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Statement of the Education Law Center to the PA Advisory Committee to the US Commission on Civil Rights

Dismantling the School-to-Prison Pipeline: Addressing the Disparate Discipline of Students of Color, Students with Disabilities, & LGBTQ Students

Good afternoon, members of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights. Thank you for the opportunity to contribute to this important discussion about school discipline and the school-to-prison pipeline in Pennsylvania. My name is Reynelle Brown Staley, and I serve as Policy Director for the Education Law Center – PA (ELC), a non-profit statewide legal advocacy organization that focuses on education.

Our testimony today draws from our nearly 45 years of experience dedicated to ensuring that all Pennsylvania children have access to a quality public education. ELC has long been a leader in the fight against exclusionary discipline practices that push students out of school and into the juvenile and criminal justice systems. Our focus is on the devastating impact these practices have on educationally marginalized student populations, such as students of color, students with disabilities, and LGBTQ+ students. We know the negative and far reaching impact of zero-tolerance policies, aggressive policing in schools, and other extreme discipline because we hear these stories from families every day.

We begin our testimony with a few representative stories to help frame how the recommendations we propose today actually matter to students' lives. The first story I offer is of Joshua, a 9-year-old Latin(x), gender non-conforming student. Joshua's classmates would constantly pick on him and mock him because they thought he was effeminate. None of his teachers or other adults in the building ever seemed to respond. One day, the teasing got too much for Joshua, and he threw his water bottle at a student, hitting the student in the stomach but not causing any serious injury. School personnel called Joshua's mother at the hair salon where she worked and demanded that she come pick her son up from school immediately. She told the school she couldn't leave her job because she would be fired, so the school called the police on Joshua and demanded that the police remove him from school. At 9 years old – before a child can even legally be adjudicated delinquent, Joshua was taken to the police station where he remained, for hours, handcuffed in a cell because his school pursued a zero-tolerance response to his behavior.

Or take the story of Jasmine, a black high school student with an Individualized Education Plan (IEP) and significant emotional and behavioral health needs that were not being met by her

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school. As a result of her disabilities, Jasmine would leave class when she became overwhelmed or frustrated, which sadly happened often. To address Jasmine's needs and meet their legal obligations to her as a student with disabilities, the school was required to develop a Positive Behavior Support Plan as part of Jasmine's IEP to help teach her positive behaviors, ensure she was supported to stay in class, and make clear that she should not be punished for the district's failures to provide her with an appropriate program. Lacking a full-time psychologist, counselor, or social worker, the school created a plan that advised school staff to call the local police any time Jasmine was violating school rules, regardless of how minor the offense. This unsurprisingly led to Jasmine having repeated and traumatizing interactions with the police which impacted her ability to learn. School became a toxic place for Jasmine, a place where she didn't feel wanted, didn't want to be, and eventually stopped attending.

Joshua and Jasmine's stories are not just isolated instances; they are, in part, the product of federal, state, and district-level policies that promote school environments that are more like prisons than learning environments and push students into the school-to-prison pipeline. We believe that, through targeted investments and meaningful policy action, all levels of government can work together to foster school climates that are safe, positive, and inclusive for all students.

With those guiding principles, we recommend the following measures:

1. Eliminate zero-tolerance policies at the state and federal levels

Zero tolerance in schools was initially intended to ensure that certain serious, and generally criminal student behavior, such as possession of guns or drugs at school, received strong and consistent disciplinary responses. Since enactment of the federal Gun-Free Schools Act of 1994, it has gone far beyond its intended purpose. Over the past 25 years, new laws and district policies based on zero tolerance have imposed severe, mandatory disciplinary responses for minor rule infractions, such as dress-code violations and tardiness.¹ One student ELC served, who was living in emergency shelter, was punished with a month in after-school detention simply because he could not afford shoes that complied with his school's dress code.

