



GOOD DISCIPLINE

LEGISLATION FOR EDUCATION REFORM

Daniel J. Losen

The Civil Rights Project/Proyecto Derechos Civiles at UCLA

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National Education Policy Center

School of Education, University of Colorado Boulder
Boulder, CO 80309-0249
Telephone: 303-735-5290
Fax: 303-492-7090

Email: NEPC@colorado.edu
<http://nepc.colorado.edu>

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Introduction

This brief is a companion to the policy brief entitled, *Discipline Policies, Successful Schools and Racial Justice*, which reviewed the research on disciplinary exclusion from school and made several recommendations, including the following three for seeking policy change through legislation:

1. Federal and state policy should require the *annual* collection and reporting of a wide range of school discipline data to the public, at the school, district and state levels, disaggregated by race, ethnicity, gender, disability status, English learner status and socio-economic status;
2. Accountability systems that evaluate schools and districts should consider multiple indicators of performance, including rates of disciplinary exclusion from school. Where persistently poor academic performance triggers interventions, the interventions should consider improvements to discipline policies and practices.
3. Legislation should help ensure that effective systemic approaches, such as school-wide systems of positive behavioral supports, as well as support for individual teachers to improve classroom management skills, are provided at the level of schools and districts.

This brief provides an array of specific legislative proposals to effectuate these recommended changes at the federal and state levels. These research-based legislative recommendations are presented topically, and in terms of changes to extant statutes, rather than as a uniform, stand-alone model code. It is also worth noting that the suggestions are supported by a recent set of resolutions unanimously passed by the American Bar Association.¹

Part I begins with specific ways to improve the collection, public reporting and use of school discipline data, including ways to amend the Elementary and Secondary Education Act, that are sensitive to the political realities. One recommended approach would be to increase the public reporting of data at the school and district level that federal law and regulations already requires states to collect. The current montage of state and federal reporting requirements often leaves the public, as well as policymakers, with an incomplete understanding of the extent to which poor and minority students are excluded from school on disciplinary grounds.

Part II explores ways in which federal and state legislation could make the overuse of discipline a more central part of our evaluation of school and district performance. Ideally, unusually high suspension rates would signal greater attention and even trigger support for the lowest performing schools within each state. Part III provides concrete suggestions for federal and state

legislation to foster greater support for district investment in system-wide positive behavioral supports, as well as support for professional development to improve teachers' classroom and behavior management.

One theme running throughout this brief is that advocates should give full consideration to the relevant federal and state statutes already in existence. In some cases it may be advantageous for those seeking changes to federal law to consider extant state laws. In other cases, states may benefit by codification of federal requirements pursuant to the "The Elementary and Secondary Education Act" (ESEA) and "The Individuals with Disabilities Education Act" (IDEA), both of which are discussed below.

Codifying federal statutory and regulatory requirements in state law can give the federal directives far more visibility and force and enable state and local advocates more opportunities

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to press for meaningful enforcement or challenge non-compliance.² Further, codifying current federal requirements in state law can help cement these beneficial policy changes at the state level, which is important to consider given that federal regulations can be easily changed by the administrative branch and because in 2011 two major federal education laws, the ESEA and the IDEA, may be reauthorized in ways that weaken the current requirements.

Considering the potential for gridlock in the U.S. Congress, state law may also prove to be a more promising and faster vehicle for large-scale change and more creative legislation. Because there are 50 unique political bodies to appeal to, the prospects for passing strong state legislation in some states may be much better than the prospects for strong federal legislation. Once passed, successful state legislation could act as the seed for dramatic federal reforms.

Areas Not Covered

This legislative brief responds to the need for systemic change in disciplinary policy and practice suggested by the companion review of the research. That brief focused on the likely causes of large disparities by race, gender and disability, as well as the lack of a research basis to justify the high frequency with which schools mete out disciplinary removal, especially for mundane forms of misbehavior. Strengthening due process and turning back the corrosive impact of zero tolerance policies on the exercise of individual rights and liberties are both important to systemic change; these, however, were not reviewed in the policy brief, and are beyond the scope of these suggestions. Similarly, support for legal representation, support for greater community involvement, limits on police in schools, the elimination of corporal punishment, appropriate responses to bullying and harassment, the need for safeguards against low quality alternative disciplinary schools and programs, and limits on the use of restraints and seclusion – all important areas for legislation – were not directly covered by the companion policy brief and are likewise not covered here.

Part I. Annual Data Collection and Public Reporting

Before embarking on the specifics of legislative language, it is important to set forth what policymakers, advocates and the public should know about school discipline. Ideally, legislation requiring the collection and reporting of school discipline data would convey the following kinds of information on an annual basis, if not more often:

- The types of disciplinary exclusion, including in-school suspension, out-of-school suspension, long-term suspensions (over ten days), expulsion, and the removal to alternative settings (i.e. an alternative disciplinary school or program).
- Clear definitions of each term.
- The frequency of use by a school, district and state of each type of suspension.
- The total number of days of missed instruction that result from disciplinary exclusion.
- The number of disciplinary exclusions by categories of offense (e.g., possession of a weapon or unlawful substance, fighting, disruption, tardiness, and truancy)
- All the above information reported by disaggregated subgroups by race/ethnicity, gender, disability status, English learner status, and socio-economic status, with numbers and percentages for each group, and the capacity to calculate rates for combined categories (such as cross-tabulation to facilitate, for example, an analysis of Black males).
- A calculation of the percentage (risk) of each group's membership disciplined at least once (the so-called unduplicated count), on the basis of each group's enrollment.
- The number of students suspended more than once during a school year.
- A calculation of the incidence rate, which provides the average number of suspensions per each sub-group member.³
- A disaggregation of the disciplinary actions taken for first time offense by category of rule violation. Reported data would allow for a comparison of the risk for suspension (by race, ethnicity, and other groups) for breaking a particular school rule for the very first time. For example the report would show whether first-time offending Black students were treated more harshly than first-time offender white students.

Administrative burdens and the collection and reporting of discipline data

It is important to put data collection in the proper context. Policymakers and community members need to have access to accurate data to inform education policy, to determine what works and what doesn't, to get a clear picture of the school climate and level of safety in a school, and to reveal possible discriminatory practices. Used well, the data would provide important

feedback for consideration of modifications to improve discipline policy. Most schools already keep track of school discipline data, in part because much of it has to be collected by federal, state, or district law or policy. At the school level, for example, many local discipline codes have incremental and escalating responses (i.e., one unexcused absence begets a warning, three beget a detention, and five beget a suspension), which can only be implemented if student-level data on each student's history of school code violations are kept on record. All schools must also

Policymakers and community members need to have access to accurate data to inform education policy, to determine what works and what doesn't, to get a clear picture of the school climate and level of safety in a school, and to reveal possible discriminatory practices.

collect and report each child's race/ethnicity, gender, ELL status, disability status and also have an indicator of socio-economic status based on whether the student is receiving free or reduced lunch support.

There are undoubtedly some collection burdens associated with federal data requirements, but these burdens are considerably reduced by technological advances enabling school personnel to enter data once into one central system, which then can generate reports to meet different requirements, such as the system being developed in Texas.⁴ The larger burden issue is more likely one of coordinating data collections and the analysis and public reporting of the data. A related burden can result when publicly reported information generates responses and questions from concerned parents that school leaders feel obligated to answer.⁵ Of course the public has a right to know how well public institutions are functioning, and such parental involvement can prove critically important to school improvement efforts.

The nature and scope of this burden should also be understood within the larger policy context. As described in the companion brief, on the heels of recent research showing discipline to be an important predictor of dropping out, states are increasingly paying attention to the relevance of disciplinary exclusion to education reform that measures success or failure with indicators other than test scores, such as graduation rates and college readiness. The more that research illustrates the relevance of disciplinary exclusion to academic achievement, graduation rates and college and career readiness, the weaker the argument becomes that it is too great a burden to analyze or publicly report this predictive information.

Overview of current federal regulatory and statutory requirements

All federal discipline data collection and reporting requirements are summarized in the appendix (I (a)). The IDEA requirements comprise the most comprehensive annual collection of discipline data of any federal statute. Preserving these IDEA data requirements is critically important. The data independently required by the U.S. Department of Education pursuant to regulatory authority also add data elements not included by IDEA. The Office of Civil Rights' Civil Rights Data Collection (CRDC) collects additional discipline data that IDEA does not require. It is also referred to as OCR data. Title IV of the ESEA also has data collection and reporting requirements⁶ (known as the Safe and Drug Free Schools and Communities Act),

including some data elements not included by IDEA or the CRDC. Appendix I (a) maps out all these federal data requirements by their respective authority. Appendix I (b) provides the definitions of key terms.

Improving federal legislation for annual and comprehensive discipline data collection and public reporting

The IDEA also contains comprehensive requirements for disaggregated discipline data collection and reporting and is the only federal statute that requires *annual* collection from every district.⁷ The most straightforward legislative improvement would amend federal legislation to ensure that the IDEA’s comprehensive data collection and reporting applies to all students, not simply those eligible for services under the IDEA. As this brief will describe, the current statutory requirements of the IDEA, excerpted below, should be leveraged to gain improvements in data collection and reporting at both the federal and state levels.⁸ More ambitious models for state and federal legislation are described at the end of this Part and in the appendix (Appendix I (c)).

Current law

Public law 108-446

SEC. 618. PROGRAM INFORMATION. [20 U.S.C. §1418]

(a) In General.--Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year, to the Secretary of Education and the public on the following:

(1)(A) The number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are in each of the following separate categories:

...

(v)(I) Removed to an interim alternative educational setting under section pursuant to 615(k)(1).

“(II) The acts or items precipitating those removals.

“(III) The number of children with disabilities who are subject to long-term suspensions or expulsions.

...

(D) The incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of 1 day or more.⁹

(E) The number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled.

...

(b) Data Reporting.--

(1) Protection of identifiable data.--The data described in subsection (a) shall be publicly reported by each State in a manner that does not result in the disclosure of data identifiable to individual children.

(2) Sampling.--The Secretary may permit States and the Secretary of the Interior to obtain the data described in subsection (a) through sampling.

(c) Technical Assistance.--The Secretary may provide technical assistance to States to ensure compliance with the data collection and reporting requirements under this title.

Amendments to the ESEA

If the ESEA contained corollary requirements to the IDEA's requirements (Table 1), the nation's discipline data collection and reporting requirements would be significantly stronger and would be consistent for all students. No change to the IDEA would be required.¹⁰ In legislative language, the IDEA requirements could be incorporated by reference. The new reporting language would fit naturally into the ESEA's annual Title I reporting on achievement and other data, which are required at the state, district and school levels. The following legislative amendment to Title I of the ESEA would accomplish this task:

1111 (h) Reports.—(1) Annual State Report Card. — (C) Required Information

The State shall include in its annual State report card;

Insert new subsection (ix) to read as follows:

(ix) for each annual report required by this subsection each state shall collect and report publicly the disaggregated school discipline data at the state and district level for all subgroups of students for which data must be reported under this part, including those not identified as having a disability, by at minimum, all categories of disciplinary exclusion currently required by 20 U.S.C. § 1418 [§618].

