

# Beyond Zero Tolerance

Discipline and  
Policing in  
Pennsylvania  
Public Schools

February 2015 - Updated



# ABOUT THIS REPORT

Originally published in November 2013, *Beyond Zero Tolerance* was well-received in Pennsylvania and beyond. **We have expanded and updated the report for 2015.**

**This updated version is organized into seven major sections.**

- First we **explain zero tolerance and why it's a problem to exclude students from school** as a disciplinary measure.
- Then, in a new section, we offer **questions and answers about school discipline** in Pennsylvania.
- Next we present our **key findings and recommendations about removing Pennsylvania students from school.**
- Then we provide a new **update of developments** in school discipline and policing.
- Then we **analyze Pennsylvania's discipline data.**
- Next we examine the **role of police in Pennsylvania's public K-12 schools.**
- Finally, we present our **conclusion** about the urgent need for reform.

Most data used in the original sections of this report cover Pennsylvania's approximately 500 regular school districts.<sup>1</sup> We have drawn on multiple sources: annual Pennsylvania Department of Education (PDE) Safe Schools Reports; the U.S. Department of Education Civil Rights Data Collection (CRDC); and information obtained under Pennsylvania's Right to Know Act from school districts, the Pennsylvania State Police, and the Pennsylvania Commission on Crime and Delinquency.

Unless otherwise noted, data on charters, intermediate units (regional educational service units that provide services to multiple districts), career technical centers and vocational schools, and state juvenile correction facilities were not used. Also, in this report, the term "suspension" refers only to out-of-school suspensions (OSS). Neither the use of in-school suspension nor referrals of young people to the juvenile justice system is addressed in this report.<sup>2</sup>

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February 2015

Additional information, including school district data and other resources, is available on our web site at [www.aclupa.org/bzt](http://www.aclupa.org/bzt).

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# Recommended Resources 2015

## Federal Policy Statements

- School Discipline Guidance, U.S. Departments of Education and Justice  
<http://www2.ed.gov/policy/gen/guid/school-discipline/index.html>
  - “Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline,” January 8, 2014
  - *Guiding Principles: A Resource Guide for Improving School Climate and Discipline*, January 2014.
- Charter Schools, U.S. Department of Education  
“Dear Colleague Letter from Assistant Secretary for Civil Rights, U.S. Department of Education – Charter Schools,” May 14, 2014. <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405-charter.pdf>
- Correctional Education in Juvenile Justice Facilities, U.S. Departments of Education and Justice, December 14, 2014. <http://www2.ed.gov/policy/gen/guid/correctional-education/index.html>

## Guidance for School Policymakers

- *Addressing the Out-of-School Suspension Crisis: A Policy Guide for School Board Members*, National Opportunity to Learn Campaign, et al., April 2013.
- *AASA and School Discipline*, AASA: The School Superintendents Association. <http://www.aasa.org/schooldiscipline.aspx>
- *Funding School Discipline Reform: Resource Guide*, AASA: The School Superintendents Association and Children’s Defense Fund, September 2014.
- *Fair and Effective Discipline for All Students: Best Practice Strategies for Educators*, National Association of School Psychologists, 2002.
- *Model Code on Education and Dignity*, Dignity in Schools Campaign, October 2013.
- Anne Gregory, et al., *How Educators Can Eradicate Disparities in School Discipline: A Briefing Paper on School-Based Interventions*, The Equity Project at Indiana University, March 2014.

## Policing in Schools

- Catherine Y. Kim and I. India Geronimo, *Policing in Schools: Developing a Governance Document for School Resource Officers in K-12 Schools*, An ACLU White Paper, August 2009.
- Nathan James and Gail McCallion, *School Resource Officers: Law Enforcement Officers in Schools*, Congressional Research Service for Congress, June 26, 2013.

## Race & Discipline

- *Discipline Disparities: Myths and Facts*, The Equity Project at Indiana University.
- Molly Knefel, “Can We Fix the Race Problem in America’s School Discipline?” *Rolling Stone*, January 24, 2014.
- Prudence Carter, Russell Skiba, Mariella Arredondo, & Mica Pollock, *You Can’t Fix What You Don’t Look At: Acknowledging Race in Addressing Racial Discipline Disparities*, The Equity Project at Indiana University, December 2014.
- Russell J. Skiba and Natasha T. Williams, *Are Black Kids Worse? Myths and Facts About Racial Differences in Behavior: A Summary of the Literature*, The Equity Project at Indiana University, March 2014.

All of these resources are available online.

# Why Pennsylvania Must Move Beyond Zero Tolerance

“Zero tolerance” describes a policy that “assigns explicit, predetermined punishments to specific violations of school rules, regardless of the situation or context of the behavior.”<sup>3</sup> The original rationale was that serious offenses should be met with firm discipline. But in practice, zero tolerance has had a much broader reach and impact. Its use is not confined to the most serious situations.

This type of education policy arrived in Pennsylvania in the 1990s. A 1995 state law known as Act 26 required the expulsion of students found possessing a “weapon,” which was broadly defined. Included under the policy were specific prohibited items, as well as anything that might be used as a weapon. Superintendents were permitted to opt for lesser punishment when deemed appropriate.<sup>4</sup> Pennsylvania, like other states, was required to enact this type of mandatory-expulsion law by the federal Gun-Free Schools Act of 1994 in order to qualify for federal funding for schools.<sup>5</sup> Many districts added their own strict zero tolerance policies, which included a broader range of “offenses,” typically fighting and drug possession.

In Pennsylvania, as around the nation, **zero tolerance took on a life of its own.** Particularly over the last 15 years, it infected the culture of schools so that an even broader range of behaviors and conflicts, like school uniform violations or talking back to adults, became the basis for removal from school, even when removal was not required by law.<sup>6</sup>

**Now, recognition is growing nationwide that zero tolerance practices have failed to make**

**schools safer and have taken away an opportunity to learn for many young people whose offenses were relatively minor.**

The conversation about the harms of excluding students from school and the need for alternatives is at an early stage in most of Pennsylvania. **Our report highlights many of the key trends and issues that must be addressed.**

## BACKGROUND

In 1986, U.S. Attorney Peter K. Nunez brought national attention to the term “zero tolerance,” using that phrase for a program he started in San Diego that impounded seagoing vessels carrying any trace of drugs. U.S. Attorney General Edwin Meese embraced Nunez’s program as a national model, and in 1988, Meese ordered customs officials to seize the vehicles and property of anyone trying to cross the border with any amount of drugs and to charge them in federal court.

From there, the term “zero tolerance” spread to a wide range of issues, and one policy seemed to lead to another.<sup>7</sup>

The Gun-Free Schools Act of 1994, the federal zero tolerance policy toward firearms at schools, was enacted in response to violence and crime in schools. As a result, zero tolerance policies quickly became institutionalized in many districts. Then the nation’s anxiety about school safety increased once again after the 1999 Columbine High School shootings in Colorado, which killed 15 people. The Columbine tragedy and the strict school-safety mandates of No Child Left Behind (NCLB), enacted in 2001, helped prompt a new wave of tough discipline policies in Pennsylvania and other states.

As federal policy was translated into state law, district policy, and ultimately school practice, a broad range of student behaviors came under the purview of zero tolerance. Typically three things happened: the definition

**What may have started out as policy driven by a concern about keeping dangerous weapons out of schools has become a set of practices that have pushed large numbers of students out of school.**

## WHERE ZERO TOLERANCE CAN LEAD: LUZERNE COUNTY 'KIDS FOR CASH' SCANDAL

In Pennsylvania, the Luzerne County “kids for cash” juvenile justice scandal provides a good example of the devastating consequences of a reliance on zero tolerance practices. The scope of the scandal, which covers actions taken between 2003 and 2008, goes far beyond school discipline. But zero tolerance practices fed young people into the juvenile justice system, where they were then further mistreated. About 2,500 young people, in 6,000 cases, were removed from school, adjudicated delinquent for minor offenses, and detained in privately run, for-profit facilities.<sup>i</sup> Two judges were sentenced to prison for taking payments in connection with the detention centers’ construction and operation.<sup>ii</sup>

The scandal is an example of multiple system failures that typically go with a reliance on zero tolerance approaches: the failure to protect young people; wrong-headed responses to misbehavior; the lack of accountability of institutions that serve youth; and the failure to properly monitor the outcomes of discipline systems.

The Interbranch Commission on Juvenile Justice, established by the Pennsylvania legislature to investigate the scandal, concluded:

“Schools in Luzerne County too quickly turned to the juvenile justice system as a vehicle to address school climate and learning conditions. . . . In Luzerne County, school referrals made under zero-tolerance policies were integral to the overall scheme as they provided an easy removal of children from their homes and schools and a constant stream of children to be placed in detention. The commission believes that zero-tolerance and allowing schools to use the justice system as its school disciplinarian has no place in the educational process or in the juvenile court system. To that end, it is recommended that the entities identified above develop and expand programs that would support at-risk students and expand affordable and available diversionary programs, while at the same time reduce unnecessary and inappropriate school referrals.”<sup>iii</sup>

In a striking exchange with commissioners, Gerald Zahorchak, then Pennsylvania’s secretary of education, testified that nothing in the safety and discipline reports provided to the Pennsylvania Department of Education (PDE) indicated that there had been a problem in Luzerne County with inappropriate referrals of students to the juvenile justice system for “minor misbehavior.”<sup>iv</sup> Zahorchak had been asked to review data covering 2003–2008, the key period of the scandal. He stated that there were no “red flags” in the data and that there were “no parts of the report that would indicate anything that’s unusual in terms of students who were being adjudicated or expelled from school.”

Pennsylvania’s system for recording and monitoring school safety and discipline data, established in 1997, did not trigger scrutiny of mass referrals of young people into the juvenile justice system. This provides an example of how monitoring systems have failed. The rush to criminalize “misbehaving” youth, a hallmark of zero tolerance, took precedence over considerations of appropriate discipline.

<sup>i</sup> The Juvenile Law Center is a good resource for complete information on the scandal.

<sup>ii</sup> United States Attorney’s Office, Middle District of Pennsylvania Docket Number 3:09-CR-00028 and 3:09:CR-00272.

<sup>iii</sup> Interbranch Commission on Juvenile Justice Report, May 2010, pp. 58–59.

<sup>iv</sup> Testimony before the Interbranch Commission on Juvenile Justice, January 21, 2010, pp. 184–187.

of “weapon” was broadened beyond the federal definition of “firearm;” additional offenses, many of them vague (such as “ongoing open defiance” and “habitually disruptive behavior”), became grounds for suspension or expulsion; and policies were adopted mandating that police be notified in specific instances.<sup>8</sup>

Increasingly, punishment came to be applied to a broad range of student behavior that was seen to be disorderly or disruptive, even as overall levels of school and youth violence declined.<sup>9</sup> **What was sacrificed along the way was an institutional commitment to fairness, due process in administering discipline, getting to the root of conflicts, and coming up with solutions that would likely prevent future conflicts.** What may have started out as policy driven by a concern about keeping dangerous weapons out of schools has become a set of practices that have pushed large numbers of students out of school.

Removing students from school has too often become a widely accepted disciplinary practice. And at the same time, new policing practices and security measures have been adopted, some of them having only a symbolic connection to safety.<sup>10</sup>

The No Child Left Behind law is perhaps best known for setting state testing goals, called Adequate Yearly Progress, for schools. But NCLB also includes school-safety provisions, and the law requires each state to develop a method for designating certain schools as “persistently dangerous.” This “persistently dangerous school” labeling process was eventually revealed to be skewed: Because the definitions were left up to the states to establish, the result was that only a handful of states designated any schools as persistently dangerous in the early years of NCLB, distorting the national discussion of school safety.<sup>11</sup>

Pennsylvania was among the states that labeled some schools as persistently dangerous, and this brought special scrutiny to the state's schools, and particularly to those in the Philadelphia district.

For several years, Pennsylvania led the nation in the number of schools designated persistently dangerous. **During the first five years of NCLB, Pennsylvania reported 35 percent of the nation's schools with that designation, while California reported none.**<sup>12</sup> Almost all of the Pennsylvania schools that have been designated persistently dangerous under NCLB have been in Philadelphia, a chronically underfunded district that became the focus of state legislators' attention. Lawmakers appointed a Safe Schools Advocate several times for the Philadelphia School District, and it remains the only district in the state to have such a position.<sup>13</sup>

Philadelphia schools have been so squarely at the center of discussions of safety and discipline issues in Pennsylvania, especially by policymakers, that developments in the rest of the state have received little attention. This report is an attempt to paint that broader picture of school discipline statewide.

## CONSEQUENCES OF EXCLUDING STUDENTS FROM SCHOOL

In the name of school safety, many Pennsylvania districts have adopted discipline practices that have resulted in the widespread use of various forms of "school exclusion" – the removal of a student from school by suspension, expulsion, reassignment to a discipline school (known as "alternative education for disruptive youth"), or intervention by law enforcement.

The growth in this practice of excluding students from school has become a **national concern** for four reasons:

- The students with the highest rates of punishment by removal from school come **disproportionately from communities that are already poorly served by the education system**, principally Black students, Latino students, and students with disabilities;
- This growth has been fed, in part, by **an expansion in serious punishment for relatively minor disciplinary matters**;

**You have to differentiate the security issue and the discipline issue. Once the kids get involved in the court system, it's a slippery slope downhill."**

— Michael Nash  
Los Angeles juvenile court presiding judge

- School removal has **negative economic and social consequences for students and surrounding communities**; and
- Removing students from school **has not prevented or deterred future misbehavior**, nor has it created safer, more productive classrooms.

The consequences of removing students from school can be devastating. The largest discipline study ever conducted – which tracked the educational careers of nearly one million public school students in Texas – 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. Thirty-one percent of these students repeated a grade; only 5 percent of other students did so. Suspension or expulsion substantially increased the likelihood of students becoming involved in the juvenile justice system *the next year*. The report pointed out that the vast bulk of these suspensions and

expulsions were for conduct where removal was *discretionary*; only 3 percent of such removals were required by state law.<sup>14</sup>

Moreover, these **consequences are experienced most heavily by certain types of students**. The Texas study found that Black students were *more likely* than any other students to be disciplined during middle and high school years. They were *less likely* to commit

offenses where school removal is required by law than White and Latino students from similar backgrounds. When such action was *discretionary*, Black students had a 31 percent higher likelihood of being disciplined than White or Latino students. And they were particularly likely to be disciplined for lower-level violations of a school code of conduct.

The **presence of police in public schools has grown steadily** as a part of the zero tolerance movement. This expanded police presence has resulted in more young people being removed from school by entering the juvenile and the adult criminal justice systems. And many people want to expand the police presence further in the aftermath of the December 2012 school shootings in Newtown, Conn., which killed 27 people.<sup>15</sup>

Michael Nash, the presiding judge of juvenile court in Los Angeles and the president of the National Council of Juvenile and Family Court Judges, has observed that as more police officers are brought into schools, the

officers often end up handling school discipline and handing out charges of disorderly conduct or assault. “You have to differentiate the security issue and the discipline issue,” he said. “Once the kids get involved in the court system, it’s a slippery slope downhill.”<sup>16</sup>

The **tide is beginning to turn in parts of the country**, especially in the use of out-of-school suspension.

