

Research-Based Recommendations for Improving School Discipline in Wake County Public Schools



Presented by:

Advocates for Children's Services

a statewide project of Legal Aid of North Carolina, Inc.

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July 29, 2010

Wake County Board of Education
3600 Wake Forest Road
Raleigh, NC 27609



Dear Members of the Wake County Board of Education:

We write to provide the Wake County Board of Education with research-based recommendations on ways to improve school discipline and safety. We urge the Board to adopt the recommendations in their entirety, as they will:

- Reduce the number of school days students miss due to short-term and long-term suspensions;
- Reduce the number of school dropouts and increase graduation rates;
- Improve school climates for students, parents, teachers, and administrators;
- Increase safety and order in schools; and
- Reduce the number of students sent to the criminal justice system due to school-based delinquency and criminal complaints and school-based arrests.

Ultimately, the recommendations will create a more fair and equitable system for our children by dismantling a devastating problem that has developed throughout the country and, unfortunately, also in Wake County: a school-to-prison pipeline (STPP).

The STPP is a system of laws, policies, and practices that pushes children—a disproportionate number of low-income children and children of color—out of school and into the delinquency and criminal systems. Students end up in the STPP in two primary ways. Directly, they are either arrested at school or school-based delinquency or criminal complaints are filed against them in court. Indirectly, they are suspended or expelled; suffer the consequences of school exclusion (e.g., lack of supervision, alienation, isolation, conflict with adults, academic failure, school dropout, etc.); become involved in delinquent or criminal activity; and get arrested or otherwise enter the justice system. (See Chart 1 below.)

Without diminishing the constitutional duty of public schools to assist these "at-risk" children in receiving a sound basic education, we recognize that parents and communities must do more to ensure their students are successful. Poverty, violence, abuse, neglect, mental health problems, a lack of parental involvement, low community value on education, and a dearth of community-based prevention and intervention services all contribute to student misbehavior. Indeed, children with negative indicators of child well-being bring those hardships with them to school every day.

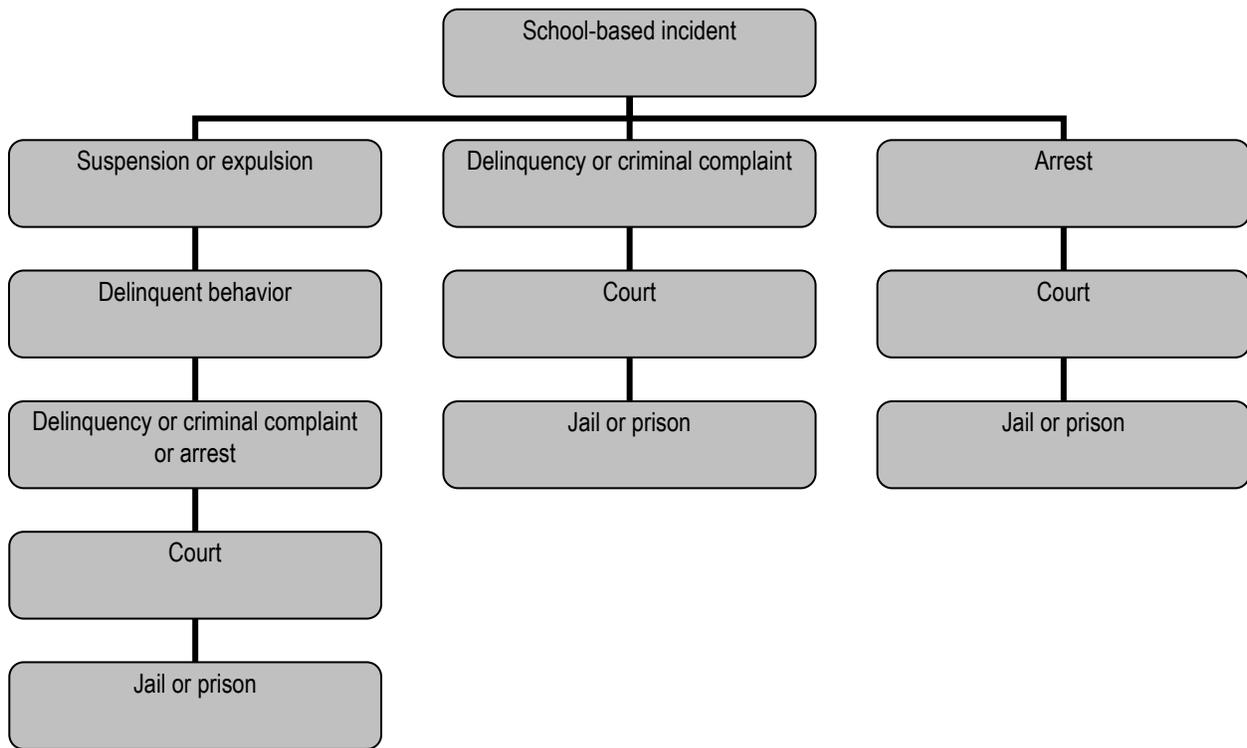
However, certain educational policies and practices have increased students' likelihood of ending up in the STPP. Such policies and practices include:

- Zero tolerance policies;

- Unlimited administrator discretion to suspend;
- Over-use of suspension;
- Excessive and largely unrestrained policing of schools;
- Too much emphasis on high-stakes testing;
- A lack of quality school-based prevention, intervention, and support services;
- A lack of quality alternatives to suspension;
- Unidentified and unmet special education needs;
- Over-crowding in schools and on buses;
- Under-funding; and
- Alienation and marginalization of parents and communities.

Simply put, these policies and practices make it even more difficult for at-risk students to succeed in school.

Chart 1:



As Wake County’s own Board resolution states, “WCPSS has a responsibility to advocate for our children’s education by actively supporting improvement of Wake County’s renowned public education system[.]”¹ The Wake County Board of Education can and should improve the school system by dismantling its STPP; however, solving such a deeply entrenched, complex crisis will require bold action, comprehensive changes, creative leadership, long-term commitment, and community engagement.

In the pages that follow, we provide research and recommendations that will not only reduce the number of suspensions, court referrals, and drop outs in Wake County, but

also will improve school-community relations, increase school safety, and create a fairer, more equitable school system. An introductory snapshot of current research by respected experts frames most sections. Each recommendation includes a brief description of the WCPSS' current policy and/or practice; and some include case studies of actual WCPSS students to illustrate how the current policy or practice operates. In addition, we have provided examples of how the recommendations have been implemented in other places around the country to create safe schools where fair disciplinary practices prevail for all children.

Please note that this document does not include every possible way to improve school discipline and dismantle Wake County's STPP. There are many other key steps the WCPSS can take to address its crisis, including:

- Expanding and improving teacher and administrator training in behavior management and cultural competency;
- Reducing school and classroom size;
- Expanding curricula to teach students social skills;
- Expanding bullying prevention programs;
- Increasing the number of highly-qualified school counselors, psychologists, and social workers;
- Reducing the emphasis on high-stakes testing; and
- Increasing community outreach and parental engagement.

Improving school discipline while ensuring that schools remain safe places will take a concerted effort on the part of elected officials, community members, legal advocates, and, of course, parents. We welcome the opportunity to discuss the research and recommendations further and to work with the Board to implement a new and better system—one that prioritizes prevention, collaboration, fairness, equity, and accountability. We share with you the common, overarching goal of keeping children in school.

Thank you in advance for carefully studying this document, considering the recommendations, and heading down a path of meaningful, lasting reform.

Sincerely,

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ABOUT ADVOCATES FOR CHILDREN'S SERVICES

Advocates for Children's Services (ACS) is a statewide project of Legal Aid of North Carolina, Inc. ACS' mission is to advocate for the idea that at-risk and/or court-involved children are rights-bearing citizens who are entitled to safe, permanent homes and should receive the medical and educational services promised by law. ACS is staffed by one managing attorney, four staff attorneys, and a paralegal who engage in the following activities:

- Provide free legal advice and representation to children from low-income families who need education, special education, mental health, or foster care services;
- Partner with community organizations to educate children and parents about their rights and how to effectively exercise and enforce them;
- Provide trainings for service providers about current issues, the law, and how to advocate for children; and
- Educate the broader community through public advocacy when systems fail the children they are supposed to serve.

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Legal Aid of North Carolina, Inc. (LANC) is a statewide, nonprofit 501(c)3 law firm that provides free legal services in civil matters to low-income people in order to ensure equal access to justice and to remove legal barriers to economic opportunity. LANC operates in all 100 counties in North Carolina through 24 geographically based offices.



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EXTENT OF THE CURRENT SCHOOL-TO-PRISON PIPELINE IN THE WCPSS

Experts agree that the phenomenon of the school-to-prison pipeline (STPP) is occurring, to various degrees, in school districts across the country. The following statistics demonstrate the extent to which the WCPSS' current school discipline policies and practices push children out of school and into the delinquency and criminal systems. This data also demonstrates much of the unfairness and inequity associated with the STPP in Wake County.

During the 2008-09 school year:

- Wake County schools gave out 20,651 short-term suspensions (i.e., “removal from school for a period of ten (10) school days or less”²) and 1,015 long-term suspensions (i.e., “removal from the school system for the remainder of the school year”³). (See Appendix C for a listing of the ten worst schools in Wake County in various categories of STPP data.⁴)
- Wake County public schools long-term suspended more students than any other school district in North Carolina.
 - Even though Wake County has only 9.4% of the state's students, it accounted for 28.3% of all long-term suspensions in North Carolina (an increase of 7.2 percentage points from the previous year). In other words, more than a quarter of all long-term suspensions in the entire state came from just one of the 115 school districts: Wake County.
 - Over the last three school years, students in Wake County have received long-term suspensions at a rate 2.6 to 3.8 times higher than students in the rest of North Carolina's school districts.⁵
 - Too many long-term suspensions were given out for relatively minor offenses. For example, 191 long-term suspensions were handed down for the primary violation of “minor assault” (e.g., pushing); 36 for “aggressive behavior;” 31 for “disruptive behavior;” and 29 for “inappropriate language.” Additionally, thousands of short-term suspensions were handed down for relatively minor, subjective offenses: over 2,500 for “inappropriate language;” over 2,300 for “disruptive behavior;” and over 5,000 (nearly a quarter of all short-term suspensions) for “disrespect of staff.”⁶
- Wake County schools gave out, on average, one short-term suspension for every 6.6 students in the district.⁷ In high schools, the rate is much higher. Wake County high schools gave out 27.3 suspensions per every 100 students.
- African American students made up 26.1% of students in the WCPSS, yet they received 62.3% of short-term suspensions and 67.5% of long-term suspensions. Over the past five school years, 94.4% (34 of the 36) of the expelled (i.e., “permanent removal from the school system”⁸) students in Wake County were African American.

- Even when holding the type of offense and offender constant, African-American students were often punished more harshly than their Caucasian peers. For example, for minor assaults involving students for whom it was their first offense and they committed only one offense on the occasion, 74% of African American students received long-term suspensions, compared to 21% of Caucasian students.⁹

Additionally, during the 2008-09 state fiscal year:¹⁰

- There were 802 school-based juvenile delinquency complaints filed against students in Wake County, which accounted for 32.9% of all delinquency complaints filed in Wake County. Notably, North Carolina is one of only two states in the nation that automatically prosecutes all sixteen- and seventeen-year-olds charged with a crime in the adult criminal justice system, regardless of the severity of their alleged crimes.¹¹ Therefore, school-based complaints that are filed against students age sixteen and older have more severe consequences—they automatically go to the adult criminal system. Consequently, those students are not counted among the 802 school-based delinquency complaints.¹² Adjusting for this harsh reality, we estimate that well over 1,000 students in Wake County are sent directly from school to the delinquency and criminal systems each year.
- 73.4% of the school-based delinquency complaints were against African American youth, even though they represent only 26.1% of students in the school district.
- Too many school-based delinquency complaints were filed for relatively minor offenses. 91% of the school-based delinquency complaints were for misdemeanors. The fourth most common school-based delinquency complaint was “disorderly conduct.”

The STPP is not a new phenomenon in Wake County; it has been a problem for years. Wake County schools have given out over 20,000 short-term suspensions and over 1,000 long-term suspensions each of the past five years (106,333 short-term suspensions and 5,187 long-term suspensions total).¹³ These suspended children are forced to endure the devastating consequences of school exclusion, which include:

- Accelerating the course of possible delinquency by leaving youth with little parental supervision and more opportunities to socialize with deviant peers;
- Increasing the likelihood of dangerous conduct, such as engaging in physical fights, possessing weapons, and using alcohol, tobacco, and drugs;
- Generating feelings of alienation and failure that lead excluded students to unemployment, gangs, and crime;
- Leading to isolation, suicidal ideation, and substance abuse;
- Intensifying conflicts with adults;
- Creating a self-fulfilling belief that a student is incapable of abiding by schools’ social and behavioral codes;
- Decreasing motivation to learn;

- Worsening academic performance (including failing grades and retention); and
- Increasing the likelihood of dropping out and not graduating.¹⁴

Over the last eight years, the number of short- and long-term suspensions in Wake County increased (faster than the rate of total student population growth) and then remained relatively constant—there has been no real progress made in significantly reducing the numbers of suspensions. (See Chart 2 and Chart 3 below.)

Each year, the educational welfare of thousands of students in the WCPSS falls victim to the STPP. Suspension and court referral are too often used as punitive measures of first resort. Instead, the aims of discipline should be to rehabilitate children, restore victims, resolve conflicts, reintegrate the children into school communities, and above all, to keep students in school.

The following detailed recommendations provide specific, concrete steps you as members of the WCPSS Board of Education can take to follow the example of other districts across the country and address the STPP problem in the WCPSS head-on. As the Supreme Court of North Carolina stated when referring to the importance of education,

“The world economy and technological advances of the twenty-first century mandate the necessity that the State step forward, boldly and decisively, to see that all children, without regard to their socio-economic circumstances, have an educational opportunity and experience that not only meet the constitutional mandates set forth in *Leandro*, but fulfill the dreams and aspirations of the founders of our state and nation. Assuring that our children are afforded the chance to become contributing, constructive members of society is paramount.”¹⁵

As WCPSS Board policy states, the “first and greatest concern” for each of you “must be the educational welfare of the students attending public schools.”¹⁶ Enacting these recommendations is a concrete, tangible way to improve the educational welfare of thousands of students by dismantling the STPP in Wake County.

