

MASSACHUSETTS APPLESEED CENTER FOR LAW AND JUSTICE



Keep Kids
in Class

NEW APPROACHES TO SCHOOL DISCIPLINE

KEEP KIDS IN CLASS:

New Approaches to School Discipline

Through our signature project, “Keep Kids In Class: Breaking the School to Prison Pipeline,” Massachusetts Appleseed Center seeks to mitigate the effects of elementary and secondary school discipline proceedings on the increasing rates of drop-outs and juvenile delinquency. Massachusetts Appleseed wrote this report because we believe in the importance of good data. Although stories and anecdotal evidence abound, little was known statistically about who is getting disciplined in Massachusetts schools and for what kind of behavior. By identifying and examining the effect of zero tolerance policies, educators, advocates and policy-makers will have the critical information needed to initiate system-wide reforms. Furthermore, by identifying alternatives to zero tolerance policies, our hope is to encourage movement away from harsh practices of school exclusion, and toward supportive learning climates that *keep kids in class*.

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Project Team

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Catalina E. Azuero
Goodwin Procter LLP
Pro Bono Counsel

James W. McGarry
Goodwin Procter LLP
Massachusetts Appleseed Center, Board Member

Sara J. Shanahan
Sherin and Lodgen LLP
Massachusetts Appleseed Center, Board Member

Beth A. Norton
Stroock & Stroock & Lavan LLP
Pro Bono Counsel

Kavita Padiyar
Ropes & Gray Law Fellow
Massachusetts Advocates for Children

Susan Wilker
Ropes & Gray Law Fellow
Massachusetts Appleseed Center

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Massachusetts Advocates for Children

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For More Information

Visit our website for more information about the Massachusetts Appleseed Center and the “Keep Kids In Class” project: www.massappleseed.org.

The Massachusetts Appleseed Center’s Mission

The Massachusetts Appleseed Center promotes equal rights and opportunities for Massachusetts residents by developing and advocating for systemic solutions to social justice issues.

This report is part of the Massachusetts Appleseed Center’s signature project, “Keep Kids In Class.” The report reflects the Massachusetts Appleseed Center’s core competencies of research, collaboration and advocacy.



Massachusetts Appleseed Center for Law and Justice, Inc.

44 School Street, Suite 415

Boston, MA 02108

Office: 617.482.8686

Email: massappleseed@appleseednetwork.org

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“[W]e’ve got an obligation to lift up every child in every school in this country, especially those who are starting out furthest behind.”¹

President Barack Obama

I. INTRODUCTION

“Jean,” a high school student, was eating lunch outside. A friend asked for a piece of candy. Jean threw the hard candy to him. The projectile inadvertently hit a teacher who happened to walk past at that moment. The teacher filed a criminal complaint against Jean for assault and battery with a dangerous weapon. Despite the principal’s statement on the record that she believed that Jean did not intend to hit anyone and was not trying to be dangerous, she suspended Jean indefinitely. Jean did not have the best grades or attendance record; however, he had no prior record of violent behavior or aggression.²

Jean is not unique. He is just one of a population of students in Massachusetts public schools who are penalized at the hands of zero tolerance policies and are disciplined by exclusion from school for vague offenses such as “disturbing school assembly.”

While Massachusetts rightly may boast of one of the top school systems in the nation, not all of our children benefit. As Massachusetts takes steps to curtail a persistent drop-out rate and a persistent achievement gap, it is important to fully understand the role that discipline plays in keeping children out of school.

The Massachusetts Appleseed Center for Law and Justice is examining the intersection of school discipline and zero tolerance. Through public interest advocacy, we seek to mitigate the effects of elementary and secondary school disciplinary proceedings on the rates of school drop-outs and court-involved youths.

It is our belief that zero tolerance policies have negatively influenced school discipline procedures. In the context of the zero tolerance mindset, Massachusetts law, specifically M.G.L. c. 71, §§ 37H and 37H½, is being applied expansively. As a result, students who present no substantial threat to school safety are nevertheless being excluded. These exclusions contribute to the drop-out rate and perpetuate the achievement gap. Many students, who are “pushed” out of the school system via exclusion, become involved in the criminal justice system, populating the *school to prison pipeline*. For those who do not become court-involved, the lack of high school education seriously compromises their ability to achieve future life success.

Across the nation, advocacy organizations, policy makers, educators and others are starting to examine the downstream effects of zero tolerance in education and to rethink the efficacy of such policies.³ A recent report from the Rennie Center for Education Research & Policy, entitled *Act Out, Get Out? Considering the Impact of School Discipline Practices in Massachusetts*, has also raised similar policy concerns locally. The Rennie Center report concluded that suspension and expulsion practices “circumvent the opportunity to engage... students in a school community.” The report called for consideration of the impact of school disciplinary practices in Massachusetts.⁴ The Massachusetts Appleseed Center is similarly advocating for such a review

in this state. The question before us is what systemic reforms are necessary to create genuine educational opportunity for all children in the Commonwealth.

The purpose of this report is to raise awareness of the critical public policy issues created by zero tolerance attitudes in school discipline practices, to serve as a catalyst for schools to reassess their discipline practices and to suggest concrete strategies that policy makers can pursue now to change this paradigm. This paper will present the following:

- A brief explanation of the legal framework that governs school discipline and the interplay of zero tolerance policies with these laws and practices;
- Documentation of existing numbers and demographics regarding student exclusions;
- A discussion of the economic and policy reasons prompting advocates and others to rethink the efficacy of zero tolerance in education;
- Alternatives to zero tolerance attitudes where educators create a supportive school climate instead; and,
- Critical next steps to begin to develop public policy recommendations to countermand these alarming trends.

II. SCHOOL DISCIPLINE LAWS IN MASSACHUSETTS

“Juan” is a ninth grade public school student without any prior disciplinary record. Juan spent the weekend camping with family and friends. Upon his return home, he emptied his backpack to use for school the next day. Without realizing it, Juan left in the backpack a small knife that he had brought on his camping trip. As Juan walked through the school’s metal detectors, the knife triggered the alarm. When school officials searched the backpack, they discovered the knife. Juan explained that he had simply forgotten about the knife and that he did not mean to hurt anyone. School officials believed him and found that he had not intended to harm anyone. Nonetheless, Juan was immediately suspended for four months from September to December.

Juan broke an important safety rule. But ask yourself: did the discipline fit the actual circumstances? Is exclusion from education an appropriate punishment for this situation? What if this were your child?

This section describes current Massachusetts laws governing school discipline and explains how federal and state laws have created a system in which children can be excluded from school and denied education outright.

A. Education as a Privilege, Not a Fundamental Right: The Federal and State Landscapes

No federal or Massachusetts constitutional right to a public education for an individual exists. In *San Antonio Independent School District v. Rodriguez*, the United States Supreme Court held that strict scrutiny does not apply in education cases because no fundamental right is in question.⁵ Similarly in Massachusetts, the Supreme Judicial Court has held that, while the Commonwealth has an “enforceable duty” and is obligated to provide public education generally,⁶ a student has no individual right to public education.⁷ Instead, education is a privilege in the Commonwealth of Massachusetts. Although the privilege must be conferred equally, it can be taken away for misconduct that threatens the safety of other students and staff, so long as its revocation is not an abuse of discretion⁸ or arbitrary or capricious.⁹

This is not to suggest that public school students are wholly without constitutional protection. The United States Supreme Court has said that students have a property interest in public education that is protected by procedural due process.¹⁰ While public schools are not required to provide the full due process protections required for criminal trials, clear legal protections exist for students facing exclusion from public education. In *Goss v. Lopez*, the Supreme Court held that generally a school cannot suspend a student without first providing notice and a hearing, even for exclusions less than ten days. The Court recognized “[t]he Due Process Clause will not shield [a student] from suspensions properly imposed, but it disserves both his interest and the interest of the State if his suspension is in fact unwarranted.”¹¹

B. Current Massachusetts Law

School committees have long had the ability to expel students from school permanently.¹² In 1993, the Massachusetts Legislature enacted the Education Reform Act to improve education for all children in the Commonwealth. As part of the Education Reform Act, the legislature expanded the authority to exclude students to the principal. This authority included, among other things, broad discretion to exclude students for misconduct that threatens the safety of other students and staff and inhibits the learning environment.

The law, M.G.L. c. 71, § 37H, expressly authorizes school administrators to exclude students from school for possession of a weapon or controlled substances and for an assault on a school employee. The law also directs school administrators to set forth in the policies governing students' conduct, what disciplinary measures are to be taken for vandalism or violation of other students' civil rights. Section 37H½ allows principals to issue an indefinite suspension while felony or felony delinquency charges are pending against a student.¹³ Upon a student's conviction, the school may proceed with permanent expulsion. In practice, this means that:

- Students of any age can be suspended or expelled from school;
- If a student is expelled, the school district is not required to review the matter to reconsider reentry of the student, and no other school district is required to admit such student;
- Students can be suspended indefinitely for merely being charged with a felony delinquency or expelled if found delinquent;
- General education students who are suspended or expelled are not entitled to receive any educational services; however, students who qualify for special education are entitled to continue to receive educational services; and,
- Students who qualify for special education services can be arrested or referred to law enforcement regardless of whether the behavior leading to the referral is a manifestation of the student's disability.

The legislative history suggests that the legislature wanted school administrators to have the ability to make decisions in real time for the benefit of school safety. However, the School Reform Act language is so broad that it not only gives the principals the discretion to exclude students, but it provides little due process protections for students and no mechanism to appeal decisions beyond the individual school district. Consequently, student appellants must file in court to appeal school exclusion decisions.

In practice, school administrators have unfettered ability to exclude, suspend and expel students from school for any reason. The courts have traditionally applied minimal scrutiny when reviewing school administrator disciplinary exclusions pursuant to § 37H¹⁴ and § 37H½¹⁵ on appeal because no fundamental right is implicated. In keeping with this deferential level of judicial review, the courts have consistently declined to overrule discipline decisions to exclude students. Using the rational basis standard of constitutional review, the Supreme Judicial Court in the *Stoughton* case confirmed its prior ruling in *Worcester* that “[w]e will affirm the superintendent’s decision if it is rational.”¹⁶

Rational basis review is a difficult legal standard for student appellants to overcome. Student appellants must show that there was no conceivable basis for the school district's determination.¹⁷ On the other hand, school district respondents satisfy the standard by demonstrating that some reasonable thinking behind the decision may have existed regardless of whether such thinking was actually employed. Typically the court will not second-guess decisions made by school administrators. All of this means that the school administration's initial determination whether or not to exclude a child is almost always the *final decision* on whether a student may remain in school.

C. Who Let the Kids Out? Zero Tolerance

With the broad disciplinary power at the local school level enacted in the Education Reform statute and sanctioned by the courts, school administrators have a free hand to mete out discipline based on their own professional judgment. Unfortunately, many school administrators across Massachusetts employ zero tolerance as a punitive and exclusionary approach towards school discipline. Zero tolerance in education evolved from policies developed by federal and state drug enforcement agencies in the 1980s as part of a "get tough on crime" mentality. Although zero tolerance was eventually phased out of federal and state drug enforcement agencies as being too inflexible and therefore unworkable, local school districts continue to implement the zero tolerance policy in public schools. The zero tolerance mindset was reinforced by violence-related tragedies in schools such as the one that took place at Columbine High School in 1999.

The crux of a zero tolerance approach to school discipline is to eliminate discretion by school administrators. Although the law as described above expressly allows for discretion regarding whether to exclude students, many school districts choose to abdicate their professional discretion to a rigid zero tolerance policy. In some ways, zero tolerance appeals to administrators. By excluding all students regardless of the severity of an offense and regardless of a child's intent, the school eliminates any potential liability for allowing potentially dangerous students to remain in schools. Zero tolerance provides school administrators with cover from political fallout if the exercise of their professional judgment turns out to be a mistake. Zero tolerance policies also create the appearance of fairness in that all students are supposed to be treated equally under the policy. However, the end result can be unfair to the many more at-risk students whose infractions are minor under the circumstances, but who nevertheless get swept up in the zero tolerance net and pushed out the school doors.

Ironically, literature suggests that zero tolerance policies do not actually make schools safer as intended.¹⁸ Zero tolerance policies serve only as a mechanism for schools to expand the list of offenses for which a student can be suspended or expelled to include drugs, fights, and destruction of school property as well as vague terms such as "disturbing school assembly" and thereby escalate the consequences for student behavior that would otherwise be considered fairly common at certain ages.¹⁹

III. WHO ARE THESE CHILDREN?

MASSACHUSETTS SCHOOL DISCIPLINE DATA

Fundamental to an understanding of Massachusetts public school discipline practices is an examination of who is adversely impacted by school discipline policies and zero tolerance. This section documents available school discipline data for four years and describes the demographics of this population of students. A look at the school discipline data suggests a compelling and disturbing portrait of disciplinary action in Massachusetts.

A. Data Collection

The Massachusetts Department of Elementary and Secondary Education (“DESE”) collects extensive information related to the use of suspensions and expulsions. Various federal and state statutes require each state to collect, monitor and report data regarding school safety, student behavior and discipline.²⁰ In Massachusetts, the Education Reform Act of 1993 requires every school district to report annually to DESE on statistics involving the use of suspensions and expulsions (together referred to herein simply as “exclusion”). School districts submit annual reports known as the School Safety & Discipline Report (“SSDR”).²¹

B. Available Data ~ Incident Data versus Headcount Data

The Massachusetts Appleseed Center obtained both “incident data” and “headcount data” from DESE for the four school years of 2006-07, 2007-08, 2008-09 and 2009-10. Incident data is the individual record for each incident during the school year that resulted in school exclusion. Headcount data is the individual record for each student who was reported to DESE as excluded. The headcount data includes demographic information at the statewide level, but not in conjunction with any particular student, school district or incident. The incident data is provided by school and by district.²² DESE makes incident data available upon written request.²³

The Massachusetts Appleseed Center filed a Freedom Of Information Act (“FOIA”) request to obtain from DESE the headcount data that corresponds to the incident data. The FOIA request sought to determine how many children were subject to such disciplinary action and to gain some insight into the demographics of this student population. For those students who were excluded on multiple occasions, the data includes an aggregate number of school days missed. Unfortunately as noted above, the headcount data includes student demographic information only at the statewide level.²⁴ DESE declined to provide disaggregated data at the district level in deference to individual student privacy concerns.

The data collected is inherently limited. The quality of data is inconsistent. School discipline data is self-reported by school districts with virtually no oversight by DESE. By way of example, the Lowell Public Schools reported incidents in 2006 and 2008 yet no incidents in 2007. In 2010, forty-one of the schools (28%) in the Boston public school district did not report.

The most serious deficiency of the data collected by the Commonwealth is that an undoubtedly large number of student exclusions remain unreported. In Massachusetts, school districts are

only required to report: (1) exclusions regardless of the duration which arise out of incidents contemplated by §§ 37H and 37H½; (2) exclusions for any reason that that are more than ten consecutive school days in duration; and (3) all exclusions of special education students regardless of the duration of time.²⁵ This leaves a huge gap in the data collection for general education students excluded for less than ten consecutive days, pursuant to a school's code of discipline for incidents that do not raise to the level of §§ 37H and 37H½. Examples of such incidents might include truancy or dress code violations pursuant to a school's student handbook or code of conduct. The majority of suspensions fall within this one to nine days time span.

C. 2009-10 School Safety and Discipline Data

Notwithstanding the limitations discussed above, the available school safety and discipline data does suggest some alarming facts and raises some critical public policy questions.

How Many? During the 2009-10 school year, 957,053 students were enrolled in public schools in Massachusetts including charter schools and vocational schools.²⁶ During that year, 60,610 incidents were reported involving 34,291 students who were excluded from school for at least one day. That would be nearly enough children to fill Fenway Park!²⁷

What Ages? Children as young as four years old (enrolled in pre-kindergarten) were excluded from school for at least one day. Children as young as ten years old (enrolled in the 4th grade) were *permanently excluded* from school pursuant to state law.

How Long? During the 2009-10 school year, over 5,200 students were excluded from school for ten days or longer. Nearly 29,000 students were excluded for one to nine school days.

Encouragingly, the number of students permanently excluded or expelled from public school dropped over the last four years, from 365 in 2006-07 to 296 in 2007-08 to 184 in 2008-09 and back up slightly to 219 in 2009-10. While it is always good to see such numbers trend down, this still means that on each day of school during 2009-10, at least one student somewhere in the Commonwealth was permanently denied access to a public education.

Demographics of Exclusions. Two thirds (63%) of the students excluded for a § 37H offense were general education students and one third (37%) were special education students. Yet special education students comprise only seventeen percent (17%) of the general student population. The excluded students were disproportionately male (74%) and poor (59%).²⁸ Only eight percent (8%) of the excluded students were English language learners.

