



March 6, 2017

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Ohio Department of Education  
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Dear Ms. Ward, Ms. Grady, Ms. Miracle, and Mr. Woolard:

Thank you for taking the time to meet with representatives of Racial Justice NOW! of Dayton, Ohio, the national Dignity in Schools Campaign (DSC), and the NAACP Legal Defense and Educational Fund, Inc. (LDF) on December 16, 2016. We appreciated the opportunity to discuss our recommendations for the Ohio Department of Education's ("the Department") accountability system and consolidated state plan under the Every Student Succeeds Act (ESSA). Racial Justice NOW!, the Juvenile Justice Coalition, the West Dayton Youth Task Force, the Faith & Justice Alliance, DSC, and LDF have reviewed the Department's draft state plan released on February 2, 2017 and write to provide recommendations for strengthening the plan.

We continue to urge the Department to include strategies to promote positive school climates and reduce the use of exclusionary discipline practices, which disproportionately impact students of color, in the Ohio state plan. The Department's School Report Card shows that during the 2015-2016 school year, Ohio students received 202,702 out-of-school suspensions and 3,156 expulsions.<sup>1</sup> Even though Black students comprised only 16.5 percent of the student population, they bore the brunt of these exclusionary and overly punitive discipline practices. Black students received 52 percent (106,117) of these out-of-

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<sup>1</sup> Ohio Department of Education, School Report Cards, Discipline Occurrences (State): 2015-2016, <http://bireports.education.ohio.gov/PublicDW/asp/Main.aspx>.

school suspensions and 53 percent (1,668) of the expulsions during that school year.<sup>2</sup> These impacted students lose valuable instruction time and suffer from compromised educational and life outcomes, including greater likelihood of dropping out of school, being retained a grade, or becoming involved with the juvenile justice system.<sup>3</sup>

These racial disparities exist in Ohio and nationwide even though there is no evidence that Black students misbehave more than their white peers.<sup>4</sup> Over half of these suspensions in Ohio were for “disobedient/disruptive behavior,” which is subjective and left to the discretion of teachers, principals, and other school staff.<sup>5</sup> This is consistent with research showing that Black students are often disproportionately disciplined for minor, subjective offenses, indicating that school staff and administrators appear more likely to negatively interpret Black students’ behavior based on their own conscious or unconscious bias.<sup>6</sup>

In order to promote positive school climates and address persistent racial disparities across Ohio’s schools and districts, we offer the following recommendations for strengthening the state plan:

**I. Include School Climate as an Indicator of School Quality and Measure this Indicator by using Discipline Data and School Climate Surveys**

We strongly urge the Department to select school climate as an indicator of school quality or student success. The Department has selected Student Engagement for this indicator, as measured by chronic absenteeism. While we understand the strong link between student attendance and academic achievement, tracking rates of chronic absenteeism alone does not provide information regarding the root causes of this problem. Schools with high rates of absenteeism, particularly among certain student subgroups, may struggle with school climate issues that fuel or contribute to this problem. If students do not feel welcome and respected and are not treated fairly at school, they will be less likely to attend. There is ample research showing that positive school climates will increase several aspects of student success, such as school attendance, academic achievement, and graduation rates.<sup>7</sup> We are also concerned that using chronic absenteeism as the only indicator of school quality or student success may lead schools

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<sup>2</sup> *Id.* See also, School Report Cards, Enrollment by Student Demographic (State): 2015-2016, <http://bireports.education.ohio.gov/PublicDW/asp/Main.aspx>.

<sup>3</sup> See, e.g., Emily Morgan, et al., The School Discipline Consensus Report: Strategies from the Field to Keep Students Engaged in School and Out of the Juvenile Justice System, Council of State Governments Justice Center, 119, (2014), [https://csgjusticecenter.org/wp-content/uploads/2014/06/The\\_School\\_Discipline\\_Consensus\\_Report.pdf](https://csgjusticecenter.org/wp-content/uploads/2014/06/The_School_Discipline_Consensus_Report.pdf).

