, and 21% were referred for expulsion.<sup>27</sup>

Attorneys representing students in the disciplinary cases who were interviewed for this Report state that in their experience, African-American and Latino children are more likely to be referred for disciplinary action and to be disciplined. In addition, these students are more likely to be disciplined for minor misconduct and to receive punishments disproportionate to their conduct.<sup>28</sup> Attorneys also report that African-American and Latino children tend to be suspended for the more discretionary offenses, such as “defiance of authority” and “disrespect of authority.” These categories of conduct clearly provide more latitude for racial bias to play a part in the use of disciplinary measures. Attorneys and community groups assert that school personnel rely upon racial and ethnic stereotypes in taking disciplinary actions. One attorney reported that she has often heard teachers comment about the size of black children accused of assault or battery.

The continuing pattern of racial disparities in school discipline is an issue that cannot be ignored. Regardless of whether intentional discrimination is the cause of the disproportionate suspension and expulsion of black and Latino children, the statistics are quite troubling. More research is needed to determine the cause of the disparities. In addition, the Department of Education’s Office for Civil Rights, which is entrusted with enforcement of Title VI, and the United States Commission on Civil Rights should vigorously investigate these disparities. It is imperative that innovative solutions to this problem be implemented. Our society cannot afford to leave any one segment of our population behind.

### **IMPACT ON CHILDREN WITH SPECIAL NEEDS**

Zero Tolerance Policies are also having a profound impact on children with special

needs. In 1997, the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.*, was amended to ensure that a child would not be punished for behavior that was a characteristic of the child's disability. Although federal law provides this protection for special education students, school officials often unfairly discipline children with disabilities. For example:

- An autistic child hit a teacher. The child was expelled and charged with battery, which is a third degree felony. (Escambia County, FL)
- A ten-year-old child with a severe case of Attention Deficit Disorder was talking on the school bus and was told by the bus aide to be quiet or a written report would be filed. The child kicked the aide; he was arrested and charged with battery. (FL)

The amended IDEA provides extensive procedural protections for children with disabilities to ensure that under appropriate circumstances the impact of their disabilities are considered in meting out punishment, but in many circumstances, school officials are clearly ignoring the law. Furthermore, parents and students often are unaware of their rights or unable to enforce them. A more detailed analysis of the legal rights of students with disabilities is set out in the legal protections section below and in Appendix II.

#### **PSYCHOLOGICAL IMPACT OF EXCLUSIONARY DISCIPLINARY POLITICS: A DEVELOPMENTAL PROSPECTIVE**

*When parents, teachers, principals, and others convey to the child that we want you, like you, and would like to have you in this school and this classroom, but there are certain things we expect of you, the response is often miraculous.*<sup>29</sup>

James Comer and Alvin Poussaint, *Raising Black Children*

Zero tolerance policies inherently conflict with prescriptions for healthy child development. They are designed primarily to punish and offer few opportunities for instruction or help for students. They frequently fall into the category of overly harsh punishments that, in the words of noted psychologists James Comer and Alvin Poussaint, “either destroys a child’s spirit, has no effect at all, worsens the problem, or makes it more difficult for you to work with the child in school – he or she no longer trusts you.”<sup>30</sup>

According to many leading psychologists, rigid and inflexible discipline policies directly conflict with two major developmental needs of school-aged youths:

- 1) the development of strong and trusting relationships with key adults in their lives, particularly those in their school; and
- 2) the formation of positive attitudes toward fairness and justice.

As a result, these policies often further alienate students from school and exacerbate the behaviors they seek to remedy. This damage is particularly acute for children who are already considered “at-risk” for school failure and often has the effect of pushing them out of school completely.

### **The Conflict Between Zero Tolerance and the Need for Adolescents to Develop Strong Bonds With Adults**

Gil Noam, Professor of Education and Psychology at Harvard University, has written that a relationship with a committed and encouraging adult who “believes in me and my future” has “proven to be an essential ingredient in most resilient children and youth who succeed despite great adversity.”<sup>31</sup> He cites research that indicates supportive relationships between adults and children that provide individual attention to high-risk youth have been shown to be central to prevention programs.

Psychologist James Comer bases his successful schools for at-risk youth on the premise that children succeed in school and life when they “become bonded to the significant adults in their lives, they identify with them, imitate their behavior, and internalize their attitudes, values, and ways. Adequate development in social, psychological, emotional, ethical, language, and cognitive areas is critical for future academic learning. A child whose development meshes with the mainstream values encountered at school will be prepared to achieve at the level of his or her ability, fostering further development. A bond develops between the child and the teacher, who now joins in supporting the overall development of the child.” Comer, in a book co-authored by renowned child psychologist Alvin Poussaint, stresses the importance of using discipline “not as a punishment or a means of control, but as a way to help a child solve a problem, develop inner controls and learn better ways of expressing feelings.”<sup>32</sup>

The liberal use of suspension as a punishment for students already at-risk for failure in school is particularly problematic. Russ Skiba, Director of the Institute for Child Study at Indiana University, and Reece Peterson, Vice President of the National Council for Children with Behavioral Disorders, maintain that “for an adolescent at-risk for anti-social behavior ... suspension may simply accelerate the course of delinquency by providing a troubled youth with little parental supervision and more opportunities to socialize with deviant peers.”<sup>33</sup> Agreeing with this assessment, Irwin Hyman, Professor of School Psychology at Temple University, states that “it is patently absurd to use suspension as a punishment for truancy or class cutting, as it simply forces such children to do what they want to do anyway.”<sup>34</sup>

As Comer and Poussaint suggest, exclusionary punishments actually intensify certain adolescents’ conflicts with adults. Sue Thorson, Assistant Professor of Special Education at the University of Maine, quotes one student as saying: “I figure if I’m going to get in trouble, I’m gonna annoy him as much as I can.... He deserves it, if he’s gonna keep singling me out, so I get on his nerves.... If you know you’re already getting in trouble, why shut up?”<sup>35</sup> This reaction appears to be particularly common among African-American children, particularly males. Brenda Townsend, Associate Professor of Special Education at University of South Florida

argues that when the majority of school suspensions and expulsions are meted out to a minority of the school population, those students are likely to interpret the disparity as rejection and, as a result, develop a collective, self-fulfilling belief that they are incapable of abiding by schools' social and behavioral codes.<sup>36</sup> Susan Black, education research consultant, notes that, "these kids often interpret suspension as a one-way ticket out of school – a message of rejection that alienates them from ever returning to school."<sup>37</sup> This may explain why so many students are suspended repeatedly, and why, according to Lawrence M. DeRidder, being suspended or expelled is one of the top three school-related reasons for dropping out.<sup>38</sup>

### **The Conflict Between Zero Tolerance and the Need for Adolescents to Develop Healthy Attitudes Toward Justice and Fairness**

Most suspensions and expulsions take place at the middle and high school level, when many adolescents are acutely tuned into issues related to fairness and justice. M. Lee Manning, Professor at Old Dominion University in Norfolk, has written that developing "a sense of justice, a perception of fairness, and an overall sense of how people should be treated"<sup>39</sup> is one of the three major developmental characteristics of young adolescents.

This does not mean that adolescents do not recognize the need for punishment. However, they display a heightened sensitivity to situations where they believe the punishment may not be warranted and seem to crave individualized discipline. Sue Thorson observed that the students she interviewed "cried out for liberation from rote enforcement and standard procedures.... While they fully understood that, in certain instances, punishment was not only necessary, but desirable, they also believed that good educational practices and honest communication would avert many situations and solve some problems without the need for punishment."<sup>40</sup>

Thus, by subjecting students to automatic punishments that do not take into account extenuating or mitigating circumstances, zero tolerance policies represent, in Gil Noam's words, a "lost moment to teach children about respect, and a missed chance to inspire their trust of authority figures."<sup>41</sup> And Manning suggests that such negative lessons, if learned during this critical developmental phase, are likely to last a lifetime.

Ultimately, to succeed, at-risk youth need to develop strong bonds with caring and compassionate adults whom they can trust. They require individualized discipline that takes into account their unique circumstances. As a consequence, their chances for developing essential resiliency skills and positive attitudes about adult authority, justice, and fairness are greatly enhanced. Unfortunately, zero tolerance policies that prescribe automatic and/or harsh punishments undermine the ability of teachers and administrators to form trusting relationships with students, and ultimately, these policies transmit negative messages about fairness, equity, and justice. As a result, many students are further alienated from the educational process, and behavioral problems meant to be remedied are, instead, exacerbated.

## ZERO TOLERANCE: IS IT WORTH IT?

Zero Tolerance Policies have high costs for children, families, and communities. The consequences are varied and in many cases they are long-term and detrimental.

### Loss of Educational Opportunities

Zero Tolerance Policies inherently result in the loss of children's educational opportunities. Children punished under these policies are faced with short- or long-term deprivation of education. Clearly, this consequence does not further the interests of the children involved or their communities.

In most situations, suspensions have negative consequences on academic performance. Children suspended may receive failing grades in each class for every day they miss during the suspension.. Students complain that during suspensions their teachers do not provide assignments so they may keep up with their schoolwork; consequently, they fall behind. Students repeatedly suspended may be retained in their grades.<sup>42</sup> This, of course, can lead to the child's alienation from the educational process, hostility on the part of the child, and eventually to dropping out. In fact, suspension is a moderate to strong predictor of a student dropping out of school; more than 30% of sophomores who drop out have been suspended.<sup>43</sup> Beyond dropping out, children shut out from the education system are more likely to engage in conduct detrimental to the safety of their families and communities.<sup>44</sup> The ultimate result is that Zero Tolerance Policies create a downward-spiral in the lives of these children, which ultimately may lead to long-term incarceration.<sup>45</sup>

- As a result of the “assault with a peanut” incident (see above), all five young men lost their right to ride the District’s school buses. Because they are from low-income families that do not have transportation, all five ultimately dropped out of school. One of the young men stated, “I didn't have a choice -- I didn't have a ride.” This young man, who earned A-grades in his favorite subject, math, wanted to graduate. He stated, “I [would have] gone to college. Maybe I could have been a lawyer.” Reportedly, the other young men are simply “hanging out,” at risk of getting into trouble.
- The child suspended for one year for hiding razor blades in order to ensure the safety of others, (see above), is returning to school this year. Although his mother has tried to help him at home during this year suspension, he will be forced to repeat the fifth grade.
- In two similar stories involving alleged assaults against teachers who attempted to break up fights (see above), students involved were out of school for extended periods. The Dublin, California student explained that it was quite difficult to keep up with her schoolwork and that teachers were not helpful; however, she

managed. Despite a request for class assignments, the student in Flagler County, Florida, did not receive any school assignments during her three months out of school.

### **Alternative Education**

In many States, alternative education programs are available to suspended or expelled students. Whether alternative education is discretionary or mandatory varies state-by-state. As shown in Appendix III, 11 States require, by law, that school districts establish some type of alternative education program although they may not require that all students be allowed to attend. In the remainder of States, it is within the discretion of school districts to provide alternative education. Unfortunately, many alternative schools are no more than holding pens for children considered to be troublemakers. Students attending those schools are mistreated and denied adequate instruction, thus exacerbating issues of alienation, hostility, and low academic performance.

