

Civil Rights *and the* **School-to-Prison Pipeline** **in Indiana**



A Report of the
Indiana Advisory Committee to the,
U.S. Commission on Civil Rights

December 2016

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

**Indiana Advisory Committee to the
U.S. Commission on Civil Rights**

The Indiana Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding the civil rights impact of school discipline and juvenile justice policies in the state, which may lead to high rates of juvenile incarceration in what has become known as the “school to prison pipeline.” The committee submits this report as part of its responsibility to study and report on civil rights issues in the state of Indiana. The contents of this report are primarily based on testimony the Committee heard during a web-based hearing on January 20, 2016 and an in-person hearing on February 17, 2015 in Indianapolis, IN.

This report details civil rights concerns raised by panelists with respect to school discipline disparities, particularly for students of color, throughout the state of Indiana. It discusses the roles of implicit biases, economic disparities, and exclusionary school discipline policies in funneling students of color into the school-to-prison pipeline. From these findings, the Committee offers to the Commission recommendations for addressing this problem of national importance.

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I. INTRODUCTION

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These Advisory Committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction.

In October 2015, the Indiana Advisory Committee (Committee) to the U.S. Commission on Civil Rights voted to take up a proposal to study what is known as the "School-to-Prison Pipeline." The Committee sought to examine the extent to which the application of school disciplinary and juvenile justice policies in the State of Indiana may have a discriminatory impact on students on the basis of race, color, sex, and/or disability,¹—leading to a disproportionate incidence of law enforcement contact and criminal penalties.

A number of federal laws² prohibit such discrimination in educational institutions and in the administration of justice, including:

- Title VI of The Civil Rights Act of 1964³ prohibits discrimination on the basis of race, color, sex, religion, or national origin, including in institutions of public education;
- The Equal Educational Opportunity Act (EEOA) of 1974⁴ prohibits deliberate segregation in schools on the basis of race, color, and national origin;
- The Individuals with Disabilities Education Act (IDEA) of 1975⁵ requires state and local education agencies to "provide a free and appropriate public education to children with disabilities."

¹ National origin was later added as a category for which the Committee sought to study.

² U.S. Department of Justice, *Types of Educational Opportunities Discrimination*. Civil Rights Division, Educational Opportunities Section. Available at: <http://www.justice.gov/crt/about/edu/types.php> (last accessed March 2, 2015)

³ 42 U.S.C. 2000(c) et. Seq

⁴ 20 U.S.C. §1701 to 1721

⁵ 20 U.S.C. §1400 et. Seq

- The Americans with Disabilities Act (ADA) of 1990⁶ prohibits discrimination against individuals with disabilities in any places of public accommodations, including private schools and daycare centers.
- The 14th Amendment to the U.S. Constitution⁷ prohibits any state from denying “to any person within its jurisdiction the equal protection of the laws.”

In this study, the Indiana Advisory Committee sought to examine the extent to which these protections, as currently applied in practice, are sufficient to address concerns regarding the disparate demographics of youth being transferred from the educational system into the criminal justice system in the state. As part of this effort, the Indiana Advisory Committee to the U.S. Commission on Civil Rights received testimony from government officials and experts through a public web hearing on January 20, 2016.⁸ The testimony of these panelists focused on the impact of racial bias, disability, and class bias on discipline disparities at public schools across the nation, and specifically in the state of Indiana. The Committee also heard about alternative policies and practices that could mitigate the use of overly-punitive, exclusionary discipline procedures in schools.

The Committee then organized and hosted an in-person hearing in Indianapolis, IN on February 17, 2016.⁹ During this meeting, the Committee heard testimony from community members, advocates, school administrators, educators, legal professionals, and government officials. Testimony included information regarding the ways in which some disciplinary policies and practices may result in a disparate impact on youth of color and youth with disabilities--contributing to the disproportionately high involvement of such youth in the juvenile justice system. The purpose of the meeting was to hear information directly from Indiana residents; particularly those who may be/have been impacted by the school-to-prison pipeline; as well as education officials, scholars, and other experts.

The following report is the result of the Committee’s review of the aforementioned testimonies, as well as of aggregated state level school disciplinary and juvenile incarceration data. The report is divided into three sections. It first provides brief background information on the phenomenon known as the “School-to-Prison Pipeline”, and describes related civil rights concerns. Second, it provides an overview of policies, practices, themes, and factors that may exacerbate the pipeline

⁶ 42 U.S.C. §12101 et. Seq.

⁷ U.S. Constitution Amendment XIV

⁸ See Appendix A.1 for hearing agenda

⁹ See Appendix A.2 for hearing agenda

according to panelists' testimony. The report concludes with a series of findings in Indiana, and related recommendations to the Commission which may help to address identified civil rights concerns.

DRAFT

II. BACKGROUND

The American Civil Liberties Union defines the school-to-prison pipeline as a “trend wherein children are funneled out of public schools and into the juvenile and criminal justice systems.”¹⁰ Although current federal data show a continued, significant decline in juvenile confinement rates in the United States since 1997,¹¹ the country maintains the highest rate of juvenile incarceration of any developed nation in the world.¹² The Indiana Equity Project explains the connection between such high rates of juvenile incarceration and school discipline policies as follows: “Opportunity to learn is one of the strongest predictors of academic achievement; so it is not surprising that removing students from school for disciplinary reasons is associated with negative academic outcomes, such as course failure, academic disengagement, and ultimately dropping out of school...Suspension itself appears to be a risk factor for future contact with the justice system.”¹³

The American Civil Liberties Union identifies a number of specific policies and practices thought to contribute to this problem, including:¹⁴

- *Zero tolerance policies* that automatically impose harsh penalties such as suspension and expulsion regardless of circumstances. These practices often leave students unsupervised and without constructive activities at home, and exacerbate academic difficulties as students fall behind in their coursework.

¹⁰ School-to-Prison Pipeline. May 2014. American Civil Liberties Union. Available at: <https://www.aclu.org/issues/racial-justice/race-and-inequality-education/school-prison-pipeline?redirect=school-prison-pipeline> (last accessed Sept. 30, 2015).

¹¹ Pew Charitable Trust Infographic, 2013. Available at: https://chiyouthjustice.files.wordpress.com/2013/09/pspp_juvenile_graphicv2.jpg (last accessed Feb. 27, 2015)

¹² No Place for Kids: The Case for Reducing Juvenile Incarceration. *The Annie E. Casey Foundation*. 2011. (Feb 27, 2015). P.3 Available at: <http://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf>. (last accessed Feb. 27, 2015)

¹³Skiba, Russell et al. New and Developing Research on Disparities in Discipline. March 2014. pp. 2-3. The Equity Project at Indiana University. Available at: http://www.indiana.edu/~atlantic/wp-content/uploads/2014/12/Disparity_NewResearch_Full_121114.pdf (last accessed Sept. 30, 2015).

¹⁴ What is the School-to-Prison Pipeline? *American Civil Liberties Union*. Available at: <https://www.aclu.org/racial-justice/what-school-prison-pipeline> (last accessed Feb. 27, 2015).

- *Police presence in school hallways* has shifted disciplinary responsibilities in many schools from teachers and administrators to police, resulting in an increase in school based arrests, often for non-violent offenses such as disruptive behavior.
- *Disciplinary Alternative Schools*, available in some jurisdictions as an alternative for students who have been suspended or expelled, reportedly lack the same educational standards as traditional schools, and often result in students falling farther behind, increasing the likelihood of contact with the juvenile justice system.
- *Juvenile Court Involvement* frequently results in “boilerplate” probation conditions for youth such as prohibitions against missing school or receiving even minor disciplinary infractions at school. Students are then often sent to secure detention facilities for violations of these strict terms.
- *Juvenile Detention* often results in a further decline in students’ academic progress, making it difficult, if not impossible, to re-enter traditional schools upon release, and increasing the likelihood of future law enforcement contact.

Regardless of whether or not such policies and practices are applied in an explicitly discriminatory manner, the Committee sought to study the *impact* of these and other related policies on school discipline and youth incarceration rates in the State of Indiana, particularly as they may unduly influence disparities in incarceration rates on the basis of race, color, sex, and disability status. Title VI of the U.S. Civil Rights Act prohibits discrimination “on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.”¹⁵ According to the U.S. Department of Justice, Title VI violations may be found where evidence of disparate impact exists, regardless of discriminatory intent. “Under the disparate impact theory, a recipient violates agency regulations by using a neutral procedure or practice that has a disparate impact on protected individuals, and such practice lacks a substantial legitimate justification.”¹⁶ Therefore, the Committee sought to examine the extent to which evidence suggests disparate impact, regardless of explicit discriminatory intent.

According to the National Institute of Corrections of the United States Department of Justice, in 2014 the State of Indiana had an incarceration rate 13 percent higher than the national average,

¹⁵ 42 U.S.C 2000d et. Seq.

¹⁶ United States Department of Justice, Civil Rights Division. Title XI Legal Manual. Available at: <https://www.justice.gov/crt/title-ix#I>. (last accessed October 09, 2015)

at 442 adults per 100,000 people.¹⁷ The Kids Count Data Center of the Annie E. Casey Foundation reports that for youth age 10 and older in Indiana, the incarceration rate is 258 per 100,000 youth, which is approximately 25 percent greater than the national average of 196.¹⁸ While some progress has been made, —between 1997 and 2010, the State of Indiana saw only a 22 percent decline in youth incarceration rates—nationally, Indiana has remained behind the curve. During this same timeframe, the country as a whole saw a 37 percent decline in youth incarcerations.¹⁹

Despite recent declines in overall youth incarcerations, data suggests that a number of disparities persist in the demographics of youth who remain incarcerated, both nationally and in the State of Indiana. In particular, youth involvement in exclusionary school disciplinary actions such as suspension and expulsion, as well as youth involvement in the juvenile justice system, continue to demonstrate a strong disparate impact on the basis of race, color, disability status, and sex. To illustrate:

- *Race/color:* The Annie E. Casey Foundation reports that African American youth face nearly five times the likelihood of incarceration compared to their white peers across the country; Latino and Native American youth face between two and three times the likelihood.²⁰
- *Disability status:* According to the U.S. Department of Education Office of Civil Rights, students with disabilities represent a quarter of students arrested and referred to law enforcement nationally, even though they are only 12 percent of the overall student

¹⁷ National Average is 395 incarcerated adults per 100,000 people. Source: National Institute for Corrections, Correction Statistics by State, 2013. *U.S. Department of Justice*. Available at <http://nicic.gov/statestats/default.aspx?st=IN> (Last accessed Sept. 28, 2015)

¹⁸ According to 2011 data, the most recent available. Youth residing in Juvenile Detention, Correctional, and/or Residential Facilities. Annie E. Casey Foundation Kids Count Data Center 2011. Available at: <http://datacenter.kidscount.org/data/tables/42-youth-residing-in-juvenile-detention-correctional-and-or-residential-facilities?loc=1&loct=1#detailed/1/any/false/867,133,18,17,14/any/319,320> (last accessed March 2, 2015)

¹⁹ Annie E. Casey Foundation: Reducing Youth Incarceration in the United States. February 2013 Kids Count Data Snapshot. Available at: <http://www.aecf.org/m/resourcedoc/AECF-DataSnapshotYouthIncarceration-2013.pdf> (last accessed March 2, 2015)

²⁰ Youth in Incarceration in the United States. *The Annie E. Casey Foundation*. 2011. Available at: <http://www.aecf.org/m/resourcedoc/aecf-YouthIncarcerationInfographic-2013.pdf> (last accessed Feb. 27, 2015)

population. Students with disabilities are also more than twice as likely to receive an out-of-school suspension (13%) than students without disabilities (6%).²¹

- *Sex:* According to the U.S. Department of Justice, in 2012 the national arrest rate for boys was just under 6,000 per 100,000 males age 10-17, while the arrest rate for girls was less than half this number, at just under 2,500.²² Similarly, the U.S. Department of Education reports that beginning as early as preschool, boys represent 82 percent of school children suspended multiple times, while only representing 54 percent of the preschool enrollment.²³

Given these well-documented and persistent disparities, the Committee's purpose was to study possible civil rights violations and underlying factors that may contribute to this concern, and to identify best practices and potential solutions to address it. In reaching the findings and recommendations that follow, the committee also considered Indiana's exploration of this issue found in the 2014 final report of the Interim Study Committee on Education of the Indiana Legislative Services Agency, November 1, 2014.²⁴

²¹ Civil Rights Data Snapshot: School Discipline, Issue Brief No. 1. U.S. Department of Education Office for Civil Rights. 2014. Available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf> (last accessed Feb. 27, 2015) [Hereafter cited as: *U.S. DOE Data Snapshot: School Discipline 2014*]

²² U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Arrest Rate Trends 1980-2012 Statistical Briefing Book*. Available at: http://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05230 (last accessed Feb. 27, 2015)

²³ *U.S. DOE Data Snapshot: School Discipline 2014*

²⁴ Available at: <http://iga.in.gov/documents/d607990a> (last accessed October 19, 2016)

III. SUMMARY OF PANEL TESTIMONY

A. Juvenile Justice Disparities: Historical and Contemporary Context

According to the latest statistics reported by The Sentencing Project, a Washington, D.C. based nonprofit research organization that studies racial disparities in the U.S. criminal justice system, the United States is “the world's leader in incarceration with 2.2 million people currently in the nation's prisons and jails.”²⁵ The phenomenon known as “mass incarceration” refers to the 500% increase in the prison population in the United States over the last forty years.²⁶ Unfortunately, African American males have borne the brunt of this increase. A recent analysis by Becky Pettit, a University of Washington sociologist, found that in 2008, “young black men (ages 18-34) were at least six times more likely to be incarcerated than young white men.”²⁷ The Committee heard testimony which indicates that this stark disparity reflects deep historical roots.

Dr. Alex Lichtenstein, a historian of American incarceration and Professor of History at Indiana University-Bloomington, testified that the last 150 years of U.S. history suggests an over reliance on the penal system to target and discipline minority youth.²⁸ His testimony detailed three waves, or periods in U.S. history, that represent a “recurrent turn to penal discipline” for minority populations, especially African American youth.²⁹ The first wave was shortly after the abolition of slavery. Southern states adopted draconian statutes designed to disenfranchise and criminalize a new generation of free African Americans.³⁰ Vagrancy laws, public order violations, and the like, represented an intentional expansion of incarceration, and scores of prison registers reveal

²⁵ The Sentencing Project, Fact Sheet: *Trends in U.S. Corrections*, 2014. Available at: <http://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>. [Last Accessed August 8, 2016]. [Hereafter cited as: *The Sentencing Project, Trends in U.S. Corrections*, 2014]

²⁶ *The Sentencing Project, Trends in U.S. Corrections*, 2014, p. 2

²⁷ Becky Pettit, *Invisible Men: Mass Incarceration and the Myth of Black Progress* (New York: Russell Sage Foundation, 2012). As cited in: Population Reference Bureau, *U.S. Has World's Highest Incarceration Rate*, August, 2012. Available at: <http://www.prb.org/Publications/Articles/2012/us-incarceration.aspx>. [Last Accessed October 20, 2016]

²⁸ Hearing before the U.S. Commission on Civil Rights, Indiana Advisory Committee, February 17, 2016. Lichtenstein Testimony, Transcript p. 27, line 7 – p. 29 line 6. [Hereafter cited as: *February 2016 Transcript*]

²⁹ Lichtenstein Testimony, *February 2016 Transcript* p. 29 line 7 – p. 35 line 22

³⁰ Lichtenstein Testimony, *February 2016 Transcript* p. 29 line 7 – p. 31 line 24

an overrepresentation of African American adolescents. Lichtenstein noted, "...some as young as 12 years old, received lengthy sentences, five, ten, fifteen years for very petty crimes."³¹ He continued, "Penal camps designed to exploit black labor, not schools designed to educate newly free people, were the institutions of choice in the post-reconstruction south."³²

According to Lichtenstein's testimony, the next wave was in response to what is known as "The Great Migration." Driven by a desire to escape the segregated and oppressive south, African American families journeyed to northern cities such as Chicago, Detroit, Philadelphia, Cleveland, St. Louis, and Gary in the early 20th century.³³ The migration reflected the hopes of many African Americans: economic opportunity and a quality education for their children. Sadly, many of the cities and states responded to the migration with residential segregation and racial confinement.³⁴ Lichtenstein noted the work of one of his colleagues, Khalil Muhammad of the Schomburg Library in New York City who found that "it was the formation of these black communities in the urban north in the wake of the great migrations that created...an entire social scientific apparatus that has associated blackness with criminality."³⁵

Lichtenstein's testimony concluded with an explanation of how today's school-to-prison pipeline represents the third wave of the country's return to an overreliance on penal discipline in communities of color. He noted that "The very same urban neighborhoods reshaped by the great migrations of the past century are the ones that today remain highly segregated with poor housing stock, structural, multi-generational unemployment, concentrated high poverty rates, underperforming schools with high expulsion rates, intensive and violent policing and, of course extremely high incarceration rates...."³⁶ He concluded, "I believe that today's massive expansion of the carceral state deep into the lives of minority youth represents really the central civil rights issue of the post civil rights generation nationally and in Indiana as well."³⁷

Lichtenstein suggested that in order to understand the school to prison pipeline, one must address the "inescapable fact that the youthful indiscretions of minority youth, and African American

³¹ Lichtenstein Testimony, *February 2016 Transcript* p.29 lines 16-20

³² Lichtenstein Testimony, *February 2016 Transcript* p.31 lines 13-16

³³ Lichtenstein Testimony, *February 2016 Transcript* p.31 line 25 – p. 32 line 14

³⁴ Lichtenstein Testimony, *February 2016 Transcript* p.32 line 15 – p. 33 line 4

³⁵ Lichtenstein Testimony, *February 2016 Transcript* p.33 lines 5-13

³⁶ Lichtenstein Testimony, *February 2016 Transcript* p.33 line 22 – p. 34 line 4

³⁷ Lichtenstein Testimony, *February 2016 Transcript* p.34 lines 13-21

youth in particular, have historically resulted in penal sanctions.”³⁸ As an example of such overreliance on the penal system, the Committee notes written testimony received from Ms. Carlotta Blake-King, a member of Hammond Indiana’s Grassroots Coalition of Concerned Citizens for Social Justice (the Coalition). Ms. Blake-King described concern regarding racial profiling of high school and middle school children, often resulting in excessive use of force.³⁹ These concerns centered on the Hammond Police Department’s practice of ticketing students for j-walking.⁴⁰ Ms. Blake-King described one incident in the fall of 2014 when a “17 year old female honor student from Morton High School was thrown to the ground with the officer’s knee in her chest for j-walking.”⁴¹ Hammond Police Chief John Doughty cited safety concern for the children as justification for these measures, and denied allegations regarding both racial profiling and use of force.⁴² Still, the Coalition contends that the practice of ticketing students for j-walking is inherently unfair, as adults and professionals regularly j-walk without consequence.⁴³ In addition, the practice unnecessarily introduces children as young as ten years old into the criminal justice system, and other effective solutions exist to address the issue without “subjecting our children to punitive action.”⁴⁴

B. Bias: Race, Sex, Disability, and Intersectionality

1. Race Bias

On July 12, 2016 President Barack Obama gave remarks at the memorial service for five Dallas police officers who lost their lives at the hands of a lone shooter four days prior.⁴⁵ The shooter had targeted white police in response to the killings of two black men by officers in other parts of

³⁸Lichtenstein Testimony, *February 2016 Transcript* p. 28 lines 20-25

³⁹ King Testimony, February 2016. *Written Testimony*, Appendix B.1 p. 3

⁴⁰ King Testimony, February 2016. *Written Testimony*, Appendix B.1 p. 1-2

⁴¹ King Testimony, February 2016. *Written Testimony*, Appendix B.1 p. 1-2

⁴² King Testimony, February 2016. *Written Testimony*, Appendix B.1 p. 6-8

⁴³ King Testimony, February 2016. *Written Testimony*, Appendix B.1 p. 9

⁴⁴ King Testimony, February 2016. *Written Testimony*, Appendix B.1 p. 9

⁴⁵ The White House Office of the Press Secretary, “Remarks by the President at Memorial Service for Fallen Dallas Police Officers.” July, 2016. Available at: <https://www.whitehouse.gov/the-press-office/2016/07/12/remarks-president-memorial-service-fallen-dallas-police-officers>. [Last accessed October 20, 2016] [Hereafter cited as: *Presidential Remarks, Dallas Police 2016*]

the country.⁴⁶ The incidents propelled the ever-present issue of race to the forefront of American consciousness. The President said, “We...know that centuries of racial discrimination—of slavery, and subjugation, and Jim Crow—they didn’t simply vanish with the end of lawful segregation. They didn’t just stop when Dr. King made a speech, or [when] the Voting Rights and the Civil Rights Act were signed. Race relations have improved dramatically in my lifetime...But...we know that bias remains...No institution is entirely immune.”⁴⁷

In congruence with the President’s words, a 2014 study of The Equity Project at Indiana University, *You Can’t Fix What You Don’t Look At: Acknowledging Race and Addressing Racial Discipline Disparities*, notes, “Regardless of our attempts to avoid the topic, the issue of race emerges over and over again, permeating our society and conditioning our lives.”⁴⁸ The authors of this study recognize the influence of race bias on every facet of society, including the American education system. They note, “For many other youth in our nation, the consequences of our heritage of presumed racial difference and long standing segregation play themselves out on a daily basis through lowered expectations, decreased educational opportunity, and disciplinary overreaction.”⁴⁹ They conclude, “Today in schools, our interactions across racial lines yield differential outcomes in school discipline, with devastating consequences for the young people served.”⁵⁰

2. *Implicit Bias and Race*

Psychologists differentiate between “explicit” and “implicit” bias. Explicit bias refers to attitudes or beliefs held about a person or group at a conscious level.⁵¹ Despite the existence of anti-discrimination laws and mainstream cultural norms, explicit bias undoubtedly persists. (The flying of Confederate flags and hate crimes against Arab, South Asian, and Muslim Americans

⁴⁶ Fernandez, et al. *Five Dallas Officers were Killed as Payback, Police Chief Says*. New York Times, July 8, 2016. Available at: <http://www.nytimes.com/2016/07/09/us/dallas-police-shooting.html> [Last Accessed October 20, 2016]

⁴⁷ *Presidential Remarks, Dallas Police 2016*

⁴⁸ Discipline Disparities Research to Practice Collaborative, *You Can’t Fix What You Don’t Look At: Acknowledging Race in Addressing Racial Discipline Disparities*, December 2014, p. 7. Available at: http://www.indiana.edu/~atlantic/wp-content/uploads/2014/12/Acknowledging-Race_121514.pdf [Last accessed October 20, 2016] [Hereafter cited as: *Discipline Disparities: Acknowledging Race*]

⁴⁹ *Discipline Disparities: Acknowledging Race*, p.7

⁵⁰ *Discipline Disparities: Acknowledging Race*, p.7

⁵¹ Perception Institute. Explicit Bias. Available at: <https://perception.org/research/explicit-bias/> (last accessed October 20, 2016)

are two everyday examples.) Specifically with respect to the cause of racial disproportionality in school discipline, the Kirwan Institute for the Study of Race and Ethnicity defines implicit bias as “the mental process that causes us to have negative feelings and attitudes about people based on characteristics like race, ethnicity, age and appearance...In the general population, implicit racial bias often supports the stereotypical caricature of Black youth—especially males—as irresponsible, dishonest, and dangerous”⁵² Contemporary forms of negative, race-based stereotypes often manifest in implicit bias. Legal scholar Linda Hamilton Krieger, who has studied the relationship between bias and discrimination in the workplace, maintains that biases are “plausibly stereotype-based,” and generally reflect underlying perceptions and attitudes against certain identity groups.⁵³ Measures such as the Implicit Association Test (IAT), designed by a group of Harvard researchers in 1998, have allowed Krieger and other researchers to draw conclusions about the pervasiveness of [both] explicit and implicit biases.”⁵⁴ For instance, one study revealed that both white and black participants more quickly associated “black faces...with words representing violent and aggressive concepts,” than white ones.⁵⁵ As Johanna Wald, Director of Strategic Planning at the Charles Hamilton Houston Institute for Race and Justice, noted, these biases exist even among those who deny them or are unaware of them. She wrote, “The striking aspect of this test is that this bias pattern exist both among those who express explicit prejudices and those who deny them.”⁵⁶

Dr. Laura McNeal, an Associate Professor of Law at the University of Louisville’s Brandeis School of Law, and Law & Policy Analyst for the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School, reminded the Committee that such implicit, or unconscious biases are most likely to surface in moments of stress, when teachers must make split-second