Despite calls by the ACLU of Pennsylvania and the Pennsylvania Joint State Government Commission on Zero Tolerance School Discipline Policies to limit the use of zero tolerance in our state,² unfortunately the trend is to expand its use. ELC has been called upon to advise the family of a first grader who was expelled for throwing his lunch box in frustration and a second grader who was expelled for pulling on another student's jacket. We even had to litigate (successfully) in Commonwealth Court to overturn an expulsion because a school district attempted to apply Pennsylvania's zero tolerance statute banning weapons on school grounds to

¹ Jason P. Nance, Students, Police, and the School-to-Prison Pipeline, 93 WASH. L. REV. 919, 933 (2016) (discussing that states and localities have applied zero tolerance to a multitude of offenses).

² *End Zero Tolerance Combating The School-To-Prison Pipeline*, <https://www.endzerotolerance.org/pennsylvania> (last visited November 14, 2019).

a pencil.³ It bears emphasizing that zero-tolerance laws and policies are ineffective and counterproductive.⁴ They deprive educators of their ability to use their judgment to consider the circumstances and decide what actions are appropriate to hold the student accountable. They unnecessarily push students out of school and into the juvenile and criminal justice systems.⁵ And they should therefore be eliminated.

2. End the enactment of state and federal laws encouraging the presence of law enforcement in schools

School shootings, like the 2018 deadly event at Parkland High School in Florida, have served as the rationale for increasing the presence of armed school security personnel despite any evidence of effectiveness as a deterrent.⁶ For each of the past few legislative sessions, the Pennsylvania General Assembly has introduced legislation to increase the presence of adults with guns in schools. Current law, including Act 44 of 2018 and subsequent amendments, formally authorize three separate categories of armed individuals legally authorized to work in schools – some with very minimal training in working with children or schools.

Although the rise in law enforcement and school security is being advocated as a way to prevent school shootings being predominantly committed by white males in suburban, majority white schools, it is students of color, students with disabilities, LGBTQ+ students, and students in poor districts with high percentages of students of color who are disproportionately impacted.⁷ In the 20 largest school districts in Pennsylvania – generally poor districts with high percentages of students of color, black students are 7 times as likely to be arrested than their white peers. Latinx students are arrested at three times the rate of white students. Further, students with disabilities are twice as likely to be suspended than their non-disabled peers.⁸

The reality is that because school shootings and other criminal activity in school is rare, when law enforcement are present in schools, they become engaged in routine matters of school discipline – matters they are trained to respond to with highly punitive, criminalizing measures. This increase in law enforcement presence in schools has not only affected middle- and high school children; students as young as 5 or 6 have been arrested and taken out of school in handcuffs by police officers for throwing a temper tantrum.⁹ Ending the school-to-prison

³ *S.A. by H.O. v. Pittsburgh Pub. Sch. Dist.*, 160 A.3d 940 (Pa. Cmwlth. 2017).

⁴ Cecil R. Reynolds et al., *Are Zero Tolerance Policies Effective in the Schools: An Evidentiary Review and Recommendations*, 63 *Am. Psychologist* 852, 860 (2008).

⁵ Nance, *supra* note 1, at 927.

⁶ Center for Schools and Communities, “School Resource Officer Evaluation, Phase One” September 2005, pp. 68–69.

⁷ There is extensive evidence of disproportionate discipline of students of color and students with disabilities in Pennsylvania as well as across the country. Federal data show, for example, that compared to white students, Latinx students were twice as likely to be arrested in Pennsylvania. American Civil Liberties Union, *Cops and No Counselors: How the Lack of School Mental Health Staff is Harming Students* 24 (2019), <https://www.aclu.org/report/cops-and-no-counselors>.

⁸ Harold Jordan, *Beyond Zero Tolerance: Discipline and Policing in Pennsylvania Public Schools* Am. Civ. Liberties Union of Pa. (February, 2015), <https://www.endzerotolerance.org/read-our-report>.

⁹ Nance, *supra* note 1, at 922.

pipeline requires ending the disproportionate policing of students of color, students with disabilities, and LGBTQ+ students in schools.