- Students at a Mississippi alternative school meet their bus in front of the local police department, where they are disciplined by police officers, if necessary. One student at this school is in a class with much older students in higher grade levels; some of these older students bully her daily. Furthermore, she does not receive instruction from her teachers. Teachers merely act as monitors. They provide worksheets and grade them but do not explain the work. The student's only positive comment was that she likes the fact that the school day at the alternative ends much earlier than at the regular school. In another alternative school, children indicate that they watch videos all day and learn nothing.

With the burgeoning number of children being suspended and expelled, there is clearly a need for high quality alternative education programs. For many students, these programs provide their last chance to receive an education. Some alternative education programs do provide an adequate education and provide much needed services to the at-risk population they serve. These schools clearly have a role to play in ensuring that these students are not deprived of educational opportunities. To date, little research has been conducted regarding alternative school programs. More information is needed in order to more accurately assess the quality of education being provided to students in these schools. Clearly, the academic standards for alternative schools should mirror those of regular schools, and resources should be equally allocated to these schools. Under-educating this growing population of students is an ill-advised strategy for dealing with disciplinary problems.

### **Criminalization of Children**

The increase in criminal charges filed against children for in-school behavior has been one of the most detrimental effects of Zero Tolerance Policies. Students are often subjected to criminal or juvenile delinquency charges for conduct that poses no serious danger to the safety of others. What was once considered a schoolyard scuffle can now land a student in juvenile court

or, even worse, in prison. In some instances this occurs regardless of age, intent, circumstances, severity of the act, or harm caused.

In many instances, school districts are simply transferring their disciplinary authority to law enforcement officials. For example, in the case of the child who bet on a game with a schoolmate, school officials conducted no investigation but simply referred the situation to the police. The five young men throwing peanuts on the school bus in Mississippi were arrested and charged with felony assault. An 11-year-old child in Columbia, South Carolina was arrested and taken away in a police car because she brought a knife to school in her lunch box to cut her chicken.<sup>46</sup> Recently, in Virginia two 10-year-old Latino boys faced felony charges for putting soap in their teacher's water -- an act that used to be considered a prank.<sup>47</sup>

### **Required Referral to Law Enforcement**

As indicated in Appendix IV, 41 States require schools to report students to law enforcement agencies for various conduct committed in school. Although most of the categories of offenses that require reporting to law enforcement agencies appear reasonable, evidence suggests that the application of the laws may be problematic. By enacting referral requirements and failing to monitor their implementation, these States have, perhaps unintentionally, set off an explosion in the criminalization of children for understandable mistakes or ordinary childhood behavior.

For example, assault is a common category of conduct for which schools are required to report students to law enforcement agencies. This category of offense is often broadly interpreted by school districts to refer students involved in fights to law enforcement agencies, regardless of severity. In Jefferson Davis County, Mississippi, the School Board has interpreted "aggravated assault," for which children must be referred to law enforcement, to include all fist fights, despite the legal requirement of "serious bodily injury." The severity of the fight is not taken into account. As a result of sweeping and often erroneous interpretations of these laws, vast numbers of children are caught up in the juvenile justice system for typical adolescent behavior.

Furthermore, referrals of schoolchildren to law enforcement agencies often occur in the absence of violence. Data from South Carolina indicates that even those students accused of "Disturbing Schools" are referred to law enforcement agencies. During the 1998-99 school year, more than 3,000 students were referred to law enforcement for this reason. In Maryland, school districts may refer students to law enforcement agencies for the first incident of possession of a paging device; the second offense requires referral to law enforcement. (See Appendix IV.) There is no support for the proposition that this treatment of children positively affects their behavior or their futures. Given the increasingly harsh way in which juveniles are being treated in the criminal justice system, we need to consider whether it is really in the child's -- or the community's -- interest to embroil these students in the judicial system for behavior that would have been handled exclusively by schools in the past.

The growing involvement of law enforcement agencies in the discipline of students for nonviolent conduct in school raises several concerns about students' rights. In many instances, students are arrested and taken from school without prior notification to parents. Consequently, students may be detained and questioned without understanding their legal rights. There is additional concern that statements made by accused students to school officials may later be used against them, without prior warning, in criminal or juvenile delinquency cases.

In addition to the increasing criminal charges filed against children, in many jurisdictions students are brought before juvenile courts. Typically, these students are charged with juvenile delinquency or "child in need of supervision." For example, in Jefferson Davis and Covington Counties in Mississippi, students involved in fights, regardless of the severity, are not only suspended but also summoned to appear in Youth Court. In March of this year, 47 students from Jefferson Davis County, 45 of whom are African-American, appeared in Youth Court for fighting. The punishment meted out by the court depended on the grade level of the student. Students were fined \$150-\$500, given six months to one year on probation, placed on curfew (6 p.m. or 7 p.m.), and required to perform 40 to 80 hours of community service. The court conducts these hearings twice per month. It is estimated that since October 1999, 200 students from Jefferson Davis County were sent to Youth Court for in-school conduct. In most instances, suspension was a sufficient punishment for what was no more than an altercation, posing no serious threat to safety.

### **ZERO TOLERANCE DOES NOT WORK**

The philosophy of Zero Tolerance has infiltrated our society on many levels. In New York City, Baltimore, and other large cities, politicians seeking to woo voters with their "tough on crime" agendas have used Zero Tolerance as a popular sound bite. Similarly, politicians and educators seeking to respond immediately to public outrage over tragic school shootings have adopted the Zero Tolerance Philosophy. Unfortunately, political expediency has won over functional policy. The philosophy is adopted with the purposes of providing a sense of security, weeding out "troublemakers," or ridding schools of under-achievers. Most Americans may agree with a Zero Tolerance policy directed at students carrying drugs and guns to school, but the Zero Tolerance Philosophy is not so limited; it is applied to a broad range of conduct. It has become a philosophy of how to deal with children – extending to conduct typical of adolescents. This "law and order" approach to education has detrimental implications for students and has not been shown to translate into greater safety for students and faculty.

There is little evidence that Zero Tolerance Policies are working to reduce violence or increase safety in our schools. Russ Skiba, Professor at Indiana University, indicates that the best gauge of its impact is documented in the National Center for Education Statistics (NCES) study of school violence.<sup>48</sup> After four years of implementation, the NCES found that schools that use Zero Tolerance Policies are still less safe than those without such policies.<sup>49</sup>

Moreover, claims of success from schools must be viewed critically. Some schools point to reduced expulsions in concurrent years to claim that zero tolerance is successful. Such

statistics ignore the fact that many expelled students attend alternative schools, drop out, or are incarcerated and do not necessarily return as better citizens for their experience. Along the same lines, suspension rates may be artificially reduced by making suspensions longer, particularly because some students tend to be punished repeatedly. Success must be judged by looking at child victimization rates both in and out of school. Where violence rates among youth continue to rise outside of schools, expulsion and suspension reductions from year to year do not equal greater safety for children.

## **CASE STUDIES ILLUSTRATING THE PHILOSOPHY OF ZERO TOLERANCE**

To move beyond the statistics and anecdotes and to obtain a glimpse of what is happening at the school level, Advancement Project staff conducted research on the disciplinary systems of four middle schools in Miami-Dade County Public School District. Miami-Dade schools were chosen for several reasons. First, there was a wealth of information and data readily accessible about these schools via the Internet. Second, all schools within the Miami-Dade School District are subject to the same code of conduct. Third, the student body and teaching/administrative staffs are multiracial. The factors taken into account in choosing the schools included out-of-school suspension rates, percentage of students of color, and/or percentage of children eligible for free or reduced lunch.<sup>50</sup> Two of the schools chosen have comparatively low suspension rates, while two have a much higher number of suspensions.

We interviewed principals and other administrative staff, questioning each principal about her or his philosophy regarding discipline and how that is communicated to staff. In addition, we asked administrators to discuss the circumstances under which they utilize their powers to suspend or expel as well as in-school suspension programs, counseling programs, school environment, and teacher/staff training regarding classroom management. Finally, we made additional inquiries regarding the most common infraction of the code of conduct and obstacles to reducing disruptive behavior. The goals were (1) to discern whether the philosophy of principals, who are the chief officers of schools, correlated to suspension rates, and (2) to better understand what other factors may be responsible for wide discrepancies in discipline.

Although these case studies represent a limited sample, the patterns revealed are quite stark and suggest the need for further research along these lines. The cases indicate that discipline philosophy determines outcomes; strict disciplinarians who believe in harsh punishments will have higher suspension and expulsion rates. However, strict discipline and harsh punishments do not necessarily translate into effective discipline. Research about safe and inclusive schools stresses the importance of the principal in setting the disciplinary tone for the school. (See next section.) Although schools may be subject to the same district-wide disciplinary code, the philosophy of the principal in many instances determines how these policies are actually applied. As a result, schools in the same district, serving similar student bodies, can have dramatically different suspension and expulsion rates, and students may receive widely varying punishments for the same offenses.

These case studies also demonstrate how the varying attitudes and philosophies of principals can impact disciplinary procedures and outcomes. While the principal's philosophy may not be the only factor influencing suspension rates, it is significant. Where the principals and administrators have adopted zero tolerance for misbehavior, suspension rates are higher. In contrast, schools where principals believe in finding other ways to deal with misbehavior have lower suspension rates. The discretionary provisions of the student code of conduct then become the vehicle through which principals may exercise their philosophical differences.

Additionally, the following describes the other general trends the research detected.

- In schools where the principal has set the standard that no child should be suspended, except under extreme circumstances, teachers are less apt to refer a child for suspension for minor misconduct. Under these circumstances, teachers understand that their recommendations for suspensions are unlikely to be upheld by the principal.
- Boredom and lack of academic challenge increases the likelihood of disruptive behavior. Almost all the administrators agreed that if students are challenged academically, they are less likely to engage in disruptive behavior in the classroom. One principal asserted, "if teachers would learn how to teach," suspension rates would be lower. A teacher in another school stated, "if you keep them busy, they're good." In fact, even the brightest students, one principal explained, get in to trouble when they get bored. Thus, in schools that lack resources such as highly qualified teachers, textbooks, supplemental instructional materials, computers, and other resources, it is probable that students may be more prone to engage in misconduct.
- Additional support resources are needed in public schools to ensure meaningful educational opportunities for all students. Many administrators complained that more counselors are needed. The student-to-counselor ratio at each of the schools examined is very high. Counselors are allotted on the basis of enrollment; however, where schools have more at-risk students additional counselors are needed.
- Teachers need to be trained in classroom management and conflict resolution. Of the four schools studied, only one provides this type of professional development training. Because teachers are the first link to the disciplinary process, they should be equipped to deal with behavioral problems using innovative strategies that do not shut out students for typical adolescent misbehavior. Additionally, schools must recognize that it is not always the student who is at fault, and that often there is an overreaction to adolescent behavior.
- Schools should monitor disciplinary referrals by teachers to ensure fair application of disciplinary codes. Monitoring may expose problems such as poor

classroom management, discriminatory treatment, or singling out of particular children. Where teachers overuse disciplinary referrals, additional training should be provided. As a result, students will not be singled out, and they will ultimately have faith that the system of punishment is just.

