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December 10, 2012

U.S. Senate Committee on the Judiciary  
Subcommittee on the Constitution, Civil Rights, and Human Rights  
224 Dirksen Senate Office Building  
Washington, D.C. 20510  
Stephanie\_Trifone@Judiciary-dem.Senate.gov

**Re: Hearing on Ending the School-to-Prison Pipeline**

Dear Chairman Durbin, Ranking Minority Member Graham, and Members of the Subcommittee on the Constitution, Civil Rights, and Human Rights:

Thank you for the opportunity to submit testimony for the hearing on ending the school-to-prison pipeline before the subcommittee on the Constitution, Civil Rights, and Human Rights, Senate Committee on the Judiciary. We are writing on behalf of the Chicago Lawyers' Committee for Civil Rights Under Law, the public interest law consortium of Chicago's leading firms. Our organization has first-hand experience with the school-to-prison pipeline and urges the committee to resolve to keep students in our schools, and not in prisons.

In *Brown v. Board of Education*, Earl Warren famously stated that "[i]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."<sup>1</sup> Yet today in Chicago, a black male student with a learning disability faces a 72.5% chance of receiving an out-of-school suspension in a given school year.<sup>2</sup> When the vast majority of a particular demographic is systematically denied access to the most fundamental of opportunities, something is seriously broken.

The Chicago Lawyers' Committee for Civil Rights Under Law's Educational Equity Project provides *pro bono* representation to students in Chicago facing expulsion from public schools. Although students have a right to representation when facing expulsion from school, very few students are able to take advantage of this opportunity. Our organization has seen first-hand how much an advocate can do to help keep a student in school. But we have also seen

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<sup>1</sup>*Brown v. Board of Education of Topeka, Kansas*, 347 U.S. 483, 493 (1954).

<sup>2</sup>Daniel J. Losen and Jonathan Gillespie. *Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School*. The Civil Rights Project at UCLA (August 2012), page 37. Available at <<http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-ccrr-research/losen-gillespie-opportunity-suspended-ccrr-2012.pdf>>.



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how easy it is for a student without representation to be expelled from school despite lack of witnesses or even despite clear evidence of innocence.

It is easy to gain personal experience with the school-to-prison pipeline in Chicago. Chicago runs one of the largest and most segregated public education systems in the country. The statistics are well-known and heartbreaking. Currently the dropout rate for black students is almost twice as high as the rate for white students, and this gap in achievement appears to be growing rather than shrinking. The University of Chicago Consortium on School Research reports that in the years since Secretary of Education William Bennett famously proclaimed Chicago public schools to be the worst in the nation, performance has improved across the board, but achievement gaps have only widened. Their report asserts that “racial gaps in achievement have steadily increased, with white and Asian students making more progress than Latino students, and African American students falling behind all other groups.”<sup>3</sup>

These disparities are further reflected in disciplinary systems – in the past year, students in the Chicago public school system cumulatively lost 306,000 class days due to suspensions, and this has affected predominantly low-income and minority students.<sup>4</sup> Black students are more than 3.5 times as likely to be suspended as their white peers. African-American students represented 45% of CPS enrollment, but 76% of students receiving at least one out-of-school suspension were African-American. Chicago currently has the third highest black-white suspension ratio among major American cities.<sup>5</sup> Research on the school-to-prison pipeline phenomenon suggests that disparities in discipline directly influence subsequent disparities in incarceration rates.

Our office has had the chance to meet some of the students that make up these statistics, and to see them as real people and not merely alarming numbers. We’ve seen how often students acting out in school is the result of problems that merit support, not discipline – difficult challenges at home, undiagnosed learning disabilities, absent parents. We’ve seen the way students’ grades drop after being out of school for even comparatively short suspensions. We’ve seen how this

<sup>3</sup> Stewart Luppescu, et. al. *Trends in Chicago's Schools Across Three Eras of Reform*, Consortium on Chicago School Research (2011). Available at

<[http://ccsr.uchicago.edu/content/publications.php?pub\\_id=156](http://ccsr.uchicago.edu/content/publications.php?pub_id=156)>.

