Civil Rights Imperiled: Discussions Must Focus On Practical Solutions To School Violence
Civil Rights Roundtable
April 2, 2018

"When children attend schools that place a greater value on discipline and security than on knowledge and intellectual development, they are attending prep schools for prison."
- Angela Davis

For over a hundred years, public schools have provided nurturing and educational environments for children, and schools now benefit from decades of pedagogical research and implementation. We must not permit fear or misinformation to suddenly subvert what we know to be true and alter our course.

Recently, in conversations about preventing further school shootings, removal of some specific civil rights protections for children and an increase in the presence of School Resource Officers (SROs) have been raised as possible solutions. We must resist the urge to conflate public policies and laws that were developed to apply to a variety of settings, with policies created specifically for schools. Schools are unique environments. In the same manner that there are different rules that apply to minors than adults because of children's specific developmental needs (e.g. alcohol, nicotine regulation), it is not effective to simply include schools into other safety related reform efforts without thoughtful consideration. Doing so distracts us from the meaningful conversations we need to have to prevent the next Parkland, and risks harming the very students these policies were developed to protect.

Maintaining our children's safety in school is critical to supporting the strength of our communities, our economies, and the engagement of our citizenry. Physical safety at school is non- negotiable and a child's right to be protected from discrimination and injustice at school is equally non-negotiable. It is essential for our children's physical and emotional well-being.

Distorting the Facts on School Discipline

When discussing school safety, it is imperative that we engage in honest and fact-based conversations.

In 2014, the U.S. Departments of Education (ED) and Justice (DOJ) issued a non-regulatory guidance package providing information and support to schools and districts for help both in complying with our nation's civil rights laws and creating safer and more welcoming schools for all students.[1] The guidance document package, which explains the application of current federal civil rights laws protecting against racial and ethnic and other forms of discrimination, advises school districts about how they can comply with these laws and prevent discrimination

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[1] See: Dear Colleague Letter: https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf. Other forms of discrimination including disability are addressed in FN 4.

against groups of students. It does not instruct school districts to ignore school safety issues, prevent referral to law enforcement or removal from school of students who are truly dangerous.[2] This critical guidance and related documents must remain in place.

Earlier this year, prior to the Parkland shootings, ED signaled its intention to consider withdrawing or replacing this guidance. Since then, some conversations about the guidance have relied on flawed data and misleading analysis to tie reductions of school exclusions falsely to the horrific violence visited upon the Parkland students and staff. It is disingenuous and cynical to connect the two issues. Civil rights protections and school shootings require two separate analyses, and wrongly conflating the two prevent a full discussion of each issue.

Since last year Max Eden, and Jason Riley, both of the Manhattan Institute have been using anecdotes to suggest a correlation between the guidance and dangerous student behavior and chaos. Recently, In a March, 2018 podcast entitled "Guns Don't Kill People, Schools Kill People " Mr. Eden noted that he wished to move the post Parkland discussion away from gun control to a focus on school discipline.[3] Others, such as the Center for American Progress Director Scott Sargrad, and Peter Cunningham of the Education Post have decried how Mr. Eden and some other conservatives like Senator Marco Rubio have engaged in "false claims" [4] and fear-mongering and exploited Parkland to attack the civil rights protections of children.[5]

When presented with data about the impact of school discipline reform, it is critically important to separate such ideological mythmaking from reality. We encourage policy makers and others to look carefully at the data being presented and evaluate whether it is establishing or supporting a causal relationship and whether the research was conducted using a scientifically valid methodology. It is also important to ask whether the conclusions are aligned with the actual research cited and whether other standards such as peer review, access to data for replication and transparency of results have been met.