### **Miami-Dade County Public Schools Code of Student Conduct**

The Secondary School Code of Student Conduct,<sup>51</sup> which also applies to middle schools, is a 35-page booklet given to students in an effort to make the rules clear and understandable. The Code details why a code is needed; the roles, rights, and responsibilities of students, parents, and teachers; and the disciplinary actions that may be taken for a wide array of conduct. The Code begins with a statement, “Zero Tolerance for School Related Violent Crime.” This policy statement explains that the District has Zero Tolerance for violence, crime, and use of weapons, and that such offenses require the District to “invoke the most severe consequences.”<sup>52</sup>

Additional relevant portions of the Code of Student Conduct, which describe the District's philosophy regarding discipline, are included below.

A good school environment is best thought of as:

- being positive, not negative
- helping, not punishing
- turning unacceptable conduct into acceptable conduct.

Order and discipline may be described as the absence of distractions, frictions and disturbances which interfere with the effective functioning of the student, the class, and the school. It is also the presence of a safe, friendly, yet businesslike atmosphere in which students and school personnel work cooperatively toward mutually recognized and accepted goals.<sup>53</sup>

A major consideration in the application of the Code is that the most appropriate disciplinary action taken by school officials is the least extreme measure which can resolve the discipline problem. Teachers and administrators strive to use a variety of informal disciplinary or guidance strategies, prior to, during, and after formal disciplinary action.<sup>54</sup>

### **Miami-Dade County Case Studies**

As the summaries below make clear, these guidelines are interpreted very differently by the principals in the four middle schools profiled. (See Appendix VI for school profiles.)

	<b>Black/Latino Students</b>	<b>Out-of-School Suspension Rate*</b>	<b>In-School Suspension Rate*</b>
G.W. Carver	63%	2.8%	0.003%
Palm Springs	94%	3.4%	19.6%
Madison	98%	16.2%	6.8%
North Dade	94%	34.1%	42.3%

\*The suspension rates represent the percentage of students suspended at least once.

### **G.W. Carver Middle School**

**Philosophy:** Carver’s principal, Ms. Simine Heise, opposes the use of suspensions and communicates this to her assistant principals and staff. Her philosophy is that teachers and administrators are in schools to educate -- not punish. She believes that suspensions are counterproductive and thus should be used only as a last resort. Principal Heise recognizes that suspensions permanently mar a student’s record and stay with the child even after she or he has long since matured and modified her or his behavior. Thus, she believes such punishment is unfair and detrimental to a student's progress and future.

Prior to her current appointment, Heise participated in an executive training program in the District, where she served as principal of two other schools. Those schools had significant numbers of at-risk children, many instances of violations of the Code of Student Conduct, and high suspension rates. The assistant principals at these schools were vigorous enforcers of the code and readily suspended students. Despite the differences from Carver, Heise employed the philosophy she has today. Heise informed assistant principals at these schools that they were not to suspend children during her tenure. Although the assistant principals complained that they often could not reach parents to discuss students' behavior, and therefore needed to resort to suspension, Heise believed that was the exact reason why those students should not be thrown out of school. She believed that doing so would leave them on the streets and lead to more trouble and possible incarceration.

G.W. Carver has the lowest suspension rate for middle schools in the Miami-Dade School System. In 1998-99, only 2.8% of students were suspended. Although G.W. Carver has fewer incidents of violence than the other schools reviewed, there are still incidents of misconduct. The most frequent reasons students are referred for disciplinary action are fights and cutting class. While the Code of Student Conduct permits ten-day suspensions for fights, the Carver Administration uses its discretion to employ other punishments permitted under the Code of Conduct. For fights and cutting class, G.W. Carver students receive one to three days of in-school suspensions (which is typically reduced) or are given a work assignment, such as cleaning the cafeteria. Supervised work assignments and in-school suspension are the most common punishments used at G.W. Carver. These punishments uphold the ideal that disciplining children

should not prevail over educating them.

Principal Heise strongly believes that children who are challenged academically and engaged by teachers are less apt to misbehave. Teachers at Carver are encouraged to be innovative. For example, during our visit a science teacher was designing a scavenger hunt using Internet links that would teach children about various types of fish. Another science teacher engages her students by growing a vegetable garden, which, in addition to teaching science, develops students' sense of responsibility and self-pride. Another teacher commented, "if you keep them busy, they're good." In addition, Heise noted that parental involvement was as an important factor in maintaining a low number of disciplinary infractions.

### **Palm Springs Middle School**

**Philosophy:** Dr. Allan Bonilla's philosophy is that every student must feel like she or he is part of the school. No child should be neglected or disregarded. Principal Bonilla will not put kids on the street, but instead insists that the school work with them. Teachers at Palm Springs Middle School know Bonilla's philosophy is to go to great lengths to meet the needs of kids and that he does not want many students referred to him for disciplinary reasons.

Bonilla has served as Principal of Palm Springs Middle School for eleven years. When he began his tenure at Palm Springs, the school had a poor reputation. It had low attendance rates, high grade retention rates, low morale, and a considerable gang problem. At the time, teachers wanted nothing to do with "have nots." Bonilla instilled in staff that every child should feel cared for and wanted. The School's attendance has improved dramatically: in 1989, it was ranked 36th in the District, but by 1998 it claimed the #1 position for attendance in the District. Bonilla made agreements with several of the students who had been retained – there were several students as old as 17-years old who were still in the middle school – to promote them if they improved their grades and conduct. Students kept their end of the bargain; as a result, in his first year as Principal, Bonilla awarded fifty administrative promotions. To quell gang activity, Bonilla reached out to gang members. For example, every morning Bonilla stood on the corner where gang members gathered. He spoke to them, listened to their concerns, remained accessible and as a result, gained their respect and trust. To this day, Bonilla spends the two hours of lunch period in the cafeteria, so that he can interact with students. For his successful efforts to turn Palm Springs Middle School around, Bonilla was named Dade County's Principal of the Year in 1994.

Although misconduct still occurs (though much less frequently), Bonilla takes an approach different from some of his colleagues. Palm Springs' out-of-school suspension rate is now down to 3.4% of students. The most frequent infraction of the Student Code of Conduct at Palm Springs is fighting. Although the District's Code of Conduct permits out-of-school suspension for fighting, students at Palm Springs are typically assigned to the School Center for Special Instruction (SCSI) (in-school suspension program) for 3-5 days. Students in this program are isolated; they spend the day in the SCSI doing their class assignments. They do not

change classrooms throughout the day. There are on average 10 students in SCSI per day. The teacher in SCSI assists students with assignments and counsels students. Other common infractions that result in assignment to SCSI include talking back to teachers, defying teachers, and not being prepared or refusing to work. Out-of-school suspensions are used for weapons (automatic suspension), severe fights, and severe defiance of authority.

Principal Bonilla acknowledges that students with behavioral and academic problems can disrupt a regular classroom setting. Instead of throwing them out of school, Bonilla developed an alternative education program that keeps them in school. This program has classes for each grade level (6-8); students stay in the same classroom for math, social studies, science, and language arts, but are permitted to take physical education and an elective with mainstream students. There are fewer students in each class, and each class has a teacher and an aide. These students are provided with academics, nurturing, and counseling. Teachers remain in regular contact with the parents of these students. The teachers in the program are more tolerant and patient. Students in the program are given the special attention they need and, as a result, are not lost.

To further reduce conflicts between students, Palm Springs Middle has implemented a unique program of conflict resolution. The HeartSmarts Program, directed by the School's TRUST Counselor,<sup>55</sup> Ms. Russell, is based upon a curriculum developed by HeartMath Institute in California. The crux of the program is that students and teachers are taught to focus upon their hearts in order to deal with stressful situations. The program includes the following elements.

- A presentation of scientific research showing the heart's critical role in brain development, learning, creativity, and internal balance in children and adults. This research shows how positive attitudes and emotions facilitate optimal learning and better health.
- Practical methodology that helps children manage their behavior and stay focused. Invaluable tools for resolving conflicts and enhancing creativity that enable teachers to make quick attitude adjustments, sustain care for students and find solutions to problems.
- Highly effective tools for students to develop emotional balance and deal with anger, stress, and impulsive behavior.
- New strategies that provide workable solutions to discipline problems, reducing stress and conflict in students and teachers.
- Tools to enable students to distinguish intelligent choices from emotional impulses.
- Communication skills for preventing conflict with peers and closing the

communication gap with teachers.

Ms. Russell and teachers at Palm Springs have been trained by the HeartMath Institute and in turn have trained other administrators, teachers, and students at Palm Springs Middle to use the tools of the HeartSmarts Program to resolve conflict and manage anger and stress. The HeartSmarts Program has contributed to improved behavior of students, including at-risk students.

In addition to HeartSmarts, Ms. Russell runs a counseling program for families of students in the alternative programs. This program employs counseling methods developed by Pairs International, a Florida-based counseling company.<sup>56</sup> Russell stays one night per week to meet with families for counseling sessions. Russell also trains students to serve as peer mediators. These innovative programs are supported by Mr. Bonilla because they fit into his philosophy -- if the needs of students are met, they will flourish in school.

### **Madison Middle School**

**Philosophy:** Principal Thelma Davis states unconditionally that she will not tolerate children who misbehave. She believes in strict discipline. Principal Davis is integrally involved in the disciplinary process at her school. If a child is referred to her by one of the assistant principals, it is because every possible alternative to suspension has already been utilized. Before she approves an out-of-school suspension, she wants the student to “defy her” before more drastic steps are taken. Students understand that Davis is their last opportunity to shape-up. While strict discipline is employed, students are given opportunities to correct behavior before suspension is used.

The suspension rates at Madison Middle during the 1998-99 school year were 16.8% in-school and 16.2% out-of-school. Principal Davis explained that the low out-of-school suspension rate is misleading because it represents the percentage of children who were suspended once; Madison Middle has a small group of students who are repeatedly suspended from school.

At the beginning of the last school year, Davis implemented a new disciplinary plan and communicated that plan to teachers. The plan required that a child be referred to her for out-of-school suspension only after the following steps have been taken:

- classroom rules must be used and exhausted;
- the Team Behavioral Plan must be used and exhausted;<sup>57</sup>
- students must be referred to counselors and the counselor’s options must be exhausted; and
- students are then referred to the grade-level administrator.

At that point, administrators will begin implementation of the Administrative Behavior Management Plan: Alternatives to Suspension.

The Administrative Behavior Management Plan details nine alternatives that should be used before a child is referred for out-of-school suspension. These alternatives include:

- Administrator/Student Conference (Parent Contact)
- Administrator/Student/Parent Conference
- After-School Detention
- Work Detail -- Before or After School
- Indoor Suspension (SCSI) (in-school suspension)
- Saturday School
- Evening Intervention
- Student Principal/Conference
- MARS -- Madison At Risk Schedule<sup>58</sup>
- Outdoor Suspension (out-of-school)

The plan reminds teachers: “the ultimate objective is to keep students in school.”