Chart 2:¹⁷

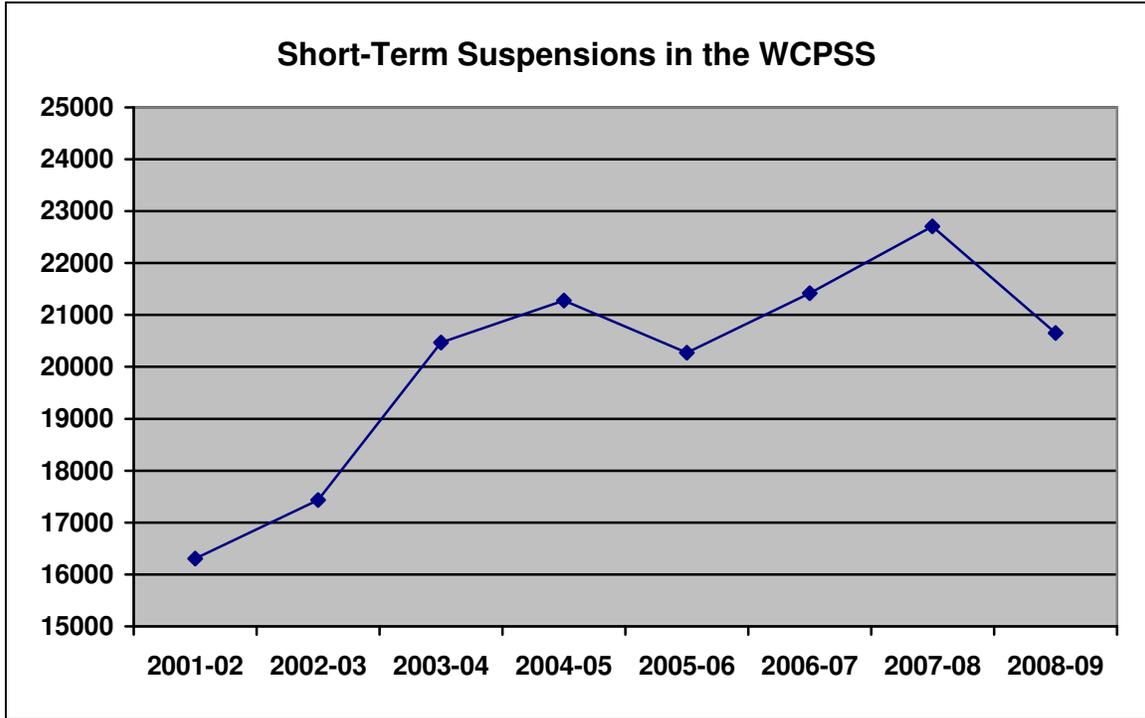
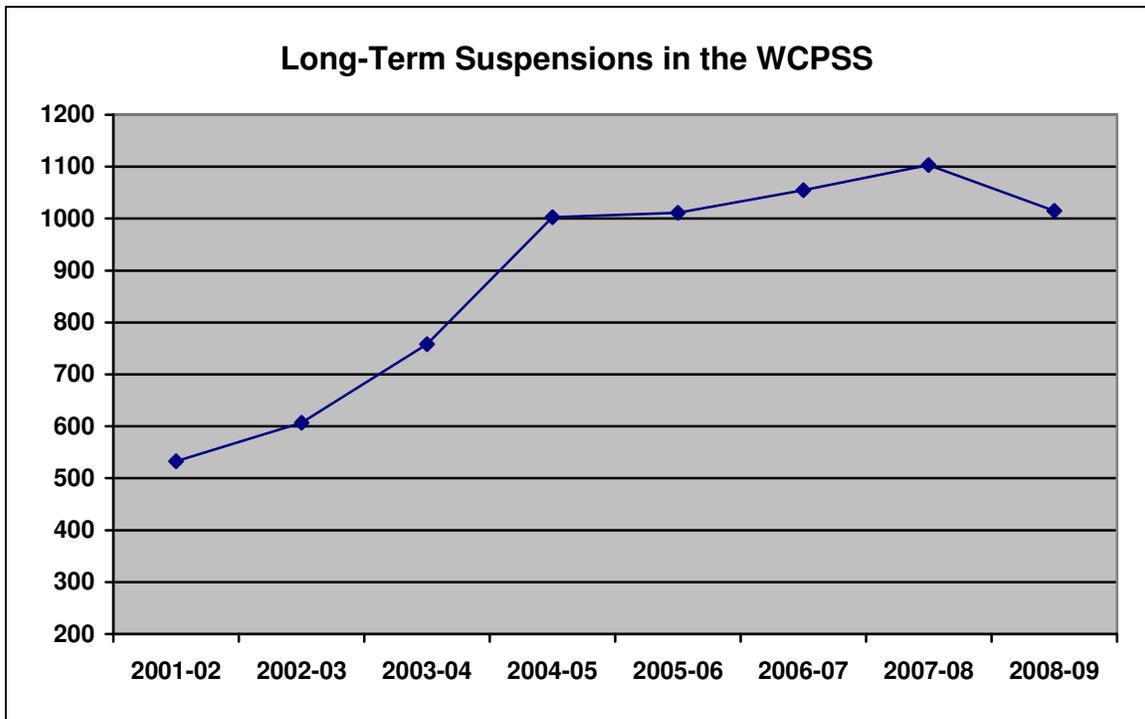


Chart 3:¹⁸



EXECUTIVE SUMMARY OF RECOMMENDATIONS

Over the last decade, national experts and a growing number of school districts have critically examined ways schools handle discipline and the resulting school-to-prison pipeline (STPP). These recommendations have distilled thousands of pages of research into an accessible collection of best practices for improving school discipline in the Wake County Public School System (WCPSS).

The unavoidable reality is that the WCPSS—along with many school districts across the country—has struggled for years to identify and implement best practices to safely reduce the number of suspensions and dismantle the STPP. The numbers do not lie: the WCPSS recently gave out 20 times more long-term suspensions than Charlotte-Mecklenburg Schools in a single year. The data shows that many suspensions are for relatively minor offenses such as “disorderly conduct” and that schools often simultaneously file complaints in court against students for these minor school-based offenses. A comprehensive picture of the current situation in the WCPSS is necessary before turning to the specific recommendations. **We recommend reviewing the brief summary of “The Extent of the Current School-to-Prison Pipeline in the WCPSS” (pages 8-11) prior to reading the detailed recommendations.**

The detailed recommendations are divided into four main topics:

- 1) Revise specific school board policies;
- 2) Provide alternatives to suspension and corrective strategies that keep children in school;
- 3) Establish limitations and procedures for the use of school resource officers (SROs); and
- 4) Ensure transparency and sound decisions through data collection and monitoring.

1) Revise Specific School Board Policies

The U.S. Department of Education and other educational experts have long recognized that implementing “Positive Behavior Interventions and Support” (PBIS) is a data-proven way to keep children in school and to consistently and systematically address their academic and behavioral needs. Decades of research supports the **expansion of the PBIS initiative** in the WCPSS, as well as examination of the consistency with which Wake County schools currently implement PBIS. This analysis should focus on measurable gains in academic achievement and school culture.

Another way for the WCPSS to make an immediate reduction in the number of children excluded from school and pushed into the STPP is by making simple revisions to current Board policies. For instance, the **elimination of all zero tolerance policies**, except those mandated by state law, would allow administrators to consider whether factors outside the student’s control contributed to the problem behavior and to respond

with age-appropriate graduated consequences and interventions. Next, **the definition of a long-term suspension**—which in Wake County is always a total exclusion from school for the remainder of the school year—should be brought in line with the statutory definition and the practice of other school districts in North Carolina that define a long-term suspension as a suspension lasting anywhere from eleven days until the end of the school year, depending on the severity of the offense. In addition, suspensions and expulsions should not be given for **off-campus conduct** that has no immediate relationship with the learning environment. And finally, **stronger due process protections** are needed for students facing the serious consequence of a long-term suspension from school. For example, due to the fundamental importance of a child’s education and the historical unreliability of second-hand evidence, hearsay should be excluded in suspension appeal hearings, except in very limited circumstances. These changes will strengthen the district’s compliance with constitutional due process requirements in suspension hearings, as well as increase the level of trust the public places in the process, regardless of the outcome.

Other recommendations include:

- Provide students and parents with clear, easy to understand student conduct policies—avoid overly vague, complex, and unnecessary language;
- Involve students, parents, and community members in developing student conduct policies and behavior standards;
- Limit out-of-school suspensions for elementary school students;
- Appoint free legal counsel for students facing long-term suspension, or, in the alternative, include in the notice of long-term suspension—which already must be sent to parents—contact information for local organizations and individuals who provide free legal representation for students;
- Provide students with the right to re-enter school if there is an unreasonable delay on the part of the school or district during the appeals process (i.e., more than ten school days between when the student files an appeal and when the hearing is held);
- Provide students with automatic school-based hearings, rather than requiring that they request one in writing within four school days following receipt of the notice of suspension;
- Provide students with the power to subpoena witnesses to appear at hearings, or, in the alternative, provide hearing officers with the power and duty to subpoena witnesses to appear at hearings at the request of the student;
- Provide students with an unbiased, neutral fact-finder, rather than a panel of teachers employed by the prosecuting principal; and
- Provide students and parents with a clear, easy to understand description of due process procedures—avoid overly vague and complex language.

2) Provide Alternatives to Suspension and Employ Corrective Strategies that Keep Children in School

A move away from an over-reliance on zero tolerance policies and practices must be coupled with a commitment to provide alternatives to suspension and to employ corrective strategies that **appropriately address students' behavior while still encouraging school success**. For example, corrective strategies could include a conference with a parent, a behavior contract, loss of a privilege such as a field trip, restorative justice techniques such as a peace circle, an anger management class, mandatory counseling, community service, restitution, high-quality in-school suspension, or a high-quality alternative school.

In addition, the WCPSS should increase its **collaboration with community organizations** to develop a **continuum of prevention and intervention services** by utilizing existing services and by creating new services where gaps exist in the community. One current gap is the lack of alternative schools for students who are recommended for a long-term suspension but do not receive special education services. The WCPSS should re-instate contracts with alternative school providers and/or establish its own **high-quality alternative schools** to meet the academic and behavioral needs of students and keep them out of the STPP.

3) Establish Limitations and Procedures for the Use of School Resource Officers (SROs)

School safety is an ever-present concern in Wake County and the WCPSS Board of Education has a duty to rely on research to inform decisions. Experts have concluded that:

“[w]idely publicized incidents of juvenile violence in public schools have created the public misconceptions that such behavior is commonplace... Contrary to popular belief, schools remain among the safest places for children...Most school violence and serious injuries at school are rare events. Nevertheless, many schools have adopted new forms of security without fully appreciating the impact on students and the educational environment.”¹⁹

The WCPSS must thoughtfully consider the expense and utilization of SROs in light of research concerning their actual ability to increase safety in schools and their potential negative impact on the school environment, such as creating an atmosphere of mistrust and alienation, working against a cooperative learning environment by producing hostility and fear, and impeding the teacher's role as counselor and educator.

One positive step the WCPSS should take is to require all SROs and other security personnel to undergo **mandatory intensive trainings** prior to starting work in schools and on-going during their time in schools. The WCPSS should also **prohibit SROs from interrogating students without the presence of students' parents, guardians,**

or other advocates. Wake County should replicate the efforts of school districts in other states that narrowed their STPPs by prohibiting administrators and SROs from filing either delinquency or criminal complaints against students for minor offenses.

Other recommendations include:

- Prohibit **delinquency and criminal complaints** from being filed against students with disabilities prior to manifestation determination reviews (MDRs) being held. Additionally, prohibit delinquency and criminal complaints from being filed against students when their behaviors are substantially related to their disabilities or when their behaviors are direct results of schools' failures to implement individualized education programs (IEPs);
- Prohibit SROs and other security personnel from carrying either **guns or TASERS** on school campuses and resorting to other methods of controlling adults;
- Establish **clear, standardized, well-publicized complaint procedures** for students, parents, teachers, and administrators to use when SROs behave inappropriately; and
- Enter into a more detailed **memorandum of understanding (MOU)** with the law enforcement agencies providing SROs. The MOU should incorporate all recommendations from this section.

4) Ensure Transparency and Sound Decisions Through Data Collection and Monitoring

Experts recommend the inclusion of parents, students, school personnel, and community members in discussing and monitoring school discipline data. The WCPSS should create **school-based discipline oversight and advisory committees** to ensure transparency, to discuss trends, and to address concerns of those affected by discipline practices. The WCPSS should make **data about prevention, intervention, and alternative learning efforts publically available** in an easy-to-understand format. Data should be collected and reported on suspensions, expulsions, school-based delinquency and criminal complaints, school-based arrests, and SROs. This data should be used to monitor school discipline activities and serve as a useful tool for the WCPSS to use when making future decisions about school discipline and the STPP.

Conclusion and Prioritizing the Five Most Important Recommendations

The recommendations in this document are driven by research and by the example of school districts across the country that have been successful in improving school discipline and dismantling their STPPs. These recommendations have been proven to reduce the number of suspensions, court referrals, and dropouts, as well as to improve school-community relations, increase school safety, and create more fair and equitable school systems.

This report is a comprehensive strategy for improving school discipline in the WCPSS. You should note that although the recommendations are research-based, this document is not a mere academic exercise. We have carefully prepared this report because we are dedicated to children, to public education, and to the improvement of the WCPSS.

Although we earnestly urge you to adopt these recommendations in their entirety, in terms of prioritization we believe that focusing on the following five recommendations will rapidly improve the quality and character of school discipline in Wake County to a dramatic degree:

- 1) Mandate that *all* schools employ school-wide strategies—such as Positive Behavior Support and Interventions (PBIS)—that emphasize clear expectations, academic achievement, and individualized interventions. Ensure implementation of PBIS with fidelity in order to produce measurable gains in academic achievement and school culture (detailed recommendation found on page 21).
- 2) Limit the use of suspensions and expulsions for minor misconduct, and mandate that administrators use graduated interventions and consequences (a “discipline matrix”) to handle misbehavior (detailed recommendation found on page 29).
- 3) Ensure that high-quality educational and behavioral alternatives to suspension are readily available and used by school and district administrators to keep students in school, avoid future misbehavior, and prevent students from being punished academically during their suspensions (detailed recommendations found on pages 41 and 43).
- 4) Change the definition of long-term suspension from “removal from the school system for the remainder of the school year” to “more than ten school days but not to exceed the time remaining in the school year.” (detailed recommendation found on page 23).
- 5) Involve students, parents, and community members in: creating student conduct policies and behavior standards; developing a continuum of prevention and intervention services; and monitoring discipline practices and reform efforts (detailed recommendations found on pages 22, 45, and 55).