<sup>4</sup> *School Group Calls for Changes to CPS Disciplinary Policies*. CBS Chicago (March 5, 2012). Available at <<http://chicago.cbslocal.com/2012/03/05/student-group-calls-for-changes-to-cps-disciplinary-policies/>>.

<sup>5</sup> Rosalind Rossi and Art Golab. *Black Students face tougher discipline in Chicago and the U.S.* Chicago Sun T. (March 6, 2012). Available at <<http://www.suntimes.com/news/education/11087696-418/black-students-face-tougher-discipline-in-chicago-and-nation-federal-analysis-finds.html>>(citing a report from the Department of Education, Office of Civil Rights, that was based on data submitted by the Chicago Public Schools for the 2009-2010 school year).



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harsh discipline isolates and alienates children, leaving them disengaged from the school community and primed to drop out. At the very first sign of trouble, schools so often given up on precisely the children most in need of extra care and attention.

Our office worked with one memorable student who was always articulate in private meetings. He talked candidly about how hard it was to be a young black male and to feel pressure from all sides to be tough. He explained how students were often bullied simply for choosing not to take drugs. He talked at length about making reflective, mindful life choices, and said that he had worked hard to find a small group of friends who were studious and responsible. Yet despite his eloquence at our meetings, when this student's expulsion hearing took place, all he could do was cry.

We have seen how families, not just students, are affected. Our organization worked with one student whose mother left her hourly job to attend his expulsion hearing, only for us to discover when we showed up that the District had cancelled the hearing with no notice. The hearing was rescheduled, and then cancelled again at the last minute after the mother had already taken off work a second time. We have worked with a student whose grandmother was willing to accompany her to an expulsion hearing despite needing to walk on a painful hip injury to get there. We have even worked with a mother who had to quit her job to provide full-time homeschooling to her son after his expulsion, leaving the rest of her children facing severe financial distress.

Although we are excited about many of the measures that the federal government has initiated to help fight the school-to-prison pipeline, we believe that there is much more to be done. The Office of Civil Rights has already begun tracking data on suspensions and expulsions, focusing on discrepancies in rates between students by race, gender, and disability status. While this is a commendable start, this data is woefully incomplete. We need a school-by-school breakdown, and we need a breakdown by offense. Gaps in data allow for excuse-making. The absence of a breakdown by individual offense and by prior disciplinary history allows individuals to persist in the erroneous belief that black and Hispanic students are punished more harshly solely because they are committing more serious offenses. More data is also needed on the involvement of police officers in public schools. Although some cities, like New York, mandate data collection on the number of arrests taking place at school, in Chicago and most other places data on in-school arrests is hard to come by. In order to have a rigorous discussion of the school-to-prison pipeline, we need data that shows how deep the inequity runs.



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The Office of Civil Rights should also be doing more to respond to official complaints. Organizations have had mixed success filing complaints about discipline disparities with the OCR. The OCR during the Obama administration has already taken positive steps toward increasing the number of school compliance reviews, but more needs to be done. As Russlynn Ali, the Assistant Secretary for Civil Rights, has herself stated "[t]he civil rights laws are the most sorely underutilized tool in education reform and closing the achievement gap."<sup>6</sup> This is real progress, but the number of compliance reviews could be even higher.

The federal government should also be doing more to increase funding to programs that provide alternatives to harsh discipline. Positive Behavioral Intervention Systems (PBIS) have been catching on in thousands of schools across America and have been remarkably successful. PBIS provides a data-driven, holistic framework that enhances academic and behavioral outcomes for all students. PBIS programs rely heavily on constant data monitoring to ensure that all behavioral interventions are having demonstrable positive effects on the school community. When students are unresponsive to school-wide behavioral interventions, PBIS programs work to implement student-specific responses that pay careful attention to (1) why the behavioral problem is occurring; (2) strengthening more acceptable alternative behaviors; (3) removing antecedents and consequences that trigger the problem behavior; and (4) adding antecedents and consequences that help maintain acceptable alternative behaviors.<sup>7</sup> Although PBIS programs receive some federal funding under the Individuals with Disabilities Education Act, increased federal involvement with PBIS programs could help expand the success of the programs to even more schools.