Disproportional Impact on Minorities. The excluded students are disproportionately Black and Hispanic. Black students comprised fifteen percent (15%) of the excluded student population, yet only eight percent (8%) of the general student population. Hispanic students comprised twenty eight percent (28%) of the excluded population, yet only fifteen percent (15%) of the general student population. In contrast, White students comprised only fifty two percent (52%) of the excluded population, whereas they made up almost sixty nine percent (69%) of the general student population enrolled in public schools in 2009-10.²⁹

Other Trends. Schools report a significant increase in “discipline by exclusion” at 6th grade, when the data show suspensions jump up significantly. The second significant increase in the use of suspensions occurs in 9th grade at which point the rate climbs to its peak; exclusions drop back in grade 10 and continue to decline as children reach the age at which public school attendance is no longer mandated by law.³⁰

Reality Check. While the actual number of students excluded from school did decline, the percentage of excluded students remained essentially unchanged at 3.6% in 2009-10. The demographic trends for this population of students also remained consistent year to year. Absent a targeted public policy campaign, we can reasonably expect to learn that a low estimate of 34,400 of the 955,563 students enrolled in public school during the 2010-11 school year will be excluded from school for some period of time. Those students are most likely to be male, poor and receiving special education services and disproportionately Black and Hispanic.

IV. RETHINKING ZERO TOLERANCE

“John” was an 8th grade student who was enrolled in the honors program and had no prior discipline in his record. One morning, “Ray” confided in John that he was afraid of “Chris” because Chris had threatened Ray earlier with a knife and cigarette lighter. Ray explained to John how Chris held the knife to his chest and threatened him, saying that he was going to kill him. John encouraged Ray to report Chris. Later in the day, John confronted Chris himself and demanded the knife and lighter, which Chris gave to John. John put the knife in his wallet, which he then put in his pocket. John intended to turn both items over to the school administration. Later in the day, Ray reported the incident to the school administration. When confronted, Chris confessed and explained to the assistant principal that John now had the knife. The assistant principal found John, who turned over the items. John was immediately suspended from school for ten days. The school scheduled a hearing to review the matter. At the exclusion hearing, John was suspended from his enrolling school for twelve months. Although he was offered placement in an alternative education program in the school district, John would have no access to the honors program.

The zero tolerance approach to school discipline stands in stark contrast to current education imperatives. With the shift to a knowledge-based economy and in this era of increasingly greater globalization, an emerging cultural context to educate every child has arisen over the past fifteen years. This is reflected in federal and state initiatives, such as No Child Left Behind (“NCLB”) at the federal level and the Readiness Project and the Dropout Commission here in Massachusetts. Yet an honors student such as John with no history of disciplinary actions can still be summarily banished from public education for an entire school year.

A. Economic Disparity Created By a Lack of a High School Education Makes School Exclusion a Critical Public Policy Issue.

The consequences of punitive and exclusionary school discipline can be devastating. These exclusions come at great cost to the individual student and to the larger community as a whole. Many cases commonly referred to as “dropout” may be better understood as forces converging to “push” students out of school.³¹ The Southern Poverty Law Center found that “[s]tudents who are repeatedly suspended, or who are expelled, are likely to fall behind their peers academically, paving the way to their eventual dropout.”³² The likelihood that students will receive their high school diploma decreases dramatically after long periods of suspension, repeated suspension, or expulsion.³³ The risk of dropout increases with the number of exclusions and the length of time spent out of school.³⁴ Students who are repeatedly excluded from school struggle to keep up with their classmates, do not feel welcomed into the school community, and often leave of their own volition.³⁵ Additionally, many of these students are unsupervised while excluded from school, leaving more time to engage in delinquent behavior.

The American Psychological Association found that “[a] student who is suspended or expelled from school is thus placed at greater risk for delinquent behavior and subsequent incarceration when placed unsupervised on the streets of the community for days or weeks at a time.”³⁶ This

can lead to a juvenile court complaint and eventually to a commitment to the Department of Youth Services (DYS) or some other form of involvement with the juvenile justice system.³⁷

High school dropouts are more likely to receive public assistance and to receive it for longer periods of time than their peers who received a high school diploma.³⁸ High school dropouts tend to have more contact with the justice system, which in turn costs states millions of dollars in incarceration, probation, and parole costs.³⁹ Those who have been incarcerated have trouble finding work after they are released, and often re-offend.⁴⁰

Approximately 10,000 Massachusetts high school students drop out of school each year.⁴¹ The Dropout Commission has reported that “[w]hile Commission members expressed support for the right of all school districts to maintain a safe and educationally sound environment, they emphasized that a student’s ultimate success and level of engagement with school should not be impacted by discipline policies that are potentially more detrimental to students’ futures than effective in altering their behavior.”⁴²

The Commonwealth has a vested economic interest in seeing all of its children complete a high school education. Those who graduate from high school are more likely to earn a livable wage, pay taxes, and be productive members of society.⁴³ Studies have linked educational attainment to overall good health. Additionally, the Commonwealth considers creation of a highly skilled workforce as an economic imperative which is “an essential prerequisite to ensure that Massachusetts remains a leader in technology and in the emerging 21st Century economy.”⁴⁴

The Dropout Commission Report cited workforce projections whereby the “success with which the state’s workforce is prepared will be of paramount importance, as approximately 60 percent of the projected net new jobs generated in this state are expected to require an associate’s degree or higher compared to 38 percent of the jobs projected to be generated in the U.S.”⁴⁵ The projections report looked at the differential and concluded that the “higher than average concentration of jobs in fast growing, high-paying, high-skilled industries, will require business, labor, the schools, and state and local policy makers across the state to collaborate more fully to prepare the state’s workforce for the jobs of the future.”⁴⁶ School exclusion becomes a more profound public policy issue in this context.

“It’s an economic issue when the unemployment rate for folks who’ve never gone to college is almost double what it is for those who have gone to college,” he said. “Education is an economic issue when nearly eight in ten new jobs will require work force training or a higher education by the end of this decade. Education is an economic issue when we know beyond a shadow of a doubt that countries that out-educate us today will out-compete us tomorrow.”

President Barak Obama

B. Limits of Zero Tolerance: A Recent Message from the Courts

The “John” vignette above is a true story based on a recent case in Worcester, Massachusetts. In that case, the court referred to the student as “LB” to protect his privacy. There, the federal district court issued an injunction allowing LB to return to school. The court looked for a rational relationship between the punishment and LB’s offense.⁴⁷ The court explained that

substantive due process would be satisfied “if the school system actually looks at the specific individual facts and circumstances and considers the state of mind of the student and makes its best judgments under the circumstances, taking into account all of the facts including, of course, the need to protect the students in the school and to promote safety, but also taking into account the consequence to the student and the degree of innocence or guilt.”⁴⁸ The judge concluded that LB suffered immediate and irrevocable harm.⁴⁹ In fact, the judge found that the harm to the student was “relatively extreme.”⁵⁰ LB lost numerous educational opportunities by being disenrolled from honors classes his freshman year of high school. LB had a strong interest in preserving his reputation. In particular, having the exclusion incident in his record would blemish college applications. The judge also considered the degree of guilt or innocence of the student noting specifically that LB had not brought the knife to school and never intended to use it as a weapon.

Notwithstanding the damage LB suffered, he was relatively fortunate. He had resources – supportive parents, a sister to tutor him, and a lawyer. But what about LB’s classmates, “Chris” and “Ray”? What about all the other children without personal resources? In the absence of strong due process protections, setting forth fair procedures and clear standards governing suspension and expulsion to prevent undue and unfair school exclusion, a student’s only recourse is to seek an injunction from the court. This puts poor students who are uninformed about their legal rights at a distinct disadvantage. We believe it is imperative to move away from zero tolerance policies and limit school exclusion to only those students who truly represent a substantial threat to school safety.

V. NEW APPROACHES TO SCHOOL DISCIPLINE

Discipline does not exist in a vacuum. There were numerous opportunities throughout the LB story where an adult could have intervened to make a difference in these young lives. Chris felt that he could bring a knife to school without fear of consequences. Ray hesitated to report a threatening incident to adults. LB felt the need to intervene himself. The principal could have allowed LB to remain in school. But it would appear that the climate in LB's school did not support an atmosphere where those things could happen.

Some school districts within Massachusetts are starting to look at what can be done to cultivate a school climate where students and staff feel supported and engaged and where students' positive social development is integrated into the educational regime. Educational stakeholders acknowledge that school exclusion need not be the only answer to behavioral or safety concerns.

While punitive and exclusionary discipline practices remain the predominant model in schools across Massachusetts, some schools are already employing supportive, preventive strategies to engage students in education and integrate positive social development as part of the academic experience.

A. Change in Action: A Principal's Story

The Massachusetts Appleseed Center approached professionals who work with public school officials about how to cultivate a supportive school climate and to adapt disciplinary approaches to fit the needs of the school. We visited three middle schools and two high schools that were described to us anecdotally as having successfully promoted positive social development by integrating it into their academic regime. These schools actively worked to create and sustain a supportive school climate.

Each school has its own distinct story. All faced both common and unique challenges. We encourage you to read the description of all the schools that we visited in the Appendix. We hope that the insights that these school principals shared with us will serve the larger education community as a catalyst for public policy discussion and possible replication.

As you walk into the principal's office, visitors discover a poster with a quote from Charles Kettering: "Believe...and act as if it were impossible to fail." This philosophy infuses this inner-city school, which was previously a dumping ground for students who were not successful at other schools. Located in a community with no less than twenty intersecting gangs, the new principal had a matter of weeks to assemble a faculty for the opening of the newly constructed middle school. Much of the student population initially came from closed schools, and many arrived with extensive histories of behavioral problems. During the first year, the excitement and promise of a new school was clouded by numerous fights and over 500 suspensions. Several years later, suspensions have dropped significantly, down by 80% during the 2008-09 school-year. The principal reports that "the building is calm, children are responsible and respectful, and students are much more attentive and are more successful in their learning."

The middle school principal described in the vignette above chose to focus on creating a supportive school climate. Today, the middle school's protocols emphasize teaching children clear rules for the school, and academic and non-academic strategies emphasize developing relationships between staff and students. Students know what is expected of them. Adults in the building support the students. The school climate has become safer and behavior improved.

According to the principal, transforming the middle school from a "nightmare" to a safe and welcoming space for all its staff and students began with a commitment to change and to think "outside the box" for solutions. One of the first tasks was to analyze the discipline data. The administration asked teachers to provide information about both "good and bad" incidents. The school administration viewed the data both to determine the status on an individual student level as well as more broadly to see what kinds of problems arose throughout the school day. Once school officials had identified a problem, they brainstormed responses. This process is on-going.

At this middle school, positive social behavior begins with strong personal relationships. According to the school's philosophy, strong relationships between students and staff can prevent discipline problems and can help to minimize the impact if there is a problem. In disciplining a student, an adult needs to know what is happening in the student's life.

The middle school sets clear rules that all teachers enforce throughout the school. The school sets expectations high, but teaches children how to behave and meet those expectations. Students learn how to speak respectfully to adults and how to be organized and prepared for class. The school expects students to behave and holds students accountable for their actions.

"Children at this age challenge authority ~ it's their job. It's our job to teach them how to challenge authority appropriately."

Middle School Principal

Most disciplinary interventions at this middle school happen in the classroom by the teacher who best knows the student. Responses to behavior are carefully tailored to the individual student.

This middle school's faculty is trained to be trauma-sensitive. The principal explains the school has a sizable refugee population. Additionally, many students have experienced community

violence. Training enables staff to be sensitive to other possible explanations for a student's behavior, which in turn enables the staff to respond constructively.

According to the principal, sending a student home is a last resort. Although the school district has a scripted discipline process, the middle school remains flexible with its internal disciplinary procedures.⁵¹ The decision to exclude a child is made carefully, considering the totality of circumstances. The school looks at the intent of the child, and also determines if

"I can't discipline a child that I don't know."

Middle School Principal

the act was related to a disability. The school also looks at the parent's response. This middle school reports that parents of suspended students recognize that the school listens to everyone and investigates everything; the hearings are fair to the student and to the parent.

The middle school also created an innovative way for students and their parents to spend time together at school through a technology program. Families come to the school for computer-training. Students get an inexpensive computer for home and the chance to spend time in school with teachers and parents in a different atmosphere than in class. While learning to use computers, the student connects with the parent and the parent connects with the teacher. The traditional hierarchies are relaxed in this environment; students can help their parents learn how to use technology, and teachers can see students excelling at this.

The school also reports that an important aspect of creating their school climate is that the students *want* to be in school. The middle school strives to develop ways to encourage students to stay in school through host programs and activities that the students want to attend. Whether it be therapeutic after-school programs, sports teams or a neighborhood church using the school facilities, students can be inside school grounds from 7:30 a.m. until 6:00 p.m., five days a week and over the weekend.

While visiting this middle school, a mother came to the school for her son's suspension hearing. She knew the teacher involved in her son's suspension through the technology program. Having an established relationship with a teacher formed in a collaborative rather than adversarial environment made it easier for her to hear the bad news about her son. The teacher and mother were able to focus on how to work together to help and support the student.

This middle school began with a commitment to change. The middle school dared to envision a new school climate and to reassess its standard operating procedures against what it hoped to achieve. The steps it took and methods employed are replicable by others.

B. School Climate Matters

First linked to learning outcomes in 1908, school climate has become a focus of educators and policymakers in recent years.⁵² Research has shown that focus on school climate is necessary to facilitate any attempt at school reform.⁵³ School climate refers to "the quality and character of school life. It is based on patterns of school life experiences and reflects norms, goals, values,

interpersonal relationships, teaching, learning and leadership practices, and organizational structures.”⁵⁴

While characterizations of school climate tend to be subjective, it is important to remember that school climate can have both a direct and indirect effect on student outcomes.⁵⁵ Generally, the four elements of school climate are understood to be safety (rules and physical safety), relationships, teaching and learning, and physical environment.⁵⁶ School climate includes the “unwritten beliefs, values, and attitudes” that shape the interactions of every individual within a school.⁵⁷

School climate sets the tone for the school environment. School climate communicates to students, staff and families what behaviors are expected and will be tolerated within the school community.⁵⁸ A “sustainable, positive school climate fosters youth development and learning necessary for a productive, contributing and satisfying life in a democratic society.... Students, families and educators work together to develop, live and contribute to a shared school vision. Educators model and nurture attitudes that emphasize the benefits and satisfaction gained from learning.”⁵⁹ A welcoming school climate can both improve academic performance and ease the social adjustments of students as they progress through school.⁶⁰ Supportive school climates are associated with dropout reduction.⁶¹

Disciplinary practices are a strong indicator of school climate. Student perceptions of school rules and enforcement contribute to a student’s assessment of the structure and predictability of the school environment.⁶² Academic literature suggests that school climate speaks directly to how students feel about school.⁶³ A supportive school culture also has been linked to lower incidents of ostracized students lashing out either physically or through more passive ways and thus becoming subject to disciplinary proceedings.⁶⁴ These benefits translate to faculty as well as students: a supportive school climate “contributes to positive relationships among adults, their sense of connectedness and success.”⁶⁵ Conversely, schools with high rates of school suspensions tend to pay significantly less attention to fostering a supportive school climate.⁶⁶

C. Alternatives to Zero Tolerance

A supportive school climate is a key component of replacing a punitive model of discipline with one that fosters teaching and learning, instead of exclusion and intolerance.

Zero tolerance policies create an inadvertent and unintended vehicle for educators to remove students from the classroom who are disruptive but not a safety concern. Locally school districts have started to develop new approaches to creating supportive and sustainable school climates in which discipline is not looked at in isolation but is incorporated into the education structure.

We believe that the key message from our findings is not to be distracted by discipline; but to focus instead on prevention. To accomplish such a change, schools need ways to organize internally to support the school climate that they seek to put in place.

Numerous alternatives to zero tolerance policies exist. Examples of such alternative approaches include positive behavioral intervention supports, restorative justice, social emotional learning, safe and responsive schools and trauma sensitive learning. Please refer to the Appendix for a brief description of each concept. The underlying theme of each of these approaches is to cultivate a school climate that engages students and incorporates teaching positive, pro-social behavior into the education and learning process.

Change starts with a choice.

VI. CONCLUSIONS AND POLICY RECOMMENDATIONS

The question before us is what systemic reforms will decrease school exclusions and foster a genuine educational opportunity for all children in the Commonwealth. Based on its initial review and inquiry, the Massachusetts Appleseed Center shares its observations and the related policy implications that flow from these conclusions.