We recognize that improving school discipline—and thus school safety—will require commitment by school board members, school personnel, community members, legal advocates, and, of course, students and parents. We recommend that the WCPSS Board of Education use these recommendations to improve school discipline in a way that prioritizes prevention, collaboration, fairness, equity, and accountability, in order to improve the educational experience of all children in the WCPSS.

DETAILED RESEARCH AND RECOMMENDATIONS TO IMPROVE SCHOOL DISCIPLINE IN THE WCPSS

The following pages contain detailed descriptions of research on improving school discipline and on best practices for dismantling the school-to-prison pipeline (STPP) in the WCPSS. In addition to paying attention to the experts' statements highlighted at the beginning of each section, please carefully read the case studies of actual students affected by the STPP in the WCPSS. **These case studies are the experiences of actual children and exemplify many of the problems inherent in the current disciplinary process in the WCPSS.** Hopefully, the case studies will give school board members considering adopting specific recommendations a practical understanding of how current policies are being applied. The students' names have been changed and some details have been omitted in order to protect confidentiality.

Recommendation #1: Revise Specific School Board Policies

ACCORDING TO THE EXPERTS

American Academy of Pediatrics

"Children who are suspended are often from a population that is the least likely to have supervision at home... children most likely to be suspended or expelled are those most in need of adult supervision and professional help...[f]or students with major homelife stresses, academic suspension in turn provides yet another life stress that, when compounded with what is already occurring in their lives, may predispose them to even higher risks of behavioral problems."²⁰

American Psychological Association

"The evidence strongly suggests, however, that zero tolerance has not increased the consistency of school discipline...schools with higher rates of school suspension and expulsion appear to have less satisfactory ratings of school climate, less satisfactory school governance structures, and to spend a disproportionate amount of time on disciplinary matters. Perhaps more importantly, recent research indicates a negative relationship between the use of school suspension and expulsion and school-wide academic achievement, even when controlling for demographics such as socioeconomic status...school suspension in general appears to predict higher future rates of misbehavior and suspension among those students who are suspended. In the long term, school suspension and expulsion are moderately associated with a higher likelihood of school dropout and failure to graduate on time...Finally a growing body of developmental research indicates that certain characteristics of secondary schools often are at odds with the developmental challenges of adolescence, which include the need for close peer relationships, autonomy, support from adults other than one's parents,

identity negotiation, and academic self-efficacy. Used inappropriately, zero tolerance policies can exacerbate both the normative challenges of early adolescence and the potential mismatch between the adolescent's developmental stage and the structure of secondary schools. There is no doubt that many incidents that result in disciplinary infractions at the secondary level are due to poor judgment on the part of the adolescent involved. But if that judgment is the result of developmental or neurological immaturity, and if the resulting behavior does not pose a threat to safety, it is reasonable to weigh the importance of a particular consequence against the long-term negative consequences of zero tolerance policies, especially when such lapses in judgment appear to be developmentally normative...Ultimately, an examination of the evidence shows that zero tolerance policies as implemented have failed to achieve the goals of an effective system of school discipline."²¹

National Association of School Psychologists

"Zero tolerance policies are complex, costly and generally ineffective. Suspension and expulsion may set individuals who already display antisocial behavior on an accelerated course to delinquency by putting them in a situation in which there is a lack of parental supervision and a greater opportunity to socialize with other deviant peers. Further, expulsion results in the denial of educational services, presenting specific legal as well as ethical dilemmas for student with disabilities. Finally, there is no evidence that removing students from school makes a positive contribution to school safety."²²

North Carolina Department of Juvenile Justice and Delinquency Prevention

"Students who are suspended from school should continue to be provided services as an important strategy for gang prevention. Anecdotal and empirical research shows that when youth are removed from the school setting, they may seek out gangs as a replacement for structure and missing relationships."²³

"The Department has seen through research one of the greatest factors that can contribute to a child's poor academic performance is out-of-school time."²⁴

North Carolina Department of Public Instruction

"If the student is not admitted to an [alternative learning program], the student is out of school for the duration of the suspension, often unsupervised. The student may then become more at-risk of academic failure; involvement in high-risk behaviors such as sex, drugs/alcohol/tobacco; delinquent behaviors; and/or serious trouble with the law...Those who are suspended or expelled out of school often go unsupervised, resulting in negative academic consequences and all too frequently, increases in crime and delinquency problems."²⁵

"Although removing a student from school may create a better learning environment for others whose education was being disrupted by that student's actions, the removed student does not typically benefit from removal, nor does simply removing the student

from school address the cause of the student's misbehavior in any way. The more time a student spends out of school, the more her/his academic progress will likely suffer. As these students fall further behind in their academic progress, it increases the probability that they will not catch up with their schoolwork, or worse, that they may never return to school. Alternative strategies to serve the academic and behavioral needs of suspended and expelled students are necessary to prevent at-risk students from becoming "repeat offenders" after they return to their home school, and to ensure that their difficulties do not escalate to the point where more serious behavioral events occur or where students drop out of school altogether."²⁶

Supreme Court of the United States

"The concern would be mostly academic if the disciplinary process were a totally accurate, unerring process, never mistaken and never unfair. Unfortunately, that is not the case, and no one suggests that it is. Disciplinarians, although proceeding in utmost good faith, frequently act on the reports and advice of others; and the controlling facts and the nature of the conduct under challenge are often disputed. The risk of error is not at all trivial, and it should be guarded against if that may be done without prohibitive cost or interference with the educational process."²⁷

"That [Boards of Education] are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes."²⁸

"Failure to observe the fundamental requirements of due process has resulted in instances, which might have been avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy. Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may exercise."²⁹

United States District Court for the Western District of North Carolina

"Extended suspension or exclusion from school deprives a student of important rights and liberties. Exclusions for weeks and months without a hearing have been ordered in many cases. Such long absences threaten the pupil with inability to keep up with his classes and with loss of his year's work and of his incentive to continue his educational career."

"But it must not be forgotten, however small the community, however familiar to one another the characters in the drama, that when a school board undertakes to expel a public school student, it is undertaking to apply the terrible organized force of the state, just as surely as it is applied by the police, the courts, the prison warden, or the militia."³⁰

Barbara Fedders, Professor, University of North Carolina School of Law

“Research indicates that children and youth will invest in more positive and prosocial activities when they are treated with respect by the adults in their lives. Kids can handle negative consequences from adults much better if they view the process that led to the consequences as a fair one. I think every lawyer, judge, and teacher should ask themselves what kind of education, what kind of exclusion system, they would want for their own kids—and let the answer to that question help guide policy.”³¹

Russell Skiba, Professor, Indiana University

“Advocates of zero tolerance argue that it makes sense that removing the most troublesome students from a school would lead to an overall improvement in the quality of the learning climate for those students that remain. Once again however, the facts don’t support the intuition. Rather than making a contribution to school safety, the increased use of suspension and expulsion seems to be associated with student and teacher perceptions of a less effective and inviting school climate. Schools with higher rates of suspension have been reported to have higher student-teacher ratios and a lower level of academic quality, spend more time on discipline-related matters, pay significantly less attention to issues of school climate, and have less satisfactory school governance. In the long-term, there is a moderate correlation between the use of exclusionary discipline and school dropout. Even more troubling are emerging data suggesting that higher rates of school suspension are associated with lower average test scores on tests of achievement.”

“More generally, data on the effectiveness of suspension and expulsion for changing student behavior are not promising. Descriptive studies of school suspension have typically found that 30% to 50% of those suspended are repeat offenders. Such a high rate of recidivism suggests that school suspension is not a particularly effective deterrent to future disruptive behavior. Indeed, in one study, students who were suspended at the sixth-grade level were more likely to be referred to the office or suspended in eighth grade, leading the researchers to conclude that for some students, suspension functions more as a reinforcer than a punisher.”

“The purpose of the application of punishment is to teach students a lesson about behavior. Yet published interviews of students regarding suspension and expulsion have found them less likely than adults to believe that discipline keeps them safe and more likely to perceive that school suspension and expulsion are ineffective and unfair. Even students who are most successful within current school structures are likely to criticize school disciplinary policies as meaningless and stultifying. Those students whose behavior does put them at risk for contact with school discipline believe that enforcement is based more on reputation than behavior. Regardless of their own background, most high school students appear to share the perception that school discipline, especially school suspension, unfairly targets poor students and students of color.”³²

SPECIFIC RECOMMENDATIONS FOR THE WCPSS

- A. Recommendation: Mandate that *all* schools employ school-wide strategies—such as Positive Behavior Support and Interventions (PBIS)—that emphasize clear expectations, academic achievement, and individualized interventions. Ensure implementation of PBIS with fidelity in order to produce measurable gains in academic achievement and school culture.³³**
- a. Current Policy and/or Practice: The WCPSS has a “Positive Behavior Support Initiative.”³⁴ However, Wake County schools are not required to implement PBIS. According to the WCPSS website and the district’s PBIS Coordinator, approximately 79% of Wake County Public Schools implement some version of a PBIS system. In June 2009, the WCPSS published a follow-up evaluation of the PBIS system, which found that “[t]he quantitative and qualitative analyses conducted for the initial PBIS evaluation yielded mixed results. Implementation evaluations showed that most elementary and middle schools had successfully implemented schoolwide behavior practices; however, there was less evidence of PBIS schools’ success in producing positive and consistent changes in climate, behavioral, and academic outcomes. Although some positive impacts were apparent, no PBIS school was successful in achieving all desired outcomes, and in many instances, there was little to no difference in outcomes over time between PBIS and comparison schools. When a significant positive change in climate, behavior, or academic achievement did occur, it was more likely to happen at the comparison schools that had not implemented the PBIS model.”³⁵
 - b. Example: The North Carolina Department of Public Instruction’s website contains evaluation and data, which documents the high success rate of PBIS in other districts across the state.³⁶ For example, the 2008-09 Evaluation Report highlights three schools that demonstrate the potential of PBIS to significantly decrease discipline referrals, increase in end-of-grade (EOG) test scores, and decrease staff turnover.³⁷
 - c. Example: The Los Angeles Unified School District has a discipline policy that requires every school to create a school-wide positive behavior and support and discipline plan. The policy’s emphasis is on: “teaching social-emotional skills; reinforcing appropriate student behavior; using effective classroom management and positive behavior support strategies by providing early intervention for misconduct and appropriate use of consequences.”³⁸
 - d. Example: “A case study of the cost benefits of PBIS was conducted at an urban Maryland elementary school. After two years of PBIS, the school experienced a 71% decrease in suspensions and a 92% decrease in office referrals. Based on an 8-hour work day, these decreases saved administrators 16.8 workdays of time. When considering the time in terms of the administrator’s daily salary, the school saved an average of \$6,478.77 per year after PBIS implementation.”³⁹

- e. Example: In twelve Chicago public schools, the number of students who received six or more disciplinary referrals fell by more than 50% over three years after implementing PBIS.⁴⁰
- f. Example: In Florida, a study of 102 schools using PBIS found that after one year of implementation, office disciplinary referrals fell by an average of 25% and out-of-school suspensions fell by an average of 10%.⁴¹
- g. Example: The Waukegan School District in Illinois chose to implement Positive Behavioral Interventions and Supports (PBIS) in Northern Elementary School as a pilot program. Prior to PBIS, Northern Elementary School had a suspension rate of 9.8%. To recognize and reward positive behavior, school staff members gave out “Gotcha” slips to students seen following school-wide rules. The slips then went into a lottery for a weekly prize for both students and teachers. After one year of celebrating positive behavior and choosing alternatives to school suspensions, Northern Elementary School’s suspension rate dropped by 22%.⁴²

B. Recommendation: Provide students and parents with clear, easy-to-understand student conduct policies. Avoid overly vague, complex, and unnecessary language.⁴³

- a. Current Policy and/or Practice: State law requires school board policies to be clear;⁴⁴ however, much of Wake County’s Board Policy is not clear. Much of the language in the Board Policy is too complex, overly vague, and/or superfluous.
- b. See Appendix A below for examples of how specific provisions of WCPSS Board Policy can be revised to increase clarity and understanding.

C. Recommendation: Involve students, parents, and community members in developing student conduct policies and behavior standards.

- a. Current Policy and/or Practice: It is our understanding that no community members are involved in the creation of Board Policy, nor is there community involvement in developing behavior standards at individual schools.
- b. Example: Alaska laws mandate the involvement of students, parents, community members, teachers, and administrators in developing behavior standards and require schools to periodically review and revise these standards with a multi-stakeholder group.⁴⁵
- c. Example: An Indiana law requires schools to work with parents “to develop and review periodically an evidence-based plan for improving student behavior and discipline[.]”⁴⁶
- d. Example: In Montgomery County (Maryland) Public Schools, “administrators, faculty, parents, and students must be involved in the planning and implementation of appropriate disciplinary procedures for each school.”⁴⁷

- D. Recommendation: Change the definition of long-term suspension from “removal from the school system for the remainder of the school year” to “more than ten school days but not to exceed the time remaining in the school year.”**
- Current Policy and/or Practice:** Board Policy defines long-term suspension as “removal from the school system for the remainder of the school year.”⁴⁸
 - Example: North Carolina state law defines long-term suspension as “in excess of 10 school days but not exceeding the time remaining in the school year.”⁴⁹
 - Example: The next nine largest school districts in the state after Wake County define long-term suspension as a suspension lasting more than ten school days—not as a suspension that automatically lasts for the rest of the school year.⁵⁰
- E. Recommendation: Eliminate all zero tolerance policies, except those mandated by state law, and require that administrators consider: whether factors outside the student’s control contributed to the problem behavior; whether such behavior could be alleviated by helping the child deal with the external factors contributing to the behavior; and whether the existence of such factors should lead to less severe consequences.**

Case Study #1

by Richelle Hollingshead, HOSTS Math Coordinator, Neighbor to Neighbor

Last year, I worked closely throughout the school year with a student, John, and his family. John is from one of those families who is incredibly "at-risk" and moves frequently. John was in his sixth grade year at a Wake County middle school and was doing well throughout the first half of the year. Although he had various minor discipline problems, he was not in any serious trouble.