One common tactic is the cherry picking of results. For example, Mr. Riley, Mr. Eden and others have pointed to a survey of student's sense of safety in 2014-15 for the Los Angeles Unified School District (LAUSD), following the elimination of suspensions in grades K-12 for minor disruptive or defiant behaviors. As can be seen in the figures below, they cherry picked just the first year results following the change and ignore all the subsequent years (15-16 and 16-17)

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[2] Max Eden, a Manhattan Institute fellow, has testified that suspension reduction practices contributed to the murder of 17 children, and he and others have relied on inconsistent and inaccurate portrayals of studies and teacher surveys to malign efforts at reducing suspensions.
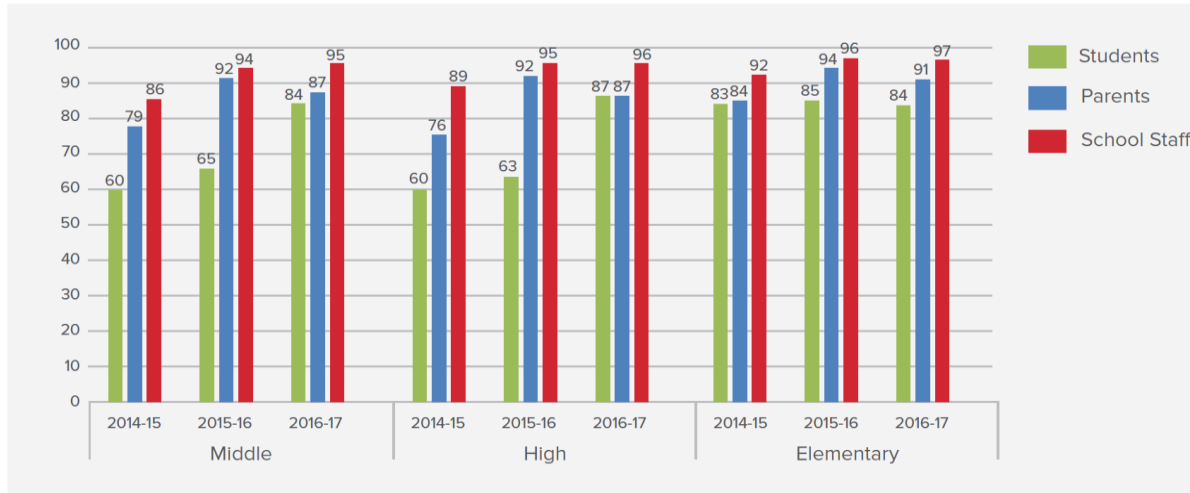
[3] See The Michael Knowles Show, *Guns Don't Kill People; Schools Kill People*, Ep. 117 at 13:30-15:34 to March 7, 2018, available at https://www.dailywire.com/podcasts/27958/ep-117-guns-dont-kill-people-schools-kill-people

[4] See Scott Sargrad, Center for America Progress, *Conservative Attacks on Discipline Reform Are a Distraction from Meaningful Action to Prevent Gun Violence,* March 9, 2018, https://www.americanprogress.org/issues/education-k-12/news/2018/03/09/447726/conservative-attacks-discipline-reform-distraction-meaningful-action-prevent-gun-violence/