⁵² Rudd, Tom. *Racial Disproportionality in School Discipline: Implicit Bias is Heavily Implicated*. Kirwan Institute for the Study of Race and Ethnicity. Issue Brief, February 2014. p.3 Available at: <http://kirwaninstitute.osu.edu/wp-content/uploads/2014/02/racial-disproportionality-schools-02.pdf> [Last accessed October 20, 2016] [Hereafter cited as *Kirwan Institute, Racial Disproportionality*]

⁵³ Greenwald, Anthony and Krieger, Linda. California Law Review VOL. 94, No.4. “Implicit Bias: Scientific Foundations.” July 2006, p. 951, footnote 20. Available at: <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1250&context=californialawreview> [Hereafter cited as *Greenwald & Krieger: Implicit Bias. 2006*]

⁵⁴ *Greenwald & Krieger: Implicit Bias. 2006*, p. 955

⁵⁵ Wald, Joanna. Supplementary Paper II: Can “De-Biasing” Strategies Help to Reduce Racial Disparities in School Discipline? Summary of the Literature. *Institute for Race and Justice, Harvard Law School*. March 2014. p.1 Available at: http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/Implicit-Bias_031214.pdf (last accessed October 20, 2016) [Hereafter cited as: *Wald, De-Biasing Strategies, 2014*]

⁵⁶ *Wald, De-Biasing Strategies, 2014*, p. 1

decisions: “The majority of school disciplinary sanctions are the product of split second decisions, which as implicit bias research reveal, is the context in which our unconscious biases have the greatest influence.”⁵⁷ She concluded, “Despite the belief by many legal scholars that we are living in a post-racial society, the stark reality is race still matters, especially in the school disciplinary context.”⁵⁸

Given the history of race and racism in America, an analysis of implicit bias is therefore critical to examining the impact it may have on racial disparities in suspension, expulsion, school arrest, and other exclusionary forms of discipline in the American education system. Dr. Russell Skiba, Director of the Equity Project at Indiana University, testified before the Committee: “We have known about the overrepresentation of African American students in school suspensions for 40 years, since the work of the Children's Defense Fund in the mid-70s, but in the last year and a half to two years there has been remarkable progress in attention to [these] issues.”⁵⁹ Dr. Skiba contended that the overrepresentation of African American students in suspension and expulsion rates is largely due to bias in schools. He testified that the “data has been consistent in showing that there is not a higher rate of misbehavior, disruptive behavior...that could sufficiently account for the overrepresentation of those students in suspension/expulsion.”⁶⁰ Furthermore, research conducted by Dr. Skiba and some of his colleagues indicates that Black students are more likely to be suspended or expelled for subjective reasons such as “defiance,” whereas white students are more likely to face disciplinary action for objective infractions, such as bringing a weapon to school.⁶¹

During the hearing, the testimony of other panelists consistently indicated that the implicit race bias embedded in school systems impacted education and school discipline.⁶² Barbara Bolling-Williams, the State President for the NAACP Indiana State Conference and Chair of the Criminal Justice Committee of the National Board of Directors, noted that such disparities

⁵⁷ McNeal Testimony. February 2016, *Written Testimony*, Appendix B.3 p. 6

⁵⁸ McNeal Testimony. February 2016, *Written Testimony*, Appendix B.2 p. 2

⁵⁹ Skiba Testimony *February 2016 Transcript*, p. 11, lines 10-16

⁶⁰ Skiba Testimony *February 2016 Transcript*, p. 15, lines 2-14

⁶¹ Skiba, R. J., Chung, C-G., Trachok, M., Baker, T., Sheya, A., & Hughes, R. (2015). Where should we intervene? Contributions of behavior, student, and school characteristics to out-of-school suspension. In D. J. Losen (Ed.), *Closing the school discipline gap: Equitable remedies for excessive exclusion* (pp. 132-146). New York: Teachers College Press.

⁶² Hanger Testimony. *February 2016 Transcript*, p. 109 lines 18-25; Kilver Testimony, *February 2016 Transcript*, p. 176 line 19-p. 177 line 4; Jackson Testimony, *February 2016 Transcript* p. 201 lines 14-25

surface for even very young children. She testified that many districts institute exclusionary discipline policies as early as preschool.⁶³ In fact, according to the U.S. Department of Education, “[nationally] Black children represent 18% of preschool enrollment, but 42% of the preschool children suspended once, and 48% of the preschool children suspended more than once.”⁶⁴ Hispanic and African-American children combined represent 47% of all children in preschool, but 67% of their same-age peers who are suspended.⁶⁵

In sum, research has shown that the American education system is not immune to the societal inequalities surrounding race. In fact, there are deep-seated imbalances that manifest in racially disproportionate school discipline patterns primarily caused by racial implicit biases. According to work out of the Equity Project at Indiana University, “Some research suggests that white and Black students may receive differential treatment in terms of opportunities to participate in learning settings, or different teacher reactions to misbehavior.”⁶⁶ In order to directly address such disparities in the education system, Dr. Skiba recommended four prescriptions: 1) Make sure that school data is disaggregated, because so that it will be possible to know “where exactly the disproportionality is occurring and how great are the disparities;” 2) schools must begin to look at race as the root cause of the disparities; 3) schools must move beyond “race neutral intervention” to consider how issues such as implicit bias may impact intervention; and 4) schools must provide support to educators so that they are able to institute alternatives to punitive and exclusionary behavioral interventions.⁶⁷

3. *Race and Sex Bias*

The data and personal stories shared by panelists point to the intersecting, damaging effects that racial bias has on Black males, in particular. Again, the Equity Project of Indiana University found “Corrosive stereotypes—like the dangerous Black male—rooted themselves deep in our nation’s psyche, and whether or not they reach our consciousness, remain entwined in our thinking and our practices today.”⁶⁸ Dr. Marvin Lynn, Professor of Education and Dean of the School of Education at Indiana University-South Bend, noted, “There are significant disparities

⁶³ Williams Testimony, Hearing before the U.S. Commission on Civil Rights, Indiana Advisory Committee. January 20, 2016. Transcript, p. 7 lines 16-26 [Hereafter cited as: *January 2016 Transcript*].

⁶⁴ *U.S. DOE Data Snapshot: School Discipline 2014*, p.7

⁶⁵ *U.S. DOE Data Snapshot: School Discipline 2014*, p.7

⁶⁶ *Discipline Disparities: Acknowledging Race*, p.4.

⁶⁷ Skiba Testimony. *February 2016 Transcript*, p. 19 line 21 – p. 21 line 6

⁶⁸ *Discipline Disparities: Acknowledging Race* p.7.

in the school discipline practices, especially as it concerns African American males.”⁶⁹ He went on to cite 2012 data suggesting that “Black students, especially black boys, face much harsher discipline in school than other students.”⁷⁰ He noted that Black students make up 18% of public school enrollment nationally, but 35% of those suspended once, 46% of those suspended more than once, and 39% of all expulsions.”⁷¹

In his testimony Dr. Skiba noted that while race and sex intersect most directly to impact African American boys with respect to the school to prison pipeline, African American girls are not exempt. He said, “African American males are most likely to be overrepresented in suspension and expulsion, but recent studies have also found there is an overrepresentation of African American females.”⁷² Dr. Skiba commented that according to 2014 statistics, Indiana ranks second in the country in its rate of Black male out-of-school suspensions, and ranks fourth in the rate of Black female out-of-school suspensions.⁷³ According to data compiled by the U.S. Department of Education Office for Civil Rights, nationally 20% of black boys and 12% of black girls received an out-of-school suspension in 2011-2012, compared to 6% of white boys and 2% of white girls.”⁷⁴ The following graph depicts such disparity, highlighting the interaction between race and sex, and underscoring its role in exclusionary school discipline outcomes.⁷⁵

⁶⁹ Lynn Testimony. *February 2016 Transcript*, p. 36, line 24 – p. 37 line 16

⁷⁰ Lynn Testimony. *February 2016 Transcript*, p. 37 lines 17-21

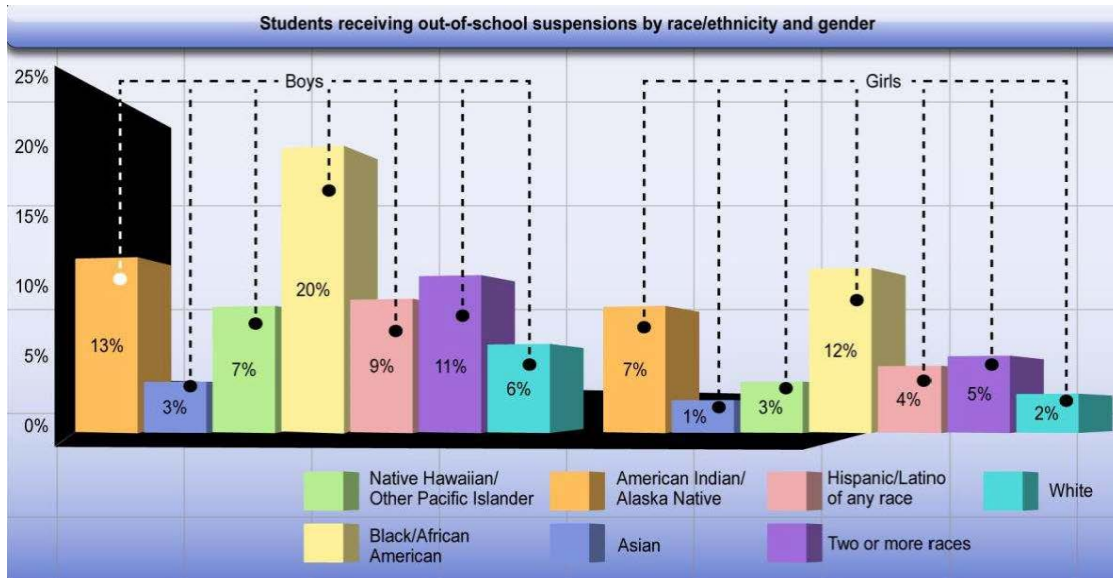
⁷¹ Lynn Testimony. *February 2016 Transcript*, p. 37 lines 20 through p. 38 line 6

⁷² Skiba Testimony. *February 2016 Transcript*, p. 12, lines 21-25

⁷³ Skiba Testimony. *February 2016 Transcript*, p. 16, lines 1-9

⁷⁴ U.S. DOE Data Snapshot: *School Discipline 2014*, p.3

⁷⁵ NOTE: Data reflects 99% of CRDC schools and a total of 290,000 American Indian/Alaska Native females, 300,000 American Indian/Alaska Native males, 1.1 million Asian males, 1.2 million Asian females, 120,000 Native Hawaiian/Other Pacific Islander males and females, 3.7 million black females, 3.8 million black males, 5.6 million Hispanic females, 5.9 million Hispanic males, 630,000 males of two or more races, 640,000 females of two or more races, 12 million white males, and 12 million white females. SOURCE: U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2011-12.



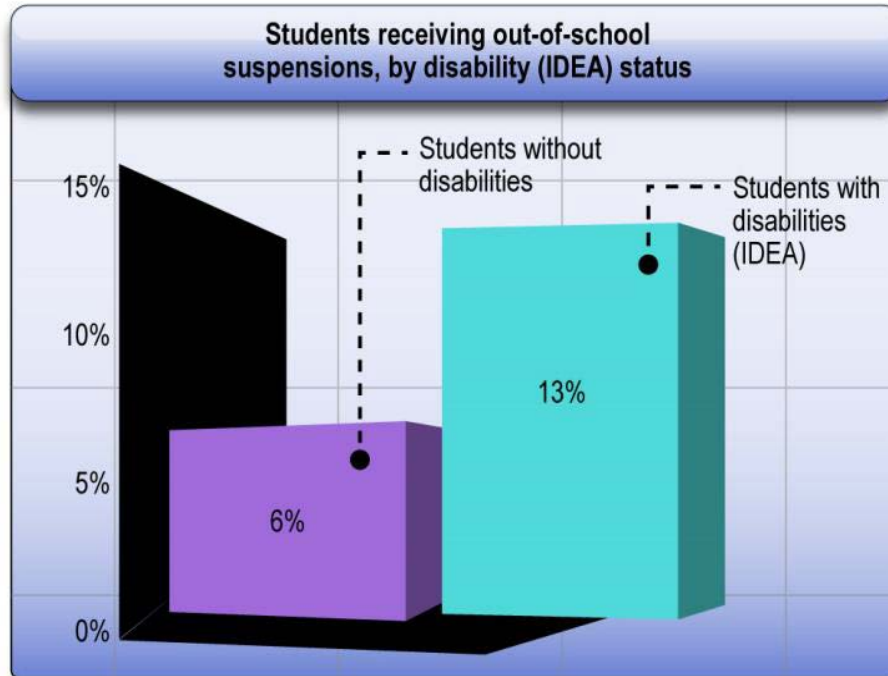
4. Disability Bias

In addition to bias based on race and sex, the data also indicate that students with disabilities are particularly vulnerable to the school-to-prison pipeline. According to panelist Rebecca Cokley, the Executive Director of the National Council on Disabilities, despite the passage of the Individuals with Disabilities Education Act (IDEA),⁷⁶ intended to ensure that students with disabilities are provided with free and appropriate public education, “we continue see schools excluding students with disabilities at disproportionate rates despite more than four decades of political and scholarly attention to this issue.”⁷⁷ The following graph⁷⁸ highlights U.S. Department of Education data from the Office of Civil Rights, which demonstrates the extent of such disparities.

⁷⁶ 20 U.S.C. §1400 et. Seq

⁷⁷ Cokley Testimony, *January 2016 Transcript*, p. 5 lines 8-14

⁷⁸ *U.S. DOE Data Snapshot: School Discipline 2014*, p.3



This data illustrates that students with disabilities served by IDEA are more than twice as likely to receive one or more out-of-school suspensions as students without disabilities.⁷⁹ The Department's report goes on to note that students with disabilities only represent 12% of the national student population, but 25% of students who are referred to law enforcement or subjected to school related arrests, 58% of students subjected to seclusion in school, and 75% of the students who are subjected to physical restraint during school.⁸⁰

These national disparities are also reflected in the state of Indiana. As Dr. Bolling-Williams noted, in the 2011-12 school year there were 1,060 Indiana public school students with disabilities referred to law enforcement; and 400 Indiana public school students with disabilities received expulsions without educational services, 94.8% of which were students with disabilities served under IDEA.⁸¹ Panelist Patricia Howey, a disability rights advocate, described the long history of trauma and neglect that led one of her clients, who had severe ADHD, depression, and PTSD, to become expelled from school and face criminal prosecution for possession of her own

⁷⁹ U.S. DOE Data Snapshot: School Discipline 2014, p.3

⁸⁰ U.S. DOE Data Snapshot: School Discipline 2014, p.7-9

⁸¹ Barbara Bolling-Williams, *Written Testimony*, January 2016 to the Indiana Civil Rights Commission on Student discipline. p.2-3 (see Appendix B.2); *See also*: Bolling-Williams Testimony, *January Transcript*, p. 7 lines 27-37

prescription medication.⁸² These stories and statistics underscore the veracity of disability bias in the American public education system, demonstrating that being labeled as having a disability may make a student more at risk of being suspended and ending up in the juvenile justice system.

Melissa Keyes, the Legal Director for Indiana Protection Advocacy Services, raised concern regarding a provision of the IDEA known as the “10-day rule,”⁸³ which may undermine supportive protections that are supposed to be available for students with disabilities. This rule “allows a school to remove a child with a disability who violates a code of conduct for not more than 10 school days without being required to provide services.”⁸⁴ Students with disabilities are protected by “procedural safeguards that are triggered by suspensions over ten consecutive days or ten cumulative days if it is based on the same behavior.”⁸⁵ However, Ms. Keys raised concern that this rule may incentivize schools to “strategically spread out short term suspensions over the course of a school year without triggering the 10-day procedural safeguard.”⁸⁶ Additionally, Ms. Keys noted that “schools have no incentive or obligation to intervene until the 11th day, but by that time, the damage has already been done and studies have shown that education is severely and often irrevocably compromised after ten days of suspension.”⁸⁷ In addition to the 10-day rule, Keys raised concern about less formal/overt mechanisms of excluding students with disabilities from school, such as “having shortened school days in a student’s IEP⁸⁸, providing limited homebound instruction, lengthy stays in seclusion rooms, constructive parental withdrawals from school, calling CPS in an effort to have the child placed elsewhere, and other methods.”⁸⁹ Keys noted, “these types of removals do not generally count toward the ten-day threshold despite the fact that they often add up to much more than ten days out of school.”⁹⁰

In addition to facing exclusionary discipline, testimony also indicated a strong connection between disability status and direct involvement in the juvenile justice system. According to Carol Kilver, Assistant Superintendent for Secondary curriculum in the Lafayette School

⁸² Howey Testimony, *February 2016 Transcript*, p. 63 line 3 – p. 69 line 19

⁸³ Keyes Testimony. *February 2016 Transcript*, p.125, lines 19-23

⁸⁴ Keyes Testimony. *February 2016 Transcript*, p. 125, lines 20-22

⁸⁵ Keyes Testimony. *February 2016 Transcript*. p. 125, line 24 – p. 126 line 10

⁸⁶ Keyes Testimony. *February 2016 Transcript*. p. 125, line 24 – p. 126 line 10

⁸⁷ Keyes Testimony. *February 2016 Transcript*. p. 125, line 24 – p. 126 line 10

⁸⁸ Individualized Education Plan

⁸⁹ Keyes Testimony. *February 2016 Transcript*, p. 126, lines 11-22

⁹⁰ Keyes Testimony. *February 2016 Transcript*, p. 126, lines 11-22

Corporation, 70% of Indiana's juvenile justice youth have a disability and or mental illness.⁹¹ Melissa Keys pointed to similar, yet more wide-ranging estimates, citing data to suggest that nationally 65% to 85% of children in the juvenile justice system have a disability."⁹² Keys also noted that only an estimated 37 percent of these children received special education services while in school.⁹³ She explained to the Committee why data approximation is so wide-ranging: "Determining how many children with disabilities are in the juvenile justice system is really challenging for a number of reasons. There is poor or inconsistent diagnostic assessments, relying on self-report, and no real standard requirements for data collection across the number of different areas."⁹⁴ Ms. Keys' analysis pointed to the need for more data on this issue in order to fully understand its impact on this population.⁹⁵

To address this issue Ms. Cokley pointed to a need for advocates to "assist students with disabilities and their families in getting these [Special Education] services, and providing oversight to the delivery of those services."⁹⁶ She made several other recommendations to comprehensively address the role of disability bias in the school-to-prison pipeline:

1. "Students with disabilities and their families need accurate information, training, and leadership development to effectively understand how they can really use the Individuals with Disabilities Education Act as a tool to ensure better services. Those trainings, information, and development need to be rendered in a culturally, linguistically, and accessibility competent manner."⁹⁷
2. The U.S. Department of Education should "bolster efforts to monitor and enforce the Free and Appropriate Public Education piece of the law and ensuring least restrictive environment...a serious move away from seclusion and restraint."⁹⁸
3. There should be "minimum subsequent standards for the quality and delivery of special ed and the related services specifically as they relate to behavioral support."⁹⁹

⁹¹ Kilver Testimony, *February 2016 Transcript*, p. 175, lines 18-20

⁹² Keys Testimony, *February 2016 Transcript*, p. 123, lines 17-20

⁹³ Keys Testimony, *February 2016 Transcript*, p. 128, lines 3-6

⁹⁴ Keys Testimony, *February 2016 Transcript*, p. 123, lines 12-17

⁹⁵ Keys Testimony, *February 2016 Transcript*, p. 124, lines 1-10

⁹⁶ Cokley Testimony, *January 2016 Transcript*, p. 5 lines 1-2

⁹⁷ Cokley Testimony, *January 2016 Transcript*, p. 4 lines 39-43

⁹⁸ Cokley Testimony, *January 2016 Transcript*, p. 6 lines 25-28

4. Implementation of a system for “evaluating bias in schools where minorities are over represented in identification, discipline, or in placement in special ed,” including instituting bias training agreements and compliance reviews.¹⁰⁰

5. *Intersectionality: Race, Sex, and Disability Status*

The last recommendation offered above also raises a critical point regarding how a student’s disability often intersects with her/his race and sex identities. Panelist Rebecca Cokley described the variety of academic, behavioral, and mental health needs that impact students’ educational outcomes, noting that in particular “...students of color are overrepresented in special education and experience more segregation and worse outcome.”¹⁰¹ Cokley testified that most students do “not actually receive a diagnosis until entering the juvenile justice system.”¹⁰² She asserted that undiagnosed and improperly diagnosed disabilities lead to a lack of access to supportive services, and that “...students of color are very quickly diagnosed as having emotional disturbance and are less likely to be diagnosed with autism. This is often done incorrectly...”¹⁰³ She concluded, “schools suspend students with disabilities and students of color many times the rate of their white and nondisabled counterparts, and schools suspend students of color with IEPs...whether they have disabilities or not, to the most disproportionate degree.”¹⁰⁴

The bar graph below, compiled by the U.S. Department of Education-Office for Civil Rights, illustrates such panelists’ concerns. The report goes on to explain: “Latino and Asian-American students with disabilities are suspended at significant but comparatively low rates (17% and 10% for Latino boys and girls, and 10% and 6% for Asian-American boys and girls, respectively) They are the exception to the rule applicable to other boys of color with disabilities, more than one out of four of whom receives an out-of-school suspension. Similarly, nearly one in five girls of color with disabilities receives an out-of-school suspension.”¹⁰⁵

⁹⁹ Cokley Testimony, *January 2016 Transcript*, p. 6 lines 27-29

¹⁰⁰ Cokley Testimony, *January 2016 Transcript*, p. 6 lines 29-34

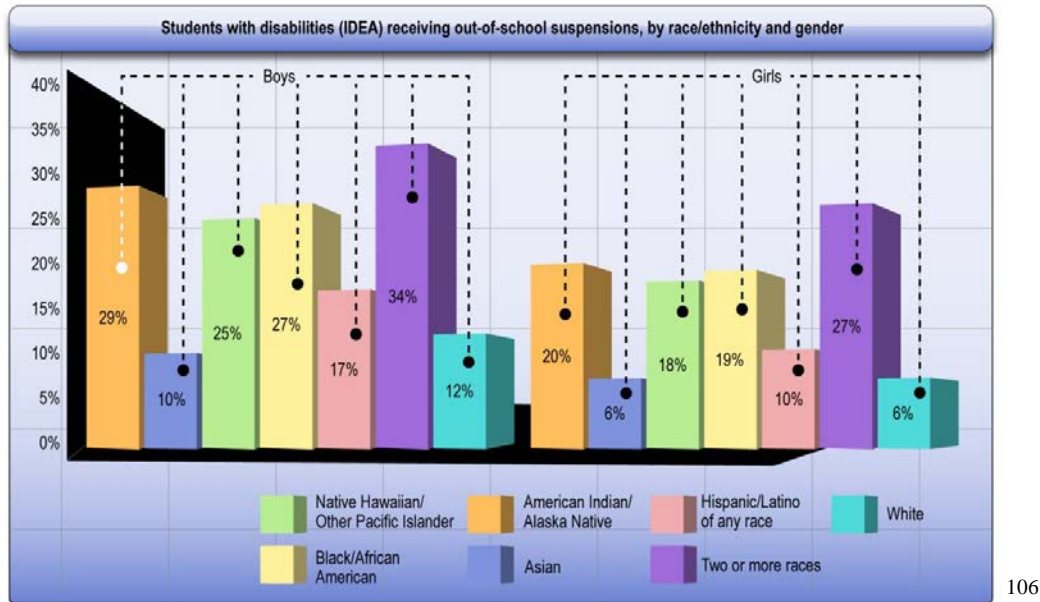
¹⁰¹ Cokley Testimony, *January 2016 Transcript*, p.4. lines 6-17

¹⁰² Cokley Testimony, *January 2016 Transcript*, p.4. lines 18-32

¹⁰³ Cokley Testimony, *January 2016 Transcript*, p.4. lines 18-32

¹⁰⁴ Cokley Testimony, *January 2016 Transcript*, p.4. lines 18-32

¹⁰⁵ *U.S. DOE Data Snapshot: School Discipline 2014*, p.4



The link between race, sex, and disability-based bias and suspension, expulsion, and juvenile incarceration rates is unfortunately strong nationally and in the state Indiana. Cynthia Jackson, the Positive Discipline Coordinator of the Indianapolis Public School system, gave testimony to the Committee which detailed the findings of an initiative within her district to review the discipline practices and policies of the system. Jackson stated that of the “7,863 incidences of suspension...79% of those students were African American, although [the] district population of African American is 50%. Of that population, a third of the students had disabilities, although within [the] district 20% of [the] students have IDPs with disabilities, so we have some disproportionally issues within our district.”¹⁰⁷ In response, the district has revised their code of conduct to “support a paradigm change that includes the positive supports, looking at balance between prevention and reaction, looking at social emotional learning and tiered systems of support. Taking the paradigm that discipline is instruction, not punishment.”¹⁰⁸ They also

¹⁰⁶ NOTE: Data reflects 98.9% of CRDC schools. Totals include 40,000 male and 19,000 female student who are American Indian/Native Alaskan, 71,000 male and 25,000 female students who are Asian, 11,000 male and 4,000 female students who are Native Hawaiian/Other Pacific Islander, 750,000 male and 355,000 female students who are black, 840,000 male and 410,000 female students who are Latino, 69,000 male and 25,000 female students who are of two or more races, 2.1 million male and 1.1 million female students who are white.