Framed this way, the legislative change requires no more than a technical amendment to correct the current asymmetry between the current ESEA and the IDEA. Although listing the categories of disciplinary exclusion, and naming the subgroups would make the language clearer, keeping a simple reference to the extant IDEA requirements should demonstrate that the addition

introduces no new collection burden, particularly given that schools currently collect suspension data on all students but for reporting currently select only the data on students with special needs.¹¹

Model State Legislation for Collection and Reporting of Discipline Data

At the state level, a similar strategy of using the current IDEA requirements to improve state legislation could ensure full reporting and would come close to meeting the ideal goals set forth at the beginning of this brief. However, more can be accomplished at the state level. The following is an example of a piece of state legislation recently introduced into the Massachusetts state legislature that would have the effect of codifying the federal requirements as the floor, while seeking even more robust data collection and reporting.

H. 177: An Act to respond to school exclusion data and reduce school dropouts.¹²

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 71 of the General Laws is hereby amended by inserting after section 37H ½ the following section: -

Section 37H ¾. (1) Each superintendent of schools shall notify the commissioner of education of all disciplinary exclusions of students from school, and shall report to the commissioner the alternative education services provided to students. On or before September 1, the commissioner shall file an annual report with the joint committee on education, arts and humanities, and with the offices of the clerks for the house of representatives and the senate, concerning the number of disciplinary exclusions in public schools, by grade level, race, gender, special education status, socioeconomic status, and English language proficiency, the duration of exclusions, the reasons for exclusions, the total number of school days in the school year students were excluded from school, the alternative education options provided to students and the number of students re-admitted under the provisions of this section. The department shall use its existing data collection tools to obtain this expanded information from districts and shall modify those tools as necessary to obtain the information. Each superintendent shall ensure that the annual reporting of data on disciplinary exclusions is made on or before August 1 to the commissioner. To ensure consistency with federal reporting requirements, annual reports from the superintendents and the commissioner required by this subsection shall collect and report publicly the disaggregated school discipline data at the state and district level for all students, including those not identified as having a disability, by all categories currently required by 20 U.S.C. § 1418.

- (2) The commissioner of education shall analyze the disciplinary exclusion data received from the superintendents, and shall meet, at minimum, the federal requirements at 20 U.S.C. §1412(a)(22). Pursuant to regulations to be promulgated by the department, for each school that excludes a significant number of students for more than ten days cumulatively in a school year, the commissioner shall investigate and, as appropriate, shall recommend models that incorporate intermediary steps prior to the use of exclusion. The results of the analysis shall be publicly reported at the school district level.

More detailed reporting is currently practiced in several states pursuant to state law than is currently required on an annual basis under federal law. Those states' requirements might also serve as useful templates for states with weak collection and reporting requirements. In North Carolina, for example, state law includes the following legislative charge:

The State Board of Education shall report annually to the Joint Legislative Education Oversight Committee and the Commission on Improving the Academic Achievement of Minority and At-Risk Students on the numbers of students who have dropped out of school, been suspended, been expelled, or been placed in an alternative program. The data shall be reported in a disaggregated manner and be readily available to the public [G.S. 115C-12(27)].¹³

The vague language of this legislative charge does not explicitly say whether disaggregate means report by race and ethnicity, by students with disabilities and by gender, although the annual reports available to the public do so.¹⁴ Several other states also report disaggregated discipline data to the public annually,¹⁵ including Colorado,¹⁶ Kentucky¹⁷ Wisconsin,¹⁸ Maryland,¹⁹ Minnesota,²⁰ Florida,²¹ and Texas.²² At the district level, with the persistent pressure from local advocates, New York City recently (2010) passed a very detailed discipline data-reporting requirement that could serve as a good model for other districts and states. The Appendix (I (d)) contains an excerpt from the new New York City administrative code in the relevant parts. Some of the most notable features of the New York City administrative code are that two reports are required each year, and that the discipline data must be disaggregated by disciplinary code infraction and length of suspension.

Model legislation and Specificity:

It may be true that efforts at the state and local levels can more easily generate reporting of more detailed information than efforts at the federal level. As a general rule, the more explicit requirements one seeks to include in a statute, the more likely it is that one segment of legislators will find the measure objectionable. While districts and states with differing discipline policies, practices and procedures may pose an obstacle to a uniform state or federal reporting requirement the competing policies would unlikely be an issue at the local level.²³

Ideally, the data that are collected would be used by educators on a regular basis. Specifically, evidence of overuse of disciplinary exclusion should be considered among several indicators when schools explore ways to improve academic performance. Part II looks at how this might be accomplished through pragmatic federal and state legislation.

Part II. Aligning Discipline Policy with Academic Achievement Goals and Addressing Significant Discipline Disparities

If properly constructed, federal and state legislation might not only raise awareness through better reporting, but also drive remedies such as the adoption of school-wide positive behavioral supports (SWPBS).

Maryland legislation that triggers a response to the overuse of suspension in any elementary school in the state.

Originally passed in 2004, a Maryland law requires that if suspensions reach 10 percent of an elementary school's enrollment, the elementary school must engage in a Positive Behavioral Interventions and Support Program.²⁴ The statute can be found in the appendix (II (a)). Although the triggers are based on aggregate rates and not subgroups, the requirements of the Maryland law present an excellent example of legislation that creates a data-driven trigger mechanism to support the districts most in need.

Those seeking to draft model legislation should consider replicating Maryland's law, adding similar triggers for middle and high schools and including specific attention to subgroups. Further, advocates should seek to amend state laws by infusing suspension rates into school and district academic accountability regimes, as most states will continue to have their own accountability system.²⁵ The following legislative recommendations for a triggering-type statute are offered as amendments to state law. The model presumes an existing state educational accountability system that is similar (at least in structure) to NCLB.

Section 1: Improvement requirements for bottom performing schools and districts: All schools and districts falling in the bottom 15% for academic success based on test scores or graduation rates, must review the use of out-of-school suspensions and expulsions by all groups of students specified by section xxxx. If the rate in the aggregate, or for any subgroup, exceeds the average aggregate rate of suspension for the state for grades k-12, the agency in question shall adopt new "proven-effective" disciplinary policies procedures, and systemic supports including but not limited SWPBS and professional development in classroom and behavior management. Each agency is required to submit a description of the disciplinary interventions in a school improvement plan to the state and monitor and annually report to the public the rates of disciplinary exclusion required by this section and section 3.

Section 2: Improvement requirements for the highest suspending agencies: Any school or district not covered by section 1, but with rates of

suspension in the aggregate or for any subgroup equal or above the suspension rates for schools or districts in the state in the top quartile for suspension rates for ALL students shall also be required to submit a school improvement plan with regard to reducing the use of out of school suspensions.

Section 3: Additional data collection and monitoring: By a date certain, school districts identified in section 1 will be required to track and publicly report out-of-school suspensions and expulsions by type of offense; track and publicly report the rate of office-disciplinary-referrals (ODRs) in the aggregate and by subgroup; and report on the average number of days of schools missed due to disciplinary suspension or expulsion, in the aggregate and by subgroup.

Section 4: Teacher quality and training: All schools and districts identified pursuant to sections I and II above must ensure that at least 10% of the funds the state provides to local schools and districts for professional development are devoted to helping teachers improve their classroom and behavior management skills and/or receive professional development to enable such personnel to deliver scientifically based behavioral interventions.

The second core legislative recommendation was to amend Title I to link the purpose of reporting the data to the overall educational academic goals such that systemic supports and training for teachers to improve school and classroom ecology would be a required intervention for schools and districts most in need. While the model legislation above may be aspirational at the federal level, there is some reason to hope that Congress might support a strong triggering mechanism.

IDEA contains a discipline trigger that can drive supportive programs like SWPBS.

An important piece of background information that drafters may find useful is that pursuant to the IDEA, school districts that are found to have significant racial disproportionality in discipline must use 15% of their Part B IDEA funds for coordinated early intervening services which may include professional development, behavioral evaluations, services and supports for students. An important legislative foothold for broader federal and state “model” legislation exists in these IDEA provisions and can be found in the appendix (II (b)(c)). Although beyond the scope of this brief, there have also been serious obstacles to meaningful implementation of these requirements. While at least one state has codified IDEA’s triggering language into state law,²⁶ the specific triggering provisions do not neatly translate to students without disabilities.

Bringing Disciplinary Data Review to the ESEA’s Accountability System

The IDEA provisions embody the concept that discipline disparities can become so large that an intervention is warranted. The ESEA also has data-triggering responses based on indicators of academic achievement and progress of students by subgroup. However, these ESEA

accountability triggers have been roundly criticized, in part because the benchmarks are unrealistic setting up most schools for triggered consequences,²⁷ and in part because the nature of the consequences they trigger can be very harsh and are not proven-effective interventions.²⁸ President Obama's Blueprint for Education Reform suggests that the accountability system will change dramatically when ESEA is reauthorized.²⁹ Absent from the Blueprint, for example, are NCLB's required consequences to *all* schools and districts receiving Title I funds if the state determines they have failed to make "adequate yearly progress" for two or more consecutive

States are giving serious attention to the predictive power of suspension.

years. Instead, the Blueprint calls for a specific set of consequences to be applied *only* to those schools and districts that states determine are persistently the bottom performers. If the Blueprint is our guide, the lowest performing schools, based on achievement in reading and math and graduation rates (for high schools), will be subjected to one of several choices of school turnaround interventions.

Neither the current ESEA nor the Blueprint mandates responses or consequences for high frequency or large disparities in disciplinary exclusion. However, statements by Secretary Duncan in March 2011, "We should get out of the business of labeling schools as failures and create a new law that is fair and flexible, and focused on the schools and students most at risk," make clear that the administration is not looking to identify more schools or districts as inadequate.³⁰ The policy brief includes the recommendation that school discipline should be considered when we evaluate the condition and quality of education in schools and districts. To effectuate this recommendation, it may be most straightforward to encourage discipline data-based interventions for just that subset of schools and districts that are already identified for interventions because they are performing at the bottom 5-15%, based on academic data, rather than seeking to add a new and distinct indicator for discipline. What identified schools must do could change based on the review of their discipline data, but no additional schools would be tagged for intervention.

Whether triggered by lack of progress in graduation rates or test scores, one current Title I consequence that is likely to be retained for these lowest performing schools and districts is that they must create a school improvement plan and then take measures to monitor and ensure effective implementation. Many state education accountability systems require this independently of the ESEA.³¹ As schools develop improvement plans, the current law also requires that the local educational agency serving the school "ensure the provision of technical assistance throughout the plan's duration." One general approach at including discipline as part of a new federal system of school evaluation and accountability would be to require that school discipline issues be reviewed as part of the required *technical assistance* an LEA must provide to any bottom performing school. If the analysis revealed high rates of disciplinary exclusion, the district would be required to provide additional technical assistance supports to bring these rates under control.