The most common violation of the Student Code of Conduct at Madison is fighting. As one Assistant Principal explained, sixth graders are immature, “they look at each other -- they fight.” Students involved in fights at Madison are typically suspended for 3 days out-of-school, (10 days if the fight involves more than one person), and receive counseling upon their return. Punishment for fights is decided on a case-by-case basis. Students also commonly engage in disruptive behavior and skip classes. The school has had no incidents involving guns.

Davis attributes the school’s suspension rates to lack of parental control of children. In many instances, there is no parental involvement at all. Students are rude and disrespectful. Often students are referred for discipline because teachers become tired of dealing with disruptions.

To reduce disciplinary problems, Davis would like to implement a program that isolates disruptive students within the school. This program would provide a smaller classroom environment. In addition, Davis believes that the student-to-counselor ratio should be lowered. Currently, counselors are working with too many students and therefore cannot be as effective because they do not have a meaningful opportunity to build relationships with students and their parents.

### **North Dade Middle School**

**Philosophy:** Ms. Eunice Davis, Principal of North Dade Middle School, believes in the zero tolerance approach to discipline. She stated clearly that she has no tolerance for nonsense or disruption in the classroom. Davis believes that classroom disruption is the foremost problem –

if teachers can teach without constant disruptions, students would learn, test scores would rise, and students would be happy. Davis believes this justifies the high suspension rate at the school. She supports the removal of disruptive students from the classroom. She believes that consistent application of zero tolerance is important.

Davis believes that home environment plays a major role in how students feel about themselves, but that it does not determine their destiny. (Davis noted that the school is located close to an area known for heavy drug activity.) Davis emphasizes to students that they can succeed. During her four-year tenure, the school has worked hard to help students see themselves as achievers.

In addition to environmental factors, Davis believes that limited parental involvement and poor preparation in elementary school contributes to the high number of disciplinary problems. In seeming contradiction, Davis asserted that disciplinary infractions arise most often because students get restless in class and as a result, pass notes, talk, and engage in general disruptive conduct. Davis contends that teachers need to include more “hands-on” activities and interaction in the classroom. She believes that good teachers do not have chronic disciplinary problems and that many teachers need more training.

Despite an acknowledgment that teachers may be to blame, at least in part, for the disciplinary problems, the suspension rates for North Dade during the 1998-99 school year were 42.3% in-school and 34.1% out-of-school. These rates are among the highest for middle schools in the Miami-Dade County school system. Madison Middle School, which has a 16.2% out-of-school suspension rate, has a comparable number of incidents of violence (approximately .22 incidents per student). Thus, the dramatically salient differences in suspension rates may be attributable to difference in philosophy. (Although a self-described “strict disciplinarian,” the Principal of Madison believes in giving students second chances.) Davis anticipates that suspension rates at North Dade will increase for the 1999-2000 school year because of consistent application of the zero tolerance policy. Ultimately, she wants the students to be in a classroom where teachers teach, not discipline.

With hopes of lowering the suspension rates, the administration informs students and parents of the school’s Zero Tolerance Policies. Last year for example, Principal Davis met with parents of students who were repeatedly referred for discipline. Davis explained her “zero tolerance” philosophy and urged the parents to stay involved with their children’s education. Unfortunately, the same students continue to be disciplined.

Discipline at North Dade Middle School was by far the harshest of the schools reviewed. Students at North Dade involved in a fight are given an automatic ten-day out-of-school suspension, one of the most drastic measures that may be taken under the District’s Code of Student Conduct. (Punishments for fights may include a series of increasingly harsh steps. A ten-day suspension is required only where a student has repeatedly engaged in fighting. Other schools reported using in-school suspensions or three- to five-day out-of-school suspensions.

Ten-day suspensions were reserved for brutal fights or gang-related fights.) Davis explained that she does not care what students have to say in their defense because they could have avoided a fight by seeking assistance from an administrator or security monitor. If a parent meets with a school official, the suspension may be reduced. A recent fight between rival gangs led to arrests, suspension, and a recommendation of expulsion of approximately ten students. In-school suspensions, which children spend the entire day (including lunch time) in a self-contained classroom, are utilized for Code of Conduct infractions such as dress code violations and talking back to a teacher.

To address the needs of the high numbers of at-risk students, North Dade has developed several programs. The Student-At-Risk Program (SARP) services 140 students (approximately 20-23 students per class), who take core classes such as math, science, language arts, and social studies together, but take electives with mainstream students. Students typically are assigned to this program for one school year. The school also recently established an alternative to suspensions program, which requires students referred for suspension to meet with a counselor four times, and parents must meet with the counselor two times. If the student or parent fails to meet these responsibilities, the student is subsequently suspended.

To decrease suspension rates, Davis believes that the school must:

- Consistently apply zero tolerance.
- Increase parental involvement.
- Refine its after-school intervention programs.
- Strengthen its school-wide conflict resolution program.
- Provide additional training for teachers in conflict resolution.

North Dade has recently implemented a number of programs that the Administration hopes will eventually reduce suspensions by addressing problems and serving as solutions. For example, the school recently purchased a computer program that will permit it to formally monitor disciplinary referrals. (It is the only school of the four mentioned that has a formal monitoring system.) This program will permit the school to analyze disciplinary referral data including the type of conduct and referring teachers. Teachers with a high number of referrals will attend workshops relating to classroom management. In addition, for the first time last year, North Dade received Title I funds. (Although eligible for funding in previous years, the school did not access funding due to administrative problems.) Among other things, Title I funds have been used to hire a full-time Community Specialist, responsible for working with parents and increasing parental involvement.

North Dade's former TRUST Counselor implemented the Peace Program in which all school clubs participated in conflict resolution. When this Counselor left and the program dissolved, suspension rates increased. The school's new TRUST counselor has trained 30 peer mediators. In order to prevent potential problems, two students from each school club are assigned to advise administrators of potential problems. In addition, every incoming 6<sup>th</sup> grader must attend a TRUST class, which covers drug awareness, self-esteem issues, conflict resolution,

and anger management.

Other programs at North Dade include: Police Mentoring Program, After-School Golf Program, After-School Tutorial Program, Concerned African-American Women (mentoring), Family Christian Association (counseling and tutoring program), and 500 Role Model.

To further combat disciplinary problems, Davis said additional resources are needed. For example, because of the school's low student enrollment, North Dade has few counselors, which are assigned to schools based upon enrollment figures, but it needs more because of the high number of at-risk students. In addition, Davis believes the District needs to provide suspended students with alternative school placements during the period of their suspensions. Such programs would potentially avoid the trouble students might get into during their suspensions.

### **Lessons**

Each of these schools confronts different problems and challenges with regard to students, teachers, and environment, yet the visits confirmed that there is a "Zero Tolerance Philosophy" that permeates many public schools. Administrators use different approaches to discipline and have varying views about what constitutes disruptive behavior and how to handle it. Ultimately, the approach chosen depends upon whether the school leadership believes that all children should be provided meaningful educational opportunities or whether they should proceed based on the conviction that disruptive behaviors cannot be tolerated under any circumstances. Thus, these interviews confirm the need to widely promote alternative methods to suspension for dealing with disruptive behaviors and to help principals and teachers understand that children can change their behaviors without being subjected to exclusion from school. Without a change in philosophy, many schools will continue to write off and weed out children, cutting off their educational opportunities.

### **BUCKING THE TREND: SCHOOLS THAT REACH OUT INSTEAD OF PUSH OUT**

*A meaningful approach to school discipline is one that treats students and their families with respect throughout the process, seeks to learn from students and to nurture their learning and growth as human beings, and that finds ways to bring students more deeply into the school community.*

Justice Matters Institute Report: "How School Communities Prevent Racism in School Discipline"

With the increasing use of suspensions and expulsions, there are schools defying the status quo. These schools are finding that it is possible to have achievement, safety, and a low number of disciplinary referrals. We identified three organizations currently targeting these schools. These groups have drawn remarkably similar conclusions about essential characteristics of these schools.

- A shift away from disciplinary practices designed to rid schools of "the problem"

toward a more inclusive model must be a school-wide effort heavily promoted by the principal and “bought into” by the majority of teachers and staff.

- Specific strategies are devised for providing students and teachers with opportunities to develop strong bonds. This often means that large schools are broken into smaller units in order to allow personal relationships between teachers and students to flourish.
- There is frequently a concerted effort to provide teachers with training and workshops focused on positive classroom management techniques and on helping teachers understand the root cause of disruptive behaviors.
- A school-wide code of conduct and expectations for student behaviors is widely promoted and understood.
- Discipline is focused on preventing and diffusing potentially disruptive situations before they erupt, and specific, well-understood strategies for addressing crises are in place. In addition, many schools employ a parent coordinator or interventionist. This individual, who is neither a teacher nor a guidance counselor, is available to the students during the day, often providing a safe haven for students who may “lose their cool.” Funds to pay such an individual often come out of Title I money or school fundraising efforts.
- Student sanctions are considered on a case-by-case basis with input from students and parents.
- Parents, community members, mental health and juvenile justice professionals, business leaders, and others are welcomed into the daily life of the school, with a particular emphasis on engaging parents in school activities.
- Explicit efforts are made to show students that they are respected and valued members of the school community, and that, as such, they are expected to adhere to high behavioral and academic standards.
- The school implements a wide range of programs, including peer courts, conflict resolution programs, early interventions, mentoring, mediations, and character education programs that promote a mutually respectful and collaborative school climate and teach students and teachers how to handle and resolve conflict in appropriate ways.
- Schools frequently transform the physical environment into a more welcoming and friendly space.

Below are summaries of the analyses provided by these organizations and brief profiles of

schools that are making progress in their efforts to improve school climate to create safe and inclusive learning environments.

### **Center for Effective Collaboration and Practice (CECP) of the American Institutes of Research<sup>59</sup>**

In “Safeguarding Our Children: An Action Guide,”<sup>60</sup> CECP identifies the qualities of “safe and responsible schools.”

- The school has strong leadership, caring faculty, family and community involvement, including law enforcement officials and representatives of community-based organizations, and student participation in the design of programs and policies.
- The physical environment of the school is safe, and school-wide policies are in place to promote and support responsible behaviors.
- Prevention and intervention programs are sustained, coordinated, and comprehensive.
- Interventions are based on careful assessment of student needs.
- Evidence-based approaches are used.
- Staff are provided with training and support to help them implement programs and approaches.
- Interventions are monitored and evaluations are conducted to ensure that the programs are meeting measurable goals and objectives.

There are several school-wide programs identified by CECP, as described in Appendix VII, that independent evaluations indicate have achieved some success in helping schools achieve these goals. In addition, CECP has identified successful schools, one of which is described below.

#### **Rachel Carson Elementary School**

Rachel Carson Elementary School in Chicago is one school that CECP has identified that has made significant progress in transforming its school culture. Rachel Carson is a K-8 public school serving 1,250 students, 95% of whom qualify for free/reduced lunch and 92% of whom are Hispanic. In 1995, the Principal made a very deliberate decision to shift to a “whole child approach.” Until that time, the School suspended large numbers of students. Her decision was not spurred by any one event, but rather by a growing realization that the high number of discipline problems required a different approach.

