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April 27, 2017

Superintendent William R. Hite, Jr.
School District of Philadelphia
440 North Broad
Philadelphia, PA 19130

Dear Dr. Hite,

On behalf of the undersigned organizations, we write to request that the School District of Philadelphia (“District”) permanently prohibit the suspension of elementary-aged students from first through fifth grades. We also urge the District to invest in additional training and resources to support schools as they move away from discriminatory and punitive exclusionary discipline practices and toward practices that promote positive school climates. Finally, we request that the District establish a plan to amend the education records of Kindergarten students who were improperly suspended under the District’s Code of Student Conduct (“Code”) during the 2016-17 school term.

Despite prohibiting the suspension of Kindergarten students, the District continues to suspend students in first through fifth grades at alarming rates. According to Pennsylvania’s most recent Safe Schools Report, the District meted out **615 suspensions to Kindergarteners, 1081 to first graders, 1779 to second graders, 2192 to third graders, 2295 to fourth graders, and 2260 to fifth graders** during the 2015-16 school year. As many of these suspensions are likely longer than one day, this means that elementary-aged students missed *well over* 10,000 days of school due to suspension.

Worse, the District **disproportionately suspends Black students, even though Black students are *not* more prone to misbehavior.**¹ According to the most recent Civil Rights Data Collection (“CRDC”) published by the U.S. Department of Education, Black students (male and female) in the District are **2.65** times more likely to be suspended at all, and **3.08** times more likely to be suspended *multiple* times, than their white peers.² This is appalling and unacceptable.

¹ See, e.g., Catherine P. Bradshaw, et al., *Multilevel Exploration of Factors Contributing to Overrepresentation of Black Students in Office Disciplinary Referrals*, 102 J. ED. PSYCH., 508, 513-14 (“ . . . Black students had greater odds of being referred to the office, even after controlling for the child’s level of behavior problems and classroom-level covariates. . . . The fact that we still observed a significantly higher risk for [disciplinary referrals] among Black students, even after controlling for teachers’ perceptions of the level of disruptive behavior . . . , lends support for the hypothesis that there is a bias against Black students in [disciplinary referrals].”); Russel J. Skiba & Natasha T. Williams, *Are Black Kids Worse? Myths and Facts about Racial Differences in Behavior*, THE EQUITY PROJECT, at 6 (Mar. 2014); Daniel J. Losen, *Discipline Policies, Successful Schools, and Racial Justice*, THE CIVIL RIGHTS PROJECT AT UCLA, at 6-7 (Oct. 2011), available at <http://nepc.colorado.edu/files/NEPC-SchoolDiscipline.pdf>.

² According to the 2013-14 CRDC data, 18.8% of Black students in the District received “any out of school suspension,” in contrast to only 7.1% of white students; and 8.0% of Black students received “multiple out of school suspensions,” compared to only 2.6% of white students. Thus, the “risk ratios” are 2.65 and 3.08.

The prohibition on suspensions of Kindergarten students was the right step forward, but did not go far enough. As we explained in last year’s letter to the School Reform Commission (“SRC”), these suspensions are **harming** our youngest learners.³ Suspensions not only harm the student who is suspended,⁴ but also the students who remain in the classroom.⁵ Research has demonstrated that exclusionary discipline does *not* have the deterrent effect that some might believe.⁶

The vast majority (over 93%) of the suspensions the District issued to first through fifth grade students—almost all of whom are ten years of age or younger—were for “conduct” offenses, *not* violent or weapons offenses. Punishment for subjective “conduct” offenses has been shown to invite racial bias.⁷ This has been the experience of Black children in the District, as indicated by the CRDC data cited above. Similarly, the District disproportionately suspends **students with disabilities** as compared to their peers without disabilities. According to the 2013-14 CRDC data, students with disabilities are **1.33** times more likely to be suspended in the District than students without disabilities; and **Black students with disabilities** are **1.72** times more likely to be suspended than their white peers with disabilities.⁸ It is imperative that the District stop excluding its youngest learners from

³ Jeffrey Lamont, et al., *Out-of-school Suspension and Expulsion*, 131(3) PEDIATRICS e1000-e1007 (2013); Hanno Petras, et al., *Who Is Most At-Risk for School Removal? A Multilevel Discrete-Time Survival Analysis of Individual- and Context-Level Influences*, 103(1) J. OF EDUC. PSYCHOL. 223 (Feb. 2011).