Further, the research reveals that discipline and poor behavior in middle school is one of several predictors of dropping out, and states are giving serious attention to the predictive power of suspension. Therefore, when high schools are identified, the required technical assistance

should be provided by the LEA, not only for each high school that had low graduation rates, but also for all the middle schools in each district that feed into a high school that falls into the bottom 5% of high schools. This additional assistance from the district would apply to all the middle schools that fed an identified bottom-performing high school including those middle schools that were not themselves identified as bottom performing.

Not all low-performing schools (or feeder schools) have discipline problems. To ensure that technical assistance in this area is aligned with actual need, the required additional technical assistance would only apply to those schools with suspension rates exceeding the state average. In those schools where the state average is exceeded, the legislation would require investing in training to improve classroom management, school leadership, or other proven-effective interventions, such as SWPBS.

The suggested federal legislation for Title I is based on the current ESEA requirements for technical assistance located at Section 1116 (b)(4). Throughout this report, suggested revisions are indicated by underlining for added language and strikethroughs for deleted language.

Amended ESEA Technical Assistance Requirements for Identified Schools

(4) TECHNICAL ASSISTANCE.—

(A) IN GENERAL.—For each school identified for school improvement under paragraph (1), the local educational agency serving the school shall ensure the provision of technical assistance as the school develops and implements the school plan under paragraph (3) throughout the plan’s duration.

(B) SPECIFIC ASSISTANCE.—Such technical assistance—

- (i) shall include assistance in analyzing data from the assessments required under section 1111(b)(3), and other examples of student work, to identify and address problems in instruction, and problems if any, in implementing the parental involvement requirements described in section 1118, the professional development requirements described in section 1119, and the responsibilities of the school and local educational agency under the school plan, and to identify and address solutions to such problems;
- (ii) shall include assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research and that have proven effective in addressing the specific instructional issues that caused the school to be identified for school improvement;
- (iii) shall include assistance in analyzing and revising the school’s budget so that the school’s resources are more effectively allocated

to the activities most likely to increase student academic achievement and to remove the school from school improvement status; and

(iv) shall include a review of school disciplinary policies, practices and procedures and the use of out-of-school suspensions and expulsions by all subgroups of students listed in section 1111(b)(2)(C)(v)(II). Where rates of suspension or expulsion for the school in question exceed the state average for suspensions or expulsions in the aggregate or for a subgroup, the local educational agency will provide technical assistance toward the adoption of “proven-effective” disciplinary policies procedures, and systemic supports including but not limited to SWPBS and classroom management training; and--

(I) in the case of a high school, the required review and possible required technical assistance would apply to all middle schools feeding into the identified high school;

(II) begin to track and publicly report out-of-school suspensions and expulsions by type of offense; and

(III) report on the average number of days of schools missed due to disciplinary suspension or expulsion, in the aggregate and by subgroup; and

~~(iv) may~~ (v.) shall be provided—

(I) by the local educational agency, through mechanisms authorized under section 1117; or

(II) by the State educational agency, an institution of higher education (that is in full compliance with all the reporting provisions of title II of the Higher Education Act of 1965), a private not-for-profit organization ~~or for-profit organization~~, an educational service agency, or another entity with experience in helping schools improve academic achievement or school environment.

(C) SCIENTIFICALLY BASED RESEARCH.—Technical assistance provided under this section by a local educational agency ~~or an entity approved by that agency~~ shall be based on scientifically based research.

Worth noting is that a similar approach currently exists in the law. Pursuant to Subpart 2 of Part H, the federal government provides grants to states and local educational agencies for dropout prevention. In subsection (a)(1)(B), the funds are designated for “effective, sustainable, and coordinated school dropout prevention and reentry programs ... in (i) schools serving grades 6 through 12 that have annual school dropout rates that are above the state average annual dropout rate; or (ii) the middle schools that feed students into the schools described in clause (i).”³²

One might argue that the recommended change to the technical assistance provisions does not provide strong enough triggers to infuse the consideration of overreliance on disciplinary exclusion into many discussions of education reform. For example, if only the bottommost

performing schools ever receive federal technical assistance, then many schools that may be inappropriately relying on exclusionary discipline will escape attention.

There is no evading the fact that in the suggested federal legislation, high rates of disciplinary removal remain a secondary, not a primary, consideration. Most recently, several civil rights groups have proposed that the ESEA be amended to add accountability for “Barrier Schools”

Funding for professional development in the core academic areas should also be strengthened and not exchanged for classroom and behavior management training. Both are necessary.

which are schools with substantial or persistent barriers to learning. Specifically, barrier schools are “schools with high rates or substantial or persistent subgroup disparities in indicators of student engagement, including: a) exclusionary or overly-punitive disciplinary practices, referrals to law enforcement, or corporal punishment; b) bullying and harassment; c) attendance; and d) truancy (i.e., unexcused absences).”³³ These schools would be required to provide an improvement plan to address serious problems revealed by these non-academic indicators. Primary accountability, to counter incentives to push-out low achievers, is supported by the research reviewed in the companion policy brief.

Part III: Strengthening Support for Classroom Management

The research presented in the companion brief suggests that support and training for teachers will be necessary to achieve a substantial reduction in disciplinary exclusion.

The overarching goal would be for legislation to address these shortcomings with a major infusion of support for training and professional development for teachers, including for classroom and behavior management. As a matter of principle, all schools and districts, and especially those with frequent use of disciplinary removal, should be provided with technical assistance on school-wide systemic approaches to positive behavior supports along with additional resources to support the professional development of teachers, principals, and administrative staff with regard to effective classroom and behavior management, promoting a positive school ecology, decreasing the frequency and seriousness of disruptive behavior and conflicts, increasing student learning time, and increasing parent and community involvement.

As pointed out in the policy brief, skill in teaching the given subject matter can influence classroom and behavior management. Therefore, funding for professional development in the core academic areas should also be strengthened and not exchanged for classroom and behavior management training. Both are necessary.

Unfortunately an infusion of funds in this area at the federal or state levels is not very likely in the near term, considering that President Obama and others are suggesting freezing most federal education spending, and most states are struggling to avoid deep cuts to education. Within this context, the following modest legislative recommendations seek to elevate the importance of providing more classroom and behavior management support.

Title I: Encourage the use of federal funds for school-wide behavioral supports and classroom and behavior management training with greater resource flexibility:

One possibility would be to add greater flexibility to the existing ESEA provisions concerning professional development so that states and districts would be allowed to use more of their current federal funds to for professional development in the area of classroom and behavior management. States and districts could better calibrate their federal professional development support to their specific needs. A place to begin would be in section 1111(c) of the law, currently entitled “Other Provisions to Support Teaching and Learning,” which asks states, in their state plans, to provide a wide range of “assurances.” Some are about meeting requirements, and some assurances that the state “encourages” or “considers” certain activities. For example, the final provision of the section states:

- (14) the State educational agency will encourage local educational agencies and individual schools participating in a program assisted under this part to offer family literacy services (using funds under this part), if the agency or school determines that a substantial number of students served under this part by the agency or school have parents who do not have a secondary school diploma or its recognized equivalent or who have low levels of literacy.

An amendment “encouraging” schoolwide PBS and classroom and behavior management using similar language and structure would read:

- (15) the State educational agency will encourage local educational agencies and individual schools participating in a program assisted under this part to provide systems of school-wide positive behavioral supports and training in classroom and behavioral management (using funds under this part), if the agency or school determines that a substantial number of students served under this part by the agency or school, have been excluded on disciplinary grounds.

In fact, there have been several bills introduced to Congress seeking to provide similar support, in particular school-wide PBS. One proposal, H.R. 2597, endorsed by then Senator Obama when it was first introduced, would amend the ESEA and other federal statutes to give states more flexibility to allow states and districts to use federal education funds for PBS. The bill also provides greater technical assistance to schools and districts and would require schools not making adequate yearly progress to review their improvement plans and receive technical assistance. These proposals differ from the “accountability” legislation described earlier because they do not trigger PBS or professional development when achievement is low or rates of disciplinary exclusion are high. Instead, H.R. 2597 *encourages* schools identified as needing improvement to conduct needs assessments on school environment and encourages states to provide technical assistance to those in need with the implementation of school-wide PBS. Similar to the suggested technical assistance requirements, the provisions that *encourage* action are triggered when schools and districts are identified by the accountability provisions as “needing improvement.” On the other hand, H.R. 2597 contains a host of incentives to allow districts to invest in PBS. Although in an ideal world, Congress would pass legislation with

stronger reporting, stronger triggering and stronger incentives, H.R. 2597 is a good example of the kinds of compromises that may be necessary if advocates hope to bolster SWPBS or classroom management professional development during the current budget crisis.

Along the same lines the appendix (III (a) (b)) contains recommendations that would amend specific provisions of the ESEA to further bolster professional development and training for teachers. While the changes sought (amending Titles I and II of the ESEA) would also support SWPBS, the suggested legislation would add incentives for a broader array of professional development activities, while maintaining the focus on classroom and behavior management. Equally important, Title IX of the ESEA defines “professional development” with an explicit reference to “classroom management skills.”³⁴ Therefore, schools and districts do have some flexibility now to use ESEA funds to provide more professional development in classroom management.³⁵

The current federal law also contains a provision that poor and minority students not be taught by unqualified, inexperienced or “out-of-field” teachers. This could help reduce the misuse of exclusionary discipline if the provisions were implemented well. Recommended strengthening of that requirement is also found in Appendix III (c).

Bolder State Legislation:

*Training in classroom and behavior management should be a mandatory component of state certification requirements.*³⁶

As with the other ideal changes to federal law, similar but more extensive changes might be accomplished at the state level, depending on the context. Many state laws have additional certification requirements to which training in classroom and behavior management could be added. For example, in 2009 Connecticut’s legislature recognized the problem that too few teachers had good classroom and behavior management training and passed the following Public Act No. 09-1: “An Act Concerning Educator Certification and Professional Development and Other Education Issues,” which in the relevant part reads as follows:

...any candidate entering a program of teacher preparation leading to professional certification shall be required to complete training in competency areas...including...development and characteristics of learners, evidence-based standards-based instruction, evidence-based classroom and behavior management, and assessment and professional behaviors and responsibilities.³⁷

*Model State legislation during a fiscal crisis*³⁸

Connecticut legislation provides the strongest example of state law pushing back on zero-tolerance approaches. Simply put, the Connecticut law requires that schools employ “in-school” suspension for nearly every school code infraction where the violator does not continue to pose a threat to themselves or others. The text of the statute can be found in the appendix (III

(c)). Unfortunately, the implementation of the law was put on hold when Connecticut was faced with a fiscal budget crisis.³⁹ According to one report:

While state tax revenues have improved somewhat recently, 15 states already have reported new budget shortfalls since the fiscal 2011 year began last summer, according to the National Conference of State Legislatures. And states are likely face continuing budget gaps over the next two years as well, according to the Denver-based research and policy organization.⁴⁰

As many states are still faced with large finance problems the relative costs of new programmatic changes must be considered when developing legislative remedies. However, part of this cost analysis should include the long-term cost savings that would accrue from increased graduation rates and lower juvenile incarceration rates. Therefore, even in a fiscal crisis it is rational from an economic standpoint to press for investments that will yield lower overall costs. While state legislation limiting the use of out-of-school suspension and requiring that removed students continue to receive education might be regarded as overly ambitious in many states, policymakers in others have begun to pursue such remedies.