¹⁰⁷ Jackson Testimony, *February 2016 Transcript*. p. 196, lines 5-23

¹⁰⁸ Jackson Testimony, *February 2016 Transcript*. p. 198 lines 6-17

challenged their administrators to reduce suspensions by 20%;¹⁰⁹ began training their police officers in restorative practices;¹¹⁰ and began instituting alternative, restorative justice, and social-emotional learning programs.¹¹¹ Such programs are new and somewhat limited in scope, but Ms. Jackson noted the need to continue and expand them: “if we don’t hold equity as a supreme value, many of our children will not have the opportunity to take advantage of the education that’s afforded to them.”¹¹²

Other identities such as national origin/citizenship, and sexual orientation/gender identity were also cited by panelists as possible areas of intersection which need to be addressed. For example, Veronica Cortez, staff attorney with the Mexican American Legal Defense Educational Fund (MALDEF), highlighted the particular struggles of English language learners. She stated, “In Indiana specifically, English language learners have a lower percentage graduation”.¹¹³ She cited a lack of support services as the root cause, and noted “they drop out, but more, they are pushed out” because they don’t understand the rules, and collect a ton of minor infractions.¹¹⁴ As a result, Cortez said that many of them end up feeling as though they do not belong.¹¹⁵ Also, Cortez mentioned that “some English learners have undiagnosed special needs,” because the language and cultural barriers that exist prevent the communication necessary to identify them.¹¹⁶ Dr. Subini Annamma, Assistant Professor of Special Education at the University of Kansas, noted sexual orientation and gender identity, specifically being gender-nonconforming, as risk factors that may also intersect to increase a student’s vulnerability to the school to prison pipeline.¹¹⁷ More attention and research is needed to better understand the extent to which these and other identities may unnecessarily put children at risk for harsh, exclusionary discipline and ultimately justice system involvement. Such research should be considered moving forward.

¹⁰⁹ Jackson Testimony, *February 2016 Transcript*. p. 199 lines 19-25

¹¹⁰ Jackson Testimony, *February 2016 Transcript*. p. 200 lines 1-15

¹¹¹ Jackson Testimony, *February 2016 Transcript*. p. 200 line 16 – p. 201 line 13

¹¹² Jackson Testimony, *February 2016 Transcript*. p. 202 lines 1-25

¹¹³ Cortez Testimony, *February 2016 Transcript*. p. 70 lines 5-11

¹¹⁴ Cortez Testimony, *February 2016 Transcript*, p. 70 lines 12-22

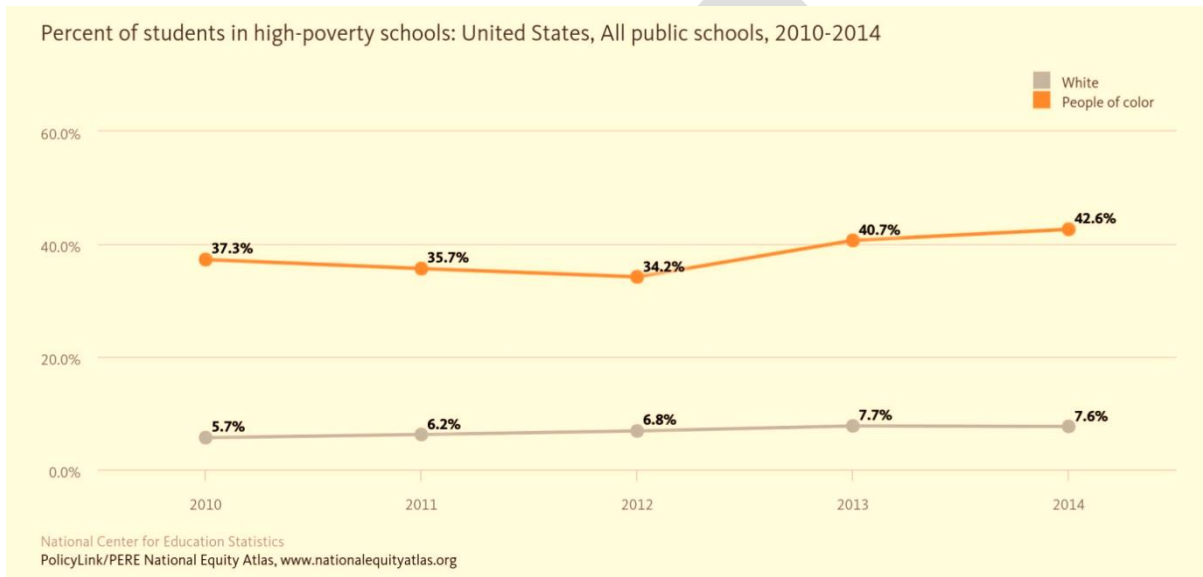
¹¹⁵ Cortez Testimony, *February 2016 Transcript*, p. 70 line 22 – p. 71 line 4

¹¹⁶ Cortez Testimony, *February 2016 Transcript*, p. 74 line 22 – p. 75 line 14

¹¹⁷ Annamma Testimony, *January 2016 Transcript*, p. 17, lines 10-29

C. The Role of Poverty and Economic Disparities Between School Districts and Communities

A 2015 report by the Southern Education Foundation revealed that, “For the first time in recent history, a majority of the schoolchildren attending the nation’s public schools come from low income families.”¹¹⁸ Furthermore, according to the National Equity Atlas, a research organization committed to socio-economic equity in the U.S., students of color are more likely to attend “high poverty schools” than their white peers. As the graph depicts below in the year 2014, “42.6% of students of color were in high-poverty schools, while only 7.64 percent of white students were.”¹¹⁹



The researchers contend, “Because most children attend neighborhood schools and American neighborhoods are highly segregated by race and income, children of color are far more likely than their white counterparts to attend schools where the vast majority of students live in families who are struggling economically. These ‘high-poverty schools’ are charged with educating children who need more supports and services, yet are given inadequate funding, leading to a

¹¹⁸ A New Majority: Low Income Students Now a Majority in the Nation’s Public Schools. Southern Education Foundation (SEF), Research Bulletin January 2015. p. 2. Available at: <http://www.southerneducation.org/getattachment/4ac62e27-5260-47a5-9d02-14896ec3a531/A-New-Majority-2015-Update-Low-Income-Students-Now.aspx>. [Last accessed October 20, 2016]

¹¹⁹ National Center for Education Statistics: National Equity Atlas 2010-2014 Report on School Poverty in the U.S. Available at: http://nationalequityatlas.org/indicators/School_poverty [Last accessed October 20, 2016] [Hereafter cited as *National Equity Atlas: School Poverty*]

growing population of young people of color who are under-prepared to succeed in the workforce.”¹²⁰

Panelist Carol Kilver underscored this reality to the Committee. She stated, “[public] schools need sufficient time and resources to build systems of support that help our families,”¹²¹ because children who are born into poverty disproportionately face socio-emotional, economic, and educational challenges.¹²² For example, Kilver cited a well-known study by psychologists and education researchers Betty Hart and Todd Risley which found that by age three a child of poverty will know approximately one million words, compared with their same age peer growing up in a professional family who will have a vocabulary of approximately five million words.¹²³ Such research suggests that low-income students often start school needing additional and remedial supports. Dr. Cheryl Pruitt, Superintendent of Gary School Corporation testified that “the cost to serve people in underserved communities is different than the cost to fund people in a wealthier community...my children won’t be able to go home to a computer or technology or wireless capabilities to be able to use those tools and those resources that take them if they are in the 10th grade from a second grade level to a 10th grade level.”¹²⁴ She concluded, “we have to look at opportunities that we can give to people and to school districts so that they can put wrap-around services and the tools needed including wireless, et cetera, into the hands of those young people.”¹²⁵ Without such supports to ensure educational achievement and a viable path to career opportunities, children from underserved communities may be more likely to end up in the school to prison pipeline.¹²⁶

In addition to disparities in access to technology and other educational supports, teachers raised concern about the high need to address the impact of trauma on students in their schools. Byron Sanders, Principal of Washington High School in South Bend, said “High rates of absenteeism, lack of parental involvement, trauma associated with poverty all converge on our hallways and in

¹²⁰ *National Equity Atlas: School Poverty*

¹²¹ Kilver Testimony, *February 2016 Transcript*, p. 175 line 21 – p. 176 line 5

¹²² Kilver Testimony, *February 2016 Transcript*, p.172 line 23 – p. 175 line 20

¹²³ Kilver Testimony, *February 2016 Transcript*, p.173, lines 17 - p. 174 line 13. *See also:* Allen testimony, *February 2016 Transcript*, p. 134 lines 5-15; Hart & Risley, *Meaningful Differences in the Everyday Experience of Young American Children*. Brookes Publishing,1995.

¹²⁴ Pruitt Testimony, *February 2016 Transcript*, p. 186 line 15 – p. 187 line 8; p. 220 lines 6-16

¹²⁵ Pruitt Testimony, *February 2016 Transcript*, p. 187 lines 18-22

¹²⁶ Pruitt Testimony, *February 2016 Transcript*, p. 187 lines 9-17

our classrooms.”¹²⁷ Leslie Dillon of the Gary Teachers’ Association described the tragic death of one of her students who was severely emotionally disturbed but could not get the support services he needed to cope.¹²⁸ She described spending 12-13 hours per day teaching, coaching, and taking children home in order to try to support her families in the face of diminishing resources.¹²⁹ Similarly, panelist Sheila Danglade, a sixth grade teacher, described her struggle to support children who experienced severe physical, sexual, and emotional abuse. “Clearly, these kids come to me needing more than reading and math.”¹³⁰ She described a number of resources available at her school for positive behavioral intervention and mental health support, including two full time counselors in the building.¹³¹ Still, she noted, it is not enough. “They are currently treating 75 of our students and there [are] 23 on their waiting list.”¹³² She continued, “with these programs we still have students that need help. The extreme number of students that come in with mental and academic issues can be overwhelming...”¹³³ Fragmented and insufficient supplementary funding supports, high mobility rates, and diversion of public school funds to private and charter schools may further exacerbate the economic challenges, particularly in under-resourced districts.¹³⁴

This intersection of poverty and race may further increase students’ risk of suspension, expulsion, and ultimately juvenile incarceration. Panelist Lisa Thureau, Founder and Executive Director of Strategies for Youth, cited evidence “which found that using exclusionary methods such as presence of law enforcement, use of arrest, drug sniffing dogs, etc. is found primarily in schools that serve youths of color and have low socio-economic status.”¹³⁵ Thureau continued, “this is often motivated by the perception of the need for security which does not correlate with the actual risk and in many ways reflect racial and elitist stereotypes held by teachers, school administrators, and sometimes parents.”¹³⁶ In concurrence, Kenneth Allen, Vice-Chairman of the

¹²⁷ Sanders Testimony, *February 2016 Transcript*, p. 192 lines 6-16

¹²⁸ Dillon Testimony, *February 2016 Transcript*, p. 233 line 6 – p. 234 line 5

¹²⁹ Dillon Testimony, *February 2016 Transcript*, p. 234 lines 13-25; p. 236 lines 7-20

¹³⁰ Danglade Testimony, *February 2016 Transcript*, p. 253 line 8 – p. 254 line 10

¹³¹ Danglade Testimony, *February 2016 Transcript*, p. 254 line 17 – p. 256 line 24

¹³² Danglade Testimony, *February 2016 Transcript*, p. 256 lines 18-24

¹³³ Danglade Testimony, *February 2016 Transcript*, p. 258 line 1 - p. 259 line 2

¹³⁴ Sanders Testimony, *February 2016 Transcript*, p. 189 line 22 – p. 192 line 5; p. 192 line 23 – p. 193 line 13; Pruitt Testimony, *February 2016 Transcript* p. 218 line 7 – p. 219 line 16; p. 220 lines 6-16

¹³⁵ Thureau Testimony, *January 2016 Transcript*, p. 13 lines 9-13

¹³⁶ Thureau Testimony, *January 2016 Transcript*, p. 13, lines 9-13

Indiana Commission on the Social Status of Black Males, articulated the relationship between poverty, low education attainment rates, high suspension/expulsion rates, high unemployment, and high incarceration rates among Black students, particularly males in the state of Indiana. He noted that 72% of black children are considered low income,¹³⁷ approximately 83% of Indiana's black fourth graders score below reading proficiency,¹³⁸ Indiana ranks as one of the 10 worst states in terms of black males' four-year high school graduation rates,¹³⁹ and national suspension and expulsion rates for black males is more than three times the rate of white males.¹⁴⁰

In sum, existing research suggests that poverty disproportionately impacts the physical, social, emotional, and educational needs of low-income students. Students who happen to be born in impoverished neighborhoods often face overwhelming odds regarding positive educational outcomes. They overwhelmingly encounter family disruption,¹⁴¹ attend under-resourced schools, and lack the nutrition necessary to learn in the classroom setting.¹⁴² They are also overwhelmingly children of color.¹⁴³ As Panelist Byron Sanders, testified, "if we don't rethink how we as a society address the needs of the poor through public education, we doom schools like mine to further segregation, dwindling enrollments and failure. Further, when systems of support are not developed and funded for students of public education, we as a society perpetuate the School-to-Prison Pipeline."¹⁴⁴

D. School Policies

1. Zero-tolerance and Exclusionary Discipline

The American Psychological Association defines the term "zero-tolerance" as "a philosophy or policy that mandates the application of predetermined consequences, most often severe and punitive in nature, that are intended to be applied regardless of the gravity of behavior,

¹³⁷ Allen Testimony, *February 2016 Transcript*, p. 134 lines 3-4

¹³⁸ Allen Testimony, *February 2016 Transcript*, p. 134 lines 18-20

¹³⁹ Allen Testimony, *February 2016 Transcript*, p. 131 lines 17-19

¹⁴⁰ Allen Testimony, *February 2016 Transcript*, p. 135 lines 6-10

¹⁴¹ Allen Testimony. *February 2016 Transcript*, p. 133, lines 15-22

¹⁴² Kilver Testimony. *February 2016 Transcript*, p. 174, lines 14-18

¹⁴³ Allen Testimony, *February 2016 Transcript*, p. 134 lines 2-4

¹⁴⁴ Sanders Testimony, February 2016 p. 188 lines 18-24

mitigating circumstances, or situational context.”¹⁴⁵ The popularization of such policies “grew out of state and federal drug enforcement policies in the 1980s,” before being adopted by the public schools in the late 80s and early 90s.¹⁴⁶ A number of recent studies have sought to demonstrate the impact of zero tolerance policies.

In its current investigation of the Baltimore Police department, the U.S. Department of Justice underscored the damaging effects of zero-tolerance policies on community residents, particularly African-Americans. The final 2016 report stressed that the police department’s “pattern of constitutional violations...result in part from BPD’s ‘zero-tolerance enforcement strategy,’ dating to the early 2000s. That strategy prioritized attempts to suppress crime by regularly stopping and searching pedestrians and arresting them on any available charges, including discretionary misdemeanor offenses.”¹⁴⁷ As an ineffective policing strategy, the Department of Justice noted that zero-tolerance has caused the police department to have a “fractured relationship”¹⁴⁸ with certain Baltimore communities: “Some community members believe that the Department operates as if there are ‘two Baltimores’ in which the affluent sections of the City receive better services than its impoverished and minority neighborhoods.”¹⁴⁹

Zero tolerance policies have had a similar effect on the public education system. According to research published in the New York Law School Law Review, by the 1990s many school districts across the country had adopted zero tolerance policies “in response to a widespread perception that school violence was increasing.”¹⁵⁰ In 1994, Congress passed the Gun Free

¹⁴⁵ American Psychological Association Zero Tolerance Task Force: *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*. December 2008. *American Psychologist*, p. 852. Available at: <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf> [Last accessed October 20, 2016] [Hereafter cited as: *Are Zero Tolerance Policies Effective? APA 2008*]

¹⁴⁶ Skiba, Russ & Peterson, Reece. *The Dark Side of Zero Tolerance: Can Punishment Lead to Safe Schools?* Phi Delta Kappa International, Online Article. January 1999, p. 1. Available at: http://curry.virginia.edu/uploads/resourceLibrary/dark_zero_tolerance.pdf [Last accessed October 20, 2016]

¹⁴⁷ U.S. Department of Justice Civil Rights Division: Investigation of the Baltimore City Police Department. August 2016, p. 24 Available at: <https://www.justice.gov/opa/file/883366/download> [Last accessed October 20, 2016] [Hereafter cited as: *U.S. DOJ Baltimore Police Investigation, 2016*]

¹⁴⁸ *U.S. DOJ Baltimore Police Investigation, 2016*, p. 10

¹⁴⁹ *U.S. DOJ Baltimore Police Investigation, 2016*, p. 10

¹⁵⁰ Skiba, Eckes & Brown, African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy. *New York Law School Review* Volume 54 2009-10. P. 1072

Schools Act,¹⁵¹ requiring each state that receives federal funds to expel students who possess a firearm on school grounds for at least one year.¹⁵² However, soon after the Act was passed, “schools began to apply zero tolerance policies for violations other than firearms possession, including...behaviors that fall loosely under the category of school disruption...for example, willful disobedience, persistent defiance of authority or the destruction or defacement of school property.”¹⁵³ The underlying assumption in the rise of zero tolerance was that removing students who engaged in any form of disruptive behavior would deter other students from disruption, thereby leading to a more positive school culture and climate for those students who remain.¹⁵⁴ Unfortunately, as Dr. Skiba mentioned during his testimony, research suggests that suspension and expulsion achieve the exact opposite effect, “Studies have found that schools with higher rates of suspension and expulsion have a poorer school climate with less holding capability for students.”¹⁵⁵ A 2008 report released by the American Psychological Association on the effectiveness of zero tolerance policies in schools revealed that, “rather than reducing the likelihood of disruption, school suspension in general appears to predict higher future rates of misbehavior and suspension among those students who are suspended.”¹⁵⁶

In addition to its failure to improve school climate and correct negative student behaviors, Skiba’s research suggests that a zero tolerance approach to school discipline has “raised civil rights concerns due to strong and consistent evidence that students of color are over-represented among those who are disciplined. A number of authors have argued that the increased use of zero tolerance is directly responsible for increasing racial and ethnic disparities in school discipline.”¹⁵⁷ As JauNae Hanger, of the Children’s Policy and Law Initiative of Indiana testified, this is largely due to the fact that zero tolerance policies encourage the use of suspensions and expulsions for “defiance, attendance, and other very discretionary and subjective type disciplinary actions.”¹⁵⁸ In 2012, U.S. Senator Dick Durbin (D-IL), Chairman of

Available at: <http://www.indiana.edu/~equity/docs/Skiba%20et%20al%2054%204.pdf> [Last accessed October 20, 2016] [Hereafter cited as: *Skiba et. al, African American Disproportionality*]

¹⁵¹ 20 U.S.C. §8921 (2000) (repealed 2002)

¹⁵² *Skiba et. al, African American Disproportionality*, p. 1083

¹⁵³ *Skiba et. al, African American Disproportionality*, pp. 1083-1084

¹⁵⁴ *Are Zero Tolerance Policies Effective? APA 2008*, p. 852.

¹⁵⁵ Skiba Testimony. *February 2016 Transcript*. p. 13 line 24 – p. 14 line 6

¹⁵⁶ *Are Zero Tolerance Policies Effective? APA 2008*, p. 854.

¹⁵⁷ *Skiba et. al, African American Disproportionality*, p. 1074.

¹⁵⁸ Hanger Testimony, *February 2016 Transcript*, p. 89, lines 13-19

the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, declared during a hearing held a hearing on the school-to-prison pipeline:

For many young people, our schools are increasingly a gateway to the criminal justice system. This phenomenon is a consequence of a culture of zero tolerance that is widespread in our schools and is depriving many children of their fundamental right to an education. The current system puts kids on a path into the adult justice system for minor infractions.¹⁵⁹

Durbin urged reforms to “better discipline our students without forcing them out of the classroom and into a courtroom.”¹⁶⁰ The hearing was the first-ever Congressional inquiry into the school-to-prison pipeline. Four years later, during the present Indiana Committee inquiry, testimony again suggested that exclusionary forms of school discipline, such as out-of-school suspension and expulsion, lead to short and long-term negative outcomes such as an increase in juvenile detention and youth involvement in the criminal justice system.

2. *Suspension and Expulsion*

In addition to demonstrating a negative impact on school culture in general, research suggests that as a part of zero tolerance policies, suspension and expulsion specifically are directly related to future disciplinary exclusion: “...disciplinary removal appears to have *negative* effects on future student behavior; students suspended in elementary school are *more* likely to receive office referrals or suspensions in secondary schools.”¹⁶¹ During testimony Dr. Skiba articulated the linkage between the racially disproportionate discipline patterns in education and the creation of what is deemed the “school-to-prison pipeline:

Students who are suspended are more likely to become academically disengaged, and there is emerging data that schools that suspend more students have lower scores on accountability tests and achievement tests. Those things obviously are more likely to lead to higher rates of dropouts and the Justice Center, [and] the Council of State Governments found that students who were suspended are five times more likely to drop out of school, even accounting for other demographic variables....students who are suspended/expelled are, in fact, more likely to be in contact with the juvenile justice system...Altogether, this research says that suspension and expulsion is in fact a risk factor in its own right for involvement in a variety of short- and long-term [negative] outcomes.¹⁶²

¹⁵⁹ Dick Durbin United States Senator Illinois: Press Releases. *Durbin Holds Hearing on Ending the School to Prison Pipeline*. December 12, 2012. Available at: <http://www.durbin.senate.gov/newsroom/press-releases/durbin-holds-hearing-on-ending-the-school-to-prison-pipeline> [last accessed October 20, 2016] [Hereafter cited as *Durbin Press Release 2012*]

¹⁶⁰ *Durbin Press Release 2012*

¹⁶¹ Skiba et. al, *African American Disproportionality*, p. 1077

¹⁶² Skiba Testimony. *February 2016 Transcript*, p. 14 line 3 – p. 15 line 1

Barbara Bolling-Williams, State President for the Indiana NAACP Indiana State Conference, noted such disparities in suspension and expulsion rates emerge as early as preschool. She said, “What else are they but babies? Black children represent 18% of the preschool population yet they represent 48% of the babies receiving more than one out of school suspension.”¹⁶³ According to panelists, one reason why exclusionary discipline is so highly correlated with the juvenile justice system is because of the damaging impact that it has on the psychological well-being of students of color, particularly African American males. Dr. Skiba noted, “As suspensions pile up students begin to...lose their identification with school and schooling and peers who are succeeding in school, and see that anti-social groups on the street become a source of identification...which becomes a direct route to contact with the juvenile justice system.”¹⁶⁴ Dr. Marvin Lynn proposed solutions for the state of Indiana during testimony. He stated there is a need for educators to “work with the legislature at the state level to create a policy environment that’s more supportive of schools in a broad sense, but that looks in particular at how we can create school climates that enhance and support the development of African-American males.”¹⁶⁵

3. *Non-traditional Education and the Pipeline*

Along with out-of-school suspension and expulsion, the Committee heard testimony about a number of alternative forms of education which may have the effect of alienating children from school. These include alternative education provided in juvenile detention facilities, alternative disciplinary schools, and inadequately supervised or supported homeschooling. While these options may provide alternative education for students who struggle academically and behaviorally in traditional schools, several panelists expressed concern about how they may feed the school-to-prison pipeline.