[5] See Peter Cunningham, Educationpost, *The Right is Distracting Us From Needed Gun Safety Laws by Creating a Myth About School Discipline,* March 6, 2016 available at http://educationpost.org/the-right-is-distracting-us-from-needed-gun-safety-laws-by-creating-a-myth-about-school-discipline/
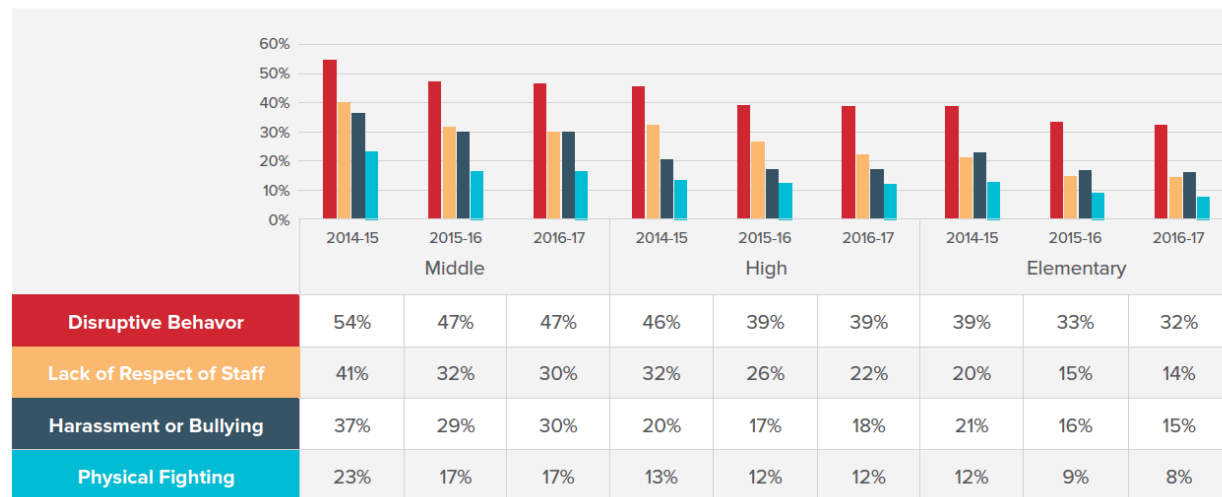
that showed improvement. They also ignored the consistently high perceptions of safety among teachers and parents.[6]

Figure 7: Student, Staff, and Parent Perceptions of Feeling Safe in LAUSD Schools

Moreover, by choosing just one indicator that declined, they ignored the numerous counter indicators such as the documented decline in student's reports of bullying, fighting, disruptive behavior and disrespect that corresponded with increasing implementation of the reform.

Figure 8: LAUSD Staff Perception of Student Behavioral Problems (Moderate or Severe)

	Middle			High			Elementary		
	2014-15	2015-16	2016-17	2014-15	2015-16	2016-17	2014-15	2015-16	2016-17
Disruptive Behavor	54%	47%	47%	46%	39%	39%	39%	33%	32%
Lack of Respect of Staff	41%	32%	30%	32%	26%	22%	20%	15%	14%
Harassment or Bullying	37%	29%	30%	20%	17%	18%	21%	16%	15%
Physical Fighting	23%	17%	17%	13%	12%	12%	12%	9%	8%

The stakes are high if guidance that protects children from unnecessary school removal is rescinded. We know that some of our most marginalized students are disproportionately

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[6] See Dan Losen's testimony on these and other distortions of research in his testimony before the U.S. Commission on Civil Rights on December 8, 2018 available at https://www.civilrightsproject.ucla.edu/news/news-and-announcements/2017-site-news/u.s.-commission-for-civil-rights-holds-hearing-on-school-to-prison-pipeline; For other examples of cherry-picking from research see Cunningham's critique of Eden's review of New York City's survey data above; A critique by the National Education Policy Center of the Fordham Foundation's review of a study of discipline reform in Philadelphia summarized here: http://thenotebook.org/articles/2018/03/26/review-finds-flaws-in-discipline-report;

affected by punitive policies and practices. Students of color[7] and those with disabilities[8] face disproportionate levels of school removal (suspension, expulsion and informal removal). Since most out of school suspensions merely remove students from school without substantive adult intervention and often without sufficient services to address the behavior that lead to the removal , it is not surprising that over-reliance on school exclusion is linked to a heightened risk of school failure, higher rates of truancy, and increased risk of involvement in the juvenile and criminal law system.[9]

In contrast, we have seen many instances in which thoughtful implementation of a range of evidence-based practices and policies such as those suggested in the guidance has supported student learning in a safe and productive school environment. We have good models to look toward to prevent the harm caused by unnecessary school removals, [10] models that do not prevent school districts from removing truly violent students or reporting them to law enforcement. Students who engage in youthful misbehavior stay in school, but their behavior is effectively addressed. Decisions about matters as important as which students are permitted to attend school and which are expelled deserve thoughtful consideration based on verifiable evidence.