Conclusion

The suggested legislation presented, seeking to amend federal law, codify federal requirements at the state level, and seeking even more ambitious changes to federal, state and local law, is intended to provide policymakers with viable legislative language and approaches to fit a variety of realistic political contexts. Those who have experience drafting legislation know too well that the legislative process can entail a great deal of effort to find interest convergence among unlikely allies and often entails very detailed negotiating over each word in the statute. In some contexts, only large-scale changes are worth battling for and it may be essential to exercise a great deal of organizing and the exertion of political muscle to demonstrate the will of constituents to win the necessary changes. In other contexts, more can be achieved by quietly seeking very modest changes to existing statutes. Of course a great deal of legislative work falls between these two extremes.

The recommendations presented in this brief are all rooted in the research reviewed in the companion policy brief. Within those limitations, this brief has attempted to provide detailed legislative language to suit a wide variety of contexts. It is worth noting that the author has worked, directly or indirectly, on most of the federal requirements described in this brief, as well as worked with state legislators to draft state law in related areas, and he has experienced the full range of acceptance and rejection of recommended legislative proposals. Informed by this experience, and given the ever-changing federal and state political landscapes, limited assumptions were made as to what the context will be. The more modest suggestions should provide viable and meaningful legislation for the more difficult contexts, and visa versa. Seeking the optimal substantive changes without regard to the context would be ill advised. Similarly, asking for and receiving too little out of the legislative process can undermine efforts at driving substantial change. In the harshest contexts, efforts may have to be devoted to preserving existing legislation and regulation, and in some cases that may entail stopping deleterious

legislative proposals. Hopefully, advocates and policymakers will find the legislation presented in this brief useful as they navigate complex legislative waters and strive to end the pernicious disparate and far too frequent use of exclusionary discipline in our public schools.

Appendix I

Table 1. Federal Data Requirements

| Required Data Collection and Reporting | IDEA | OCR's CRDC 2010 | TITLE IV of ESEA: Safe and Drug Free Schools and Communities Act | Title I of ESEA (NCLB) |
|---|---|--|---|--|
| Annual Collection | Yes | No: Biennial | No: Unclear | None |
| Sampled or Universal data | Universal | Sampled; will be "universal in 2011," then revert to sampled. | Sampled | None |
| Public Reporting/Level | Yes: States obligated to report to U.S. Education Secretary and public, but LEAs only required to report on revision of policies, practices, and procedures where non-compliance with law was at issue and corrected. | Schools and districts report to U.S. Secretary of Education who makes federal, state, district and school level data available to the public. Secretary does not report data back to each state, district or school. ⁴¹ | State and district level reporting on certain types of serious drug or violence related offenses and, where applicable, if school is deemed "persistently dangerous." | None for discipline, but schools, districts, states each have obligation to issue reports to public on wide range of academic, other indicators. |
| In-school suspension | Yes | Yes | No (except if for listed serious offense) | None |
| Corporal Punishment | Unclear | Yes | No | No |
| Out-of-school suspension on one day or more | Yes, as of 2004 | Yes | Only for serious offense | None |
| Out-of-school suspensions, 1-11 days | Yes | Yes | Only for serious offenses | None |
| Multiple Out-of-school suspensions | Yes | Yes | Only for serious offenses | None |
| Long-term suspensions or cumulative more than 10 days | Yes | Yes | Only for serious offenses | None |
| Restraint and Seclusion | Yes (check amendment) | Yes | Only for serious offenses | None |
| Alternative School or Change of Placement | Yes | Yes with details regarding whether for disciplinary or academic problems | Unclear | None |
| Reasons for discipline | Only if resulting in removal to alternative interim placements | No, except for bullying and harassment. | Only for serious offenses | None |
| Days lost due to suspension | No | No | No | None |

Table 1. Federal Data Requirements (continued)

| Required Data Collection and Reporting | IDEA | OCR’s CRDC 2010 | TITLE IV of ESEA: Safe and Drug Free Schools and Communities Act | Title I of ESEA (NCLB) |
|--|---|---|--|--|
| School-based referral to law enforcement | In regulations or guidance | Yes | Yes | None |
| School-based arrest | In regulations or guidance | Yes | Yes | None |
| Disaggregation | Yes, by race/ethnicity, disability category (IDEA only), LEP status, and gender | Yes, by race/ethnicity, disability status, Section 504, LEP status, (all cross-tabulated by gender) | None required | None, but all other reporting requires disaggregation by same subgroups as CRDC plus Socio-economic status |

Definitions

The current ESEA has an entirely separate definitions section, and the ESEA’s subsection on report cards covers a full range of indicators – none of which are defined in the subsection. In the interest of uniformity across state and federal requirements, the following U.S. Department of Education’s Civil Rights Data Collection (CRDC) definitions should be codified into state law and provided as an amendment to Title IX of the ESEA. Some additional improvements to the definitions should be considered and are noted in italics.

Corporal punishment: Corporal punishment is paddling, spanking, or other forms of physical punishment imposed on a student.

Expulsion under zero-tolerance policies: Removal of a student from the school setting for an extended length of time because of zero-tolerance policies. A zero tolerance policy is a policy that results in mandatory expulsion of any student who commits one or more specified offenses (for example, offenses involving guns, or other weapons, or violence, or similar factors, or combinations of these factors). A policy is considered “zero tolerance” even if there are some exceptions to the mandatory aspect of the expulsion, such as allowing the chief administering officer of an LEA to modify the expulsion on a case-by-case basis.

Another way to define “zero-tolerance” is found below.

Expulsion with educational services: An action taken by the local educational agency removing a child from his/her regular school for disciplinary purposes, with the continuation of educational services, for the remainder of the school year or longer in accordance with local educational agency policy. Expulsion with educational services also includes removals resulting from violations of the Gun Free Schools Act that are modified to less than 365 days.

Expulsion without educational services: An action taken by the local educational agency removing a child from his/her regular school for disciplinary purposes, with the cessation of educational services, for the remainder of the school year or longer in accordance with local educational agency policy. Expulsion without services also includes removals resulting from violations of the Gun Free Schools Act that are modified to less than 365 days.

In-school suspension: Instances in which a child is temporarily removed from his or her regular classroom(s) for at least half a day but remains under the direct supervision of school personnel. Direct supervision means school personnel are physically in the same location as students under their supervision.

Out of school suspension: For students with disabilities (IDEA) and without disabilities:

Out-of-school suspension is an instance in which a child is temporarily removed from his/her regular school for disciplinary purposes to another setting (e.g., home, behavior center). This includes both removals in which no IEP services are provided because the removal is 10 days or less as well as removals in which the child continues to receive services according to his/her IEP.

For students without disabilities and students with disabilities served solely under Section 504: Out-of-school suspension means excluding a student from school for disciplinary reasons for one school day or longer. This does not include students who served their suspension in the school.

Referral to law enforcement: Referral to law enforcement is an action by which a student is reported to any law enforcement agency or official, including a school police unit, for an incident that occurs on school grounds, during school-related events, or while taking school transportation, regardless of whether official action is taken.

School-related arrest: A school-related arrest is an arrest of a student for any activity conducted on school grounds, during off-campus school activities (including while taking school transportation), or due to a referral by any school official.

Zero-tolerance policies: A zero-tolerance policy is a policy that results in mandatory expulsion of any student who commits one or more specified offenses (for example, offenses involving guns, or other weapons, or violence, or similar factors, or combinations of these factors). A policy is considered “zero tolerance” even if there are some exceptions to the mandatory aspect of the expulsion, such as allowing the chief administering officer of an LEA to modify the expulsion on a case-by-case basis.

Zero-tolerance policies should be re-defined to emphasize the automatic nature of the disciplinary consequence, and to cover more than expulsions. The definition should also de-emphasize the level of discretion granted to the school authority as follows:

A zero tolerance discipline policy is a school discipline policy that typically results in an automatic disciplinary consequence, including, but not limited to, out-of-school suspension, expulsion, and involuntary school transfer for disciplinary purposes,

usually in response to a first offense. A school discipline policy is a zero tolerance policy, *even if invoking the prescribed consequence is not mandatory.*

Other amendments to the IDEA and ESEA

More comprehensive approaches to legislation on federal discipline data collection and reporting: The recommended broad adoption of provisions currently in the IDEA would still not bring together all the current federal disciplinary data collection and reporting requirements that schools, districts and states must meet. For example, the ESEA's Title IV Safe and Drug Free Schools and Communities Act (SDFSCA) requires reporting the number of serious drug related and violent offenses that result in suspension or expulsion, whereas the IDEA does not require reporting of the reasons for the disciplinary exclusion. However, Title IV does not require disaggregation of the data by race or any other subgroup. Further, the number of incidents must be reported, but not the percentage of students committing the offenses. Nor do the SDFSCA data have to be reported to the public *annually*.

Accordingly, the recommended legislative language might also include small but important changes to strengthen the IDEA and to correct for the fact that the IDEA does not explicitly require reports to the public at the school and district level. In contrast to the IDEA, the U.S. Department of Education's Office for Civil Rights exercises its administrative authority to collect data on discipline, covers students with and without disabilities, and gives the public access to data at the school and district levels, but *not annually* or universally.

Expanding upon the Safe and Drug Free School and Communities Approach (SDFSCA): Title IV's "type of offense" reporting requirements perform a very valuable function. The required reporting on serious offenses in the current law paves the way to requiring the reporting of the remaining offenses as "lesser offenses," perhaps lumped together as one additional category. Ideally legislation expanding the reporting requirements for Title IV data could add lesser offenses and require the same subgroup disaggregation as found in the IDEA or current Title I of the ESEA.⁴²

While both approaches, one amending the IDEA requirements, the other amending the Title IV requirements, would represent progress, neither approach captures the comprehensive U.S. Department of Education's Civil Rights Data Collection, a large set of data that many schools and districts are currently required to report biennially.

Codifying the OCR Requirements: Discipline data have been collected and reported biennially by the U.S. Department of Education pursuant to their regulatory authority since 1968.⁴³ In 2009 the U.S. Department of Education finalized the data collection requirements for the Civil Rights Data Collection instrument. This extensive survey collects data directly from a large sample of schools and districts and most years includes over one third all the nation's school districts. In 2009-2010 the sample size was enlarged to be almost half, and in 2011-2012 the plan is to survey all the nation's schools and districts.⁴⁴

The fact that every school and district will be required to respond to the CRDC, including the new categories, in 2011-2012 could help assuage the argument that requiring these data be

collected and reported publicly is a burden. One could argue that once every school and district has had to collect and report these data once, the burden associated with learning how to respond to the collection items to ensure accuracy will be more easily overcome. Collecting and reporting the same data each year has arguably resulted in certain economies of scale, and since many schools and districts can and will be required to report in future years it is likely more cost efficient over time to continue to collect and report the data annually.