Advocacy to change school-exclusion policies and practices has hit a high point in the last two years. In 2011, the U.S. Departments of Education and Justice began a Supportive Schools Discipline Initiative, a coordinated response to the “school-to-prison pipeline” and the disciplinary policies and practices that push students out of school. The goal is to support good discipline practices and identify

harmful ones.<sup>17</sup> In 2012, the U.S. Department of Education released the Civil Rights Data Collection (CRDC), a national database of discipline statistics, and the U.S. Senate held its first-ever hearing on “Ending the School-to-Prison Pipeline.”<sup>18</sup>

## Q&A on School Discipline 2015

### **Q What's the problem with removing students from school as a disciplinary measure?**

**A** Suspension, expulsion, and police intervention are being used to remove large numbers of students from school for a broad range of alleged infractions. Removal places young people at greater risk for disengagement from school, dropping out, chronic underemployment, and future involvement with the justice system.

This is not a wise way to handle school-based conflicts, especially when—as is often the case—they don't pose major safety concerns. Due process, equal treatment, and basic fairness are often sacrificed in the rush to remove students from schools. Finally, there is a lack of evidence that removal under these circumstances improves school environment and safety.

Our report is a call for school officials to correct the problems associated with excessive reliance on removing students from school and to adopt alternatives that have been proven to work.

### **Q Why is it important to grant students due process in discipline matters?**

**A** Under *due process*—a central principle in the Constitution—a fair and lawful procedure must be followed before an individual right can be taken away. In school discipline, this would mean that a student who is accused of an offense is informed about the alleged wrongdoing, is shown whatever information an official may be acting on, and is given the chance to tell his or her side of the story and present other evidence or witnesses.

Using due process helps school officials get to the bottom of incidents and conflicts. It helps protect students if the wrong person is accused, the incident report does not reflect what actually happened, a false allegation is made, or the incident results from other problems in the school environment that need attention. Due process has an added benefit: When students feel that they are being treated fairly, they are more likely to accept school policies and to respect the people who administer them, even if they disagree with those policies.

### **Q What explains the differences in discipline rates found for students of different races?**

**A** Black students and Latino students are the most likely to face disciplinary punishment in Pennsylvania's public schools. Federal officials and academic researchers have concluded that there is no evidence that disparities in discipline rates for Black students are due to higher rates of misbehavior.

Several factors have been identified by experts to help explain these disparities. First, school rules are selectively enforced to the detriment of some groups of students. Black students are more likely to be disciplined—and to be disciplined more severely—than other students who exhibit the same behaviors.

The problem is further exacerbated by schools that establish rules which, intentionally or unintentionally, negatively impact a certain race or ethnicity of students. A good example would be certain clothing rules. Federal officials have stated that, in some instances, these rules are discriminatory (and in violation of the law), especially when they serve no legitimate educational objectives or those objectives might be met by policies that don't single out specific racial groups.

Finally, Black students tend to be referred to the principal's office more often for violations that are measured subjectively, such as "disruption" or "defiance," while White students are more likely to be referred for offenses that can be determined by objective observation, such as smoking.

## **Q Is school discipline that removes children from school a problem only for Black and Latino students?**

**A** No. Black and Latino students are disciplined at disproportionately high rates, but students with disabilities are also much more likely to be punished than their non-disabled peers. Black students with disabilities are disciplined at particularly high rates. Moreover, some Pennsylvania districts with high out-of-school suspension rates have few students of color. Discipline practices that favor removal from school may affect a broad range of students. Notably, many of the students who were victims of the “kids for cash” scandal in Luzerne County (see box on page 6) were White.

## **Q What can districts do to reduce racial disparities in discipline?**

**A** The first step is to assess whether there is a problem. School officials should regularly review discipline data to determine whether discipline rates show persistent disparities. The next step is to examine the leading reasons for discipline for different groups of students. Do certain groups of students tend to be disciplined more frequently for certain offenses? Discussion within the school community can be revealing. Students, parents, and guardians can provide clues about the selective enforcement of school rules and other underlying problems contributing to discipline disparities. Codes of student conduct that use broad and subjective categories of offenses should be changed.

## **Q Do charter schools have the same discipline policies as traditional public schools?**

**A** No. Charter schools receive public funding, but are run independently. Charters have their own student codes of conduct, which are typically very different from those of regular public schools and tend to be more restrictive. Several concerns have been raised about the practices of some charters: punishing students more frequently than regular public schools do for minor nonviolent infractions; failing to grant due process in disciplinary matters; engaging in informal practices that exclude students from school; and encouraging families to disenroll their students (transferring them back into the traditional public system) when there is a discipline infraction.

## **Q If we reduce out-of-school suspensions, will that make schools more disorderly?**

**A** No. In most schools, there does not appear to be a relationship between the frequency of students’ removal from school and how peaceful a school is. Creating positive school environments requires shifting the emphasis of discipline policies away from zero tolerance to practices that increase fairness, improve communication, and establish problem-solving mechanisms. This requires effort and buy-in from the whole community. Some promising approaches include positive behavior intervention and support, restorative practices, social and emotional learning, and improved classroom management. Adoption of these approaches has led to reduction in the use of exclusionary discipline, a reduction in the amount of instructional time lost to discipline, and increased student engagement with school.

Finally, it is important that school discipline systems be reviewed and reformed as a whole, not piecemeal. Some districts have reduced suspensions only to see more students get arrested for the same violations. This is not a desirable outcome. We recommend reserving the most serious consequences (school removal and police assistance) for the most dangerous offenses.

## **Q What’s the matter with adding police officers to work in schools?**

**A** Traditionally, police have engaged with schools mostly to respond to emergencies involving threats or major acts of violence or to provide security near schools at arrival and dismissal times and at special events. The growing trend of having police stationed in schools full-time is concerning because when police see schools as their beat, they tend to get involved in routine student conflicts and disciplinary matters that are not particularly dangerous or violent. This may happen by choice or at the request of educators. In some instances, what may be a minor infraction (such as a violation of the cell-phone policy) escalates when the intervening adult is a law enforcement officer.

Students may also become confused about when in-school police are acting as school officials or as law enforcement, and what rights students have in those interactions. Generally speaking, school officials have more authority over day-to-day in-school matters, such as searches of student belongings and the questioning of students, than outside law enforcement.

Another concern is that school districts may be liable for the actions of security staff and police, including discriminatory behavior. Finally, having police stationed in schools increases the possibility of students becoming involved with the justice system in some way, such as through arrest or citation.

## Q What promising school policing reforms are being adopted?

A Communities around the country are beginning to reconsider how police are used in schools. Data about the effectiveness of these policy changes are not yet available, but here are some of the adjustments under way:

- In Philadelphia, **School District police face restrictions in low-level conflicts** and classroom management matters. A new directive issued in the spring of 2014 states that some incidents should not trigger a call for police services: failure to follow classroom rules/disruption, dress code violations, failure to carry hall pass/appropriate ID, failure to participate in class/unpreparedness, truancy/excessive tardiness/cutting class, possession of beepers/pagers/cell phones/other electronic devices, possession of other inappropriate personal items, inappropriate use of electronic devices, and verbal altercations.
- The Oakland, Calif., Unified School District has **established a formal complaint process** for parents and students to use when they feel that school police have behaved inappropriately.
- The Pennsylvania Department of Education's Model Memorandum of Understanding suggests that districts establish **protocols for police interaction with students with disabilities**.
- The San Francisco School District has adopted a policy stating that **student arrests for non-school matters should not normally be made on campus** and that any on-campus arrest should be conducted in a way that does not violate the student's privacy.
- San Francisco also has a policy that allows parents/guardians to have **adequate time** to get to school **to be present at the questioning of their child by police**.
- The Philadelphia Police Department established a diversion program for all schools in the city (public, private, or charter) providing **alternatives to arrest** for minor offenses, first-time offenses, and cases in which students are unlikely to reoffend.

# Key Findings and Recommendations

*Beyond Zero Tolerance* focuses on two forms of exclusion from school that many Pennsylvania public school districts rely upon heavily: out-of-school suspensions (OSS) and removal from school by police, a category that includes arrests and summary offenses.

In this first-time analysis of statewide school discipline data for Pennsylvania, we found that Black and Latino students and students with disabilities have been disproportionately removed from school.

For both forms of exclusion from school, we report our findings and suggest evidence-based best practices.

## OUT-OF-SCHOOL SUSPENSIONS

Out-of-school suspensions are the most common form of formal discipline. Their overuse can result in young people losing learning time and leaving school.

- Statewide, about 10 OSSs were issued for every 100 students in the 2011–2012 school year. During 2009–2010, 1 out of every 15 students was suspended from school at least once.
- Seventy-five Pennsylvania districts have consistently suspended students at rates above the state average.
- District size is not the best predictor of high suspension rates. Of the 10 districts with the highest OSS rates, only 2 are among the 10 largest districts in the state.
- Black students have the greatest likelihood of receiving out-of-school suspensions and expulsions. Statewide, 1 out of every 6 Black students was suspended from school at least once in 2009-2010, making Black students almost five times more likely to be suspended than White students.
- Latino students are three times more likely to be suspended than White students.
- Students with disabilities are almost twice as likely to receive OSSs as other students.
- Black students with disabilities receive OSSs at the highest rate of any group – 22 out of every 100 were suspended at least once.

## RECOMMENDATIONS

- 1. Conduct school-level and district-level reviews of out-of-school suspension as well as law enforcement referral practices.** Such reviews should identify which students are most likely to be impacted as well as specific schools where the differences in suspension rates for different types of students (the “suspension gap”) is greatest. Pay special attention to disciplinary actions for broad and vague behavioral categories such as disruption, disorderly conduct, and defiant behavior. Investigate disparities, and adopt corrective measures.
- 2. Remove students from school only when there is a real and immediate safety threat to the school community.** School removal should not be permitted for minor misbehavior (such as dress-code violations).

3. **Revise district codes and school-level rules to minimize the disruption in students' continued access to education.** When students must be removed from a classroom or school, establish a learning plan for them.
4. **Examine district practices regarding the punishment of students with disabilities where discipline rates are disproportionately high for this group.** Make sure that reviews are being conducted to determine whether the behavior was due to the disability (manifestation reviews) and that students are provided Individualized Education Plans.
5. **Embrace alternative strategies that have been demonstrated to improve school climate.** Promote individualized strategies of positive intervention, rather than punishment. Examples include School-Wide Positive Behavior Supports, restorative practices, and social and emotional learning programs. School districts are required to develop agreements, called Memoranda of Understanding (MOU), with law enforcement agencies that establish protocols for interactions between police and schools, and the state Board of Education has approved a model MOU. One noteworthy provision of Pennsylvania's model permits school officials to "consider the propriety of utilizing available school-based programs, such as school-wide positive behavior supports, to address the student's behavior."<sup>19</sup> We consider this to be a positive approach, one that should be embraced by more districts.
6. **Revise the Annual Safe Schools Reports** to include information on the number of students suspended and arrested, separated by race, disability, gender, and reason. Also, mandate that arrest data contained in PDE reports be accurate and consistent with reports sent to the U.S. Department of Education.

## LAW ENFORCEMENT IN SCHOOLS

School-based police programs have expanded dramatically in the last 15 years, but educators have done a poor job of monitoring and measuring these programs' performance, their impact on students and whether they have made schools more peaceful.

**Expanded student contact with police raises troubling concerns about the involvement of law enforcement in everyday disciplinary matters.**

- School Resource Officers (SROs), first employed in Pennsylvania in 1997, worked in 87 school districts in 2011–2012, up from 26 districts in 2003–2004.
- SROs work under no statewide standard set of guidelines regarding their role in schools and contact with students.
- There is little evidence that the presence of full-time police has increased school safety.
- Black and Latino students have the greatest likelihood of being arrested in Pennsylvania.
- Only a handful of Pennsylvania school districts keep records of how many students are convicted of summary offenses in adult court. The overwhelming majority of districts don't monitor this practice. So in most districts, these numbers are unknown.

## RECOMMENDATIONS

1. **Minimize the use of law enforcement in school discipline matters, restricting police involvement to serious criminal matters.**
2. **Review misconduct and incident patterns in schools staffed by police as part of the evaluation of program effectiveness.**
3. **Revise agreements between law enforcement departments and school districts to explicitly restrict the roles of school police and school resource officers in student searches and interrogations.** School-based police should be governed by the same constitutional restrictions as outside law enforcement.
4. **Train all security staff members that have contact with students.** Topics of this training should include: de-escalation; mediation; adolescent development; bias-based and sexual harassment; working with students with disabilities; cultural competencies; School-Wide Positive Behavior Support, peer mediation, conflict resolution or other evidence-based restorative justice techniques; and the impact and collateral consequences to a student of arrest, court, detention and incarceration.

# What's New in Discipline and Policing 2015

The ACLU first published this statewide *Beyond Zero Tolerance* report in November 2013. Since then, we have seen several significant developments in school discipline and policing.

## ■ New federal data show the continuation in Pennsylvania of the patterns reported in *Beyond Zero Tolerance* in which students of color and students with disabilities are disproportionately punished.

In March 2014, the U.S. Department of Education released discipline and school performance data for all schools in the country that receive public funds, including district-run and charter schools.<sup>1</sup> Known as the Civil Rights Data Collection (CRDC), the dataset covers the 2011-2012 school year.<sup>2</sup> Here are a few of its significant findings for Pennsylvania.

- Black students are suspended at substantially higher rates than White students.
- Pennsylvania is one of 11 states (and D.C.) where the difference in suspension rates between Black and White students (a “suspension gap”) is higher than the national average, for both male and female students.
- About 22 percent of Black male students were suspended out of school at least once, compared to 5 percent for White males and 14 percent for Latino males.
- Black female students are suspended at high rates: 13 percent

vs. 2 percent for White females and 7 percent for Latino females.

- Students with disabilities are suspended at 11 percent, almost twice the rate of other students (6 percent).
- Although about 15 percent of Pennsylvania students are classified as students with disabilities covered by the federal Individuals with Disabilities Act (IDEA), 75 percent of the students who were physically restrained are covered by IDEA.<sup>3</sup>

## ■ New federal guidelines on school discipline and school climate address how to avoid discrimination.

In January 2014, the U.S. Departments of Education and Justice issued guidelines to public school agencies nationwide on school discipline and climate. This “guidance” is a set of documents that addresses: 1) how to administer a discipline system that is non-discriminatory and 2) best practices for improving school climate.

The centerpiece of these documents is the “Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline,” addressed to the heads of all publicly funded K-12 districts and other schools. The letter is intended to help schools meet their legal obligations not to

discriminate on the basis of race, color, or national origin. It points to **conditions that may contribute to the disproportionate discipline of students of color.** The memo identifies several practices that may be discriminatory:

- Selective enforcement of policies resulting in the punishment of students of a certain race, but not other students who commit the same acts (e.g., if only Black students are sent to the principal’s office for being disruptive when other students are disruptive as well).
- Punishment of students under seemingly race-neutral policies that are known to disproportionately affect certain races, especially if it is learned that the reason for the policy is only a pretext—that the stated reason is not the real reason.
- Punishment under race-neutral policies that disproportionately harms a specific racial or ethnic group when there is no sound educational reason for such a policy and when alternatives exist that do not have a disparate impact.

The guidance and its accompanying documents caution that out-of-school suspension should be used as a last resort. The guidance expresses particular **concern about**

**policies that impose mandatory suspension, expulsion or police citation on students who commit certain minor offenses** – such as being late to class, possessing a cell phone, violating school uniform policies, insubordination or acting out, or truancy. It reviews seven practical scenarios in which unlawful discrimination might come into play, and it makes **positive recommendations for best practices** that can be used to improve school environment and safety.

The letter also makes several significant **statements about the role of police in schools**, another focus of *Beyond Zero Tolerance*:

- School personnel should understand that they, rather than law enforcement or security staff, are responsible for administering routine student discipline.
- Districts may be legally liable for discriminatory behavior carried out by police and security staff operating in schools.