Deflecting from the Gun Debate: Collateral Consequences

The first principle in developing policy solutions to any social problem, including school shootings, should be that of "do no harm."

Prominent among the proposals under consideration by the Administration is one to increase police presence in our schools, primarily through the increased use of SROs. However, this

[7] Okonofua, J. A. & Eberhardt, J. L. (2015). Two Strikes: Race and the Disciplining of Young Students. *Psychological Science*, *26*(5), 617-624. Retrieved from https://doi.org/10.1177/0956797615570365 (report from a Stanford study that found when Black students misbehaved more than once, teachers were more likely to stereotype the students as troublemakers and recommend harsher discipline). See also, Gilliam, W. S., Maupin, A. N., Reyes, C. R., Accavitti, M., and Shic, F. (2016). *Do Early Educators' Implicit Biases Regarding Sex and Race Relate to Behavior and Recommendations of Preschool Expulsions and Suspensions?* Retrieved from Yale University, Edward Zigler Center in Child Development & Social Policy website: http://ziglercenter.yale.edu/publications/Preschool%20Implicit%20Bias%20Policy%20Brief_final_9_26_276766_5379_v1.pdf (report from a Yale study that found school staff members of all races have higher expectations of challenging behavior for Black children than from their White counterparts and examined Black children's behavior more critically).
[8] Daniel J. Losen & Jonathan Gillespie, *Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School*, The Center for Civil Rights Remedies at The Civil Rights Project, August 2012. Available at https://files.eric.ed.gov/fulltext/ED534178.pdf (finding that nationally, students with disabilities of all races are suspended at twice the rate of their non-disabled peers, and that Black students with disabilities were suspended more than similarly situated White students with disabilities.).
[9] Rosenbaum, J. (2018). Educational and Criminal Justice Outcomes 12 Years After School Suspension. *Youth & Society*. Retrieved from http://dx.doi.org/10.1177%2F0044118x17752208 (finding a causal link between suspensions while in secondary school and involvement in the criminal law system as adults). Balfanz, Robert et. al, (2012). *Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade*, p. 8 (Children who have been suspended just three times before reaching ninth grade have a 49% likelihood of dropping out of high school.   ).
[10] Hinze-Pifer R., Sartain L. (2018). Rethinking Universal Suspension for Severe Student Behavior, *Peabody Journal of Education*. Retrieved from https://doi.org/10.1080/0161956X.2018.1435051 (finding modest improvements in test scores and overall attendance when suspensions for serious infractions were curtailed); Brea Perry & Edward Morris, *Suspending Progress, Collateral Consequences of Exclusionary Punishment in Public Schools*, 79 Am. Soc. Rev. 1067 (2014); and Russell J. Skiba & Daniel J. Losen, *From Reaction to Prevention: Turning the Page on School Discipline*, AMERICAN EDUCATOR, AFT, Vol. 39, No. 4, Winter 2015-16 Ed., at 6.

approach is neither a new nor an effective one. It began in earnest in the 1980s and escalated following the Columbine shooting in the late 90s. Today, 24 percent of elementary schools and 42 percent of high schools have police on campus.[11]

The evidence on SRO's overall effect on school safety is mixed at best, and most of the research is based on perceptions of safety rather than actual experiences. However, there is substantial evidence of a risk of harm to vulnerable students by misguided SRO and/or police policies. The Department of Education's Office for Civil Rights (OCR) confirms that increased police presence in schools results in disproportionate arrest rates for students of color and children with disabilities.[12] Other research shows that SRO presence also results in increased arrests overall, mainly for subjective, non-dangerous, and youthful misbehavior, like disorderly conduct. [13] Arrests for minor and subjective infractions do not increase school safety. It is important that SROs, who are sworn law enforcement officers, are not used to enforce the school discipline code. That work is best left to trained educators. SROs were trained as police and that is the oath they swore to uphold. Currently, only 12 states require specialized SRO training for school related work, even as disproportionate suspensions, expulsions, and arrests are a national concern.[14]

As arrest rates for children of color and children with disabilities are already disproportionately high increasing SRO presence without significant training for all school-based staff, clear limitations on their role in school policies, and strong in-school SRO oversight will only result in harm our most marginalized students. Making changes that will impact children who are more likely to be victims of school violence than the perpetrators of it, distracts from fact based discussions that will be more likely to lead to real solutions.