*Academic Environment:* As part of this shift, a concerted effort was made to make the school environment more physically inviting. The school time and space was rearranged to provide opportunities for students to form stronger relationships with teachers. Previously, a student would see 7-8 teachers a day in as many classrooms, and mobility was high throughout the day. Now a student only moves 2-3 times a day, and is often taught different subjects by the same teacher. In addition, a curriculum focus that integrates the arts has given students opportunities to express themselves, to engage in learning, and to have fun.

Attendance has increased from 93% to 98%, and academic achievement is improving. The percentage of students testing at grade reading level has increased from 12% to 42% between 1992-1999.

*Parental Involvement:* The school has significantly bolstered its outreach to parents. School staff visit homes, telephone parents to involve them, host an open house for parents, and offer parent educational classes. A school newsletter is sent to all parents. Though initially resistant, the teachers now realize that the most effective approach to classroom management is to gain the trust of parents and to make an early investment in establishing relationships. Many staff members are bilingual.

*Discipline:* Rules and consequences are now posted around the school and a copy is signed by parents and explained in native languages. Students keep copies in their homework assignment planner. The school used Title I discretionary funds to hire a full-time interventionist. This person deals with attendance and behavior and develops individualized plans in conjunction with students, families, and teachers. He or she also tutors after school and during summer school. When a disciplinary problem does arise, a supervised study hall at 7:30am (before classes) is assigned, or an in-school suspension is used for more serious problems. Out-of-school suspensions and expulsions are used as a last resort only, and frequently for offenses mandated by zero tolerance policies in effect in Chicago.

This year ten students were suspended – less than 1% of the student body – and none for longer than two days; none were expelled. This record contrasts dramatically to the rest of the city of Chicago, where the expulsion rate has been “soaring” during the past two years.<sup>61</sup>

### **Justice Matters Institute<sup>62</sup>**

In its preliminary report on school discipline entitled “How School Communities Prevent Racism in School Discipline,”<sup>63</sup> Justice Matters has identified eight schools teaching predominantly students of color located throughout the country that were able to maintain low suspension and expulsion rates and stay safe. It found commonalities in many of these, including the following elements.

- Caring ethic is explicitly a central part of the school mission.
- Resources are devoted to building strong relationships.
- Collaborative approach to discipline violations, involving student, teacher,

- sometimes parent or other staff. Students allowed to argue their case.
- Discipline dealt with on a case-by-case basis; individualized plans developed by teacher or special team.
- Schools have strong relationships with parents; parents very involved and invested.

### **DeWitt Clinton High School**

One school identified by Justice Matters as meeting many of these criteria is DeWitt Clinton High School, located in the Bronx, in New York City. It enrolls 4,311 students: 35 % African-American, 57% Latino, and 6% Asian Pacific Islander. Students apply to Clinton from all over the Bronx. Thirty percent of the students are chosen from the applicant pool on a competitive basis, and the remaining seventy percent are randomly drawn from the applicant pool. Approximately, 12,000 students apply each year for the 1,000 freshman slots.

*Academic Environment:* In order to strengthen relationships between students and faculty, Clinton has broken the school into ten “houses,” each with a supervisor, coordinator, family outreach assistant, and guidance counselors. Students take courses throughout the school, but the house staff follow them throughout their four years. The house staff mentors students by helping students choose courses and counseling them on a wide range of issues. Staff are so vigilant that if a student misses a few days at school, one of the house staff will contact them by phone or go to their home.

The staff makes a conscious effort to show students that they care; this extended family includes custodians and cafeteria workers. School slogans such as, “Who cares? We care,” “Never, never, never, never quit” and “Commitment to excellence,” reinforce the sense of concern for the well-being of students.

*Discipline:* Dewitt Clinton employs a standard discipline policy with particular consequences used for particular behaviors. However, application of the rules is not mechanical and inflexible. If there is a behavior issue, the student may be sent to speak with one of the staff members of the house staff, with the Coordinator of Student Affairs, or with a Dean. This discussion may arrive at a solution. Parents may also be involved in this process. Suspensions are avoided and other options are pursued. Last year, the number of students suspended and/or expelled was 17, or less than half of 1% of the student body.

The school also offers a wide range of activities, assemblies, dances, sports events, speakers, etc. that are open to the community, as well as a range of student clubs and electives.

### **Milwaukee Catalyst/Designs for Change<sup>64</sup>**

Approximately 50% of all middle school students and one-third of all high school students in Milwaukee's public school system are suspended at least once; 97% of these suspensions are for non-violent offenses and infractions. In an effort to implement educational

practices that ensure equitable and effective school discipline and support high achievement for all students, Milwaukee Catalyst initiated a campaign entitled *Safe and Orderly Schools That Educate All Students*.

Milwaukee Catalyst joined forces in partnership with Designs for Change<sup>65</sup> to conduct a national review of scholarly work regarding effective school discipline practices in urban schools. These findings, contained in *Best Practices for Ensuring Equitable and Effective Discipline that Supports High Achievement for All Students* (1999)<sup>66</sup> are summarized below.

1. *Effective School Leadership*
  - There is a comprehensive and proactive plan for school discipline.
  - A fair, clear code of conduct is consistently enforced.
  - Policies address root causes of discipline problems.
  - Suspension is used as the last resort.
  - School council and staff take part in analyzing and improving discipline.
  - Teachers are evaluated on effective discipline practices.
  
2. *School Environment Supports Learning*
  - Every student is a valued member of the school community.
  - The community develops proactive discipline strategies.
  - School staff take responsibility for school-wide discipline.
  - A quality in-school suspension program provides academic help.
  - Extra-curricular activities build ties between students and school.
  - The school is structured around small units.
  - Self-discipline is taught in the classroom.
  - Root causes of student truancy and tardiness are addressed.
  - Most students with discipline problems are kept in the mainstream program.
  
3. *Effective Adult Learning and Collaboration*
  - Workshops focus on proactive discipline methods.
  - Training provides a clear analysis of the root causes of discipline problems.
  - There is regular follow-up in the form of concrete planning and teacher support.
  - All adults participate in professional development workshops.
  
4. *Family and Community Partnerships*
  - Families, students, and community help identify problems and solutions.
  - All discipline information is clearly communicated to families and students.
  - Community agencies assist students and families with discipline problems.
  - Families are notified and enlisted as partners when children are suspended.
  - The school contacts parents to recognize children's *positive* behavior.

5. *Quality Instructional Program*

- Teachers view students' social and emotional development as part of their job.
- Engaging learning activities are used to minimize student misbehavior.
- Teachers communicate clear expectations for student behavior.
- Teachers maintain classroom discipline without disrupting the learning process.
- Teachers model proper behavior by treating all students with respect.
- Suspended students get help from teachers to make up missed work.

### **Canton Middle School**

Canton Middle School in Baltimore, Maryland, is one school that is adopting many of the qualities described above.<sup>67</sup> Canton serves a student population of 770 that is 88% low-income and 50% minority. Making strides in the area of *School Leadership*, the Principal has moved aggressively to put new systems into place and empower teachers. His goal was to create a structure that supports student achievement and reduces disciplinary referrals.

In-school suspension is used before students are sent home for conduct infractions. Parents of suspended children must meet with a team of teachers. The number of students suspended has decreased from 47 three years ago to 11 last year, approximately 1.5% of the student body. (Baltimore's citywide suspension rate is 9.9%.<sup>68</sup>)

*School Environment Supports Learning:* The school is divided into two “schools-within-a-school” in order to create more opportunities for close bonds to develop between teachers and students. A comprehensive plan to address students’ needs helps prevent discipline problems with programs including: (1) school-based medical and mental health services, (2) a Diagnostic Assessment Center providing services to students with severe behavioral problems, and (3) a dropout prevention program offering work experience in the community and in private businesses. Students in the dropout prevention program meet once a week as a group to explore strategies to help them perform better in school. They are also permitted to work one day a week in a community setting or in a private business. In addition, teachers are encouraged to teach social skills in class.

*Effective Adult Learning and Collaboration:* Teachers benefit from 18 half-days of staff development and five-week workshops in the summer. New teachers are mentored by a designated teacher mentor and by the department chair. A School Improvement Team is organized into four research and development teams that design strategies to improve school climate and to help teachers more effectively manage classrooms.

*Family and Community Partnerships:* Parents participate in the School Improvement Team and the Parent Advisory Board. Parents are trained and hired as substitute teachers. There are phones in every classroom to allow teachers to communicate regularly with parents. The PTA offers opportunities for parents to meet teachers and to learn about after school activities for students and families.

## **Other Promising Programs**

In addition to avoiding the overuse of suspensions and expulsions by changing school climate, schools are using other programs to modify students' behavior. One of these programs, the On-Campus Intervention Program, is described in detail in Appendix VII.

The work involved in successfully transforming a school culture is a daunting task that requires the commitment of the principal, teachers, staff, parents, and community. To achieve this transformation, adults must analyze their own behaviors as well as the behaviors of their students and be open to changing practices that may no longer fit with the school's overall mission.

As our understanding of essential elements involved in maintaining safe and inclusive schools deepens, certain areas will require further analysis. For instance, it is clear that the role of the principal is pivotal in making significant changes. What happens to schools when there is a leadership change? The principals in two of the three schools cited in this report have retired in the past year. Will these schools continue to maintain their focus on overall school climate?

Another important question that merits closer examination involves the relationship between school climate and academic achievement. While this has not been the focus of this report, schools committed to transforming the use of discipline are simultaneously working to improve the academic performance of their students. We need to better understand how overall school climate impacts learning in the classroom.

While these schools do not provide any magic formulas, they do offer hopeful blueprints for how progress in this direction can be made. Their experiences, along with those of other schools undergoing similar transformations, can be tremendously instrumental in helping other schools and communities in their efforts to achieve similar goals.

## **LEGAL PROTECTIONS FOR STUDENTS FACING ZERO TOLERANCE POLICIES**

While legal protections are an important tool for students, parents, and activists seeking to ameliorate the impact of brutal Zero Tolerance Policies, the law is an inadequate safeguard in many circumstances. In addition to making maximum use of existing legal rights in individual cases, activists also need to develop a comprehensive strategy for improving the law. Such a strategy might include amendments to federal and state laws, reform of school policies, improvement of administrative enforcement, and litigation designed to develop more favorable precedents. While not a comprehensive legal guide, this section of the Report highlights legal issues for the purpose of stimulating strategic thinking about use and development of the law in this area.

Federal laws provide an incomplete patchwork of legal protections against the imposition of harsh school disciplinary measures. Many federal courts bend over backwards to defer to disciplinary decisions by school officials. However, a few courts, perhaps responding to the growing trend in harsh sanctions for innocuous conduct, have started to give the laws more teeth.

For example, in one case striking down an inflexible, mandatory expulsion of a student who did not know that a friend had placed a knife in his car's glove box, a federal court proclaimed: "Zero hour has indeed arrived for the Zero Tolerance policy."<sup>69</sup>

This section provides an overview of the three categories of federal rights that appear to have the most potential for ameliorating some of the harshest consequences of the Zero Tolerance trend: 1) protections against discrimination on the basis of color or national origin, 2) rights of students with disabilities, and 3) the due process rights applicable to all students. This section also summarizes the strategic potential of each set of laws. A more detailed treatment of the legal doctrine and enforcement systems is set out in Appendix II, which also includes a brief discussion of due process protections under state laws.