Funding should also be raised for programs that increase re-enrollment and decrease dropout rates. Evidence is clear that students who face harsh punishments like suspension and expulsion are much more likely to drop out than their peers.<sup>8</sup> Students who drop out are more than three times as likely to face incarceration.<sup>9</sup> In Chicago, 28.4% of Hispanic men and 24.4% of black men between the ages of 19 and 24 do not have a regular high school diploma. For

<sup>6</sup>Nadra Kareem Nittle. *U.S. Department of Education Investigating Record Number of Civil Rights Complaints*. America's Wire. Available at <<http://americaswire.org/drupal7/?q=content/us-department-education-investigating-record-number-civil-rights-complaints>>.

<sup>7</sup>George Sugai, et. al. *Applying Positive Behavioral Support and Functional Behavioral Assessment in Schools*. Journal of Positive Behavioral Interventions, vol. 2 no. 3. (2000).

<sup>8</sup>M.E. Goertz, J.M. Pollack, and D.A. Rock. *Who Drops Out of High School and Why?; Findings from a national study*. Teachers College Record, 87, 357-73 (1986). Available at <<http://www.tcrecord.org/Content.asp?ContentId=688>>.

<sup>9</sup>L. Lochner and E. Moretti. *The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self Reports*. The American Economic Review, 94 (1), 155-189 (2004).



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white men this number is just 4.6%.<sup>10</sup> Adjusting back into the routines of school life after months or even years out of class is tremendously difficult, and students benefit from increased supervision during this time. Congress needs to restore funding for the Truant Alternative Optional Education Program (TAOEP) to \$18 million. During the 2008-2009 school year, TAOEP funding was at \$20,078,000. For the current school year it is only at \$12,000,000, despite the fact that it provides much-needed resources that help prevent chronically truant students from dropping out. The federal government should also choose to fund the Illinois Hope and Opportunity Pathways through Education (IHOPE) program at \$25 million. IHOPE would provide resources for re-enrolling over 5,000 high school dropouts across the state.

Work is needed on the prison end of the school-to-prison pipeline as well. We need to fight for juvenile justice initiatives that focus on holistic, restorative responses. Students who are arrested are 50% more likely to drop out.<sup>11</sup> Combined with the high arrest rates in Chicago Public Schools, the school environment practically ushers students into the juvenile justice system.<sup>12</sup> Rather than criminalize students for minor offenses, the juvenile justice system should focus more on restorative policies. Restorative justice programs help children understand the harm they may have inflicted, facilitate collaborative solutions, and promote awareness and understanding. Such programs may include peace circles, mediation, and implementing peer juries.

Finally, an increased set of public-private partnerships between the federal government and the public-interest organizations working on these issues would be both efficient and more likely to lead to the best outcomes. We are tremendously pleased to be a part of this hearing, and hope that this can serve as the start of long-term collaboration on the school-to-prison pipeline between the subcommittee on the Constitution, Civil Rights, and Human Rights and the many non-profit groups doing work in this area. Our involvement at one hearing matters, but it should be just the beginning.

Given this, we urge the federal government to support communities in their fight to end the school-to-prison pipeline. We encourage the government to work

<sup>10</sup> Andrew Sum and Ishwar Khatiwada. *High School Droupouts in Chicago and Illinois and Their Persistent Labor Market Problems*. Center for Labor Market Studies at Northeastern University (November 2012).

<sup>11</sup> *Failed Policies, Broken Futures: The True Cost of Zero Tolerance in Chicago*, Voices of Youth In Chicago Education. Available at <http://www.publicinterestprojects.org/wp-content/uploads/downloads/2011/08/VOYCE-report-2011.pdf>.

<sup>12</sup> *The School to Prison Pipeline: A Fact Sheet*. Chicago Youth Justice Project. Available at <http://chiyouthjustice.files.wordpress.com/2012/02/chicago-stpp-fact-sheet-2010-2011.pdf> (stating that in 2010, there were 5, 574 juvenile arrest of youth 17 and under on Chicago Public School property).



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to reduce racial disparities in discipline, promote alternatives to harsh punishment, and ensure that all young people have the opportunity to succeed.

Sincerely,

Jay Readey  
Executive Director

Eve Rips  
Civil Rights Fellow