A. Conclusions

ZERO TOLERANCE CREATES AN INADVERTENT AND UNINTENDED VEHICLE FOR EDUCATORS TO REMOVE STUDENTS FROM THE CLASSROOM WHO ARE DISRUPTIVE BUT ARE NOT A SAFETY CONCERN. Current Massachusetts school discipline law endows school principals with unfettered authority to exclude students for misconduct. Zero tolerance policies serve as a mechanism for schools to expand the list of offenses for which a student can be excluded to include drugs, fights, and destruction of school property as well as “disturbing school assembly.” Treating all of these offenses the same escalates the consequences for student behavior that would otherwise be considered fairly common at certain ages. Many more students are thus at risk of being swept up in the zero tolerance net and pushed out the school doors.

- ❖ The law provides little due process protections for student exclusions and **no** mechanism to appeal exclusion decisions beyond the school district.
- ❖ Students may be excluded from school for misconduct that does not rise to the level of seriousness contemplated by the legislature as an appropriate basis for exclusion.
- ❖ In the absence of a fundamental right to education, a school administration’s initial determination whether or not to exclude a child from school is almost always the *final decision* on whether a student may remain in school.
- ❖ School districts have **no** legal obligation and **no** incentive to revisit such decisions or to readmit these children to school.
- ❖ Student appellants must file a legal action in court to appeal a school exclusion discipline decision.
- ❖ The crux of a zero tolerance policy is to eliminate a school administrator’s discretion in disciplinary proceedings.
- ❖ Zero tolerance policies do not make schools safer.

AVAILABLE SCHOOL DISCIPLINE DATA SUGGEST SOME ALARMING TRENDS.

- ❖ Too many students are out of school on any given day in Massachusetts.
- ❖ Many suspended students are too young to be spending time out of school.
- ❖ Students in 6th and 9th grades are particularly at risk for being disciplined by exclusion.
- ❖ The excluded students are most likely to be male, poor and participants in a special education program.

- ❖ Black and Hispanic students are disproportionately represented among the excluded student population.

AVAILABLE SCHOOL DISCIPLINE DATA IS LIMITED IN SCOPE AND DEFICIENT IN QUALITY. DESE collects but has not reported publicly on the Massachusetts school discipline data in ten years. Legal obligations to protect student privacy prevent DESE from disclosing disaggregated school district discipline data to third parties for independent analysis.

- ❖ Inconsistency in reporting by school districts and lack of oversight by DESE create deficiencies in the quality of the state's data.
- ❖ The lack of demographic information severely constrains the ability of independent entities to evaluate disparate impact on vulnerable populations and minority groups within school districts.
- ❖ A significant number of general education student are excluded for less than ten days, but these exclusions do not trigger state reporting requirements and go unreported each year.

ECONOMIC DISPARITY CREATED BY A LACK OF A HIGH SCHOOL EDUCATION MAKES SCHOOL EXCLUSION A CRITICAL PUBLIC POLICY ISSUE. Society has raised the stakes for children who do not receive a high school diploma.

- ❖ An emerging cultural context to educate every child has arisen over the past fifteen years with the shift to a knowledge-based economy and increasingly greater globalization.
- ❖ The Commonwealth of Massachusetts has a vested economic interest in seeing all of its children complete a high school education.

ZERO TOLERANCE POLICIES IMPERIL OUR CHILDREN, IN PARTICULAR AT-RISK CHILDREN.

- ❖ Many cases commonly referred to as “dropout” may be better understood as forces converging to “push” students out of school.
- ❖ Use of exclusion as discipline puts individual students at great peril; punitive and exclusionary discipline is employed by schools at great cost to the larger community as a whole.

SCHOOL CLIMATE MATTERS. A supportive school climate is a key component of replacing a punitive model of discipline focused on exclusion and intolerance with one that fosters teaching, learning and community.

- ❖ Research has shown that a school must adapt its school climate to facilitate any attempt at school reform.
- ❖ School climate communicates to students, staff and families what behaviors are expected and will be tolerated within the school community.
- ❖ Disciplinary practices are a strong indicator of school climate.
- ❖ Alternatives to zero tolerance exist.
- ❖ Schools are taking steps now to put a supportive school climate in place; these approaches could be replicated by other schools.

B. Policy Recommendations

COMMIT TO FAIRNESS

1. Create fair procedures with clear standards governing school exclusion proceedings. By way of example, encourage students to seek representation; provide students with a list of free and low-cost legal advocates; give students a chance to present evidence or witnesses; alert students to any evidence being relied upon by the school; or, provide an interpreter when needed.
2. Focus on the student's intent and require the school district to determine whether the behavior was "knowing and intentional."
3. Inquiry should include whether the student actually presents a danger to the school.
4. Create a more meaningful appeals process beyond what is currently provided to ensure reasonable and responsible decision making by school districts.

GOOD POLICY BEGINS WITH GOOD DATA. Improved reporting and increased state oversight will create accountability at all levels. Improved and expanded data collection will enable stakeholders and policymakers to better understand problems, create solutions and track success.

5. Make SDR reporting simple for school administrators.
6. Capture all school exclusions by requiring school districts to report school exclusions of general education students excluded for one to nine days.
7. Capture whether an incident falls under § 37H (exclusion for an offense) or § 37H½ (exclusion during pendency of legal charges).
8. Create better DESE oversight of SDR reporting by school districts.
9. Require DESE to report publicly the SDR data on an annual basis.
10. Encourage schools to self assess by reviewing SDR data internally.
11. Given DESE's obligations to protect the identity of individual children, SDR data should be compiled so it can be accessed by the public in a meaningful way.

MOVE AWAY FROM ZERO TOLERANCE ATTITUDES IN SCHOOL DISCIPLINE.

12. Acknowledge that zero tolerance does not make schools safer.
13. Commit to change.
14. Explore alternatives to zero tolerance punitive and exclusionary disciplinary practices; research programs that assist schools to change school climate.

CREATE A SUPPORTIVE SCHOOL CLIMATE WHERE ZERO TOLERANCE POLICIES ARE IRRELEVANT. Schools that are interested in creating a supportive school climate can take steps now to effect change.

15. Research ways for schools to organize internally to support the desired school climate they wish to create.

16. Engage students, faculty, family and community; all of these stakeholders are resources, and must have input into creating a new school climate.
17. Create forums to share strategies and best practices among schools.
18. Foster a continuing dialogue among education stakeholders, public safety officials, policymakers and advocates on these vital issues.

END NOTES

¹ President Barack Obama, Remarks by the President on Education Reform at the National Urban League Centennial Conference (July 29, 2010) (transcript available at <http://www.whitehouse.gov/the-press-office/remarks-president-education-reform-national-urban-league-centennial-conference>).

² The three vignettes are real situations. The first two fact patterns were provided by attorneys from South Coastal Counties Legal Services, the Suffolk Juvenile Justice Center. The third fact pattern is the LB case from Worcester, MA.

³ See, e.g., DIGNITY IN SCHOOLS CAMPAIGN, <http://www.dignityinschools.org/> (last visited January 5, 2012).

⁴ RENNIE CTR. FOR EDUC. RESEARCH & POLICY, ACT OUT, GET OUT? CONSIDERING THE IMPACT OF SCHOOL DISCIPLINE PRACTICES IN MASSACHUSETTS 22 (2010).

⁵ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973) (“Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.”). In *San Antonio*, parents brought a class action on behalf of students who were minorities or poor residents of school districts with a low property tax base, attacking the manner in which Texas financed its public education system. *Id.* at 4-5. The Supreme Court rejected the parents’ arguments to apply strict scrutiny for the analysis of both their equal protection and substantive due process claims. *Id.* at 28, 35.

⁶ *McDuffy v. Sec’y of the Exec. Office of Educ.*, 415 Mass. 545, 606, 621 (1993) (conducting a thorough review of the history of public education in the state and stating that “[w]hat emerges from this review is that the words are not merely aspirational or hortatory, but obligatory”). The court located the duty in the Massachusetts Constitution, a duty established upon two premises: “First, the protection of rights and liberties requires the diffusion of wisdom, knowledge, and virtue throughout the people. Second, the means of diffusing these qualities and attributes among the people is to spread the opportunities and advantages of education throughout the Commonwealth.” *Id.* at 560-61.

⁷ *Doe v. Superintendent of Sch. of Worcester*, 421 Mass. 117, 129-30 (1995) (declining to find in the *McDuffy* holding a fundamental right to education that would trigger the use of strict scrutiny whenever a Massachusetts student was excluded from school out of concern for safety).

⁸ See *id.* at 124-126 (applying the abuse of discretion standard to both the initial decision of the principal to expel a student for carrying a lipstick knife and the superintendent’s review of the principal’s decision).

⁹ *Doe v. Superintendent of Sch. of Stoughton*, 437 Mass. 1, 5 (2002) (“[W]e must grant school officials substantial deference in their disciplinary choices. Thus, we will overturn a superintendent’s decision to suspend a student only if it is arbitrary and capricious, so as to constitute an abuse of discretion.” (citing *Nicholas B. v. Sch. Comm. of Worcester*, 412 Mass. 20, 21-22 (1992))).

¹⁰ *Goss v. Lopez*, 419 U.S. 565, 574 (1975) (“Although Ohio may not be constitutionally obligated to establish and maintain a public school system, it has nevertheless done so and has required its children to attend. Those young people do not ‘shed their constitutional rights’ at the schoolhouse door Among other things, the State is constrained to recognize a student’s legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause.” (citations omitted)).

¹¹ *Id.* at 579.

¹² See, e.g., *Nicholas B. v. Sch. Comm. of Worcester*, 412 Mass. 20, 21-22 (1992) (upholding the decision of a school committee to expel a student who had physically assaulted another student because the committee had not acted arbitrarily or capriciously); *Bd. of Educ. v. Sch. Comm. of Quincy*, 415 Mass. 240, 245-47 (1993) (noting the wide latitude afforded to school committees in imposing discipline and refusing to compel the school committee to provide alternative education to an expelled student).

¹³ A child between the ages of seven and fourteen may not be charged with a crime and prosecuted under Massachusetts law. Such a juvenile may be brought before the court only in delinquency proceedings, which are not criminal proceedings. A student between the ages of fourteen and seventeen may be charged with a crime and prosecuted under Massachusetts law only when the Commonwealth is authorized to proceed against the child as a youthful offender in the particular circumstances specified in M.G.L. ch. 119, § 54. In all other circumstances, a child between the ages of fourteen and seventeen may not be criminally charged and prosecuted under Massachusetts law. Rather, he or she may be brought before the court in delinquency proceedings.

In Senate debates prior to the passage of § 37H½, Senator Daniel Leahy illustrated the unjust effect that a felony delinquency complaint can have on a student's education. He explained that if a student was charged with stealing a VCR, he could be indefinitely suspended from school under § 37H½. *See* S. 178, 1st SESS., at 1666 (Mass. 1993). Today, the theft of an iPhone (an item valued at over \$250) may result in a felony delinquency charge. As another example, a student may be charged with assault and battery with a deadly weapon, a felony offense, for kicking another person while wearing a shoe, the shoe being the dangerous weapon.

¹⁴ *Doe v. Superintendent of Sch. of Worcester*, 421 Mass. at 129-32. (announcing that “a student's right to an education is [not] a ‘fundamental right’ which would trigger strict scrutiny analysis” and applying “the lowest level of scrutiny, the rational basis test”). The Supreme Judicial Court also rejected the student's argument that “the expulsion violated her substantive due process rights under the Fourteenth Amendment to the United States Constitution.” *Id.* at 133. Applying the rational basis test under the Supreme Court case *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973), which held there is no right to an education under the federal constitution, the court found no violation of the plaintiff's substantive due process rights. *See id.*; *see also supra* note 5 and accompanying text. In dissent, Chief Justice Liacos asserted that there is an individual fundamental right to education, correlated with the legislature's constitutionally enforceable duty to provide education. *Doe v. Superintendent of Sch. of Worcester*, 421 Mass. at 138-40 (Liacos, J., dissenting).

¹⁵ *Stoughton*, 437 Mass. at 6-7 (allowing a principal to infer from the nature of the crime alone that a student posed a “substantial detrimental effect” to the school and therefore permitting the suspension of a student who was charged with a felony).

¹⁶ *Id.* at 6. The Supreme Judicial Court further explained the standard “[a] decision is not arbitrary and capricious if ‘reasonable minds could differ’ on the proper outcome.” *Id.* (quoting *Kinchla v. Bd. of Appeals of Falmouth*, 11 Mass. App. Ct. 927, 927 (1981)).

This standard has been relied on by lower courts to hold that “[b]ased on the broad discretion granted to school officials by the Legislature under M.G.L. c. 71, § 37H ½, there are only very limited circumstances in which a principal or headmaster's decision to suspend a student could be overturned so long as that student has a felony charge pending.” *Doe v. Winchendon Sch. Comm., Memorandum of Decision and Order on Plaintiff's Motion for a Preliminary Injunction*, No. 04-1069B, 2004 WL 1515905, at *2 (Mass. Super. Ct. July 2, 2004) (denying plaintiff's motion for preliminary injunction that would allow a student to return to school from a suspension, where the student had been suspended indefinitely for the duration of juvenile delinquency proceedings for writing a note that read “A Bomb will not go off between the hours of 7:28 am and 2:00 pm, do not evacuate the school. Nothing will happen, do you understand.” shortly after a bomb threat at the school.).

¹⁷ *See Heller v. Doe*, 509 U.S. 312, 320-21 (1993) (articulating the deferential nature of rational basis scrutiny).

¹⁸ AMERICAN PSYCHOLOGICAL ASSOCIATION ZERO TOLERANCE TASK FORCE, *ARE ZERO TOLERANCE POLICIES EFFECTIVE IN THE SCHOOLS? AN EVIDENTIARY REVIEW AND RECOMMENDATIONS* 43 (2006) (“[R]ather than making a contribution to school safety, suspension appears to have a negative relationship with indicators of a positive school climate.”).

¹⁹ *See, e.g.*, Stephanie Chen, *Girl's Arrest for Doodling Raises Concerns About Zero Tolerance*, CNN, Feb. 18, 2010, <http://www.cnn.com/2010/CRIME/02/18/new.york.doodle.arrest/index.html?iref=allsearch>; Ian Urbina, *It's a Fork, It's a Spoon, It's a... Weapon?*, N.Y. TIMES, Oct. 11, 2009, http://www.nytimes.com/2009/10/12/education/12discipline.html?_r=1&scp=1&sq=it's%20a%20fork,%20it's%20a%20spoon&st=cse; *Zero-Tolerance Drug Policy: Seventh Grader Suspended for Touching Adderall Pill*, HUFFINGTON POST, Mar. 3, 2010, http://www.huffingtonpost.com/2010/03/01/zero-tolerance-drug-polic_n_480647.html.

²⁰ *See, e.g.*, Individuals with Disabilities Education Act, 20 U.S.C. § 1412(a)(22) (2006) (requiring states to evaluate the rates at which children receiving special education are suspended or expelled in order to remedy any disproportional rates); No Child Left Behind Act of 2001, 20 U.S.C. § 6311(h)(1)(D)(iv) (2006) (allowing states to include in the mandatory state report card information about school violence, drug and alcohol use, and student exclusions); 20 U.S.C. § 7912(a) (2006) (permitting students attending a “persistently dangerous” public school to attend a safe alternate school within the district); Safe and Drug-Free Schools and Communities Act, 20 U.S.C. § 7116 (2006) (requiring states to report to the federal Secretary of Education “on the incidence and prevalence, age of onset, perception of health risk, and perception of social disapproval of drug use and violence by youth”); Gun-Free Schools Act, 20 U.S.C. § 7151(d)-(e) (2006) (requiring schools and states to make annual reports with respect to the circumstances of expulsions due to firearm possession on school grounds); Education Reform Act of 1993, 1993 Mass. Acts 159, 177-78 (codified as amended at MASS. GEN. LAWS ch. 69, § 1I (2008)) (requiring school districts in

Massachusetts to annually provide the state with “statistics, policies, and procedures relative to expulsions and in-school and out-of-school suspensions”).

²¹ Mass. Dep’t of Elementary & Secondary Educ., *School Safety & Discipline Report Frequently Asked Questions*, http://www.doe.mass.edu/infoservices/data/guides/ssdr_faq.html (last updated Sept 27, 2011).

²² Data for exclusions listed by school district includes the following fields: School District, School Name, Grade, Offense, Discipline, Offense Description, Discipline Description, and Days Missed. Data for exclusions listed by demographics includes the following fields: Grade, Race, Gender, Special Education, Low Income, English as a Second Language, Offense, Discipline, Offense Description, Discipline Description, and Days Missed. MASS. DEP’T OF ELEMENTARY & SECONDARY EDUC., 2008-09 SSDR FILES (2009) (on file with author). See, *infra* note 22 for a description of how to access this data through DESE. Massachusetts law states that “[e]ach school district shall file a report with the department every year by a date and in a format determined by the board. Said report shall include, but not be limited to, the following:...(e) statistics, policies, and procedures relative to expulsions and in-school and out-of-school suspensions.” MASS. GEN. LAWS ch. 69, § 1I (2009).