Juvenile Detention. Susan Lockwood, the Director of Juvenile Education for the Indiana Department of Corrections (IDOC), gave testimony regarding the impact of exclusionary discipline policies on her work with youth receiving educational services while serving time in juvenile detention. Lockwood stated that the juveniles in her care are severely behind academically and “many of them haven’t been in school, they have dropped out of school.”¹⁶⁶ She added, “...we do our best to try to help them catch-up, but we can’t make up all of those years of not being engaged in school, or when they come to us behind, we do what we can to try

¹⁶³ Bolling-Williams Testimony, *January 2016 Transcript*, p. 7 lines 16-26

¹⁶⁴ Skiba Testimony, *February 2016 Transcript*, p. 47 line 24 – p. 48 line 7

¹⁶⁵ Lynn Testimony, *February 2016 Transcript*, p. 44, lines 10-15

¹⁶⁶ Lockwood Testimony, *February 2016 Transcript*, p.138, lines 3-9

to help them catch up, but we can't totally close that gap.”¹⁶⁷ The grim educational prospects for youth who end up in juvenile detention centers was also reflected in the testimony of Patricia Howey, a special education advocate, who noted, “...once a child is in [the school-to-prison]-pipeline, they rarely come out of it again. Once they are in the juvenile delinquency procedure, they are in that pretty much until they are adults.”¹⁶⁸

Alternative Schools. Sheila Huff, a Principal and longtime educator in Evansville, IN, gave testimony to the Committee which highlighted the nature of alternative disciplinary schools in the state. Ms. Huff noted the importance of alternative schools for some students; for example, those with behavioral or academic challenges, or those struggling with truancy or pregnancy, “we encourage that they possibly look at going to the alternative school to give them the opportunity to graduate because we recognize if they stayed in our traditional school they would not end up graduating.”¹⁶⁹ However, Ms. Huff acknowledged that while alternative schools can be a good option for some students, it may not meet the needs of others.¹⁷⁰ Huff noted that the corporation, and the state, has “some work to do” with regard to ensuring educational opportunities in alternative schools that are on par with traditional schools.¹⁷¹

Homeschooling. Homeschooling may also serve as an effective alternative education strategy for youth facing difficulty in the traditional school setting. However, the Committee heard testimony indicating concern about the lack of a homeschooling statute in the State of Indiana.¹⁷² Some testimony suggested that this lack of regulation may incentivize principals to inappropriately offer homeschooling as an “alternative” to expulsion—in order to lower the number of expulsions recorded on their school’s records.¹⁷³ Diana Daniels, the Executive Director of the National Council on Educating Black Children, cited a number of interviews with three Indiana principals who disclosed instances where they had met with the parents of struggling children and recommended that they transfer into homeschooling or risk expulsion.¹⁷⁴ After a student transfer to “homeschool” however, Ms. Daniels noted that there is currently no way to verify

¹⁶⁷ Lockwood Testimony. *February 2016 Transcript*, p. 138, lines 9-14

¹⁶⁸ Howey Testimony, *February 2016 Transcript*, p. 68, lines 21-24

¹⁶⁹ Huff Testimony, *February 2016 Transcript*, p. 210, lines 1-23

¹⁷⁰ Huff Testimony, *February 2016 Transcript*, p. 210 line 24 – p. 211, line 5

¹⁷¹ Huff Testimony, *February 2016 Transcript*, p. 210 line 24 – p. 211, line 5

¹⁷² Daniels Testimony *February 2016 Transcript*, p. 79 line 18 – p. 80 line 2

¹⁷³ Daniels Testimony *February 2016 Transcript*, p. 80 line 3 – p. 84 line 4

¹⁷⁴ Daniels Testimony *February 2016 Transcript*, p. 80, line 3 - p. 81 line 16; p. 93, line 21 - p. 94 line 15; p. 96 line 17 – p. 97 line 10

whether or not these children are receiving equivalent education.¹⁷⁵ Ms. Daniels raised concern that in many cases, the child may not receive adequate education or supervision at home, and thus may instead end up in the streets.¹⁷⁶ Ann Wilkins, the Uniserv Director for the Indiana State Teachers Association, gave testimony stating that “suspended and expelled children are often left unsupervised and without constructive activities while they are out of school.”¹⁷⁷ These children are much more likely to get into legal trouble, and are “easily targeted and put into the juvenile system.”¹⁷⁸ Daniels suggested that an investigation be done to find out how pervasive the practice of documenting student expulsions as “transfers” to “homeschool” in order to avoid a record of expulsion, without verifying the parent’s capacity for supervision and educational support at home.¹⁷⁹ She also recommended training for parents of homeschool transfer children to help them understand their role and responsibility when they agree to homeschool their child.¹⁸⁰

In response to this testimony, the Committee received a number of written statements from various homeschool advocates. In a statement submitted on behalf of the Indiana Association of Home Educators, Ms. Debi Ketron wrote, “we reject the notion that government involvement in home education is beneficial to families. Home education must be a family decision without coercion from a governmental entity such as a public school”¹⁸¹ Staff Attorney Thomas Schmidt of the Homeschooling Legal Defense Association (HSLDA) noted that Indiana parents who do not send their children to public school are required to provide their children with “the instructional equivalent to that given in the public schools”¹⁸² from the age of seven until the child either graduates or reaches eighteen years of age. However, Mr. Schmidt also noted that the Indiana legislature has removed “all authority of the State Board of Education or the local school districts to define ‘equivalent education’ or to regulate it beyond that which is specifically

¹⁷⁵ Daniels Testimony *February 2016 Transcript*, p. 93, line 21 - p. 94 line 15

¹⁷⁶ Daniels Testimony *February 2016 Transcript*, p. 93, line 21 - p. 94 line 15; p. 98 line 5 – p. 99 line 1

¹⁷⁷ Wilkins Testimony. *February 2016 Transcript*, p. 229, lines 18-21

¹⁷⁸ Wilkins Testimony. *February 2016 Transcript*, p. 229, lines 22-24

¹⁷⁹ Daniels Testimony *February 2016 Transcript*, p. 83, lines 10-20

¹⁸⁰ Daniels Testimony *February 2016 Transcript*, p. 83, lines 10-20

¹⁸¹ Ketron *Written Testimony*, October 3, 2016, Indiana Association of Home Educators, Appendix B.4

¹⁸² Schmidt *Written Testimony*, Home School Legal Defense Association Written testimony, Appendix B.5; Indiana Code §20-33-2-28

authorized by statute.”¹⁸³ Upon the request of the superintendent, parents overseeing the home education of their children are required only to report the days of attendance of “each child who is subject to compulsory education” and the grade-level of each child in the homeschool.¹⁸⁴ Mr. Schmidt noted, “the intent of the legislature is that children in nonpublic schools be educated in an equivalent manner but that they have the freedom to use the curriculum that best suits the needs of their school. In the case of homeschool programs, the curriculum can be tailored to the needs of each individual student within the home.” Ms. Ketron testified that “if current law was enforced, it would prevent the issues with the School to Prison Pipeline as it relates to home education.”¹⁸⁵

Additional testimony from other homeschool advocates expressed strong support for homeschooling as an appropriate and positive alternative to traditional education for some children. Mr. Augustus Tucker, President of the National Black Home Educators, cited research to suggest that controlling for gender and family socioeconomic status, Black homeschool students do better than their public school counterparts in reading, language, and math.¹⁸⁶ Still, as Ms. Ketron noted in her written statement, “home education works because the parents take responsibility for their children’s education.”¹⁸⁷ As such, the concern that some traditional school principals may be offering homeschooling as an alternative to expulsion for students whose parents are unable to provide equivalent supervision and instruction at home remains problematic. Alison Slatter of the Indiana Association of Home Educators Action wrote, “[homeschooling] is not suitable for parents with out of control children who are being coerced by the government school system into homeschooling.”¹⁸⁸

¹⁸³ Schmidt *Written Testimony*, Home School Legal Defense Association Written testimony, Appendix B.5; Indiana Code § 20-33-2-12(a)

¹⁸⁴ Indiana Code §20-33-2-21(b); §20-33-2-20(c); see HSLDA written testimony Appendix B.5

¹⁸⁵ Ketron *Written Testimony*, October 3, 2016, Indiana Association of Home Educators, Appendix B.4

¹⁸⁶ Tucker *Written Testimony*, National Black Home Educators (NBHE) Appendix B.6

¹⁸⁷ Ketron *Written Testimony*, October 3, 2016, Indiana Association of Home Educators, Appendix B.4

¹⁸⁸ Slatter *Written Testimony*, October 13, 2016, Indiana Association of Home Educators, Appendix B.7

4. Police Presence in Schools

In tandem with the advent of zero tolerance policies in schools, the School Resource Officer (SRO) program gained prominence in the 1990s in response to various school shootings.¹⁸⁹ According to the U.S. Department of Education, Office of Civil Rights data, students of color and students with disabilities are more likely to receive referrals to police officers in school, and to be arrested in school than their counterparts.¹⁹⁰ During testimony panelist Lisa Thureau spoke of her experience interviewing students, educators, and school police. She noted, “The introduction of police into public schools can sometimes represent a risk factor for youth of color, instead of a protective factor.”¹⁹¹ Thureau spoke extensively about the impact of the SRO program on exclusionary discipline policies, the school-to-prison pipeline, and their disparate impact on “youth of color, poor youth, and youth with special needs.”¹⁹² Thureau suggested that officers often “presume defiance with youths of color and use that presumption to justify arrest.”¹⁹³ Thureau’s primary concern was that the presence of SROs may threaten the rights of “youth protected by the Civil Rights Act, the Equal Education Opportunities Act, and the Americans with Disabilities Act.”¹⁹⁴ Thureau described school arrest as “the great interrupter [because] it doubles the likelihood that youth will drop out of school.”¹⁹⁵ The impact of bias and the intersection of race, sex, disability and socio-economic status help explain the disparities in school referrals to SROs and ultimately school arrests. Thureau cited research to suggest that police officers often presume defiance and assume that youth of color are 4-5 years older than they are.¹⁹⁶ Such biases may result in officer’s failure to recognize a child’s need for protection,

¹⁸⁹ Weiler, Spencer and Cray, Martha. *Police at School: A Brief History and Current Status of School Resource Officers*. The Clearing House: A Journal Of Educational Strategies, Issues And Ideas Vol. 84 , Iss. 4, 2011. Available at: <http://eric.ed.gov/?id=EJ925632> [last accessed October 20, 2016]

¹⁹⁰ U.S. DOE Data Snapshot: *School Discipline 2014*, p. 1: “While black students represent 16% of student enrollment, they represent 27% of students referred to law enforcement and 31% of students subjected to a school-related arrest. In comparison, white students represent 51% of enrollment, 41% of students referred to law enforcement, and 39% of those arrested. Students with disabilities (served by IDEA) represent a quarter of students arrested and referred to law enforcement, even though they are only 12% of the overall student population.”

¹⁹¹ Thureau Testimony, *January 2016 Transcript*, p. 12, lines 26-39

¹⁹² Thureau Testimony, *January 2016 Transcript*, p. 12, lines 22-28

¹⁹³ Thureau Testimony, *January 2016 Transcript*, p. 15, lines 8-11

¹⁹⁴ Thureau Testimony, *January 2016 Transcript*, p. 12, lines 29-31

¹⁹⁵ Thureau Testimony, *January 2016 Transcript*, p. 12 lines 31-35

¹⁹⁶ Thureau Testimony, *January 2016 Transcript*, p. 15 lines 9-12

and the “distress that comes with trauma, fear, and living in a manner that leads to chronic exposure to trauma.”¹⁹⁷ In order to address this crucial segment of the school-to-prison pipeline, Thureau suggested that SRO roles be “clarified and delineated”,¹⁹⁸ in conjunction with “strong accountability systems” to ensure protection of student’s civil rights.¹⁹⁹

Similarly, Garry School Corporation Superintendent Dr. Cheryl Pruitt testified that “police are trained to take down, so it is important that they have that training in how to communicate and relate to individuals in a school.”²⁰⁰ She gave the example of a student who was “harassed” by a school resource officer for violating the school’s no-cell-phone policy, without knowing that the child had just found out her father had just been killed.²⁰¹ She noted that her district recently made the decision to release their police force.²⁰² All officers were required to re-apply for their jobs, “and they all had to go through restorative justice training as well as safety security officer training and SRO training”²⁰³ She continued, “Sometimes police officers can be very, very helpful if they understand the relationships because our students come to school with a lot of issues and concerns and sometimes you can know what’s going on in the community and you don’t have to attack the child.”²⁰⁴ In Gary, all school staff, including school resource officers, receive restorative justice training, and are trained to understand culturally relevant pedagogy in order to improve these important relationships.²⁰⁵

5. *High-Stakes Testing*

During testimony panelist Carol Craig, an educational consultant and Chair of the Advisory Committee for the Children’s Policy and Law Initiative, suggested several recommendations to address the school-to-prison pipeline in Indiana.²⁰⁶ Among them was a recommendation to “examine the school accountability system for Indiana,” as Craig noted that there is an “over-

¹⁹⁷ Thureau Testimony, *January 2016 Transcript*, p. 15, lines 6-14

¹⁹⁸ Thureau Testimony, *January 2016 Transcript*, p. 14 lines 13-21

¹⁹⁹ Thureau Testimony, *January 2016 Transcript*, p. 15 line 35 - p. 16 line 5

²⁰⁰ Pruitt Testimony, *February 2016 Transcript*, p. 207 lines 6-10

²⁰¹ Pruitt Testimony, *February 2016 Transcript*, p. 205 line 25 – p. 206 line 17

²⁰² Pruitt Testimony, *February 2016 Transcript*, p. 205 lines 13-18

²⁰³ Pruitt Testimony, *February 2016 Transcript*, p. 205 lines 13-18

²⁰⁴ Pruitt Testimony, *February 2016 Transcript*, p. 205 lines 19-25

²⁰⁵ Pruitt Testimony, *February 2016 Transcript*, p. 206 lines 11- 17; p. 213 lines 1-21

²⁰⁶ Craig Testimony, *February 2016 Transcript*, p. 292 line 13,- p. 295 line 1

emphasis on testing.”²⁰⁷ Panelist Carol Kilver agreed, commenting that the state of Indiana has an “unnatural focus on standardized testing.”²⁰⁸ Both statements represented a consensus among many panelists: high stakes testing contributes to the school-to-prison pipeline phenomenon in that it inhibits genuine teacher-student relationships, diverts attention and resources away from students’ social-emotional needs, and may negatively impact school discipline procedures.²⁰⁹ School Principal Byron Sanders testified, “These accountability requirements shift our thinking away from what is in the best interest of students to what is necessary to meet high stakes accountability requirements and avoid state takeover.”²¹⁰ He continued, “we relegate our time and our energy not on addressing the trauma that plagues our students and interferes with their learning or on the institutional practices that better engage at-risk students but on next-step action plans designed to improve our performance on those high stakes tests.”²¹¹

According to the Indiana Department of Education, the purpose of Statewide Testing for Educational Progress (ISTEP) “is to measure student achievement in the subject areas of English/Language Arts, Mathematics, Science, and Social Studies,” (3rd through 8th graders as well as 10th Graders).²¹² However, some panelists concluded that too much classroom time is being spent on test preparation, and not on relationship-building and education.²¹³ Furthermore, high school teacher Nicole Garcia raised concern that the curriculum teachers are most often provided are “Eurocentric, standardized, and are often irrelevant to our students.”²¹⁴ She continued, “as a result, many of us spend hours writing grants so that we can buy the materials we need to engage our students.”²¹⁵ She suggested that teachers need “more time to spend on character education, conflict resolution, and relationship building without feeling like we are not

²⁰⁷ Craig Testimony, *February 2016 Transcript*, p. 293, lines 13-17

²⁰⁸ Kilver Testimony. *February 2016 Transcript*, p. 176, lines 6-7

²⁰⁹ Kilver Testimony. *February 2016 Transcript*, p. 176, lines 6-18; Jackson Testimony. *February 2016 Transcript*, p. 201, lines 1-13; Wilkins Testimony. *February 2016 Transcript*, p. 232, lines 2-10; Garcia Testimony. *February 2016 Transcript*, p. 240, lines 17-25; Pier-Silver Testimony. *February 2016 Transcript*, p. 250, line 19 – p. 251 line 12; Craig Testimony. *February 2016 Transcript*, p. 293, lines 10-21

²¹⁰ Sanders Testimony, *February 2016 Transcript*, p. 189 lines 3-21

²¹¹ Sanders Testimony, *February 2016 Transcript*, p. 189 lines 3-21

²¹² Indiana Department of Education: ISTEP + Grades 3-8. *Purpose*. Available at: <http://www.doe.in.gov/assessment/istep-grades-3-8> [last accessed October 20, 2016]

²¹³ Wilkins Testimony, *February 2016 Transcript*, p. 232, lines 3-6

²¹⁴ Garcia Testimony. *February 2016 Transcript*, p. 241, lines 12-16

²¹⁵ Garcia Testimony. *February 2016 Transcript*, p. 241, lines 5 - 21

going to prepare our students to pass a myriad of assessments over the course of the year, including the ISTEP.”²¹⁶

Panelist Colin Pier-Silver, the Title 1 ELA instructional coach at Navarre Intermediate Center, highlighted the importance of districts and schools developing systems of support for teachers and students. According to Pier-Silver an over-emphasis on high stakes testing shifts the school’s focus away from “teaching children”—which encompasses genuine relationship-building—to “teaching curriculum,” which creates a high-pressured environment for teachers, students, and school administrators.²¹⁷ Ann Wilkins of the Indiana State Teachers Association articulated the link between high stakes testing and school discipline. She said, “We have way too much emphasis on testing leaving teachers to miss out on too many teachable moments. These moments are what keep our students engaged in classes with fewer discipline issues.”²¹⁸

E. Alternative Policies and Solutions

1. Implicit Bias Training, Cultural Competency, and Teacher Diversity

A number of panelists offered general recommendations, alternative school policies and discipline strategies that could address the school-to-prison pipeline in the state of Indiana. Panelist JauNae Hanger recommended more regulation around the use of suspensions/expulsions because, as noted in a previous section of the report, many schools suspend students for fairly subjective reasons, such as “defiance.”²¹⁹ Dr. Subini Annamma noted that such arbitrary implementation of exclusionary discipline reflects racial implicit bias because students of color are often disproportionately impacted. She stated, “We know that the disproportionate racial bias begins in the classroom. It doesn’t begin with the officers, it doesn’t begin with administrators, it begins in the classroom. The teachers have to be trained better, first of all, to recognize their own implicit bias and who they find disruptive to begin with and who they tolerate in the classroom. They also have to be equipped with how to build relationships.”²²⁰

Dr. Marvin Lynn noted that implicit and explicit racial bias in the classroom is a critical issue, “There is a real lack of cultural competence on the part of the average teacher...this is true for

²¹⁶ Garcia Testimony. *February 2016 Transcript*, p. 241, lines 17-25

²¹⁷ Pier-Silver Testimony. *February 2016 Transcript*, p. 251 line 2 – p. 252 line 4

²¹⁸ Wilkins Testimony. *February 2016 Transcript*, p. 232, lines 3-6

²¹⁹ Hanger Testimony, *February 2016 Transcript*, p. 89, lines 12-20

²²⁰ Annamma Testimony, *January 2016 Transcript*, p. 18, lines 16-21

white teachers as well as African American teachers...there is a real gap there in understanding and knowledge about how we really work with African American males effectively.”²²¹ According to a review published by the Charles Hamilton Houston Institute for Race and Justice of Harvard Law School, “Implicit bias research opens up a new avenue for interventions by helping us to better understand—and address—the split-second decision-making and judgments that can determine a student’s future trajectory.”²²² For Dr. Lynn, Dr. Annamma, and other panelists, implicit-bias and cultural-sensitivity training for teachers, as well as school staff/administrators, is a vital intervention that could increase teachers’ cultural competency, enhance school climate, and confront the root-cause of the school-to-prison pipeline: racial bias.

Dr. Lynn not only recommended cultural competency training for teachers, but also the hiring of more teachers of color, particularly Black males. He noted that the “diminishing presence of African American male teachers [likely] exacerbates the problem” of racial bias and exclusionary discipline.²²³ A recent study co-authored by political science Professor Don Haider-Markel, at the University of Kansas, provides empirical support for this recommendation. According to the study, “Increasing the proportion of minority teachers in a school enhances all students’ perceptions of school discipline fairness.”²²⁴ Also, a 2014 study on discipline disparities cited the need for cultural diversity among teachers to reflect the “rapidly increasing diversity in our nation’s student population.”²²⁵ The researchers concluded, “Unless pervasive negative stereotypes are explicitly engaged and challenged, educators can carry common stereotypes with them into schools.”²²⁶

Although implicit-bias training and cultural diversity among teachers and school staff could effectively address race bias and its impact on exclusionary discipline, the school-to-prison pipeline remains “a large social issue that demands a comprehensive response crossing over a myriad of systems (education, juvenile justice, foster care, housing, health care, job creating) and that requires legal, legislative, practice, and policy reforms aimed at structures, institutions, and

²²¹ Lynn Testimony, *February 2016 Transcript*, p. 41, lines 17-25

²²² Wald, *De-Biasing Strategies*, 2014, p.7

²²³ Lynn Testimony, *February 2016 Transcript*, p. 41, lines 22-24

²²⁴ Diepenbrock, George. *Hiring more minority teachers in schools gives fairer perception of discipline*. The University of Kansas Press. Sept. 1, 2015 Available at: <https://news.ku.edu/2015/08/24/hiring-more-minority-teachers-schools-gives-fairer-perception-discipline>. [Last accessed October 20, 2016]

²²⁵ *Discipline Disparities: Acknowledging Race*, p. 3-4.

²²⁶ *Discipline Disparities: Acknowledging Race*, p. 3-4.

individuals.”²²⁷ As such, research indicates that “new strategies for reducing [implicit bias] effects may serve as a valuable compliment to—not replacement of—ongoing efforts to dismantle the pipeline in all of these other domains.”²²⁸

2. Other School Resources and Supports

Melissa Keyes, the legal director for the Indiana Protection Advocacy Services, proposed more supports and resources for educators. Keyes stated “Indiana schools are not prepared to handle the great variability in children’s educational, social, and behavioral needs. Teachers need more support, everyone needs more resources, and there needs to be more options for community based treatment and wrap-around services.”²²⁹ Similarly, JauNae Hanger of the Children’s Policy and Law Initiative of Indiana proposed more funding for classroom management and alternatives to exclusionary discipline.²³⁰ Student service personnel, such as school counselors, social workers, and psychologist are essential because, as Hanger noted, “the actual number of these personnel in our schools are way under what is recommended at the national level.”²³¹ Julie Smart, the State Coordinator at the McKinney-Vento Homeless Education Program for the Indiana Department of Education, also commented that more student service personnel are needed in schools in order to provide prevention and intervention resources when needed.²³² Smart’s testimony called for district and school enforcement of the 1:250 student-to-counselor ratio currently mandated by the Illinois General Assembly.²³³

3. Restorative Justice Intervention and Positive Behavioral & Social-Emotional Supports

Researchers have defined restorative justice as “‘a process of bringing together the individuals who have been affected by an offense and having them agree on how to repair the harm caused by the crime,’ with the goal of restoring victims, offenders, and communities in a way that all

²²⁷ Wald, *De-Biasing Strategies*, 2014, p.7

²²⁸ Wald, *De-Biasing Strategies*, 2014, p.7

²²⁹ Keyes Testimony, *February 2016 Transcript*, p.129, lines 16-21

²³⁰ Hanger Testimony, *February 2016 Transcript*, p. 89 line 25 – p. 90, line 7

²³¹ Hanger Testimony, *February 2016 Transcript*, p. 90 lines 8-18

²³² Smart Testimony, *February 2016 Transcript*, p. 147, lines 8-20

²³³ Smart Testimony, *February 2016 Transcript*, p. 156, lines 15-25

stakeholders agree is just.”²³⁴ Restorative justice is often defined in opposition to the punitive, justice model, “which is designed to establish the culpability of the offender and to exact an appropriate punishment.”²³⁵ Whereas zero tolerance stresses retribution and punishment, restorative justice stresses rehabilitation and restoration.²³⁶ Dr. Annamma suggested that schools and districts reframe their philosophical approach to discipline to reflect a restorative model and “recognize that discipline is an opportunity for learning instead of discipline is an opportunity for punishment and exclusion of our most vulnerable students.”²³⁷ Hanger agreed, recommending the restorative approach as an intervention to exclusionary school discipline. She noted that state has “amended the authorization of the Indiana Safety Fund...to authorize social emotional learning strategies as opposed to just security measures.”²³⁸ Similarly, Dr. Monica Solinas-Saunders, Assistant Professor at the School of Public and Environmental Affairs at Indiana University-Northwest, cited Minnesota and Colorado as model states that had successfully implemented restorative justice models. She proposed that the state of Indiana follow-suit, “piloting projects in our districts and see if these programs might solve part of the [school-to-prison pipeline] problem that we are seeing in the State of Indiana.”²³⁹ She noted that through the implementation of restorative justice, the State of Minnesota reduced expulsions by 63 percent.²⁴⁰

Positive Behavioral Intervention and Support (PBIS) programs were also mentioned by panelists as a viable alternative to exclusionary discipline policies. According to the National Educational Association (NEA), “(PBIS) is a general term that refers to positive behavioral interventions and systems used to achieve important behavior changes...PBIS improves the social culture and the

²³⁴ John Braithwaite, *A Future Where Punishment is Marginalized: Realistic or Utopian?*, 46 UCLS L.REV. 1727,1743(1999). As cited in: Sun Beale, Sara. *Still Tough on Crime? Prospects for Restorative Justice in the United States*, 2003 Utah Law Review 413-437 (2003) p. 418. Available at: http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1631&context=faculty_scholarship [last accessed October 20, 2016] [hereafter cited as: *Prospects for Restorative Justice*, 2003]

²³⁵ *Prospects for Restorative Justice*, 2003, p. 418.