### **Prohibitions on Racial Discrimination**

The Fourteenth Amendment to the United States Constitution and Title VI, a provision of the Civil Rights Act of 1964, each prohibit discrimination on the basis of race, color, or national origin. The Constitution applies to all public school systems, while Title VI applies to any school system receiving "federal financial assistance," a criterion which encompasses virtually all public schools.

The Supreme Court has held that only intentional discrimination, which is often difficult to prove, violates the Fourteenth Amendment. While data and anecdotal evidence suggest that intentional discrimination, which includes unconscious stereotyping or profiling, may be widespread, meeting the Supreme Court's requirements for proving intentional discrimination will be highly challenging in many situations. For example, one key point in the disciplinary process where discrimination might occur is the initial decision to refer a student for an infraction. As data described in this Report indicate, students of color are more likely than whites to be referred for subjective infractions such as "defiance of authority." When teachers and other school officials responsible for reporting disciplinary infractions are more prone to identify violations by students of color than by white students, misconduct by white students will go unreported. Consequently, proving that students of color were treated differently than similarly situated white students may be impossible since those white students were never referred for any disciplinary action.

Despite these limitations, the legal protections against intentional racial discrimination are valuable. Particularly where other evidence of racial animus on the part of school officials exists, such as use of racial epithets or tolerance of a racially hostile environment, courts may infer intentional discrimination from large racial disparities in discipline and the other evidence. And, if students of color are disciplined more often or more harshly than similarly situated white students, a claim of intentional discrimination is likely to be successful. Finally, where a school system is under a desegregation order, its disciplinary practices may be scrutinized more carefully than in other cases to further ensure that it eliminates all of the effects of its prior dual system.

Title VI of the Civil Rights Act of 1964, through its regulations, incorporates a legal standard known as the “adverse impact” doctrine. Under the adverse impact doctrine, when a racially “neutral” policy or practice produces a disproportionately harmful impact on students of color, the burden shifts to the school system to justify its policy or practice under a relatively high standard. The adverse impact doctrine was adopted by the Supreme Court in the landmark case of *Griggs v. Duke Power* in 1971, in an opinion written by then Chief Justice Warren Burger. At least two rationales support the adverse impact doctrine. First, by focusing on consequences instead of intent, the doctrine scrutinizes practices that may result from intentional discrimination, even when that intent is impossible to detect or prove. Forcing the defendant to justify its practices helps ensure that its actions are based on clearly legitimate reasons and not a subterfuge for undetectable intentional discrimination. Second, given the history of racial exclusion in this country, the adverse impact doctrine represents a policy decision, repeatedly reaffirmed by Congress, that regardless of intent, actions that pile additional disadvantages on historically oppressed groups should not be permitted unless supported by a compelling justification.

If vigorously enforced, the adverse impact standard under Title VI could be a potent tool for challenging disciplinary systems that produce the large racial disparities cited elsewhere in this Report. Once plaintiffs prove such disparities, schools must show that the practice is justified under the “educational necessity” standard, which requires more from school systems than mere recitation of the goals of a positive learning environment and safe schools. While these goals are compelling, the “educational necessity” criterion requires that the disciplinary system actually serve those goals. As set out elsewhere in this Report, the overwhelming weight of child development and education policy research indicates that harsh, inflexible school discipline practices, extending well beyond serious weapons and drugs, are not educationally sound and do not improve school safety. In addition, even if the school system meets its burden on “educational necessity,” plaintiffs can prevail by showing that an alternative approach to discipline would achieve these goals with a less discriminatory impact. This Report documents several positive approaches to school discipline that have been independently assessed and found to create safe schools and healthy learning environments. Therefore, if the “educational necessity” and “less discriminatory alternative” elements of the adverse impact doctrine were taken seriously by enforcement agencies and courts, it would be difficult for any school system with significant racial disparities to justify a harsh, disproportionate, or inflexible system of discipline.

There have been few court cases applying Title VI’s adverse impact standard to school discipline systems. While the results of the court cases are mixed, this area of law has the potential to develop into a significant protection against brutal discipline systems that produce harmful racial impacts. Title VI litigation is no panacea, but it is a legal tool that in appropriate factual situations may be extremely useful.

The Office for Civil Rights (OCR) of the U.S. Department of Education is responsible for enforcing Title VI. Because it is often difficult for students and their parents to find attorneys to represent them in court cases, the role of OCR is critically important. Unfortunately, it does not appear that OCR is vigorously applying the adverse impact doctrine in its complaint

investigations and findings. Although comprehensive information on OCR's handling of complaints is difficult to obtain, the known cases suggest that OCR often processes school discipline complaints under the intentional discrimination standard. The cases that we have been able to review do not reveal serious consideration by OCR of whether harsh disciplinary systems actually serve school safety, a required element of "educational necessity." Nor do OCR case files indicate much attention to alternative disciplinary systems that could equally serve educational and safety goals with a less discriminatory impact. Moreover, while OCR has authority to initiate investigations without waiting for complaints, OCR has not used this power even to look at the educational justification for the disciplinary practices of school systems with the most egregious racial disparities. Another apparent problem with OCR enforcement in the discipline area is that the agency does not publicize the informal resolutions it reaches in the vast majority of school discipline complaints and has made it very difficult for the public to obtain access to these settlements. As a result, whatever legal standard OCR is applying, it is not being clearly communicated to school officials around the country.

One beneficial result of applying Title VI's adverse impact standard is to nudge school systems toward more positive approaches to teaching and discipline that produce better educational outcomes overall. OCR's action on one complaint provides a glimmer of what is possible. Acting on a 1996 complaint against a high school in Alameda, California, OCR found insufficient proof that the school district maintained a hostile atmosphere or intentionally discriminated against Latino students in the severity of discipline received for similar offenses. Without explicitly citing the adverse impact doctrine, OCR apparently proceeded under this standard. Pointing to a significantly higher rate of discipline against Latino and African-American students, particularly in the area of "disrespect of authority," OCR negotiated with the school district to implement positive strategies, such as conflict resolution teams, peer counseling groups, workshops addressing issues of race, and a retreat for administrative staff that covered racial stereotyping, profiling, and communication styles. Particular attention was paid to discipline for "defiance of authority." These steps led to an overall decrease in suspension rates and a steep decline in the racial disparities. OCR did not close the case until these improvements had been documented.

The Alameda case illustrates the potential of OCR Title VI enforcement to produce outcomes that advance racial justice and benefit students and schools. Unfortunately, this type of enforcement appears to be an innovative exception, rather than common practice, for OCR. And, even the Alameda case illustrates OCR's timidity about even mentioning the adverse impact doctrine and regulations.

The OCR administrative complaint process represents a promising but under-utilized mechanism for addressing racially disproportionate imposition of school discipline. Persons interviewed for this Report indicated that activists often counsel against filing such complaints, because of a lack of confidence in OCR. Clearly, OCR needs to take immediate action to provide clear policy guidance on the proper application of the adverse impact doctrine in the school discipline context, to improve its handling of complaints, and to regain the trust of those whom Congress intended Title VI to protect. One possible advocacy strategy would be for

activists to coordinate the filing of an increased number of strong complaints with OCR, coupled with pressure on OCR to improve its enforcement practices.

### **Legal Rights of Students with Special Needs**

Three federal statutes provide basic protections for students with disabilities. The Individuals with Disabilities in Education Act (IDEA) is specifically targeted toward students with disabilities and their families, while the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973 prohibit discrimination against persons with disabilities, including students.

The IDEA provides the most comprehensive set of rights for students with disabilities. The core of this law mandates that school systems provide a free and appropriate public education to all children with disabilities in the least restrictive environment. The Act's school discipline protections are designed to serve the overall goal of full inclusion of students with disabilities in public education. Each state has its own set of laws and regulations to implement IDEA and must maintain a mechanism for administrative dispute resolution that complies with the Act's requirements.

While students with disabilities can be held to most generally applicable standards of conduct and subjected to discipline for infractions, IDEA recognizes that a student's disability may contribute to a child's engagement in some types of misconduct. If a student's misconduct is caused by the disability or by the school system's failure to provide appropriate services and supports to address the impact of the disability, the system's power to impose discipline is limited.

Determining whether the student's disability caused a disciplinary infraction is a critical issue under IDEA. For any suspension longer than ten consecutive days, the school system must hold a "manifestation hearing" to determine whether the triggering misconduct was a manifestation of the student's disability. The Act provides important procedural safeguards and substantive protections, and favorable court precedents make this law very valuable to students and parents with access to good legal advice or representation. Unfortunately, it appears that many special needs students do not have access to attorneys with expertise in this complex area of law and that school systems often do not fully comply with these IDEA provisions.

When the student's misconduct is not caused by his or her disability, the general disciplinary sanction, including suspension or expulsion, may be imposed on a student with a disability. However, even in this situation, IDEA provides students with disabilities with a right not available to all students – a free and appropriate public education. In other words, if a student with a disability is suspended or expelled, the school system still has the duty to ensure that the student is provided with an interim alternative education that fully provides the services the student needs to make effective progress. Because the right to an appropriate education is not generally available to non-disabled students, some in Congress seek to amend IDEA to remove this right. Advocates for children respond that the right should be broadened to *all* children.

In addition to “manifestation hearings” and other legal avenues available to individual students, systemic challenges to a system of discipline that violates the rights of special needs students can be effective in some situations. Examples of systemic violations are practices that affect large numbers of special education students, such as a categorical rule assigning all children with emotional disorders to special classrooms or a pattern of failing to diagnose students with disabilities and provide them with the legally required services and protections.

Section 504 provides protections against disciplinary practices with a disproportionate adverse impact on students with disabilities that generally mirror the adverse impact standard applied under Title VI. In addition, IDEA regulations require record keeping and monitoring of the racial impact of the identification and placement of students with disabilities, which covers long-term suspensions, expulsions, and the placement of students with disabilities into alternative schools.

Finally, given the increased routing of students into the criminal justice system, it is noteworthy that IDEA has been held to limit a school system’s ability to commence criminal proceedings against students with disabilities.

In sum, federal law provides a plethora of protections for children with special needs that, if fully complied with, would provide extremely valuable safeguards for this group of students. These laws are highly complex, involving varying administrative schemes and differing procedural rules on questions such as exhaustion of administrative remedies. Because one of the most potent legal requirements in this area strictly limits imposition of discipline when a student’s disability contributed to the infraction, one might expect the level of discipline against students with special needs to mirror that of the general student population. The existence of much higher levels of discipline for these students suggests, at a minimum, that serious inquiry is needed into whether and how implementation of this facially strong system of laws is failing.

### **The Constitutional Right to “Due Process”**

The Due Process Clause of the Fourteenth Amendment, which applies to the states and all their subdivisions, provides real but limited protections to students living under zero tolerance policies.

