



THE CIVIL RIGHTS PROJECT/PROYECTO DERECHOS CIVILES
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H. 3435: An Act to Help Students Stay in School

Testimony of Daniel J. Losen¹

My name is Daniel Losen and I am a Senior Education Law and Policy Associate at the Civil Rights Project at UCLA. I have worked on the intersection of education law and policy and civil rights for ten years, first at The Civil Rights Project at Harvard where I also lectured in law, and now at UCLA where I commute in cyberspace from my home in Lexington MA. Before becoming a lawyer I taught elementary school in Cambridge, Lincoln, and Acton public schools for 10 years and helped start and run an alternative public school during my last few years in Acton. My wife is also a public school educator and we have two sons in the Lexington public schools.

As an education and civil rights researcher and lawyer I have dedicated my work toward revealing serious problems and generating effective remedies when our system of public education fails to meet the needs of our children, especially where that failure burdens disadvantaged and minority children more than others.

We have a hidden problem in Massachusetts with regard to the high frequency of suspensions in too many schools and districts. H. 3435 can help correct this problem as it contains provisions to ensure that the good citizens of our Commonwealth can learn when and if school suspensions are being used too frequently. The comprehensive reporting on the use of school suspensions required by H. 3435 will also help educators better evaluate efforts at school discipline, and school reform more generally.

Arguably, suspensions remove disorderly students and thereby improve the school environment so that well-behaving students can learn without distractions. In some cases suspensions are also aimed at getting parents' attention to persistent problems at school. Many proponents of harsh "zero tolerance" discipline codes will assert that you need to suspend kids as a deterrent to violence and unlawful drug activity. Yet the majority of offenses for which students are suspended appear to be non-violent, less disruptive offenses such as truancy, dress-code violations, tardiness and use of foul language. Despite nearly two decades of implementation of zero tolerance policy and its application to mundane and non-violent misbehavior, there is no evidence that frequent reliance on removing misbehaving students improves school safety or student behavior.

In support of federal policy similar to H. 3435 to the extent that it proposed improving the tracking and reporting of suspension and expulsions, Fight Crime: Invest in Kids, a non-profit organization of 5,000 Police Chiefs, Sheriffs, Prosecutors and other Law Enforcement Leaders recently stated, "While school safety must be maintained and truly dangerous students removed from the school community as appropriate, suspension and

¹ This testimony reflects the sole opinion of Daniel Losen and should not be attributed to The Civil Rights Project or UCLA.



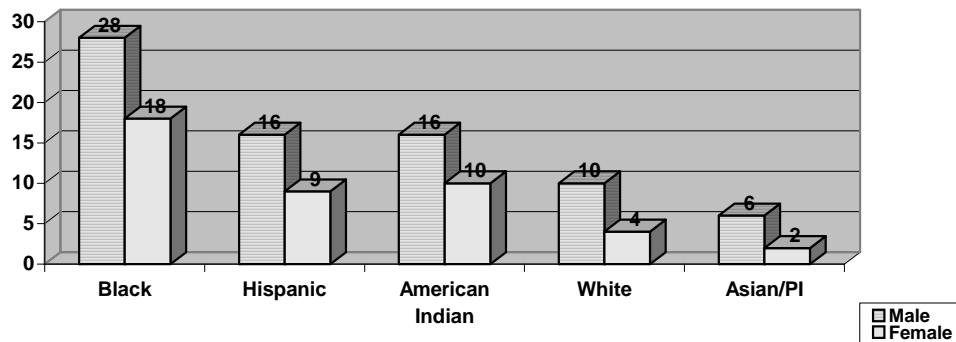
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expulsion often provide troubled kids exactly what they do not need: an extended, unsupervised hiatus from school that increases their risk of engaging in substance abuse and violent crime.” The statement goes on to say that we need more data to “...help educational authorities track suspensions and expulsions to evaluate their approach to school discipline and ensure students are not inappropriately placed at risk.”² Because suspended students miss instructional time, the frequent use of school suspension also reduces students’ opportunity to learn. In this way, the frequent use of suspension by schools leads to both lower achievement and a net reduction in community safety.

The serious concerns expressed by law enforcement officials about the over-use of suspension are amplified by consistent findings that African American and Latino youth are over-represented in school suspensions and that the increase in use is greatest among poor and minority children. As the following graph depicting national middle school suspensions as a percentage of each group’s total enrollment demonstrates, suspension rates in middle school are extremely high, especially for particular minority groups. Within each racial group there are also dramatic differences in rates of suspension when the data are further broken down by gender.