The guidance explains:

“These statutes cover school officials and everyone school officials exercise some control over, whether through contract or other arrangement, including school resource officers. Schools cannot divest themselves of responsibility for the nondiscriminatory administration of school safety measures and student discipline by relying on school resource officers, school district police officers, contract or private security companies, security guards or other contractors, or law enforcement personnel. To the contrary, the Departments may hold schools accountable for discriminatory actions taken by such parties.”

### ■ **The U.S. Department of Education reminds charter schools that they must observe federal civil rights laws and policies.**

During the 2013-2014 school year, 128,712 Pennsylvania students attended charters,<sup>iv</sup> which receive public funding but are managed independently from regular school districts. They have their own codes of student conduct, often more restrictive than other public schools. This governance framework can present problems in avoiding discrimination.

In May 2014, the U.S. Education Department distributed a “Dear Colleague” letter on charters.<sup>v</sup> It reminded local education agencies of their legal responsibilities to ensure that charters:

- **Do not discriminate in admissions** on the basis of race, color, national origin, or disability.
- **Provide free and appropriate public education for students with disabilities**, whether they are in regular or special education, and provide related aids and services that are designed to meet these students’ individual educational needs as adequately as those of students without disabilities are met.
- Take affirmative steps to **help English language learners overcome language barriers** so that they can participate meaningfully in their schools’ educational programs.
- **Avoid and redress discrimination in the administration of school discipline** on the basis of race, color, or national origin; disability; and gender.

### ■ **Philadelphia adopts a promising program that offers students alternatives to arrest.**

Although the number of school police has increased across the state due to increases in state funding (see page 28), Philadelphia has instituted a new Delinquency Diversion Program aimed at reducing arrests for students without prior criminal records who are accused of certain minor offenses.<sup>vi</sup>

In July 2014, a Memorandum of Understanding laying out the specifics of the program was signed by the Philadelphia Police Department, the Philadelphia School District, and several other agencies. Under the new arrangement, eligible students will have the option of completing a program sponsored by the Department of Human Services in lieu of arrest.<sup>vii</sup>

<sup>i</sup>The Civil Rights Data Collection covers schools that serve students at least 50 percent of the school day. It also includes long-term secure juvenile justice agencies, schools for the blind and deaf, and alternative schools, in addition to regular public schools and charters. [ocrdata.gov](http://ocrdata.gov)

<sup>ii</sup>Civil Rights Data Collection Data Snapshots: School Discipline, U.S. Department of Education Office for Civil Rights, Issue Brief No. 1 (March 2014).

<sup>iii</sup>*Beyond Zero Tolerance* did not address the use of physical restraint. Physical restraint “immobilizes or reduces the ability of a student to move his or her torso, arm, legs, or head freely.” It does not include action taken by an escort to move a student to a new location or away from the site of an incident. “2011-12 Civil Rights Data Collection Definitions,” U.S. Department of Education, Office of Civil Rights.

<sup>iv</sup>Pennsylvania Charter School Enrollment - 2008-2014, May 27, 2014, Pennsylvania Department of Education.

<sup>v</sup>Dear Colleague Letter from Assistant Secretary for Civil Rights Catherine E. Lhamon, concerning the applicability of federal civil rights laws to charter schools, May 14, 2014.

<sup>vi</sup>Kevin Bethel and Rhonda McKitten, “Communities finding ways to combat school-to-prison pipeline,” *The Hill*, July 18, 2014.

<sup>vii</sup>Memorandum of Understanding Between the Philadelphia School District, the Philadelphia Police Department, the Philadelphia Department of Human Services, the Philadelphia District Attorney’s Office, the Philadelphia Court of Common Pleas, Family Court, and the Department of Behavioral Health and Disabilities Services regarding the Philadelphia Delinquency Diversion Program, May 29, 2014.

# Overview: Pennsylvania's Data on Discipline

Many people assume that school discipline is an issue only for large school systems or big cities. Legislators and state agencies, for example, have focused much of their attention regarding this issue on the School District of Philadelphia. But the reality we found in Pennsylvania is considerably more complex. In many categories, school districts of varying sizes have high per student discipline rates.

However, one of our findings persists across categories — Black students, Latino students, and students with disabilities are disproportionately affected by the major forms of discipline that resulted in removal from school.

## OUT-OF-SCHOOL SUSPENSIONS

State law permits school officials to remove a student from school for up to 10 consecutive days without action by the district's school board or governing authority. These out-of-school suspensions (OSSs) provide perhaps the most revealing measure of how a district or school disciplines its students. They represent a serious, but common, form of discipline, and they are easy, procedurally speaking, to implement. OSSs cannot be appealed to state court, in most instances.<sup>20</sup> However, when overused, suspensions harm the school community.

Districts' figures on both the *number of OSSs* and the *number of students suspended* provide **different ways to evaluate discipline practices**. The raw number of suspensions can be used to discern overall discipline patterns. The number of students suspended can be used to determine the likelihood of a particular type of student (by race, gender, disability status, etc.) being disciplined.

All Pennsylvania districts annually provide the *number of OSSs* they issue in their required Safe Schools Reports for the Pennsylvania Department of Education. The *number of students suspended* is available from a sample of districts that contribute to the Civil Rights Data Collection (CRDC), a U.S. Department of Education database of school discipline statistics.

The difference in these two statistics stems from the fact that **some students are suspended multiple times in the course of an academic year**, a practice that is commonplace in many schools.

An analysis of these data showed some broad findings about how Pennsylvania districts are using these suspensions.

### Statewide Number of Suspensions

- Ten OSSs were issued for every 100 students in public schools around the state in the 2011–2012 school year. This rate marks an increase

from the 2009–2010 rate of 9 OSSs per 100 students.

- During the same school year, 166,276 OSSs were given out in Pennsylvania's school districts.<sup>21</sup>

### Statewide Number of Students Suspended

- About 1 out of every 15 public school students – 6.51 percent of all Pennsylvania students – was suspended out-of-school at least once during the 2009–2010 school year, the year for which the most recent data are available.<sup>22</sup> This rate is close to the national OSS rate of 7.4 percent.
- According to a federal Department of Education survey covering 80 percent of Pennsylvania public school students, 89,821 students received OSSs during the 2009–2010 school year. Extrapolating the full number of students suspended from that sample shows that the figure is in the range of 110,000 students when all schools are included.<sup>23</sup>

## HIGHEST OUT-OF-SCHOOL SUSPENSION RATES IN PA 2011–2012

DISTRICT	ENROLLMENT	20 LARGEST DISTRICTS	SUSPENSIONS PER 100 STUDENTS	BLACK	WHITE	LATINO
York City SD	5,196		91.4	121.8	42.8	82.4
Sto-Rox SD	1,383		78.3	101.8	53.1	18.2
Woodland Hills SD	4,048		70.4	98.4	16.9	46.4
Wilkes-Barre Borough SD	1,100		59.3	60	18.75	*
Pittsburgh SD	26,653	Y	58.1	84.8	23	22.8
Aliquippa SD	1,189		52.5	62.3	22.3	40
Southeast Delco SD	3,989		49.5	62.5	24.2	40.9
Erie City SD	12,324	Y	48.8	92.2	20.8	52.4
Big Beaver Falls Area SD	1,711		39.1	69.1	24	20
Penn Hills SD	3,987		37.9	53.1	14.3	*
East Allegheny SD	1,831		37.8	79.1	21.7	26.1
Harrisburg City SD	6,691		36.6	42.2	17.3	29.1
Scranton SD	9,798	Y	35.1	77.9	24.3	52.1
Upper Darby SD	12,216	Y	34.8	59.3	17.9	18.2
Pottsville Area SD	2,928		30.2	53.2	28.1	45.1
Wilkes-Barre Area SD	7,044		29.6	64.5	19.1	30.8
Cornell SD	657		28.2	26	23.5	16.7
Monessen City SD	932		27.8	49.8	9.1	63.6
Chester-Upland SD	3,944		27.4	27.9	9.5	27.1
Rochester Area SD	879		26.7	40.7	22.2	*
Philadelphia City SD	154,262	Y	25.9	33.6	14	23.4

\*Latino enrollment too small to calculate rate.

### Highest-Suspending Districts

Pennsylvania districts suspend students at widely varying rates, but some districts stand out. The **York City District**, which has the highest suspension rate in the state,

issued **91 suspensions for every 100 students**. The second-highest suspension rate was 78. Districts with high suspension rates typically suspend certain students multiple times in the course of a school year.

The list of high-suspending districts tends to remain consistent over several years. All of the top-suspending districts in 2011–2012 (*see chart above*), except **Scranton**, were among the highest-suspending districts in two of the last three years.

## OSS RATES FOR 10 LARGEST SCHOOL DISTRICTS 2011–2012

LARGEST SCHOOL DISTRICTS	ENROLLMENT	SUSPENSIONS/ 100 STUDENTS
Philadelphia SD	154,262	25.9
Pittsburgh SD	26,653	58.1
Central Bucks SD	20,081	1.6
Reading SD	18,060	20.8
Allentown City SD	17,560	17.8
Bethlehem Area SD	14,427	7.9
North Penn SD	12,649	1.6
Erie City SD	12,324	48.8
Upper Darby SD	12,216	34.8
West Chester Area SD	11,827	3.6
<b>Statewide OSS Rate</b>		<b>10.1</b>

## ASSIGNMENTS TO ALTERNATIVE DISCIPLINARY PROGRAMS

Many Pennsylvania school districts operate Alternative Education for Disruptive Youth (AEDY) programs, commonly referred to as “disciplinary schools.” Students from middle school to high school who, based on misconduct that occurs in schools, fit the legal definition of “disruptive youth” may be transferred to an AEDY program. The state mandates that the transfer should only occur after an informal hearing in which the administrative decision is made. Students are supposed to be evaluated at least once each semester to determine whether they are ready to return to a regular school environment. Many school districts also place students in AEDY who have been expelled from school after a formal hearing.

**It is unclear how many students have been assigned to Pennsylvania’s AEDY programs in recent years because PDE has not released an AEDY annual report since 2010, when it released the report for the 2006-2007 school year.**<sup>24</sup> Moreover, figures given in AEDY annual reports are inconsistent

with PDE’s Safe Schools Reports. The AEDY annual report for 2006-2007 reported that 31,080 students had been referred to AEDY programs, while PDE’s Safe Schools Report for the period gave a figure of 7,809.

Student advocates have long been concerned about the overall poor educational environment of these programs. They typically provide fewer instructional hours and have lower educational standards than regular schools. There have also been reports that some AEDY programs rely on punitive discipline and even the use of corporal punishment.<sup>25</sup>

In August 2013, the Education Law Center of Pennsylvania (ELC-PA) filed a civil rights complaint with the U.S. Department of Justice against the Pennsylvania Department of Education.<sup>26</sup> **The complaint alleges that PDE’s policies and practices for AEDY programs have resulted in the disproportionate assignment of Black students and students with disabilities to these programs and that students placed in the programs are denied equal educational opportunities.**

Data obtained by ELC-PA under the state’s Right to Know Law indicate that the disproportionate assignment of

## District Size and Suspension Rates

The enrollment size of a district is not the best predictor of suspension rates.

- Of the 10 districts with the highest OSS rates, only 2 are among the 10 largest districts in the state.
- Only 6 of the 10 largest districts have OSS rates that are above the state average of 10 OSSs per 100 students.
- Ten of the 20 largest districts – districts with enrollments greater than 9,000 students – have OSS rates below the state average.

Black students has remained constant for at least the last four years. While Black students made up just less than 16 percent of Pennsylvania school enrollment in 2010–2011, they comprised 35.3 percent of students in AEDY programs. According to an analysis of data prepared by ELC-PA, 15 percent of Pennsylvania students have been identified as students with disabilities, while 44 percent of the students in these segregated discipline programs are classified as students with disabilities.

## RACE AND ENROLLMENT IN DISCIPLINARY SCHOOLS 2006–2007

	AEDY ENROLLMENT	ALL PA. ENROLLMENT
Black	36%	15.8%
White	51%	74.6%
Latino	12%	6.8%

Source: PDE AEDY Report for 2006–2007

## EXPULSIONS

Expulsions typically result in the loss of education – students end up either in programs of lower educational quality or no education program at all. They risk being held back or dropping out. By law, school districts are not required to provide an education to expelled students 17 and older.<sup>27</sup>

An expulsion, defined in Pennsylvania law as the removal of a student for more than 10 *consecutive* days, must be approved by majority vote of the governing body of the district or local education agency.<sup>28</sup> Because an expulsion is so severe and requires a more extensive process (including a formal hearing), it is an uncommon form of school exclusion.

- Expulsions are heavily concentrated in 25 districts; only these districts expelled more than 15 students per year in 2011–2012.
- During that school year, 1,808 students were expelled from Pennsylvania’s public school districts.

## EXPULSIONS 2011–2012

GREATEST NUMBER OF EXPULSIONS			HIGHEST EXPULSION RATE/100 STUDENTS			
DISTRICT	ENROLLMENT	EXPULSIONS	DISTRICT	ENROLLMENT	RATE/100 STUDENTS	EXPULSIONS
Allentown City SD	17,560	106	Donegal SD	2,864	1.33	38
Philadelphia SD	154,262	106	Wilkes-Barre SD	1,100	1.00	11
Upper Darby SD	12,216	74	Lebanon SD	4,598	0.94	43
Lebanon SD	4,598	43	Cocalico SD	3,221	0.84	27
Harrisburg City SD	6,691	43	Duquesne City SD	409	0.73	3
Central Dauphin SD	10,831	42	Wattsburg Area SD	1,536	0.72	11
Donegal SD	2,864	38	Moniteau SD	1,455	0.69	10
Scranton SD	9,798	37	Columbia Borough SD	1,325	0.68	9
Hazleton Area SD	10,337	36	Washington SD	1,540	0.65	10
Bethlehem Area SD	14,427	33	Harrisburg City SD	6,691	0.64	43
Delaware Valley SD	5,160	32	Delaware Valley SD	5,160	0.62	32
Coatesville Area SD	6,953	31	Wayne Highlands SD	2,930	0.61	18
Cocalico SD	3,221	27	Upper Darby SD	12,216	0.61	74
Cheltenham Twp. SD	4,458	27	Cheltenham Twp. SD	4,458	0.61	27
Lancaster SD	10,851	25	Allentown City SD	17,560	0.60	106
Reading SD	18,060	24	Troy Area SD	1,510	0.60	9
Penn Manor SD	5,133	23	Harmony Area SD	361	0.55	2
Northampton Area SD	5,543	23	Valley Grove SD	955	0.52	5
Hempfield SD	6,947	22	West York Area SD	3,113	0.51	16
Wilkes-Barre Area SD	7,044	20	Western Wayne SD	2,219	0.50	11
Quakertown Community SD	5,250	19	South Eastern SD	2,910	0.48	14
Seneca Valley SD	7,257	19	Mid Valley SD	1,732	0.46	8
Wayne Highlands SD	2,930	18	Burgettstown Area SD	1,324	0.45	6
Abington SD	7,434	17	Apollo-Ridge SD	1,327	0.45	6
West York Area SD	3,113	16	Penn Manor SD	5,133	0.45	23
Council Rock SD	11,643	15	Coatesville Area SD	6,953	0.45	31

## STUDENT ARRESTS

- During the 2011–2012 school year, 5,261 students were arrested in Pennsylvania school districts.
- The highest arrest rates were not in the largest districts in the state for that year. In fact, the 10 largest districts in the state were not among the districts with the 20 highest arrest rates.
- The **Brownsville Area School District**, with only 1,797 students, had the highest arrest rate in the state. Nearly 7 out of every 100 students were arrested in 2011–2012.
- Philadelphia ranked 30th in arrest rate. The district has 9.4 percent of the state’s public school students but 28.4 percent of the arrests (1,495 arrests).