²³ A person must register at http://www.doe.mass.edu/infoservices/research/download_form.aspx to access incident data. DESE sends a different link via email that enables access the spreadsheets. The authorization lasts for one week.

²⁴ As supplied by DESE, the headcount data reports the following: grade, gender, special education status, disability classification, low income status, LEP, alternate education status, race, and days missed. MASS. DEP’T OF ELEMENTARY & SECONDARY EDUC., SCHOOL SAFETY AND DISCIPLINE REPORT HEADCOUNT DATA, 2006-07, 2007-08, 2009-10 (on file with author).

²⁵ See MASS. DEP’T OF ELEMENTARY & SECONDARY EDUC., 2009-2010 SCHOOL SAFETY AND DISCIPLINE REPORT INSTRUCTIONS 2 (2009), available at <http://www.doe.mass.edu/infoservices/data/guides/ssdr.pdf>; see also sources cited *supra* notes 20-21.

²⁶ Mass. Dep’t of Elementary & Secondary Educ., *2008-09 Enrollment by Grade Report*, http://profiles.doe.mass.edu/state_report/enrollmentbygrade.aspx?mode=&year=2009&filterBy=&orderBy= (last visited January 5, 2012).

²⁷ If general education students who received suspensions but are not included in the data were added, it would surely require a change in venue to at least Gillette Stadium!

²⁸ DESE designates low-income students as those who (1) are eligible for free or reduced price lunch; (2) receive Transitional Aid to Families benefits; or (3) are eligible for food stamps. See Mass. Dep’t of Elementary & Secondary Educ., *Profiles Help – About the Data*, <http://profiles.doe.mass.edu/help/data.aspx> (last visited January 5, 2012).

²⁹ For general student population statistics, see Mass. Dep’t of Elementary & Secondary Educ., *2008-09 Massachusetts State Report Card: Part I – Enrollment and Educator Data*, <http://profiles.doe.mass.edu/staterc/enrollment.aspx?fyCode=2008> (last visited January 5, 2012).

³⁰ Currently, students are only required to attend school until they reach the age of sixteen in Massachusetts. See MASS. GEN. LAWS ch. 76, § 18 (2008). A recent report by the Massachusetts Graduation and Dropout Prevention and Recovery Commission advocated for increasing the compulsory attendance age to eighteen. See MASS. GRADUATION & DROPOUT PREVENTION & RECOVERY COMM’N, MAKING THE CONNECTION 22-23 (2009), available at http://www.mass.gov/Eeoe/docs/Dropout_Commission_Report_10_21_2009.pdf. Should such a law pass, it would be instructive to determine whether an increased mandatory age of attendance would yield a corresponding increase in use of school exclusions at the tenth and eleventh grades.

³¹ AMERICAN CIVIL LIBERTIES UNION OF MICH., RECLAIMING MICHIGAN’S THROWAWAY KIDS: STUDENTS TRAPPED IN THE SCHOOL-TO-PRISON PIPELINE 23 (2009) (examining this issue, the Michigan ACLU found that a number of people consider the term “dropout” a “misnomer because it fails to reflect the extent to which many students are ‘pushed out’ of school because of administrative expedience, discrimination and other reasons”).

³² *Pushed Out*, 36 TEACHING TOLERANCE, Fall 2009, available at <http://www.tolerance.org/magazine/number-36-fall-2009/pushed-out>.

³³ “The consequences of these harsh disciplinary practices are devastating. Students who are repeatedly suspended, or who are expelled, are likely to fall behind their peers academically, paving the way to their eventual dropout. The research correlates dropout to suspensions and expulsions. A student is also more likely to drop-out if he or she has been retained for a grade – a common consequence of multiple suspensions.” *Id.*

³⁴ See AMERICAN CIVIL LIBERTIES UNION OF MICH., *supra* note 31, at 12 (finding that students who were suspended multiple times were more likely to drop-out of school). Donna Lieberman of the New York Civil Liberties Union testified before The New York City Council Committees On Education And Civil Rights that “students who have

been suspended are three times more likely to drop out by the 10th grade than students who have never been suspended.” Donna Lieberman, New York Civil Liberties Union Executive Director, Testimony Of Donna Lieberman On Behalf Of The New York Civil Liberties Union before The New York City Council Committees On Education And Civil Rights Regarding The Impact Of Suspensions On Students’ Education Rights (Jan. 23, 2008) (available at <http://www.nyclu.org/content/impact-of-school-suspensions-and-demand-passage-of-student-safety-act>) (citing Ruth B. Ekstrom et al., *Who Drops Out of High School and Why?: Findings from a National Study*, 87 TCHRS. C. REC. 356 (1986)).

³⁵ See ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK 12 (2005) (“Once many of these youths are in ‘the system,’ they never get back on the academic track.... [M]any become demoralized, drop out, and fall deeper and deeper into the juvenile or criminal justice systems.”); Anne Gregory, Russell J. Skiba & Pedro A. Noguera, *The Achievement Gap and the Discipline Gap: Two Sides of the Same Coin?*, 39 EDUC. RESEARCHER 59, 60 (2010) (“Suspended students may become less bonded to school, less invested in school rules and course work, and subsequently, less motivated to achieve academic success.”); MASS. GRADUATION & DROPOUT PREVENTION & RECOVERY COMM’N, *supra* note 30, at 4 (“Students themselves report a lack of connection to adults or their school as a leading reason for disengaging from school. Other important reasons cited include feeling too far behind to catch up, boredom, lack of academic support, and a general feeling of being overwhelmed.”); RENNIE CTR. FOR EDUC. RESEARCH & POLICY, *supra* note 4, at 6 (“Studies have... shown suspension to be one of the strongest predictors of dropping out.”).

³⁶ AMERICAN PSYCHOLOGICAL ASSOCIATION ZERO TOLERANCE TASK FORCE, *supra* note 18, at 77-78.

³⁷ See AMERICAN CIVIL LIBERTIES UNION OF MICH., *supra* note 31, at 19.

Th[e] report poses the question of whether suspensions and expulsions are, in all cases, the most effective method of addressing chronic violence and other forms of misconduct in the schools. Currently, it is possible for a Michigan student who is suspended for an extended period for criminal or anti-social behavior to become even more deeply involved in undesirable activities. This behavior pattern is likely to continue in the school after the student is re-admitted. This report challenges legislators, educators, parents and others to give serious consideration to alternatives to discipline such as restorative practices that are designed to not only identify the causes of misconduct, but to effectively remedy them as well.

Id.

³⁸ See JENNIFER LAIRD ET AL., NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., DROPOUT RATES IN THE UNITED STATES: 2005 (2007); Johanne Boisjoly et al., *Trends, Events, and Duration of Initial Welfare Spells*, 72 SOC. SERV. REV., 466 (1998); Richard B. Freeman, *Why Do So Many Young American Men Commit Crimes and what Might We Do About it?*, 10 J. ECON. PERSPECTIVES 25 (1996); Lance Lochner & Enrico Moretti, *The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports*, 94 AM. ECON. REV. 155 (2004); Kristin A. Moore et al., *Poverty and Welfare Patterns: Implications for Children*, 31 J. SOC. POL’Y 207 (2002).

³⁹ See MASS. GRADUATION & DROPOUT PREVENTION & RECOVERY COMM’N, *supra* note 30, at 8.

⁴⁰ ANDREW SUM ET AL., AN ASSESSMENT OF THE LABOR MARKET, INCOME, HEALTH, SOCIAL, CIVIC AND FISCAL CONSEQUENCES OF DROPPING OUT OF SCHOOL: FINDINGS FOR MASSACHUSETTS ADULTS IN THE 21ST CENTURY 69-70 (2007).

⁴¹ MASS. GRADUATION & DROPOUT PREVENTION & RECOVERY COMM’N, *supra* note 30, at 1 (letter from MA Secretary of Education Paul Reville).

⁴² *Id.* at 21.

⁴³ See SUM, *supra* note 40. Adults without a high school degree are less likely to be employed; when they are employed they make less money each year. *Id.* at 11-24. Lower yearly income means lower income over the course of their lives. *Id.* at 24-31. These low salaries contribute to the poverty rate and provide less revenue to the state in income taxes. They tend to have significantly higher health care costs, and must often rely on the state subsidies. *Id.* at 50, 53-57.

⁴⁴ EXEC. OFFICE OF LABOR & WORKFORCE DEV., COMMONWEALTH OF MASSACHUSETTS EMPLOYMENT PROJECTIONS 2006-2016, at 24 (2009) (“The education and training of the Massachusetts workforce will be an essential ingredient in maintaining a high productivity, high-wage economy.”).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Transcript of Motion Hearing at 12, LB v. O’Connell, No. 09-CV-40124 (D. Mass. Aug. 6, 2009).

⁴⁸ *Id.* at 18.

⁴⁹ *Id.* at 25.

⁵⁰ *Id.* at 26.

⁵¹ The suspension protocols are established by the school district; however, details regarding suspension, e.g. number of days, are not always set. Therefore, each school within the school district retains some flexibility within its individual school disciplinary procedures.

⁵² See CTR. FOR SOC. & EMOTIONAL EDUC., SCHOOL CLIMATE RESEARCH SUMMARY - JANUARY 2010, at 1 (2010), available at http://www.schoolclimate.org/climate/documents/SCBrief_v1n1_Jan2010.pdf.

⁵³ *Id.* at 1, 5.

⁵⁴ CTR. FOR SOC. & EMOTIONAL EDUC., SCHOOL CLIMATE GUIDE FOR DISTRICT POLICYMAKERS AND EDUCATION LEADERS 3 (2009).

⁵⁵ *Id.*

⁵⁶ See CTR. FOR SOC. & EMOTIONAL EDUC., SCHOOL CLIMATE RESEARCH SUMMARY - JANUARY 2010, *supra* note 51, at 1.

⁵⁷ Wayne N. Welsh, *The Effects of School Climate on School Disorder*, 567 ANNALS AM. ACAD. POL. & SOC. SCI. 88, 89 (2000).

⁵⁸ *Id.*

⁵⁹ CTR. FOR SOC. & EMOTIONAL EDUC., SCHOOL CLIMATE GUIDE FOR DISTRICT POLICYMAKERS AND EDUCATION LEADERS, *supra* note 53, at 3.

⁶⁰ See Gabriel P. Kuperminc et al., *Perceived School Climate and Difficulties in the Social Adjustment of Middle School Students*, 1 APPLIED DEVELOPMENTAL SCI. 76, 84-86 (1997).

⁶¹ TEXAS APPLESEED, TEXAS' SCHOOL-TO-PRISON PIPELINE: SCHOOL EXPULSION 66 (2010).

⁶² See H. Jerome Freiberg, *Measuring School Climate: Let Me Count the Ways*, 56 EDUC. LEADERSHIP 22 (1998). (describing the student concerns surveys that are utilized to measure school climate).

⁶³ See Sara E. Goldstein et al., *Relational Aggression at School: Associations with School Safety and Social Climate*, 37 J. YOUTH & ADOLESCENCE 641, 642-3 (2008).

⁶⁴ See *id.* at 642, 649-650.

⁶⁵ CTR. FOR SOC. & EMOTIONAL EDUC., SCHOOL CLIMATE GUIDE FOR DISTRICT POLICYMAKERS AND EDUCATION LEADERS, *supra* note 53, at 8.

⁶⁶ Russell Skiba & Jeffrey Sprague, *Safety Without Suspensions*, 66 EDUC. LEADERSHIP 38, 40 (2008).

APPENDIX

MASSACHUSETTS SCHOOL DISCIPLINE LAW

The following is the complete text of current Massachusetts law regarding public school policies for conduct of teachers and students and for student handbooks.

CHAPTER 71. PUBLIC SCHOOLS

Chapter 71: Section 37H. Policies relative to conduct of teachers or students; student handbooks

The superintendent of every school district shall publish the district's policies pertaining to the conduct of teachers and students. Said policies shall prohibit the use of any tobacco products within the school buildings, the school facilities or on the school grounds or on school buses by any individual, including school personnel. Said policies shall further restrict operators of school buses and personal motor vehicles, including students, faculty, staff and visitors, from idling such vehicles on school grounds, consistent with section 16B of chapter 90 and regulations adopted pursuant thereto and by the department. Copies of these policies shall be provided to any person upon request and without cost by the principal of every school within the district.

Each school district's policies pertaining to the conduct of students shall include the following: disciplinary proceedings, including procedures assuring due process; standards and procedures for suspension and expulsion of students; procedures pertaining to discipline of students with special needs; standards and procedures to assure school building security and safety of students and school personnel; and the disciplinary measures to be taken in cases involving the possession or use of illegal substances or weapons, the use of force, vandalism, or violation of a student's civil rights. Codes of discipline, as well as procedures used to develop such codes shall be filed with the department of education for informational purposes only.

In each school building containing the grades nine to twelve, inclusive, the principal, in consultation with the school council, shall prepare and distribute to each student a student handbook setting forth the rules pertaining to the conduct of students. The school council shall review the student handbook each spring to consider changes in disciplinary policy to take effect in September of the following school year, but may consider policy changes at any time. The annual review shall cover all areas of student conduct, including but not limited to those outlined in this section.

Notwithstanding any general or special law to the contrary, all student handbooks shall contain the following provisions:

(a) Any student who is found on school premises or at school-sponsored or school-related events, including athletic games, in possession of a dangerous weapon, including, but not limited to, a gun or a knife; or a controlled substance as defined in chapter ninety-four C, including, but not limited to, marijuana, cocaine, and heroin, may be subject to expulsion from the school or school district by the principal.

(b) Any student who assaults a principal, assistant principal, teacher, teacher's aide or other educational staff on school premises or at school-sponsored or school-related events, including athletic games, may be subject to expulsion from the school or school district by the principal.

(c) Any student who is charged with a violation of either paragraph (a) or (b) shall be notified in writing of an opportunity for a hearing; provided, however, that the student may have representation, along with the opportunity to present evidence and witnesses at said hearing before the principal.

After said hearing, a principal may, in his discretion, decide to suspend rather than expel a student who has been determined by the principal to have violated either paragraph (a) or (b).

(d) Any student who has been expelled from a school district pursuant to these provisions shall have the right to appeal to the superintendent. The expelled student shall have ten days from the date of the expulsion in which to notify the superintendent of his appeal. The student has the right to counsel at a hearing before the superintendent. The subject matter of the appeal shall not be limited solely to a factual determination of whether the student has violated any provisions of this section.

(e) When a student is expelled under the provisions of this section, no school or school district within the commonwealth shall be required to admit such student or to provide educational services to said student. If said student does apply for admission to another school or school district, the superintendent of the school district to which the application is made may request and shall receive from the superintendent of the school expelling said student a written statement of the reasons for said expulsion.

Chapter 71: Section 37H½. Felony complaint or conviction of student; suspension; expulsion; right to appeal

Section 37H½. Notwithstanding the provisions of section eighty-four and sections sixteen and seventeen of chapter seventy-six:

(1) Upon the issuance of a criminal complaint charging a student with a felony or upon the issuance of a felony delinquency complaint against a student, the principal or headmaster of a school in which the student is enrolled may suspend such student for a period of time determined appropriate by said principal or headmaster if said principal or headmaster determines that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school. The student shall receive written notification of the charges and the reasons for such suspension prior to such suspension taking effect. The student shall also receive written notification of his right to appeal and the process for appealing such suspension; provided, however, that such suspension shall remain in effect prior to any appeal hearing conducted by the superintendent.

The student shall have the right to appeal the suspension to the superintendent. The student shall notify the superintendent in writing of his request for an appeal no later than five calendar days following the effective date of the suspension. The superintendent shall hold a hearing with the student and the student's parent or guardian within three calendar days of the student's request for an appeal. At the hearing, the student shall have the right to present oral and written testimony on his behalf, and shall have the right to counsel. The superintendent shall have the authority to overturn or alter the decision of the principal or headmaster, including recommending an alternate educational program for the student. The superintendent shall render a decision on the appeal within five calendar days of the hearing. Such decision shall be the final decision of the city, town or regional school district with regard to the suspension.

(2) Upon a student being convicted of a felony or upon an adjudication or admission in court of guilt with respect to such a felony or felony delinquency, the principal or headmaster of a school in which the student is enrolled may expel said student if such principal or headmaster determines that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school. The student shall receive written notification of the charges and reasons for such expulsion prior to such expulsion taking effect. The student shall also receive written notification of his right to appeal and the process for appealing such expulsion; provided, however, that the expulsion shall remain in effect prior to any appeal hearing conducted by the superintendent.

