



## APPENDICES

### GOOD DISCIPLINE: LEGISLATION FOR EDUCATION REFORM

*Daniel J. Losen*

The Civil Rights Project/Proyecto Derechos Civiles at UCLA

October 2011

### **National Education Policy Center**

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

Email: [NEPC@colorado.edu](mailto:NEPC@colorado.edu)  
<http://nepc.colorado.edu>

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This is one of a series of briefs made possible in part by funding from  
The Great Lakes Center for Education Research and Practice.

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FOR EDUCATION RESEARCH & PRACTICE  
<http://www.greatlakescenter.org>  
[GreatLakesCenter@greatlakescenter.org](mailto:GreatLakesCenter@greatlakescenter.org)

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Publishing Director: **Alex Molnar**

**Suggested Citation:**

Losen, D.J. (2011). *Good Discipline: Legislation for Education Reform*. Boulder, CO: National Education Policy Center. Retrieved [date] from <http://nepc.colorado.edu/publication/discipline-policies-legislation>.

## Appendix I

**Table 1. Federal Data Requirements**

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

**Table 1. Federal Data Requirements (continued)**

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

**Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Other amendments to the IDEA and ESEA

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

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

***Expanding upon the Safe and Drug Free School and Communities Approach (SDFSCA):*** Title IV's "type of offense" reporting requirements perform a very valuable function. The required reporting on serious offenses in the current law paves the way to requiring the reporting of the **remaining offenses as "lesser offenses," perhaps lumped together as one additional category.** Ideally legislation expanding the reporting requirements for Title IV data could add lesser offenses and require the same subgroup disaggregation as found in the IDEA or current Title I of the ESEA.<sup>2</sup>

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

***Codifying the OCR Requirements:*** Discipline data have been collected and reported biennially by the U.S. Department of Education pursuant to their regulatory authority since 1968.<sup>3</sup> In 2009 the U.S. Department of Education finalized the data collection requirements for the Civil Rights Data Collection instrument. This extensive survey collects data directly from a large sample of **schools and districts and most years includes over one third all the nation's school districts. In 2009-2010 the sample size was enlarged to be almost half, and in 2011-2012 the plan is to survey all the nation's schools and districts.**<sup>4</sup>

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

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

CRDC discipline data required as of 2010 include:<sup>5</sup>

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

All the CRDC data must be disaggregated by race/ethnicity, Limited English proficiency status, disability (IDEA) and sex. The discipline data are collected using two tables, one for students without disabilities and one for students with disabilities with full disaggregation for each one.<sup>6</sup> A straightforward way to bolster the federal collection and reporting of discipline data would be to amend the ESEA to make the CRDC data collection an annual collection required of every school and district. Further, the CRDC **contains clear definitions of terms such as “in-school” and “out-of-school” suspension not found in the statutes. Moreover, in 2011, the CRDC will add mandatory disciplinary data collection from pre-schools and has added state-funded juvenile correction facilities, two areas that are not included under the IDEA or Title IV. Finally, the CRDC is meant to merge nearly all of the collection requirements of the IDEA with the current CRDC collection. However, where the IDEA requires disaggregated discipline data on students with disabilities “by disability category,”<sup>7</sup> it is not yet clear that this will be covered by the CRDC. The results of that data collection are expected to be publicly available before 2012. However, codifying the CRDC as suggested would not eliminate any IDEA requirements. Model legislation would need to expand on the CRDC data requirements only slightly to require disaggregation by type of offense.**

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

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

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

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

- (A) In general.—A State that receives assistance under this part shall prepare and disseminate an annual State report card.
- (B) Implementation. —The State report card shall be—
  - (i) concise; and
  - (ii) presented in an understandable manner and uniform format and, to the extent practicable, provided in a language that the parents can understand.

*Amendment: [Insert new subsection (iii)]*

(iii) be collected in a manner that allows for cross-tabulation<sup>8</sup> of the subgroups required in paragraph (C)(i) below.

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

...

*Amendment: Insert new subsection (ix):*

for each annual report required by this subsection each state shall collect and report to the Secretary of Education and to the public<sup>9</sup> the disaggregated school discipline data at the state, district and school level (including preschools and state-run juvenile detention facilities) for all students, disaggregated by all the categories required in paragraph (i)<sup>10</sup> as follows:

- (I) The number and percentage of children who are subject to corporal punishment, in-school suspension, seclusion or restraint, out-of-school suspension of one day or more, more than one out-of-school suspension, long-term suspension, expulsion, referral to law enforcement, expulsion or suspension pursuant to Title IV, or arrested for a school-related offense.
- (II) The number of incidents per student in the educational agency for each type of disciplinary removal in paragraph (I).
- (III) The number and percentage of children who are removed to alternative educational settings.
- (IV) The acts or items precipitating those removals.



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

## **New York City’s New Reporting Requirement**

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

Be it enacted by the Council as follows:

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

### CHAPTER 11

#### REPORTS ON STUDENT DISCIPLINE

§8-1101. Definition; confidentiality requirements.

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

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

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

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

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

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

§14-152. School activity reporting.

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

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

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

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

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

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

## Appendix II

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

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

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

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

### *IDEA: Discipline Data Collection and Public Reporting*

#### **Current law: Public law 108-446**

SEC. 612.<sup>11</sup> STATE ELIGIBILITY.

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

...

(22) Suspension and expulsion rates.--

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

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

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

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

#### **Suggested amendments**

*Amend subsection (22) as follows:*

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

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

(22) Suspension and expulsion rates.--

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

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

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

*Insert a new subsection (B)*

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

*Renumber original subsection (B) to (C)*

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

### ***IDEA Data Collection, Analysis, and Triggered Remedy:***

#### **Improving the IDEA Discipline Data Collection and Public Reporting requirements:**

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

#### ***Recommended amendments to the comprehensive IDEA requirements:***

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

#### **Public law 108-446**

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

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

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

...