## 20 DISTRICTS WITH HIGHEST ARREST RATES 2011–2012

SCHOOL DISTRICT	ENROLLMENT	TOTAL NUMBER OF ARRESTS	ARREST RATE/100 STUDENTS	ARREST RATE RANKING
Brownsville Area SD	1,797	123	6.84	1
Tyrone Area SD	1,912	52	2.72	2
Albert Gallatin Area SD	3,575	82	2.29	3
Tulpehocken Area SD	1,497	29	1.94	4
North East SD	1,666	29	1.74	5
Ringgold SD	3,036	50	1.65	6
Northgate SD	1,207	19	1.57	7
Valley Grove SD	955	15	1.57	8
Rockwood Area SD	771	12	1.56	9
Salisbury Township SD	1,608	25	1.55	10
Bethlehem-Center SD	1,267	19	1.5	11
Dubois Area SD	3,996	58	1.45	12
Whitehall-Coplay SD	4,215	61	1.45	13
Wilkes-Barre Area SD	7,044	101	1.43	14
Pottsgrove SD	3,301	46	1.39	15
Steelton-Highspire SD	1,316	18	1.37	16
Forbes Road SD	458	6	1.31	17
North Schuylkill SD	1,896	24	1.27	18
Littlestown Area SD	2,062	25	1.21	19
Penns Manor Area SD	938	11	1.17	20

# A Closer Look: Who Is Most Affected by Out-of-School Suspensions?

In Pennsylvania, students with the greatest likelihood of being suspended are Black students, Latino students, students with disabilities, and especially Black and Latino students with disabilities. This pattern is clear whether measured by the *number of suspensions* or the *number of students suspended*. In this section, we consider both ways of looking at suspensions.

## RACE AND OUT-OF-SCHOOL SUSPENSION: A View Based on the Number of Suspensions

Black students, and to a lesser extent Latino students, receive OSSs at much higher rates than their White and Asian peers. During the 2011–2012 school year, data provided by districts to the Pennsylvania Department of Education in Safe Schools Reports show:

- Black students made up 13.6 percent of Pennsylvania students, but received almost half of OSSs (48.25 percent).
- Black students received OSSs at more than three and a half times the state average rate and 7.6 times the rate of White students.
- The OSS rate for Black students exceeds that of White students in 336 Pennsylvania districts. All but a few of the remaining districts have very low Black enrollments (0–4 percent).<sup>29</sup>
- The OSS rate for Black students exceeded the overall state average in 205 districts.
- Latino students made up 8.4 percent of students, but received 14.5 percent of all OSSs.

- Latino students received OSSs at 1.7 times the overall state average and 3.7 times the rate of White students.
- The OSS rate for Latino students exceeds that of White students in 222 districts. The differences are most extreme (a difference of 10 or more OSSs/100 students) in 44 districts.
- Most of the districts that have roughly equal OSS rates for White and Latino students are districts in which Latino student enrollment is low (0–4 percent).<sup>30</sup>
- The disproportionate suspension of Black and Latino students is not a short-term trend in Pennsylvania schools. Black and Latino students received OSSs at rates that were substantially higher than other students and much higher than the state average during the last three completed school years for which we have data (2009–2012).<sup>31</sup>
- Although many of the school districts with high overall OSS rates also have high rates for Black students, there are overall low-suspending districts in which Black OSS rates are high.

Examining these figures leads to two observations:

### OUT-OF-SCHOOL SUSPENSIONS PER 100 STUDENTS 2009–2012

YEAR	STATE AVERAGE	WHITE	BLACK	LATINO
2011–2012	10.11	4.71	35.88	17.45
2010–2011	10.19	4.77	34.14	19.23
2009–2010	9.09	4.3	31.97	15.85
<b>3-year avg.</b>	9.8	4.6	34	17.5

## TOP-SUSPENDING DISTRICTS FOR BLACK AND LATINO STUDENTS 2011–2012 (OSS RATES/100 STUDENTS)

HIGHEST SUSPENDING — BLACK	BLACK	OVERALL	HIGHEST SUSPENDING — LATINO	LATINO	OVERALL
York City SD	121.8	91.4	South Eastern SD*	129.2	2.9
Sto-Rox SD	101.8	78.3	York City SD	82.4	91.4
Woodland Hills SD	98.4	70.4	Monessen City SD*	63.6	27.8
Erie City SD	92.3	48.8	Erie City SD	52.4	48.8
Pittsburgh SD	84.8	58.1	Scranton SD	52.1	35.1
Northwestern SD*	84.6	14.7	Woodland Hills SD*	46.4	70.4
East Allegheny SD	79.1	37.8	Pottsville Area SD	45.1	30.2
Scranton SD	77.9	35.1	Highlands SD*	43.3	18.9
Western Wayne SD*	75.6	6.8	Southeast Delco SD	40.9	49.5
Big Beaver Falls Area SD	69.1	39.1	Aliquippa SD*	40	52.5
Tamaqua Area SD*	68.7	10.3	Montoursville Area SD*	38.1	2.9
Chambersburg Area SD	68.4	21.1	New Brighton Area SD	37.9	13.5
Wilkes-Barre Area SD	64.5	29.6	Wattsburg Area SD*	33.3	7.9
Southeast Delco SD	62.5	49.5	Greenwood SD*	33.3	6.5
Aliquippa SD	62.3	52.5	Uniontown Area SD*	33.3	7
Richland SD*	61.5	4.5	Line Mountain SD*	33.3	2.6
Wilkesburg Borough SD	60	59.3	Central Dauphin SD	32.3	20.8
Upper Darby SD	59.3	34.8	Hanover Area SD	32.1	10
Catasauqua Area SD	57.1	15.1	Wilkes-Barre Area SD	30.8	29.6
Pottsville Area SD	53.2	30.2	Harrisburg City SD	29.1	36.6
Penn Hills SD	53.1	37.9	Bedford Area SD*	27.6	7.5
Ringgold SD	50.6	16.2	Western Wayne SD	27.4	6.8
Carbondale Area SD	50	15.1	Chester-Upland SD	27.1	27.4
Monessen City SD	49.8	27.8	Armstrong SD*	26.3	9.7
Central Dauphin SD	47.9	20.8	East Allegheny SD*	26.1	37.8
Highlands SD	46.8	18.9	Lancaster SD	25.2	24.3

Highlighted districts rank high for both Black and Latino students, while non-highlighted districts rank high for one group.

\*Black or Latino enrollment < 2%

### THE RACIAL SUSPENSION GAP: A View Based on the Number of Students Suspended

In order to better understand the likelihood that a Black student, a Latino student, or a student with a disability faces of being suspended out of school, we looked at the *number of such students who were suspended compared to that group's representation in the school population.*

Because annual PDE Safe Schools Reports do not provide the necessary information, we used data reported by districts to the U.S. Department of Education for the Civil Rights Data Collection (CRDC) covering the 2009–2010 school year.<sup>32</sup> This survey contains data on 294 Pennsylvania districts attended by 80 percent of public school students, including all districts with enrollments over 3,000 and a representative sample of smaller districts.

Looking at school discipline in Pennsylvania through the lens of the *number of students* suspended gives us a picture similar to the view we saw from analyzing the *number of suspensions*: The data showed a strong pattern of disproportionate disciplining of Black and Latino students. In the 2009–2010 school year:

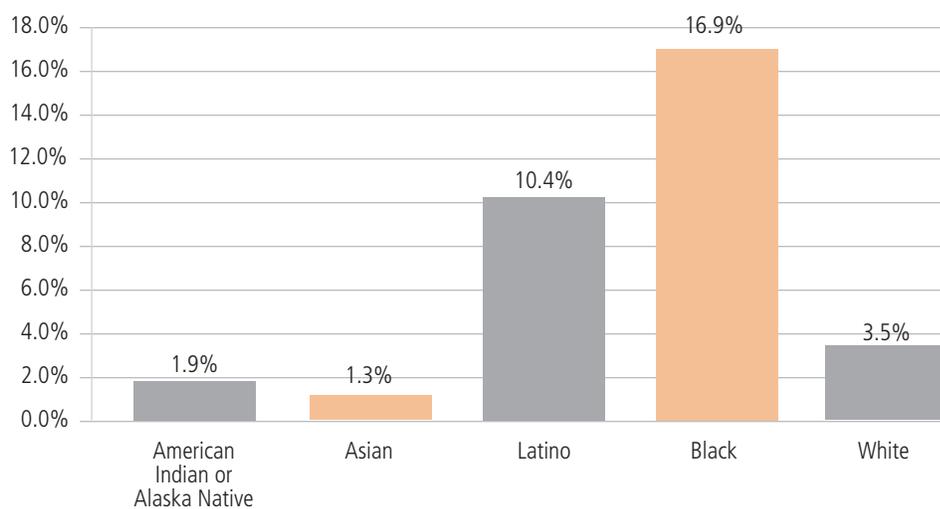
- Black students had higher rates of suspension than any other group. One out of every six Black students

was suspended at least once during the 2009–2010 school year – a *suspension rate* of nearly 17 percent.

- A Black student was almost five times more likely to get suspended than a White student.
- Black students made up 17.6 percent of the CRDC sample, but were 45.8 percent of students receiving OSSs.
- One out of every 10 Latino students was suspended – a *suspension rate* of 10 percent.
- A Latino student was three times more likely to be suspended than a White student.

Pennsylvania’s racial disparities in out-of-school suspensions are in line with national projections done by the Civil Rights Project at UCLA, with one major exception. **Pennsylvania has one of the highest Latino out-of-school suspension rates in the country – ranking 6th out of the 47 state projections that the project did.**<sup>33</sup> Nationwide, about 7 out of every 100 Latino students are suspended out-of-school at least once during a school year, but in Pennsylvania, the rate is just more than 10 out of every

## PA. STUDENTS SUSPENDED AT LEAST ONCE 2009–2010



Source: Civil Rights Data Collection for 2010, U.S. Dept. of Education

100 Latino students. Black student suspension rates were roughly the same in Pennsylvania as the national average – about 17 percent are suspended at least once.

A Black or Latino student has an especially high likelihood of being suspended in certain districts. For example, in the **Pottsville Area School District**, 85 percent of Black students were suspended out of school at least once during the 2009–

2010 year. Similarly, about 27 percent of Latino students were suspended at least once by the **York City School District**, compared to a rate of zero percent for White students.

Finally, the differences in the *suspension likelihood, or suspension rate*, for different groups of students can be extreme. This **suspension gap** is a measure of the differences between suspension rates for different groups.

Here is an example: If 8 out of every 100 Black students and 4 out of every 100 White students in a school receive an OSS, the suspension rate is 8 percent for Black students and 4 percent for White students. The Black-White suspension gap would be 4 percentage points (8 percent-4 percent).

**In Pennsylvania overall, the Black-White suspension gap is 13.4 percentage points.**

In some Pennsylvania districts, the suspension gap between Black and White students, and Latino and White students, is extreme. The **Pottsville Area district** and the **York City district** again provide examples: The Black-White gap is the greatest in the Pottsville Area district, where almost

## OUT-OF-SCHOOL SUSPENSION RATE AND RACE 2009–2010

HIGHEST RATE — BLACK		HIGHEST RATE — LATINOS	
Pottsville Area SD	84.6%	York City SD*	26.9%
Tussey Mountain SD	50.0%	Lancaster SD	26.0%
Pittsburgh SD	42.4%	William Penn SD	25.0%
York City SD*	37.4%	Westmont Hilltop SD	25.0%
Erie City SD	37.3%	Erie City SD	22.1%
William Penn SD	35.5%	Pittsburgh SD	20.5%
West Mifflin Area SD	32.6%	Panther Valley SD	18.2%
Aliquippa SD*	31.8%	Chester-Upland SD	18.0%
New Castle Area SD	29.3%	Oxford Area SD	17.1%
Chartiers-Houston SD	28.6%	Reading SD	16.2%
Lancaster SD	27.8%		

Source: Civil Rights Data Collection for 2010, U.S. Dept. of Education

\*There are likely errors in data for these districts. See *Methodology* for a discussion of data errors.

## RACIAL SUSPENSION GAP 2009–2010

GREATEST BLACK-WHITE GAP	B-W GAP	BLACK OSS	WHITE OSS	GREATEST LATINO-WHITE GAP	L-W GAP
Pottsville Area SD	61.0%	84.6%	23.6%	York City SD*	26.9%
Tussey Mountain SD	47.1%	50.0%	2.9%	Westmont Hilltop SD	24.7%
York City SD*	37.4%	37.4%	0.0%	Chester-Upland SD	18.0%
Pittsburgh SD	25.9%	42.4%	16.5%	Lancaster SD	12.1%
Erie City SD	25.5%	37.3%	11.7%	Eastern Lebanon County SD	11.9%
West Mifflin Area SD	23.4%	32.6%	9.3%	Erie City SD	10.4%
Chartiers-Houston SD	23.3%	28.6%	5.2%	Panther Valley SD	10.1%
Northern York County SD	22.5%	25.0%	2.5%	Mechanicsburg Area SD	8.1%
Aliquippa SD*	21.1%	31.8%	10.7%	Harrisburg City SD	7.8%
Williamsport Area SD	19.3%	24.2%	4.8%	Coatesville Area SD	7.6%
Wayne Highlands SD	19.1%	22.2%	3.1%	Butler Area SD	7.5%
Upper Darby SD	17.7%	25.9%	8.2%	Allentown City SD	7.3%
Allentown City SD	17.4%	25.0%	7.6%	Cheltenham Township SD	6.7%
Woodland Hills SD	17.0%	23.5%	6.5%	Lebanon SD	6.5%
Norristown Area SD	15.7%	21.9%	6.3%	Conrad Weiser Area SD	6.1%
Gateway SD	15.6%	22.0%	6.4%	Middletown Area SD	5.8%
Central Valley SD	15.5%	20.7%	5.2%	Ambridge Area SD	5.6%
William Penn SD	15.5%	35.5%	20.0%	Central Dauphin SD	5.5%
Baldwin-Whitehall SD	15.3%	18.9%	3.6%	Schuylkill Valley SD	5.5%
Pottsgrove SD	15.2%	21.0%	5.8%	Governor Mifflin SD	5.3%
Mechanicsburg Area SD	15.1%	17.3%	2.2%	Kennett Consolidated SD	5.3%
Penn Hills SD	15.0%	24.4%	9.5%	Susquehanna Township SD	5.3%
New Castle Area SD	14.9%	29.3%	14.4%	Reading SD	5.3%
North Pocono SD	14.8%	20.0%	5.2%	Bethlehem Area SD	5.3%
Coatesville Area SD	14.3%	20.6%	6.2%	Wilkes-Barre Area SD	5.3%
Ringgold SD	14.2%	23.0%	8.8%	Oxford Area SD	5.2%
Penncrest SD	14.0%	16.7%	2.6%	Pennsbury SD	5.1%
Wyoming Valley West SD	14.0%	20.0%	6.0%	William Penn SD	5.0%
Lancaster SD	13.9%	27.8%	13.9%	North Pocono SD	4.8%

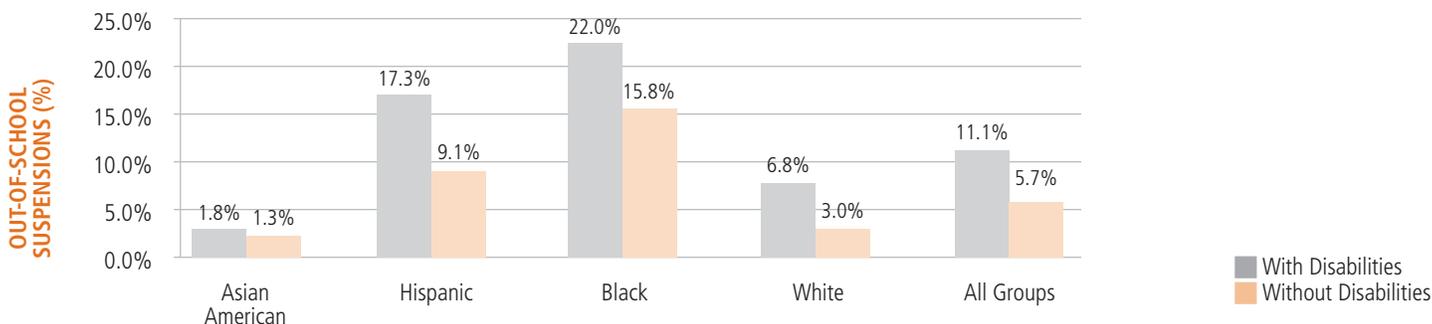
Source: Civil Rights Data Collection for 2010, U.S. Department of Education. \*See *Methodology* for a discussion of data errors.

