



VIA EMAIL (chenderson@dccouncil.us)

March 13, 2015

Councilmember David Grosso
Chair, Committee on Education
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue NW
Washington, D.C. 20004

Re: Performance Oversight Hearing, OSSE

Dear Committee Chair and Council members:

University Legal Services (ULS) is the federally mandated protection and advocacy program for individuals with disabilities in the District of Columbia. One of our roles is to advocate for the educational rights of students with disabilities under the Individuals with Disabilities Education Act (IDEA) and similar laws. We are writing to voice our concern about the rate of suspension and expulsion of students with disabilities in D.C. schools, as well as the disproportionate use of seclusion and restraint on the same group.

Nationwide, schools are suspending and expelling students at an alarming rate. According to data collected by the U.S. Department of Education Office for Civil Rights 2014 Report (“OCR 2014 Report”), 3.5 million students were given in-school suspensions during the 2011-2012 school year.¹ Additionally, 1.9 million students were given a single out-of-school suspension, 1.6 million were given multiple out-of-school suspensions, and 130,000 students were expelled.²

According to the OCR 2014 Report, students with disabilities bear a disproportionately large share of this punishment — they are more than twice as likely to receive an out-of-school suspension than students without disabilities.³ This disproportionality is compounded where disability and race intersect; one in four African-American boys with disabilities are suspended,

¹ U.S. Department of Education Office for Civil Rights, *Civil Rights Data Collection: Data Snapshot (School Discipline) 2* (2014), available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>.

² *Id.*

³ *Id.* at 3.

and almost one in five African-American girls with disabilities are suspended.⁴ Students with disabilities are also more likely to be suspended multiple times in a single year.⁵

The punishment disparity in D.C. is among the worst in the nation. The OCR 2014 Report found that D.C. had one of the five highest gaps in the country between the suspension rates for students with and without disabilities at 13 percent.⁶ And though recent data shows a three percentage point decrease in the District's punishment disparity, during school year 2013-2014, 21.2 percent of students in special education in the District were still suspended one or more days, compared to 11.5 percent of all students.⁷

The most recent report from the Office of State Superintendent of Education (OSSE) found that D.C. students who receive a moderate amount of special education services (levels two and three of four levels) are 1.7 times more likely than students without disabilities to be suspended or expelled.⁸ Students with certain disabilities, such as emotional disturbance, are nearly three times more likely than students without disabilities to be suspended or expelled.⁹

These statistics have disturbing consequences. Studies have shown that students who are suspended are more likely to repeat a grade, drop out, and be referred to the juvenile justice system. Nationally, more than 240,000 of the three million students suspended or expelled annually are referred to law enforcement.¹⁰ In an in-depth report performed in Texas, thirty-one percent of students who had been suspended or expelled repeated a grade at least once in contrast to only five percent of those with no disciplinary involvement, and approximately 10 percent of students who had been suspended or expelled eventually dropped out.¹¹ Given the potential long term harm of suspensions and expulsion, any such act should only occur after serious consideration and exhaustion of all other efforts to change the student's conduct, including positive behavioral supports.

⁴ *Id.* at 4. To put these rates in perspective, African-American boys with disabilities are suspended at more than four times the rate of the average student and African-American girls with disabilities are suspended at three times the average rate.

⁵ Daniel J. Losen & Jonathan Gillespie, Civil Rights Project, *Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School* 15 (2012), available at <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-ccrr-research>.

⁶ U.S. Department of Education Office for Civil Rights, *Civil Rights Data Collection: Data Snapshot (School Discipline)* 11 (2014).

⁷ District of Columbia School Equity Reports 2014 (Jan. 27, 2014) at 4, available at <http://www.dcpsb.org/sites/default/files/report/2014%20Equity%20Reports%2C%20Charter%20Trends.%201-15%20ry.pdf>.

⁸ Office of the State Superintendent of Education, *Reducing Out-of-School Suspensions and Expulsions in District of Columbia Public and Public Charter Schools* 14 (2014), available at http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/OSSE_REPORT_DISCIPLINARY_G_PA_GES.pdf.

⁹ *Id.*

¹⁰ Donna St. George, 'School-to-prison pipeline' hearing puts spotlight on student discipline, Washington Post, Dec. 13, 2012, available at http://www.washingtonpost.com/local/education/school-to-prison-pipeline-hearing-puts-spotlight-on-student-discipline/2012/12/13/18503286-4524-11e2-9648-a2c323a991d6_story.html.

¹¹ Tony Fabelo et al., Council of State Gov'ts Justice Ctr., *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement* xi (2011), available at http://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf.

The current District of Columbia Public Schools (DCPS) discipline regulations facilitate the overuse of these disruptive punishments. They allow for “temporary removal” and “in-school disciplinary action” for minor infractions, such as lying or being tardy.¹² DCPS’ tiered infraction system leads to more suspensions and expulsions of students with special needs for behaviors that could be transformed with appropriate behavioral supports. DCPS classifies infractions in five tiers ranging from violations such as attending class without appropriate materials at Tier I to Tier V violations for much more serious acts, such as assault and possession of a weapon. Only these higher tier violations can result in long-term suspensions or expulsion. However, multiple violations of the prior tier can be classified as higher tier violations so that repeated violations of lower tier conduct can result in suspensions and even expulsion.