⁴ Whenever a school suspends a student, it increases that child’s likelihood of future educational barriers and challenges, including discipline, truancy, and dropout, which feed the School-to-Prison Pipeline. See, e.g., American Civil Liberties Union of Pennsylvania, *Beyond Zero Tolerance: Discipline and Policing in Pennsylvania Public Schools*, at 7 (Feb. 2015) (“[Texas study] found that students who were suspended or expelled, especially repeatedly, were more likely to be held back a grade or drop out of school than other students.”); see also Harold Jordan, *What’s Wrong with Criminalizing Our Early Learners?*, NAT. BLACK CHILD DEVELOPMENT INST. (2016), <http://www.nbcdi.org/whats-wrong-criminalizing-our-early-learners>.

⁵ A three-year study of over 17,000 students found that the math and reading scores of students who are *not* being suspended suffer when their classmates are removed from the learning environment. See Brea L. Perry & Edward W. Morris, *Suspending Progress: Collateral Consequences of Exclusionary Punishment in Public Schools*, 79 AM. SOCIOL. REV. 1067 (2014). The study found that even when controlling for level of violence and disruption in schools, school funding, and teacher ratios, **having classmates be suspended at an above-average rate negatively impacted the entire student body**. See also Jane Meredith Adams, *Study: Suspensions harm ‘Well-Behaved’ Kids*, EDSOURCE, Jan. 8, 2015, <https://edsources.org/2015/study-suspensions-harm-well-behaved-kids/72501>.

⁶ American Psychological Association, *Zero Tolerance Task Force Report, Are Zero Tolerance Policies Effective in Schools?: An Evidentiary Review and Recommendations*, 63(9) AM. PSYCHOL. 852, 854 (challenging common assumptions about exclusionary discipline, researchers found that excluding children who exhibit problematic behaviors from school did not deter their future misbehavior, but rather predicted future misbehavior by those students).

⁷ See, e.g., Tom Rudd, *Racial Disproportionality in School Discipline: Implicit Bias is Heavily Implicated*, KIRWAN INST., at 2 (Feb. 2014), available at <http://kirwaninstitute.osu.edu/wp-content/uploads/2014/02/racial-disproportionality-schools-02.pdf>; Russel J. Skiba, et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 34 URBAN REVIEW 317, 334-45 (Dec. 2002); Losen, *supra* note 1, at 6-7.

⁸ According to the 2013-14 CRDC data, 15.4% of students with disabilities in the District received “any out of school suspension,” in contrast to only 11.6% of students without disabilities; and 18.6% of Black students with disabilities received “any out of school suspension,” as compared to only 10.8% of white

the academic environment through the use of discriminatory, outdated, and ineffective discipline techniques.

Furthermore, parents of students who are suspended are often forced to leave work to attend to their child's needs. This disproportionately affects households that live close to or below the federal poverty line. Parents whose children are punished through exclusionary discipline are often employed in low-wage hourly positions subject to poor scheduling, non-existent sick and personal leave policies, and little to no benefits. Parents risk forfeiting their family's income when they leave work to attend to a child who has been suspended from school. This creates economic instability and injustice for working parents who are attempting to provide for their families and build wealth, and therefore contributes to a cycle of disadvantaging the poor. Lastly, when schools rely on punitive discipline methods, the opportunity to build critical relationships between the family and the school is lost.

Dr. Hite, to avoid and eliminate continuous harm that suspensions cause our youngest learners—who are disproportionately students of color and students with disabilities—and their families, we urge you to take this important step forward. Make the District a leader on this issue and propose a permanent ban on all out of school suspensions for elementary students from Kindergarten through fifth grades.

This move is not unprecedented for a school district of Philadelphia's size.⁹ Seattle prohibits suspensions for *all* elementary students; Minneapolis prohibits suspensions for students through fifth grade; and Houston prohibits suspensions for students through third grade. New York City and Chicago—school districts significantly larger than Philadelphia—prohibit suspensions for students through second grade. And the states of California,¹⁰ Connecticut,¹¹ and our neighbor, New Jersey,¹² have legislatively limited suspensions for students through second and third grade. This can and should be done here in Philadelphia.