85 percent of Black students and almost 24 percent of White students have been suspended at least once, a difference of 61 percentage points. In the York City district, the Latino-White gap is 27 percentage points.

**The suspension gap may be a useful measure for school districts to use to monitor how discipline is administered over time.** This term is consistent with how educators measure student success in many areas. For example, the “achievement gap” measures the

difference in student performance by different groups on exams, grade completion, and graduation rates. If districts or individual schools track suspension gaps, they can examine their causes and set goals to reduce them over time.

## IMPACT BY RACE AND DISABILITY OF THE USE OF OUT-OF-SCHOOL SUSPENSIONS IN PA. 2009–2010



Source: Civil Rights Data Collection for 2010, U.S. Dept. of Education

### DISABILITY, RACE, AND SUSPENSION: A View Based on the Number of Students Suspended

Students with disabilities are almost twice as likely as non-disabled students to receive OSSs – 11.1 percent vs. 5.7 percent. This pattern holds for Whites, Blacks, and Latinos.

Black students with disabilities receive OSSs at the highest rate of any group – 22 out of every 100 students were suspended at least once – a rate that is more than 15 percentage points higher than the rate for White students with disabilities, 6.8 percent. Similarly, the suspension rate for Latino students with disabilities is 17.3 percent. Black and Latino students with disabilities are more likely to be suspended more than once than any other group.

**The high discipline rate of students with disabilities, especially Black male students with disabilities, is an alarming national and Pennsylvania trend. By law, a student with a disability should not be disciplined for behavior that is a manifestation of his or her disability.**<sup>34</sup>

These patterns raise the prospect that many schools are failing to conduct manifestation reviews (to determine whether the behavior was due to the disability) and failing to provide

appropriate individualized education plans and supports (including counseling) to students.<sup>35</sup>

**Getting to the bottom of these issues has been made more difficult by the fact that the state has not done an effective job of monitoring broader racial or ethnic disparities in special education.** Federal law requires states to identify districts that have “significant disproportionality” by race or ethnicity in the assignment

of students to special education, including the identification of students with disabilities and in the use of exclusionary discipline. But states were permitted to set their own standards for determining “significant disproportionality.” A February 2013 federal audit found that under the formula used by Pennsylvania education officials, no districts were identified as having significant racial or ethnic overrepresentation in special education.<sup>36</sup>

### PA. SCHOOL DISTRICTS WITH THE HIGHEST SUSPENSION RATE FOR BLACK STUDENTS WITH DISABILITIES 2009–2010

#### STUDENTS WITH DISABILITIES (SWD), RANKED BY HIGHEST FOR BLACK STUDENTS WITH DISABILITIES

SCHOOL DISTRICT	LATINO	BLACK	WHITE	TOTAL (SWD)
Woodland Hills SD	33.3%	73.4%	29.2%	60.0%
Pottsville Area SD	0.0%	66.7%	8.1%	9.4%
Erie City SD	36.2%	54.8%	22.7%	36.4%
Cumberland Valley SD	0.0%	50.0%	6.8%	7.7%
Shamokin Area SD	0.0%	50.0%	23.9%	23.5%
Allentown City SD	26.6%	43.8%	13.2%	27.3%
Chartiers Valley SD	0.0%	42.9%	8.3%	12.2%
Harrisburg City SD	30.9%	42.4%	0.0%	37.3%
Southeast Delco SD	0.0%	42.0%	24.0%	33.6%
New Castle Area SD	0.0%	40.0%	14.3%	17.2%

Source: Civil Rights Data Collection for 2010, U.S. Dept. of Education. Note: York City SD suspends Black SWD at very high rates; however, errors in district data prohibit a reliable calculation of the exact rate.

# A Closer Look: Who Is Most Affected by Student Arrests?

In the 20 largest districts in the state, Black and Latino students have the greatest likelihood of being arrested. Black students are arrested at more than seven times the rate of White students, and Latino students at three times the rate of White students.

## CONCERNS ABOUT STUDENT ARREST DATA

### 1. Arrest data do not reveal the full extent of student interaction with law enforcement.

As part of the zero tolerance movement, schools throughout Pennsylvania have adopted the practice of referring students involved in even minor behavioral matters or confrontations to the police for action in the courts. Many of these referrals result in citations for “summary offenses,” usually disorderly conduct or harassment.<sup>37</sup>

A summary offense, the lowest-grade criminal offense in Pennsylvania, normally carries no potential for jail time and does not trigger the Sixth Amendment right to counsel. These students, therefore, are not referred to the juvenile justice system, where they would be provided with free counsel, have access to diversionary programs, and appear in front of Juvenile Court judges. Instead, they and their parents find themselves in magisterial district

## ARREST RATES FOR 20 LARGEST PA. SCHOOL DISTRICTS 2009–2010

	ASIAN OR PACIFIC ISLANDER	LATINO	BLACK	WHITE	TOTAL
Enrollment	22,590	79,735	152,870	164,005	421,325
Total Arrests	25	480	2,190	325	3,015
Overall Arrest Rate	0.11%	0.60%	1.43%	0.20%	0.72%

Source: Civil Rights Data Collection for 2010, U.S. Dept. of Education

courts (or in Philadelphia Municipal Court) among adult defendants, usually without counsel.<sup>38</sup>

Police issuing these citations may be local law enforcement or the district’s own police officers. Under Pennsylvania law, districts may ask a local judge to grant school police officers the power to issue summary citations to students.<sup>39</sup> Many districts have been granted such powers.

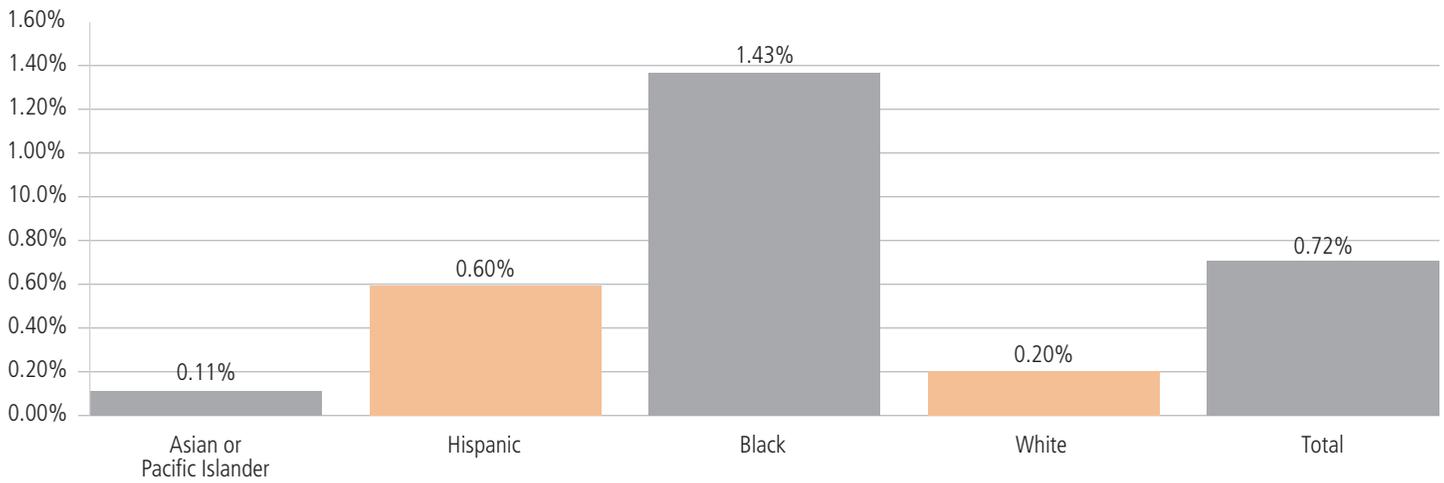
**It is not easy to uncover the extent of this problem, as there is no statewide database that records this phenomenon.** For

instance, in **Erie**, a mid-sized school district, state police data show that summary criminal charges were brought against more than 400 students during the 2011–2012 school year – 310 of whom were processed through adult court – although the district reported only 90 incidents involving law enforcement and 4 arrests to the PDE for the same time period. Separate data from the state police show that nearly all of the disorderly conduct charges issued against juveniles in that school district that year were against Black students.

**Districts have done a poor job of tracking student referrals to court for summary offenses.** In **Pittsburgh**, a district spokesperson has stated that the district has not compiled a total for the number of students brought before a magisterial district judge for disorderly conduct.<sup>40</sup>

Schools throughout Pennsylvania have adopted the practice of referring students involved in even minor behavioral matters or confrontations to the police for action in the courts.

## ARREST RATES BY RACE FOR 20 LARGEST PA. DISTRICTS 2009–2010



Source: Civil Rights Data Collection for 2010, U.S. Dept. of Education

Information about the disposition of these actions is not contained in safety and discipline reports made available to the public.

### 2. The accuracy of student arrest data is doubtful.

It is important that accurate records be maintained and reviewed regarding how many arrests are made, under what circumstances, who is most likely to face arrest, and the outcome of justice-system involvement.

Early in our research, we discovered major inconsistencies in student arrest data compiled by official sources and reported to state and federal agencies. The table to the right, taken from a sample of districts, illustrates discrepancies in official arrest data.

The **Erie City School District** provides a good example of the problem. For 2009–2010, 45 arrests were reported to PDE, while only 15 were reported to the U.S. Department of Education for the Civil Rights Data Collection (CRDC). About 200 arrests were reported for the Erie district in the Uniform Crime Reporting System, a database maintained by the state police, for the period from January through June of 2010 (less than a complete school

year).<sup>41</sup> Discrepancies exist for other years and for other districts. These discrepancies indicate that there may

be a larger problem with the accuracy of student arrest and law enforcement-related data.

It is important that accurate records be maintained and reviewed regarding how many arrests are made, under what circumstances, who is most likely to face arrest, and the outcome of justice-system involvement.

### STUDENT ARREST DATA COMPARISON FROM DIFFERENT SOURCES 2009–2010

County	School District	Arrest	
		PDE	CRDC
Northampton	Bangor Area SD	19	30
Northampton	Easton Area SD	21	0
Erie	Erie City SD	45	15
Luzerne	Wilkes-Barre Area SD	104	25

# How Involved Should Police Be in Student Discipline?

There is growing evidence that a regular police presence in schools leads to more police involvement in everyday school discipline matters, including minor issues, resulting in the escalation of low-level incidents into criminal matters.

Involvement with law enforcement is probably the most extreme and consequential form of discipline a student may face. Possible outcomes include arrest, a ruling of juvenile delinquency (guilty finding in juvenile court), and summary citations for minor offenses in adult court.

**As the presence of police has grown in schools, educators and legislators have failed to address fundamental questions about officers' proper roles:**

- What guidelines should apply to police activity in schools?
- Should police be involved in routine school discipline matters?
- Does a police presence make a school safer?
- When should students be referred to law enforcement?

Most school-based police programs operate without sufficient formal oversight from host districts. Moreover, when students do have contact with law enforcement staff, educators fail to monitor the outcomes.

School officials and lawmakers who make decisions about placing police in schools must consider and address these issues. And educators must wrestle with decisions about whether to involve police in school discipline matters when it is not mandatory and whether to maintain a robust routine police presence in schools.

## **MORE DISTRICTS ARE PLACING POLICE IN SCHOOLS**

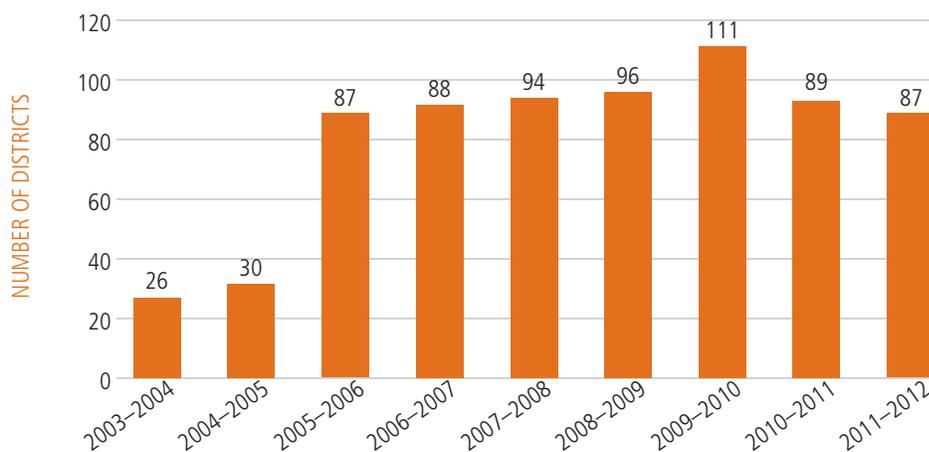
The number of districts adopting programs that place police officers in the schools full-time has risen in the last 15 years. Most School Resource Officer programs came to Pennsylvania districts in the last decade, expanding from 26 districts in 2003 to a peak of 111 districts in the 2009–2010 school year (see below).

The driving forces behind the expansion of school-based police include the availability of outside (non-

district) funding from governmental agencies and the claims – largely unsubstantiated – that security provides a calming or preventive influence. Another influence is the idea that police play useful non-security roles even when there has been no outbreak of school-based crime.

After the tragic school shootings in December 2012 in Newtown, Conn., calls for expanding the number of police officers in schools rose. In July 2013, Pennsylvania lawmakers passed legislation that significantly expanded funding for school police and school

## **PA. SCHOOL DISTRICTS WITH SCHOOL RESOURCE OFFICERS**



## TYPES OF SECURITY OFFICERS

Three types of security personnel are employed by districts: School Police Officers, School Resource Officers, and School Security Officers. The Pennsylvania Department of Education defines them as follows:<sup>i</sup>

**“SCHOOL POLICE OFFICER”** (SPO) means an officer employed by a school district who has been granted powers under [section 778] subsection (c)(2), (3) or (4), or any combination thereof [referring to sections of PA education law granting school police the powers of regular local police, the power to issue citations for summary offenses, and the power to detain students] ... A number of school districts have their own school police departments. These officers are typically full-time, in-house school officers with police powers who are employed directly by the school district rather than directly by a law enforcement agency outside of the school district.<sup>ii</sup>

**“SCHOOL RESOURCE OFFICER”** (SRO) means a law enforcement officer commissioned by a law enforcement agency whose duty station is in a school. SROs are law enforcement officers from local, county or state law enforcement agencies assigned to schools in cooperative agreements with education officials.