3. Invest in mental and emotional health supports and professionals, not more police

Since June 2018, the General Assembly has invested \$120 million into a new funding stream aimed at preventing and addressing school shootings. During that same time, the total new funding dedicated by Pennsylvania's legislature to supporting the most fundamental needs of the 1.7 million students in our state's public schools was less than three times that amount – money that is supposed to pay for a basic public school education, i.e., educator and other staff salaries, textbooks and technology, and the range of student instructional needs. These basic education needs are underfunded in Pennsylvania – by as much as \$4 billion each year – leading many schools to provide inadequate climate supports to enable student learning. Yet because funding is more readily available for school security, both through this new funding stream and through the Safe Schools Targeted Grants program that the Pennsylvania Department of Education administers, school districts are incentivized to invest in metal detectors, police officers, and other security measures, but not in the mental health resources and supports that students need - and that would actually lead to safer schools.

This phenomenon disproportionately affects students of color and other historically marginalized students, as these students are more likely to attend underfunded schools and under-resourced communities.¹⁰ 23% of Pennsylvania public school students attend schools with police but lack either a nurse, psychologist, social worker, or counselor. 90% of Pennsylvania public school students attend schools without enough counselors.¹¹ Even when schools do have mental health professionals, they are most often grossly understaffed. When schools lack counselors and administrators to handle routine matters of school discipline, ordinary, age-appropriate student conduct is more likely to escalate and result in law enforcement involvement. When communities invest in police rather than education for historically marginalized communities, schools may involve more students in the criminal justice system, even for low-level violations of school behavioral codes.¹²

4. Develop a robust continuum of alternatives to exclusionary discipline and eliminate the use of suspension and expulsion, especially for our youngest learners

School codes of conduct reflect both the regulatory framework established by federal and state policymakers and the local prerogatives of the school community. In addition to the changes to the federal and state context described above, local school districts need to revise their codes of conduct to ensure that school-level and district-level responses to student behavior are

¹⁰ American Civil Liberties Union, *supra* note 7, at 5.

¹¹ Report, Am. Civ. Liberties Union of Pa., *Supporting Pennsylvania Students: The Choice* (2015), https://static.wixstatic.com/ugd/10497b_eb811e23518d4b59b22f46280a25421a.pdf

¹² Nance, *supra* note 1, at 949.

appropriate, proportionate, and likely to have a corrective effect on the student and the school community.

Codes of conduct should ban suspensions and expulsions for minor violations, especially for young learners like Joshua.¹³ Such exclusionary discipline is an ineffective deterrent¹⁴ and not only harms the student who is suspended or expelled,¹⁵ but also the students who remain in the classroom,¹⁶ creating a toxic school climate. Several school districts in Pennsylvania, including Philadelphia,¹⁷ Pittsburgh,¹⁸ and Phoenixville,¹⁹ have successfully banned the use of suspensions for non-violent offenses in kindergarten through second grade to improve school climate. In addition, states including Texas,²⁰ California,²¹ Connecticut,²² Maryland,²³ New Jersey,²⁴ and Oregon²⁵ have all limited suspensions for elementary school students.

Codes of conduct should also require educators and school administrators to exhaust all non-punitive, alternative disciplinary practices before exclusionary discipline is even considered. California recently revised its Compilation of School Discipline Laws and Regulations to state that “[s]uspension, including supervised suspension...shall be imposed only when other means of correction fail to bring about proper conduct.”²⁶ Pennsylvania could benefit from following this model.

Instead of exclusionary discipline, school districts should employ effective, data-driven, evidence-based prevention initiatives, such as:

- Positive Behavioral Interventions and Supports
- Social and Emotional Learning

¹³ Jeffrey Lamont, Policy Statement: Out-of- School Suspension and Expulsion, 131 PEDIATRICS e1000, (2013).

¹⁴ Reynolds, *supra* note 4, at 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).

¹⁵ Jordan, *supra* note 8, at 7 (reporting 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).