*[sections i-iv of this subsection omitted]*

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

(II) The acts or items precipitating those removals.

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

...

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

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

(b) Data Reporting.--

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

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

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

(d) Disproportionality.--

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

...

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

...

- (2) Review and revision of policies, practices, and procedures.--In the case of a determination of significant disproportionality with respect to the identification, or placement, or discipline of children with disabilities, ~~or the placement in particular educational settings of such children,~~ in accordance with paragraph (1),<sup>12</sup> the State or the Secretary of the Interior, as the case may be, shall—
- (A) provide for the review and, if appropriate, revision of the policies, procedures and practices used in such identification, ~~or placement, or discipline,~~ to ensure that such policies, procedures, and practices comply with the requirements of this title;
  - (B) require any local educational agency identified under paragraph (1) to reserve the maximum amount of funds under section 613(f)<sup>13</sup> to provide comprehensive coordinated early intervening services to serve children in the local educational agency, particularly children in those groups that were significantly overidentified under paragraph (1); and
  - (C) Require the state to report annually to the public on the particular districts determined to have significant disproportionality highlight the specific areas where this was found and require the local educational agency to publicly report on the revision of policies, practices, and procedures described under subparagraph (A).



## Appendix III

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

### Changes to Title II referenced in Part III:

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

Currently the ESEA indirectly encourages district applicants to target schools that need to be more effective in addressing behavioral issues. **Section 2122, concerning “Local Applications and Needs Assessment,”** at (b)(3) currently conditions district eligibility on an assurance by LEA's that it will target its funds for schools that—**“(A) have the lowest proportion of highly qualified teachers; (B) have the largest average class size; or (C) are identified for school improvement under section 1116(b).”** At subsection (b)(9) districts are asked to ensure that they, **“(B) improve student behavior in the classroom and identify early and appropriate interventions to help students described in subparagraph (A) learn.”**<sup>14</sup>

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

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

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

### ***Toward a model approach***

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

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

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

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

Unfortunately, Congress and the Obama administration appear to support relaxing the requirements of the law pertaining to highly qualified teachers.<sup>15</sup> Therefore adding more to the **ESEA's definition may not be a very promising avenue at this time.**<sup>16</sup> However, a requirement that teachers must demonstrate they have received training in classroom and behavior management could be worthwhile in some states.

## Access to Highly Qualified Teachers

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

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

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

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

- (L) ensure, through incentives for voluntary transfers, the provision of professional development, recruitment programs, or other effective strategies, that low-income students and minority students are not taught at higher rates than other students by unqualified, out-of-field, or inexperienced teachers;...<sup>17</sup>

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

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

#### **Substitute House Bill No. 7350**

Public Act No. 07-66

AN ACT CONCERNING IN-SCHOOL SUSPENSIONS.

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

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

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

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

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

Approved May 30, 2007

## Appendix IV

### Fixing other problematic incentives in ESEA accountability.

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

- (xi) include students who have attended schools in a local educational agency for a full academic year but have not attended a single school for a full academic year, except that the performance of students who have attended more than 1 school in the local educational agency in any academic year shall be used only in determining the progress of the local educational agency;”<sup>18</sup>

When dealing with a highly mobile student body within a district, as many districts do, it makes sense that schools are not held accountability for the test scores of students they only taught for a fraction of the year. However, when otherwise non-mobile students do not attend a school for a full academic year because they were suspended and/or forced to transfer to an alternative disciplinary school or program, the school that suspended or forced the student to transfer should **still be held accountable for the student’s test scores.**<sup>19</sup> Otherwise, there is an incentive to frequently suspend or forcibly transfer low scoring students, as a way to artificially boost a schools performance profile. This loophole can be closed by stating that the test scores of all enrolled students who are suspended, expelled or transferred on disciplinary grounds must be counted against both the LEA and the school initiating the disciplinary removal unless the fact that the student did not attend the school in question for a full academic year was for reasons other than those stemming from disciplinary exclusion.

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

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

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

## Notes and References

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§613(f) Early Intervening Services.--

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

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

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

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

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

15 In December of 2010, an **“anomaly amendment”** was inserted into Congress's Continuing Resolution (allows the government to continue functioning in the absence of an official budget.) The amendment allows all teachers who are merely enrolled in an alternative certification program, including those lacking any experience or relevant licensure, **to be considered “highly qualified” under No Child Left Behind (NCLB) regulations.”** See

Council for Exceptional Children, (January 12, 2011). What is a highly qualified teacher? Congress weighs in. *Policy Insider*. Retrieved January 28, 2011, from <http://www.policyinsider.org/2011/01/what-is-a-highly-qualified-teacher-congress-weighs-in.html>

16 According to one report, a bipartisan group of Senators is planning on “tossing out” the term “highly qualified.” See Armario, C. (2011, January 26) Senators pledge to work jointly on education. Associated Press. Retrieved February 4, 2011, from [http://www.google.com/hostednews/ap/article/ALeqM5gyWtc1T0o\\_JdpDi1xQHxGpnmSKag?docId=c8aa32139c3f4d36882d9ad7c375b8c8](http://www.google.com/hostednews/ap/article/ALeqM5gyWtc1T0o_JdpDi1xQHxGpnmSKag?docId=c8aa32139c3f4d36882d9ad7c375b8c8). (No longer available as of September 13, 2011.)

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

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

19 For a detailed discussion of the interplay between test score accountability and disciplinary alternative schools in Texas see Reyes A.H. (2006). *Discipline, Achievement, Race: Is Zero Tolerance the Answer?* Lanham, MD: Rowman & Littlefield, 53-56.