CRDC discipline data required as of 2010 include:⁴⁵

- Corporal punishment
- In-school suspension
- One out-of-school suspension
- More than one out-of-school suspension
- Expulsion with educational services
- Expulsion without educational services
- Zero tolerance expulsion
- Referral to law enforcement
- School-related arrests
- Restraints and seclusions
- Harassment and bullying

All the CRDC data must be disaggregated by race/ethnicity, Limited English proficiency status, disability (IDEA) and sex. The discipline data are collected using two tables, one for students without disabilities and one for students with disabilities with full disaggregation for each one.⁴⁶ A straightforward way to bolster the federal collection and reporting of discipline data would be to amend the ESEA to make the CRDC data collection an annual collection required of every school and district. Further, the CRDC contains clear definitions of terms such as “in-school” and “out-of-school” suspension not found in the statutes. Moreover, in 2011, the CRDC will add mandatory disciplinary data collection from pre-schools and has added state-funded juvenile correction facilities, two areas that are not included under the IDEA or Title IV. Finally, the CRDC is meant to merge nearly all of the collection requirements of the IDEA with the current CRDC collection. However, where the IDEA requires disaggregated discipline data on students with disabilities “by disability category,”⁴⁷ it is not yet clear that this will be covered by the CRDC. The results of that data collection are expected to be publicly available before 2012. However, codifying the CRDC as suggested would not eliminate any IDEA requirements. Model legislation would need to expand on the CRDC data requirements only slightly to require disaggregation by type of offense.

Because the CRDC is required by the administration, and not by statute, legislation codifying the CRDC data collection, and making it annual, would entail far more explicit legislative language than the technical legislative amendments described earlier that simply referenced extant statutory requirements of Title IV or the IDEA in an amendment to Title I’s reporting requirements. The addition of disaggregation of SES (not required by CRDC) is also suggested by the policy brief, and would make the discipline data consistent with all the other sub-group

reporting requirements of the ESEA. Adding SES would not be difficult to justify in the context of amending the ESEA, but SES is not mentioned in the IDEA or Title IV provisions.

Without regard to strategic concerns, the following “model” federal legislation is presented in the form of an amendment to the current reporting requirements of Title I of the ESEA. It is essentially the codification of the CRDC with a few additional requirements to make it even stronger.

1111(h) Reports.— (1) Annual State Report Card.—

(A) In general.—A State that receives assistance under this part shall prepare and disseminate an annual State report card.

(B) Implementation. —The State report card shall be—

(i) concise; and

(ii) presented in an understandable manner and uniform format and, to the extent practicable, provided in a language that the parents can understand.

Amendment: [Insert new subsection (iii)]

(iii) be collected in a manner that allows for cross-tabulation⁴⁸ of the subgroups required in paragraph (C)(i) below.

(C) Required Information—The State shall include in its annual State report card;

...

Amendment: Insert new subsection (ix):

for each annual report required by this subsection each state shall collect and report to the Secretary of Education and to the public⁴⁹ the disaggregated school discipline data at the state, district and school level (including preschools and state-run juvenile detention facilities) for all students, disaggregated by all the categories required in paragraph (i)⁵⁰ as follows:

(I) The number and percentage of children who are subject to corporal punishment, in-school suspension, seclusion or restraint, out-of-school suspension of one day or more, more than one out-of-school suspension, long-term suspension, expulsion, referral to law enforcement, expulsion or suspension pursuant to Title IV, or arrested for a school-related offense.

(II) The number of incidents per student in the educational agency for each type of disciplinary removal in paragraph (I).

(III) The number and percentage of children who are removed to alternative educational settings.

(IV) The acts or items precipitating those removals.

(V) The number and percentage of children who are subject to out-of-school suspension or expulsion, by category of “serious violent or drug-related” offenses as specified by § x of Title IV and the number and percentage of children who are removed for “lesser offenses,” defined as those not meeting the definition of “serious violent or drug-related” offenses.

New York City’s New Reporting Requirement

A Local Law to amend the administrative code of the city of New York, in relation to reports on school discipline and police department activity relating to schools.

Be it enacted by the Council as follows:

Section 1. Title 8 of the administrative code of the city of New York is hereby amended by adding a new chapter 11 to read as follows:

CHAPTER 11

REPORTS ON STUDENT DISCIPLINE

§8-1101. Definition; confidentiality requirements.

- b. In no event shall any report submitted pursuant to this chapter release, or provide access to, any personally identifiable information contained in education records in violation of 20 U.S.C. §1232g or information in violation of any other applicable confidentiality requirement in federal or state law.

§8-1102. Annual report on student discipline. The chancellor shall submit to the city council by October 31st of each year an annual report, based on data from the preceding school year, on the discipline of students.

- a. The data in this report shall be disaggregated by school and shall show the total number of students in each school who have been:
 1. subjected to a superintendent's suspension; or
 2. subjected to a principal's suspension.
- b. The data provided pursuant to each of paragraphs one and two of subdivision a shall be disaggregated by race/ethnicity, gender, grade level at the time of imposition of discipline, age of the student as of December 31st of the school year during which discipline is imposed, whether the student is receiving special education services or whether the student is an English Language Learner, disciplinary code infraction and length of suspension. If a category contains between 0 and 9 students, the number shall be replaced with a symbol.

- c. The report shall also include the citywide total number of transfers that occurred in connection with a suspension, disaggregated by involuntary and voluntary transfers.

§8-1103. Biannual citywide report on suspensions. The chancellor shall submit to the council by October 31st and March 31st of each year a report on the discipline of students citywide, based on data from the first six months of the current calendar year and the second six months of the preceding calendar year respectively. Such report shall include the number of suspensions citywide for each month, disaggregated by superintendent's and principal's suspensions.

§2. Chapter one of title 14 of the administrative code of the city of New York is amended to add a new section 14-152 to read as follows:

§14-152. School activity reporting.

- a. Definitions. For the purposes of this section the following terms shall have the following meanings:

1. "Non-criminal incident" shall mean an incident occurring within a New York city public school that does not constitute a felony or misdemeanor, and that falls within one of the following types: dangerous instruments; fireworks; trespass; disorderly conduct; harassment; loitering; or possession of marijuana.
2. "School safety agent" shall mean a person employed by the department as a peace officer for the purpose of maintaining safety in New York city public schools.

- b. Report of activity relating to schools. The department shall submit to the council on a quarterly basis, a report based on data reflecting summons, arrest and non-criminal incident activity from the preceding quarter. Such report shall be disaggregated by patrol borough and include, at a minimum:

1. the number of individuals arrested and/or issued a summons by school safety agents or police officers assigned to the school safety division of the New York city police department;
2. in those cases where arrests were made or summonses were issued: (i) the charges (including penal law section or other section of law), and (ii) whether the charge was a felony, misdemeanor or violation; and
3. the number and type of non-criminal incidents that occurred.

- c. The data provided pursuant to paragraphs one through three of subdivision b shall, for each of such paragraphs, where practicable based upon the manner in which the applicable records are

maintained, be disaggregated by race/ethnicity, year of birth, gender, whether the individual is receiving special education services, and whether the individual is an English Language Learner.”

Appendix II

Maryland State Law Requiring Positive Behavioral Interventions and Support Program when suspension rates exceed a certain level

§ 7-304.1. Positive Behavioral Interventions and Support Program.

- (a) "Positive Behavioral Interventions and Support Program" defined.- In this section, "Positive Behavioral Interventions and Support Program" means the research-based, systems approach method adopted by the State Board to build capacity among school staff to adopt and sustain the use of positive, effective practices to create learning environments where teachers can teach and students can learn.
- (b) Program established - Suspension.-
- (1) Subject to paragraph (3) of this subsection, each county board shall require an elementary school that has a suspension rate that exceeds the standard specified in paragraph (2) of this subsection to implement:
 - (i) A positive behavioral interventions and support program; or
 - (ii) An alternative behavior modification program in collaboration with the Department.
 - (2) An elementary school is subject to this subsection if it has a suspension rate that exceeds:
 - (i) 18 percent of its enrollment for the 2005-2006 school year;
 - (ii) 16 percent of its enrollment for the 2006-2007 school year;
 - (iii) 14 percent of its enrollment for the 2007-2008 school year;
 - (iv) 12 percent of its enrollment for the 2008-2009 school year; and
 - (v) 10 percent of its enrollment for the 2009-2010 school year and each school year thereafter.
 - (3) An elementary school that has already implemented a 'positive behavioral interventions and support' program or a 'behavior modification' program shall expand its existing program if it has a suspension rate that exceeds the standard specified in paragraph (2) of this subsection.

IDEA Trigger Requiring District Expenditures in Response to Disciplinary Disparities by Race:

IDEA: Discipline Data Collection and Public Reporting

Current law: Public law 108-446

SEC. 612.⁵¹ STATE ELIGIBILITY.

(a) In General.--A State is eligible for assistance under this part ... if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

...

(22) Suspension and expulsion rates.--

(A) In general.--The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--

(i) among local educational agencies in the State; or

(ii) compared to such rates for nondisabled children within such agencies.

(B) Review and revision of policies.--If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, **the use of positive behavioral interventions and supports** [*emphasis added*], and procedural safeguards, to ensure that such policies, procedures, and practices comply with this title.

Suggested amendments

Amend subsection (22) as follows:

(A) (i) by inserting “and within” after the word “among” and

(A) (ii) by inserting “and among” after the word “within.”

(22) Suspension and expulsion rates.--

(A) In general.--The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant

discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--

- (i) among and within local educational agencies in the State; or
- (ii) compared to such rates for nondisabled children within and among such agencies.

Insert a new subsection (B)

(B) Public reporting.—The State Educational agency shall report annually to the public, the rates of long-term suspension and expulsion, disaggregated by race and ethnicity, among and within local educational agencies and compared to such rates for non-disabled children among and within such agencies.

Renumber original subsection (B) to (C)

~~(B)~~ (C) Review and revision of policies.--If such discrepancies are occurring, the State educational agency reviews and, if appropriate

IDEA Data Collection, Analysis, and Triggered Remedy:

Improving the IDEA Discipline Data Collection and Public Reporting requirements:

Amendments to federal statutes might also include small but important changes to strengthen the IDEA. The recommended change would correct for the fact that the IDEA does not explicitly require reports to the public at the school and district level. In contrast to the IDEA, the U.S. Department of Education's Office for Civil Rights exercises its administrative authority to collect data on discipline, covers students with and without disabilities, and gives the public access to data at the school and district levels, but *not annually* or universally.

Recommended amendments to the comprehensive IDEA requirements:

Given the IDEA's comprehensive requirements, only a few minor changes to the sections on collection and reporting are presented below, along with a correction to a technical flaw in the remedial part of the legislation where racial disparities can trigger funds for early intervening services.

Public law 108-446

SEC. 618. PROGRAM INFORMATION. [20 U.S.C. §1418]

- (a) In General.--Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year, at the state, district and school levels, to the Secretary of Education and the public on the following:

(1)(A) The number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are in each of the following separate categories:

...

[sections i-iv of this subsection omitted]

(v)(I) Removed to an interim alternative educational setting under section 615(k)(1).

(II) The acts or items precipitating those removals.

(III) The number of children with disabilities who are subject to long-term suspensions or expulsions.

...

(D) The incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of 1 day or more.

(E) The number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled.