The concept of “due process” has two distinct components. The first, procedural due process, requires states and their local governmental subdivisions to provide fair and adequate procedures for determining when they will deprive a person of life, liberty, or property. The second aspect of the Due Process Clause, substantive due process, is concerned with whether a state may impair a given right, regardless of the fairness of the procedures employed.

For purposes of procedural due process analysis, the right to a public education is considered a “fundamental” property right granted by the states. However, the same interest in access to public education is not considered “fundamental” for purposes of substantive due

process. Thus, the procedural protections provided by the Due Process Clause tend to be stronger and given more weight by the courts than the substantive protections.

*Procedural due process.* The procedural element of due process governs issues such as the type of hearing that is required before an adverse action can be taken, whether there is a right to counsel, and the evidence that can be considered. The procedures required prior to suspending a student for ten or fewer days are informal and fairly meager. However, more formal procedures and greater rights accrue when a longer suspension or expulsion is at issue.

The right to a hearing, particularly the more formal procedures required for deprivations longer than ten days, can be a valuable mechanism for challenging disciplinary actions. A hearing will at least provide the student an opportunity to show that he did not commit the infraction charged. However, school officials can also use hearings to solidify their case against the student. The informal hearing required for short suspensions, in which the student often does not have a right to counsel or even the presence of a parent, is particularly fraught with opportunities for school officials to exert pressure on the student to “confess.”

In some cases, procedural due process also requires the hearing and disciplinary decision to include an individualized consideration regarding the appropriate punishment. While the Due Process Clause does not prevent school boards from adopting and applying mandatory punishments, it does require individualized treatment when state law or school board policy allows for case-by-case determinations or modification of mandatory penalties. In these situations, which are common across the fifty states, school boards may not simply defer to a written or unwritten zero tolerance policy or to the recommendation of other school officials such as the principal. Instead, as part of making an independent disciplinary decision, the school board (or equivalent decisionmaking body) must consider the nature of the offense; the student’s age, record, and past behavior; and any mitigating factors.

The ability to challenge mandatory imposition of harsh punishment and to insist on consideration of extenuating circumstances and the individual student’s record can be a critically important issue in many cases. Especially in cases where the student’s infraction was unintentional (Boy Scouts who forget to remove pocket knives from backpacks; students who find weapons and take steps to prevent their use; students who drive a parent’s car to school not realizing a weapon is in the glove box or trunk), whether individual circumstances are considered can mean the difference between a long-term expulsion and minimal or no punishment.

*Substantive due process.* Substantive due process provides two major protections. First, students are entitled to have adequate notice of the types of conduct that are prohibited. The notice requirement may be particularly important in the case of unintentional infractions. The notice requirement may not be satisfied if the code of conduct does not make clear that students are held to “strict liability” for ensuring that a car or backpack they bring onto school property is free of pocket knives, etc. However, student disciplinary rules do not have to be as detailed as criminal codes.

Second, students are protected from punishments that are “irrational.” This is a lenient standard that often leads courts to defer to school district decisions, even when those decisions are extremely harsh and the punishment is disproportionate to the infraction. The legal standard generally is stated as prohibiting disciplinary actions that are “grossly disproportionate” to the offense or where the disparity between the offense and the punishment is “shocking.”

Despite the tendency of courts to defer to school officials in applying the rationality standard of substantive due process, lawyers and activists should consider strategies to convince courts to put more teeth into the substantive due process rationality review. Particularly as Zero Tolerance Policies produce more and more examples of egregious disciplinary decisions that seem to many to be both “shocking” and “grossly disproportionate,” there will be opportunities to present courts with very compelling fact patterns.

*State Due Process Claims.* The constitutions and laws of many states provide a higher level of due process protections than the U.S. Constitution. While full treatment of state laws is beyond the scope of this Report, those laws provide a valuable set of protections that should be fully explored by students facing punishment under zero tolerance policies. Furthermore, policy makers should consult state laws for ideas to replicate in other states and to seek to incorporate into federal laws.

### **State Mandated Zero Tolerance**

Most States have passed laws mandating Zero Tolerance. These State laws establish grounds for suspensions and expulsion, whether students should be referred to law enforcement agencies, and upon what grounds. Furthermore, in an effort to monitor the use of disciplinary measures, some States have passed data collection laws.

#### *Reasons for Discipline*

Many States passed laws that establish the reasons for which students may be suspended or expelled. Of course, in most jurisdictions, School Districts may establish disciplinary policies that are much more expansive than State laws.

Appendix III is a survey of state laws identifying the conduct for which States sanction suspensions or expulsions.

- 41 States have laws establishing grounds for suspension; 49 establish grounds for expulsion.
- All of the States have laws permitting expulsion for possession of firearms, weapons, or deadly weapons. Only 18 States have laws specifying possession, use, or distribution of drugs as grounds for expulsion. Other grounds for expulsion include willful or continued defiance of authority or disruptive behavior (10 States) and habitual profanity (2 States).

- Grounds for suspension include assault, possession of a paging device, hate violence, extortion, violence against school official, sexual harassment, tobacco and alcohol use, gang membership, disobedience, defiance of authority, profanity, and disruptive behavior.

### *Law Enforcement Referrals*

A growing number of students are referred to law enforcement agencies for conduct in school. These law enforcement agencies may include police departments or juvenile courts. There are 43 States that require school officials to report students to law enforcement agencies. (See Appendix IV.) In most instances, this referral is due to the commission of a crime. However, school districts interpret these laws to require reporting of students for conduct that typically would not rise to the level of a criminal act. Beyond a misunderstanding of the requirements of the law, some districts may strictly interpret legal requirements to refer students to law enforcement officials because of fines that may be assessed against school officials failing to report students as required. Maryland is the only State that requires reporting of students to law enforcement agencies for an act that is not a *per se* violation of criminal codes. School Districts in Maryland are required to report students to law enforcement agencies for possession of a paging device. Again, school districts often expand upon the law. Thus, the circumstances under which students will be referred to law enforcement agencies may be much more expansive.

### *Data Collection*

In an effort to monitor the overuse of Zero Tolerance Policies, advocates, government officials, and policymakers must be equipped with data. Appendix V summarizes discipline data collection requirements. Data collection varies by State.

- 27 States require collection of discipline data by type of offense/conduct.
- 11 States require collection of discipline data by race.
- 11 States require collection of discipline data by gender.

Unfortunately, data collection is inconsistent and, in some instances, unreliable. In addition, many State Departments of Education, responsible for the collection and reporting of data, do not make data readily accessible. For example, in several States requiring data collection, there is confusion within the Departments of Education as to who within the Departments maintains data. Furthermore, many States require that persons or organizations seeking discipline data be “cleared” to obtain such data. There is a need for consistency in reporting across States and additional detail in reporting.

## **CONCLUSION**

In the wake of a series of tragic school shootings in our public schools, policymakers and school officials have understandably taken steps to ensure the safety of our children. However, in the rush to make an immediate response, rhetoric has won over commonsense. The result:

Zero Tolerance. These policies, adapted from criminal justice policies, set in motion a series of events negatively affecting children, families, and communities. These adverse consequences warrant an immediate review of disciplinary policies and reform to ensure not only that schools are safe but also that children's civil rights are protected and that they are able to avail themselves of an education. During a time when education is frequently viewed as the only route out of poverty for many children, and when students must pass increasingly rigorous tests in order to be promoted or graduate, it is especially important that they receive the best possible education available to them.

Obviously teachers and administrators need to retain the authority to remove students who endanger the safety of themselves and others. However, as the examples we have provided illustrate, needlessly harsh measures are being taken against students who pose no threat whatsoever to the school or to others; all under the guise of Zero Tolerance. A "one size fits all" approach is inappropriate and is causing great harm to many students who deserve more compassion and a "second chance."

There are schools who have rejected the extreme policies of Zero Tolerance. These schools, like those depicted in this Report, maintain discipline and safety while providing educational opportunities. Instead of pushing students out, these schools embrace students. These schools see as their objective the education of all children, not just those who are always good and are academically gifted. They believe that the best place for a child during school hours is in the school. These schools use suspensions as a last resort and still maintain orderly and safe schools. These schools serve as models so that more schools may abandon the draconian measures taken against students for typical adolescent behavior and avoid the devastating consequences of leaving children outside the schoolhouse doors.

## **RECOMMENDATIONS**

### *For the Federal Government:*

The Department of Education should require all school districts receiving federal aid to provide more comprehensive civil rights compliance data, including data on disciplinary actions taken by offense, with the race and disability status of the child, and information on referrals to law enforcement agencies for in-school conduct.

The Department of Education's Office for Civil Rights (OCR) should conduct many more compliance reviews and investigations to ensure that children are not discriminated against in the adoption or application of disciplinary policies.

OCR should promulgate guidance for enforcement offices that directs these offices to analyze complaints filed under the regulations using disparate impact analysis and promotes interventions that consistently address both differential treatment and disparate impact.

OCR, working with other offices, should develop a technical assistance program for schools specifically aimed at helping reduce disparities in discipline while making disciplinary practices more effective.

The United State Commission on Civil Rights should investigate the disproportionate impact the rapid growth in harsh disciplinary actions is having on minority students and students with disabilities, including a thorough investigation of the effectiveness of the Department of Education's oversight role.

The General Accounting Office should study OCR's work on race and disability discrimination in the student discipline arena, with special attention to the effectiveness of public education and technical assistance, the clarity and consistency of internal policies, and the length of time for investigations.

*For Researchers and Program Evaluators (Including Those Within Federal and State Agencies):*

Research is needed to assess the quality of alternative education programs and to ensure that they comply with federal education laws and policies such as, Title I.

Ethnographic studies are needed in order to measure the extent to which teachers treat minority children unfairly in classrooms.

*For States and School Districts:*

States should include in their public school accountability laws provisions that take suspension rates into account in grading and ranking school performance. High suspension rates, especially for non-violent and non-criminal conduct, should negatively impact school performance ratings.

States should pass legislation permitting advocates to represent students in due process hearings.

The 24 States that now do not mandate alternative education should pass laws requiring school districts to provide such programs.

Schools should formally monitor disciplinary referrals, keeping careful records, to ensure that teachers are not overreacting to student conduct or unfairly singling out students. Teachers who engage in such practices should be required to take appropriate professional development courses in classroom management, child development, and multi-cultural human relations.

Graduate schools of education should require training in classroom management and behavioral issues, and this training should include some familiarization with legal requirements and the underlying fairness rationale for them.

School Districts should establish a specific minimum number of staff development days devoted to classroom management, guidance techniques, and conflict resolution; the plan should be related to the seriousness of the discipline issues in the school or district and should be reviewed periodically.

School Districts should establish disciplinary committees that draw membership from guidance counselors, school administrators, teachers, and parents.<sup>70</sup> Such a committee would, at the request of a child's parent, review a suspension recommendation prior to the commencement of the suspension period,<sup>71</sup> and disapproval of a suspension by the committee would block School

Board action.

School Districts should establish a Community Review Board to provide an independent, outside watchdog function on student discipline issues.<sup>72</sup> The independence of the membership and their proceedings, as well as adequate resources to consider and investigate complaints concerning both general policy and individual cases, should be assured by statute or regulations.