The student shall have the right to appeal the expulsion to the superintendent. The student shall notify the superintendent, in writing, of his request for an appeal no later than five calendar days following the effective date of the expulsion. The superintendent shall hold a hearing with the student and the student's parent or guardian within three calendar days of the expulsion. At the hearing, the student shall have the right to present oral and written testimony on his behalf, and shall have the right to counsel. The superintendent shall have the authority to overturn or alter the decision of the principal or headmaster, including recommending an alternate educational program for the student. The superintendent shall render a decision on the appeal within five calendar days of the hearing. Such decision shall be the final decision of the city, town or regional school district with regard to the expulsion.

Upon expulsion of such student, no school or school district shall be required to provide educational services to such student.

LEGISLATIVE HISTORY

The following is a brief legislative history of M.G.L. c. 71, §§ 37H and 37H½. The history involves the evolution and growth of a principal's authority to exclude students from school. One of the interesting dialogues that emerges from the legislative history that resulted in the current version of M.G.L. c. 71, §§ 37H and 37H½ involves the tension between the desire to vest a principal with broad discretion to exclude students and the need for due process protections. The level of "discretion" evolves across various iterations of the law. As the history shows, initially the law provided for a mandate to exclude students, putting the onus on the principal to *justify* a decision that a student may remain in school. The Massachusetts legislature then shifted the burden to a simple requirement that a principal notify a superintendent of a decision to allow a student to remain in school. Ultimately, all the qualifying requirements disappear within the law, leaving the principal with unfettered authority.

School committees have long had the ability to expel students from school permanently.¹ In 1972, the Massachusetts legislature enacted the original law regarding policies relative to conduct of teachers and students and first articulated concurrent authority of a principal to exclude a student from school. The 1972 law merely required school districts to publish the rules governing conduct at school; it did not specify the parameters of a principal's discretion to discipline students.²

In 1992, the law stated specific categories of misconduct that could warrant the use of disciplinary action such as exclusion from school. As of that point in time, the law made no reference to expulsion or to an expelled student's permanent loss of the right to public education:

In cases involving the possession or use of weapons, the possession or use of illegal substances, the illegal possession of alcohol, or the use of excessive force, provided that the violation occurs on school property, the principal or headmaster of every school system within each city, town, or district shall have the authority to suspend a student, including an indefinite suspension, and no other disciplinary measure adopted as a rule or regulation may inhibit this authority to suspend.³

In 1994, Congress passed the Gun-Free Schools Act. This Act mandated expulsion of any student who brings a firearm to school.⁴ The Gun-Free Schools Act tied receipt of certain federal dollars to adoption of the law at the state level. Any state law that permitted a principal to deviate from the federal expulsion requirement on a case-by-case basis would still comply as long as the modified punishment was stated in writing.⁵

Beginning in 1993, Massachusetts required expulsion except in instances where a principal *justifies* a lesser punishment in writing:

[A] principal may, in his discretion, decide to suspend rather than expel a student who has been determined by the principal to have violated either paragraph (a) or (b); provided, however, that any principal who decides that said student should be suspended shall state in writing to the school committee his reasons for choosing the suspension instead of the expulsion as the most appropriate remedy. In this statement, the principal shall represent that, in his opinion, the continued presence

of this student in the school will not pose a threat to the safety, security and welfare of the other students and staff in the school.⁶

Originally, the law was intended to give principals more discretion and flexibility to punish student misconduct. In fact, the law created a strong disincentive for a principal to choose suspension or other lesser punishment because the principal was required to *justify* in writing a decision other than expulsion.⁷ Recognizing that it had created an unintended incentive to expel students, the Legislature further amended the law to require a principal only to notify the superintendent of the date a suspension takes effect when deciding to suspend instead of expel.⁸

Ironically, passage of the Education Reform Bill of 1993 was fueled by a desire to strengthen Massachusetts' position in the global economy by enhancing public school safety and appropriately managing the state's financial future (it is unfortunately having the opposite effect as shown by school discipline statistics). The House Special Committee on Education drafted Massachusetts House Bill 800, an education bill preceding the 1993 Act, with "the best interests of the state's school children and the state's economic future in mind" in order to compete with progressive reforms in other states.⁹ The Committee's focus on the state's school children appeared to be broad and collective, believing that with *their* success, as a group of "skilled members of a vital workforce, [the state's] future security [would] be assured."¹⁰ Yet the law's focus continued to be to exit a student unceremoniously.

Today, § 37H states only that "a principal may, in his discretion, decide to suspend rather than expel a student who has been determined by the principal to have violated either paragraph (a) or (b)" without any opportunity for a student to appeal such a decision.¹¹

Subsequent to the passage of § 37H, the Legislature further expanded a school principal's authority to suspend or expel students from school through a new law in 1994 ~ § 37H½. Part One of this law allows a principal to suspend indefinitely a student charged with a felony or felony delinquency if the principal also determines the student's continued presence at school would substantially affect the welfare of the school in a detrimental way.¹² Part Two of the law grants principals power to expel students adjudicated guilty of a felony or felony delinquency, either by conviction or admission of guilt, upon the same finding in Part One of a substantial detrimental effect on school welfare.¹³ A student disciplined under either section of § 37H½ has the right to notification of the disciplinary action, a right to appeal to the superintendent, and the right to counsel at that appeal.¹⁴ Section 37H½ states affirmatively that no school or any school district bears any responsibility to provide an educational opportunity to expelled students.¹⁵

A high profile school murder case in Billerica, Massachusetts, prompted the state legislature to pass § 37H½ in the name of public safety.¹⁶ Thomas Petruzzelli, a Shawsheen Valley Technical High School student, was convicted of murdering Bruce Hinckley on July 4, 1992.¹⁷ Following Petruzzelli's conviction, the Billerica school system offered to provide Petruzzelli home tutoring; instead, a judge ruled that Petruzzelli had the right to attend school until his sentencing.¹⁸ In response, citizens of Billerica petitioned the state legislature for a new public safety law.¹⁹

The legislative history reflects a clear priority to protect school safety with more robust discipline, despite competing concerns for due process and educational opportunity for all

students. An exchange between Representative Anne Paulsen and Lt. Governor Paul Celluci illustrates the core values at issue:

Paulsen asked Celluci whether suspending a student only charged with a crime offends the presumption of innocence.²⁰ Celluci responded that “[w]e think the principal should have that authority, you see people charged with crimes held without bail.”²¹ Middlesex County District Attorney Tom Reilly, who helped draft the bill, agreed with Celluci, saying “[d]ue process will take its course, but the principal has to make that decision right away.”²²

At a Senate debate on December 8, 1993, Senator Daniel Leahy proposed an amendment to the law requiring that the facts underlying an alleged felony by a student involve a threat to physically injure.²³ Leahy argued that a student could be charged with stealing a VCR; yet, the law as written gave a principal the power to suspend or expel such a student.²⁴ Senator Jane Swift responded, “[w]e’re talking about a felony. I think the superintendent should have discretion to act based on the situation.”²⁵ Leahy’s version of the law did not pass.

¹ See *Bd. of Educ. v. Sch. Comm. of Quincy*, 415 Mass. 240, 245-46 (1993) (noting the wide latitude afforded to school committees in imposing discipline and refusing to compel the school committee to provide alternative education to an expelled student); *Nicholas B. v. Sch. Comm. of Worcester*, 412 Mass. 20, 21 (1992) (upholding the decision of a school committee to expel a student who had physically assaulted another student because the committee had not acted arbitrarily or capriciously).

² MASS. GEN. LAWS ch. 467 (1972) (current version at MASS. GEN. LAWS ch. 71, § 37H (1996)) required “The School committee of every city, town or district shall publish its rules or regulations pertaining to the conduct of teachers or students which have been adopted. Copies of the rules or regulations shall be provided to any person upon request and without cost by the principal or headmaster of every school within each city, town or district. Such rules or regulations shall not become effective until filed with the commissioner of education accompanied by a certification by the committee that copies of the rules or regulations are available as previously set forth.”

³ MASS. GEN. LAWS ch. 133, § 430 (1992) (current version at MASS. GEN. LAWS ch. 71, § 37H (1996)).

⁴ The Gun-Free Schools Act, 20 U.S.C. § 7151 (2007) (originally enacted as 20 U.S.C. § 8921 (1994) (repealed by Pub. L. 107-110, title X, § 1011(5)(C) (2002))) states, “Each State receiving Federal funds under any subchapter of this chapter shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than 1 year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school, under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of a local educational agency to modify such expulsion requirement for a student on a case-by-case basis if such modification is in writing.”

⁵ See *id.*

⁶ S.B. 1550 (Mass. 1993), amended by MASS. GEN. LAWS ch. 51 (1994) (current version at MASS. GEN. LAWS ch. 71, § 37H (1996)).

⁷ *State House Bulletin*, June 13, 1994.

⁸ S.B. 1560 (Mass. 1994).

⁹ *Statement of Rep. Mark Roosevelt, Chairman, H. Spec. Comm. on Education*, H.B. 800, at 2 (Mass. 1993).

¹⁰ See *id.* at 4.

¹¹ MASS. GEN. LAWS ch. 51 (1994) (current version at MASS. GEN. LAWS ch. 71, § 37H (1996)).

¹² MASS. GEN. LAWS ch. 71, § 37H½ (1996).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *State House Bulletin*, May 6, 1993.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Journal of the S.*, at 1666 (Mass. 1993).

²⁴ S. Deb. (Mass. 1993).

²⁵ *Id.*

RECENT MASSACHUSETTS EDUCATION REFORM LAWS

Beyond the scope of this report, the intersection of school discipline and zero tolerance has been addressed in the much broader context of educational reform at the state and national levels. Advocates, legislators, government officials, and other stakeholders are together collectively re-examining the public school system and crafting means to ensure that every child receives an education and successfully navigates the complexities and consequences that school discipline and zero tolerance present. The following are recent legislative initiatives in Massachusetts relevant to the discussion.

Education Reform

In January 2010, Massachusetts passed the *Education Reform Act* (“2010 Act”).²⁶ Building upon the 1993 *Education Reform Act* that instituted the Massachusetts Comprehensive Assessment System (MCAS), the 2010 Act focused on schools with low student performance. The law provides superintendents more autonomy, specifically the ability to fire teachers and to extend the school day. The 2010 Act also raises the cap on Commonwealth charter schools and specifies that most of the charter schools be located in the districts determined to be low-performing. The Massachusetts legislature recognized the importance of school climate, evidenced by the requirement that an underperforming school or district must establish measurable annual goals in its turnaround plans, including a goal related to student safety and discipline.

Bullying

Subsequent to the 2010 *Education Reform Act*, the legislature passed an anti-bullying law in response to growing public concern over bullying in Massachusetts public schools, entitled *An Act Relative To Bullying In School*. In addition to defining bullying and cyber-bullying, this law both details disciplinary sanctions for those found to be bullies, as well as instructs schools to enact proactive plans and other measures to prevent bullying.²⁷ The bullying law requires schools, when they discipline students, to balance the need for accountability with the need to teach appropriate behavior. The bullying regulations also require that schools not report to the police incidents of bullying that can be appropriately handled within schools. For students with disabilities, the bullying law requires that special education teams address bullying through the IEP.

Dropout Commission

Recognizing that a well-educated population is important to the state, as well as to the individual students, Massachusetts has long been concerned about the number of high school dropouts. In 2008, Governor Patrick signed an *Act to Improve Dropout Prevention and Reporting of Graduation Rates*. This law created a commission to study the problem of high school dropouts in Massachusetts. In October 2009, the commission released its report, *Making the Connection: A Report of the Massachusetts Graduation and Dropout Prevention and Recovery Commission*, which recognized that harsh discipline policies contribute to the dropout problem. Certain proposed legislation corresponded with the commission’s work and recommendations, e.g., a bill to raise the mandatory school age from 16 to 18. Furthermore, the commission recommended that §§ 37H and 37H ½ of Chapter 71 of the Massachusetts General Laws be amended to remove

an outdated provision that allows public schools in the Commonwealth to deny enrollment permanently to a student who has been expelled from another district.

The commission further recommended use of discipline that focuses on intervention and evidence-based practices rather than exclusion. It further recommended that DESE collect and publicize additional school exclusion data obtained from school districts.²⁸

Behavioral Health and Public Schools Task Force

The Behavioral Health and Public Schools Task Force was created under section 19 of *An Act Relative to Children's Mental Health*, commonly referred to as "Yolanda's Law."²⁹ The law mandated that the task force develop a framework for collaborative services and supportive school environments addressing various domains, including school discipline. The task force piloted an assessment tool based on the framework with a number of local schools and sent an interim report regarding the pilot to the state legislature in December 2009. The final report detailing the statewide assessment of Massachusetts' public schools was published in August 2010. The Final Report of the Massachusetts Behavioral Health and Public Schools Task Force is entitled "Creating Safe, Healthy, and Supportive Learning Environments to Increase the Success of all Students" and can be found on the Massachusetts' DESE website at <http://www.doe.mass.edu/research/reports/0811behavioralhealth.pdf>.

²⁶ Chapter 12 of the Acts of 2010.

²⁷ Chapter 92 of the Acts of 2010.

²⁸ Massachusetts Executive Office of Educ., *Making the Connection; A Report of the Massachusetts Graduation and Dropout Prevention and Recovery Commission*, Oct. 2009 p.5 (Exec. Sum.)

²⁹ Chapter 321 of the Acts of 2008.

IMPORTANT EVENTS IN THE STATE AND FEDERAL EDUCATION LANDSCAPES

- 1969 The Task Force on Children Out of School (the original name of Massachusetts Advocates for Children) meets to address children who are on the street rather than in school.
- 1970 Task Force publishes *The Way We Go to School: the Exclusion of Children in Boston*, detailing the types of students who are excluded and the reasons for those exclusions.
- 1971 Massachusetts passes first bilingual education law in the nation.
- 1972 Massachusetts passes first special education law in the nation.
- 1973 United States Supreme Court decides in *San Antonio Independent School District v. Rodriguez* that there is no fundamental right to education under the federal Constitution.
- 1975 United States Congress passes the Education for All Handicapped Children Act, which was renamed the Individuals with Disabilities Education Act (IDEA) in 1990.
- 1975 United States Supreme Court decides in *Goss v. Lopez* that students are entitled to some level of due process prior to school exclusions.
- 1983 National Commission on Excellence in Education publishes *A Nation at Risk*, challenging the quality of American education.
- 1993 Massachusetts Supreme Judicial Court recognizes in *McDuffy v. Secretary of the Executive Office of Education* that the Commonwealth has a duty to provide public education.
- 1993 Massachusetts passes education reform legislation.
- 1994 United States Congress passes the Gun-Free Schools Act, requiring states receiving federal education funds to expel students who bring firearms to school.
- 1999 Two students massacre classmates and faculty in Columbine, Colorado, prompting many school discipline policies across the nation to reflect a “zero tolerance” program, including mandatory exclusions.
- 2001 United States Congress passes No Child Left Behind, the reauthorization of the Elementary and Secondary Schools Act, which attempted to make states adopt curriculum standards in order to decrease the achievement gap associated with racial and socioeconomic differences.
- 2002 Massachusetts repeals bilingual education law.
- 2004 United States Congress reauthorizes IDEA and implements additional safeguards for students with learning disabilities.
- 2004 Massachusetts amends the education reform act to promote safe and supportive learning environments (i.e., trauma-sensitive) through grants to schools.
- 2005 Massachusetts Advocates for Children publishes *Helping Traumatized Children Learn*.
- 2007 Governor Patrick announces the Commonwealth Readiness Project.
- 2008 Massachusetts creates the Task Force on Behavioral Health and the Public Schools, charging it with creating a framework for schools to promote collaborative services and a supportive environment for children.
- 2008 Governor Patrick revives a cabinet-level position for the Secretary of Education, the first time such a position had been part of the cabinet in several administrations.
- 2009 Massachusetts Graduation and Dropout Prevention Recovery Commission links dropout rates with punitive school exclusions.
- 2009 President Obama creates Race to the Top initiative as part of the stimulus package.
- 2010 Massachusetts legislature passes new education reform bill.
- 2010 Massachusetts legislature passes anti-bullying bill.

SCHOOL DISCIPLINE DATA TABLES

Fundamental to an understanding of Massachusetts public school disciplinary practices is an examination of who is adversely affected by school discipline policies and zero tolerance. This section expands on the discussion presented in Chapter III of the report regarding available school discipline data and describes the demographics of this population of students. A look at the school discipline data suggests a compelling and disturbing portrait of disciplinary action in Massachusetts.