(b) Data Reporting.--

(1) Protection of identifiable data.--The data described in subsection (a) shall be publicly reported by each State in a manner that does not result in the disclosure of data identifiable to individual children.

~~(2) Sampling.--The Secretary may permit States and the Secretary of the Interior to obtain the data described in subsection (a) through sampling.~~

(c) Technical Assistance.--The Secretary may provide technical assistance to States to ensure compliance with the data collection and reporting requirements under this title.

(d) Disproportionality.--

(1) In general.--Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local educational agencies of the State with respect to—

...

(C) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

...

- (2) Review and revision of policies, practices, and procedures.--In the case of a determination of significant disproportionality with respect to the identification, or placement, or discipline of children with disabilities, ~~or the placement in particular educational settings of such children,~~ in accordance with paragraph (1),⁵² the State or the Secretary of the Interior, as the case may be, shall—
- (A) provide for the review and, if appropriate, revision of the policies, procedures and practices used in such identification, ~~or placement, or discipline,~~ to ensure that such policies, procedures, and practices comply with the requirements of this title;
 - (B) require any local educational agency identified under paragraph (1) to reserve the maximum amount of funds under section 613(f)⁵³ to provide comprehensive coordinated early intervening services to serve children in the local educational agency, particularly children in those groups that were significantly overidentified under paragraph (1); and
 - (C) Require the state to report annually to the public on the particular districts determined to have significant disproportionality highlight the specific areas where this was found and require the local educational agency to publicly report on the revision of policies, practices, and procedures described under subparagraph (A).

Appendix III

The Act's provisions focused on training and development of teachers and principals are found in Title II of the Act.

Changes to Title II referenced in Part III:

- 1. Precondition Title II eligibility on ensuring that states prepare all teachers of core content to address both the academic content and management.** Title II, like many other subsection of the law requires those seeking federal funds to provide certain assurances and submit clear plans of action as a condition of eligibility. A change to Title II's eligibility requirements could require that State Applications, at Section 2112(b)(5), under a new paragraph (C), include a description of the comprehensive strategy and monitoring that the SEA will use to ensure that credentialing requirements of Section 1119 are met, and in addition that they include those components, including training in classroom and behavior management, that are effective in preparing teachers to address both academic and social/emotional needs of students.
- 2. Allow Title II funds to be used to meet preparation requirements for teachers that include classroom and behavior management.** Section 2113(c), which lists the activities States receiving grants are allowed to carry out, including (1), "Reforming teacher and principal certification or licensing requirements," should ensure that their requirements and routes to certification of teachers of core content include classroom and behavior management components that are effective in preparing these teachers to address both the academic and social/emotional needs of diverse students. Section 2113(c)(3), concerning programs for alternative routes for teacher certification, should contain a similar requirement.
- 3. Include "lacking training in classroom and behavior management" among the defining elements of a "high need" local educational agency.** At Section 2102(3)(A), Title II sets forth the definition of a "high need" local educational agency as: those LEAs with not less than 10,000 (or 20% of) children from families with incomes below the poverty line, and "(B)(i), for which there is a high percentage of teachers not teaching in the academic subjects or grade levels that the teachers were trained to teach; (ii) or for which there is a high percentage of teachers with emergency, provisional, or temporary certification or licensing." This "high need" definition should also prioritize LEAs with high numbers of teachers lacking training in classroom and behavior management.

Currently the ESEA indirectly encourages district applicants to target schools that need to be more effective in addressing behavioral issues. Section 2122, concerning "Local Applications and Needs Assessment," at (b)(3) currently conditions district eligibility on an assurance by LEA's that it will target its funds for schools that—"(A) have the lowest proportion of highly qualified teachers; (B) have the largest average class size; or (C) are identified for school improvement under section 1116(b)." At subsection (b)(9) districts are asked to ensure that they, "(B) improve student behavior in the classroom and identify early and appropriate interventions to help students described in subparagraph (A) learn."⁵⁴

Some Title II funds should go to grant applicants that seek help with classroom management and student behavior. It is worth noting that the current law already contains some incentives

toward this end. For example, Section 2123(a) instructs local educational agencies that receive a sub-grant that they “shall use” the funds to “carry out one or more of the following activities....” Among the many listed activities are the following:

- (3) Providing professional development activities—
 - (A) that improve the knowledge of teachers and principals and, in appropriate cases, paraprofessionals, concerning—
 - (i) one or more of the core academic subjects that the teachers teach; and
 - (ii) effective instructional strategies, methods, and skills, and use of challenging State academic content standards and student academic achievement standards, and State assessments, to improve teaching practices and student academic achievement; and
 - (B) that improve the knowledge of teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices and that—
 - (i) involve collaborative groups of teachers and administrators;
 - (ii) provide training in how to teach and address the needs of students with different learning styles, particularly students with disabilities, students with special learning needs (including students who are gifted and talented), and students with limited English proficiency;
 - (iii) provide training in methods of—
 - (I) improving student behavior in the classroom** [*emphasis added*]; and
 - (II) identifying early and appropriate interventions to help students described in clause (ii) learn;....

Toward a model approach

A model proposal would highlight support for classroom and behavior management in much the same way that the law currently highlights professional development to instruction in the core academics. In other words, a dedicated subsection all about providing support for improving classroom and behavior management is in order. This new provision would also add new funds for states and districts specifically for professional development in classroom and behavior management. But with no new funds, a bold new subsection would likely be regarded as competing with the current earmarked professional development funds for core academics such as reading, math and science.

However, to the extent that competitive federal education grants, such as Race to the Top are maintained or expanded, incentives could be written into a range of competitive federal grant

programs such that points would be awarded to applicant states that required teachers to receive training in classroom and behavior management as well as those with school wide PBS.

Add classroom and behavior management training to the definition of highly qualified teachers found in Title IX: The ESEA defines highly qualified teachers under Section 9101§(23), teachers of academic subjects are required to meet state-defined criteria to be considered highly qualified. Ideally, whether a teacher has received training in classroom and behavior management should be part of the definition. Specifically, requirements for teacher certification in core content areas and qualification criteria (including alternative routes) must include components that are effective in preparing teachers to address classroom management and student’s social/emotional needs. Changing the definition would, in turn, impact several of Title I’s provisions that seek to ensure states provide highly qualified teachers to all students.

Unfortunately, Congress and the Obama administration appear to support relaxing the requirements of the law pertaining to highly qualified teachers.⁵⁵ Therefore adding more to the ESEA’s definition may not be a very promising avenue at this time.⁵⁶ However, a requirement that teachers must demonstrate they have received training in classroom and behavior management could be worthwhile in some states.

Access to Highly Qualified Teachers

Title I also seeks to correct any unequal access to highly qualified teachers. If properly implemented, the requirement below should improve access to experienced and “in field” teachers. If such teachers are more successful at engaging and redirecting potentially disruptive students then this provision could also, indirectly, decrease the frequency with which poor and minority students are suspended and expelled from school.

Specifically, in order to be eligible for Title I funds, each state plan requires at §1111 (b)(8)(C) that the plan shall describe:

- (C) the specific steps the State educational agency will take to ensure that...schools provide instruction by highly qualified instructional staff...including steps that the State educational agency will take to ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers, and the measures that the State educational agency will use to evaluate a publicly report the progress of the State....

There is also a corollary Title I provision, that applies to plans submitted by Local Educational Agencies to the state, that districts provide assurances that they will,

- (L) ensure, through incentives for voluntary transfers, the provision of professional development, recruitment programs, or other effective strategies, that low-income students and minority students are not taught at higher rates than other students by unqualified, out-of-field, or inexperienced teachers;...⁵⁷

One problem with these provisions, acknowledged by the U.S. Secretary of Education, is that the requirements were not fully enforced. To leverage proper implementation, the Secretary has the discretion to withhold funds from states for non-compliance pursuant to §1111(g)(2). These provisions could be strengthened by setting forth more specific but less punitive consequences. For example, states that fail to show adequate steps have been taken, and districts that provide no evidence of addressing the inequity, could be required to invest a certain portion of their Title I funds to provide incentives to recruit and retain highly-qualified, experienced “in-field” teachers in districts serving high proportions of the state’s poor and minority children. Where the issue is primarily unequal exposure to “inexperienced” teachers states could be required to earmark up to 10% of their Title I funds toward training in classroom and behavior management, at least until the unequal access to experienced teachers was rectified.

Connecticut State Law Limiting Most Suspensions to In-school Suspensions.

Substitute House Bill No. 7350

Public Act No. 07-66

AN ACT CONCERNING IN-SCHOOL SUSPENSIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (c) of section 10-233a of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2008):

(c) "In-school suspension" means an exclusion from regular classroom activity for no more than [five] ten consecutive school days, but not exclusion from school, provided such exclusion shall not extend beyond the end of the school year in which such in-school suspension was imposed.

Section 2. Section 10-233c of the general statutes is amended by adding subsection (f) as follows: (Effective July 1, 2008):

(NEW) (f) Suspensions pursuant to this section shall be in-school suspensions, unless during the hearing held pursuant to subsection (a) of this section, the administration determines that the pupil being suspended poses such a danger to persons or property or such a disruption of the educational process that the pupil shall be excluded from school during the period of suspension.

Approved May 30, 2007

Appendix IV

Fixing other problematic incentives in ESEA accountability.

The current ESEA also has a significant accountability loophole that, if a high level of test score accountability remains, might logically create an incentive to pushout low achievers. Similar loopholes might exist in test-driven accountability systems mandated under state law. The problematic provision of the current ESEA regarding the use of test scores for school and district accountability reads as follows:

- (xi) include students who have attended schools in a local educational agency for a full academic year but have not attended a single school for a full academic year, except that the performance of students who have attended more than 1 school in the local educational agency in any academic year shall be used only in determining the progress of the local educational agency;⁵⁸

When dealing with a highly mobile student body within a district, as many districts do, it makes sense that schools are not held accountability for the test scores of students they only taught for a fraction of the year. However, when otherwise non-mobile students do not attend a school for a full academic year because they were suspended and/or forced to transfer to an alternative disciplinary school or program, the school that suspended or forced the student to transfer should still be held accountable for the student's test scores.⁵⁹ Otherwise, there is an incentive to frequently suspend or forcibly transfer low scoring students, as a way to artificially boost a schools performance profile. This loophole can be closed by stating that the test scores of all enrolled students who are suspended, expelled or transferred on disciplinary grounds must be counted against both the LEA and the school initiating the disciplinary removal unless the fact that the student did not attend the school in question for a full academic year was for reasons other than those stemming from disciplinary exclusion.

In simpler legislative language § 1111 (b)(3)(C)(xi) would be amended by inserting this final sentence after the semicolon:

This provision does not apply to students whose failure to attend the school for the full academic year was the result of disciplinary exclusion or a transfer to a disciplinary alternative school or program.

It may seem that this loophole closure does not fix the problem that the alternative school has no accountability. However, the closing of the loophole does mean that the school utilizing the disciplinary alternative school will have an interest in ensuring that instruction at the alternative school is of high quality, and that the sending school may also be reluctant to use the alternative school for extended periods unless they think it is absolutely necessary.