²³⁶ *Prospects for Restorative Justice*, 2003, p. 418.

²³⁷ Annamma Testimony, *January 2016 Transcript*, p. 11 lines 36-37

²³⁸ Hanger Testimony, *February 2016 Transcript*, p. 91lines 6-9

²³⁹ Solinas-Saunders Testimony. *February 2016 Transcript*, p. 24, line 21 – p. 25 line 2

²⁴⁰ Solinas-Saunders Testimony. *February 2016 Transcript*, p. 25 lines 3-9

behavioral climate of classrooms and schools which ultimately lead to enhanced academic performance.”²⁴¹

Panelist Colin Pier-Silver noted, “In 2014, SBCSC²⁴² revised its code of conduct and office discipline referral and began to use the Positive Behavior Interventions and Supports known as PBIS.”²⁴³ Pier-Silver noted that the goal of their student code of conduct is “getting to the root of why a student misbehaves and guiding them to make better choices as well as preventing their misbehavior.”²⁴⁴ Similarly, Cynthia Jackson talked about the Indianapolis Public Schools undertook to review their discipline practices and policies.²⁴⁵ Jackson stated, “Our students have been trained that if you make an error, suspension is usually the option...and we have teachers who have been teaching for a while who were growing up in the area of exclusion, so changing their hearts and minds is going to take a little while but it is not going to just be activity with parents, it is students and teachers.”²⁴⁶ Panelist Ann Wilkins of the Indiana State Teachers Association cautioned that “the professional development on [PBIS] has been limited and therefore administrators and teachers are not able to implement it properly.”²⁴⁷ She noted however that “with proper implementation, we can begin to make positive changes.”²⁴⁸

4. Economic Investment and Prioritization

The Committee recognizes that instituting additional training and supports for students, families, and staff in schools—particularly in under-resourced communities—is a financial challenge in today’s political and economic context. However, the Committee finds it important to note that policies that needlessly funnel youth into the criminal justice system impose significant immediate and long-term costs on residents of the State. The Justice Policy Institute reported in a recent study that Indiana taxpayers pay \$212.13 per day, or \$77,427.00 per year, to confine a

²⁴¹ National Educational Association (NEA) NEA Education Policy and Practice Department. Positive Behavioral Interventions and Supports: A multi-tiered Framework that Works for Every Student *An NEA Policy Brief*, 2014. P.1. Available at: https://www.nea.org/assets/docs/PB41A-Positive_Behavioral_Interventions-Final.pdf [last accessed October 20, 2016]

²⁴² South Bend Community School Corporation

²⁴³ Pier-Silver Testimony, *February 2016 Transcript*, p. 245, lines 17-22

²⁴⁴ Pier-Silver Testimony, *February 2016 Transcript*, p. 245, line 23 – p. 246 line 7

²⁴⁵ Jackson Testimony, *February 2016 Transcript*, p. 196, lines 5-13

²⁴⁶ Jackson Testimony, *February 2016 Transcript*, p. 198 line 17 – p. 199 line 10

²⁴⁷ Wilkins Testimony, *February 2016 Transcript*, p. 231, lines 18-21

²⁴⁸ Wilkins Testimony, *February 2016 Transcript*, p. 231, lines 21-25

single young person.²⁴⁹ This is more than what it would cost to pay tuition, fees, room and board at Harvard, Perdue, IU, Notre Dame, for a full year.²⁵⁰ The direct and immediate costs paid for confinement pale in comparison to the long-term costs that arise as a result of the confinement. There are at least five additional long-term costs that should be considered.

1. Costs of recidivism.

Several studies show there is a strong positive relationship between youth incarceration and recidivism.²⁵¹ A report published in the Journal of Qualitative Criminology found that youth who were incarcerated as a juvenile were roughly 20% more likely to commit additional crimes than youth who were arrested but not incarcerated.²⁵² Similarly, “a report by Youth Advocate Programs found that more than eight out of 10 youth in an alternative-to-incarceration program remained arrest free, and nine out of 10 were at home after completing their community-based program, at a fraction of what it would cost to confine these youth.”²⁵³ The Justice Policy Institute’s economic analysis found that the cost of recidivism in the United States could be as high as \$7 billion per year, factoring in the costs to individuals who have been harmed by the additional crime, and the costs of further arrests, prosecution, court proceedings and confinement.²⁵⁴

2. Lost future earnings of confined youth

Studies show that children embroiled in the criminal justice system are less likely to graduate from high school.²⁵⁵ Individuals who do not graduate from high school earn less than those who

²⁴⁹ *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, Justice Policy Institute, 11 (Dec. 2014). Available at: http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf. [Last accessed October 20, 2016] [Hereafter cited as: *Sticker Shock*, 2014]

²⁵⁰ Harvard University, Harvard College Griffin Financial Aid Office, Cost of Attendance: <https://college.harvard.edu/financial-aid/how-aid-works/cost-attendance>; Perdu University Undergraduate Admissions: Tuition and Fees: <http://www.admissions.purdue.edu/costsandfinaid/tuitionfees.php>; Indiana University Office of Admissions: <https://admissions.indiana.edu/cost-financial-aid/tuition-fees.html>; University of Notre Dame Undergraduate Admissions: <http://admissions.nd.edu/discover/cost-financial-aid/>. [last accessed October 20, 2016]

²⁵¹ *Sticker Shock*, 2014, p. 22

²⁵² *Sticker Shock*, 2014, p. 21

²⁵³ *Sticker Shock*, 2014, p. 7

²⁵⁴ *Sticker Shock*, 2014, p. 26

²⁵⁵ *Sticker Shock*, 2014, p. 28

did, and are “significantly less likely” to become employed at a full-time, stable job, “or one that pays benefits.”²⁵⁶ Indeed, individuals who do not graduate high school earn approximately \$630,000 less throughout their lifetime.²⁵⁷ In a national study, the Justice Policy Institute found that “between \$4 billion and nearly \$8 billion is lost [annually] when young person[s] are confined by the courts.”²⁵⁸

3. Lost tax revenue

Lost earnings affect not only the confined individual, but also the State of Indiana and U.S. economy. According to the Justice Policy Institute, U.S. “taxpayers and the public lose between \$2 billion and nearly \$4 billion in future tax revenue as a result of the impact of confinement on a young person’s ability to earn a living.”²⁵⁹

4. Costs of additional medical spending

According to a 2010 Centers for Disease Control (CDC) report, educational attainment impacts an individual’s overall health.²⁶⁰ A person’s level of education was found to be inversely associated with obesity,²⁶¹ heart disease, hypertension, stroke,²⁶² emphysema or chronic bronchitis,²⁶³ diabetes, ulcers, liver disease, kidney disease, chronic joint symptoms,²⁶⁴ absence

²⁵⁶ Cecilia Elena Rouse, Member, Council of Econ. Advisors, Testimony before the Subcommittee on Children and Families & Committee on Health, Education, Labor and Pensions: The State of the American Child: The Impact of Federal Policies on Children, 4 (July 29, 2010), available at <https://www.whitehouse.gov/files/documents/20100729-rouse-testimony2.pdf>. [last accessed October 20, 2016]

²⁵⁷ *Sticker Shock*, 2014, p. 28

²⁵⁸ *Sticker Shock*, 2014, p. 26

²⁵⁹ *Sticker Shock*, 2014, pp. 31-32

²⁶⁰ CDC, *Summary Health Statistics for U.S. Adults: National Health Interview Survey, 2009*, 10 VITAL & HEALTH STATISTICS 249, 10, 73, 76 (2010), http://www.cdc.gov/nchs/data/series/sr_10/sr10_249.pdf. [last accessed October 20, 2016]

²⁶¹ *Id.* at 12, 103, 106.

²⁶² *Id.* at 5, 16, 19.

²⁶³ *Id.* at 5–6, 22, 25.

²⁶⁴ *Id.* at 6, 34, 37.

of natural teeth,²⁶⁵ mental health issues (feelings of nervousness or worthlessness),²⁶⁶ difficulty in physical activities,²⁶⁷ and migraines, back pain, neck pain, and jaw pain.²⁶⁸

In contrast, a person's level of education was found to be positively associated with a healthy weight,²⁶⁹ nonsmoking,²⁷⁰ "hav[ing] a usual place of health care and to consider a doctor's office or HMO as their usual place of health care,"²⁷¹ more frequent visits to the dentist,²⁷² and more testing for HIV.²⁷³ On average, each additional high school graduate saves the public health system \$40,500 over the individual's lifetime.²⁷⁴ The Justice Policy Institute estimates that U.S. taxpayers pay "anywhere from just under a billion to more than \$1.5 billion in increased Medicare and Medicaid costs when the previous confinement of a young person is accounted for among those individuals who rely on public assistance."²⁷⁵

5. Cost of sexual assault

A 2012 Department of Justice report found that nearly 5% of youth in correctional facilities were sexually abused by other youth or by facility staff.²⁷⁶ Victims of sexual assault can suffer severe physical and psychological harm that can hinder his or her ability to integrate into the

²⁶⁵ *Id.* at 7, 46, 49.

²⁶⁶ *Id.* at 8, 52, 55, 58, 61.

²⁶⁷ *Id.* at 9, 70, 97, 100.

²⁶⁸ *Id.* at 7, 40, 43.

²⁶⁹ *Id.* at 12, 103, 106.

²⁷⁰ *Id.* at 85, 88.

²⁷¹ *Id.* at 12, 109, 112.

²⁷² *Id.* at 14, 127, 130.

²⁷³ *Id.* at 14, 133, 136.

²⁷⁴ Henry Levin, Clive Belfield et al., *The Costs and Benefits of an Excellent Education for All of America's Children*, COLUMBIA UNIV., 12 (Jan. 2007). Available at: <http://cbcse.org/wordpress/wp-content/uploads/2013/03/2007-Levin.Excellent-educatin-for-all-of-america%C2%B4s-children.pdf> [Last accessed October 20, 2016]

²⁷⁵ *Sticker Shock*, 2014, p. 32

²⁷⁶ *Sticker Shock*, 2014, pp. 32-33

community upon release from confinement.²⁷⁷ The Justice Policy Institute estimated that the cost of sexual assault nationwide is between \$900 million and \$1.4 billion per year.²⁷⁸

In summary, the long-term costs for the confinement of young people can be summarized as follows:

Long-term costs	Low estimate	High estimate
Cost of recidivism	\$0	\$7,030,000,000
Lost future earnings of confined youth	\$4,070,000,000	\$7,600,000,000
Lost tax revenue	\$2,070,000,000	\$3,870,000,000
Additional medical spending	\$860,000,000	\$1,500,000,000
Costs of sexual assault	\$900,000,000	\$1,370,000,000
Total Costs	\$7,900,000,000	\$21,470,000,000

The Justice Policy Institute report concludes that “the long-term costs of young people’s confinement may add up to an additional \$8 billion to \$21 billion each year, beyond the hundreds of thousands of dollars states and localities spend to confine young people.”²⁷⁹

If Indiana enacted policies that focused on increasing the rate of high school graduation, it would produce several million dollars in net benefits to Indiana over the lifetime of these students. The benefits would mainly be attributed to a reduction in crime and healthcare costs, and an increase in tax revenue.

²⁷⁷ *Sticker Shock*, 2014, p. 34

²⁷⁸ *Sticker Shock*, 2014, p. 35

²⁷⁹ *Sticker Shock*, 2014, pp. 1-2

IV. FINDINGS AND RECOMMENDATIONS

Among their duties, advisory committees of the U.S. Commission on Civil Rights are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.²⁸⁰ The Indiana Advisory Committee heard testimony and reviewed data that clearly demonstrate disparities in the administration of school discipline between white students and students of color, particularly African American students. Boys, and students with disabilities are also at a significantly increased risk, especially where these identities and race intersect.

Experts have entitled the unfortunate routing of students from the educational system to the criminal justice system the “school-to-prison pipeline.” Suspension, expulsion, and referral to law enforcement are forms of discipline that may increase a student’s likelihood of future involvement with the juvenile justice system. A summary of findings relating to the Committee’s inquiry on this topic is provided below. Following these findings, the Committee proposes for the Commission’s consideration several recommendations that apply both to Indiana and to the nation as a whole.

A. Findings

1. *Implicit Bias*

- a) Implicit bias is defined as unconscious attitudes or beliefs held by an individual. Biases, and the stereotypes associated with them, could influence the often split-second disciplinary decisions administered by teachers or school administrators. Research shows that race, color, sex, and disability-based bias may contribute to persistent disparities in school discipline. The intersection of race, color, sex, and disability increases a student’s risk of being funneled in to the school-to-prison pipeline.
- b) The Committee heard testimony about how implicit bias affects response to behaviors of black students in comparison to the behavior of white students. While white students are more frequently disciplined for engaging in objective behaviors such as smoking or graffiti, black students are more often punished for objective behaviors such as class “disruption.”

²⁸⁰ 45 C.F.R. § 703.2

- c) Disparities in the incidence of exclusionary school discipline on the basis of race exist despite evidence that there is no significant difference in the behavior, or misbehavior, of black and white children.
- d) Panelists recommended that teachers, school officials, and School Resource Officers receive implicit-bias and trauma-informed training to mitigate the disparate effects of race, color, sex, and disability-based biases on students.

2. *Exclusionary Discipline Policies*

- a) Overly-punitive school disciplinary practices, such as expulsions, suspensions, and police officer referrals are vestiges of an era of zero-tolerance. These practices are commonly considered exclusionary discipline policies. They exclude students from their learning environments; increase the risk of juvenile justice system involvement, and ultimately the criminal justice system. Youth of color, particularly African Americans and youth with disabilities are disproportionately impacted.
- b) According to the U.S. Department of Education Office for Civil Rights data Black boys and girls have higher suspension rates than any of their peers, and students with disabilities served by IDEA are more than twice as likely to receive one or more out-of-school suspension as students without disabilities
- c) These practices could result in students struggling to find opportunities for achievement or a career path. Alternative schools and juvenile detention centers often do not provide an adequate alternative to traditional school settings. Consequently, students who have been suspended or expelled may have difficulty re-engaging with traditional education after even short periods of exclusion.

3. *Poverty/Economic Disparities*

- a) Children who are born into poverty disproportionately face social-emotional, economic, and educational challenges. Students who happen to be born in impoverished neighborhoods often face overwhelming odds regarding positive educational outcomes.
- b) Research shows that students of color are more likely to attend “high poverty schools” than their white peers. Panelists commented on the intersectionality of race and poverty. In Indiana, 72% of black children are considered low income. More structural supports and community-based resources are needed to address a growing population of young people of color who are or may be under-prepared to succeed.
- c) Attention must be given to the impact of poverty on struggling family systems and communities. Funding for school service personnel must be prioritized to enact the kind of prevention and intervention needed to combat the school-to-prison pipeline.

- d) Research indicates that investing in prevention based strategies, particularly in under resourced schools, may demonstrate long term net economic benefit when compared to the costs and long term economic impact of youth incarceration.

B. Recommendations

In response to these concerns, the Committee offers the following recommendations to the Commission:

- 1) The Commission should issues the following formal recommendations to the U.S. Department of Education:
 - a) The Department's Office of Civil Rights should establish a Review Committee to study the impact of school discipline policies on disparities in educational outcomes on the basis of race, color, sex, national origin, and disability.
 - b) The Department should require that states impose mandatory reforms to disciplinary policies for schools that demonstrate significant disparities in disciplinary actions on the basis of race, color, sex, disability, or national origin according to the Office of Civil Rights, Civil Rights Data Collection. Such reforms may be based on the Department's 2014 Guiding Principles Resource Guide for Improving School Climate and Discipline.
 - c) The Department should study the possibility of requiring ongoing anti-bias, cultural competency, and trauma-informed training as a condition of receiving federal funding. School discipline interventions should not be neutral in nature, but should take into consideration approaches that address race, color, sex, national origin, and disability disparities.
 - d) The Department should require that states utilize best practices to include root cause analysis of disciplinary problems and employ the assistance of psychologists, social workers, and community organizations as opposed to law enforcement.
 - e) The Department should examine and recommend an expansion of evidence-based restorative justice and other alternative disciplinary models to reduce exclusionary discipline.
 - f) If law enforcement officers, or School Resource Officers (SROs) are to be working in schools, the Department should establish uniform licensing requirements to ensure that such officers are properly trained and equipped to respond in an age appropriate manner with children. Applicable training should include strategies for recognizing and mitigating implicit bias.

- g) The Department should require that school districts engage in continuous, shared educational planning between alternative schools or juvenile detention facilities and a child's homeschool, to ensure that students receive an education of similar quality and duration even if sent to an alternative school.
 - h) The Department should act to enforce Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990 with regards to institutions with policies and practices that demonstrate a disparate impact on the basis of race, color, sex national origin or disability.
- 2) The Commission should issue the following formal recommendations to the U.S. Department of Justice:
- a) The Department's Office of Juvenile Justice and Delinquency Prevention should examine educational outcomes and disparities on the basis of race, color, sex, and/or disability among youth who reside in juvenile detention and correctional facilities.
 - b) The Department should take steps to rigorously enforce civil rights statutes prohibiting the disparate treatment of students on the basis of race, color, sex, national origin and disability. This recommendation comes as a result of testimony and statistics relating to elements associated with a prima facie case of discrimination.
 - c) The Department should require mandatory, all-staff training on recognizing and mitigating the impact of implicit bias in its juvenile detention and correctional facilities.
- 3) The Commission should issue the following formal recommendation to the Indiana General Assembly:
- a) The Indiana General Assembly should adopt and pass appropriate legislation to implement the following recommendations provided in the November 1, 2014 Final Report of the Interim Study Committee on Education of the Indiana Legislative Services Agency.
 - i) The Committee recommends finding alternatives to expulsion and suspension for all students, with a special focus on truancy.
 - ii) The Committee recommends finding alternatives to expulsion and suspension for all students, with a special focus on eliminating disparities for minorities and other disadvantaged groups.

V. APPENDIX

A. Hearing Agenda

1. January 20, 2016 (web-based hearing)
2. February 17, 2016 (Indianapolis, Indiana)

B. Written Testimony

1. Blake-King, Written Statement and Supplementary Attachments
2. Bolling-Williams Written Statement
3. McNeal Written Statement
4. Ketron Written Statement, Indiana Association of Home Educators, October 3, 2016
5. Schmidt Written Statement, Home Schooling Legal Defense Association
6. Tucker Written Statement, National Black Home Educators, April 18, 2016
7. Slatter Written Statement, Indiana Association of Home Educators, April 20, 2016

U.S. COMMISSION ON CIVIL RIGHTS



Civil Rights and the School-to-Prison Pipeline in Indiana

Hosted By:

The Indiana Advisory Committee to the U.S. Commission on Civil Rights

Date:

Jan. 20, 2016

Time:

11 a.m. EST

Dial:

- ♦ 888-417-8533
- ♦ Conference ID: 2138345

U.S. COMMISSION
ON CIVIL RIGHTS

Midwestern Regional Office
55 West Monroe
Suite 410
Chicago IL, 60603

Phone: 312-353-8311
Fax: 312-353-8324
Online: www.usccr.gov

The Indiana Advisory Committee to the United States Commission on Civil Rights is hosting an online panel discussion regarding civil rights and the school-to-prison pipeline in Indiana.

Panelist presentations (11 a.m.-12:15 p.m. EST)

- *Strategies for Youth, Founder and Executive Director Lisa Thurau*
- *Indiana State NAACP, President Barbara Bolling-Williams*
- *National Council on Disabilities, Executive Director Rebecca Cokley*
- *University of Kansas, Assistant Professor of Special Education Subini Annamma*

Open Forum (12:15-12:30 p.m. EST)

The Committee will hear public testimony during the open forum period as time allows. Toll-free public access to the meeting is available via the conference call numbers listed to the left (audio only). To join the online portion of the conference (visual), please register at: <https://cc.readytalk.com/r/kwf2s53iu6ux&eom> or contact the Commission's Midwest Regional Office for assistance. Meeting materials and presentations will be available before and after the event at: <http://www.facadatabase.gov/committee/meetings.aspx?cid=247>. Click on "Meeting Details" and "Documents" to download.

This is the first in a two-part series on the topic. The Committee will also meet in Indianapolis on Wednesday, February 17th from 8am–5pm EST to hear additional testimony. Contact the Midwest Regional office for more information.

State Advisory Committees to the U.S. Commission on Civil Rights are composed of state citizens who serve without compensation. The Committees advise the Commission of civil rights issues in their states, providing recommendations and advice regarding such matters to the Commission.

U.S. COMMISSION ON CIVIL RIGHTS



Civil Rights and the School-to-Prison Pipeline in Indiana

Hosted By:

The Indiana Advisory Committee to the U.S. Commission on Civil Rights

The Indiana Advisory Committee to the United States Commission on Civil Rights is hosting a public meeting to hear testimony regarding civil rights and the school-to-prison pipeline in Indiana. This meeting is free and open to the public.

Date:

Feb. 17, 2016

Opening Remarks and Introductions (8:00am-8:15am)

Time:

8:00am– 5:00pm, EST

- Panel 1: Academic (8:15am-9:30am)
- Panel 2: Community (9:45am-11:00am)
- Panel 3: Government (11:15am-12:30pm)

Break (12:30-1:30pm)

Location:

Ivy Tech Community College Event Center
2820 North Meridian Street Indianapolis, Indiana 46208

- Panel 4: School Administrators (1:30pm-2:45pm)
- Panel 5: Educators (3:00pm-4:15pm)
- Open Forum (4:15pm-4:45pm)

Closing Remarks (4:45pm-5:00pm)

U.S. COMMISSION ON CIVIL RIGHTS

Midwestern Regional Office
55 West Monroe
Suite 410
Chicago IL, 60603

Phone: 312-353-8311
Fax: 312-353-8324
Online: www.usccr.gov

The Committee will hear public testimony during the scheduled open forum session, as time allows. Please arrive early if you wish to speak. This is the second in a two-part series of public meetings on the topic. The first meeting took place on Wednesday, January 20th at 11:00am EST via web conference. For more information please contact the Midwestern Regional Office of the U.S. Commission on Civil Rights.

State Advisory Committees to the U.S. Commission on Civil Rights are composed of state citizens who serve without compensation. The Committees advise the Commission of civil rights issues in their states, providing recommendations and advice regarding such matters to the Commission.