**“SCHOOL SECURITY OFFICER”** (SSO) means a noncommissioned officer employed by a school district or a vendor who is assigned to a school for routine safety and security duties and who has not been granted powers under section 778 (c) (2), (3) or (4). In-house school security personnel, although sometimes commissioned with limited arrest authority depending upon jurisdiction, qualifications, and other issues, typically are civilian, non-police classified school support personnel without full police powers. In many school systems, these officials are the backbone of school operations with respect to providing school safety support services, enhanced campus supervision, assistance with disruptive students, monitoring visitors, coordination with law enforcement officials, and a host of other functions geared toward improving and maintaining school safety.

<sup>i</sup> Pennsylvania Department of Education 2012–2013 PIMS Manual Vol. 2, Appendix X, August 1, 2012.

<sup>ii</sup> The Public School Code of 1949, Sec. 778, describes the powers and duties of school police officers and the method of their appointment.

resource officers. For the 2013–2014 school year, up to \$5.1 million in state funds is earmarked for SROs and school police.<sup>42</sup> Under the program, grants of up to \$60,000 will be offered for School Resource Officers and \$40,000 for School Police Officers. **PDE has stated that priority in funding will be given to municipalities and districts that have not employed police for the last three years, so it is likely that school-based police programs will expand to more districts in the state.**<sup>43</sup>

The principal growth has been in the number of districts adopting SRO

programs, which place regular law enforcement officers in schools by special arrangement with a district. SRO programs were started in Pennsylvania in 1997 with a grant to districts from the Pennsylvania Commission on Crime and Delinquency (PCCD).

These programs represent one of several approaches to security and policing that Pennsylvania’s public schools have adopted. **During the 2011–2012 school year, 188 districts employed some form of security (police or non-police security staff). Statewide, 128**

**districts employed sworn police officers** – 41 districts *only* school police (SPOs), 78 districts *only* SROs, and 9 districts with *both* SPOs and SROs.<sup>44</sup> In many districts, more than one type of security agent was employed. The School District of Philadelphia, which has the largest school security force in the state, employed 501 School Police Officers (SPOs, officers employed by the district’s own police department) and 85 School Security Officers (SSOs, non-police security) that year.<sup>45</sup> In many cases, sworn police officers (SPOs and SROs) oversee a force of non-police security staff.<sup>46</sup>

The chart on page 30 details the number of districts employing different types of security during the 2011–2012 school year. Of the 87 districts that employed SROs, 9 also had school police (SPOs), and 19 had non-police security (SSOs).

**The remaining 300-plus districts had no regular school district-funded security stationed in schools full-time.** These districts either relied on local police to include schools within their beats or simply called local law enforcement for assistance in specific instances. The districts come in a range of sizes. Eight of them have enrollments of more than 5,000 students, including **West Chester, Scranton, Neshaminy and East Penn.**

The fact that a district does not have its own security force does not necessarily mean that students do not have contact with law enforcement or risk arrest. Some schools are aggressive in their use of outside law enforcement. For example, the School District of **Scranton** no longer employed SROs as of the 2011–2012 school year. Even so, about 88 students were arrested in school-related matters that year.

Even districts with their own security forces, such as **Pittsburgh** and **Philadelphia**, maintain close cooperation with local law

SECURITY TYPE	NUMBER OF DISTRICTS	ADDITIONAL SECURITY	
School Security Officers (SSO –non-police security)	104	50 SPO	21 SRO
School Resource Officers (SRO –regular law enforcement assigned to schools)	87	9 SPO	19 SS
School Police Officers (SPO – school district police)	50	9 SRO	29 SSO

enforcement, which may include stationing local police on a part-time basis inside certain schools. In Philadelphia, *armed* municipal police officers are placed at (or around) many high schools and some middle schools.<sup>47</sup>

### MORE TYPES OF INCIDENTS NOW REQUIRE POLICE NOTIFICATION

School administrators have considerable discretion in every area of school discipline except one – when public schools are *required* to request assistance from outside law enforcement. Act 104, passed in 2010, amended the Pennsylvania school code to expand the list of incidents for which school officials are required to notify police immediately.<sup>48</sup>

All districts are required by state law to negotiate agreements with local law enforcement that establish protocols for school-police cooperation and intervention. These are called Memoranda of Understanding, or MOUs.

Act 104 required the state Board of Education to adopt a model MOU for districts and police departments and to establish protocols for police notification when certain offenses occur on school property, for emergency and nonemergency response by the police, and for police response to incidents involving students with disabilities.<sup>49</sup> In November 2011, the state board approved a model MOU for school districts and adopted regulations (known as Chapter 10) to implement Act 104.<sup>50</sup> School districts may develop their own MOUs instead of adopting

the model, but they must explain to PDE’s Office for Safe Schools any differences from the model.

The law also gives a list of incidents for which school officials may, but are not required to, notify local law enforcement. This list includes incidents that can be characterized as simple assault, harassment, theft, disorderly conduct, indecent exposure, tobacco sale or use, alcohol-related matters, making terroristic threats, a few other instances, and conspiracy to commit any of the above acts.

As a side note, we have a concern about listing incidents where notification is discretionary: **The law may effectively encourage districts to report incidents to police that might otherwise be handled effectively using less-punitive approaches.**

### MORE FUNDING FOR SCHOOL RESOURCE OFFICERS

Eighty-seven school districts in Pennsylvania have SRO programs. Although used by a minority of districts in the state, these programs have achieved a certain prominence because they represent a school-policing model that is on the rise nationwide, and they will receive increased federal and state funding in 2013–2014 and beyond.

As the state’s public schools struggle with challenging finances and the prospect of cutting staff positions, several districts are debating whether to start or continue SRO programs.

Pennsylvania’s SRO programs are supported by a combination of

funding sources – non-district public funds, such as grants from the state or federal government; local governmental funds; and school district budgets. A spike in SRO programs in 2005 (*see chart, page 28*) was due to an increase in the flow of multi-year grant funding from governmental agencies. In 2004, the U.S. Department of Justice’s Office of Community Oriented Policing Services distributed \$60 million to school districts and police departments nationwide to hire SROs.

In a 2005 evaluation of SRO programs, principals of 50 Pennsylvania schools with SRO programs responded to questions about the sources of funding: 44 percent stated that school police were funded solely from local district and government funds; 10 percent solely from federal and state grants; 22 percent from federal grants and local funds; and 18 percent from state grants and local funds.<sup>51</sup>

### What SROs Do

The SRO is said to play three roles in schools: law enforcement, counseling and mentoring, and classroom instruction. This is referred to as the “Triad Model.”<sup>52</sup> The Pennsylvania Commission on Crime and Delinquency describes the SRO program’s focus this way: “(P)reventing delinquency, deterring crime and drug abuse, discouraging gang activity, and stopping violence. Program goals are to enhance safety and security in and around schools and surrounding communities, to promote positive choices among young people, and to improve interactions between schools and criminal justice agencies.”<sup>53</sup>

Estimates of how SROs spend their time – especially the balance between law enforcement and other contact with students outside the classroom – vary widely. But by all accounts, making classroom presentations on law enforcement topics, such as drug education based on the DARE model, is typically the least time-consuming part of the job.

## Employment of SROs

SROs are provided to school districts either by local law enforcement – loaning an existing officer to the district or selecting a new person to serve as an SRO – or by the Pennsylvania State Police (PSP). In 2006, the PSP started its own SRO program, a fee-based service under which districts may contract with the agency to hire an existing trooper as an SRO in high schools, alternative learning schools, or at school events. The PSP has promoted its program at school board meetings across the state. At present, 12



**Data suggest that the decline in violent victimizations experienced by children at school might, in part, be the result of an overall decline in crime against juveniles and not the result of more SROs working in schools.”**

— Congressional Research Service

school districts contract with the state police for SRO services.<sup>54</sup>

Individual SRO programs tend to employ a small number of officers. Only 10 districts have four or more SROs (in order by number

of officers): **Penn Hills** (22 SROs), **Central Dauphin, Bethlehem Area, Lancaster, Cranberry Area, Allentown City, Wilkes-Barre Area, Norristown Area, Woodland Hills,** and **Deer Lakes.**

## CONCERNS ABOUT PLACING POLICE IN SCHOOLS

### 1. There is a lack of evidence that stationing police in schools makes schools safer.

Promoters of SRO programs contend that SROs make schools safer in several ways: by being on the scene to address criminal activity when it occurs; by serving as a deterrent; by encouraging students to report possible dangerous activity before it occurs; and by mentoring troubled young people or those who find themselves in unsafe environments.

Based on these claims, one would expect a demonstrated reduction in serious misconduct incidents shown over time and, furthermore, periodic reviews of school-safety records done by school officials to assess these programs. But neither appears to be the case.

The Congressional Research Service, in a June 2013 report to Congress, concludes:

“Despite the popularity of SRO programs, there are few available studies that have reliably evaluated their effectiveness.” It adds that the research does not address whether SRO programs deter school shootings and that “data suggest that the decline in violent victimizations experienced by children at school might, in part, be the result of an overall decline in crime against juveniles and not the result of more SROs working in schools.”<sup>55</sup>

Few assessments of Pennsylvania SRO programs exist. Most of them are old, and they are based largely on opinion surveys (of school staff, SROs, parents, and sometimes students), not a detailed review of school incident trends. The same is true about most of the research literature on the subject, including the two SRO program assessments that have been funded by the Pennsylvania Commission on Crime and Delinquency. One of these assessments, which focused primarily on the results of opinion surveys, noted as an aside that a review of the Violence, Weapons Possessions & Incident Reports for 30 Pennsylvania schools with SROs compared to a set of peer schools without SROs found “no notable differences” in reporting rates. It reached the same conclusion after comparing truancy rates.<sup>56</sup> **This would be a valuable line of further study by school decision-makers.**

The most comprehensive study of incident trends, comparing a nationwide sample of schools that added police (SROs and SPOs) to those that chose not to, concluded:

“Unlike studies that have reported on key stakeholders’ perceptions of the effectiveness of the SRO programs for increasing school safety, this study found no evidence suggesting that SRO or other sworn law enforcement officers contribute to school safety. That is, for no crime type was an increase in the presence of police significantly related to decreased crime rates. The preponderance of evidence suggests that, to the contrary, more crimes involving

weapons possession and drugs are recorded in schools that add police than in similar schools that do not. ... (M)ore serious crimes are likely to be reported to the police, regardless of whether an officer is present."<sup>57</sup>

## 2. Increased school policing may have negative impacts.

Does stationing police in schools lead to more police involvement in enforcing school rules and other discipline matters that are better handled by school officials? Can it lead to the escalation of incidents?

The above-mentioned study of incident trends also concluded that **as schools increased their use of police officers, the reported number of crimes involving non-serious violent offenses that are reported to law enforcement increases.** The study identifies *fighting* and *threats to fight without a weapon* as the most common types of non-serious violence that would lead to a referral to outside law enforcement when an officer is present in school. Most of these situations require some form of intervention, but not an automatic police response that may result in a student becoming involved with the justice system.

Several reports about the impact of school-based policing show that a police presence is more likely to lead to law enforcement involvement in a broad range of non-serious situations, typically characterized as "disorderly conduct," "disruption," or "defiant behavior."<sup>58</sup>

No statewide data are available for Pennsylvania schools that would permit an assessment of whether stationing police in schools and requesting police assistance in routine discipline matters result in increased law enforcement involvement in non-serious incidents. PDE's Safe Schools Reports do not collect this data.

School districts may have information that would provide some clues, however. For example, districts typically maintain incident logs that may provide useful, albeit incomplete, information when combined with other information. Using incident reports is not without problems, though. Some of them are no more than a series of checkboxes. Also, reports could be written in a way that conflates disrespectful behavior with criminal behavior. Notwithstanding these problems, it is clear that districts possess or could obtain information that would permit such an inquiry.

**Pittsburgh** has been debating the high number of "disorderly conduct" incidents reported to the state Education Department by the city's school district. In January 2013, then-Pennsylvania Auditor General Jack Wagner issued a report about the Pittsburgh district in which he noted that "(I)n each of the last two reporting years [2009–2010 and 2010–2011] ... disorderly conduct incidents comprised more than half of the total of all district-reported incidents (60.7 percent and 56.7 percent, respectively)," a proportion that is three times higher than the state average.<sup>59</sup>

The discussion centers on whether incidents are simply being miscoded due to differences in definitions of *disorderly conduct* between the district and PDE, whether many students are facing charges before a magistrate judge for disrespectful behavior that should not be considered criminal, or both.<sup>60</sup>

The appropriate handling of school-based disciplinary matters has also come up in funding debates about SRO programs. In 2010, the **Waynesboro School District** decided not to fund its program beyond the expiration of its grant. The debate centered on whether the district could use its own funds to cover the cost of the program and whether an assistant principal, for example, would be better at handling disciplinary issues than a School Resource Officer.

**(M)ore serious crimes are likely to be reported to the police, regardless of whether an officer is present."**

— Chongmin Na and Denise Gottfredson, criminology researchers

Several reports conclude that a police presence is more likely to lead to law enforcement involvement in a broad range of non-serious situations, typically characterized as "disorderly conduct," "disruption," or "defiant behavior."

A school board member, arguing for retaining school staff instead of the SRO, reviewed a list of 3,336 disciplinary issues handled by the assistant principal in 2009–2010 and concluded that one-third of these were minor infractions, not safety issues. She said they could be handled by school staff.<sup>61</sup>

But the Waynesboro district reported only 112 incidents of serious misconduct to the Pennsylvania Department of Education for that school year. Such a low number suggests that the vast bulk of the “disciplinary issues” referred to at the school board meeting – not just one-third of them – were indeed considered by school officials to be non-criminal matters normally handled by school staff, not the police.

### 3. Most School Resource Officer programs lack sufficient oversight.

SROs occupy a unique position in school security programs: These officers straddle the line between serving as regular police officers and as school staff, which presents potential problems. Where does accountability lie?

To help us learn how these roles are understood and enforced, we requested that all Pennsylvania districts provide us copies of all Memoranda of Understanding (MOU) with local or state law enforcement, *including those that employ SRO and School Police Officer programs*. As mentioned above, a state law passed in 2010 and regulations passed to implement it (Act 104 and Chapter 10) require districts to negotiate new MOUs with law enforcement. Most Pennsylvania districts approved new MOUs in late 2011 and early 2012. But these standard MOUs, including the model MOU approved by the State Board of Education, do not explicitly address district-run security programs, such as the SRO and SPO programs.

The MOUs sent in response to our request indicate:

- Most districts hosting SRO programs did not provide MOUs that specifically address the operation of SRO programs.
- Of the SRO-specific MOUs, most state that the SRO should not act as school disciplinarian, although some specify that the SRO may advise the administration on school disciplinary matters. Only a handful discuss the SRO’s search and interrogation powers, and their limits, when SROs are interacting with students. Some 15 MOUs state that school districts may disclose information from a student’s educational record to the SRO without observing the privacy limitations of the federal Family Educational Rights and Privacy Act.
- One MOU states that the SRO is not a district employee and is under the command of the local sheriff.

An MOU that addresses the SRO program may not provide sufficient guidance even when it states that the SRO is not the school disciplinarian. **More detailed guidance about which matters law enforcement should not handle is also needed.** An American Civil Liberties Union national report on the governance of school-based policing programs explains the challenge:

“[T]he vast majority of student misbehavior may technically fall within the definition of a criminal offense, leading to confusion among officers, teachers, parents, and children alike. Absent clear guidelines, there may be confusion or disagreement as to whether a food fight in the cafeteria amounts to criminal “disorderly conduct,” whether talking back to a teacher constitutes a criminal “disturbance of school or public assembly,” or whether a playground shoving match should be classified as a criminal “assault.”<sup>62</sup>

Current Pennsylvania Department of Education guidelines for districts regarding how to complete annual Safe Schools Reports most likely cloud the picture. They point out that the reportable misconduct infraction categories may also be considered crimes under Pennsylvania law.<sup>63</sup> We note that PDE requires the reporting of a much broader range of incidents than the law requires districts to report to law enforcement.<sup>64</sup> This has serious implications. First, a broad range of behaviors may be considered crimes. Second, school administrators may be confused about how to classify certain incidents, and they may feel the pressure to report them as more serious offenses.