Further evidence in support of the District's capacity to move this forward, is the District's own experience implementing the Kindergarten ban. To our knowledge, there has been no significant backlash against the policy at the building level from administrators or teachers; and, as a result, far fewer Kindergarten students have been suspended this year. Most Kindergarten teachers did not receive professional development on de-escalation, conflict resolution, or other classroom management techniques in advance of the 2016-17 school year, even though the District *rightly* offered it. That said, it is imperative that the District invest in training and resources that will enable school communities to build the skills and provide the services necessary to ensure a high-quality education to all students

students with disabilities. Thus, the "risk ratios" are 1.33 and 1.72.

⁹ A comprehensive list of state laws and school district policies is attached as an addendum to this letter.

¹⁰ CAL. EDUC. CODE § 48900(k)(1)(2).

¹¹ C.G.S.A. § 10-233c(g).

¹² N.J.S.A. § 18A:37-2a(a).

in a positive, welcoming, and affirming school climate. These additional resources should include mandatory professional development on de-escalation, conflict resolution, or other classroom management techniques; mandatory professional development on Restorative Practices; and additional staff at the local school level to assist schools in developing inclusive and positive school cultures. Ending the harmful practice of suspending elementary-aged students is the necessary immediate step forward; the District can stop harming students now by banning this practice. This does not, however, obviate the importance of training and resources for school communities to create and promote a positive school climate in all aspects of school life, and we urge the District to commit to sustained support for initiatives that enable local school communities to achieve this broader goal.

Finally, despite the ban on suspensions of Kindergarten students, the District has suspended a lesser, *but still substantial*, number of Kindergarten students this school year—for offenses that did not cause “serious bodily injury,” as defined by the Code. Parents of students who have been suspended in violation of the Code should have the opportunity to amend their child’s educational records to remove the suspension. We respectfully request that the District: (1) tally the number of suspensions meted out to Kindergarteners in violation of the Code; (2) expeditiously amend the education records of affected students, with parent consent; and (3) provide technical assistance to schools with notable numbers (over 5) of suspensions of Kindergarten students. This technical assistance will help prepare these schools for successful implementation of any future revisions to the Code prohibiting suspensions of elementary students. The District must include parents of students in the affected schools in developing a plan for a positive school climate that does not rely on discriminatory and harmful suspensions of elementary-aged students.

To conclude, we reiterate our request that the District (1) permanently prohibit the suspension of elementary-aged students from first through fifth grade, and (2) remedy the suspensions that the District imposed upon Kindergarten students during the 2016-17 school year in violation of its own Code.

Thank you for your consideration.

Sincerely,

Education Law Center-PA
Deborah Gordon Klehr, Esq., Executive Director

One Pennsylvania
Salewa Ogunmefun, Political Director

ACLU of Pennsylvania
Harold Jordan, Senior Policy Advocate

Youth United for Change
Rapheal Randall, Executive Director

Councilwoman Helen Gym

Caucus of Working Educators of the Philadelphia Federation of Teachers
Ismael Jimenez & Kelley Collings, Co-Chairs

Parents United for Public Education, A Citywide Parent Leadership Collective
Kendra Brooks & Robin D. Roberts, Parent Leaders

PhillySUN, Schools Unifying Neighborhoods
Media Mobilizing Project

Representative Jordan A. Harris
Chairman – Pennsylvania Legislative Black Caucus

Disability Rights Pennsylvania
Perri Jude Radevic, Chief Executive Officer

Mental Health Association of Southeastern Pennsylvania
Lisa Snitzer, Family and Youth Division Director

Education Rights Network

Teacher Action Group Philadelphia

cc:

School Reform Commission

Joyce S. Wilkerson, Chair

William J. Green, Member

Farah Jimenez, Member

Dr. Christopher McGinley, Member

Rachel Holzman, Esq., Deputy Chief, Student Rights & Responsibilities

Enclosed:

American Civil Liberties Union of Pennsylvania, *Discipline of Early Learners – Laws, District Policies and Federal Resources* (April 7, 2017).