Instead of addressing the reason for the conduct, the school can simply dole out escalating punishments to the child for continuing to act in the same way; consequently, the student does not learn appropriate behavior and may see the punishment (escape from the school environment) as a reward. Under these rules, even something as simple as a repeated pattern of failing to do homework could result in a Tier III suspension.¹³

According to a report compiled by DC Lawyers for Youth, the majority of suspensions handed out during the 2011-2012 school year were for Tier III infractions involving no weapons, drugs, or injuries to another.¹⁴ The most common behavior that resulted in suspension was “causing disruption” at school or a school-sponsored event.¹⁵ None of the most common reported reasons for suspensions were for Tier V violations.¹⁶

It is harder to assess the reason for disproportionate disciplinary actions in charter schools because they are not subject to the discipline regulations applicable to DCPS and have each created their own policies that have a wide array of behavioral expectations and levels of punishment for rule violations. However, it is ULS’ experience that some charter schools use progressively punitive point systems, without accommodation for students with disabilities, that lead to students with disabilities being repeatedly suspended, and eventually eligible for expulsion, based on non-violent behaviors related to their disability, such as inattention, noncompliance, and minor disruptive behavior.

Significantly, federal law requires that students with disabilities receive important protections under the IDEA. For example, there is a ten day limit on suspending a child with a disability; once that limit has been reached, there must be a manifestation determination to ensure that the child is not being suspended for conduct which is a manifestation of his or her disability.¹⁷ If the conduct is a manifestation of the child’s disability, the child has a right to stay

¹² D.C. Mun. Reg. Subt. 5-B § 2502.3.

¹³ *Id.*

¹⁴ Every Student, Every Day, *District Discipline: The Overuse of School Suspension and Expulsion in the District of Columbia* 6, available at http://d3n8a8pro7vhmx.cloudfront.net/dcly/pages/64/attachments/original/1371689930/District_Discipline_Report.pdf?1371689930.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 20 U.S.C. § 1415(k)(1)(E); D.C. Mun. Regs. Subt. 5-B, § 2510.8.

in his or her prior educational placement,¹⁸ and he or she cannot be suspended or expelled except in limited circumstances. Instead, the school must act to help the student through behavioral assessments and behavioral support plans.¹⁹ It is our experience with clients that this simply is not happening and students with special needs are not receiving the protections mandated by the federal law.

Of particular concern are in-school suspensions, as there is little oversight and therefore little accountability for schools that repeatedly remove students from the academic setting because of misconduct. Often parents are not informed of this isolation. Students lose valuable instructional time and fall further behind in their classes, resulting in further diminished self-esteem and the potential for increased behavioral outbursts.

Another troubling issue is the overuse of restraint and seclusion to manage the behavior of students with disabilities. Students with disabilities make up only 12 percent of the nation's student population, but they are 58 percent of those placed in seclusion and 75 percent of students who are physically restrained.²⁰ A U.S. Department of Education report found no evidence that the use of seclusion and restraint is effective in reducing problem behavior, yet these practices persist.²¹ In 2012, OSSE proposed regulations to increase safety and transparency when seclusion and restraint are used in D.C.'s public and charter schools, but these rules were not adopted. We believe these rules should be reconsidered and strengthened to ensure that students' rights are protected.

OSSE should gather more data from DCPS and the charter schools, not just on the number of suspensions and disciplinary actions taken but also on the specific methods the schools are using to ensure that students with IEPs continue to receive educational services during suspensions. OSSE should know the number of manifestation determinations being held and the number of suspended students with IEPs that do not have positive behavioral support plans in place before suspension. OSSE should provide oversight to ensure that manifestation determinations are being held, that they are providing accurate determinations, and that, where positive behavioral support plans exist, the plans are actually being implemented before suspensions are permitted. OSSE should also gather data on the use of restraint and seclusion in all public and non-public schools in which D.C. students attend, require schools to take corrective actions when restraint and seclusion are being overused, and make the data available to the public on an annual basis.

OSSE should provide greater oversight of in-school suspensions, out-of-school suspensions, and expulsions of students. OSSE should periodically review school records and perform observations of classrooms where in-school suspensions occur to ensure that rates reported are accurate and that students are receiving educational services. If students are sent home, OSSE should require the schools to record how special education needs are being met at

¹⁸ 20 U.S.C. § 1415(k)(1)(F)(iii)

¹⁹ 20 U.S.C. § 1415(k)(1)(D), (F); D.C. Mun. Regs. Subt. 5-B, § B2510.

²⁰ U.S. Department of Education Office for Civil Rights, *Civil Rights Data Collection: Data Snapshot (School Discipline)* 1 (2014).

²¹ U.S. Department of Education, *Restraint and Seclusion: Resource Document 2* (2012), available at <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.

the home and then review these records to ensure that students are not falling behind because of disciplinary action.

ULS welcomes the opportunity to discuss these comments further. Please feel free to contact me at (202) 547-0198, ext. 107 or mclark@uls-dc.org with additional questions.

Sincerely,

/s/

Mary Nell McGarity Clark
Managing Attorney