Data Collection

The Department of Elementary and Secondary Education (“DESE”) collects extensive information on the use of suspensions and expulsions. Various federal and state statutes require each state to collect, monitor and report data regarding school safety, student behavior and discipline. In Massachusetts, the Education Reform Act of 1993 requires every school district to report annually to DESE on statistics involving the use of suspensions and expulsions (together referred to herein simply as “exclusion”). School districts submit annual reports known as the School Safety & Discipline Report (“SSDR”).

Incident Data versus Headcount Data

The Massachusetts Appleseed Center obtained both “incident data” and “headcount data” from DESE for the four school years of 2006-07, 2007-08, 2008-09 and 2009-2010. Incident data is the individual record for each incident during the school year that resulted in school exclusion. Headcount data is the individual record for each student who was reported to DESE as excluded. The headcount data includes demographic information at the statewide level, but not in conjunction with any particular student, school district or incident. The incident data is provided by school and by district. DESE makes incident data available upon written request.

The Massachusetts Appleseed Center filed a Freedom Of Information Act (“FOIA”) request to obtain from DESE the headcount data that corresponds to the incident data. The FOIA request sought to determine how many children were subject to such disciplinary action and to gain some insight into the demographics of this student population. For those students who were excluded on multiple occasions, the data includes an aggregate number of school days missed. Unfortunately as noted above, the headcount data includes student demographic information only at the statewide level. DESE declined to provide disaggregated data at the district level in deference to important individual student privacy concerns.

Student Enrollment Statewide

During the 2009-10 school year, 957,053 students were enrolled in Massachusetts public schools, including charter schools and vocational schools. Statewide enrollment has decreased slightly since the 2006-07 school year. The number of enrolled students who were identified as Low Income has increased slightly over the past four years. The number of minority students has increased slightly. The number of enrolled students identified by the other demographic characteristics has remained fairly constant during the same time frame. The demographics of the student population statewide are listed in Table 1 for each of the four years that correspond with the school discipline data that is the subject of this report and for the following school year.³⁰

Table 1– Statewide Enrollment

School year	2009-10	2008-09	2007-08	2006-07
Total Statewide Enrollment	957,053	958,910	962,806	968,661
Black ³¹	8.2%	8.2%	8.1%	8.2%
Asian ³²	5.3%	5.1%	4.9%	4.8%
Hispanic ³³	14.8%	14.3%	13.9%	13.3%
White ³⁴	69.1%	69.9%	70.8%	71.5%
Native American ³⁵	0.3%	0.3%	0.3%	0.3%
Native Hawaiian/Pacific Islander ³⁶	0.1%	0.1%	0.1%	0.2%
Multi-race/Non-Hispanic ³⁷	2.2%	2.0%	1.9%	1.7%
Male	51.3%	51.4%	51.4%	51.4%
Female	48.7%	48.6%	48.6%	48.6%
Special Education	17% (164,847)	17.1% (166,037)	16.9% (164,298)	16.7% (163,396)
Low Income ³⁸	32.9% (315,161)	30.7% (294,692)	29.5% (283,827)	28.9% (280,238)

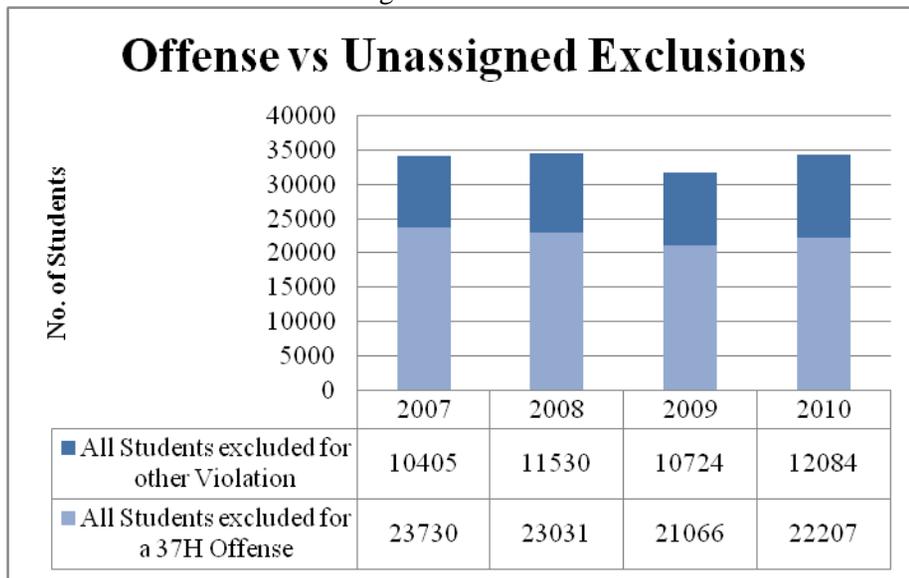
Exclusions

In Massachusetts, school districts are required to report: (1) exclusions of any student which arises out of incidents involving drugs, violence or criminal incident as contemplated by §§ 37H and 37H½; (2) exclusions of any general education student for any reason that is more than ten consecutive school days in duration;³⁹ and (3) exclusions of all special education students for any disciplinary action regardless of the duration of time of the exclusion.⁴⁰

DESE refers to an “offense,” which means any incident involving drugs, violence or criminal incident that results in exclusion as a disciplinary action that is reported pursuant to §§ 37H and 37H½. Incident data includes a description of the offense, e.g. knife (cutting weapon), marijuana possession, physical fight, etc. DESE uses the term “unassigned” to describe incidents that resulted in exclusion for other types of non-drug related or non-violent violations.

Of the 34,291 students who were excluded in 2009-10, 22,207 of those students were excluded as a result of disciplinary action for an offense; whereas, 12,084 of those students were excluded for other reasons. Table 2 shows the number of students who were excluded for an offense in juxtaposition to the number of students who were excluded for another reason for each of the four school years.

Table 2 – Offense versus Unassigned Exclusions



Special Education

Special education students appear to be at higher risk for exclusion for an offense than general education students. Special education students comprised 36% of the students excluded for an offense; yet, only 17% of enrolled students were identified as special education during the 2009-10 school year. Conversely, general education students comprised 83% of students enrolled statewide; yet only 63% of students excluded for an offense were general education students during that same year.

The percentage of special education students compared to general education students who are excluded for an offense remains constant over the four school years. Table 3 shows the number of special education students juxtaposed with general education students who are excluded for an offense for each of the four years.

Table 3 – Special Education and General Education Students Excluded for an Offense

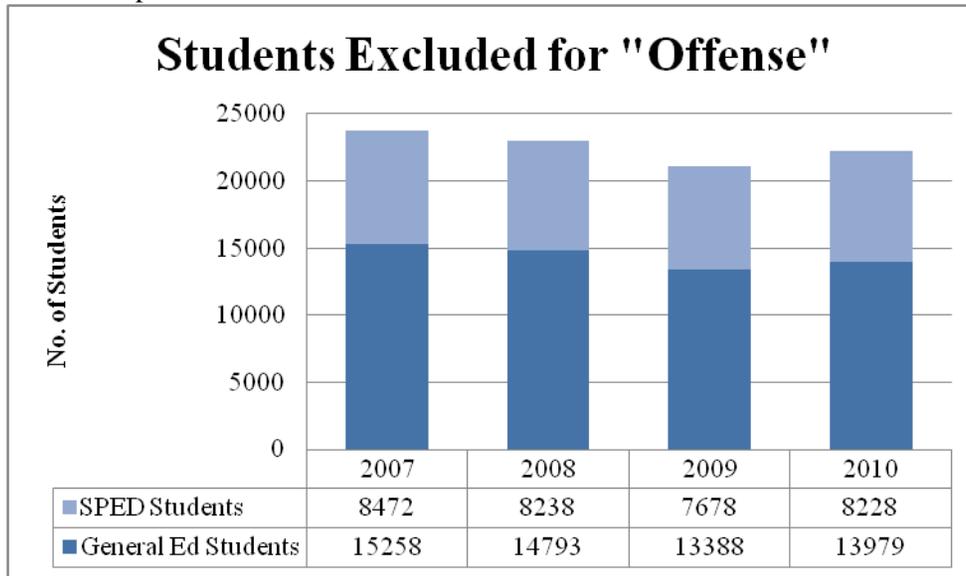
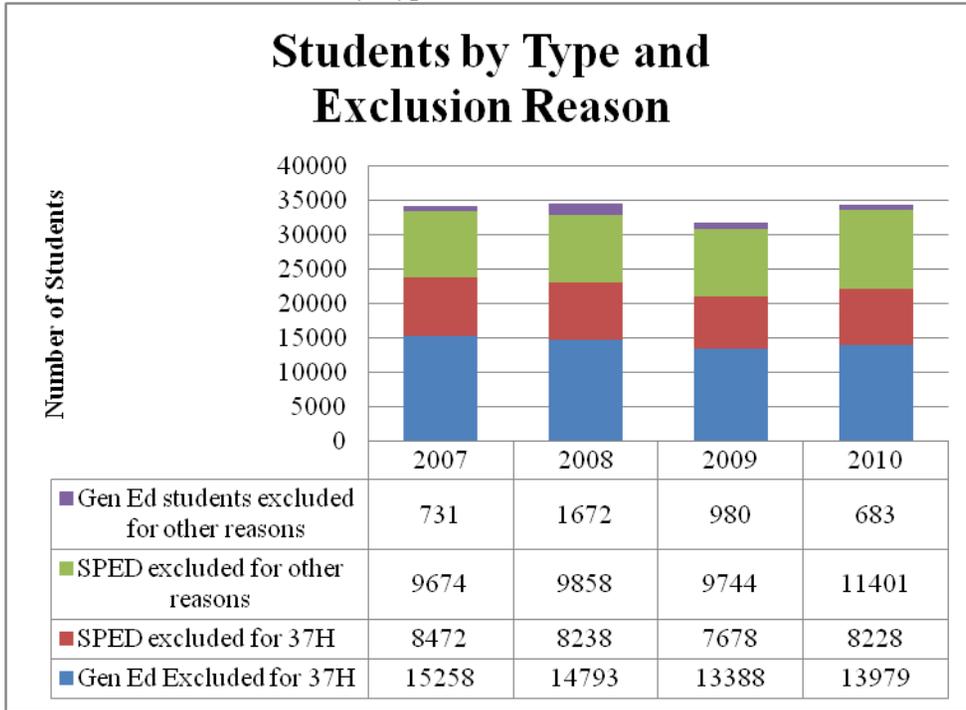


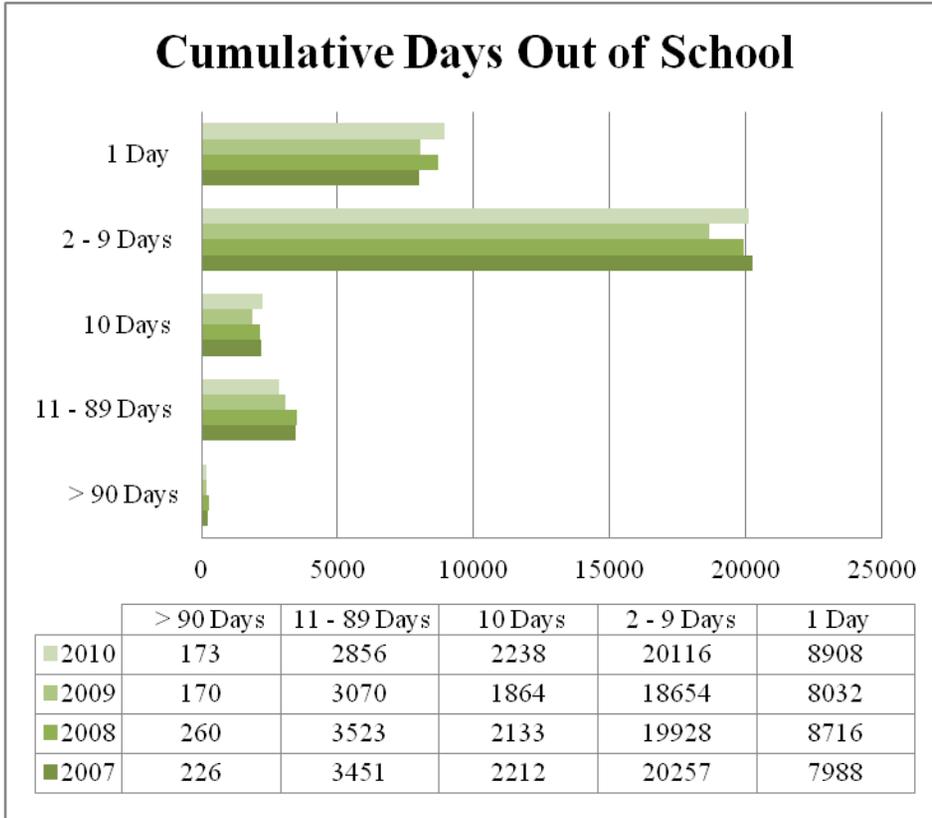
Table 4 – Students Excluded by Type and Exclusion Reason



Time Out of School

During the 2009-10 school year, 60,610 incidents were reported by school districts in accordance with state and federal law. Those incidents resulted in the exclusion of 34,291 students from school for at least one school day. Just over 29,000 students were excluded for one to nine school days. Over 5,200 students missed ten or more school days. The vast majority of reported exclusions are one to nine days in duration.

Table 5 Numbers of Students Excluded by Days Missed



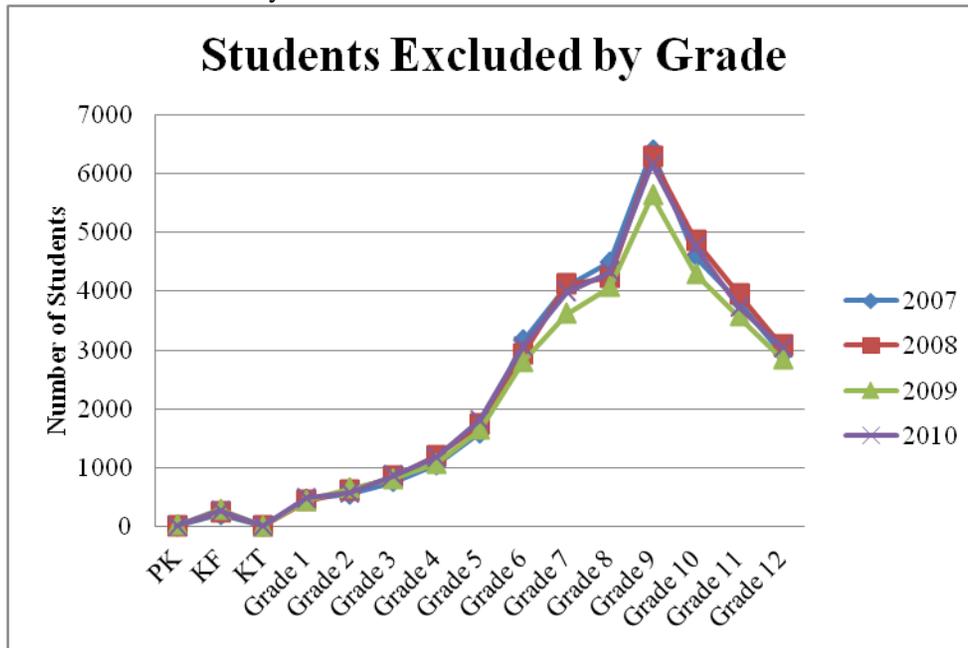
Unreported Disciplinary Actions Resulting in Exclusions

A large number of student exclusions go unreported. This is due to a gap in data collection requirements for general education students who are excluded pursuant to a school's code of discipline for less than ten (10) consecutive days for reasons that do not trigger §§ 37H and 37H½ reporting requirements. Additionally there is little accountability for reporting. Fluctuation can be seen in the number of incidents reported by some schools from year to year – sometimes hundreds of incidents one year and zero the next – suggesting inconsistent reporting. Together this creates a significant piece of missing information in fully understanding the impact of zero tolerance and school discipline policies.

Exclusions by Grade

During the 2009-10 school year, almost 5,200 students, including nearly 300 kindergartners, were excluded from elementary schools, grade PK through grade 5. The number of exclusions nearly doubled from Grade 5 to Grade 6 at which point over 3,000 students were excluded in 2009-10. There were 11,373 middle school students excluded in total. Use of exclusion as a disciplinary measure appears to peak at Grade 9 with 6,153 students being excluded in 2009-10 before the numbers begin to decline at Grade 10. At Grade 10, most students are 16 years old, the age at which students may drop out of school legally. The decline in exclusions at Grade 10 may be the result of students dropping out, rather than of a change in behavior resulting in a decline in exclusions. The data sets show consistent figures in 2006-07, 2007-08 and 2008-09.