¹⁶ Brea L. Perry & Edward W. Morris, *Suspending Progress: Collateral Consequences of Exclusionary Punishment in Public Schools*, 79 AM. SOCIOLOGICAL REV. 1067, PINCITE (2014).

¹⁷ Superintendent William R. Hite, The School District of Philadelphia Code of Conduct 2019-2020 16 (The School District of Philadelphia, 2019).

¹⁸ Superintendent Anthony Hamlet, Pittsburgh Public Schools K-5 Code of Student Conduct Updated for 2019-2020 3 (Pittsburgh Public Schools, 2019).

¹⁹ Superintendent Alan Fegley, Phoenixville Area School District Elementary Student Handbook 2019-2020 16 (Phoenixville Area School District, 2019).

²⁰ Tex. Educ. Code Ann. § 37.0013 (limiting suspensions for students in grades 2 and below).

²¹ Cal. Educ. Code Ann. § 48900(k)(1)(2) (limiting suspensions for students in kindergarten through third grade).

²² Conn. Gen. Stat. Ann. § 10-233c (limiting suspensions for students in grades 2 and below).

²³ Md. Code Ann. Educ. § 7-305 (limiting suspensions for students in grades 2 and below).

²⁴ N.J. Stat. Ann. § 18A:37-2a(a) (limiting suspensions in pre-kindergarten through grade 2).

²⁵ Or. Rev. Stat. § 339.250 (limiting suspensions for students in fifth grade and younger).

²⁶ Child Trends & EMT Associates, California Compilation of School Discipline Laws and Regulations 17 (U.S. Dep’t of Educ. 2019).

- Student conflict resolution programs
- Mentoring
- Cognitive behavioral therapy in schools
- Trauma-informed practices
- Restorative practices

To truly achieve their intended results, these strategies must be implemented with fidelity with a Multi-Tiered System of Support that is both academic and behavioral.

5. Make sure LGBTQ+ students are wholly supported

There is limited data on how the school-to-prison pipeline uniquely impacts LGBTQ+ students, however, we know anecdotally and from available data that these students are profoundly impacted. Ninety percent of LGBTQ+ youth in juvenile detention reported having been suspended or expelled at least once.²⁷ Verbal harassment by peers and school personnel, negative attitudes about gender expression, and stigmatizing dress code policies create hostile school climates for LGBTQ+ youth. The compounded impact of racially biased school discipline and anti-LGBTQ+ language and rhetoric in schools calls for an approach to advocacy and youth engagement that addresses the whole lived experiences of LGBTQ+ youth of color. In addition to the recommendations mentioned above, schools should actively create supportive school environments that celebrate diversity, including through expanding access to Gay Straight Alliance clubs and LGBTQ+ inclusive curriculum.

6. Provide training and resources to enable school personnel to adequately support underserved students

Biases, implicit and explicit, too often govern classroom decisions. Data shows that teachers and school administrators discipline students of color more often and more severely than they do white students for the same offenses.²⁸ During the 2015-2016 school year, Black male students represented 8 percent of enrolled students and accounted for 25 percent of students who received an out-of-school suspension. Black female students represented 8 percent of the student enrollment and accounted for 14 percent of students who received an out-of-school suspension. Similarly, students with disabilities represented 12 percent of students enrolled but 26 percent of students who received an out-of-school suspension.²⁹ Addressing issues of student discipline is not simply a matter of addressing student behavior; it also requires training adults to overcome their biases and respond consistently and appropriately to the behavior they see.

It is imperative that all school staff, including educators, administrative staff, and school-based law enforcement, receive training and resources to understand and recognize signs of behavior

²⁷ Shannan Wilber, Juvenile Detention Alternatives Initiative, *A Guide to Juvenile Detention Reform: Lesbian, Gay, Bisexual and Transgender Youth in the Juvenile Justice System* 9 (Annie E. Casey Foundation 2015).

²⁸ Nance, *supra* note 1, at 924-25.