Agenda

Opening Remarks and Introductions (8:00-8:15am)

Academic Panel (8:15-9:30am)

Russell Skiba, Ph.D. ; Director of The Equity Project at Indiana University
Laura McNeal, Ph.D. Assistant Professor of Law at The University of Louisville
Monica Solinas-Saunders, Ph.D. Assistant Professor of Criminal Justice, Indiana University Northwest
Alex Lichtenstein, Ph.D., Assistant Professor of History, Indiana University
Marvin Lynn, Ph.D., Professor and Dean of the School of Education at Indiana University South Bend

Community Panel (9:45-11:00am)

Patricia Howey, Special Education Advocate
Veronica Cortez, Staff Attorney, Mexican American Legal Defense and Educational Fund (MALDEF)
Diana M. Daniels, Executive Director, The National Council on Educating Black Children
JauNae Hanger, President, Children's Policy and Law Initiative of Indiana
Rev. Janette Wilson, Esq., National Director of RainbowPUSH Coalition

Government Panel (11:15am-12:30pm)

Julie Smart, Program Coordinator for School Social Work and McKinney-Vento Education Coordinator, Indiana Department of Education
Susan Lockwood, Director of Juvenile Education, Indiana Department of Correction
Kenneth Allen, Vice Chair, Indiana Commission on the Social Status of Black Males
Melissa Keyes, Director of Legal & Advocacy Services, Indiana Protection & Advocacy Services

Break (12:30-1:30pm)

School Administrator Panel (1:30-2:45pm)

Carol Kilver, Assistant Superintendent for Secondary Instruction, Lafayette Community Schools
Sheila Huff, Principal, Bosse High School, Evansville
Cheryl Pruitt, Ph.D., Superintendent of the Gary Schools Corporation
Byron Sanders, Principal, Washington High School, South Bend Community School Corp.
Cynthia Jackson, District Positive Discipline Coordinator, Indianapolis Public Schools

Educator Panel (3:00-4:15pm)

Ann Wilkins, ISTA Uniserv Director, Indiana State Teachers Association
Leslie Dillon, Gary Teachers Union Local 4 AFT
Nicole Garcia, Washington High School English teacher, South Bend Community School Corp.
Colin Pier-Silver, Instructional Coach, Navarre Intermediate, South Bend Community School Corp.
Shelia Danglade, 6th grade teacher, Charles W. Fairbanks School 105, Indianapolis Public Schools

Open Forum (4:15-4:45pm)

Closing Remarks (4:45-5:00pm)

February 16, 2016

Melissa Wojnaroski, Analyst
U.S. Commission on Civil Rights
State Advisory Committee
Indianapolis, Indiana

Dear Ms. Wojnaroski:

My name is Carlotta Blake-King, I reside in Hammond, Indiana and I'm a community activist and strong advocate for children's issues. My intentions were to attend today's U.S. Commission on Civil Rights Hearings and testify in person on the ongoing practice of the Hammond Police Department of citing our middle and high school students (ONLY) for J-Walking. This practice began in 2014. I have charged repeatedly to various officials that this practice definitely falls under the guise of School to Prison Pipeline activities.

One incident in particular concern us and that was in the fall of 2014 a 17 year-old female honor student from Morton High School was thrown to the ground with the officer's knee in her chest for J-Walking. And to date, to our knowledge that officer was never reprimanded. The Hammond Branch of the NAACP held a press conference on this matter and the issue of excessive force and racial profiling and demanded termination and other measures, (a copy of the press release is attached).

The Hammond City Court was filled with hundreds of Student, some with the parents and others without their parents, going before Judge Harkin and were given fines as much as \$275.00 for the citations and told parents that if they didn't pay it their child would never get a permit and any form of ID in the State of Indiana. The penalty was for the student to write an essay. However, when the students were cited, they were afraid to tell their parents, thus missing the original court date and so on.

On October 17, 2014 we worked with the Hammond Ministerial Alliance and the Hammond Branch of NAACP to host a Town Hall Meeting. Over 300 people were in attendance. The community came together on this issue and others; however, the Ministerial Alliance dropped the ball and never called another Town Hall Meeting to follow up on what the plan of action was going to be.

On November 18, 2014, I filed a complaint with the Hammond Human Relations Department regarding the issue of excessive force, racial profiling and the J-Walking issue and it was faxed to Kenith Bergeron, CSR DOJ. Since then, an agreement, December 17, 2016, between the Hammond NAACP and the Hammond Ministerial Alliance and the City of Hammond and other entities was reached, however, it did NOT include the issue of J-Walking and no one was suspended or reprimanded. And for whatever reason, we were NOT asked to participate in the meetings and we filed the charges.

On December 20, 2014 our group, The Hammond's Grassroots Coalition of Concerned Citizens for Social Justice organized a "Black Lives Matter" rally in front of Hammond City Hall and the

Mayor simply demonized it and when the Hammond Police Department arrived it was by the grace of God that we did not let them incite us. They were ready to arrest some folks.

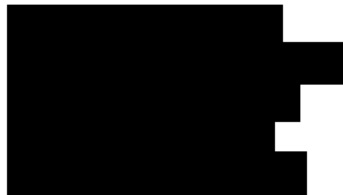
The practice still continues and the Mayor supports it whole-heartedly. You can't image the scars many of our students who were cited have gone experienced and not to say the fines the parents were mandated to pay. We have repeatedly gone before the Hammond City Council asking for a "moratorium" on the matter so that the parents, PTA and others that felt there was a better resolve for this issue rather than citing our children. The Chief sent a letter to Councilman Higgs justifying the tickets and claiming that the Superintendent of Schools were aware of the practice and supported it. Well, I spoke to Dr. Watkins at length and he denied knowing thing regarding this practice and certainly was NOT aware of the exuberate fines.

Attached is also a letter from the Chief of Police that indicates the % of students receiving the citations based on race; 51% African American, 28% Hispanic and 21% White. Also included is a copy of the Agreement that does NOT address any resolve of the J-Walking citations.

Ms. Wojnaroski, we are hoping that your Committee can assist us in some way for a meaningful resolve. Thanks for listening and please feel free to contact me for any additional information.

Sincerely,

Carlotta Blake-King, Contact Person for
Hammond's Grassroots Coalition of Concerned Citizens for Social Justice



November 13, 2014

TO: Hammond Human Relations Commission

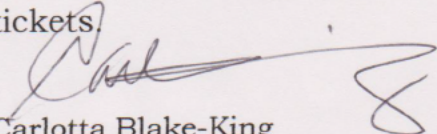
FROM: Carlotta Blake-King, member of the Concerned Citizens alleging Police Brutality by the Hammond Police Department.

RE: I'm Filing a complaint charging *Racial Profiling* by the Hammond Police Department in various areas. (*often times led to excessive force*)

My allegations are as follows based on my perception and the definition of racial profiling. More than 85% of persons that appear in **The Hammond City traffic court** are African-Americans, and Latinos. More than 85% of persons that appear in the **Hammond City Traffic School** are African-Americans and Latinos. And the most recent area of prolific "*racial profiling*" is the *targeting* of African-American and Latino students for the minor traffic violation of **J-Walking!** Investigate the most recent incident involving a 17 year-old 85# female honor student thrown to the ground with the officer's knee in her chest for Jay-walking. The Hammond Police Department is contributing to the Industrial Prison Complex thereby systematically targeting and conditioning these young students to court life at an early age that dictates authority to students in an extremely harsh manner. Such as "sit down", hats off, herding them in like cattle, be quiet, attorney talk, you are fined, etc. And the financial burden that is put on parents to pay these outrageous fines is a financial hardship. Who set the fines? How can a seat belt violation be \$25 and a speeding ticket starting at \$50, but a J-Walking ticket is in excess of \$250? I allege that the cost of these fines is Racial Profiling at its worst. The Judge is telling the parents that until the fines are paid the student will not get a driver's permit or driver's license. With NO ID, one cannot vote. I allege that these acts by ALL parties involved can eventually adversely affect a student getting into college.

I'm requesting a thorough investigation of my allegations of racial profiling that is evidenced in the Hammond City traffic court, the Hammond City Traffic

School and the targeting of African-Americans and Latinos with J-Walking tickets.



Carlotta Blake-King



 *** FAX TX REPORT ***

TRANSMISSION OK

JOB NO.	0772
DESTINATION ADDRESS	913123534390
SUBADDRESS	
DESTINATION ID	
ST. TIME	11/20 15:42
TX/RX TIME	00' 27
PGS.	2
RESULT	OK

FAX

DOJ

To: Kenith Bergeron From: B. Reelus - HARC

312-353-4728

Phone:

Phone:

219-853-6502

312-353-4390

Fax:

Fax:

Date: 11-18-14

Pages:

Re:

Cc:

☐ Urgent

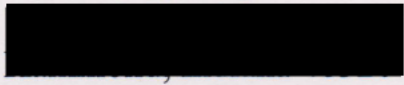
☒ For Review

☐ Please Comment

☒ Please Reply

Comments:

509 Douglas Street
Hammond, Indiana 46320
December 1, 2014 24

Carlotta B. King


Dear Ms. King:

This letter is in response to your complaint alleging that the Hammond Police Department (paraphrasing your complaint) is involved in systematic Racial Profiling by definition, documented, evidenced by majority African Americans and Latinos in Traffic Court, traffic school and Targeting African American and Latino Youth for minor incidents of J-walking; often times with excessive force.

I am aware of only one incident involving the use of any force being exerted during a J-walking enforcement by officers of the Hammond Police Department. The officer was punched in the face by a teen who did not wish to be cooperative and accept the citation she was guilty of. Minimal force to arrest was used after the Hammond Police Officer was punched in the face by the teen.

If you have other documentable evidence showing where a Hammond Police Officer used excessive force during the writing of a J-walking ticket I would be most welcome to review and pursue any allegations or complaints of that nature. I have checked Internal Affairs and we currently have no complaints of this nature.

I have reviewed the statistics from our Pedestrian Grant. We write tickets at High Schools and middle schools. As you know we send home fliers through the school to educate the parents and the children to the dangers and seriousness of J-walking. We also have the school make intercom announcements asking for children to comply with the law for their own safety and to assure traffic is not blocked or congested by children walking in the streets.

I assume that you looked at the demographic makeup of the children attending Hammond Public Schools prior to making your allegations. I have since done so. The demographics in regard to High School and Middle school are:

34% African American

50% Hispanic

16% White

The tickets issued to date are:

51% African American

28% Hispanic

21% White

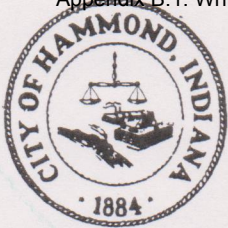
The figures are slightly disproportional to Both African American and White students and low for Hispanics. I believe these numbers show that the Hammond Police Officers are not engaged in racial profiling but simply issuing tickets based on who makes a decision in their own mind after being educated and warned, to still commit the infraction.

For point of interest we have not had a traffic school as you mentioned for some years now. You made a claim that someone paid a 250.00 fine for J-walking. It is the policy of the court for students, that instead of a fine they generally are required to properly complete a 3 page essay and show a good attitude in court and any judgment is dismissed. Speeding tickets in a car are 152.00 not the 50.00 amount you mentioned.

I took the liberty of pulling the stats most recent months compiled for the Seatbelt enforcement Grant. In September Five minority police officers conducted 15 patrols and five white officers conducted 14 patrols. These 29 patrols resulted in 133 African Americans being cited, 97 White offenders, 74 Hispanic offenders and 3 Asian offenders. 117 citations issued did not identify a race on the ticket. This issue has been addressed and corrected so the next time we pull stats they will be more precise. With that said, I do not statistically see evidence of profiling and the officers month to month taking the overtime to do these patrols is consistently diverse.

Sincerely,

Chief John D. Doughty
Hammond Police Department



THOMAS M. McDERMOTT, JR.
Mayor

Hammond Police Department

CITY OF HAMMOND, INDIANA 46320 • 509 DOUGLAS STREET • PHONE (219) 852-2900

509 Douglas Street
Hammond, Indiana 46324
January 21, 2015

Mr. Anthony Higgs, Councilman
Hammond Common Council
Hammond, Indiana 46320

Dear Councilman:

This letter is to update you on the current position of the Hammond Police Department in regards to our participation in the Criminal Justice Institute Grant and the enforcement of the Pedestrian portion.

We believe that the safety of our school age children is a priority. When students are walking in, or crossing a street in an illegal manner, it puts them at a much higher risk of becoming the victim of a pedestrian/vehicle accident. The presence of students in the streets also affects the way traffic flows when vehicles must slow or stop to avoid a pedestrian in a lane of traffic.

We recently had a meeting with the School City of Hammond Administration. We have their support and were advised that parents regularly call them to complain about students in the streets and express a concern for their welfare. The School City employs police within the schools themselves under contract to assure the students have a safe environment to learn and better themselves. The Hammond Police Department feels their safety outside of the school is important also.

We feel a moratorium on the ticketing of students who chose to put themselves in danger would be unethical and reckless. I am unable to consider a moratorium on tickets because the next serious injury or fatality of a student would weigh heavily on me personally. I hope the advocates of a moratorium can look inward and make the same moral judgment call and are willing to take ownership of the possible consequences of asking the police to ignore the safety of our children.

Sincerely,

Chief John D. Doughty
Hammond Police Department

January 26, 2015

Anthony Higgs, 3rd District Councilman &
Homero "Chico" Hinojosa, 5th District Councilman
City Of Hammond
5925 Calumet Avenue
Hammond, Indiana 46320

RE: 3RD REQUEST – "Moratorium/Indiana Criminal Justice Institute Grant

Dear Councilmen:

We are requesting your support in making a motion on the floor asking for a "**moratorium**" on the Indiana Criminal Justice Institute Grant administered by the Hammond Police Department in reference to the *j-walking* citations that only target Middle and High School students. It is our opinion that this is a reckless practice that has already led to an alleged "excessive force" incident while citing a student at Morton High School. We are also requesting that the "rules be suspended" for those who wish to speak to this grave issue."

We need to take a deep breath and look at what are we trying to accomplish with a practice that subjects our most vulnerable asset and that is our "children" at such an early age as 10, to the criminal system; what City does this, it is just absurd. Especially if adults/Judges, Attorneys, and employees are able to *jaywalk* across the street to get to this building to work, lunch, and back to their vehicles, without the worry of being ticketed; it's just unfair. Looking at paying a minimum of \$160.00 for a *j-walking* ticket is considered by some, legal extortion.

And Additionally, the letter that we received from the Chef of HPD indicated that there were flyers distributed in the schools for the purpose of education, intercom notices in the schools, however after speaking to Dr. Jerry Watkins, Superintendent of Hammond Schools he indicated that he was not aware of any flyers, intercom announcements, etc. and went on to say he was not aware that the students were actually cited for *j-walking* and appeared in Hammond City Court and actually fined.

Also from our investigations at Eggers Middle and Morton High there are some simple solutions to curtail the *j-walking* issue as oppose to subjecting our children to punitive actions.

In conclusion, we are hoping for an opportunity to sit down and develop real solutions for this issue and please consider all of our concerns listed above and immediately stop this practice of ticketing our youth for *j-walking*.

Sincerely,

Hammond's Grassroots Coalition of Concerned Citizens for Social Justice

Kendall Warner
Johnnie Williams
Carolyn Jackson
Ola Smith
Carlotta Blake-King

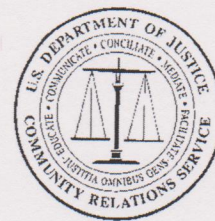
Cc: David Capp, Attorney General
William Rowell, FBI
Kenith Bergeron, USDOJ

COPY



MEDIATION AGREEMENT BETWEEN

**City of Hammond, Indiana,
Hammond Police Department and
Hammond Fraternal Order of Police**



AND

**Hammond Ministerial Alliance and
The Hammond Branch of the
National Association for the Advancement of Colored People**

This Mediation Agreement (Agreement) is the result of meetings between the parties, including City of Hammond Mayor, Chief of Staff, Hammond Police Chief (HPC), Hammond Human Relations Commission, Hammond Fraternal Order of Police (HFOP), the Hammond Ministerial Alliance (HMA), and the Hammond Branch of the National Association for the Advancement of Colored People (HBNAACP). The parties met in mediation on March 26, 2015, April 30, 2015, June 9, 2015, July 21, 2015, August 25, 2015, September 10, 2015, October 1, 2015 and October 30, 2015. The intent of the parties to this Agreement is to improve police-community relations and their relationships for the benefit of the people of the City of Hammond, Indiana (the City). The parties agree to work collaboratively for the benefit of the community, in a spirit of mutual cooperation and community reconciliation.

With the consent of the parties, the Community Relations Service (CRS) of the United States Department of Justice provided mediation services to the parties involved.*

Issues

The parties convened mediation to address concerns over police community relations in the City addressing allegations of biased policing and excessive use of force.

Points of Agreement

The parties agreed to the following:

- Hammond Community Policing Programs;
- Development of Social Media Links for Hammond Police Department (HPD) Website;
- Cultural Competency/Procedural Justice training for Hammond police officers and community partners;
- Body Cameras for HPD;
- Collaboration on Police Officer Recruitment Initiative;
- Revision and Update on HPD Use of Force Policy; and
- Hammond Police Citizens Advisory Commission.



NAACP wants cops in Taser incident pulled from street



OCTOBER 10, 2014 1:15 PM • ROB EARNSHAW
ROB.EARNSHAW@NWI.COM, (219) 933-3241

HAMMOND | The state president of the NAACP wants the two Hammond police officers involved in a September incident pulled from street duty.

Hammond police officers Patrick Vicari and Charles Turner were named in a federal lawsuit filed in U.S. District court Monday, alleging they used excessive force when they broke a car window during a traffic stop

for a seat belt violation Sept. 24 at Cline Avenue and 169th Street.

The city of Hammond was also named in the suit.

"They definitely ought to be confined to desk duty and not interact with the public until there has been a full investigation," Barbara Bolling-Williams said during a news conference Friday morning in front of the Hammond Police Department.

She called the traffic stop a "systemic continuing evidence of a problem in a police department."

NAACP representatives met Oct. 1 with Hammond Mayor Thomas McDermott Jr. and Police Chief John Doughty to express concerns about what they consider aggressive force police use in arresting Hammond residents -- including arrests for minor incidents they said they police seem to have escalated.

A video of the Sept. 24 incident, which has gone viral on social media, shows a police officer smashing the passenger's-side window of a car, Taser-ing the passenger, Jamal Jones, and pulling him from the vehicle. Driver Lisa Mahone's 14-year-old son, who was seated in the backseat with his 7-year-old sister, recorded video of the incident, according to the lawsuit.

The Rev. Homer Cobb, president of the Hammond branch of the NAACP, said the meeting with Hammond officials seemed "productive and encouraging" but he demands police receive proper training "so the city won't become the next Ferguson, Missouri."

Cobb said there was a recent Hammond incident in which a 17-year-old female honor student was thrown to the ground with an officer's knee in her chest because she was jaywalking.

Appendix B.1: Written Testimony

Hammond Police said the juvenile resisted the citation for jaywalking and tried to flee. Police said she also punched the officer in the face. She was charged with battery on a police officer and resisting law enforcement.

Cobb said they aren't asking for residents in Hammond to behave in a destructive manner but to record and report officers' behavior legally to help deter bad behavior.

Cobb said if the "bad behavior" of police continues the NAACP and the community will march, protest, make demands including resignations if the acts continue.

"If need be, the NAACP will ask the Justice Department to intervene," he said.

The Rev. Orvill Sanders, president of the Minister Alliance of Hammond, said they are requesting an independent investigation of the incident he called "appalling and despicable."

Hammond City Councilman Anthony Higgs spoke at the news conference and said racism is a problem in Hammond.

"Let's not kid ourselves," he said. "It needs to be handled and dealt with in a professional manner."

When asked if Hammond will become the next Ferguson, Bolling-Williams said "we pray that it's not."

"We trust that it won't be," she said.

On Thursday, LaPorte County officials issued an arrest warrant for Jones stemming from when he failed to appear in court for a 2007 court hearing.

Officials issued an arrest warrant for Jamal Jones after officials realized a 2007 arrest warrant had an incorrect date of birth.

Jones was charged Dec. 2, 2007, in LaPorte County with dealing marijuana, a Class A misdemeanor, driving while suspended and speeding, according to court records.

Mahone previously served 16 months in prison after Indiana State Police found nearly a half-kilo of cocaine in her vehicle during a 2011 traffic stop.



Former Hammond cop criticizes department minority hiring

NOVEMBER 06, 2014 2:15 PM • ROB EARNSHAW, ROB.EARNSHAW@NWI.COM, (219) 933-3241

HAMMOND | A former Hammond Police Officer criticized the minority hiring of the department during a community forum Wednesday.

Paul Walker, who retired from the Hammond Police Department in 2002, said neighboring cities East Chicago and Gary have done a better job hiring minority officers.

During the forum on the Hammond Police Department's role and relations in the community, Chief John Doughty said nine officers of the 201 in the city are African-American.

Walker, an African-American, said when he retired 12 years ago there were seven black officers and six of them are still there - and those six are included in the current nine.

"That's the reality," Walker said. "There has to be a change made."

East Chicago Police Chief Mark Becker on Thursday said the city takes strides to make sure the department reflects its population. He said one example is the City Council enacting of an ordinance that provides 15 percentage points to be added to the final testing grade of applicants if they live in the city.

Becker said the makeup of the department is 60 percent Hispanic, 30 percent African-American with the remainder white officers.

He said that "is pretty much consistent with our population in the city."

"We're pretty reflective of our population," Becker said.

Doughty said they are actively trying to change the demographics in the department.

"We are trying to catch up," he said.

Doughty said of the nine new hires starting in 2015, six are white males along with a three females - one black, one Hispanic and one white.

"In that range of hiring, it's one-third minority, which is pretty good," Doughty said. "It's not perfect. I'd like to do better."

Doughty said testing to qualify as a hire is handled by the Institute for Public Safety Personnel in Indianapolis to ensure it is fair.

Pastor Herman Polk, of the Ministerial Alliance, said it may be time to look beyond the top 10 applicants of test.

Appendix B.1: Written Testimony

"Maybe we need to look beyond the top 10," he said. "If 20 people pass the test, why not look at No. 19?"

Polk said if the discussion is about not enough African-American police in the community, there should be a program where the police go into neighborhoods "not arresting but mentoring."

"Then perhaps we could encourage the people from our community to be police," he said.

Panel members at the forum agreed if the department is to become more diverse, it needs the community's help. Hammond Police Internal Affairs Lt. Andy Short, who is African-American, said the community needs to bring individuals to the hiring process.

"I want to see more come who want to be a police officer," Short said. "I feel that each and every one of us in here owes it to your community to help someone along. Don't just talk about it, be about it."

State Rep. Linda Lawson, D-Hammond, who is retired from the Hammond Police and was its first female officer, said she believes the police department needs to reflect the people who live in its city and believes "with all my heart our department does the very best they can at recruiting."

"We need to find young men and women that can take this test, pass this test and have a desire to be a police officer," she said.

North Township Trustee Frank Mrvan said Hammond's demographics have changed quickly and now the rest of the power structure has to change. He said it's a situation faced not only in Hammond but other cities across the country where the manufacturing base fell out and communities changed.

"You always want to have the best of the best protecting you, first and foremost," Mrvan said. "But the demographics and the police department - they're going to catch up with other. That's how the society works and it may not be fast enough for everyone but that's how communities thrive."

The community forum, which drew about 300 local residents, was prompted by recent controversial traffic stop resulting in a lawsuit against two Hammond Police Officers.

The Rev. Homer C. Cobb, president of the Hammond chapter of the NAACP, said the forum marked a representation of one, and what one people can do.

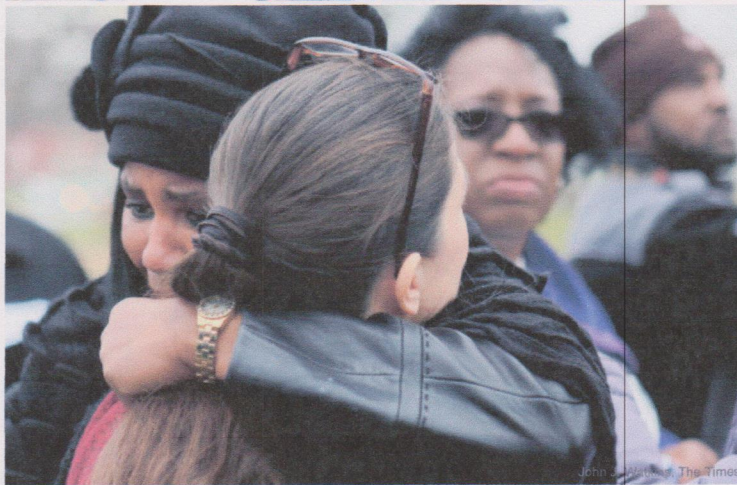
"I hope we come out of this more knowledgeable," he said.



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Activists disrupt traffic in Hammond to protest injustices



Overcome with emotion, Hammond activist Carlotta Blake-King, left, is comforted by Eve Gomez on Sunday at a demonstration at Hammond City Hall.

December 14, 2014 9:00 pm • Sarah Reese sarah.reese@nwi.com, (219) 933-3351

HAMMOND | A Gary native whose son was fatally shot by police last month in Tennessee was among more than three dozen people who rallied Sunday outside Hammond City Hall to protest racial and social injustice.