One day, John held another student while other boys roughoused in the bathroom. Due to Wake County's zero tolerance policy of "Multiple on One" fights, John and one of his friends were immediately up for long-term suspension. It did not matter that John had no previous suspension or serious disciplinary action throughout his first year of middle school. It did not matter that the other student was not seriously injured, or that John never punched anyone. The policy stood.

John's mother and I fought the suspension at both the school and Superintendent level. At the school-level, the hearing process is, in my opinion, completely stacked against a student. How incredibly scary to be twelve years old, sitting before a panel of teachers, administrators, and other school personnel, and feeling like you are sitting in a courtroom accused of murder. I felt awful for John at that hearing and he looked terrified. He was barely able to speak and defend himself he was so intimidated. The principal of the school was not in the hearing; however, the suspension decision is

ultimately in his hands. Despite his absence and not hearing any of the testimony, or John's defense, the suspension was upheld.

At the next level, the Superintendent held a "closed review" of the suspension and school hearing. I don't know what that means at all—I only know the Superintendent chose to "uphold the school's decision."

John's mother and I could have appealed again to the School Board level. However, at the time, John had already been out of school for a month and a half without any educational opportunities, as none were made available to him during the appeals process. We decided it was in his best interest to get into school quickly, without wasting more time in hearings. Additionally, we were worried about the emotional toll on John of sitting through another hearing. We enrolled him at Richard Milburn, an option that no longer exists since WCPSS terminated that contract.

Going through that process with John and his family was one of the most disheartening things I have ever gone through. Of all students, John NEEDS the opportunity to be in school. He is already behind, already subject to the pressure of drugs and gangs on the street, already thinks he has no hope in school. And how do we as a school system treat him? Like a convicted felon. It's a sad, sad self-fulfilling prophecy.

Case Study #2

by Keith Howard, Staff Attorney, Advocates for Children's Services

One of my clients was Sarah, a petite, thirteen-year-old honor roll student. Sarah had never been in trouble, was a model student, and had dreams of becoming an attorney, but she was long-term suspended for nearly a semester for protecting herself from unrelenting bullying by multiple male students.

For a year and a half, one male student and his group of friends bullied Sarah. They called her derogatory names in front of classmates, made fun of her appearance, and treated her like she was sub-human. On one occasion, the ring leader pulled Sarah's shorts down in gym class with the intent to expose her undergarment and possibly her genitalia. All of this dehumanizing behavior occurred at school but not one teacher or administrator took any action to help this child, even after being informed of the bullying.

Sarah's mother told me about the changes she noticed in her daughter when the bullying began. Sarah, formerly a happy child, began to isolate herself and lose weight. Her grades began to fall, and she changed the way she walked in an attempt to stop the bullying. She was depressed and angry, and believed she was ugly. Her self-esteem was destroyed. Sarah told her gym teacher about the bullying, but no action was taken. After the gym teacher failed to do anything to stop the bullying, Sarah felt like adults could not help her and that if she told anyone else, the bullying would get worse.

One day, Sarah was confronted by several boys after lunch. The boys were teasing her about how she looked and walked. While Sarah walked to class, the male students surrounded her. At this point, several other students gathered around. The male

students called her names, mimicked the way she walked, and encouraged other students to harass and torment her. Not knowing what to do, she began to cry and pulled out the scissors she had permission to use for a class assignment. She did not say a word even as the ring leader threatened her and acted as if he was going to physically attack her. Fortunately for Sarah, other students restrained him before he could do anything.

Sarah began uncontrollably crying and explained to a teacher that the same bullies had been tormenting her for a year and a half, that some of her grades had fallen due to stress, and that she did not have anyone to go to for help. The teacher escorted her to a guidance counselor who asked her a few questions and then called her tormentors into the room. One of the boys apologized but the ring leader informed the guidance counselor that Sarah pulled out a pair of scissors. At that point—in the administrators' eyes—Sarah went from being the victim to being the aggressor.

Consequently, Sarah was recommended for long-term suspension for possessing a weapon on school grounds and for threatening another student with the weapon. Despite the fact that Sarah had never received any type of suspension in the past, was an honor roll student, and was the victim, the Board approved the recommendation of long-term suspension. The Board apparently did not consider the mitigating circumstances and instead enforced a problematic zero-tolerance school policy that defined scissors as weapons. Sarah's mother lost faith in the public school system and ultimately decided to enroll Sarah in a private parochial school.

Case Study #3

by Jane Wettach, Clinical Professor of Law, Duke Children's Law Clinic

One of our clients was a senior at a high school in Wake County. She had no discipline history. In early September, there was a large, supposedly gang-related fight outside of the school before the school day began. According to the student, she saw that her brother's acquaintances were involved in the fight and went over to make sure he was not involved. The fight shifted around, she got too close, and one of the main participants in the fight ended up falling on her, pinning her against a window. She hit him several times to try to get away, while other students were hitting him. He eventually moved, along with the fight, and she went back and stood with her friends.

The next day, her name came up in talks with students who were in the fight, and she was summoned to the office. She told the resource officer what had happened. The school charged her with "Multiple-on-One Assault" and gave her a long-term suspension until the end of the school year (she was also charged with breaking other rules—fighting, instigating a fight, and disruption of school). Her mother appealed the suspension and called the Clinic.

A law student represented the student at the school-based hearing. The school resource officer and assistant principal said that the student had some sort of conflict with the student who fell on her, and that she was more involved in the fight than she

said she was. None of them saw her involvement in the fight however, and their conclusions were little more than conjecture. They said that they gave her a long-term suspension because they wanted to treat everyone who was involved in the fight the same way. The suspension was upheld by the teacher panel, the superintendent, and the Board of Education.

- a. Current Policy and/or Practice: Zero tolerance policies mandate specific punishments for specific rule infractions, regardless of accidental mistakes, ignorance, or extenuating circumstances. State law mandates 365-day suspensions for bringing a weapon onto school property or to a school activity⁵¹ and making a false bomb threat.⁵² The law further requires a 300- to 365-day suspension, if no appropriate alternative educational setting is available, for any student who is at least thirteen years of age and who physically assaults and seriously injures a teacher or other school personnel.⁵³ WCPSS Board Policy creates an additional three zero tolerance policies for incidents relating to fighting and assault.⁵⁴ More importantly, a “zero tolerance” mentality pervades most disciplinary decisions since WCPSS Board Policy does not mandate that administrators consider any specific extenuating factors and does not even provide guidance as to which factors should be considered.
- b. Recommendation: Administrators should consider the following factors before suspending a student:
 - i. The student’s mental illness and/or disability;
 - ii. The appropriateness of the student’s educational placement or setting;
 - iii. Whether the student is or has been a victim of bullying or harassment;
 - iv. The student’s family situation, such as involvement in foster care, domestic violence, homelessness, poverty, recent death of a loved one, or immigration status;
 - v. The student’s substance abuse or addiction;
 - vi. The student’s disciplinary history;
 - vii. The student’s age and ability to understand consequences;
 - viii. The student’s expression of remorse;
 - ix. Whether the student was acting in self-defense; and
 - x. Whether the school made any effort to address the student’s behavior using positive, preventative methods prior to the incident at issue.
- c. Example: In Texas, administrators must consider “as a factor in each decision concerning suspension, removal to a disciplinary alternative education program, expulsion, or placement in a juvenile justice alternative education program, regardless of whether the decision concerns a mandatory or discretionary action...: (A) self-defense; (B) intent or lack of intent at the time the student engaged in the conduct; (C) a student’s disciplinary history; or (D) a disability that substantially impairs

- the student's capacity to appreciate the wrongfulness of the student's conduct[.]”⁵⁵
- d. Example: In Florida a new law was passed that encourages schools to use alternatives to expulsion and referral to law enforcement, such as restorative justice, and requires schools to take the particular circumstances of the student’s misconduct into account before issuing punishment.⁵⁶
 - e. Example: All school personnel in the Baltimore City Schools must consider the following factors when responding to student misbehavior: “the age, health, decision-making ability, and disability or special education status of the student, the appropriateness of the student’s academic placement; the student’s prior conduct and record of behavior; the student’s willingness to repair the harm; the seriousness of the offense and the degree of harm caused; and the impact of the incident on the school community.”⁵⁷
 - f. Example: Chicago Public School Student Code of Conduct (SCC) reads: “[t]he SCC provides a variety of interventions and consequences to address student misconduct that range from the least severe to expulsion. Before any intervention or consequence is issued, school officials shall consider all mitigating circumstances and shall ensure that the student receives due process.” The Code lists a variety of mitigating circumstances school leaders should consider when disciplining students, such as the student’s age, health, maturity, and academic placement; the student’s prior conduct and record of behavior; the student’s willingness to make restitution; the seriousness of the offense; and the student’s willingness to enroll in a student assistance program.⁵⁸
 - g. Example: In New York City, when determining which disciplinary measure to impose, the following “must be considered” by school officials: “the student’s age, maturity, and previous disciplinary record (including the nature of the prior misconduct, the number of prior instances of misconduct, and the disciplinary measure imposed for each); the circumstances surrounding the incident leading to the discipline; and the student’s IEP, BIP and 504 Accommodation Plan, if applicable.”⁵⁹
 - h. Example: Prior to Principal Jim Bever’s arrival at Greenfield Middle School in Indiana, school discipline was “consistent with the zero tolerance philosophy of punishing even minor student misbehavior severely in an attempt to ‘send a message’ to students.” When Principal Bever took over at Greenfield, his “approach to discipline focused primarily in two areas: (1) developing relationships with community agencies, and (2) facilitating teacher and student growth and development.” After only one year of implementing new strategies and changing the school culture around discipline, the out-of-school suspension rate dropped from 50.67 incidents per 100 students in 1998-1999, to 18.53 incidents per 100 students in 1999-2000. This decrease in suspension rates was not an aberration; the data shows that the out-of-school suspension rates averaged 41.55 incidents per 100 students between the years of 1996-1999, but 23.84 incidents per 100 students between the years of 2000-

2003. Between the years of 1996-1999, the average number of suspensions and expulsions for drugs, weapons and alcohol was 8.50, whereas the average was 1.50 between 2000-2003.⁶⁰

F. Recommendation: Limit the use of suspensions and expulsions for off-campus misconduct.

Case Study #4
by Jason Langberg, Everett Fellow, Advocates for Children’s Services

My client, Kenneth, was suspended from a Wake County high school for five days for violating Board Policy 6440: Trespassing. The policy reads:

“No student shall be on the campus of any school except the one to which the student is assigned during the school day without the knowledge and consent of the officials of that school. Students who loiter at any school after the close of the school day will be considered trespassers. If the student does not leave when instructed to do so, he/she may be prosecuted. A student under suspension from school is trespassing if he/she appears on the property of any school or at any school sponsored activity during the suspension period without the express permission of the principal.”

According to the notice of suspension, Kenneth allegedly left campus and was found by Raleigh Police at an abandoned house. Admittedly, Kenneth should not have been in an abandoned house during school hours. However, the Board Policy quite clearly applies only to students trespassing on school property or at school-sponsored activities, not an abandoned house on private property. Therefore, the high school administrator who suspended Kenneth either was ignorant of what the policy actually says, or chose to deprive Kenneth of his education for five days in hopes that no one would notice that the charged violation was entirely bogus.

Not only was Board Policy 6440 improperly applied, but also the high school does not have control of all matters pertaining to its students. This case was an exercise of authority outside of the high school’s jurisdiction, and thus, an arbitrary act in violation of Kenneth’s due process rights. A school can exert its authority over the off-campus behavior of students only when a student’s off-campus actions have a demonstrable negative impact on the operation or safety of the school. Yet, Kenneth’s actions were not affecting the operation or safety of the school. High school administrators are school personnel, not law enforcement officers, and should not act outside of their jurisdiction.

- a. Current Policy and/or Practice: Board Policy allows principals to long-term suspend or expel any student “whose conduct at any time, place, or cyberspace, on or off campus, has a direct and immediate effect on maintaining order and discipline or protecting the safety and welfare of students or staff in the schools.”⁶¹ The phrase “direct and immediate

effect” is not defined in the Board Policy—interpretation is left entirely to the subjective discretion of individual school administrators.

- b. Example: Baltimore City Public School’s code specifies that, “[i]ncidents that occur off school grounds are generally not addressed by Baltimore City Public Schools and/or its Code, except for those incidents that occur during a student’s regular route to and from school, in school-sponsored activities or within a reasonable time before and after school or school activities.”⁶²

G. Recommendation: Limit the use of suspensions and expulsions for minor misconduct,⁶³ and mandate that administrators use graduated interventions and consequences (a “discipline matrix”) to handle misbehavior.⁶⁴

Case Study #5
by Jay Santiago, Director, Structured Day Program, Haven House

One of the children in our program was suspended from a Wake County high school for ten days twice during the past school year for repeatedly cutting classes. It didn’t make sense to me for her to miss school when she already chose on her own to miss classes.

Another child was recommended for long-term suspension from a Wake County middle school for coming to school “under the influence of Tylenol.” This one was totally confusing.

Both students attended our structured day program this past year and were very respectful and mild-mannered in nature.