²⁹ U.S. Department of Education Office for Civil Rights, 2015-16 Civil Rights Data Collection: School Climate and Safety 14 (2019), <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>.

that may be connected to a diagnosed or undiagnosed disability. They should also receive training and access to information that emphasize an empathic response to student behavior – a response that builds trusting relationships with students by prioritizing, valuing, and understanding each student’s individual experiences.³⁰ This is particularly critical in schools with large percentages of students of color and students in poverty where school staff may not reflect or understand their racial, cultural, or socioeconomic background.³¹ Diversifying the teaching force as well as providing adequate and continuing training programs is imperative to providing all Pennsylvania students, and particularly students of color, with teachers who understand and value them.

Training is particularly critical for school-based law enforcement, who are almost exclusively trained and tasked with enforcing the criminal code. They do not complete extensive coursework in youth development or receive substantive training on age-appropriate behaviors for students. Their approach to students is not trauma-centered, yet roughly 60 percent of schoolchildren are likely to have suffered or witnessed some form of trauma within the previous year.³² Until recently, Pennsylvania did not require school security personnel to undergo any training in dealing with children, and even now, that training is minimal. And even that minimal training would be deferred under pending legislation in the General Assembly that would allow armed security to work in Pennsylvania schools this entire school year without receiving any training on working with children.³³

The reality for many students like Joshua and Jasmine is that they are being educated in spaces that increasingly feel less like schools and more like prisons. They are forced to pass by metal detectors, bulletproof glass, armed police officers, k-9 units, and other military-grade equipment before they enter their learning space.³⁴ They are subject to a host of harsh rules that are strictly enforced with severe consequences. They are not given the resources and opportunity to learn

³⁰ Jason A. Okonofua et al., Brief Intervention to Encourage Empathic Discipline Cuts Suspension Rates in Half Among Adolescents, 113, Proc. Of the Nat’l Acad. Of Sci. of the U.S., 5221-22 (2016). 3

³¹ Jason Fontana & David Lapp, Research for Action, A PACER Policy Brief: New Data on Teacher Diversity in Pennsylvania 1 (Research for Action 2018)<https://8rri53pm0cs22jk3vvqnalub-wpengine.netdna-ssl.com/wp-content/uploads/2018/09/RFA-New-Data-on-Teacher-Diversity-PACER-FINAL.pdf> (noting that students of color account for 33% of all Pennsylvania students educators of color account 6% of all Pennsylvania teachers).

³²David Finkelhor, Heather Turner, Anne Shattuck, Sherry Hamby, & Kristen Kracke, Children’s Exposure to Violence, Crime, and Abuse: An Update, DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS JUVENILE JUSTICE BULLETIN: NATIONAL SURVEY OF CHILDREN’S EXPOSURE TO VIOLENCE, (Sept.

2015), https://www.ojdp.gov/pubs/248547.pdf?ed2f26df2d9c416fbddddd2330a778c6=nnxrpdozn-nzubdzrr&utm_source=youth.gov&utm_medium=federal-links&utm_campaign=reports-and-resources &utm_source=youth.gov&utm_medium=federal-links&utm_campaign=reports-and-resources.

³³ H.B. 49, Reg. Sess. (Pa. 2019),

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=H&type=B&bn=0049>.

³⁴ “Do the Harder Work-Create Cultures of Connectedness in Schools”:

A Youth & Parent Organizer Response to the Federal Commission on School Safety, COMMUNITIES FOR JUST SCHOOLS FUND, (Dec. 5, 2018), <https://www.cjsfund.org/do-the-work>.

and not provided adequate supports when they fail. Yet all students fail at some point, whether academically or through poor decisions in their interactions with others. Schools can and should take steps to support students while maintaining certain standards of community safety.

Dismantling the school-to-prison pipeline requires building a welcoming educational community, one where laws and policies support student learning and investments in students' holistic well-being. We believe the changing the legal framework and policy practices for schools to divest from policing and move towards embracing all students in an inclusive and supportive environment would play a significant role in dismantling the school-to-prison pipeline.

We thank the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights for addressing this important topic and inviting the Education Law Center to submit this testimony.