<sup>4</sup> Russell Skiba, et al, New and Developing Research on Disparities in Discipline, The Equity Project at Indiana University, 2, (Mar. 2014), [http://www.indiana.edu/~atlantic/wp-content/uploads/2015/01/Disparity\\_NewResearch\\_010915.pdf](http://www.indiana.edu/~atlantic/wp-content/uploads/2015/01/Disparity_NewResearch_010915.pdf).

<sup>5</sup> Ohio Department of Education, *supra* note 1.

<sup>6</sup> Russell J. Skiba, Robert S. Michael & Abra Carol Nardo, The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment, The Indiana Education Policy Center, (June 2000) (stating that data showing that Black students are disproportionately disciplined for minor and subjective reasons “is evidence of a pervasive and systematic bias that may well be inherent in the use of exclusionary discipline.”), <http://www.indiana.edu/~equity/docs/ColorOfDiscipline.pdf>.

<sup>7</sup> See, e.g., The School Discipline Consensus Report, *supra* note 3, at xii (stating research shows that academic achievement, attendance, and student success increases when students are in school environments where they feel “physically and emotionally safe, connected, fairly treated, and valued.”).

to penalize students and parents for truancy instead of addressing the issues that lead to student absenteeism, which may be beyond the family's control.

The Department also plans to incorporate a "discipline check" into the calculation for chronic absenteeism. We support the use of expulsion data to prevent schools from meeting benchmarks for chronic absenteeism by expelling students for truancy. However, we encourage the Department to use a more comprehensive approach for incorporating discipline data into the state's accountability system to ensure that all schools and districts with high rates of exclusionary discipline practices (e.g. in-and out-of-school suspensions, expulsions, school-based arrests, and referrals to law enforcement), especially high rates of disciplinary practices imposed on student subgroups, are identified and that these issues are addressed. Using discipline data will not result in any additional burden to districts. The Department already collects most of these data, and ESSA requires states and district to report discipline data on annual report cards.<sup>8</sup> Additionally, Georgia and a consortium of school districts in California currently use discipline data for accountability purposes.<sup>9</sup>

The Department also states that it will investigate the use of school climate surveys as both a school improvement tool and a potential measure to include as part of Ohio's accountability system in the future. We support the use of school climate surveys, in addition to discipline data, for these purposes to provide a comprehensive assessment of the school environment. However, the stark racial disparities in Ohio's school discipline practices presents a sense of urgency that leads us to encourage the Department to include such surveys in the state's accountability system beginning in the 2017-2018 school year. The American Institutes for Research has developed free school climate surveys that states can use.<sup>10</sup>

Finally, we urge the Department to develop a definition for positive school climate and include this definition in its state plan. For example, the Dignity in Schools Campaign's Model Code on Education and Dignity urges states to create a climate where: students feel socially, emotionally and physically safe; there is mutual respect between teachers, students, and families; and students' self-expression and self-esteem are supported.<sup>11</sup>

## **II. Utilize ESSA Funding to Provide Meaningful Supports to Schools and Districts to Promote Positive School Climates**

In section 6.1C of the plan, the Department states that it will use Title IV, Part A funds to support districts to improve school conditions for student learning, including by reducing the overuse of discipline practices that remove students from the classroom. However, this part of the state's plan does not provide sufficient information regarding how it will support such strategies, stating only that it will use a portion of these funds to pilot a school climate survey. In section 6.1A of the plan, the Department states that it will use ESSA funds to support the transition from early childhood to early grades by providing resources

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<sup>8</sup> Every Student Succeeds Act, Public Law No. 114-95, S. 1177, 114th Cong. §1111(h)(1)(c)(viii) (Dec. 10, 2015).

<sup>9</sup> Georgia Department of Education, School Climate, <https://www.gadoe.org/External-Affairs-and-Policy/Policy/Pages/School-Climate.aspx>; See also, The CORE Districts, Data Collaborative, <http://coredistricts.org/>.

<sup>10</sup> National Center for Safe and Supportive Learning Environments, ED School Climate Surveys, <https://safesupportivelearning.ed.gov/edscls>.

<sup>11</sup> The Dignity in Schools Campaign, A Model Code on Education and Dignity, 18, Revised Oct. 2014, [http://www.dignityinschools.org/files/Model\\_Code\\_2013.pdf](http://www.dignityinschools.org/files/Model_Code_2013.pdf).

to districts to implement Positive Behavioral Interventions and Supports (PBIS) with fidelity. However, it is unclear whether students in all grade levels will benefit from these resources.