Notes and References

1 Specifically, the ABA in the relevant part

[U]rges federal and state legislatures to pass laws...that:

Help advance the right to remain in school, promote a safe and supportive school environment for all children, and enable them to complete school; and limit exclusion from and disruption of students' regular educational programs as a response to disciplinary problems;...

and further urges,

federal and state legislatures to legally define, and assure standardized on-going monitoring, reporting, and accountability for, measuring graduation rates, school dropout rates, school truancy, and disciplinary violations resulting in student suspensions and expulsions, with data disaggregated by race, disability and other disparately affected populations, and ensure that no group of students is disparately subjected to school discipline or exclusion.

The ABA resolutions, along with supporting reports were retrieved January 2, 2011, from <http://www.cleweb.org/latest/ABA.119B.RighttoRemaininSchool.pdf>.

2 The advantage to codifying federal requirements in state law, without making changes, is that the legislature is not being asked to add a new obligation, and the law would be harder to characterize as adding a new burden. Instead, by codifying federal requirements, the state law simply ensures that the state will do that which it is already required to do.

3 Additional data are very useful and important but could be difficult to require as a matter of legislation. For example, office referral rates and first-time offender data are very helpful to have whenever discrimination is at issue. Such data would increase the capacity to compare the use of discipline for subgroups of students. Racial disaggregation of the disciplinary data for first-time offenders, as well as by numbers of students who were referred for possible action (known as "office disciplinary referrals") yet not subjected to disciplinary removal from school or the classroom, can help reveal whether students of different groups were treated differently for similar misbehavior. Ideally, states and districts that keep individual student identifier records in digital form can track office referrals that do not result in in- or out-of-school suspensions. Increasingly, districts and schools are using systems of positive behavioral supports, and these systems do track office referrals. However, this level of information might not be kept or reported by schools and districts that have not implemented a PBS system. Nor are office referrals and first-time offender data typically part of state-level reports. Considering the added value, but also the added costs, this brief recommends that legislation drafters at the state level seek to offer additional funding as an incentive to collect and report office referral and first-time offense data. Such funding is not realistic at the federal level at this writing.

4 Tucker, B. (2011). Texas tackles the data problem. *Education Next*, 11 (1). Retrieved March 4, 2011, from http://educationnext.org/files/ednext_2011_Tucker.pdf.

5 Furthermore, although ensuring that confidentiality safeguards are adhered to is sometimes raised as burdensome, standard legislative safeguards exist to help prevent personally identifiable data from being reported to the public. For example, the IDEA contains the following proviso: "Protection of identifiable data. – The data described in subsection (a) shall be publicly reported by each State in a manner that does not result in the disclosure of data identifiable to individual children."

6 ESEA, PUBLIC LAW 107-110—JAN. 8, 2002, § 4112(c). Retrieved December 12, 2010, from <http://www2.ed.gov/policy/elsec/leg/esea02/107-110.pdf>.

7 Only public reporting at the state level and to the U.S. Secretary of Education is included among the IDEA's core data requirements, however.

8 For recommendations on improving the IDEA data reporting requirements, see Appendix B

9 In technical guidance, the U.S. Department of Education requires schools to report on “in-school” suspensions as well. U.S. Department of Education (July 2010). *Children with Disabilities (IDEA) Suspensions/Expulsions*, XML Specifications. Retrieved April 26, 2011, from <http://www2.ed.gov/about/inits/ed/edfacts/eden/xml/x006-6-2.doc>.

10 In Appendix B there is a detailed recommendation on how to improve the current IDEA legislation with regard to the public reporting of discipline data.

11 It is worth noting that Senate Bill 919, sponsored by HELP Committee Chairman Senator Harkin in 2011 as a revision to Title IV of the ESEA, contains quite comprehensive discipline reporting requirements. Called the Successful, Safe, and Healthy Students Act, this substantial revision of Title IV includes most of the data requirements recommended in this brief. The Bill was introduced on May 9, 2011. Retrieved August 12, 2011, from <http://thomas.loc.gov/cgi-bin/query/z?c112:S.919>:

12 Filed with the Massachusetts State Legislature by Rep. Wolf on January 19, 2011.

13 North Carolina Board of Education & Department of Public Instruction (2008). *Report to the Joint Legislative Education Oversight Committee: Annual Study of Suspensions and Expulsions 2006-2007*, 1. Retrieved December 3, 2010, from <http://www.ncpublicschools.org/docs/research/discipline/reports/suspensions/2006-07suspensions.pdf>.

14 The report also provides grade level data and data on every school district (notwithstanding limits) as well as all charter schools. Comprehensive as it appears, however, this report does leave out important information. For example, the numbers of suspensions by race for each school district are reported, but without each district's baseline enrollment data or a description of the percentage of each racial group subject to at least one suspension. The public would need more information to tell, for example, whether Blacks were at greater risk for suspension than Whites. A more explicit charge would have generated a more useful public report.

15 As pointed out in the companion policy brief, simply getting discipline data collected and reported to the public will not necessarily lead to improvements. North Carolina, for example, has been compiling its state reports for several years, yet the state is one of the highest suspending states and has some of the largest racial disparities in the nation. Wisconsin similarly reports disaggregated suspension data to the public at the school and grade level, and by type of school (i.e. middle school), for every district. Any visitor to Wisconsin's website can create graphs or suspension rates for racial subgroups for the most recent year as well as previous years. Yet Wisconsin, like North Carolina, is also among the states with the greatest racial disparities and highest frequency of suspension in the country.

It is also true, however, that there has been a great deal of advocacy around racial disparities in discipline in North Carolina and at least one major lawsuit regarding discipline issues and students with disabilities in Milwaukee, Wisconsin. Further, in both states a large number of districts have begun to invest in school-wide PBS. While it is not known whether public access to the data inspired these legal or policy actions, it would be logical that public reporting did raise public awareness of discipline issues and contributed to filing systemic complaints (Wake County) and class actions (Milwaukee) intended to provide remedies at the district level.

16 This untitled webpage describes in detail Colorado's disciplinary data collection requirements. Retrieved January 4, 2011, from https://cdeapps.cde.state.co.us/sdi_field_definitions.htm.

17 Kentucky Department of Education (undated). *Kentucky Safe Schools Reporting: Entering Behavior Events and Resolutions for Inclusion on the Safe Schools Report*. Lexington, KY: Author, 11. Retrieved January 4, 2011, from <http://www.education.ky.gov/nr/rdonlyres/de1ef16f-1b5f-4a3d-978f-c60a72714a98/o/ss1310kybehaviorandsafeschoolsreport.pdf>.

18 The state of Wisconsin posts this description of its data collection efforts:

ISES Discipline Data Collection and Reporting 2006-07 and Beyond. Data about suspensions, expulsions, and other removals will be collected as part of the Individual Student Enrollment System (ISES) beginning with the collection of 2006-07 discipline data in summer and fall 2007. These data elements, listed below, will be added to ISES in response to a major expansion in discipline data reporting required by the federal Individuals with Disabilities Education Act (IDEA). They will be used not only to meet IDEA requirements but also the requirements of ESEA and Wisconsin School Performance Report. The latter requirements were met through 2005-06 by the Wisconsin School Performance Report aggregate discipline collection and other smaller collections.

Most districts and schools will have until fall 2007 to submit the 2006-07 discipline data in ISES. Schools that might be identified as persistently dangerous, based on data for past years, may be required to submit 2006-07 discipline data by June 2007. This same schedule is expected to continue in future years.

Wisconsin Dept. of Public Instruction (undated). *ISES Discipline Data Collection and Reporting*. Madison, WI: Author. Retrieved January 4, 2011, from <http://dpi.state.wi.us/lbstat/isesdiscip.html>.

19 Maryland has extensive data reports. One example is:

Maryland State Department of Education (2010, Aug.). *Report to the Maryland State Board of Education on the Provision of Educational Services to Long-Term Suspended and Expelled Students in Maryland Public Schools*. Baltimore: Author. Retrieved January 4, 2011, from http://www.msde.maryland.gov/NR/rdonlyres/FCB60C1D-6CC2-4270-BDAA-153D67247324/25427/Report_to_MarylandStateBoardEducation_08272010.PDF.

20 According to the website in Minnesota called *Categorical Data for SY08 Statewide Out-of-School Suspensions and Removals for Portions of a School Day*, the state reports disaggregated data by race and disability and type of offense in the same table. This appears to be an annual report. It is unclear whether school and district level data can be accessed. Retrieved January 4, 2011, from <http://education.state.mn.us/mdeprod/groups/Compliance/documents/Report/014590.pdf>.

21 A review of Florida's publicly reported discipline data found racially disaggregated data at the state and school district levels further disaggregated by type of school (Elementary, Middle and High). See: Florida State Department of Education (undated). *School Environmental Safety Incidence Reports* (Downloadable spreadsheet online). Retrieved February 28, 2011, from <http://www.fldoehub.org/schoolsafety/Pages/SESIRDisciplinay.aspx>. The reports provide disaggregated data on both the number of actions and the number of students disciplined one or more times.

22 Texas collects and reports extensive amounts of discipline data, with a great deal of disaggregation. In a web document titled *Disciplinary Data Product: Annual Summary Report*, the state lists all the data collection and reporting categories with links to several of the reports following this explanation:

A 425 PEIMS record is required for each disciplinary action taken against a student which results in the removal from the regular classroom for at least one day. A single student can have multiple records if removed from the classroom more than once and a single incident can result in multiple actions. These data are required by TEC Chapter 37, and by IDEA '97, which includes students who are receiving special education and related services.

Every disciplinary action that results in the removal of a student from any part of their regular academic program is categorized in one of the following general categories: In-School Suspension (ISS), Out-of-School Suspension (OSS), Expulsion, JJAEP, or Disciplinary Action Education Program (DAEP) assignments.

The counts on these reports are generated independently at the state, region and district levels, depending on the level requested. In general, if the heading name includes “students”, a student is counted once for the particular criteria of action or reason at the selected level. Otherwise, this is a count of records. Students may be counted more than once.

See Texas Education Agency (Updated Nov. 5, 2010). *Disciplinary Data Product: Annual Summary Report*.

Retrieved January 4, 2011, from

http://ritter.tea.state.tx.us/adhocrpt/Disciplinary_Data_Products/Glossary_Summary_Disciplinary.html.

23 One of the reasons why policy can more easily be changed regarding local collection and reporting is that there is not a montage of competing policies, each with its own set of advocates, that have to come into line. If a policy change is proposed at the state level, it might prompt pushback from different districts that want to keep doing things their way. A district-level change, however, simply moves from one uniform district policy to another, as opposed to, e.g., changing 18 different policies to comply with one uniform policy – which could be the case with changes at the state level.

24 Md. EDUCATION Code Ann. § 7-304.1. Retrieved September 13, 2011, from

https://web.lexisnexis.com/research/retrieve?_m=6d57759b124f39192afa430908914a21&csvc=toc2doc&cform=tocslim&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzV-zSkAb&_md5=165fea732b3of35582af7226c35e01da.

25 See Sunderman, G.L., Kim, J.S., & Orfield, G. (2005) *NCLB Meets School Realities: Lessons From the Field*, 1st Ed., 26-32. Thousand Oaks, CA: Corwin Press.