SROs are law enforcement officers at all times, no matter what additional responsibilities they may have in schools.

**MOUs with law enforcement, codes of conduct, and other policy documents should provide educators with guidance as to which school behaviors should not trigger the automatic involvement of law enforcement, where state law permits such discretion.**

#### **4. School Resource Officer programs raise constitutional concerns.**

Because SROs are both school staff members and police officers, a critical issue is whether an SRO is acting as a school administrator or a police officer when searching and interrogating a student. As a general rule, police must have a warrant in order to search a student or his or her belongings. School administrators are granted more leeway, depending on the nature of the search.<sup>65</sup>

Some surveys of SROs indicate that they spend up to 60 percent of their time counseling and mentoring young people. At what point do discussions with young people become informal interrogations about possible violations of the law? When an SRO is monitoring the hallways or the lunchroom, is he or she engaged in law enforcement, counseling, or something else? Does a police presence increase the likelihood of an officer getting involved with ordinary school discipline and school or classroom management issues?

Controversy is growing about the legality of SROs searching and questioning students *without probable cause* and about their work in tandem with school officials. Recently the Kentucky Supreme Court threw out statements made by a student because of concerns about the legality of the SRO's role in obtaining them. In the opinion, the court commented that the adoption of zero tolerance practices was leading to "a dramatic shift away from traditional in-school discipline towards greater reliance on juvenile justice interventions."<sup>66</sup>

**SROs are law enforcement officers at all times, no matter what additional responsibilities they may have in schools.** Without clear guidelines and restrictions that are understood by the entire school community and outside law enforcement and that are enforced by district officials, having SROs in schools may result in the violation of students' constitutional rights and create liability for the district.<sup>67</sup>

**Controversy is growing about the legality of SROs searching and questioning students *without probable cause* and about their work in tandem with school officials.**

# Conclusion: An Urgent Need for Reform

Removing students from school as a form of punishment has been a widespread discipline practice in many Pennsylvania public schools. This report has outlined concerns about this practice.

The discipline trends highlighted in *Beyond Zero Tolerance* are not short-term, or one- or two-year spikes, especially when it comes to the use of out-of-school suspensions. They typically last for at least three years in any given district. Once policy and practice become institutionalized, they do not change, at least not without deliberate intervention. **Creating better school climates demands that inquiry and action occur at all levels – within districts, within school communities, and at policy-making levels.**

It is policy – at the national, state, district, and school levels – that drives disciplinary practices. A range of forces have an effect:

- State law pertaining to exclusion from school;
- Federal and state expenditures for school police;
- District codes of conduct;
- The content of principal training programs; and
- District and state Education Department decisions about how discipline data should be kept and how practices should be monitored.

The harms caused by zero tolerance policies demand attention and change from these decision-makers. Yet many of the most important decisions about school discipline can be controlled at the district or school level.

One of the major impacts of zero tolerance in Pennsylvania schools has been a rise in disciplinary action in vague categories labeled *disruption, disorderly conduct, or defiant behavior*, for uniform or

We close this report with two thoughtful comments to consider, one from a student who attended Orr High School in Chicago and the other from a Western Pennsylvania superintendent.

**Not all Pennsylvania districts have embraced zero tolerance. These districts have shown that other types of intervention by school staff can make a positive difference.**

dress-code violations, and for scuffles that do not involve the use of a weapon or result in major injury. In **Philadelphia**, OSSs for “disruption” made up between 30 and 42 percent of all suspensions between 2003 and 2009.<sup>68</sup> Similarly, **Erie, Pittsburgh** and **Allentown** report high numbers of disorderly conduct incidents.

Classification of these incidents is one area where educators have some discretion. Most of these situations require some form of intervention, but not automatic exclusion from school or a police response that may lead to students becoming involved with the justice system.

It is important to recognize that not all Pennsylvania districts have embraced zero tolerance. These districts have shown that intervention by principals, school staff, students, community members, and superintendents can make a positive difference.

In December 2012, Edward Ward, 20, a student from Chicago, offered this perspective on school discipline in testimony before the U.S. Senate’s Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights:

From the moment we stepped through the doors in the morning, we were faced with metal detectors, X-ray machines and uniformed security. Upon entering the school, it was like we stepped into a prison. Violence is prevalent in my community. When I was 18, I witnessed a complete stranger’s killing mere feet from me, in a neighborhood restaurant. That same year, I found my cousin – who had moved out of our neighborhood to get married and start a better life – slain by gun violence outside my home. A few years back, I was stopped by police on the street and

saw them train their guns on me until I could quickly show that the item in my pocket was simply a cell phone.

When my classmates were suspended from Orr, they would disappear for days, and when they were kicked out, they would disappear sometimes for weeks. What was most shocking to me was discovering that they were being suspended for minor infractions, the kind of infractions that shouldn't merit more than a stern warning or reminder. I clearly remember a classmate who was climbing up the stairs from the weight room in the basement of our school, and on his way up, he tripped and landed on his knee. His reflex was to yell "Damn!" from the pain. He was served with a two-day out-of-school suspension. This was disheartening, and it made me question what kind of reasoning was behind these policies that led my school to dish out suspensions and expulsions that led to young people missing valuable class time and being abandoned by our schools. ...

My school's environment was very tense; the halls were full with school security officers whose only purpose seemed to be to serve students with detentions or suspensions. Many of the school security officers were very disrespectful to students; some of them spoke to us as if we were animals. ... Instead of feeling like I could trust them, I felt I couldn't go to them for general security issues because I would first be interrogated before anything would get done. ...

The police officers stationed at my school were even more aggressive. ... Every time there was a fight, the police would step in and handcuff students, even in cases where there was no weapon. Some would be sent to the police station in the school; a few ... never came back to school after that.



**Although safety has to be one of our top priorities, a show of force is not necessarily the best way of dealing with it in our community."**

— Dr. Wayde Killmeyer, Clairton superintendent

These policies and actions disheartened me. I could slowly see the determination to get an education fade from the faces of my peers because they were convinced that they no longer mattered, that their voices would continue to be completely ignored. Students were not given a chance to explain themselves or defend their actions. ...

When Orr's administrators bought into our restorative-justice peer juries, we were able to interrupt the trend of automatic suspensions so that the voices of students who were facing disciplinary action could be heard, the underlying needs explored, the harms repaired and the student put back on the right track.<sup>69</sup>

Clairton's superintendent, Dr. Wayde Killmeyer, recalled the situation in his written testimony submitted to the Pennsylvania House Select Committee on School Safety in June 2013:

(I)n the past, the school district relied too heavily on the local police department. Teachers would call in police officers to deal with students who were simply being disobedient. As a result, the police were reluctant to respond to calls from the school and the relationship between the school and the police department was strained, to say the least. ...

(T)he administration of the school made a concerted effort to handle discipline issues on our own, within the school. ... The school made a pledge to the ... police that we would only call them for actual police matters. In so doing, we went from a situation where the police were being called every day, to the current situation, in which it is a

rare occasion that we have to call them in. School administrators ... have been able to create a positive environment and at the same time bring disciplinary problems down significantly, and in the process rely less heavily upon the police.

This positive environment was created by recognizing and responding to the less-than-positive environment from which many of our students come. ... Like many similarly situated districts, our students come to us hungry, tired, from homes that are chaotic and where education is not a high priority. Dealing with these human needs has to be a higher priority than putting an armed guard in our halls. Although safety has to be one of our top priorities, a show of force is not necessarily the best way of dealing with it in our community.<sup>70</sup>

## ENDNOTES

<sup>1</sup>The exact number of districts has fluctuated in the last decade. In 2009, Center and Monaca school districts, both in Beaver County, became the Central Valley School District. Several school districts contain no high schools; students attend schools in other districts. At present, there are 500 school districts in Pennsylvania; but only 499 districts are required to report safe schools data to the Pennsylvania Department of Education. The Bryn Athyn district contains no schools within its boundary. Most students there attend private schools; public school students attend schools in two nearby districts.

<sup>2</sup>For more information about referrals to the juvenile justice system, see *Lessons from Luzerne County: Promoting Fairness, Transparency and Accountability*, Juvenile Law Center.

<sup>3</sup>Christopher Boccanfuso and Megan Kuhfeld, "Multiple Responses, Promising Results: Evidence-Based, Nonpunitive Alternatives to Zero Tolerance," *Child Trends*, Publication #2011-09, March 2011.

<sup>4</sup>Public School Code of 1949, Section 1317.2. Under Pennsylvania law, a "weapon" includes, but is not limited to, any knife, cutting instrument, cutting tool, nunchaku, firearm, rifle or any other tool, instrument, or implement capable of inflicting serious bodily injury.

<sup>5</sup>Gun-Free Schools Act, 20 U.S.C. 7151

<sup>6</sup>For a review of the controversy about zero tolerance practices, see: Donna St. George, "More schools rethinking zero-tolerance discipline stand," *Washington Post*, June 1, 2011.

<sup>7</sup>Russell J. Skiba, "Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary Practice," Indiana Education Policy Center, Policy Research Report #SRS2, August 2000.

<sup>8</sup>For an examination of how zero tolerance policies were implemented from the federal to the local district level, using Virginia as a case study, see: Jennifer A. Sughrue, "Zero Tolerance for Children: Two Wrongs Do Not Make a Right," *Educational Administration Quarterly*, Vol. 39, No. 2, April 2003.

<sup>9</sup>For an in-depth discussion of the history and impact of zero tolerance, see: Christopher G. Robbins, *Expelling Hope: The Assault on Youth and the Militarization of Schooling*, Albany, NY: State University of New York Press, 2008.

<sup>10</sup>For a discussion of these developments, see: Dan Berrett, "Columbine Cast Shadow over Pocono Schools," *Pocono Record*, December 27, 2009.

<sup>11</sup>*The Washington Post* exposed the arbitrariness and sheer folly associated with the designation of schools as "persistently dangerous." See: Nelson Hernandez, "'No Child' Data on Violence Skewed," November 18, 2007.

<sup>12</sup>U.S. Department of Education, Office of the Inspector General, "An OIG Perspective on the Unsafe School Choice Option," ED-OIG/S03G0015

<sup>13</sup>24 PS 13-1310-A

<sup>14</sup>*Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement*, Council of State Governments Justice Center and The Public Policy Research Institute at Texas A&M University, 2011.

<sup>15</sup>Other proposals range from increasing emergency preparedness, to arming school staff, to easing restrictions on carrying guns onto school property, to proposals to provide for mental health services or counseling. "School Safety Legislation Since Newtown," Education Week.

<sup>16</sup>Erik Eckholm, "With Police in Schools, More Children in Court," *New York Times*, April 12, 2013.

<sup>17</sup>U.S. Department of Justice Press Release, "Attorney General Holder, Secretary Duncan Announce Effort to Respond to School-to-Prison Pipeline by Supporting Good Discipline Practices," July 21, 2011.

<sup>18</sup>U.S. Senate Committee on the Judiciary Hearing on Ending the School-to-Prison Pipeline, December 12, 2012. Also, see written testimony from the American Civil Liberties Union to the committee.

<sup>19</sup>Model MOU, Section 2, Notification of Incidents to Law Enforcement.

<sup>20</sup>There are a few possible exceptions. A student may challenge a suspension if the discipline violates his or her constitutional rights. A student may ask a school board to reduce or eliminate the suspension. However, school boards are not normally required to hear such a complaint.

<sup>21</sup> *PDE Annual Safe Schools Report for 2011–2012*. When all schools receiving public funding are counted, including charters, intermediate units, career technical centers and vocational schools, and state juvenile correction facilities, total OSSs equal about 183,000.

<sup>22</sup> This number was computed from the most recent federal Civil Rights Data Collection (2010).

<sup>23</sup> Civil Rights Data Collection, U.S. Department of Education, April 2012.

<sup>24</sup> “Alternative Education for Disruptive Youth: 2006/2007 Annual Report for Public Schools,” Pennsylvania Department of Education, November 2010.

<sup>25</sup> See *Improving “Alternative Education for Disruptive Youth” in Pennsylvania*, Education Law Center of PA, March 2010.

<sup>26</sup> Education Law Center, Civil Rights Complaint to the U.S. Department of Justice, August 7, 2013.

<sup>27</sup> Some districts allow older students to complete their education, although they aren’t required to do so.

<sup>28</sup> 22 Pa Code 12.6 and 12.8.

<sup>29</sup> A few districts with substantial Black enrollments (7 percent or more) have roughly equal OSS rates for Black and White students: Morrisville Borough, Jenkintown, and Grove Area school districts.

<sup>30</sup> A few districts with substantial Latino enrollments (7 percent or more) have roughly equal OSS rates for Whites and Latinos: Norristown, Bermudian Springs, Wilson, Shenandoah, Bensalem, East Penn, Riverside, and Delaware Valley. Norristown stands out as having high OSS rates for Black students, but roughly equal rates for Latino and White students.

<sup>31</sup> During this period, the statewide average OSS rate was 9.8 OSSs/100 students; however, Black students received OSSs at almost seven and a half times (7.4) the rate of Whites. We did not examine disproportionality in suspension rates for the school years preceding the fall of 2009.

<sup>32</sup> “Revealing New Truths about Our Nation’s School: The Transformed Civil Rights Data Collection,” U.S. Department of Education, March 12, 2012. A new survey, covering the 2011–12 school year, is in process. It will cover all public schools and school districts in the country, including juvenile justice facilities, charter schools, alternative schools, and schools serving students with disabilities. Districts were required to submit data by Dec. 7, 2012. The results should be made available to the public in the spring of 2014.

Data can be accessed at: <http://ocrdata.ed.gov/>

A snapshot of major trends can be found at: <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf>

<sup>33</sup> National projections were published in: Daniel Losen and Jonathan Gillespie, *Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School*, The Civil Rights Project at UCLA, August 07, 2012. Data for Florida, New York, and Hawaii are so seriously flawed that they are not included in state projections.

<sup>34</sup> Individuals with Disabilities Education Act. See 34 CFR § 300.530(e).

<sup>35</sup> For a helpful discussion of discipline of students with disabilities, see: Daniel J. Losen and Tia Elena Martinez, *Out of School and Off Track: The Overuse of Suspensions in American Middle and High Schools*, The Center for Civil Rights Remedies at the UCLA Civil Rights Project, April 8, 2013.

<sup>36</sup> “Individuals With Disabilities Education Act: Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education,” General Accounting Office, GAO-13-137, February 2013.

<sup>37</sup> For a discussion of summary offenses, see <http://www.jlc.org/resources/fact-sheets/types-juvenile-offenses-pennsylvania>

<sup>38</sup> 18 Pa. Code §106(c). When youth are not compliant, they can be referred to juvenile court. In some instances, adults can be imprisoned for up to 90 days for lack of compliance with conditions set by the court (18 Pa. C.S. §106(c)(2)).

<sup>39</sup> Public School Code of 1949, Sec. 778.

<sup>40</sup> “Pittsburgh schools to clarify codes of conduct,” *Pittsburgh Post-Gazette*, June 17, 2013.

<sup>41</sup> No UCRS arrest data are available for the Erie district for the fall of 2009.