We urge the Department to use ESSA funding to assist districts with implementing alternative discipline approaches that address student behavior in positive, non-exclusionary ways at all grades levels (preschool through high school). We also recommend targeting supports to districts most in need of such resources. For example, in a recent report on promoting educational equity, the Council of State Chief State School Officers advises states to assist schools and districts with implementing these approaches by providing technical assistance and funding to prioritize training on PBIS, including restorative practices, targeting schools based on an analysis of discipline data.<sup>12</sup> We also encourage the Department to use ESSA funds to provide trainings on implicit and explicit bias and structural racism for schools and districts.

In addition, the Department should encourage districts to consider school climate in the needs assessments for schools identified for comprehensive support and improvement. Specifically, the Department should encourage districts to analyze indicators such as discipline data in these needs assessments and to include strategies to promote positive school climates in their improvement plans. Improvement plans should detail strategies to reduce exclusionary discipline practices and disproportionality across race, gender, and disability—including by requesting funding for alternative practices.

### **III. Select an N-size of 10 to Capture as Many Subgroups in the State’s Accountability System as Possible, without Revealing Personally Identifiable Information about Students**

The Department plans to use an n-size of 15 for accountability purposes. We are pleased that the Department has lowered this number from its current N-size of 30, which excluded far too many students from the state’s accountability system. A lower N-size will include more student subgroups in the system and provide a more thorough identification of schools that are underperforming with regard to subgroup populations. However, we encourage the Department to select an N-size of 10 in its final plan. Thirteen states currently use an N-size of 10 or fewer for accountability purposes.<sup>13</sup> Research shows that states can set an N-size of 10 and meet requirements for statistical reliability and fully protect students’ privacy.<sup>14</sup>

### **IV. Ensure the Successful Transition of Students Involved in the Juvenile Justice System Back into Schools and the Community by Improving the Quality of Instruction in these Facilities**

The Department states that it will use Title I, Part D funds to achieve the goal of ensuring that all students who come into contact with the justice system have access to quality education programs. It also states that districts will be required to describe in their local plans how they will provide opportunities for these students to participate in grade-appropriate coursework. We are pleased that the Department plans to use ESSA funds to assist the transition of justice-involved children and youth. We urge the Department

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<sup>12</sup> Council of Chief State School Officers and The Aspen Institute, *Leading for Equity: Opportunities for State Education Chiefs*, 22, (February 2017), [http://www.ccsso.org/News\\_and\\_Events/Press\\_Releases/CCSSO\\_and\\_the\\_Aspen\\_Institute\\_Release\\_Commitments\\_for\\_Advancing\\_Educational\\_Equity\\_in\\_States.html](http://www.ccsso.org/News_and_Events/Press_Releases/CCSSO_and_the_Aspen_Institute_Release_Commitments_for_Advancing_Educational_Equity_in_States.html).

<sup>13</sup> Jessica Cardichon, *Ensuring Equity in ESSA: The Role of N-Size in Subgroup Accountability*, Alliance for Excellent Education, 5, (June 2016). <http://all4ed.org/wp-content/uploads/2016/06/NSize.pdf>.

<sup>14</sup> *Id.* at 7.

to go further than what is currently detailed in the state plan by outlining a strategy for improving the quality of coursework offered in facilities to ensure alignment with challenging state academic standards. All students, including those who end up in the juvenile justice system due to discriminatory or overly punitive discipline practices, should have the opportunity to succeed.

Finally, we encourage the Department to continue to meaningfully engage stakeholders throughout the ESSA implementation process by taking all the feedback on the state's plan into consideration and using this input to inform revisions to the final plan before submission to the U.S. Department of Education. We also urge the Department to create a mechanism for communicating to the public the feedback received on the state plan, changes made to the final plan based on this feedback, and changes that were not made and why.

Thank you for your consideration of these recommendations. If you have any questions or would like any additional information, please contact Hashim Jabar at (937) 469-7080 or [hajabar@rjohio.org](mailto:hajabar@rjohio.org).

Sincerely,

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