Middle school suspension rates for all children broken down by race and gender: 2005-2006.

Percent Suspended from Middle School (ages 12-14)



Data Source: U.S. Department of Education: Office for Civil Rights (over 9000 middle schools). Analysis by Losen and Skiba (Pending Publication: 2009) Available Online Testimony of Daniel J. Losen, UN Highcommission website at

http://www2.ohchr.org/english/bodies/hrcouncil/minority/oral_statements_forum_minority_2008.htm .

² See, Fight Crime: Invest in Kids, Comments Pursuant to Notice of Proposed Information Collection Request, November 10, 2009.



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Some argue that these disparities are due to the fact that poor and minority children, particularly males, tend to misbehave more frequently in school than white children. But research about principal attitudes conducted by Russ Skiba, Professor at Indiana University, refutes this argument.

Professor Skiba's statewide research showed that, when adjusted for poverty and other factors that schools do not control, the attitude and beliefs of the principal on discipline had a significant effect on suspension rates. Specifically, one study found much higher use of suspension among principals who blamed students and parents and viewed punishment as an effective deterrent. Conversely, principals who considered suspensions as a tool of last resort, and believed that school discipline should serve an educational function, firmly enforced school rules yet lowered the use of out of school suspension. The research supported the conclusion that a student's likelihood of being suspended had less to do with his or her behaviors than with the attitudes of the principal in his or her school.³ Notably, the schools with the lower use of suspension also had significantly higher test scores, thus belying the myth that harsh discipline is needed to rid schools of "bad" kids so "good" kids can learn. Other research raises doubts as to whether harsh school discipline has a deterrent value.⁴

One of the most important aspects of H.3435 is that it will reveal the full extent of suspension use in every district and end the current practice of publicly reporting just the worst offenses regarding discipline data. The current reporting practice, whereby only suspensions for the most violent and unlawful offenses are reported, gives the tax paying public a skewed impression that we are only suspending the very worst and most dangerous offenders. The reported data makes it seem if suspension is a measure of last resort. The complete data reveal otherwise. H 3435 contains data reporting requirements for all students that mirror the more comprehensive federal reporting requirements for students with disabilities. These requirements should help dispel the illusions of how discipline is meted out in our Commonwealth. My testimony uses this comprehensive federally reported data on the discipline of students with disabilities for the State of Massachusetts to show that we are suspending extraordinarily high numbers of students with disabilities.⁵

Specifically, in 2006-07 a total of 14,827 students with disabilities were suspended out of school at least once (ages 3-21). The child count for MA for that year (ages 6-21) was 150,146. That means that roughly one out of every ten students with disabilities was suspended out of school that year. This calculation combined both the

³ The Disciplinary Practices Survey: How Do Indiana's Principals Feel about Discipline? Russell Skiba, Heather Edly, Center for Evaluation and Education Policy, July 2004, Children Left Behind Policy Briefs, Analysis 2-C, available online at: <http://ceep.indiana.edu/ChildrenLeftBehind/pdf/2c.pdf>.

⁴ See Linda Raphael Mendez, *Predictors of suspension and negative school outcomes: A longitudinal investigation*, in *Deconstructing the School to Prison Pipeline* Wald & Losen Eds., at 27 (2003).

⁵ The raw data in this table can be found at www.ideadata.org. To construct the chart I used Table 5-5 which provide unduplicated head counts of students with disabilities ages 3-21 by race and ethnicity. See [https://www.ideadata.org/Tables31ST/AR_5-5 .htm](https://www.ideadata.org/Tables31ST/AR_5-5.htm). The columns on suspensions out of school for up to 10 days were combined with those for suspensions and expulsions totaling 10 days or more. These totals were divided into the headcount table 1-19 for 2006. It is possible that the calculation is slightly inflated because the suspension tables include students ages 3-5 and the headcount data is for students ages 6-21.



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short and long-term out of school suspension data.⁶ The hidden racial disparities in suspensions for kids with disabilities in Massachusetts are even more disturbing.