<sup>42</sup> SB 10 amended 24 PS 13-1302-A and increased funding for school safety grants to \$8.5 million, 60 percent of which is earmarked for school police and SROs. For a description of these grant programs for the 2013–2014 school year, see “2013–2014 Safe Schools Targeted Grants,” Pennsylvania Department of Education.

<sup>43</sup> “School Safety Grant Program Being Readied for Fall Rollout,” *PennLive*, July 21, 2013.

<sup>44</sup> Not included in this count are public school SRO programs that are not run by traditional school districts. We were able to identify three career technical centers that have had SRO programs at some point in the last decade: York County School of Technology, North Montco Tech, and the Western Center for Technical Studies. There may be additional programs.

<sup>45</sup> Philadelphia School Police do not carry firearms, unlike many districts with school police.

<sup>46</sup> “Sworn police officers” are certified by some police agency. Normally they have (or may be granted) the power to arrest and detain students. Other security staff members do not have those powers.

<sup>47</sup> School security chiefs from around the country outline the full array of security options adopted by schools in this survey:

"School Security Chiefs List Serve Discussion: Armed vs. Unarmed School Security Officers," U.S. Department of Education Office of Safe and Drug-Free Schools.

<sup>48</sup> Act 104 of 2010. P.L. 996 No. 104 (Nov. 17, 2010).

<sup>49</sup> Chapter 10. Safe Schools.

<sup>50</sup> State Board of Education Actions: November 2011.

<sup>51</sup> "School Resource Officer Evaluation, Phase Two," Center for Schools and Communities, September 2005.

<sup>52</sup> *To Protect and Educate: The School Resource Officer and the Prevention of Violence in Schools*, National Association of School Resource Officers, October 2012, pp. 21–27.

<sup>53</sup> Pennsylvania Commission on Crime and Delinquency definition of School Resource Officer.

<sup>54</sup> Information provided by the Pennsylvania Department of Education to the Pennsylvania House Select Committee on School Safety, 2013.

<sup>55</sup> Nathan James and Gail McCallion, *School Resource Officers: Law Enforcement Officers in Schools*, Congressional Research Service Report for Congress, June 26, 2013.

<sup>56</sup> "School Resource Officer Evaluation, Phase One," Center for Schools and Communities, September 2005, pp. 68–69.

<sup>57</sup> Chongmin Na and Denise C. Gottfredson, "Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors," *Justice Quarterly*, (2011) pp. 1–32.

<sup>58</sup> For an overview, see: *Education Under Arrest: The Case Against Police in Schools*, Justice Policy Institute, November 2011. Also, see: Jason Langberg, Barbara Fedders, and Drew Kukorowski, "Law Enforcement Officers in Wake County Schools: The Human, Educational, and Financial Costs," Advocates for Children's Services, North Carolina, February 2011.

<sup>59</sup> "School District of Pittsburgh Performance Audit Report," Auditor General Jack Wagner, January 2013, pp. 38–41.

<sup>60</sup> "Pittsburgh schools to clarify codes of conduct," Pittsburgh Post-Gazette, June 17, 2013.

<sup>61</sup> Minutes of the Waynesboro Area Board of School Directors, June 15, 2010.

<sup>62</sup> Catherine Y. Kim and I. India Geronimo, *Policing in Schools: Developing a Governance Document for School Resource Officers in K-12 Schools*, An ACLU White Paper, August 2009.

<sup>63</sup> Pennsylvania Information Management System, Manual Vol. 2, Appendix Z ("Infraction Codes").

<sup>64</sup> For the 2011–2012 school year, Pennsylvania districts reported 61,168 misconduct infractions to PDE's Office of Safe Schools; 14,323 of those incidents were reported as having had law enforcement involvement.

<sup>65</sup> *Know Your Rights: A Handbook for Public School Students in Pennsylvania*, American Civil Liberties Union of Pennsylvania, August 2013.

<sup>66</sup> "'Miranda' Warning Needed in School Drug Case, Court Rules," *Education Week*, April 26, 2013.

<sup>67</sup> Christopher Z. Campbell, "The Effective Use of School Resource Officers: The Constitutionality of School Searches and Interrogations," *School Law Bulletin*, University of North Carolina School of Government, Winter 2003.

<sup>68</sup> Response from the School District of Philadelphia to Open Records Request from the American Civil Liberties Union of Pennsylvania, September 13, 2010.

<sup>69</sup> Testimony of Edward Ward before the U.S. Senate Committee on the Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights on "Ending the School-to-Prison Pipeline," December 12, 2012.

<sup>70</sup> Written testimony submitted by Dr. Wayne Killmeyer, superintendent of Clairton City School District, to the Pennsylvania House Select Committee on School Safety. A version also appeared as "We Don't Need Guns in Schools," Erie Times-News.

<sup>71</sup> In the PDE Safe Schools Database online, the earliest annual reports that can be accessed are from the 1999-2000 school year. At the end of the report, there is a box that includes the types of sanctions given for misconduct incidents. These sanctions include: detention, in-school suspension, out-of-school suspension, expulsion—less than one calendar year, expulsion—one calendar year, expulsion—more than one calendar year, and other.

<sup>72</sup> PDE Safe Schools Database for reports before the 2004–2005 school year states, "The reports below do not reflect original numbers as posted for the respective years. Those reports published prior to the 2004–2005 school year only included incidents as defined as violent in nature. These reports include all incidents so as to adhere to the current convention of reporting guidelines."

<sup>73</sup> PDE Safe Schools Database. Beginning in the 2005–2006 school year, an additional page was added to each school district's Annual Report that included expulsions and out-of-school suspensions disaggregated into grade, race/ethnicity, and gender.

<sup>74</sup> PDE Safe Schools Reports also measure misconduct incidents this way.

# METHODOLOGY

This report draws on multiple sources: annual Pennsylvania Department of Education (PDE) Safe Schools Reports; the U.S. Department of Education Civil Rights Data Collection (CRDC) for the 2009–2010 school year; and information obtained under Pennsylvania’s Right to Know Act from school districts, the Pennsylvania State Police, and the Pennsylvania Commission on Crime and Delinquency. This information was supplemented by conversations with district staff, by relevant law, and by assessments produced by other agencies. Combined, these sources offer a broad view of districts’ overall discipline and intervention strategies.

For this report, we filed information requests under Pennsylvania’s Right to Know Law to all school districts in the state and three state-funded vocational schools requesting detailed information about out-of-school suspensions, arrests, incidents involving law enforcement, school security staffing and budgeting, and Memoranda of Understanding between districts and law enforcement. We asked additional questions of districts that have employed School Resource Officers – about training, equipment, and incidents involving the use of force. Districts were uneven in their responses to these requests. A small number of districts provided additional information, such as incident logs (with student-identifying information removed). Where information was unclear or differed from other public records, we followed up with clarifying questions to senior district staff. We are especially grateful to district staff members who discussed discipline strategies with us.

None of these data sets is completely without error. Where possible, we compared suspect data to information from other official sources, reviewed patterns over several successive years, or sought clarification from district officials. In a few instances, we chose not to use specific pieces of data, or to use data in limited ways when we suspected the information is not correct or when it is not

complete for some groups of students. When sample sizes are small, officials may decide that students could be individually identified by releasing exact numbers. Officials may choose not to report this data for privacy reasons, effectively suppressing the information.

We have reason to believe that data provided by the York City and Aliquippa districts to the federal government for the CRDC contain errors. For York, the number of Black students with disabilities who were suspended exceeds the number of Black students classified as disabled. Aliquippa reported the number of students with disabilities as zero, although it gave non-zero figures for suspensions of students with disabilities.

In the course of our research, we discovered problems with arrest data and data about the disciplinary transfer of students to alternative education programs. Arrest data reported by different official agencies are inconsistent. In addition, PDE Safe Schools Report data about assignments to alternative education disciplinary programs are inconsistent with data provided by PDE to the Education Law Center under Pennsylvania’s Right to Know Law. Furthermore, there are some disciplinary practices for which there is no statewide data, such as summary citations issued to students and related appearances in adult court.

Since 1997, the PDE has required all districts statewide to report the number of suspensions, initially just suspensions issued in response to misconduct incidents reported to the state. Beginning with the 2005–2006 school year, districts have been required to report all suspensions for the PDE Safe Schools Report. The main impetus for this reporting requirement was for the state to keep track of student misconduct and how it was punished, not to provide a critical examination of the districts’ discipline strategies and whether they have led to unfair or disproportionate discipline. The database was also designed to

provide state education officials a way of addressing the federal mandate, under the No Child Left Behind Law, that each state education department compile a list of “persistently dangerous schools.”

This reporting requirement has become more robust over time. Originally, Pennsylvania was primarily concerned with the safety in schools. In the 1999–2000 school year, a system was created that ensured accurate reporting of violent incidents. Beginning with the 1999–2000 school year, the annual report includes the number and type of sanctions given for misconduct incidents.<sup>71</sup> Beginning with the 2004–2005 school year, districts were expected to report misconduct incidents beyond those that were considered violent in nature.<sup>72</sup> And since the 2005–2006 school year, districts have been required to report all out-of-school suspensions issued for reasons beyond misconduct incidents.

Suspensions are reported in six general categories: academic, conduct, drugs and alcohol, tobacco, violence, and weapons. Additionally, schools are required to report out-of-school suspensions in a format that is separated, or disaggregated, by race, gender, and grade level.<sup>73</sup> Due to this expanded level of reporting, it became possible to sift through this PDE data to analyze trends for a broader purpose, such as the longitudinal view of suspension trends measured in suspension actions per 100 students.<sup>74</sup>

Unfortunately, data on the actual number of students suspended is not typically made available for districts across the state; data that disaggregate these figures by race, special education status, gender, etc., are even less available. The U.S. Department of Education has stepped into this breach by requiring most districts to report these figures in a federal database known as the Civil Rights Data Collection (CRDC). Beginning in the fall of 2012, *all* districts were required to report detailed discipline data to the U.S. Department of Education.

# The Pennsylvania School Landscape 2012

Profiling Pennsylvania’s public school districts has built-in challenges. The state has a large number of school districts, averaging 500 in the last decade. Enrollments vary widely, from 222 students (Austin Area) to 154,262 (Philadelphia). The average enrollment per district is 3,300 students. About 30 percent of districts have enrollments of 1,000 to 2,000 students. Nineteen percent have enrollments between 2,000 and 3,000. Only 25 districts have enrollments greater than 8,000 students.<sup>i</sup>

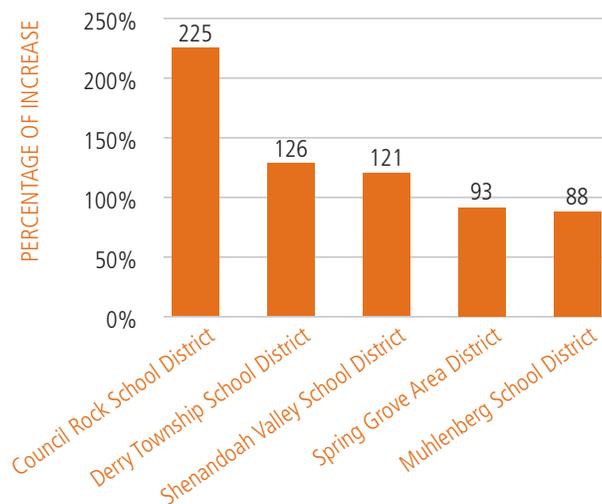
Two trends are of note:

**Students are not evenly distributed around the state by race and ethnicity.** The racial/ethnic composition of Pennsylvania public schools is: 72.5 percent White, 13.6 percent Black, 8.4 percent Latino and 3.3 percent Asian/Pacific Islander.<sup>ii</sup> Fifty-eight percent of Pennsylvania districts have Latino enrollments of less than 2 percent, and 41 percent report having virtually no Latino students. Similarly, Black students are most

heavily concentrated in these 10 counties: Philadelphia, Dauphin, Delaware, Allegheny, Monroe, Montgomery, Erie, Beaver, Mercer, and Northampton. But Black students are more evenly distributed across the state than Latinos. About 53 percent of Pennsylvania districts have Black enrollments of 2 percent or more, while 13 percent have virtually no Black students.

**Latino enrollment has increased by 200 percent in the last two decades. This is perhaps the most significant change in Pennsylvania school demographics.** The districts that have seen the greatest increase in Latino students over the last five years are Council Rock School District (an increase of 225 percent in the last five years), Derry Township School District (126 percent), Shenandoah

## LATINO ENROLLMENT INCREASES IN THE LAST FIVE YEARS

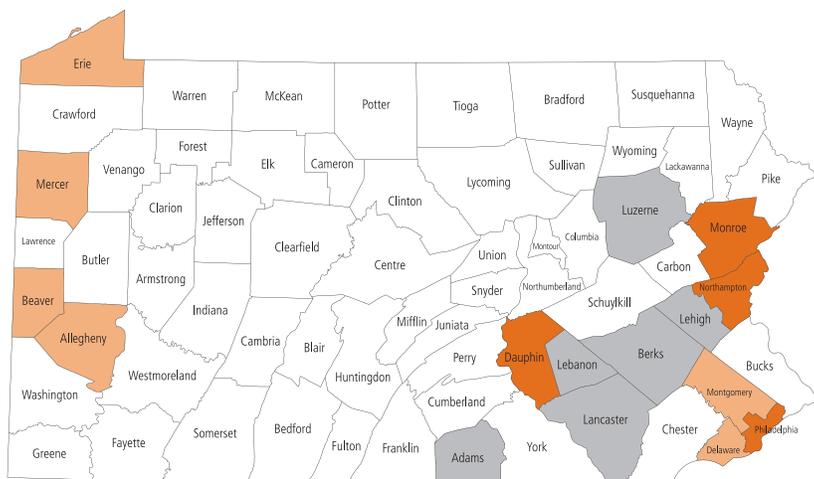


Valley School District (121 percent), Spring Grove Area (93 percent), and Muhlenberg School District (88 percent).<sup>iii</sup> The 10 counties with the highest percentage of Latino students are Lehigh, Berks, Monroe, Philadelphia, Northampton, Lebanon, Lancaster, Luzerne, Adams, and Dauphin.

<sup>i</sup> Enrollment figures are for the 2011–2012 school year. Pennsylvania Department of Education, “Enrollment Public School 2011–12.”

<sup>ii</sup> The Pennsylvania Department of Education uses the following self-reported racial/ethnic categories: American Indian / Alaska Native, Asian, Black (Non-Hispanic), Hispanic, Multi-Racial, Native Hawaiian or other Pacific Islander (not Hispanic), White (Non-Hispanic), and unknown.

<sup>iii</sup> Only districts with at least 100 Latino students in the 2009–2010 school year were included in order to minimize the chance that small increases would falsely lead to large fluctuations in rates.



■ Black student concentration   
 ■ Latino student concentration  
■ Black/Latino student concentration

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## Thanks go to:

- Jay Waser of KSys Inc. for kindly providing us with Excel files of Pennsylvania Safe Schools data for the 2011–2012 school year.
- Daniel J. Losen and Jonathan Gillespie at the Civil Rights Project at UCLA for providing us with specially formatted out-of-school suspension data for Pennsylvania. Our analysis of the suspension gap is modeled on the work of the project.
- Colleagues at the American Civil Liberties Union of Pennsylvania, including Peggy Curchack, Thalia Guzman, Nathan Hurdle, John Magolan, Sara Mullen, Sara Rose, and Reggie Shuford.

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This project was funded by the Pittsburgh Child Guidance Foundation and the American Civil Liberties Union's National Racial Justice Program.



Additional information, including school district data and other resources, is available on our web site at [www.aclupa.org/bzt](http://www.aclupa.org/bzt).