Table 6 – Exclusions by Grade



Disproportional Impact on Certain Demographics

Analysis of the disaggregated headcount data reveals the disproportional exclusion of students within certain demographic categories.

Gender

Although the gender breakdown of students enrolled in the Commonwealth was fairly evenly split between males and females over the four school years,⁴¹ male students were excluded much more frequently, representing roughly 74% of the excluded population in each of the school years.

Low Income

Students identified as low-income are disproportionately represented among the excluded population of students. Low-income students comprised 63% of the excluded students in 2009-10 despite comprising only 33% of Massachusetts public school enrollment.⁴²

Table 7 Low Income Students

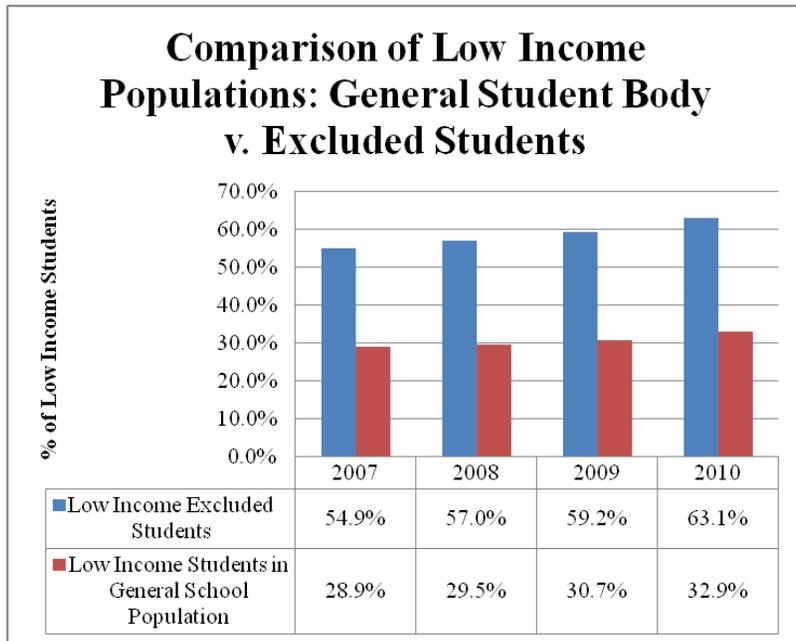
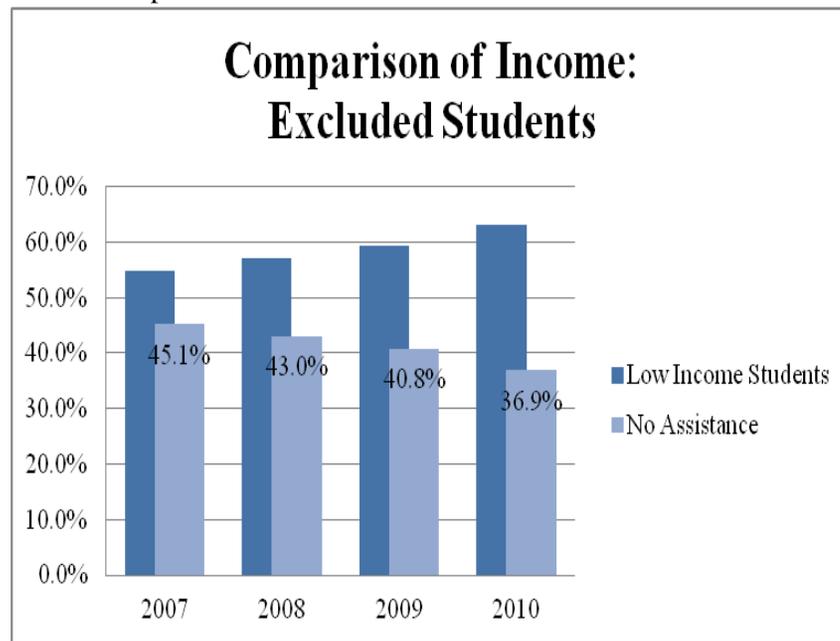


Table 8 Comparison of Income: Excluded Students

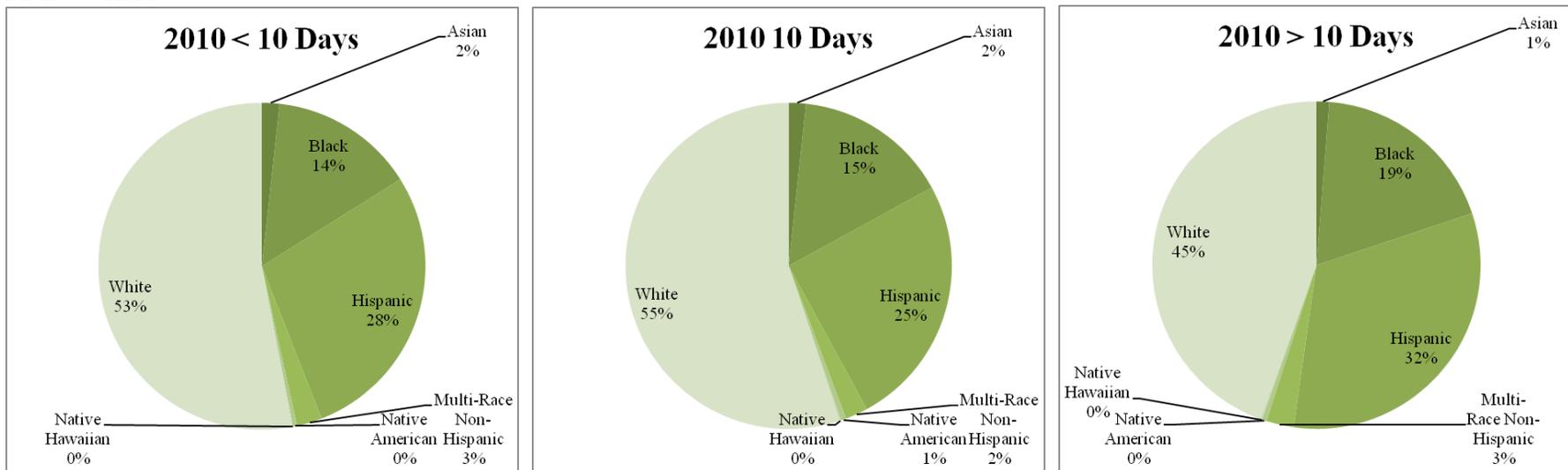


Race

The disproportionate exclusion of certain minority students emerges when exclusion figures are compared to the enrollment figures of these minority subgroups in Massachusetts schools during the 2009-10 school year. Of those students excluded during the 2009-10 school year, 28.2% were Hispanic, and 14.8% were Black. Of the students enrolled during the 2009-10 school year, 14.8% were Hispanic and 8.2% were Black. Meanwhile, only 52.4% of excluded students were White; whereas, 69.1% of the student body was White.

The disproportional rate increases when we look at the race of students excluded for lengthier periods during which students lose significant access to educational resources. Of students excluded for more than 10 days in 2009-10, 19% were Black and 32% Hispanic, while once again the representation of White students in this group dropped, down to 45%. The graphs in Table 6 demonstrate the growing disproportional rate for those two minority groups as length of exclusion increases. This trend is echoed in the headcount data for the 2006-07, 2007-08 and 2008-09 school years.⁴³

Table 9 – Race



³⁰ Enrollment information was retrieved from DESE's Selected Populations Report for each school year. This data is available at http://profiles.doe.mass.edu/state_report/selectedpopulations.aspx.

³¹ For the purposes of the school discipline data collection, DESE defines African American or Black as a person having origins in any of the black racial groups of Africa.

³² DESE defines Asian as a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent.

³³ DESE defines Hispanic or Latino as a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

³⁴ DESE defines White as a person having origins in any of the original peoples of Europe, the Middle East or North Africa.

³⁵ DESE defines Native American as a person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

³⁶ DESE defines Native Hawaiian or Other Pacific Islander as a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands

³⁷ DESE defines Multi-race, Non-Hispanic as a person selecting more than one racial category and non-Hispanic.

³⁸ DESE designates a student as Low Income who either (1) is eligible for free or reduced lunch, (2) receives Transitional Aid to Families benefits, or (3) is eligible for food stamps.

³⁹ See MASS. DEP'T OF ELEMENTARY & SECONDARY EDUC., 2009-2010 SCHOOL SAFETY AND DISCIPLINE REPORT INSTRUCTIONS 2 (2009), available at <http://www.doe.mass.edu/infoservices/data/guides/ssdr.pdf>; see also sources cited *supra* note 1.

⁴⁰ See MASS. DEP'T OF ELEMENTARY & SECONDARY EDUC., 2009-2010 SCHOOL SAFETY AND DISCIPLINE REPORT INSTRUCTIONS 2 (2009), available at <http://www.doe.mass.edu/infoservices/data/guides/ssdr.pdf>; see also sources cited *supra* notes 20-21.

⁴¹ For each of the 2006-07, 2007-08, 2008-09 and 2009-10 school years, statewide enrollment was 51.4% male and 48.6% female. Enrollment information retrieved from DESE's Enrollment By Race/Gender Report for each given school year. Available at: http://profiles.doe.mass.edu/state_report/enrollmentbyracegender.aspx.

⁴² Enrollment information retrieved from DESE's Selected Populations Report for each given school year. Available at: http://profiles.doe.mass.edu/state_report/selectedpopulations.aspx.

⁴³ In the 2006-07 school year, Black, Hispanic, and White students comprised 8.2%, 13.3%, and 71.5%, respectively, of the student population, but constituted 18%, 24%, and 54% of the exclusions. In terms of exclusions for more than 10 days, Black students represented 23% of the excluded students, Hispanic students 30%, and White students 44%. The numbers were similar the following years. In 2007-08, Black, Hispanic, and White students comprised 8.1%, 13.9%, and 70.8%, respectively, of the student population, but constituted 17%, 25%, and 54% of the exclusions. In terms of exclusions for more than 10 days, Black students represented 21% of the excluded students, Hispanic students 29%, and White students 46%. In 2008-09, Black, Hispanic and White students comprised 8.2%, 14.3% and 70% respectively of the student population, but constituted 16%, 28% and 53% of excluded students. Of students excluded for more than 10 days in 2008-09, 17% were Black and 32% Hispanic, while once again the representation of White students in this group dropped down to 47%.

MIDDLE SCHOOL A

Day after day, roughly 450 students walk through the front doors of this Massachusetts middle school carrying an entire world of emotions, problems, and needs. This recognition is core to the middle school's philosophy: teachers and staff want and need to be aware and sensitive to the issues in a student's life that potentially interfere with the capacity to learn and socialize safely within the school community.

This middle school principal chose to focus on school climate because he recognized early on during his tenure that a sense of safety and security among students preempts behavioral problems.

School leadership must do its part to create a supportive culture that integrates preventative approaches to discipline. Faculty and staff have risen to this challenge by developing numerous internal initiatives and programs.

Communication is the key. The concept: a simple form that quickly and efficiently alerts teachers and staff interacting with a particular student of any potentially sensitive situations. Brief and meaningful, but discrete, the form encourages and empowers teachers to deal with students proactively rather than react punitively. While no definitive way exists to determine how many disciplinary incidents are prevented by this simple, cost-neutral measure, faculty and staff are confident that armed with pertinent information about the students provides the opportunity for an informed and supportive approach.

“Communication is ... everything in terms of building a positive and productive school culture.”

Middle School Principal

Faculty and staff buy-in is one of the leading obstacles that this middle school's administrators have faced in their attempts to implement non-traditional approaches to school discipline into their schools. The principal has found it incredibly helpful to have a few strong leaders in the school community who are invested in the strategy. Administrators continue to work toward garnering faculty-wide support.

This middle school places a strong emphasis on counseling and trauma-sensitive approaches. Many of the middle school's faculty and staff are trained in conflict resolution and offer students a chance to have their conflicts mediated.

This middle school seeks to cultivate a sense of safety and security among students in order to preempt behavioral problems. The philosophy is that a student who feels safe and supported in school may very well strive to preserve that balance when faced with conflict or to seek out alternative ways to resolve an issue. Faculty and staff have implemented various measures based on this concept, e.g., creating quiet havens, access to a self-regulated pass and neutral places to do school work.

This middle school's principal tries to identify faculty strengths and talents. In this context, teachers are viewed as a resource to students as well as to other teachers.

This middle school sets clear expectations for both faculty and staff and for the student body. School exclusion is one of the disciplinary actions that this middle school uses. However, exclusion is a last resort, and school administrators always try to find an appropriate consequence that lends itself to a teachable moment for the student(s) involved. While certain offenses, e.g., physical fight, may not leave faculty and staff with many options other than suspension, the school will vary the duration of the exclusion, depending on the severity of the incident. Additionally, the principal might defer part of a punishment to year-end to give a student an opportunity to abate a portion of the student's time out of school by demonstrating that (s)he can stay out of trouble.

This middle school is committed to open communication with all its stakeholders. The middle school seeks to build healthy relationships with parents to facilitate effective interactions with students. Faculty and staff meet regularly with parents. Faculty and staff usually notify parents about student detentions as well as any more serious disciplinary actions. To keep the line of communication open and

“Children need to be kept in school as often as possible to facilitate true learning and to foster strong relationships.”

Middle School Teacher

to ensure that parents remain informed, the guidance department speaks with many parents every Friday to provide an update on a student's progress and well-being. By involving parents in the educational process as much as possible, this middle school creates an important bridge that reinforces its commitment to individually addressing student needs and handling disciplinary issues in a more proactive manner.

This middle school believes its success is due to the culmination of administrators, teachers and staff coming together to cultivate a supportive environment, in which students can learn and achieve their potential. Communication is the key. Cost has, for the most part, been minimal. Maintaining and improving school culture is an on-going process that requires a commitment to long-term change. The methods are simple and implementation is a work in progress. The dedication, thoughtfulness, and openness of this middle school's staff and faculty have been instrumental in establishing the enriching educational environment sought after.

MIDDLE SCHOOL B

Respect is a “two-way street,” the principal of this middle school states matter-of-factly. If the nearly 700 middle school students are expected to respect the principal and staff, then these students must be treated with the same respect in turn. Neither years in the building nor years in teaching nor even years in life excuse an adult from honoring this school philosophy. Years have, however, afforded the school administration with the experience and confidence to rethink its approaches to education and discipline.

Prompted by availability of state desegregation money, two middle schools merged in a move that brought together a diverse group of students, teachers and cultures. The merged middle school focused on bringing together different populations and helping them to learn with and from each other. A constantly changing residential population creates other unique challenges. In facing these challenges, the middle school chose to emphasize community, foster stable relationships and teach broadly applicable interpersonal skills.

The middle school began by focusing on school climate. Many staff members expressed dissatisfaction with aspects of the school climate. The assistant principal held a meeting for all staff who wanted to talk about ways to improve the school culture. Each person in attendance explained what it was about the school climate that concerned them. The responses ranged from very specific items to broad topics.

Student suspension is usually served in school. In-school suspension ensures that students receive all the services they need during the day, while holding the students accountable for their actions. Services include any tutoring and counseling that would ordinarily have been conducted in class. Teachers send them the classroom work so they do not fall behind.

[Students] need to feel that teachers don't want them to fall behind."

Middles School Principal

The middle school is structured to create opportunities to develop strong relationships between students and staff. Playing upon the city's nautical history, the school is divided into two “wharves,” each with four homerooms for each grade. Students stay with their homeroom classmates all day and are taught by two teachers. The pair teaches 45 students. The students spend significant time with these two teachers. Each grade within a wharf is a separate “cluster” and the cluster teachers meet once every six days with the assistant principal and a guidance counselor to discuss student issues. By sharing information about students, they are able to spot a potential problem early and take action. They can work together to determine what an appropriate response would be.

The school is committed to building relationships outside of the cluster structure and actively creates opportunities for faculty, staff and students to interact. Guidance counselors run lunch groups and reading teachers staff *morning duty*.

The middle school focuses on the social curriculum with an emphasis on developing close relationships in the community. The school teaches students how to avoid conflict and works

with them when conflicts arise to learn strategies that will prevent further ones. The middle school developed specific programs to address the needs of middle school students, but the lessons those students learn will help them throughout their lives.

The middle school sets clear expectations about behavior and establishes protocols to address different types of discipline problems. Discipline is considered part of the educational curriculum. Not merely a reaction to behavior, discipline is actually a strategy for teaching students how to behave. Most discipline incidents are addressed in the classroom; however, some others are handled by the office staff.

Despite its preventative efforts, students at this middle school may be suspended or expelled. Typically such a decision is made by a team of teachers, counselors and administrators who know the student. The team evaluates the individual student circumstances and the specific incident details. The school tailors its discipline responses based on the individual student.