L'Sana DJahspora said he attended his son's memorial service Saturday in Gary and joined the protest Sunday to fight for justice in his son's name.

Cinque "Q" DJahspora, 20, was shot by police Nov. 6 outside the condominium complex in Jackson, Tenn., where he lived with his father.

L'Sana DJahspora said his son did not have a gun and medical records show he was shot in the back from a distance.

Police say a black officer shot Cinque DJahspora after DJahspora fought with him and stabbed him, according to media reports.*

The elder DJahspora contends that would have been out of character for his son. Police say they won't release a

Related Galleries



Gallery: Demonstrators protest at the Hammond City Hall

Protesters question jaywalking tickets

Among the issues protesters raised Sunday during a rally outside Hammond City Hall was the ticketing of students by police for jaywalking.

Organizer Carlotta Blake-King said Hammond Police Chief John Doughty sent her a letter in response to her complaint about the issue.

Compare arrest rates in northwest Indiana

Blacks are far more likely to be arrested than people of other races, and in some places, dramatically so. Using FBI arrest records in a recent study, *USA TODAY* found nearly 1,600 places where the disparity in arrest rates is more pronounced than Ferguson, Missouri's rate of 186.1 black arrests to 66 non-black arrests. Below is the data available for communities in northwest Indiana.

City	Black Rate	Non-black Rate
Crown Point	199.3	43.9
East Chicago	203.7	92.4
Hammond	135.4	53.6
Highland	245.7	48.2
Hobart	900.2	129.2
Lake Co. Sheriff's Dept.	14.9	8.7
LaPorte	651.8	158.8
Merrillville	82.1	50.5
Michigan City	438.5	167.9
Munster	153.5	27
Valparaiso	209.5	68.5

*2011-12 arrest rate per 1000 residents

Article: <http://www.gannett-cdn.com/experiments/usatoday/2014/11/arrests-interactive/>



TOWN HALL MEETING!!

EVERYONE IS WELCOMED!!

HOSTED BY:

**CONCERNED CITIZENS ADDRESSING THE ALLEGED
POLICE BRUTALITY**

BY THE HAMMOND POLICE DEPARTMENT

WHEN: FRIDAY, OCTOBER 17, 2014

**WHERE: OPHELIA STEEN CENTER
5927 COLUMBIA AVE
HAMMOND, IN**

TIME: 6:00 P.M. SHARP!!



**Persons that believe that they were a victim of Racial
Profiling or Police Brutality; please bring any documents to
support your claim.**

WRITTEN TESTIMONY OF INDIANA STATE CONFERENCE NAACP TO THE INDIANA CIVIL RIGHTS COMMISSION ON STUDENT DISCIPLINE

Barbara Bolling-Williams, Esq., Indiana State Conference NAACP President

Founded in 1909, the NAACP is the nation's oldest, largest and most widely-recognized civil rights organization. The NAACP's principal objective is to ensure the political, educational, economic and social equality of minority group citizens of the United States and to eliminate race prejudice. The NAACP seeks to remove all barriers of racial discrimination through the democratic processes. The Indiana State Conference of NAACP Branches represents the national office in Indiana on statewide and national issues and coordinates the work of local NAACP units within the state.

School Discipline, Restraint, & Seclusion

The intersection of school, police and juvenile bureaucracies that too often unnecessarily pushes black and other minority students out of school is often referred to as the "school to prison pipeline."¹ Manufacturing guru W. Edwards Deming once said, "In God we trust, all others must bring data." We should use data—the right data—to inform, question and shape our perspective and, importantly, as the nation's oldest civil rights organization, our tactical and strategic advocacy.² In that light, we offer as context the following national statistical highlights on school discipline, restraint and seclusion.³

• **Suspension of preschool children, by race/ethnicity and gender:** Black children represent 18% of preschool enrollment, but 48% of preschool children receiving more than one out-of-school suspension; in comparison, white students represent 43% of preschool enrollment but 26% of preschool children receiving more than one out of school suspension. Boys represent 79% of preschool children suspended once and 82% of preschool children suspended multiple times, although boys represent 54% of preschool enrollment.⁴

¹ V. Goode & J. Goode, *De Facto Zero Tolerance: An Exploratory Study of Race & Safe School Violations*, in TEACHING CITY KIDS: UNDERSTANDING AND APPRECIATING THEM 85 (J. Kincheloe & k. hayes eds., Peter Lang 2007); NAACP, *Arresting Development: Addressing the School Discipline Crisis in Florida*, available at <http://www.advancementproject.org/reports/ArstdDvpmEs.pdf>; also available at: http://www.naacpldf.org/content/pdf/pipeline/arresting_development_full_report.pdf.

² On-line discipline data is increasingly available to the public. OCR's Civil Rights Data Collection is an important example. The CRDC for the 2011-12 school year was collected from every public school and school district in the country. <http://ocrdata.ed.gov>. In the Baltimore County, MD school district, for instance, blacks are 38.6% of district enrollment, but 60.9% of out-of-school suspensions, 52.4% of in-school suspensions and 60.6% of expulsions. <http://www.ocrdata.ed.gov/Page?t=d&eid=26919&syk=6%pid=961>

³ See U.S. Department of Education Office for Civil Rights 2 Civil Rights Data Collection: Data Snapshot (School Discipline) March 21, 2014. <http://www.ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>

⁴ The U.S. Department of Education and the U.S. Department of Health and Human Services have issued a joint *Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings* (Dec. 10, 2014). <http://www2.ed.gov/policy/gen/guid/school-discipline/letter-suspensions-expulsion-policy.pdf>

The purpose of this policy statement is to support families, early childhood programs, and States by providing recommendations from both Departments for preventing and severely limiting expulsion and suspension practices in early childhood settings. Recent data indicate that expulsions and suspensions occur at high rates in preschool settings. This is particularly troubling given that research suggests that school expulsion and suspension practices are associated with negative educational and life outcomes, in addition to the stark racial and gender disparities that exist in the practice.

- **Disproportionately high suspension/expulsion rates for students of color:** Black students are suspended and expelled at a rate three times greater than white students. On average, 5% of white students are suspended, compared to 16% of black students. American Indian and Native-Alaskan students are also disproportionately suspended and expelled, representing less than 1% of the student population but 2% of out-of-school suspensions and 3% of expulsions.
- **Disproportionate suspensions of girls of color:** While boys receive more than two out of three suspensions, black girls are suspended at higher rates (12%) than girls of any other race or ethnicity and most boys; American Indian and Native-Alaskan girls (7%) are suspended at higher rates than white boys (6%) or girls (2%).
- **Suspension of students with disabilities and English learners:** Students with disabilities are more than twice as likely to receive an out-of-school suspension (13%) than students without disabilities (6%). In contrast, English learners do not receive out-of-school suspensions at disproportionately high rates (7% suspension rate, compared to 10% of student enrollment).
- **Suspension rates, by race, sex, and disability status combined:** With the exception of Latino and Asian-American students, more than one out of four boys of color with disabilities (served by IDEA) — and nearly one in five girls of color with disabilities — receives an out-of-school suspension.
- **Arrests and referrals to law enforcement, by race and disability status:** While black students represent 16% of student enrollment, they represent 27% of students referred to law enforcement and 31% of students subjected to a school-related arrest. In comparison, white students represent 51% of enrollment, 41% of students referred to law enforcement, and 39% of those arrested. Students with disabilities (served by IDEA) represent a quarter of students arrested and referred to law enforcement, even though they are only 12% of the overall student population.
- **Restraint and seclusion, by disability status and race:** Students with disabilities (served by IDEA) represent 12% of the student population, but 58% of those placed in seclusion or involuntary confinement, and 75% of those physically restrained at school to immobilize them or reduce their ability to move freely. Black students represent 19% of students with disabilities served by IDEA, but 36% of these students who are restrained at school through the use of a mechanical device or equipment designed to restrict their freedom of movement.

Drilling Down

In 2011-12, there were 1,060 referrals to law enforcement of Indiana public school students with disabilities. 227, or 21.7%, were black; 720, or 68.7%, were white; 39, or 3.7 %, were *Latino*; 52, or 5%, were two or more races; between 1-3, or 0.2%, were Native Hawaiian or Other Pacific Island http://ocrdata.ed.gov/StateNationalEstimations/Estimations_2011_12er.

Even Indiana public school preschool students received out of school suspensions in 2011-12. Of 27 students who received only one out-of-school suspension, 8, or 29.6%, were black; 6, or 22.2% were *Latino*; 7, or 25.9%, were white; and 6, or 22.2%, were two or more races. 8, or 29.6%, were students with disabilities served under IDEA.

There were 37 students reported to have one or more out-of-school suspensions: 8 (21.6%) were black; 6 (16.2%) were *Latino*; 16 (43.2%) were white; and 7 (18.9%), were two or more races. 15 (40.5%) were students with disabilities served under IDEA.

http://ocrdata.ed.gov/StateNationalEstimations/Estimations_2011_12

In 2011-12, 400 Indiana public school students with disabilities received expulsions without educational services. Of these 400, 158 were black or African American (41.7%); 23 were *Latino* (6.1%); 171 were white (45.1%); between 1-3 were Native American or Alaska Native (0.5%). 379 (94.8%) were students with disabilities served only under IDEA, while 21 (5.3%) were served only under Section 504 of the Rehabilitation Act.

Parenthetically, the 41.7% of black students expelled without educational services in Indiana is higher than the national percentage (36.9%) of black students expelled without educational services in 2011-12. And the 45.1% of Indiana white students expelled under this category is higher than the national percentage (37.2%) of white students expelled without educational services in 2011.

http://ocrdata.ed.gov/StateNationalEstimations/Estimations_2011_12

In 2011-12, 3,318 Indiana public school students without disabilities received expulsions without education services. Of those 3,318, 978 (29.5%) were black; 1,810 (54.6%) were white; 350 (10.5%) were *Latino*; 9 (.3%) were Asian; and 6 (.2%) were American Indian or Alaska Native. 139 (4.2%) were English Language Learners.

The 29.5% expulsion figure for Indiana black students without disabilities was less than the 42.2% national percentage of black students without disabilities expelled without educational services in 2011-12. But the 54.6% for white Indiana students in this category exceeds the national average (36.7%) for white students without disabilities expelled without educational services in 2011-12.

http://ocrdata.ed.gov/StateNationalEstimations/Estimations_2011_12

OCR's 2011 student discipline data also provides reports for individual schools and for individual districts. <http://ocrdata.ed.gov/DistrictSchoolSearch> Looking, just as an example, at Indianapolis Public Schools and at other districts in Marion County, one can begin to appreciate that there are serious challenges in some of our districts. I noticed, for example, that Franklin Township had 5.6% black students, but 17.2% of in school suspensions were of black students and, 15.5% of the out of school suspensions involved black students. 16.2% of expulsions were of black students. I hope this has improved in the last few years, particularly with the Department of Justice/Department of Education Guidelines on Student Discipline that came out in January 2014.

<http://www2.ed.gov/policy/gen/guid/school-discipline/index.html> How many of the districts are incorporating these federal guidelines into their discipline policies and practices? How many have trained their staff on the new federal guidelines? If yes, what measurable changes are evident? If not, why?

And then there's the question to what extent is in-school suspension, which we generally favor over out-of-school suspension, an opportunity for genuine learning and support for the students, versus a room that's essentially a glorified babysitter, a challenge in some schools? To what extent do the schools and/or the school districts have the resources they need to prepare all students, regardless of their zip codes, for credit-bearing college courses or for vocational training that leads to middle class jobs? Many of the questions in this and the previous paragraph cannot be answered by examining student discipline data alone, as important as quality discipline data is.

Indeed, essential student discipline data may not be readily available to the public to answer key student suspension/expulsion-related questions. But such information should be made publicly available. For example:

- When students are suspended, do they receive a written and timely notice of suspension that clearly explains the reason for the suspension in a way that provides the student fair notice?
- How many students have served all or much of their suspensions by the time the parent or guardian can get a hearing, *e.g.*, 3-day suspension?
- How fair and unbiased are the due process⁵ hearing officers' decisions? (Ask the district for data on hearing officer decisions.)
- What methods do schools use to get kids out of a school without calling it a suspension?
- How frequently are "social adjustment" transfers used?
- What role do "alternative schools" play as a destination for students who have been expelled or suspended?
- To what extent do these alternative schools have the resources necessary to provide the support needed for students struggling academically and with behavioral issues?
- To what extent do they have comparable resources to non-alternative schools?⁶

Finally, the Every Student Succeeds Act (ESSA), signed by the President on December 10, 2015, requires that each State Plan must address how the State will support Local Education Agencies improving school conditions for learning, including reducing the overuse of discipline practices that remove students from the classroom, as well as reducing the use of aversive behavioral interventions that compromise student health and safety.

ESSA allows the following activities to support safe and healthy students:

- Drug and violence prevention activities and programs,
- School-based mental health services,
- Programs or activities that integrate healthy and safety practices into school or athletic programs,
- Programs or activities that help prevent bullying and harassment,
- Programs or activities that improve instructional practices for developing relationship-building skills,
- Training for school personnel in various drug, violence, trafficking, and trauma areas, and
- Other programs to support safe and healthy students.

Under current law, State Education Agency plans for addressing the educational needs of neglected and delinquent children and youth have been required to address transitions from correctional facilities to locally operated programs. ESSA recognizes that transitions occur *in both directions* and requires SEA

⁵ Here I use "due process" in the constitutional sense. A student who is punished by a public school has a right to notice and some hearing.

⁶ <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-resourcecomp-201410.pdf>

plans to examine transition for students both to and from correctional facilities and locally operated programs. SEA plans are also required to: focus on State-established outcomes; prioritize neglected and delinquent children and youth's attainment of a regular high school diploma; establish procedures to ensure the timely re-enrollment of students returning from juvenile justice systems, to the extent practicable provide assessment of each student upon entry into a facility, and where appropriate deliver evidence-based service and interventions designed to keep children and youth in school.

Indiana Advisory Committee to the U.S. Commission on Civil Rights
School-to-Prison Pipeline Hearing Notes
Laura McNeal, J.D., Ph.D.¹

Title: The Role of Implicit Bias in the School-to-Prison Pipeline

Introduction

My work with the school-to-prison pipeline started approximately 8 years ago while working with Detroit and Chicago public high school students in a grant program designed to increase their readiness for college. What I quickly learned is that low academic achievement, which was the focus of our program, was not the greatest barrier to equal educational opportunity, but rather the systemic siphoning of African American and Latino boys into the criminal justice system through the school-to-prison pipeline. When I mention “school-to-prison pipeline” I am referring to the policies and practices that push our nation’s schoolchildren, especially our most at-risk children, out of classrooms and into the juvenile and criminal justice systems. One of the most disturbing aspects of the STTP are the racial disparities that exists between students of color and their white peers.

Office of Civil Rights Data- Racial Disparities

- Although black students made up only 18% of those enrolled in the schools sampled, they accounted for 35% of those suspended once, 46% of those suspended more than once and 39% of *all* expulsions. (OCR Data, 2009-10).

¹ Dr. McNeal is an Assistant Professor of Law at the University of Louisville’s Brandeis School of Law. She also serves as a Law & Policy Analyst for the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School. A special thanks to Johanna Wald, Director of Strategic Planning, at the Charles Hamilton Houston Institute for Race and Justice for sharing her tremendous insight and research of the implicit bias literature toward this project.

- Black students make up 44 percent of students suspended more than once and 36 percent of students expelled, though they represent only 15 percent of students. (OCR Data, 2011-12).
- According to the office of civil rights- Overall, black students were three and a half times as likely to be suspended or expelled than their white peers.

Context of the Problem

How did the school-to-prison pipeline begin? There are several factors that contribute to the evolution of the school-to-prison pipeline such as poor classroom management skills and lack of cultural competency among school staffs. However, the education literature suggests that the following factors have made the largest contribution to this epidemic:

- Drastic increase in number of school resource officers
- Lack of developmental competence among school staff
- Criminalization of normal adolescent behavior
- School administrator abuse of discretionary power
- Over reliance on referrals to law enforcement as opposed to utilizing alternative approaches to discipline (i.e. restorative justice practices)

Although all of these factors play a significant role in the perpetuation of the school-to-prison pipeline one aspect is inconspicuously absent, the role of implicit bias. Despite the belief by many legal scholars that we are living in a post-racial society, the stark reality is race still matters, especially in the school disciplinary context. The glaring racial disparities in school disciplinary sanctions previously mentioned are undisputable.

Although I applaud the efforts of stakeholders in education to facilitate alternative approaches to school discipline to foster substantive reform, most of these strategies will be unsuccessful due to the failure to address the influence of implicit racial bias.

What is implicit bias?

Implicit bias is *unconscious* bias that influences our daily decisions. The concept of implicit bias is based on the science of implicit cognition, which “suggests that individuals do not always have conscious, intentional control over the processes of social perception, impression formation, and judgment that motivate their actions.”² Rather, there are many implicit mental processes that operate outside of an individual’s conscious intentional focus, including implicit attitudes, implicit perceptions, implicit memories, and implicit stereotypes.³ Implicit biases live within our schemas.⁴ A schema is a cognitive framework or mechanism that assists in organizing and interpreting information.⁵ Schemas can be useful because they allow us to take shortcuts in interpreting the vast amount of information that is available in our environment.⁶ However, these mental frameworks also cause us to exclude pertinent information and instead focus only on things that confirm our pre-existing beliefs and ideas. Schemas can perpetuate stereotypes and serve as a hindrance to retaining new information that does not conform to our established ideas about the world.⁷ An example of a schema is the traditional gender categories of male and female. Implicit bias lies within those schemas because of our natural tendency to unconsciously develop pre-existing beliefs and ideas about those gender schemas such as the notion that females are more proficient in English and males are more competent in math and science fields.⁸ As one can imagine, the influence of these types of stereotypes can be highly destructive in a multitude of contexts such as employment decisions and judicial decisions. For example, a judge may

² *Project Implicit; Background*, HARVARD UNIV., <https://implicit.harvard.edu/implicit/demo/background/faqs.html> (last visited August 6, 2015).

³ *Id.*

⁴ Source: <http://americansforamericanvalues.org/unconsciousbias/>

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Jerry Kang, *ARTICLE: TROJAN HORSES OF RACE*, 118 HARV. L. REV. 1489, 1492 (2005).

unconsciously issue a harsher sentence on a male than female due to the stereotypical depiction of males having a higher propensity for violence.

Since implicit bias is a relatively new phenomenon, it is not uncommon for some individuals to doubt its authenticity.⁹ The Implicit Association Test (IAT), created in 1997, was designed by a group of Harvard researchers to determine whether an individual holds an implicit bias against a certain group of people.¹⁰ Specifically, the IAT measures the relative strength of association between a target concept such as gender and an attribute concept, which are positive and negative meanings we attach to the target group.¹¹ Essentially, the test measures whether the test taker associates “good characteristics” more with one group over another.¹² There are several benefits to taking an IAT. First the test helps unmask prejudice that individuals may be unaware of that is negatively influencing how they their judgment.¹³ Unconscious prejudice can be detrimental in legal and education settings. Another benefit of taking an IAT is that it promotes prejudice reduction because individuals that are made aware of their unconscious bias are more likely to engage in self-correction during decision-making.¹⁴ Lastly taking an IAT helps dispel hegemonic notions that we are living in a color-blind society where race is no longer a contributing factor to inequity.

⁹ Gregory Mitchell & William E Tetlock, *ARTICLE: Antidiscrimination Law and the Perils of Mindreading*, 67 OHIO ST. L.J. 1023 (2006).

¹⁰ Reshma M. Saujani, *The Implicit Association Test: A Measure of Unconscious Racism in Legislative Decision-Making*, 8 MICH. J. RACE & L. 395, 406 (2003).

¹¹ Reshma M. Saujani, *The Implicit Association Test: A Measure of Unconscious Racism in Legislative Decision-Making*, 8 MICH. J. RACE & L. 395, 406 (2003).

¹² Reshma M. Saujani, *The Implicit Association Test: A Measure of Unconscious Racism in Legislative Decision-Making*, 8 MICH. J. RACE & L. 395, 406 (2003).

¹³ Reshma M. Saujani, *The Implicit Association Test": A Measure of Unconscious Racism in Legislative Decision-Making*, 8 MICH. J. RACE & L. 395, 408 (2003).

¹⁴ Reshma M. Saujani, *The Implicit Association Test": A Measure of Unconscious Racism in Legislative Decision-Making*, 8 MICH. J. RACE & L. 395, 410 (2003).

It is difficult for many people to accept that they harbor implicit biases that are contradictory to their egalitarian beliefs and values.¹⁵ According to the leading implicit bias expert, Professor Mahzarin Banaji, “even the most well-meaning person unwittingly allows unconscious thoughts and feelings to influence seemingly objective decisions.”¹⁶ Unconscious stereotypes that we associate toward certain groups of people affect even the most fair-minded individuals, resulting in implicit prejudice.¹⁷ These biases are fueled by negative stereotypes perpetuated through the news, social media, and the film and television industry. For example, some individuals associate African American males as having a higher propensity for violence, dishonesty, and laziness due to their overrepresentation as criminals on television. Similarly, unconscious stereotypes can also associate certain characteristics to Asian Americans such as being highly intelligent and all love karate. Associating certain characteristics to groups of people, at even young ages, affects our ability to perceive people from an individualist, non-stereotypical perspective.¹⁸ As a result, implicit biases appear in all facets of society in terms of gender, race, disability, sexual orientation, ethnicity, and other traditionally marginalized groups.

A myriad of empirical research has been conducted over decade, which provide evidence that implicit racial bias is pervasive among many who consciously subscribe to a belief in racial equality. The empirical work of Linda Hamilton Krieger, which explores the intersection of unconscious bias and discrimination in the workplace, highlights the following three themes in relation to social cognition research that are relevant to implicit

¹⁵ Mahzarin Banaji, Max Bazerman, & Dolly Chugh, *How (Un)ethical Are You?*, HARVARD BUSINESS REVIEW, 1 (Dec 2003) <http://www.foundationforeuropeanleadership.org/assets/downloads/infoItems/145.pdf>

¹⁶ *Id.*

¹⁷ Mahzarin Banaji, Max Bazerman, & Dolly Chugh, *How (Un)ethical Are You?*, HARVARD BUSINESS REVIEW, 1 (Dec 2003) <http://www.foundationforeuropeanleadership.org/assets/downloads/infoItems/145.pdf>

¹⁸ *Id.* at 2.

racial bias: (1) biases and stereotypes operate regardless of whether an individual has an explicit intent to do so; (2) stereotyping is automatically triggered by normal cognitive processes, and (3) people have limited control over their cognitive processes.¹⁹ This study is groundbreaking because it helps illuminate how stereotypes and racial attitudes are not only implicit but also involuntary.²⁰ Thus, individuals that possess implicit racial biases toward certain groups of people are unintentionally allowing those biases to influence their decision-making. Thus, if messages about race or gender are not framed in terms that address conscious networks, unconscious attitudes will triumph.²¹

Implicit Bias and the School-to-Prison Pipeline

The effect of unconscious biases is especially disconcerting in the context of school disciplinary decisions. The majority of school disciplinary sanctions are the product of split second decisions, which as implicit bias research reveal is the context in which our unconscious biases have the greatest influence. Since the science of implicit bias is a relatively new area of research, there are unfortunately a limited number of empirical studies, especially in relation to the school-to-prison pipeline. However, research in this area continues to grow as stakeholders in education seek empirically based interventions to dismantle the school-to-prison pipeline. A recent study conducted at Stanford University explored what role, if any, implicit bias played in racial disparities in school discipline among five school middle schools across three school districts.²² The findings of this study revealed not only that teachers possessed unconscious racial bias

¹⁹ Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 DUKE L.J. 345, 354 (2007)

²⁰ Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 DUKE L.J. 345, 354 (2007)

²¹ DREW WESTEN, *THE POLITICAL BRAIN* (Perseus Book Group, 2007).

²² Okonofua, J.A. & Eberhardt, J.L. (2015). Two Strikes: Race and the Disciplining of Young Students, *Psychological Science*.

toward students of color, but that this bias could be significantly reduced with the proper intervention and training.²³ According to the Stanford study, the number of school suspensions were reduced by 50% as a result of the de-biasing intervention training provided to teacher participants.²⁴ The intervention focused on reframing how teachers view discipline as opportunities for growth as opposed to strictly punitive.²⁵ Another study found that students whom teachers viewed as displaying a “black walking style” were perceived as being highly aggressive and more likely to need special education services.²⁶ The findings in these two studies coupled with the discipline gap between students of color and their white peers suggest there is a strong correlation between implicit bias and racial disparities in school disciplinary sanctions. In an ideal world, school learning environments would be immune from unconscious negative attitudes about race. However, that is not the current reality. Stakeholders in education can no longer afford to demonstrate deliberate indifference to the significance of race and the role implicit bias plays in perpetuating racial disparities in school discipline. Despite the laudable goals of school reform measures such as Restorative Justice and Positive Behavioral Interventions and Supports, all of these efforts will not yield systemic reform without addressing implicit bias.