- a. Current Policy and/or Practice: Individual school administrators are allowed to long-term suspend or expel a student for “a serious violation of any of the policies” or for “repeated violations” of the Code of Student Conduct.⁶⁵ The Board Policy does not define “serious violation”—interpretation is left entirely to the subjective discretion of individual school administrators. Board Policy also does not specify which violations, if repeated, warrant a long-term suspension or expulsion. Board Policy reads: “Suspension from school is a serious measure. Principals should utilize every reasonable resource at their disposal to affect another solution to student misconduct.”⁶⁶ However, it does not mandate that administrators use graduated interventions and consequences, or even provide guidance as to what productive interventions and consequences could be used. The vague guidelines have contributed to overuse, bias, and inconsistency in the application of disciplinary policies.
- b. Example: The Baltimore City Public Schools Code provides detailed guidance and support to principals by dividing inappropriate behaviors into four levels—out-of-school suspensions are only an option for the highest two levels and expulsion is only an option for the fourth level. Therefore,

many low-level offenses can never result in out-of-school suspension, and many other offenses can only reach that level if alternative interventions were unsuccessful and the behavior was repeated.⁶⁷

- c. Example: The New Orleans Recovery School District Student Code of Conduct reads: “In the effort to fully implement Positive Behavior Support and reduce the loss of instructional time due to out-of-school suspension and expulsion, the Recovery School District expects that each school will utilize a wide variety of corrective strategies that do not remove children from valuable instructional time.” It goes on to list specific corrective strategies for graduated levels of infractions.⁶⁸
- d. Example: In the Denver Public Schools, students can only be expelled for the most serious misbehavior and can only be suspended out-of-school for serious infraction or if misbehavior is repeated. Also, the amount of time that a student can be suspended out-of-school is limited: unless the student commits the highest level of infraction, the maximum out-of-school suspension period is three days.⁶⁹ As a result of changes to the discipline policies of the school board, local organizing, and advocacy efforts, there has been a “63% reduction in referrals to law enforcement within the Denver Public Schools, and a 43% reduction in the use of out-of-school suspensions” during the 2008–2009 school year.⁷⁰
- e. Example: Connecticut law requires suspensions to automatically be in-school suspensions rather than out-of-school suspensions, unless it is determined that the student poses “such a danger to people or property, or causes such a disruption of the educational process.”⁷¹ “[S]ince the 2006-07 school year, out-of-school suspensions statewide have declined from 7.1 percent of the public school population annually to 5.4 percent in 2008-09.”⁷²
- f. Example: In New York City schools, infractions are grouped into five levels. The City’s code reads: “Whenever possible and appropriate, interventions should begin with the lowest level of disciplinary response. Clear distinctions are made for levels of behavior for grades K–5 and 6-12 so that the age and general maturity of the student are considered. Some infractions may not apply to students in grades K–3. The Discipline Code provides graduated penalties for students who engage in repeated misbehaviors despite the prior imposition of appropriate disciplinary measures. More severe penalties will be imposed on those students who engage in a pattern of persistent misconduct. Whenever possible and appropriate, prior to imposing such penalties, school officials should exhaust less severe disciplinary responses.”⁷³

H. Recommendation: Limit out-of-school suspensions for elementary school students.

- a. Current Policy and/or Practice: There is currently no general prohibition of suspension for elementary school students. Therefore, by omission, Board Policy allows suspension for children as young as six-years-old (i.e., the age when most students begin first grade).

- b. Example: In Seattle, “[p]rincipals and assistant principals cannot short-term suspend a student in Kindergarten through Grade 4 for more than ten (10) consecutive or cumulative school days during a single semester or trimester, depending on the school.”⁷⁴
- c. Example: In Boston, “[s]uspensions may not exceed three (3) school days for a student fifteen years of age or younger or five (5) school days for a student sixteen years of age or older.”⁷⁵
- d. Example: Guilford County Schools provide varying degrees of punishments for elementary, middle, and high school students for violations of each individual rule.⁷⁶
- e. Example: The Chicago Public Schools Student Code of Conduct reads: “The Board recognizes that students of different grades and ages are at different developmental levels, thus their behavior will be different and may call for different responses. In determining the appropriate level of interventions and consequences, in addition to mitigating circumstances, school officials should consider the grade level and age of the student. This approach may result in a less severe intervention and consequence for a lower grade or younger student as compared to a higher grade or older student.”⁷⁷
- f. Example: Denver limits the offenses for which elementary school students can receive out-of-school suspensions.⁷⁸

I. Recommendation: Provide students facing long-term suspension with strong due process protections.

**Case Study #6
by Larry Reeves, Private Attorney**

My experience with the so-called "due process" afforded students in the WCPSS was disturbing. I represented a high school student who was detained and interrogated by school personnel and a school resource officer after he was searched on school grounds and found to be in possession of a misdemeanor amount of marijuana. The interrogation of my client as described by school personnel was coercive and overbearing and was done without my client being advised of any of his constitutional rights applicable to custodial interrogations.

I then get to the hearing on whether or not my client should be suspended from school for the remainder of the school year. I find that virtually none of the rules of evidence apply and that the school could support its decision to suspend my client for the remainder of the school year by relying on rank hearsay (from another student who had every reason to lie about my client to protect himself) that would be inadmissible in any court of law. Even more fundamentally unfair was the fact that none of the school personnel "testifying" against my client were placed under oath.

I am a former prosecutor (Mecklenburg County) and a former FBI Special Agent. I am not one to side automatically with law-breakers. But I do believe in due process. From

my experience in defending my student-client, I am shocked to realize that students in our public schools apparently routinely lose their right to obtain an education through a series of proceedings that comply with virtually none of the long-accepted due process requirements of the U.S. Constitution.

Case Study #7
by Jill G., Wake County Parent

My son goes to a Wake County high school and this is our story.

I was called at work in the morning by the school's Intervention Coordinator (IC) and told that he had my son in his office and I needed to come to the school. I rushed out of work and went to his office. I found out later I was called into the school three hours after my son was interrogated.

When I went into the office, the IC, the Vice Principal (VP), and the school resource officer (SRO) were in the office. I was told that a student was going to class and smelled like marijuana and when they asked him how he got to school he told them my son drove him.

They interrogated and asked my son who the dealers were in the school and if his friend sold. My son was scared and didn't say anything at first and then he said he gave names because they made it sound that if he helped them they would give him the ten-day suspension and then call me so he could go home.

They found a picture of marijuana and a picture of a scale with a small amount of marijuana on his phone. So the school charged him with selling and decided that instead of a ten-day suspension they were giving him a long-term suspension.

The day of the school-based appeal was horrible. We all arrived early and the school made us sit and wait close to forty minutes past the start time. We didn't get more than twenty minutes into the appeal when the school's attorney was rude and kept interrupting our attorney. After that it became very nasty. Their side had evidence that they didn't show us before. The IC lied about the time frame of the entire incident and when we mentioned we had affidavits from three of my son's friends saying that [my son] is not a dealer and they never bought from him, the school said that the students did tell on my son but it was in confidence. So we had to reschedule the appeal. We later found out the school lied—his friends never told them anything about my son.

During the second appeal, the IC lied again and changed his story around. The feeling was that my son was going to be guilty no matter what we said and proved.

I was also in contact with an advocate at the school who was helping me with getting my son set up to do online classes and she told me that no one wins any of the appeals and the only chance we had which would be slight was finally going to the Board of Education, and again, that was a slim chance we would win.

Of course, we also lost our appeal to the Superintendent.

During all this time, besides pretty much cleaning out my savings account for all this, I missed a lot of time from my job and physically got sick and had to get stronger medicine from my doctor. I also lost weight.

What was upsetting was my son was guilty about going to school high and having illegal things with him, but he was not and never was a dealer, but the school lumped it all together.

The criminal charges were the easy part. My son signed up for a Drug Education class and said he would stay out of trouble for a year and the judge signed it and he did the mandatory classes already.

When we finally got the Board of Education hearing that was the biggest joke. We were only given fifteen minutes to talk and you could tell that they weren't really interested in what we had to say. Again the IC changed his story and timelines. Nothing we said or any proof we showed made a difference. My son was already doing his on-line classes and passing. I had to keep calling them for a month to even get him enrolled in the classes.

Because of the long-term suspension my son's license was taken away, which caused me to miss work to drive him to his job. When I tried for weeks to see if he could get a restricted license I was told if he got caught in the car with drugs he could have gotten it back. I also was told that it's easier to get a restricted license if you get a DWI/DUI. Unbelievable. I asked a few of the people I have been dealing with from the school and DMV and I told them what they are saying is they would rather have a child turn down a job (my son has a good full-time summer job) because they won't give a restricted license and have them roam the streets and get into trouble. What lesson is he learning from this one? And no one told me that the longer we appealed the longer it would take to get his license back.

I cannot understand why if a good student who has never gotten into any trouble in or out of school is treated like a criminal and kicked out of school. That is not teaching them a lesson; it's pushing them more in the direction of getting in trouble. Besides, my son and myself have lost all respect for school administration. My son was also shown it is okay for the school to lie to get what it wants.

My son was treated like a criminal, but not given the same rights as a criminal. My son was wrong in his actions, but he did not deserve to be treated this way. No student should be treated this way. The policies need to be changed drastically.

Case Study #8**by Lindsay Bass, Legal Extern, Advocates for Children's Services**

As an extern for Legal Aid—Advocates for Children's Services (ACS), I spent the semester helping keep kids in school. I was surprised at how much effort is spent trying to kick kids out of school, especially when the State has repeatedly recognized the important role an education plays in becoming a productive member of our society. The biggest surprise came when I went to a school suspension hearing in Wake County.

Our client had been suspended in October for the rest of the school year for bringing drugs to school; he was given four hours of home instruction per week. When the whole situation was taken into consideration, it was clear that this boy was not the predatory drug dealer that the school board had feared when establishing its zero tolerance policy. Our client had been pressured by a bully to take the drugs to school. After losing six family members within the year, leaving him no male role models in his life, our client became especially susceptible to peer pressure. He already had emotional and behavioral disabilities, and the isolation created by the suspension further set his development back. At the suspension hearing in front of the three-teacher panel, an ACS attorney argued that this zero tolerance policy was too strict in this case and that this punishment did not fit the crime. The punishment was upheld.

Since this was the client's first appeal, I understood it would be an informal hearing held at the school in front of a panel of three teachers. What I did not understand is that our client would have virtually no chance for a fair review of his punishment.

There was the pretense that the hearing was fair and balanced and that the moderator was interested in the due process rights of the student, but to me that was a false pretense. The hearing was taped and documents were marked and admitted into evidence, continuing the facade of formality; but it seemed there were no evidence rules to distinguish credible evidence from dubious evidence. Hearsay was considered credible, especially if conveyed by the principal, and there was no right to confrontation. Though the student was punished for drug possession by the principal, there was not enough evidence for criminal charges (no drugs were ever found!), which demonstrates that the school and this school hearing required a low level of proof to prove the student guilty and suspend him for over seven months, thereby depriving him of his fundamental right. That low standard is troubling.

I was most concerned by the moderator of the hearing. Most noticeably, she skewed the process by reiterating the argument of the school's attorney to the teacher panel with inflection and a stern voice just before the panel deliberated. She dismissed our argument and gave the impression that she was stating the law. This moderator acted very professionally to the client's mother, and if I had no legal training, I'm sure I would believe she was being neutral. I worry that this lack of transparency in the hearing confuses students and their families. Additionally, each of the teachers on the panel works directly under the school's witnesses (i.e. principal and assistant principal), which

limits their ability to review the suspension neutrally. The likelihood of our client getting a fair shake at this hearing is slim to none.

I am amazed and frustrated that people who have dedicated their lives to educating children can so easily kick kids out of school and offer them such minimal alternative education.

Case Study #9

by Jason Langberg, Everett Fellow, Advocates for Children's Services

The experience of one of my clients, Ralph, demonstrates the many problems with WCPSS' current due process policies.

Ralph was a middle school student facing a long-term suspension. Prior to the school-based appeal hearing, the school and its attorney redacted all of the names from the witness statements (without any individualized, specific demonstration of a threat to the witnesses), failed to provide a "new" witness statement until minutes before the hearing, failed to provide a list of the witnesses the school planned to call to testify, and failed to share any of the investigation notes and reports.

How were Ralph and I supposed to adequately prepare for the hearing? I believe the failure to provide these documents as discovery violated Ralph's right to examine evidence, to present evidence, to confront and cross-examine witnesses, and to have effective assistance of counsel.

Then, at the school-based hearing, as is the case in all school-based hearings in Wake County, the "jury" consisted of a panel of teachers from Ralph's school who were supervised by the principal who was seeking to long-term suspend Ralph. Moreover, the principal chose two of the teachers who sat on the panel, whereas Ralph was only allowed to choose one of the teachers who sat on the panel. The panel's decision is made by majority vote and the principal is allowed to handpick a majority of the panelists. The odds were unfairly stacked against Ralph before the hearing even began. I believe these policies violated Ralph's right to an impartial tribunal.

At the beginning of the school-based hearing, the description of the alleged incident contained in the "Notice of Student Suspension from School" (written by a school administrator) was read to the panel of teachers by the hearing officer. The description contained one-sided conclusions about the alleged incident, thereby circumventing the school's burden of proving by "substantial evidence" that Ralph committed the alleged violations. In other words, the description was precisely what the school was supposed to have to prove at the hearing—instead, it was read to the panel as a matter of fact. Additionally, the description of the incident was mostly hearsay evidence, as was virtually all of the evidence the school presented at the hearing. I believe hearsay evidence violated Ralph's right to confront and cross-examine witnesses.

Despite all of these obstacles and injustices, the panel of teachers decided that Ralph

did not commit the most serious of the alleged rule violations but did commit less serious violations, and therefore, should only receive a short-term suspension. This is an extremely unusual (nearly unheard of) result from a school-based hearing in Wake County.

The principal, who was not even present during the school-based hearing, completely disregarded the panel's decisions—a panel that heard three and a half hours of evidence and information. She decided that Ralph would still be long-term suspended.

I believe the principal's actions violated Ralph's right to adequate due process. The WCPSS Board Policy has an established process for students to appeal a principal's recommendation for long-term suspension to a panel of teachers. If a student prevails in that process, yet is still excluded from school, that process is rendered meaningless and the student's due process rights are violated. School districts are required to follow their own policies. The principal's actions were fundamentally unfair and rendered meaningless Ralph's one real meaningful opportunity to be heard.

Moreover, the principal's actions amounted to a disrespectful slap in the face of the teachers who served on the panel. The teachers dedicated nearly four hours to hearing testimony, reading witness statements, asking questions, and carefully considering evidence. They were the ones who were present to assess credibility, probe key issues, and process information. In contrast, the principal was not present during the hearing, yet she made a decision that the three teachers were wrong. What is more, her decision was made within an hour of the end of the school-based hearing, which means she did not even have time to review the full recording of the hearing. The principal essentially said to the three teachers: "I do not respect and/or trust you enough to accept your decision" (despite the fact that in school-based hearings administrators are allowed to handpick the majority of the panelists).