Schools should develop in-school suspension programs that keep students on track with their education and provide counseling, including behavior modification and conflict resolution. Recent widespread reductions in counseling and social work budgets in many school districts should be reversed.

*For Parents and Community Leaders:*

Parent and school reform groups, including civil rights groups, should learn the facts about school discipline practices.

Community groups should meet with school and school board officials to insist that all policies and procedures reflect fair process and sound principles based on schooling goals rather than crime-fighting strategies.

Community groups should request data on discipline and disparities, using the state Freedom of Information Act (FOIA) if necessary. If the data suggest adverse impact based on race or disability, concerned groups should discuss the matter with the local news media and with school officials. If dissatisfied, they should immediately file a discrimination complaint with the federal Office for Civil Rights and press OCR for a timely investigation.

## ENDNOTES

1. For purposes of this report, Zero Tolerance Policies include not only mandatory punishments, but also harsh, rigid punishments that are unwarranted because they fail to take into account circumstances, including students' disciplinary records. These policies put common-sense aside, in favor of a "take no prisoners" attitude toward discipline.
2. Statement of William Modzeleski, Director, Safe and Drug-Free Schools Program, U.S. Department of Education, Feb. 18, 2000. "An overwhelming majority of schools (90 percent) do not experience any serious violent crime, and nearly half of all our schools (43 percent) experience no crime at all." *Id.* In addition, crime and violence in schools is continuing to decrease. *Id.*
3. In 1994, Congress passed the Federal Gun-Free Schools Act, 20 U.S.C. §8921, requiring states to pass legislation requiring a one-year expulsion for students carrying firearms on school property. Failure to comply would result in loss of federal funding.
4. The U.S. Department of Education defines a Zero Tolerance Policy as a policy that "mandates predetermined consequences or punishments for specific offenses." U.S. Department of Education, National Center for Education Statistics (NCES) and U.S. Department of Justice, Bureau of Justice Statistics, *Indicators of School Crime and Safety, 1999*, Appendix A, Table A1, September 1999. However, even the Federal Gun-Free Schools Act vests school administrators with discretionary powers in determining the punishment. In most instances however, this is not the practice.
5. *Daily Southtown*, Monday, November 22, 1999.
6. "Fact, fiction collide in classroom," *Boston Globe*, April 27, 2000.
7. Pedro Noguera, "How Student Perspectives on Violence Can Be Used to Create Safer Schools," *In Motion Magazine*, March 2000. Available online at <<http://www.inmotionmagazine.com/pedro.html>>.
8. *Ibid.*
9. Statement of Sheriff Bridges, *Clarion Ledger*, August 31, 1999.
10. U.S. Department of Education, Office for Civil Rights, *Fall 1998 Elementary and Secondary School Civil Rights Compliance Report: National and State Projections*, June 2000.
11. Florida Department of Education, *School Indicators Report*, 1999.
12. State of Wisconsin, Department of Public Instruction, "School Discipline-Suspensions," *Education at a Glance*, April 1999.
13. *Suspended Education: A Preliminary Report on the Impact of Zero Tolerance on Chicago Public Schools, Generation Y*, a project of the Southwest Youth Collaborative, citing Chicago Public Schools, End of the Year Reports to Illinois State Board of Education, 1992-93 through 1998-99.
14. *Ibid.*
15. *Suspended Education: A Preliminary Report on the Impact of Zero Tolerance on Chicago Public School Students, Generation Y*, a project of the Southwest Youth Collaborative, Chicago, Illinois, citing Chicago School Reform Board of Trustees, *Chicago Public Schools: FY 2000 Final Budget*, Schools and Regions Objectives.
16. Florida Department of Education, Bureau of Instructional Support and Community Services, *Statewide Report on School Safety and Discipline Data*, May 1999.
17. Most of these anecdotes report the action recommended by school officials. In some instances the ultimate action taken may have been less severe as the result of the involvement of an attorney or community organization.
18. *CBS Evening News*, June 8, 2000.
19. *Education News*, April 13, 1999.
20. "School Suspension: Ounce of Prevention or Pound of Overreaction?" *The Hartford Courant*, November 17, 1999.

21. *See e.g.*, Children's Defense Fund, "School Suspensions: Are They Helping Children?," Cambridge, MA: Washington Research Project (1975); Clarence H. Thornton and William T. Trent, "School Desegregation and Suspension in East Baton Rouge Parish: A Preliminary Report," 57 *Journal of Negro Education* 482 (1988); Anna C. McFadden, George E. Marsh II, Barrie Jo Price, and Yunhan Hwang, "A Study of Race and Gender Bias in the Punishment of Handicapped Children," 24 *The Urban Review* 239 (1992); Kids First Coalition, "Locked Out: Exposing the Suspension Epidemic in the Oakland Public Schools," Oakland, CA (June 1999).
22. Department of Education, Office for Civil Rights, 1998 *Elementary and Secondary School Civil Rights Compliance Report*.
23. Applied Research Center, *Making the Grade: A Racial Justice Report Card*, (1999)(hereinafter "ARC Report").
24. NCES Report, *supra*, note 4, Appendix A, Table A1. *Indicators of School Crime and Safety, 1999*.
25. South Carolina Public Schools, *School Crime Incident Report*, School Year 1998-99.
26. *Ibid.*
27. *Ibid.*
28. *See also*, Gale M. Morrison and Barbara D'Incau, "The Web of Zero Tolerance: Characteristics of Students Who Are Recommended for Expulsion from School," *Education and Treatment of Children*, vol. 20, 1997, pp. 316-35, Russ Skiba, *The Color of Discipline*, Indiana University, June 2000.
29. James Comer and Alvin F., M.D: *Raising Black Children, 197-198* (1992).
30. *Ibid.*
31. Gil Noam, Kendra Winner and Andrew Rhein, "The Harvard RALLY Program and the Prevention Practitioner: Comprehensive, School-based Intervention to Support Resiliency in At-Risk Adolescence" *Journal of Child and Youth Care Work* Vol. 1-1 1, (1996), 36.
32. Comer, *Raising Black Children*, 198.
33. Russ Skiba and Reece Peterson, *The Dark Side of Zero Tolerance: Can Punishment Lead to Safe Schools? Phi Delta Kappan* ( January 1999).
34. Irwin Hyman and Pamela Snook. *Dangerous Schools - What We Can Do About the Physical and Emotional Abuse of Our Children*, 161.
35. Sue Thorson, *The Missing Link: Students Discuss School Discipline Focus on Exceptional Children*, v. 29, 1996, 1-12.
36. Brenda Townsend, "The Disproportionate Discipline of African American Learners: Reducing School Suspensions and Exclusions," *Exceptional Children*, Vol. 66, No. 3, 381-391.
37. Susan Black, "Locked Out: Why Suspension and Expulsion Should Be Your Court of Last Resort," *The American School Board Journal*, (January 1999).
38. DeRidder, Lawrence M. "How Suspension and Expulsion Contribute to Dropping Out," *The Education Digest*, February 1991.
39. M. Lee Manning. "Developmentally Responsive Multicultural Education for Young Adolescents," *Childhood Education*," v. 76, no.2, (Winter 1999/2000).
40. Thorson, *The Missing Link*.
41. *The New York Times*, December 1, 1999.
42. Grade retention often results in dropping out. *See Hauser, Should We End Social Promotion? Truth & Consequences*, Working Paper presented at Conference on High Stakes Testing sponsored by The Civil Rights Project at Harvard University and Columbia University, December 4, 1999.
43. Skiba, "The Dark Side of Zero Tolerance: Can Punishment Lead to Safe Schools?" *supra*, note 33.

44. For example, statistics for Los Angeles for 1993 indicated that 85% of all daytime crimes were committed by truant youths. See Ronald D. Stephens, "National Trends in School Violence: Statistics and Prevention Strategies," *School Violence Prevention: A Practical Handbook*, eds. Arnold and Conoley (1997), 75.
45. See ARC Report, *supra*, note 18, citing that approximately 50% of high school drop outs are unemployed and 68% of the U.S. prison population dropped out of high school.
46. *Dubuque Telegraph Herald*, October 26, 1996.
47. *Washington Times*, November 20, 1999.
48. Skiba, "The Dark Side of Zero Tolerance," *Kappan*, 1999.
49. *Ibid.*
50. Percentage of children eligible for free/reduced lunch is an indicator of poverty levels.
51. Miami-Dade County Public Schools Code of Conduct may be found at <<http://www.dade.k12.fl.us/parents>>.
52. *Ibid.*
53. *Ibid.* at 2.
54. *Ibid.* at 4.
55. Every school in Miami-Dade has a Trust Counselor, who is responsible for drug and alcohol abuse counseling.
56. See <<http://www.Heartmath.com>>.
57. See <<http://www.pairs.com>>.
58. This program, similar to Palm Springs Middle School's alternative education program, has yet to be established.
59. The American Institutes for Research (AIR) is an independent, not-for-profit corporation that performs basic and applied research for clients that include federal and state government agencies, not-for-profit organizations, and private corporations. The Center for Effective Collaboration and Practice (CECP) supports and promotes the production, exchange, and use of knowledge about effective practices for children and youth with emotional and behavioral problems at risk of school and social failure.
60. <<http://www.air.org/cecp/guide/actionguide>>.
61. Catalyst, "Program loses seats as expulsions soar," February 1999. Available online at <<http://www.catalystchicago.org>>.
62. Justice Matters Institute is a research/advocacy organization devoted to promoting social justice and multi-racial unity in California. Its Educational Justice Program seeks to overcome the marginalization of people of color in schooling through dissemination of information and ideas, building community and networks, advocacy, and policy development. <<http://www.justicematters.org>>.
63. Justice Matters Institute. "Turning To Each Other, Not On Each Other: How Communities Prevent Racism in School Discipline," 2000.
64. Milwaukee Catalyst (MC) is a citywide coalition pressing for effective school reform through research and advocacy and is currently developing a resource guide and community plan for implementing research-based school discipline practices that keep students in school.
65. A twenty-three year old education reform organization based in Chicago.
66. *Best Practices: Ensuring Equitable and Effective Discipline that Supports High Achievement for All Students*, Milwaukee Catalyst and Designs for Change, 1999.
67. In an earlier resource guide entitled, *Act on the Facts*, MC identified four public schools that were making progress in creating successful urban schools. *Act on the Facts-Press for the Public Schools that Work! A Resource Guide*, Milwaukee Catalyst 1998.
68. Justice Policy Institute, "Schoolhouse Hype: Two Years Late," (2000). Available online at <<http://www.cjcj.org/schoolhousehype>>.
69. *Seal v. Dunaway*, No. 3:97-cv-267 (E.D. Tenn. 1999)(unreported memorandum decision).

<sup>70</sup> The parent seeking review by the disciplinary committee must waive the privacy rights of her/his child.

<sup>71</sup> Unless imminent danger to the safety of students and staff exists, out-of-school suspensions should not begin until after the District's appeals process has been exhausted.

<sup>72</sup> Such Boards would be modeled after successful examples of civil review boards that monitor police departments and investigate allegations of police misconduct.