Strategies for Addressing Implicit Bias in School Discipline

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Neal, L. V. I., McCray, A. D., Webb-Johnson, G., & Bridgest, S. T. (2003). The effects of African American movement styles on teachers' perceptions and reactions. *The Journal of Special Education*, 37(1), 49-57. Accessed at: <http://coedpages.uncc.edu/cpobrie/African-Americans.bias,%20movement.pdf>

- a. Require all school personnel to take a confidential Implicit Association Test (IAT)²⁷ and mandatory implicit bias training for *all* school personnel.
- b. Monitor racial disparities in school disciplinary referrals at the classroom level to help identify school personnel that unknowingly harbor racial bias towards students of color.
- c. Reaffirm school personnel's ethical obligations to promote equality and require them to minimize the effects of their implicit bias on school disciplinary sanctions.
- d. Educate school personnel on the measures for reducing the effects of implicit bias:
 - i. Raise awareness of implicit bias
 - ii. Identify areas of ambiguity and introduce more objective measures for school disciplinary decisions
 - iii. Routinely checking disciplinary policies and thought-processes for bias
 - iv. Acknowledge group and individual differences and provide counter-narratives for stereotypes
 - v. Reframe how school personnel view school discipline—as opportunities for growth as opposed to a punitive perspective

²⁷ Allowing the results of teachers' Implicit Association Test (IAT) to remain confidential will inform teachers of their unconscious bias without fear of repercussions by school administrators. Research has shown that once individuals become aware of their implicit bias they tend to self-correct their behavior.



Indiana Association of Home Educators

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October 3, 2016

Ms. Diane Clements-Boyd
Chairwoman of the Indiana Advisory Committee
to the U.S Commission on Civil Rights
Midwestern Regional Office
55 West Monroe, Suite 410
Chicago, IL 60603

Dear Ms. Clements-Boyd and the Indiana Advisory Committee to the U.S.
Commission on Civil Rights:

The draft of the School to Prison Pipeline report was not posted online for our review prior to the September 19, 2016 conference call. Homeschooling was not mentioned during the conference call, so there was no need to provide public comment at that time.

Once the draft was released for public viewing, we found a great deal about which to be concerned. The language “inadequately supervised and supported homeschooling” in the draft report is nebulous and troublesome. Home education is parent-directed, home-based, and privately-funded; it is defined in Indiana Code as a non-accredited, nonpublic school. While the Committee's report appears to be advocating for increased involvement in homeschooling, private home education has been occurring successfully in Indiana for decades without government involvement. Home education works because the parents take responsibility for the education of their children. The Indiana General Assembly has deemed that only minimum government involvement is necessary for successful home education programs in this state. We strongly believe that changing that would harm the spirit of independence and initiative needed to be an effective home educator. Personal responsibility is a key provision to a successful home education program.

The inclusion of Ms. Daniels' testimony about homeschooling being “completely unregulated” in Indiana is disturbing. Indiana Association of Home Educators (IAHE) as well as Home School Legal Defense Association (HSLDA) testified in direct opposition to this assertion by Ms. Daniels. Indiana Association of Home Educators requested HSLDA provide testimony regarding Indiana Code that relates to home education. In fact, if current law was enforced it would prevent the issues with the School to Prison Pipeline as it relates to home education. We are disappointed to see that this information was omitted from the report. Both IAHE and HSLDA would have been more than willing to personally testify before the IAC-USCCR in the



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original hearing held on this topic. Unfortunately, we were not invited to do so until later.

Finally, we are troubled by: "The Committee notes that additional testimony from various home school advocates expressed strong support for properly supported home schooling as a positive intervention, especially for youth who are struggling in school.169" We are concerned that this sentence could be misconstrued to mean IAHE and others who testified believe that coercion of troubled students into "homeschooling" may be used as a positive intervention for troubled students. Once again, the vague language used in "properly supported" may be interpreted to mean government involvement. We reject the notion that government involvement in home education is beneficial to families. Home education must be a family decision without coercion from a governmental entity such as a public school. The parent must weigh the personal cost as to whether or not home education is a good fit for his or her child.

Thank you for the opportunity to express our concerns regarding the draft report. You may contact me for further questions at debik@inhomeeducators.org or 317-467-6244 ext. 107.

Sincerely,

Debi Ketron
Member, Board of Directors
Director of Government Affairs

Cc: Home educators of the State of Indiana

Appendix B.5: Written Testimony
MICHAEL P. FARRIS, JD, LLM
CHAIRMAN (WA, DC)
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OF COUNSEL (CA)

Testimony to the Indiana Advisory Committee to the United States Commission on Civil Rights on Homeschooling in the School-to-Prison Pipeline Discussion

Recently the Indiana Advisory Committee to the United State Commission on Civil Rights heard testimony on the issue of school-to-prison pipeline in the state. In the meeting held on February 17, 2016 there was some discussion of homeschooling in Indiana. However, since much of the information provided was not accurate we felt it was necessary to help clarify the status of Indiana homeschool law.

I work as a staff attorney for the Home School Legal Defense Association (HSLDA). We are a national organization which has as its primary purpose the protection of the right of parents to educate their children at home. We assist our member families in understanding what state law requires as well as providing practical advice and assistance in developing successful homeschool programs. We currently have more than 83,000 member families in all 50 states and over 2,300 families in Indiana.

Contrary to the earlier testimony to this Committee, Indiana is not the "Wild West" when it comes to homeschooling. Under state law Indiana families educating their children at home have the same legal status as a nonpublic school. Any parent who homeschools their children must follow the same requirements as any other non-accredited nonpublic school.

Over 100 years ago the Indiana Appellate Court held that state law allows the operation of homeschool programs. *State v. Peterman*, 32 Ind. App. 665, 70 N.E. 550 (1904). It was in this decision that the court acknowledged that a child being educated at home is to be treated the same as a nonpublic school. The court defined a school as "a place where instruction is imparted to the young. . . . We do not think that the number of persons, whether one or many, make a place where instruction is imparted any less or any more a school." *Peterman*, 70 NE at 551.

The Appellate Court also explained why homeschooling was legally permitted with minimal regulations. "Under a law very similar to ours, the Supreme Court of Massachusetts has held that the object and purpose of a compulsory educational law are that all the children shall be educated, not that they shall be educated in any particular way." *Peterman*, at 551.

The court concluded,

The result to be obtained, and not the means or manner of attaining it, was the goal which the lawmakers were attempting to reach. The law [compulsory attendance]

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Schmidt Testimony, p. 1

was made for the parent who does not educate his child, and not for the parent who... so places within the reach of the child the opportunity and means of acquiring an education equal to that obtainable in the public schools...." *Peterman*, at 552.

Under Indiana law all children must be to be sent to a public school or "provided with instruction equivalent to that given in the public schools" for the school year in which the student becomes seven years of age until they graduate or become eighteen year of age. Indiana Code § 20-33-2-6 and § 20-33-2-8. This "equivalent instruction" language applies equally to nonpublic schools and homeschools. In fact, Indiana Code § 20-33-2-28 states:

It is unlawful for a parent to: (1) fail; (2) neglect; or (3) refuse; to send his child to a public school for the full term as required under this chapter unless the child is being provided with instruction equivalent to that given in the public schools.

Prior to 1979, the term "equivalent" was followed by the language "as determined by regulation of the Commission on General Education." However, the Indiana legislature decided to remove all authority of the State Board of Education or the local school districts to define "equivalent instruction" or to regulate it beyond that which is specifically authorized by statute.

Parents who establish a nonpublic school in their home have to provide equivalent instruction to that given in the public schools, but they are not bound to follow any of the curriculum standards or requirements for public schools that are delineated in the statute. Indiana Code § 20-33-2-12(a) states:

A school that is: (1) non-public; (2) non-accredited; and (3) not otherwise approved by the State Board of Education; is not bound by any requirements set forth in IC 20 or IC 21 with regard to curriculum or the content of educational programs offered by the school.

The intent of the legislature is that children in nonpublic schools be educated in an equivalent manner but that they have the freedom to use the curriculum that best suits the needs of their school. In the case of homeschool programs, the curriculum can be tailored to the needs of each individual student within the home. In fact, homeschool families have more choices of high quality curriculum than your average public school. It is estimated that homeschool parents in the U.S. spend over \$1,000,000,000.00 each year in educating their children at home.

Besides having to provide equivalent instruction, there are two more requirements that apply to nonpublic schools which operate in the home. Indiana Code § 20-33-2-21(b) states:

Each principle or school administrator in a nonpublic school that is attended by a student who is subject to the compulsory school attendance law...shall furnish, on request of the state superintendent, the number of students by grade level attending the school. Emphasis mine.

Therefore, homeschoolers must report the number of children by grade level attending their nonpublic school in the home whenever this information is specifically requested by the state superintendent of public instruction.

Secondly, nonpublic schools are required to keep "an accurate daily record of the attendance of each child who is subject to compulsory school attendance" [Indiana Code § 20-33-2-20]. Subsection (c) of this section states:

In a nonpublic school, the record shall be required to be kept solely to verify the enrollment and attendance of a student upon request of the 1) state superintendent; or 2) the superintendent of the school corporation in which the nonpublic school is located. Emphasis mine.

Indiana law also has numerous laws in place in the event a child is not adequately educated. These laws include the appointment of attendance officers, the power of certain officers to take children in custody when they are not in school, and the prosecution of parents when they fail to ensure the child is enrolled in a school or being provided with instruction equivalent to that given in public schools.

Homeschooling is a fundamental right that is protected by the Indiana laws and the U.S. Constitution. The purpose of compulsory attendance laws in Indiana is to ensure that children be educated, not that they should be educated in any particular way. The courts, the Constitution, and the Indiana statutes all indicate that parents have the right to control their children's education, including the right to provide an education for them at home. However, under Indiana law the State Department of Education and the local school districts, have a very limited role in dealing with nonpublic schools and nonpublic schools in the home.

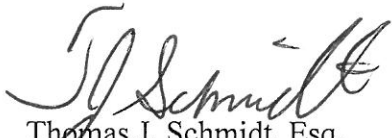
In fact, in *Mazanec v. North Judson-San Pierre School Corporation*, 614 F. Supp. 1152 (N.D. Ind. 1985), (aff'd by 798 F.2d 230), the federal district court recognized that parents have the constitutional right to educate their children in a home environment (at page 1160) with minimal regulation. The court wrote concerning the qualifications of homeschool parents that, "it is now doubtful that the requirements of a formally licensed or certified teacher...would pass constitutional muster." (at p. 1160).

Indiana is not alone in treating homeschoolers the same as nonpublic schools. At least 14 other states have laws which treat individual homeschool families as private or religious/church related schools. Six more states treat groups of homeschool families the same as private or religious/church related schools. In addition, Oklahoma protects the right of parents to provide "other means of education" under their state constitution. All told, nearly half of the states (44%) treat homeschool parents in the same way as traditional private/nonpublic schools. These parents have to comply with the same laws as any other nonpublic school, just like Indiana.

In conclusion, homeschooling in Indiana is regulated. It is regulated in a same manner as any other non-accredited nonpublic school is in the state. Parents have to follow the same laws and ensure that their children are being educated. If they fail to educate their children they can be prosecuted. There have been several situations in Indiana over the past few years where parents

failed to educate their children and they were successfully prosecuted. Many more have been investigated due to concerns of friends, family, or local school officials and found to have been adequately educating their children. Research shows that on average homeschool students score higher on nationally normed achievement tests and get into college at a high rate that their public school counterparts.

Should the Committee have any additional questions about homeschooling in Indiana we would be more than willing to assist.



Thomas J. Schmidt, Esq.
HSLDA Staff Attorney (Licensed in California)



National Black Home Educators

April 18, 2016

To whom it may concern:

Home schooling works for African-Americans. The following are some key points I would like to share regarding a 2015 study of Black homeschool families and their students by Dr. Brian Ray.

Academic achievement of Black homeschool students:

Comparing Black homeschool students to Black public school students yields notable findings. While controlling for gender of student and family socioeconomic status, being homeschooled had an effect size in...

1. Reading scores of about 42 percentile points higher than if public schooled.
2. Language, being homeschooled had an effect size of about 26 percentile points higher than if public schooled.
3. Math, being homeschooled had an effect size of about 23 percentile points higher than if public schooled.

These Black homeschool students' achievement test scores were quite high, all things considered. They scored at or above the 50th percentile in reading (68th), language (56th), math (50th), and core (i.e., a combination of reading, language, and math; 58th) subtests. By definition, the 50th percentile is the mean for all students (or all ethnicities/races) nationwide in institutional public schools.

The study was not designed to compare Black homeschool students' scores to other homeschool students' scores. However, Black homeschool students scored above the national average of public school students and, likewise, homeschool students in general score above the public school average.

The parents' five most-often stated reasons for homeschooling were the following:

1. "prefer to teach the child at home so that you can provide religious or moral instruction" (selected as one of the "three main reasons" by 46.9% of parents),
2. "accomplish more academically than in conventional schools" (38.3%),
3. "for the parents to transmit values, beliefs, and worldview to the child" (34.6%),
4. "to customize or individualize the education of each child" (28.4%), and
5. "want to provide religious or moral instruction different from that taught in public schools" (27.2%).

Two key demographic features:

1. They were median income families.
2. 40% of the families would qualify for free/reduced lunch had they been in public schools.



National Black Home Educators

Key methods notes:

1. The study was the first of its kind, delving into the quickly growing world of African Americans engaging in parent-led home-based education, the parents' reasons for homeschooling and the children's academic achievement.
2. This was a nationwide study of Black families and the children in them who have been homeschooled more than half of their school-age lives.
3. The parents completed surveys about their motivations for homeschooling and the students took standardized academic achievement tests.
4. This was a descriptive and explanatory study. It was not experimental and does not necessarily settle cause-and-effect questions regarding homeschooling compared to public schooling.
5. People should be cautious making generalizations from this information.
6. However, the positive findings related to homeschooling are consistent with 30 years of research on homeschooling.

These are just a few of the findings available for anyone interested in the African-American community engaged in parent-led home-based education. Parent-led home based education, also known as homeschooling, should not be confused with institutional public school education that is conducted in a home setting. These key findings and many other positive results concerning black home educators and their students are supported in several other studies that have been conducted in urban areas, i.e. Washington-DC and Atlanta, Georgia. Much of the current research conducted supports the positive benefits of African-Americans who choose homeschooling.

Regards,

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School to Prison Pipeline IAHE Testimony

Indiana Advisory Council to the United States Commission on Civil Rights

By: Alison J. Slatter

April 20, 2016

There's no place like home as Dorothy once said. Rather than a disordered, random patchwork, home education in Indiana is truly a yellow brick road to real educational order and success, unlike the fictional Oz. Thank you for allowing the Indiana Association of Home Educators (IAHE) an opportunity to respond to the previous testimony.

Far from being a lawless Wild West, Indiana is a model state for homeschooling. Whomever made such a contrary statement is unfamiliar with mainstream homeschooling in Indiana and the laws guiding home education. We have adequate provisions to ensure responsible home education with a visible and active state homeschool organization which helps parents meet the educational goals, including religious training and special education needs of their children. IAHE contends the real problem discussed in the previous testimony is not found in homeschooling, but within the public school system.

Home educators in Indiana must maintain attendance records for all children from the age of 7 to 18 years with generally 180 days of instruction per year documented for each child. At any time, the Indiana Superintendent of Public Instruction may ask homeschool parents for their attendance records to ensure instruction is taking place. In addition, the Indiana Code (IC 20-33-2-28) requires parents to provide an equivalent education to the public schools. If a parent is in violation of any of these

provisions, they can and should be prosecuted accordingly. **The children the transcript refers to as being “homeschooled” cannot be homeschoolers because instruction in the home by the parent has not been provided.** If the parents are not following the Indiana law, they do not qualify as homeschoolers. **Rather, these children are truants.**

The Indiana Association of Home Educators (IAHE) has long suspected principals were encouraging parents of problem students to reclassify the students as homeschooled. We are glad to see the speaker has publicly confirmed our suspicions. IAHE receives calls from parents whose children have been pushed out of public school. Many of these parents contact us requesting to “enroll their student” for someone else to teach. They do not understand that as a homeschooler, the PARENT is the one who gladly takes full responsibility for teaching their child. When these parents come to understand they are fully responsible, they are not at all interested in home education. In many cases the public school has already reported the child’s enrollment as a homeschooler to the Indiana Department of Education (IDOE) despite the fact the parents are wholly unfamiliar with this form of education. We refer these parents back to the public school or to the IDOE for reevaluation. **Home education needs to be a parent-driven decision and not a public school dumping ground.** It is a weighty responsibility that is not to be taken lightly.

In our view, the current Indiana Code relating to home education does not need to be changed. **We do agree that the practice of principals encouraging parents to reclassify their children as homeschoolers when the principal knows the parent does not intend to actually homeschool must be stopped.**

“Change of Placement” for a student enrolled in the public school system comes with responsibility on the part of the schools to ensure children are placed in an appropriate educational environment. The casual attitude with which school principals refer troubled students with behavior issues to home education is reckless and not in the best interest of the child. Homeschooling is not the root cause of this problem. More regulation of homeschoolers will not end principal misuse of the homeschool category. In addition, research shows that there is no correlation between the degree of state control/regulation of homeschooling and home-educated students’ academic achievement (Ray, 2010).¹ There are solutions to this problem and IAHE has suggestions for the state to curb the problem without harming the freedom of conscientious parents who choose to direct the education of their child.

¹ Ray, Brian D. (2010, February 3). Academic achievement and demographic traits of homeschool students: A nationwide study. *Academic Leadership Journal*, 8(1) [a peer-reviewed journal]. Retrieved April 19, 2016 from <http://www.nheri.org/AcademicAchievementAndDemographicTraitsOfHomeschoolStudentsRay2010.pdf>.

One of the recommendations Ms. Daniels made for correcting this issue is for more education and training of parents on home education. This should not be a function of the public school system. IAHE has been performing this task for the last 33 years. IAHE already offers a wide range of options for parents to become familiar with home education, as well as the rights and responsibilities of parents who choose to homeschool. As a means of connecting new homeschoolers to the support needed in their local area, IAHE has 16 experienced homeschooling couples who voluntarily serve as Regional Representatives. Each Representative is a ‘veteran’ homeschooler who can answer questions from parents starting their homeschooling years. In addition, IAHE regional representatives host free “You Can Homeschool” events to make sure families start off on the right track. We also maintain an active Facebook page with over 5,000 “Likes”, a website with resources, podcasts and recommendations for new homeschoolers as well as publishing *The Informer* magazine, with over 7,500 subscribers, containing articles of interest to home educators. Every public library in the state of Indiana is sent a copy of *The Informer* for their patrons’ use. Our email newsletter is sent out weekly to over 6,000 families with events and opportunities. Once a year, we host a large homeschooling convention featuring guest speakers, vendor exhibit hall and educational activities at the Indiana State Fairgrounds. Last year’s attendance at the convention was over 5,000 people. IAHE is a non-profit organization committed to informing, educating and supporting homeschool families in Indiana.

In fact, we are having our Convention at the Indiana State Fairgrounds on April 29-30, 2016, offering specific classes for parents new to homeschooling and other classes to help parents continue to improve as they homeschool their children. This will be our 31st annual Convention.

In addition, this year, IAHE has invited the National Black Home Educators to speak about the National Home Education Research Institute’s study on “African American Homeschool Parents’ Motivation for Homeschooling and Their Black Children’s Academic Achievement”. We invite the members of the USCCR-Indiana Advisory Council to attend this event.

As you can see, IAHE is not invisible. We are quite easily found for anyone seeking information on home education in Indiana. Training and education in homeschooling is readily available to those who want it, regardless of income. As a matter of fact, we are listed as a resource on the IDOE’s website for homeschooling. Hoosiers for Quality Education also lists us as a resource for further exploration of this

form of education.

Many mistakenly believe home education is only available to affluent families. Nothing could be further from the truth. Low-income families, as well as middle and upper-income parents, have successfully educated their children at home. The single largest expense in a homeschool budget is curriculum. Used and free curriculum is readily available to the resourceful homeschool family. Throughout the year, used curriculum sales, both online or at a regional book sale, can help families obtain their chosen books at a fraction of the price of new ones. Further, it is possible to buy curriculum to use for a year and then sell it the next year for the same amount you purchased it, thus completely recovering the amount paid in the first place. Free online curriculum is also available. IAHE has put together a Pinterest page of free or low cost curricula for new homeschoolers. This is one more example of the many resources available through IAHE, for free, to Hoosier home educators.

On page 152, Ms. Smart is quoted as saying, “But what we have learned is the most at-risk student can succeed if there is one adult in the building who is crazy about that kid, and that can be your janitor, that can be a teacher, that could be your media specialist, it doesn't matter, but just that one simple free intervention makes a huge difference.” IAHE could not agree more. **A parent, crazy about their child, makes all the difference in the world to the child’s educational outcome.** For multiple reasons, homeschool parents throughout Indiana have chosen to take on the responsibility of educating their child.

A major reason for many parents choose home education is based on their belief that it is their God-given responsibility to instruct their children in accordance with their religious convictions. Christian homeschoolers find ample reason to home educate in the Bible. In Deuteronomy, parents are told to instruct their children all day long in everything they do. The sixth chapter of Luke reminds parents that students will become like their teacher. The Book of Wisdom, Proverbs, instructs us that wisdom comes from God and understanding from His mouth. According to the National Black Home Educators association, who also submitted written testimony for today’s discussion, three of the top 5 reasons cited among African-American homeschoolers dealt with religious, moral instruction and the desire to transmit those beliefs to their children. Home education to many families is an act of obedience to their beliefs and an exercise of religious liberty. It is my understanding a major point of contention in the school choice debate is the use of public funds for religious purposes. If one truly believes taxpayer

money has no business supporting a family's private religious beliefs, then government funding and control has no business in home education. The introduction of government-funded homeschooling is the first step to a loss of religious liberty and academic freedom.

On page 222, Mr. Douglas says, "On that topic of people coming -- home schoolers or people coming back from alternative sources of education back into public schools, are you seeing whether they are returning at pace with their peers or behind? And I have to admit, I have anecdotal evidence from a principal in Kokomo years ago who was making a comment to me that kids were coming back from home schooling badly behind, I was curious whether that was just an anecdote or a bigger problem."

Mr. Douglas inadvertently touched upon the second major reason for all homeschoolers, African-American homeschoolers in particular, to home educate. The overwhelming majority of parents want to give their children the best education possible, especially those with special needs. **Many families have found great success bringing their children home to tailor education to the needs and demands of the child rather than forcing the child to conform to the needs and demands of the school.** At IAHE, we regularly hear stories about how students have re-ignited their love of learning once placed in a home environment during instructional time. We have a growing list of testimonials of children who were behind in public school, but are now thriving in home education. In preparation for today's hearing, we began asking our members if they had a story they would like to share with the Indiana Advisory Committee. You can find their stories on our website at: <http://www.iahe.net/testimonials>.

Not every child thrives in an institutional education environment. As a result, many children who are subjected to the framework of classroom instruction can fall behind. In fact, Ms. Clemens from Decoding Dyslexia Indiana testified to this fact. Many parents pull their children who are already underperforming academically from the public school system. A child who has fallen behind by two or three years in public school will sometimes take years of consistent hard work at home to claw his/her way back into parity with their peers. Should life circumstances require the child's re-entry into the public system, it would not be at all surprising to learn the child was behind his/her peers. He/she was already behind prior to the child's time spent as a homeschooler.

In conclusion, the current crisis of children being expelled from public school, "transferred to homeschooling" at the direction of the school's principal, and now appearing to be "lost" never involved

committed homeschool students and cannot be solved by regulating home education. IAHE, as a network of parents whom highly esteem education, urge correction of the “change of placement” procedure for expelled public school students. IAHE will continue to carry out our mission to support Indiana parents who freely decide to homeschool while fighting taxpayer funding of home education. For some Indiana school-age children, there’s just no place like home for learning.

Indiana Advisory Committee to the United States Commission on Civil Rights



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