Additionally, the principal's actions violated North Carolina General Statute § 115C-391, which makes it clear that principals do not have the authority to impose long-term suspensions—that authority lies with superintendents. At the time of the school-based hearing, Ralph had already been suspended for sixteen school days (i.e., more than ten school days—the maximum punishment principals are allowed to impose). Therefore, the principal effectively extended the suspension beyond a short-term suspension and imposed upon Ralph a long-term suspension, which is clearly illegal.

School-based hearings require an extraordinary amount of resources. Students and teachers must be taken out of class to testify. Administrators and police officers must turn away from their official duties for a period of time. Parents and character witnesses must take time off of work. Taxpayer dollars are used to pay for the school's lawyer and the time spent by representatives from the Office of Student Due Process. More importantly, the hearings are extremely stressful and emotionally draining for students and their families. Ralph literally shook throughout his hearing and cried at various points. His guardian was brought to tears multiple times. All of the money, time, and

energy spent on school-based hearings are all for naught if principals are allowed to simply ignore the outcomes.

Ultimately, the principal “changed her mind” after I wrote a letter to the Superintendent and a member of the Board of Education. Subsequently, Ralph was allowed to return to school; however, he should have never had to experience such an unfair process. Ralph’s story makes me think: How many students without lawyers receive unjust results? What kind of message does this type of arbitrary abuse of power send to students? How often do administrators “change their minds” to avoid attention being drawn to the injustices that permeate the everyday experiences of children facing suspension?

a. Current Policy and/or Practice:

- i. Students have a right to be represented by an attorney or advocate;⁷⁹ however, families that cannot afford to hire an attorney are not appointed one at public expense. Therefore, in practice, wealthier families can have lawyers, while low-income families have to know where to find free lawyers and hope one is available.⁸⁰ Moreover, there are parents who do not make enough to hire a private attorney but because of having just enough income and assets, they are not eligible for a free lawyer. The district also does not provide students facing long-term suspension with a list of free legal resources.
- ii. Students have a right to an impartial hearing panel;⁸¹ however, the first appeal is heard by a panel of three staff members from the school the student attends. Not only does the prosecuting principal supervise all three staff members, but also the principal gets to select two of the staff members to serve on the panel, whereas the student is only allowed to choose one. Only 22.1% of principals’ recommendations for long-term suspensions had a school-based hearing—in other words, less than one quarter of students appealed their recommendation for long-term suspension. However, most of the recommendations for long-term suspension that were appealed to a school-based panel were unsuccessful anyway: 88.5% were upheld; 10.9% were reduced to short-term suspension; and 0.6% were found not guilty. Moreover, school-based hearings are supposed to occur within ten days of the beginning of the suspension (i.e., during the initial short-term suspension period). However, nearly one-third of school-based hearings (111) during the 2008-09 school year were delayed beyond the tenth day because of scheduling issues for the Office of Student Due Process, scheduling issues for the school, or scheduling issues for the hearing officer (i.e., not at the fault of the students).⁸²
- iii. Parents have a right to review their students’ educational records prior to the hearing;⁸³ however, parents are not given the records

- unless they make a specific request for them. Additionally, schools are permitted to withhold records of investigations into disciplinary incidents, even if the records are exculpatory (i.e., records that tend to prove the student is innocent of the alleged rule violation(s)).
- iv. Students have a right to confront and cross-examine witnesses;⁸⁴ however, unreliable, unchallengeable hearsay evidence is regularly used by school administrators and their witnesses. Additionally, it is extremely difficult, and often not possible, to obtain evidence that is necessary for effective cross-examination (e.g., witness statements, video tapes, personnel or educational files, investigation reports, etc.). Also, principals are not required to tell the student facing suspension who they plan to call as witnesses.
 - v. Students have a right to present witnesses;⁸⁵ however, they do not have subpoena power (i.e., they cannot ask the school to make the witnesses come to the hearing) and often the names of witnesses are withheld by school officials. The Board of Education has the power to issue subpoenas for the attendance of witnesses at Board hearings;⁸⁶ however, that subpoena power does not extend to school-based hearings. Moreover, if a student intends to call another student as a witness to the school-based hearing, the student witness must have written permission from his/her parent to appear during the hearing. Thus, the student facing suspension has to find the witness and obtain the witness' parent's signed permission, even though the student is not allowed on campus during the suspension and the student may not know how to contact the witness.
 - vi. Students have a right to appeal a principal's decision to the Superintendent, and then the Superintendent's decision to the Board of Education;⁸⁷ however, such appeals are few-and-far between and largely unsuccessful. During the 2008-09 school year, only 119 long-term suspensions were appealed to the Superintendent. The Superintendent upheld 89.9% of the long-term suspensions. Only forty-four of the long-term suspension recommendations made their way up to the Board of Education. The Board upheld the majority of the suspensions (65.9%). It modified 34.1%, which presumably means one of two things: 1) the long-term suspension stood (and stayed on the student's record), but was shortened from the rest of the year and the student was allowed to return to school; or 2) the long-term suspension stood (and stayed on the student's record), but the student was placed in an alternative learning program. Finally, according to public records, the Wake County Board of Education did not overturn any long-term suspensions or reduce any to short-term suspensions.⁸⁸
- b. Recommendation: Include improved due process protections for students facing long-term suspension, such as:

- i. Appoint free legal counsel for students facing long-term suspension, or, in the alternative, include, in the notice of long-term suspension, which already must be sent to parents, contact information for local organizations and individuals who provide free legal representation for students.
- ii. Provide students with the right to re-enter school if there is an unreasonable delay on the part of the school or district during the appeals process (e.g., more than ten school days between when the student files an appeal and when the hearing is held).
 - 1. Example: In New York City public schools a student must be reinstated on the sixth school day following the suspension if the hearing is continued or postponed by an employee of the Department of Education.⁸⁹
- iii. Provide students with an automatic school-based hearing, rather than requiring that they request one in writing within four school days following receipt of the notice of suspension.⁹⁰
 - 1. Example: In the Boston Public Schools there is automatically a hearing unless the parent waives that right in writing.⁹¹
 - 2. Example: When a student receives a long-term suspension in the Baltimore City Public School district, the school principal must immediately schedule a suspension conference with the student and the student's guardian. The suspension conference must take place within three school days of the student's removal from school.⁹²
 - 3. Example: In the New York City Public Schools, principals are required to schedule a suspension conference with a parent or guardian as soon as possible after a suspension. The principal must schedule the suspension hearing no later than five days after the suspension.⁹³
 - 4. Example: The Louisiana Recovery School District in New Orleans mandates that, "[t]he principal or designee must contact by telephone or send a certified letter to the parent(s)/legal guardian(s), to give notice of the suspension, to provide the reason for the suspension, and to establish a date and time for a conference with the principal or designee as a requirement for readmitting the student." The Student Code of Conduct also requires that "[a]ll students shall be treated fairly and honestly in resolving grievances and complaints, and in the consideration of any suspension or expulsion," and requires that the student has an opportunity to explain his/her behavior.⁹⁴
- iv. Provide students with the power to subpoena witnesses to appear at hearings, or, in the alternative, provide hearing officers with the power and duty to subpoena witnesses to appear at hearings at the request of the student.

1. Example: In New York City public schools students have the right to obtain subpoenas from the hearing officer.⁹⁵
2. Example: Students in Seattle Public Schools may request that the school arrange for specific witnesses to testify at the hearings.⁹⁶
- v. Provide students with an unbiased, neutral fact-finder, rather than a panel of teachers employed by the prosecuting principal.
 1. Example: In the Denver Public Schools, expulsion hearings are “conducted by a hearing officer, who may not be a current employee of the school, District, or Board of Education.”⁹⁷
- vi. Exclude hearsay evidence in appeal hearings, except in very limited circumstances (e.g., there is clear evidence of a threat to the witnesses physical safety).
 1. Example: In the Boston Public Schools “all witnesses presenting testimony for or against the student shall appear in person at the hearing..., and no statements for or against the student shall be presented unless the persons making the statements are so present.” The policy allows for three very limited hearsay exceptions.⁹⁸
- vii. Provide students and parents with a clear, easy to understand description of due process procedures—avoid overly vague, complex, or superfluous language.
 1. See Appendix B below for examples of how Board Policy can be re-written.
 2. Example: The Cincinnati Public School System clearly summarizes “What Families Can Expect: Steps Following Student Misbehavior” within the Student Code of Conduct.⁹⁹

Recommendation #2: Provide Alternatives to Suspension and Corrective Strategies that do not Remove Children from School

ACCORDING TO THE EXPERTS

Russell Skiba, Professor, Indiana University

“[P]rograms that are identified as effective or promising include elements such as bullying prevention, conflict resolution, improved teacher training in classroom management, parent involvement, anger management, and multiagency collaboration.”¹⁰⁰

“For troublesome or at-risk students, the most well-documented outcome of suspension appears to be further suspension, and eventually school dropout. There may well be unanticipated social costs to this spiral of school exclusion. Research in the field of

juvenile delinquency suggests that the strength of the school social bond is an important predictor in explaining delinquency. From a developmental standpoint, one might well question the wisdom of school disciplinary strategies that are expressly intended to break that bond with troublesome students.”

Eric Zogry, North Carolina Juvenile Defender

“There are many aspects about juveniles alleged to be delinquent that make them unique. However, the one commonality among all juveniles—they are, were, or should be enrolled in school. I don’t think anyone involved in the educational or juvenile justice systems would disagree that the one aspect of creating a successful adult is structure and teaching. Yet that is exactly what is being removed from those youth who need it most. It is completely counter-productive to producing and maintaining a lawful and productive society. Any notion that removing the “bad apple” students for the “sake of the many” behaviorally competent students is ill-placed. Our society will never advance unless and until those who need the most attention and support are considered first. Keeping our youth in schools and diverting them from the juvenile and criminal justice systems should be the number one goal of our educational system.”¹⁰¹

Educators in Support of Petitioners in *Graham v. Florida*

“[A]ll adolescents have the potential for positive growth and development, and even the most troubled youth can change and be rehabilitated. . . . In fact, the available evidence suggests that when schools and communities reject troubled or at-risk children, adolescents are even more likely to experience repeated failure. To be sure, at-risk students may exhibit defiant and disruptive behavior, making the task of education even more challenging. During the past few decades, however, innovative educators have taken stock of these entrenched obstacles, and sought to alter existing institutional structures and challenge preconceived notions about at-risk students, including those with behavioral problems. By addressing the needs of especially defiant, disruptive, at-risk students, these educators have enabled thousands of students to reform their behavior, overcome their challenges, and achieve success.”¹⁰²

SPECIFIC RECOMMENDATIONS FOR THE WCPSS

A. Recommendation: Ensure that high-quality educational alternatives to suspension are readily available and used by school and district administrators to prevent students from being punished academically during their suspensions.

a. Current Policy and/or Practice:

- i. It is our understanding that suspended students receive failing grades or “incompletes” for the work and/or classes they miss during the period of suspension.
- ii. State law requires each North Carolina school district to have at least one alternative learning program.¹⁰³ Wake County has five

- alternative schools; however, none of them serve long-term suspended students.¹⁰⁴
- iii. Students with disabilities who are long-term suspended typically receive between one and six hours per week of instruction outside of regular school hours (called “homebound” or “home/hospital” instruction). On April 30, 2010, the North Carolina Department of Public Instruction issued a report declaring that many of the WCPSS’ practices around services for long-term suspended students with disabilities violate federal law.¹⁰⁵
 - iv. Wake County has a program called Second Chance Online Resource for Education (SCORE), which provides online classes for suspended students. However, it is our understanding that many long-term suspended students are not enrolled in SCORE. Furthermore, online classes present many concerns, such as: a student who does not have access to a computer with the internet at home or the transportation necessary to access free internet at a public library or instructional center; a student missing out on the benefits of attending a real school, such as free and reduced lunch, exercise in gym class, extracurricular activities, socialization, and supervision; and a student who is not computer literate.
- b. Example: In New York City public schools, all students must be provided with alternative instruction during suspensions. In New York City: “Students may not be penalized academically during the suspension or removal period.”¹⁰⁶
 - c. Example: In Denver Public Schools, “[i]f the suspension has been extended [so that the total suspension is ten (10) days or more], the student must be provided with alternative education during the suspension period.”¹⁰⁷ The Denver Public School’s policy states that, “[t]he school shall provide the student with the opportunity to earn equivalent grades and credits as other students during the student’s suspension, and the ability to make-up tests, final examinations, and complete class and homework assignments without penalty while on suspension or within a reasonable time following the completion of the suspension.”¹⁰⁸
 - d. Example: Kentucky law provides that a “board that has expelled a student from the student’s regular school setting shall provide or assure that educational services are provided to the student in an appropriate alternative program or setting, unless the board has made a determination, on the record, supported by clear and convincing evidence, that the expelled student posed a threat to the safety of other students or school staff and could not be placed into a state-funded agency program.”¹⁰⁹
 - e. Example: In the Chicago Public Schools students must be assigned homework during in-school or out-of-school suspension and must be given the opportunity to make up any statewide tests, final exams, and in-class tests or quizzes given during the period of suspension.¹¹⁰

- f. Example: Missouri law states that a suspension does not relieve the state or the suspended student's parents/guardians of their responsibilities to educate the student. School districts are encouraged to provide an in-school suspension system and to search for other acceptable discipline alternatives prior to using suspension of more than ten days or expelling a student from the school. Each school district must pay the per pupil costs for alternative education programs for a child who is long-term suspended or expelled.¹¹¹
- g. Example: The Hamilton Centers Youth Service Bureau (in Hamilton County, Indiana) collaborated with five schools to create a program to ensure students who are suspended continue to learn even when they are out of school. "Students who are suspended attend the program and spend their entire day doing work assigned by the home school. Students receive credit for any work they complete while in the program...During the 2003–2004 school year, 97% of the students participating in the program completed all school assignments while in the program, and many worked ahead in their subjects before the end of their suspension period."¹¹²

B. Recommendation: Ensure that high-quality behavioral alternatives to suspension are readily available and used by school and district administrators.