This middle school asks suspended students to describe the incident in writing and to describe what the student could do to prevent a similar problem in the future. The administration talks with the students about the behavior to help them understand and deconstruct why the students has been suspended in an effort to teach appropriate social behavior and to build strong relationships between student and faculty and staff.

This middle school employs a full time conflict resolution coordinator. Students can seek mediation *before* and after an incident occurs. With a trained adult, students talk through their problems, and think about how they might have responded differently, and how they could respond differently in the future.

This middle school works with its larger community, both formally and informally. The day that we visited, the school was preparing to host a city-wide forum on the topic of bullying.

HIGH SCHOOL C

This charter school teaches students in grades 7 through 12. Nearly half of the students are eligible for free and reduced lunch programs. Students come to this high school from many different schools and start at varying levels with widely differing academic skills. The high school works affirmatively to integrate new students into its community. To deal with all of those challenges, the high school puts a strong emphasis on knowing its students personally. This not only creates a more supportive school community, but also helps each child succeed individually. When students feel respected by adults, they value that feeling and become important ambassadors for the school community.

The high school first turned its attention to discipline when it observed a rise in the number of student exclusions. The high school formed a study group to research the underlying causes and create solutions. The study group addressed two important questions: (1) What are the most commonly used disciplinary practices? and (2) How can discipline be used to promote social responsibility in the school and within the smaller classroom? Ultimately, the study group published a book about how to use discipline to promote social skills and learning, and trained school staff on the new mission and discipline philosophy developed. All educators are expected to demonstrate and teach social skills.

This high school recognizes the importance of faculty buy-in. The school community operates under a shared mission, and it is crucial that the school’s teachers believe in that mission. The school has been using the Restorative Justice approach for five years now. The staff believe in the method, but it can be challenging. The principal acknowledges the importance of continually cultivating buy-in.

This school’s leadership structure has teachers holding students accountable, and vice versa. If a student skips class, the teacher notifies appropriate school personnel to locate that student. The student does not get in trouble, but is returned to his/her classroom. Students also hold teachers accountable. One of the school’s values is “voice.” Students know that they have a voice, and if there is a problem, they will notify the teacher or another adult. Students are taught to use their voice productively, and that disrespectful use of voice diminishes its effectiveness among the staff and other students.

“Discipline is something that lives inside you.”

High School Principal

This high school is a Safe & Supportive Learning Environment (SSLE) grant recipient. The state-funded grant program assists school districts with the development and establishment of (1) comprehensive programs to promote school safety and help prevent violence in schools and (2) in-school programs and services to address, within the general education school program, the educational and psycho-social needs of students whose behavior interferes with learning, particularly those who are suffering from the traumatic effects of exposure to violence. SSLE focuses on mindfulness, self-soothing and centeredness. The school approaches the needs of all students individually, understanding that many may have a trauma history.

The faculty at this high school seeks to resolve disciplinary issues short of exclusion from the classroom. When the consequences for a disciplinary incident rise to the level of exclusion, the school remains connected to the excluded student, making sure he/she knows his/her options and next steps. When a student returns to the school, the stakeholders develop a plan together to ensure successful reintegration. It is constant work, with counselors and the dean calling home often, but this collaborative effort is critical to the student's success.

This high school ensures that students are known personally, challenged intellectually and expected to participate actively in their education. This mission translates to the school's discipline philosophy. The high school teaches students that discipline is inside of them. Disciplining students is not a power struggle; rather, it is about the student learning what he/she should and should not do and the school community creating an atmosphere of safety and support. If a student needs help reaching an understanding of behavioral expectations, the school will provide structure. Over time, the student learns to take more and more responsibility for self-discipline. It is important to the school to build the student and family's trust in the school community. When students feel valued and respected, they become important allies to the school.

As students learn discipline, there are of course behavioral problems that come up. The school is committed to a restorative approach to discipline. Most behavioral problems are handled by the teacher in the classroom, or even by peers reminding fellow students of their responsibilities. When a teacher does send students to the office, the dean later meets with the teacher to discuss what he/she needs from the student. Administrators, teachers and students work together to "make it right."

This high school believes in progressive discipline. For behavioral problems not capable of resolution in the classroom, a number of avenues exist: a student may be referred to the office or, in appropriate circumstances; the conflict may be referred to the peer mediation program. If a suspension is ultimately imposed, even if for one day, a re-entry conference is held before the student's return. To this principal, suspension is a sign that family involvement must increase to aid student success.

When the problem is bigger and affects many members of the school community, the school holds a restorative conference to discuss the consequences. These conferences are usually held for physical fights, thefts, or other incidents that break the sense of trust in the school. If all the parties agree, the dean brings together as many people as possible who were affected by the actions. They discuss what happened and how they were affected. This process is highly individualized. The dean of students acknowledges that it is developmentally appropriate for students at this age to be ego-centric. These conferences are good opportunities for them to develop empathy and accept the consequences of their actions.

HIGH SCHOOL D

This urban high school is led by an experienced principal who is committed to her students and to making the school a place where students feel safe and thrive. To do that, the high school has chosen to make the best interests of the students its primary focus as well as the underlying organizational principle. It is essential that the students *want* to come to school every day. When students are not engaged in the school community, the school’s administrators must ask themselves why the students don’t want to be there. Bored, struggling academically – the high school principal believes that it is the school’s responsibility to engage and support its students every day.

The high school focused on the school climate. Two underperforming schools with very different cultures merged to form one high school. The principal realized that the high school must be organized in ways that strengthen relationships so “adults come together to help the kids.” A school can organize around curriculum and content or around the student. Initially organized around the curriculum to increase test scores, the high school learned organizing around students was more important to overall success.

The principal’s experience has been that teachers are receptive to changing the school climate. She prefers to work with teachers in small groups. The principal’s integrity and credibility aided her in establishing trust with the faculty; a necessary first step to gain teacher buy-in.

The high school works with teachers to ensure students have a clear understanding of what is acceptable behavior in the classroom. The high school encourages teachers not to think about discipline per se, but instead about how faculty and students can work together to accomplish the work at hand.

Strong relationships are essential to discipline at this high school. The principal explained that she prefers to use the term *limit-setting* rather than *discipline*. High school students are growing adults, not children; they are learning to make their own decisions and the high school must help the students understand the consequences of certain actions. A teacher cannot establish effective limits in a student’s life without first establishing a trusting relationship with the students. In her career in education, this principal learned that roles and titles do not matter; the relationships do.

Ostensibly the high school has zero tolerance for illegal activities. However, the high school has been rethinking two common disciplinary strategies: exclusion and calling parents. The high school found that exclusion is not an effective tool for limit-setting and asking a student to leave school sends the wrong message. A student is keenly aware that the high school has rejected them.

“Exclusion ... doesn’t work. It sends the message ‘we don’t want you’ ... but you’ll be back tomorrow.”

High School Principal

The most important piece is to connect with the student and the family. When discipline is based on relationships rather than exclusions, the parents and high school can work together to explain to the student the consequences of the student’s actions and set clear limits. To assist with building those relationships, this high school has created a staff position to support work with families.

The high school has also partnered with outside organizations such as universities and hospitals to make sure the full community is supporting the students and meeting their needs.

ALTERNATIVES TO ZERO TOLERANCE POLICIES

Numerous alternatives to zero tolerance policies exist. Examples of such alternative approaches include positive behavioral intervention supports, restorative justice, social emotional learning, safe and responsive schools and trauma sensitive learning. The following is a brief description of each concept. As noted in the body of the report, the underlying theme of each of these approaches is to cultivate a school climate that engages students and incorporates teaching positive, pro-social behavior into the education and learning process.

Positive Behavioral Intervention Supports (PBIS)

School-Wide Positive Behavioral Interventions and Supports (PBIS) is a field-tested, evidence-based decision-making framework that focuses on the “prevention of behavior problems.”⁴⁴ PBIS “emphasizes four integrated elements: (a) data for decision making, (b) measurable outcomes supported and evaluated by data, (c) practices with evidence that the outcomes are achievable, and (d) systems that efficiently and effective[ly] support implementation of these practices.”⁴⁵ PBIS schools organize their practices along a continuum, providing supports to students “based on their behavioral responsiveness to interventions.”⁴⁶ The framework is adaptable to a school’s particular needs and aids in cultivating environments that are less exclusionary, are more responsive and preventive, and enhance academic engagement and achievement.⁴⁷

To learn more about PBIS, please visit the United States Department of Education, Office of Special Education Programs Technical Assistance Center on Positive Behavioral Interventions & Supports, available at <http://pbis.org/default.aspx>.

Restorative Justice

Restorative justice is a theory of justice that emphasizes repairing the harm caused by criminal behavior.⁴⁸ The practice engages all stakeholders, those who are harmed, wrongdoers and their affected communities, in the search for “solutions that promote repair, reconciliation and the rebuilding of relationships.”⁴⁹ In practice, the injured party is given a voice and role in decision-making while wrongdoers are afforded the opportunity to make amends and repair harm.⁵⁰ Restorative Justice is a broad term that has grown to encompass a growing social movement to institutionalize peaceful approaches to harm, problem-solving and violations of legal and human rights. In the education setting, schools implement restorative justice through victim-offender mediation, conferencing and peacemaking circles.⁵¹

To learn more about restorative justice, please visit the Center for Restorative Justice at Suffolk University, available at <http://www.suffolk.edu/college/1496.html>.

Safe and Responsive Schools (SRS)

The Safe and Responsive Schools Framework, developed through a U.S. Department of Education Office of Special Education Programs grant, is a process for both improving student behavior and preventing school violence.⁵² SRS enables schools to “develop a broader perspective on school safety, stressing comprehensive planning, prevention, and parent/community involvement.”⁵³ The framework emphasizes strategies for all students, students at risk for disruption or violence, and students with intense or chronic behavior problems.⁵⁴ Together, the strategies developed enable schools to create a

positive climate, identify at-risk students early on to provide the necessary services and effectively respond to serious or persistent behavior problems.⁵⁵

To learn more about SRS, please visit the Safe and Responsive Schools websites housed at Indiana University in Bloomington, IN and at the University of Nebraska-Lincoln, available at <http://ceep.indiana.edu/projects/project.php?id=78&category=1> and <http://www.unl.edu/srs/>.

Social and Emotional Learning (SEL)

Social and Emotional Learning (SEL) teaches students fundamental skills such as “recognizing and managing... emotions, developing caring and concern for others, establishing positive relationships, making responsible decisions, and handling challenging situations constructively and ethically.”⁵⁶ As a framework for school improvement, “[t]eaching SEL skills helps create and maintain safe, caring learning environments.”⁵⁷ SEL programs are implemented school-wide at all grade levels to provide sequential, age-appropriate instruction.⁵⁸ Other key pieces of implementation include professional development and community-wide reinforcement. “Families and schools work together to promote children’s social, emotional, and academic success.”⁵⁹

To learn more about Social and Emotional Learning, please visit the Collaborative for Academic, Social, and Emotional Learning, available at <http://www.casel.org/>.

The Trauma and Learning Policy Initiative (TLPI)

TLPI is a joint program of Massachusetts Advocates for Children and Harvard Law School.⁶⁰ TLPI published *Helping Traumatized Children Learn* in 2005; it represented the culmination of nearly a decade of research and collaboration among mental health professionals, educators, lawyers, and child advocates. Acknowledging the distinct situation of children affected by domestic violence and other traumatic experiences, TLPI created an initiative to train school staff and administrators to create whole school models that are sensitive to students who have experienced trauma. To achieve its goals, TLPI articulated a “flexible framework” to aid those schools that wished to adapt their existing school cultures to become trauma-sensitive. Consequently, the schools can be more effective in educating children whose past or on-going trauma-inducing experiences impede their ability to meet the social and academic demands of a school environment.⁶¹ Briefly, the TLPI framework requires (1) school-wide infrastructure and culture, (2) staff training, (3) linking with mental health professionals, (4) academic instruction for traumatized students, (5) nonacademic strategies and (6) school policies, procedures, and protocols.⁶² The framework addresses a school-wide commitment necessary to shift its approach to students, and the elements described by the framework can be accomplished through “the use of multiple strategies tailored to the needs of each school community and its individual students.”⁶³

To learn more about TLPI, please visit the Trauma Learning and Policy Initiative page at Massachusetts Advocates for Children, available at <http://massadvocates.org/trauma-learning.php>.

Behavioral Health and Public Schools Framework

The legislature set up a Task Force on Schools and Behavioral Health to explicate a framework that can be implemented across Massachusetts to support schools to create “safe and supportive, school environments with collaborative services”. (Section 19, An Act Relative to Children's Mental Health). One of the key enumerated outcome goals of the legislative act was to ensure the framework reduced suspensions and expulsions in addition to increasing time on learning, reducing truancy and drop-out

rates, and more. The framework is based on the TLPI's flexible framework and can be found in the Task Force report to the Massachusetts Legislature, which is available at <http://www.doe.mass.edu/research/reports/0811behavioralhealth.pdf>. The framework is organized according to six areas of school operations: leadership, professional development, access to clinically, culturally and linguistically appropriate services, policies and procedures, and family engagement. Rather than a how-to "program" approach, the framework involves schools in the process of whole school organizational change. The beauty of the framework is that it helps schools create the foundation for learning-safe supportive whole school environments, while enabling a school to weave together disparate mandates and programs (e.g., positive discipline, anti-bullying, mental health supports) and integrate them into the fabric of the school. Already, the framework is being employed by the Department of Elementary and Secondary Education to structure: (1) each school district's development of an anti-bullying prevention and intervention plan, in accordance with the Commonwealth's new comprehensive anti-bullying statute;⁶⁴ (2) the state's special education resource for preventing bullying of children with disabilities; (3) state regulations relating to low-performing schools; and, (4) the state's new Guide to Social Emotional Learning curriculum. As all of these initiatives must work together to stop disciplinary removals, many early adopter schools using the framework are reporting greatly reduced suspensions and expulsions. DESE has a website with a self-assessment tool schools can use engage in a process to implement an action plan available at <http://bhps321.org/>.

⁴⁴ 20 U.S.C. § 1465(b) (2006).

⁴⁵ OFFICE OF SPECIAL EDUC. PROGRAMS, U.S. DEP'T OF EDUC., WHAT IS SCHOOL-WIDE POSITIVE BEHAVIORAL INTERVENTIONS & SUPPORTS? 1 (2009), available at <http://pbis.org/common/cms/documents/WhatIsPBIS/WhatIsSWPBS.pdf>.

⁴⁶ *Id.* at 2.

⁴⁷ *See id.*

⁴⁸ *See* RESTORATIVE JUSTICE ONLINE, <http://www.restorativejustice.org/> (last visited Oct. 26, 2010).

⁴⁹ Suffolk Univ. Coll. of Arts & Scis, Ctr. for Restorative Justice, *What is Restorative Justice?*, <http://www.suffolk.edu/research/6953.html> (last visited January 5, 2012).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *See* Ind. Educ. Policy Ctr., Safe & Responsive Sch., *Building Safe and Responsive Schools: System Wide Training in Preventive School Discipline*, <http://www.indiana.edu/~safeschl/about.html> (last updated Feb. 28, 2002); Ind. Educ. Policy Ctr., Safe & Responsive Sch., *Safe and Responsive Schools*, <http://www.unl.edu/srs/> (last visited January 5, 2012).

⁵³ Ind. Educ. Policy Ctr., Safe & Responsive Sch., *Comprehensive Framework*, <http://www.unl.edu/srs/frame.html> (last visited January 5, 2012).

⁵⁴ *Id.*

⁵⁵ *See id.*

⁵⁶ Collaborative for Academic, Social & Emotional Learning, *What is SEL? Basics*, <http://casel.org/publications/what-is-sel/> (last visited January 5, 2012).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ TLPI is located at Harvard Law School. *See* Harvard Law Sch., WilmerHale Legal Servs. Ctr., *Special Education Clinic: Trauma and Learning Policy Initiative*, <http://www.law.harvard.edu/academics/clinical/lsc/clinics/specialed.htm> (last visited January 5, 2012).

⁶¹ TRAUMA & LEARNING POLICY INITIATIVE, MASS. ADVOCATES FOR CHILDREN, HELPING TRAUMATIZED CHILDREN LEARN 15, 44-45 (2005).

⁶² *Id.* at 47.

⁶³ *Id.* at 44.

⁶⁴ MASS. GEN. LAWS ch. 71, § 37O (2010).



Massachusetts Appleseed Center for Law and Justice, Inc.

44 School Street, Suite 415
Boston, MA 02108

617.482.8686 | Tel

617.482.9111 | Fax

www.massappleseednetwork.org