26 The IDEA actually has two triggering mechanisms. The second one, racial disparities can trigger a review of policies, practices and procedures. See 612(a)(22). Wisconsin has codified this provision in state law.

27 U.S. Department of Education (March, 2011). Duncan Says 82 Percent of America’s Schools Could “Fail” Under NCLB This Year (press release). Retrieved April 26, 2011, from

<http://www.ed.gov/news/press-releases/duncan-says-82-percent-americas-schools-could-fail-under-nclb-year>.

28 See Sunderman, G.L., Kim, J.S., & Orfield, G. (2005) *NCLB Meets School Realities: Lessons From the Field*, 1st Ed., 87-96. Thousand Oaks, CA: Corwin Press.

29 U.S. Department of Education (2010). *A Blueprint for Reform: The Reauthorization of the Elementary and Secondary Education Act*. Washington, DC: author. Retrieved June 7 2010, from

<http://www2.ed.gov/policy/elsec/leg/blueprint/index.html>.

30 U.S. Department of Education (March, 2011). Duncan Says 82 Percent of America’s Schools Could “Fail” Under NCLB This Year (press release). Retrieved April 26, 2011, from

<http://www.ed.gov/news/press-releases/duncan-says-82-percent-americas-schools-could-fail-under-nclb-year>

31 For a partial review of different state accountability systems see Sunderman, G.L., Kim, J.S., & Orfield, G. (2005) *NCLB Meets School Realities: Lessons From the Field*, 1st Ed., 26-32. Thousand Oaks, CA: Corwin Press.

32 ESEA, PUBLIC LAW 107-110—JAN. 8, 2002, §1822 (a)(1)(B) Retrieved December 12, 2010, from <http://www2.ed.gov/policy/elsec/leg/esea02/107-110.pdf>.

33 Asian American Justice Center et al (2011, April). Accountability Principles for ESEA Reauthorization: A joint statement of civil rights leaders, 11. Retrieved April 24, 2011, from <http://www.lawyerscommittee.org/admin/site/documents/files/Civil-Rights-ESEA-Accountability-Letter.pdf>.

34 ESEA, PUBLIC LAW 107-110—JAN. 8, 2002, §9101 “Definitions”(34)(A)(iv). Retrieved December 12, 2010, from <http://www2.ed.gov/policy/elsec/leg/esea02/107-110.pdf>.

35 It is also worth noting that a simple way to bolster the attention to classroom management and student behavior would be to amend the definitions section of professional development so that Section 9001(34)(A) (iv) “classroom management skills” would read, “classroom *and behavior* management skills.”

ESEA, PUBLIC LAW 107-110—JAN. 8, 2002, §9101 “Definitions”(34)(A)(iv). Retrieved December 12, 2010, from <http://www2.ed.gov/policy/elsec/leg/esea02/107-110.pdf>.

36 For a full description of issues with classroom management and the development of legislation to address the shortcoming in Connecticut see:

Carson, C., (April, 2010) Connecticut takes promising steps towards enhancing teacher training in classroom management. *Connecticut Voices For Children*. Retrieved January 30, 2011, from <http://www.ctjja.org/resources/pdf/CTVoices-Classroom-Mgmt-Apr2010.pdf>.

37 Connecticut Act 09-1. Section (1)(h) (2009). Retrieved January 30, 2011, from <http://www.cga.ct.gov/2009/ACT/Pa/pdf/2009PA-00001-R00HB-06901SS2-PA.pdf>.

38 The Advancement Project maintains a website with some examples of model legislation and links to the relevant state codes. See:

<http://www.stopschooltojails.org/content/model-legislation> (retrieved September 13, 2011).

39 Mozdzer, J., (March 10, 2009) Rell postpones in-school suspension law: Critics say districts hard-pressed to meet costs state mandate. *Hartford Courant*. Retrieved January 4, 2011, from http://articles.courant.com/2009-03-10/news/education0310_1_suspensions-education-committee-districts.

40 Cavanaugh, S. (2011, Jan. 4). Policy, Fiscal Challenges Confront State Officials. *Education Week* 30 (15). Retrieved September 13, 2011, from http://www.edweek.org/ew/articles/2011/01/04/15legislatures_ep.h30.html?tkn=TVYFxicUt7hQ9XvQez05IAGoHaInoj%2B5g8%2Fg&cmp.

41 OCR provides the public with national and state projections based on sampled data to which it applies statistical weights to provide estimates at these levels.

42 Senator Harkin’s proposal, S. 919, introduced after this brief was finalized and submitted for publication, would make the reporting requirements quite comprehensive and correct many of the deficiencies in the current law. See the Successful, Safe, and Healthy Students Act, introduced on May 9, 2011. Retrieved August 12, 2011, from <http://thomas.loc.gov/cgi-bin/query/z?c112:S.919:>.

43 See U.S. Department of Education (n.d.). *2009-2010 Civil Rights Data Collection: Frequently Asked Questions*, 4. Retrieved April 28, 2011, from http://www.crdc2009.org/downloads/2009_CRDC_FAQ.pdf.

44 See U.S. Department of Education (n.d.). *2009-2010 Civil Rights Data Collection: Frequently Asked Questions*, 4. Retrieved April 28, 2011, from http://www.crdc2009.org/downloads/2009_CRDC_FAQ.pdf.

45 This list summarizes the information presented by Rebecca Fitch. Not included are data collected on harassment and bullying. That data are also disaggregated by race, sex and disability. The data do include the number of students disciplined for harassment or bullying, but this is the only area where data on a type of offense is collected. The emphasis of this collection is on the students who are being bullied or harassed. In the future, as more schools and districts create stricter rules around bullying and harassment, it will be important to watch for racial disparities in terms of which groups are excluded subjected to the policy, and not just which groups are bullied or harassed.

46 Fitch, R. (2010, Sept. 27). Power point presentation on the Civil Rights Data Collection. Conference on Civil Rights and School Discipline: Addressing Disparities to Ensure Equal Educational Opportunity, Washington, DC (on file with author).

47 See IDEA Public law 108-446 § 618 (a)(1)(D), codified as 20 U.S.C. § 1418 (a)(1)(D). Retrieved December 12, 2010, from <http://idea.ed.gov/download/statute.html>.

48 *Cross tabulation*: This very technical addition to the model legislation would ensure that anyone with access to the data could easily calculate subsets of the selected subgroups. For example, it would ensure that the discipline data are reported by race in one place, and gender in another, but also enable the public reporting of, for example, suspensions by race with gender (e.g., percentage of Black male students suspended, or Hispanic students with disabilities suspended).

49 Because current law at §1111 (h) Reports.—(2) Annual Local Educational Agency Report Cards.—(B) Required Information—requires the state to ensure that LEAs report the information described in paragraph (1)(C), the changes above would be incorporated into the local reporting requirements without need of new legislative language. Similarly, repetition of the subgroups and new language on statistical reliability or privacy is unnecessary because sub-paragraph 1111(h)(1)(C)(i) requires

information to be disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged, except that such disaggregation shall not be required in a case in which the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student.

ESEA, PUBLIC LAW 107-110—JAN. 8, 2002, § 1111(h). Retrieved December 12, 2010, from <http://www2.ed.gov/policy/elsec/leg/esea02/107-110.pdf>.

50 ESEA, PUBLIC LAW 107-110—JAN. 8, 2002, § 1111 (h), regarding state reports, at (1)(c)(i) reads

information, in the aggregate,disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged, except that such disaggregation shall not be required in a case in which the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student.

Further, at § (2)(B) these same subgroups are required of the LEA report cards. ESEA, PUBLIC LAW 107-110—JAN. 8, 2002, § 1111(h). Retrieved December 12, 2010, from <http://www2.ed.gov/policy/elsec/leg/esea02/107-110.pdf>.

51 IDEA Public law 108-446 § 612(a)(22), codified as 20 USC §1412 (a)(22). Retrieved December 12, 2010, from <http://idea.ed.gov/download/statute.html>.

52 The statutory language is somewhat confusing, but that analysis is beyond the scope of this brief. Suffice it to say that regulations issued in 2005 correctly interpret the statute to mean that finding “significant racial disproportionality” in discipline in an LEA triggers the required maximum funding of 15% of Part B funds for coordinated early intervening services as described in section 613 (f). The confusion arises because paragraph 1 mentions discipline, while paragraph 2 does not explicitly do so but does explicitly mention identification and placement. The following suggested amendment would serve to codify the regulations on this point:

Revise sub-section 2 to insert the phrase, “each area described in paragraph (1),” before the words “in accordance with.”

53 The text of §613(f) as written follows:

§613(f) Early Intervening Services.--

(1) In general.--A local educational agency may not use more than 15 percent of the amount such agency receives under this part [B] for any fiscal year, ... to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 ... who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

(2) Activities.--In implementing coordinated, early intervening services under this subsection, a local educational agency may carry out activities that include--

(A) professional development ...for teachers and other school staff to enable such personnel to deliver scientifically based academic instruction and behavioral interventions...

(B) providing educational and behavioral evaluations, services, and supports, ...

54 ESEA, PUBLIC LAW 107-110—JAN. 8, 2002, § 2122. Retrieved December 12, 2010, from <http://www2.ed.gov/policy/elsec/leg/esea02/107-110.pdf>.

55 In December of 2010, an “anomaly amendment” was inserted into Congress's Continuing Resolution (allows the government to continue functioning in the absence of an official budget.) The amendment allows all teachers who are merely enrolled in an alternative certification program, including those lacking any experience or relevant licensure, to be considered “highly qualified” under No Child Left Behind (NCLB) regulations.” See Council for Exceptional Children, (January 12, 2011). What is a highly qualified teacher? Congress weighs in. *Policy Insider*. Retrieved January 28, 2011, from <http://www.policyinsider.org/2011/01/what-is-a-highly-qualified-teacher-congress-weighs-in.html>

56 According to one report, a bipartisan group of Senators is planning on “tossing out” the term “highly qualified.” See Armario, C. (2011, January 26) Senators pledge to work jointly on education. Associated Press. Retrieved February 4, 2011, from http://www.google.com/hostednews/ap/article/ALeqM5gyWtc1Too_JdpDi1xQHxGpnmSKag?docId=c8aa32139c3f4d36882d9ad7c375b8c8. (No longer available as of September 13, 2011.)

57 ESEA, PUBLIC LAW 107-110—JAN. 8, 2002, §1112(c)(1)(L), Retrieved December 12, 2010, from <http://www2.ed.gov/policy/elsec/leg/esea02/107-110.pdf>.

58 ESEA, PUBLIC LAW 107-110—JAN. 8, 2002, § 1111(b)(3)(C)(ix). Retrieved December 12, 2010, from <http://www2.ed.gov/policy/elsec/leg/esea02/107-110.pdf>.

59 For a detailed discussion of the interplay between test score accountability and disciplinary alternative schools in Texas see

Reyes A.H. (2006). *Discipline, Achievement, Race: Is Zero Tolerance the Answer?* Lanham, MD: Rowman & Littlefield, 53-56.