- a. Current Policy and/or Practice:
 - i. The Campbell Juvenile Justice Project is available to conduct mediation for school-based incidents, but it is under-utilized by schools.¹¹³
 - ii. Alternative Counseling Education (ACE) is a Board approved alternative for long-term suspensions for students who possess drugs at school.¹¹⁴ However, the availability of ACE is very limited. It is only available to students once during their school career, and it is not accessible to students who are alleged to have been involved in the distribution of drugs. The program costs hundreds of dollars for the student, making it only available to families that can afford it or to families who have Medicaid and are able to get Medicaid to cover the significant costs.
 - iii. It is our understanding that Wake County does not have any other institutionalized suspension alternatives or diversion programs. Therefore, any other existing alternatives were created by resourceful teachers and administrators or community organizations.
- b. Recommendation: Alternatives to exclusion include:¹¹⁵
 - i. Time-out/chill-out period;
 - ii. Reflective activity (e.g., essay);
 - iii. Role play;
 - iv. Conference with parent;
 - v. Home/school communication system (e.g., daily report cards);

- vi. Daily or weekly check-ins with an administrator;
 - vii. Behavioral contract/probation;
 - viii. Schedule adjustment;
 - ix. Loss of privilege (e.g., field trip, afterschool activity);
 - x. Restorative justice (e.g., peace circle);¹¹⁶
 - xi. Referral to counselor, social worker, or support team;
 - xii. Anger management class;
 - xiii. Mandatory counseling;
 - xiv. Substance abuse treatment;
 - xv. Community service;
 - xvi. Mediation;
 - xvii. Restitution;
 - xviii. Detention;
 - xix. High-quality Saturday school;
 - xx. High-quality in-school suspension; and
 - xxi. High-quality alternative school (with uniform quality-standards, including quality leadership/administration and curriculum-based standards).
- c. Example: In 2006, Chicago Public Schools adopted a new student code of conduct incorporating restorative justice techniques, and now over fifty high schools in Chicago have restorative peer jury programs. Administrators are encouraged to use balanced and restorative justice practices, such as peacemaking circles (also called circles of understanding), community service, peer juries (also called youth, teen, and student courts), restorative group conferencing (also called family group conferencing or accountability conferencing), victim impact panels, and victim-offender conferencing (also called victim-offender mediation or victim-offender dialogue). As a result, over 1,000 days of suspension were avoided in 2007-08 by referring students to peer jury programs for violating school rules, thereby keeping them in the learning environment.¹¹⁷
- d. Example: West Philadelphia High School in Pennsylvania was known as one of the worst schools in Philadelphia and was on the state's "Persistently Dangerous Schools" list for six years. But after implementing restorative practices school-wide, the climate has improved dramatically. Suspensions were down by 50% and violent acts and serious incidents were down 52% in the 2007-2008 school year.¹¹⁸
- e. Example: Pattengill Middle School in Lansing, Michigan, introduced restorative practices to address disciplinary issues in January 2005. The new approach to discipline resulted in a "15% drop in suspensions, while suspension rates at the district's other middle schools increased" and "93% of 292 students participating reported using restorative methods to resolve their conflicts." The school was also able to avoid two expulsions because of restorative practices. Approximately "90% of participating students reported learning new skills in their restorative experiences, and 86% reported using those skills to peacefully resolve or avert conflicts

after their restorative interventions.” Based on the success of the program at Pattengill, the school district expanded its restorative program throughout the district. “Lansing restorative justice coordinator Nancy Schertzing estimated that through mid-April 2007, restorative interventions had saved Lansing students nearly 1,500 days of suspension.”¹¹⁹

- f. Example: Northern Elementary School near Lexington, Kentucky increased student achievement while dramatically reducing school suspensions. The school discipline program at Northern consisted of: 1) establishing clear expectations for students; 2) setting high expectations of academic achievement; 3) creating a system of daily communication between parents and teachers; 4) forming a Student Assistance Team (SAT) to provide students with guidance counselors, mental health clinicians and family social workers; 5) offering intensive case management services; 6) providing mental health testing and counseling services for children who need it; 7) creating an in-school suspension classroom; and 8) developing after-school and Saturday school programs. The number of students reading on grade level improved each year following the implementation of these strategies; “only 15% of the students were reading at grade level in the 1999 school year...[a]ccording to data supplied by the school, by 2000, the percentage of students reading at grade level had increased to 31.9%, which increased to 47.8% in 2001, and again, in 2002 to 62.2%, and 80.7% in 2003.” The number of disciplinary incidents resulting in a suspension decreased during this time period, declining “from 29 in 2000-2001 to 21 in 2001-2002, and to 12 in 2002-2003, a reduction of 59%.”¹²⁰
- g. Example: To address the high rates of suspensions within the Milwaukee School District, educators used principals of restorative justice to teach students how to mediate and resolve non-violent conflicts. Students at James Madison Academic Campus (J-MAC) joined as victims, offenders and jurors to resolve conflicts by attentively listening and speaking to one another. Prior to implementing the restorative justice practices, the school’s office had, on average, twenty discipline referrals at the start of every morning, according to Assistant Principal Tosha Powell. In less than a year of using the practices, the school had one or two discipline referrals a day, and some days none.¹²¹

C. Recommendation: Increase collaboration with community organizations to develop a continuum of prevention and intervention services by utilizing existing services and by creating new services where gaps exist.

- a. Current Policy and/or Practice: The WCPSS has a Prevention Services department that coordinates prevention and intervention services.¹²²
- b. Example: The Baltimore City Public School Board Policy requires schools to provide and explain a community resource list to parents and students when the student is placed on short-term suspension, long-term suspension, or expulsion.¹²³

- c. Example: The Prince George's County Public Schools in Maryland has a Department of Family and Community Outreach (DFCO), which coordinates family events throughout the district. The Department trains and supervises parent liaisons at each school and tracks the numbers of families at each event. The district is also developing Parent Academies to address specific needs of the community.¹²⁴
- d. Example: The Wichita, Kansas Public School District surveys parents to gauge satisfaction and school climate. Each school uses the survey data to create short- and long-term goals to improve relationships between the community and the school.¹²⁵
- e. Example: In Wayne County, Indiana, five schools collaborated with the Boys and Girls Clubs to create the Positive Alternatives Program. Schools fax student assignments to the center daily, where students complete the work. The program offers daily conflict resolution workshops for students who have been suspended or expelled, and brings in guest speakers to discuss life-skills and community service with the students. The students also have the opportunity to complete community service activities at the senior citizens' center and the city parks.¹²⁶
- f. Example: The YMCA Youth Services Bureau in Allen County, Indiana has a Students Out of School (SOS) program that requires students suspended out-of-school to perform community service. All students in grades six through nine participate in service activities throughout the community. So far the program has worked with approximately 200 students, who have performed approximately 5,000 hours of community service.¹²⁷
- g. Example: Researchers at the Annenberg Institute of School Reform studied six schools in New York City, all of which had extremely low rates of violent incidents and no metal detectors. After profiling each school extensively, the researchers summarized the strategies and best practices of the schools. These practices include: (1) no metal detectors in the schools; (2) "a conscious policy or practice of trusting students to behave responsibly; (3) clear and simple rules, formed with some student input; (4) an adult perception of students as people and someone's children; (5) a principal who has established authority over the [school resource officers] and defines role and behavior standards for them; (6) a clear delineation of responsibilities for discipline ...; (7) strong leadership from senior [school resource officers]; and (8) constant communication between school staff and [school resource officers] and integration into the school community through meetings and community events."¹²⁸

Recommendation #3: Establish Limitations and Procedures for the Use of School Resource Officers

ACCORDING TO THE EXPERTS

Arrick Jackson, Professor, University of North Texas

“This study concludes that, since the SRO has no significant impact on students’ perception of police or offending, then it would behoove school administrators to utilize their financial resources for counseling, student-faculty crime prevention programs or delinquency awareness programs.”

“...officers may, due to their emphasis on security, pose obstacles to an open and free learning environment, therefore impeding the teacher’s role as counselor and educator and replacing it with an authoritative role.”

“Police in schools may provide a psychological benefit for administrators, staff, parents, and the adult public; however, their presence may pose a psychological threat to students, who may view police as a threat to their freedom to move about, have open conversations, and experiment in legal activities that may be socially unacceptable to police and administrators.”¹²⁹

Randall Beger, Professor, University of Wisconsin Eau Claire

“In the wake of recent high-profile campus shootings, schools have become almost prison-like in terms of security and in diminishing the rights of students. Ironically, a repressive approach to school safety may do more harm than good by creating an atmosphere of mistrust and alienation that causes students to misbehave.”¹³⁰

“Widely publicized incidents of juvenile violence in public schools have created the public misconceptions that such behavior is commonplace...Contrary to popular belief, schools remain among the safest places for children...Most school violence and serious injuries at school are rare events. Nevertheless, many schools have adopted new forms of security without fully appreciating the impact on students and the educational environment...Other studies demonstrate that aggressive security measures produce alienation and mistrust among students...At a deeper level, the overarching presence of police and security hardware in public schools may actually interfere with student learning...A climate of heightened security seems to work against a cooperative learning environment by producing hostility and fear.”¹³¹

SPECIFIC RECOMMENDATIONS FOR THE WCPSS

- A. Recommendation: Limit the use of school resource officers.**

Case Study #10**by Kristine Sullivan, Staff Attorney, Disability Rights North Carolina**

Disability Rights North Carolina investigated several allegations of abuse and neglect at Carroll Middle School, including staff's inappropriate reliance on SROs to handle classroom disciplinary matters. In this case, staff called the SRO to the classroom without any clear protocol as to who should call, which administrators needed to be involved, the incidents that would form the appropriate basis for calling the SRO, etc. The SRO came to the classroom and, on at least two occasions, put handcuffs on a student with autism who was exhibiting disability-related behaviors. On one occasion, the SRO put handcuffs on the student's ankles. Disability Rights spent many months trying to negotiate with the WCPSS to adopt recommendations that would hopefully prevent similar incidents in the future. WCPSS administrators and their attorney declined to adopt the recommendations entirely.¹³²

- a. Current Policy and/or Practice: A school resource officer (SRO) is “a certified law enforcement officer who is permanently assigned to provide coverage to a school or a set of schools.”¹³³ There are approximately fifty-five full-time SROs in Wake County (approximately twenty-five are employed by the Wake County Sheriff's Department and approximately thirty of them are employed by the following police departments: Apex; Cary; Garner; Fuquay-Varina; Holly Springs; Knightdale; Raleigh; and Wake Forest). The WCPSS also employs six full-time “security investigators.”¹³⁴
- b. Example: Denver Public Schools places express limitations on the use of law enforcement personnel. Its policy states that it “is the goal of the [District] that the juvenile and criminal justice systems be utilized less frequently to address school-based misconduct.” While state law requires the referral of some school-based crimes to law enforcement, the policy limits the involvement of law enforcement to those offenses and only a few more serious offenses. For all other offenses, school officials are prohibited from referring the student to the police.¹³⁵
- c. Example: The San Francisco Unified School District Student and Parent/Guardian Handbook states that the district “recognizes the serious potential consequences for youth of juvenile court involvement and wishes to avoid unnecessary criminalization of our students.” The policy limits police involvement to situations when it is: necessary to protect the physical safety of students and staff; required by law; or appropriate to address criminal behavior of persons other than students. The policy specifies that “[p]olice involvement should not be requested in a situation that can be safely and appropriately handled by the District's internal disciplinary procedures” and that “[d]isproportionate use of police intervention in inappropriate situations shall be cause for corrective action by the District.”¹³⁶
- d. Example: Bushwick Community High School (BCHS) in Brooklyn, New York, has 350 students, only one security guard, and no metal detectors.

Principal Tira Randall notes, “[a]ll our students have failed in, and been failed by, the school system. The typical male student is eighteen and has been disconnected for a year or two from his previous school. Many of the female students are mothers. Many of the students work full time. Almost all of the students are Black or Latino. There are Crips, Bloods, and Latin Kings in the school, and the teachers know who they are.” In the four years since the high school opened, there have been “absolutely no violent incidents on its premises.”¹³⁷

- B. Recommendation: Require all SROs and other security personnel to undergo mandatory, intensive trainings prior to starting work in schools and on-going during their time in schools.**¹³⁸

Case Study #11

by Jason Langberg, Everett Fellow, Advocates for Children’s Services

One of my clients, Quentin, a ninth grade student at a Wake County high school, was brought to an administrator’s office and interrogated by the SRO. Next, the SRO made Quentin stand up and put his hands on a bookshelf. The SRO then patted down Quentin and found nothing. Unsatisfied, the SRO then searched, without consent, Quentin’s backpack.

The search supposedly occurred because, four days earlier, Quentin inappropriately joked with a female student in the hallway. Unquestionably, Quentin’s behaviors were wrong; however, that does not justify the SROs actions, which were undertaken in violation of clearly defined law and Wake County’s own policies regarding searches at school. At the school-based hearing, Quentin’s advocate asked the SRO, “What was the reason for [Quentin] even being search?” The officer answered as follows:

“That’s standard procedure for any event such as this. The administration has a right to search a student at any time, for any reason whatsoever. But certainly during events such as this, it’s standard procedure that everyone is searched.”

Quentin’s advocate then read a portion of Board Policy 6600 and asked the officer whether he had reasonable suspicion to believe Quentin was in possession of illegal or unauthorized materials. The officer responded:

“The administration has a right to search anyone for any reason. Uh, it doesn’t matter whether there’s a suspicion of being a, uh, of having something or not. It’s just, uh, the administration’s right, uh, for anyone coming on to campus. Um, but it’s standard procedure for any time that a violent act, or near violent act, um, on campus, uh, it’s standard procedure that when those suspects or individuals are spoken to that they are searched because it is found that, um, individuals that are involved in this type of behavior, uh, it’s very possible that they may have something associated with this same type of behavior. So, again, it’s the administration’s right to go ahead and search, um, at any point.”

The officer's testimony directly contradicts well-established constitutional rights (i.e., the Fourth Amendment), case law, and Board Policy (i.e., 6600.1). A school official absolutely cannot search anyone at any time for any reason. A search by a SRO is only permissible if the officer has reasonable suspicion to believe that the search will turn up evidence that the student had violated or was violating either the law or the rules of the school. Reasonable suspicion means the SRO has a particularized and objective basis for suspecting wrongdoing.