According to the federally reported data, in 2006, approximately 6.9% of White students with disabilities (about one in 14) were suspended. But compare that to the fact that 20% of Black students with disabilities in the Commonwealth were suspended that same year. That's one out of every 5 Black children with disabilities suspended from school in just one year! In comparison, it means that Black students with disabilities were suspended at a rate that was approximately 3 times higher than that of White students with disabilities.⁷

I am testifying in support of H. 3435 because I think it will help reveal these problems. These data also suggest that some check on the use of suspension is needed to ensure that removing students from school is a measure of last, not first, resort. H. 3435 is designed to provide that check.

I encourage the legislators to consider the cost to taxpayers when school administrators go unchecked, and use suspension too often. Consider, for example, that a survey of correctional facilities found that nationally approximately 33 percent of youth in juvenile corrections had been previously identified as eligible for special education under the Individuals with Disabilities Education Act.⁸ In reality we pay a huge cost for juvenile incarceration. According to a 2003 report by the National Center on Education, Disability and Juvenile Justice, the costs associated with incarcerating juveniles can often be as high as \$70,000 per bed per year in juvenile facilities.¹ That is a very expensive special education placement.

New research suggests that the links between suspension, dropping out and incarceration are strong and that the repercussions from suspensions in middle school may be long-lasting. Specifically, a recent study conducted by Robert Balfanz of Johns Hopkins University connects the dots that lead certain youths through school and into prison. By carefully chronicling the educational paths of over 400 individuals incarcerated in ninth grade in one major northeastern city, he found that the youths most at risk of incarceration were clearly identifiable by middle school; and that nearly all had "struggled profoundly" in school. According to Balfanz's research, the typical ninth grader who went to prison had previously attended school only 58% of the time, failed at least one quarter of their classes, and read at a sixth grade level at the end of 8th grade. Two thirds had been suspended at least once in eighth grade. In his sample, 80% were black, and 85% came from neighborhood non-selective schools.⁹

⁶ Pursuant to the federal requirements unduplicated data are reported by length out of school suspension as described in the preceding footnote.

⁷ The math is straightforward as I divided the Black risk of 20% by the White risk of 6.9% which equals 2.89 or approximately 3.

⁸ Mary M. Quinn et al., *Youth With Disabilities in Juvenile Corrections: A National Survey*, 71 *EXCEPTIONAL CHILDREN*

339, 342 (2005), <http://www.neglected-delinquent.org/nd/docs/mquinn0305.pdf>.

⁹ Deconstructing the School to Prison Pipeline, High Poverty Schools and the Justice System, p. 77



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Given the suggested strong relationship between suspension and involvement in the juvenile justice system, it stands to reason that suspending less frequently, and avoiding the use of suspension for minor offenses, could help reduce dropouts and incarceration, and save taxpayers money in the long run. For example, a team of leading economists from Columbia, Princeton and Queens College predicts that increasing high school graduation rates would decrease violent crime by 20 percent and drug and property crimes by more than 10 percent.ⁱⁱ The economists calculated that each additional high school graduate yielded an average of \$26,500 in lifetime cost savings to the public. (This estimate accounts for the expense of trials, sentencing and incarceration.)

In conclusion, in the interest of improving the educational outcomes of our students, and improving community safety, as well as for the long-term economic interests of the Commonwealth of Massachusetts, I urge you to pass H. 3435

A handwritten signature in cursive script that reads "Daniel J. Losen".

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ⁱ Peter E. Leone, Christine A. Christle, C. Michael Nelson, Russell Skiba, Andy Frey & Kristine Jolivet, *School Failure, Race, and Disability: Promoting Positive Outcomes, Decreasing Vulnerability for Involvement with the Juvenile Justice Delinquency System* (National Center of Education, Disability and Juvenile Justice, October 2003). This report cites several sources for this figure including: Coordinating Council on Juvenile Justice and Delinquency Prevention, *National Juvenile Justice Action Plan* (Office of Juvenile Justice and Delinquency Prevention 1995); Maryland Department of Legislative Services, *Juvenile court- Expansion of jurisdiction. Fiscal and Policy Note, HB 520* (Maryland General Assembly 2003).

ⁱⁱ Henry Levin, Clive Belfield, Peter Muennig & Cecilia Rouse, *The Costs and Benefits of an Excellent Education for America's Children*, Working Paper, Teachers College, Columbia University (2006). <http://www.cbcse.org/pages/cost-benefit-studies.php>. Crimes and arrests were considered in deriving the impact of education on the commission of specific crimes because crimes greatly exceed arrests. Data on specific crimes was taken from the annual Uniform Crime Report. *Id.* at 41.