Recommendations:[15]

We agree that more can and must be done to make our schools safe, welcoming, and inclusive environments. And we agree that a multi-faceted approach is needed to build these kinds of environments. After years of careful research, we do know what works for vulnerable youth across our country.

First, we need to help schools plan for how to respond meaningfully to danger, so that they are prepared well in advance. To that end, we should provide resources to schools to help them develop meaningful safety plans and train crisis intervention teams. Safety plans bring together

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[11] U.S. Department of Education, Office for Civil Rights, "2013-2014 Civil Rights Data Collection: A First Look," October, 28, 2016, 5, http://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf.

[12] U.S. DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION DATA SNAPSHOT: SCHOOL DISCIPLINE, NO. 1 (Mar. 2014) [hereinafter DATA SNAPSHOT]. Nationwide, Black students "represent 16% of student enrollment," but make up "27% of students referred to law enforcement and 31% of students subjected to a school-related arrest." Further, "[s]tudents with disabilities represent a quarter of the students who are referred to law enforcement or subjected to school related arrests, while representing just 12% of the student population."

[13] Theriot, Michael T. (2009). School resource officers and the criminalization of student behavior
Journal of Criminal Justice 37, 280–287, http://youthjusticenc.org/download/education-justice/school-policing-security/School%20Resource%20Of%EF%AC%81cers%20and%20the%20Criminalization%20of%20Student%20Behavior.pdf

[14] U.S. Department of Education Office for Civil Rights, *Civil Rights Data Collection: Data Snapshot (School Discipline)*, March 21, 2014. Available at https://ocrdata.ed.gov/downloads/crdc-school-discipline-snapshot.pdf.

[15] Many of these recommendations appear in some form in:
https://obamawhitehouse.archives.gov/sites/default/files/docs/wh_now_is_the_time_full.pdf.

internal and external resources to assess a school's safety needs and plan for any possible emergencies. Any barriers or physical changes to the structure that are erected for the purposes of safety must be fully accessible so that all members of the school community-- including those with disabilities-- can exit safely in the event of an emergency.

A crisis intervention team should:

- Establish district-wide policies for preparedness and response
- Oversee their implementation at the school level
- Train school-based teams
- Establish connections with partner agencies
- Provide school-level teams with support and backup
- Coordinate the sharing of resources, such as assigning counseling staff from other schools to a school responding to a crisis.[16]

Second, we need to invest as needed to ensure that all students have access to high-quality mental health and counseling services. We need to support our schools with psychologists, nurses, and counselors who are trained to develop trusting relationships with children, to recognize the signs of trauma, danger, or harm, who can respond thoughtfully and appropriately, and who can help educators understand and respond to concerns that arise in their classrooms. Existing training programs such as "Mental Health First Aid" can help educators identify and proactively address the mental health issues that arise in their classrooms.

Third, for schools that do have SROs we need to invest in training them on the unique functions of a police officer in school settings; on recognizing multiple forms of disability and responding appropriately; and on differentiating between the appropriate roles of educators (teacher, mentor, discipline administrator) and police (safety expert, law enforcer, first responder). Without this critical training, SROs will hurt, not help, our shared goal of making schools safe by arresting students engaging in non-violent behavior.

And fourth, keeping protections like the 2014 school discipline guidance in place will make our schools more, not less, safe now and in the long run. We need to support school districts in building safer and more nurturing school climates that reduce violence and bullying and improve communication and trust between children and the adults responsible for them. We already know that improving school discipline practices to make them less punitive and more inclusive helps reach those goal.

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[16] "A Model for School-based Crisis Preparedness and Response"
  https://ovc.gov/publications/bulletins/schoolcrisis/pg3.html (2003)