In Quentin's case, the SRO had neither probable cause nor reasonable suspicion. The incident with the female student occurred four days earlier and did not involve any illegal or unauthorized items. Therefore, prior to conducting the search, the SRO had no reason to believe that Quentin had any illegal or unauthorized items on his person or in his belongings. Moreover, the law is clear that intrusions upon constitutionally guaranteed rights must be based on more than inarticulate hunches, and simple good faith on part of officer is not enough. School officials do not have a right to search a student because the student acts in such a way so as to create a reasonable suspicion that the student has violated some rule or law. In other words, a student's status as a "rule breaker" does not constitute reasonable ground for a search. Rather, there must be reasonable suspicion that a specific rule or law has been violated and that a search could reasonable be expected to produce evidence of that violation.

It is tragic that someone such as the SRO in Quentin's case, who presumably, by virtue of his position, is regularly involved in discipline and searches of students, is so mistaken about the law. It is also troubling that his testimony indicates that he considers himself a school administrator. Moreover, if his testimony that the school administration believes it "has a right to search a student at any time, for any reason whatsoever" is in fact true, it suggests that students' rights are being systematically violated at the high school. Finally, this type of monstrous behavior damages the integrity of our public schools, which are the central socializers of children, and it sends the wrong message to students about fair treatment.

- a. Current Policy and/or Practice: It is our understanding that the WCPSS does not require any specialized trainings for SROs. Individual law enforcement agencies may require some specialized trainings.
- b. Recommendation: The training should be appropriate for the age of the students the SROs will serve. Trainings that should be mandatory include:
 - i. Legal standards for searches and seizures in public schools;
 - ii. Creating positive school climates;
 - iii. Positive Behavior Interventions and Support (PBIS);
 - iv. Adolescent development;
 - v. Working with students with disabilities;
 - vi. Cultural competency;
 - vii. De-escalating students without using physical force;
 - viii. Using safe restraint techniques; and
 - ix. The consequences for youth of court-involvement and arrests.

C. Recommendation: Prohibit delinquency and criminal complaints from being filed against students who commit minor offenses.

**Case Study #12
by Camille White, Wake County Parent**

My son, an African American male, was a freshman when he was long-term suspended for fighting at a Wake County school. This was the first time my son had been involved in any sort of fight, at school or anywhere else. Even though this was his first offense, the school not only suspended him for the rest of the school year, but also filed a police report, thereby pushing him into the juvenile justice system—all based on the principal's self-contradictory statements.

Although many of the facts surrounding the suspension are disputed, all parties agreed that some sort of physical altercation took place between my son and a senior boy, James, in the cafeteria. The school's only support for charging my son with a violation of Policy 6425.2 was from the testimony of the principal, who swore to two separate and irreconcilable versions of the events.

In the police report, and more significantly, the school report (as this bears her signature), the principal stated that the fight occurred "right in front of" her, and she stated that my son "just went up to [James] and punched him." She stated in the police report that my son kept punching James until she and a guidance counselor pulled the two boys apart. This police report resulted in a petition in juvenile court charging my son with assault.

However, the principal later testified to a wholly different version of events than what she had reported to law enforcement and the official school report. In her testimony before the Board of Education, the principal stated that she did not see how the fight started, but rather another student drew her attention to the fight after it had already started. She said that when she and the guidance counselor pulled the two boys apart, my son was not only not punching James like she had said previously, but rather James had my son in a headlock and would not release him. Moreover, she testified that she had not, at any point, seen any hitting or punching at all, from either of the two boys.

Although the principal's testimony was clearly not credible since she swore to two irreconcilable versions of events, and even though it is highly doubtful that James actually suffered "serious physical injury," the Board relied upon it in upholding a long-term suspension. Further, it appears that the Board took no disciplinary action against the principal for offering false testimony, either in the police report, school report, or in her testimony before the Board.

My son should not have been fighting at school, and surely his actions warranted some disciplinary response. However, a short-term suspension and perhaps a few meetings with the school guidance counselor or a mediator would have been a fairer and more

appropriate way for the school and the Board to respond to this situation. Instead, rather than trying to bring my son back on track after he made a mistake, the school demonized him by excluding him from school and pushing him into the juvenile justice system.

The consequences of these decisions are serious and perhaps irreparable. Before this incident, my son enjoyed school and was doing extremely well academically. He had passing grades, and he was on track to go on to the college of his choice. Now, he is alienated from school and his grades have dropped. Although juvenile court dropped the case, the charges remain on my son's record and I continue to feel disappointed, alienated, and frustrated.

- a. Current Policy and/or Practice: It is our understanding that the WCPSS does not limit, in any way, when delinquency and criminal complaints can be filed against students.
- b. Example: In Clayton County, Georgia, a cooperative agreement was reached among the school district, district attorney's office, juvenile court, police department, and others that ensures "misdemeanor delinquent acts," like fighting, disrupting the public school, disorderly conduct, most obstruction of police, and most criminal trespass, do not result in the filing of a complaint unless the student commits a third or subsequent similar offense during the school year, and the principal conducts a review of the student's behavior plan. Thus, youth receive warnings after a first offense and referral to mediation or school conflict training programs after a second offense. Furthermore, elementary school-aged youth cannot be referred to law enforcement for "misdemeanor delinquent acts" if committed on school premises.¹³⁹ As a result of these reforms, "there has been a 47% reduction in juvenile court referrals from schools in just three years. The biggest drops have been for misdemeanor offenses like fighting, disruption, and disorderly conduct to the juvenile court, and the referrals of Black students, in particular, have decreased dramatically. There has also been significant improvement in the relationships between police officers and students, and graduation rates in Clayton County have improved by 20% since 2004."¹⁴⁰
- c. Example: In Jefferson County, Alabama, family court Judge Brian Huff "repeatedly observed how local schools were constantly feeding students into the court system. After collecting data from the 2007–2008 school year, he noticed that 80% of school referrals to his court came from one school system. Within that system, misdemeanors and violations comprised well over 90% of all student referrals. Racial disparities also ran rampant – African-American students made up 99% of all school referrals from Birmingham, and significantly more African-American youth in comparison to White youth were being held in the county's youth detention center." Judge Huff collaborated with the school superintendent, police chief, and other community stakeholders to develop a "set of graduated consequences for certain offenses so that youth would

not automatically be arrested and referred to court. Under the protocol, a first offense should result in a warning, a second offense may require the student and a parent to attend a school offense workshop, and a third offense may be referred to court.” Even before the school district officially adopted the protocol, “advocacy efforts had already led to a decrease in family court referrals by about 50%.”¹⁴¹

- d. Example: The Denver Public Schools policies, “strongly encourage informing parents and guardians of alternative strategies such as restorative justice, mediation, and other interventions...and using such strategies instead of engaging the juvenile and criminal justice systems when appropriate and adequate to address both the victim's needs and the misconduct” when there is a law violation in school and a victim. The Parent/Student Policy Handbook goes on to state: “When the victim of a law violation is a school or the District, or when there is no victim, incidents are to be resolved without the involvement of law enforcement whenever practicable[.]”¹⁴²
- e. Example: In Florida, a new law was passed that discourages schools from arresting students for minor offenses such as classroom disruption and fighting.¹⁴³

D. Recommendation: Prohibit delinquency and criminal complaints from being filed against students with disabilities prior to conducting manifestation determination reviews (MDRs). Additionally, prohibit delinquency and criminal complaints from being filed against students when their behaviors are substantially related to their disabilities or when their behaviors are direct results of schools’ failures to implement the individualized education programs (IEPs).

- a. Current Policy and/or Practice: It is our understanding that the WCPSS does not limit, in any way, when delinquency and criminal complaints can be filed against students with disabilities.
- b. Example: A change to Tennessee law now mandates that school personnel may only file a juvenile petition against a student receiving special education after conducting a manifestation determination that concludes that the student’s inappropriate behavior was not caused by the student’s disability.¹⁴⁴

E. Recommendation: Prohibit SROs and other security personnel from carrying guns and TASERs on school campuses.

Case Study #13

by K. Cary Brege, Equal Justice Works Fellow, Advocate’s for Children’s Services

My client, John, was repeating the ninth grade for the third time when he was long-term suspended from a Wake County school. John was abused as a child and continues to suffer from multiple diagnoses, including post-traumatic stress disorder (PTSD). John has had an Individualized Education Program (IEP) since first grade that lets the school

system know he “shuts down” and cannot talk when he is in new and difficult situations. Nevertheless, after a verbal argument with another student at lunch, John was taken from the cafeteria and left alone with a school resource officer (SRO) in a small room. The SRO repeatedly asked John his name after John had “shut down,” threatened him with criminal charges, and grabbed his arm. John reacted negatively and violently due to his PTSD, at which point he was TASERed by the SRO in the chest. John’s lung collapsed and he had to be rushed to the hospital. John’s IEP Team ultimately found that his behavior of grabbing the SRO’s arm was a manifestation of his disability, yet that did not change the fact that John was TASERed by the SRO for behavior due to his disability, nor did it change the fact that he suffered difficulties breathing for months.

- a. Current Policy and/or Practice: Most SROs carry pepper spray, many carry TASERs, and some carry guns.¹⁴⁵ According to a report by the North Carolina TASER Safety Project, “The TASER is shaped like a gun and is loaded with cartridges that shoot two small hooked metal electrodes capable of reaching a target up to 35 feet away in law enforcement models, and up to 15 feet away in models created for the general public. When fired, the electrodes hook into the skin or clothing to prevent removal and distribute a charge of about 1200 volts in electrical pulses at a rate of 19 pulses per second.”¹⁴⁶
- b. Example: This year, the Glynn County, Georgia school board rejected a proposal to arm the school system’s police officers with TASERs.¹⁴⁷

F. Recommendation: Prohibit SROs from interrogating students without the presence of students’ parents, guardians, or other advocates.

Case Study #14

by Erwin Byrd, Staff Attorney, Advocates for Children’s Services

I represented a twelve-year-old student who was suspended long-term from a Wake County middle school for being involved in an off-campus fight. When she got to school the day after the fight, she was interrogated by the school principal, a SRO, and at least one other adult. When she asked if she could call her mother before talking to the SRO, she was told that she could not. At the student’s school-based hearing, the principal was questioned about WCPSS Board Policy 6500.3, which requires principals to “make a reasonable attempt to notify the parents to give them an opportunity to be present during questioning” of a student by law enforcement. The principal admitted that she ignored this policy, claiming that involving parents in these conversations “impedes the school’s investigation.” This Board cannot allow school administrators to ignore policies that are in place to protect students’ fundamental rights, such as the right against self-incrimination. Parents need to be present when their children are being questioned by law enforcement.

- a. Current Policy and/or Practice: The only limitations on when SROs can interrogate students are those created by courts—the WCPSS has not expanded on the bare minimum civil liberties guaranteed by the courts.

The courts have stated that a student is entitled to the presence of his/her parent or guardian, as well as his/her attorney, during questioning when two conditions are present: 1) the student is in some official form of "custody;" and 2) a law enforcement officer is conducting the interrogation. The "custody" definition is strict—the courts have held that a student is not in custody unless a reasonable person "would believe he had been placed under the equivalent of a formal arrest."¹⁴⁸

- G. Recommendation: Establish clear, standardized, well-publicized complaint procedures for students, parents, teachers, and administrators to use when SROs behave inappropriately.**
- a. Current Policy and/or Practice: It is our understanding that the WCPSS does not have such procedures.

- H. Recommendation: Enter into a more detailed memorandum of understanding (MOU) with the law enforcement agencies providing SROs. The MOU should incorporate recommendations III(A) through III(G) above.**

- a. Current Policy and/or Practice: The WCPSS has entered into a MOU with the following agencies: Wake County Sheriff's Office; Apex Police Department; Cary Police Department; Fuquay-Varina Police Department; Garner Police Department; Holly Springs Police Department; Knightdale Police Department; Raleigh Police Department; and Wake Forest Police Department. The MOU only consists of six pages of substance and is insufficient.¹⁴⁹
- b. Recommendation: The memorandum should include the following:
- i. Qualifications for becoming a SRO;
 - ii. Process for becoming an SRO;
 - iii. Trainings SROs are required to attend;
 - iv. Duties, responsibilities, and activities of SROs;
 - v. Procedures SROs are required to follow, including, procedures to be followed with respect to interrogations and searches of students
 - vi. Limitations on SROs, including limitations with respect to filing delinquency and criminal complaints and arresting students;
 - vii. Factors by which SROs will be evaluated; and
 - viii. Consequences for mistreatment of students, parents, teachers, and administrators.

Recommendation #4: Ensure Transparency and Sound Decisions Through Data Collection and Monitoring

- A. Recommendation: Create school-based discipline oversight and advisory committees made up of students, parents, community members, and teachers (including at least one teacher with expertise in special education).**

- a. Current Policy and/or Practice: It is our understanding that there are no discipline oversight and advisory committees in the WCPSS.
- b. Recommendation: The committee should be fully independent and engage in the following activities:
 - i. Develop action plans to reduce suspensions and court referrals, eliminate racial disparities, etc.;
 - ii. Develop procedures for responding to problems and concerns of students, parents, and teachers;
 - iii. Develop expectations for all members of the school community;
 - iv. Monitor the activities of school resources officers (SROs);
 - v. Review instances of individual students who repeatedly receive short-term suspensions for possible alternatives, fairness, any violations of students' rights, etc.;
 - vi. Review every long-term suspension for possible alternatives, fairness, any violations of students' rights, etc.; and
 - vii. Review discipline data monthly for use of interventions, excessive suspensions, racial disparities, etc.
- c. Example: San Francisco public schools are required to create Site Based Disciplinary Committees composed of teachers, parents, school administrators, and students (except at the elementary level). These committees analyze student behavior indicators (i.e., student attendance, referrals, and suspensions) and identify possible interventions on a quarterly basis.¹⁵⁰
- d. Example: The Denver Public Schools Board strongly encourages each school "to establish a discipline committee of school personnel, parents, and students to develop, monitor, and evaluate school discipline policy and school climate."¹⁵¹
- e. Example: The Brandywine School District (in Delaware) created a Discipline Committee made up of district staff, school personnel, parents, and community members to "provide consistent expectations for students, consistent implementation of consequences, and provide proactive ways to address discipline problems before they occur."¹⁵²
- f. Example: The Superintendent of the Recovery School District in New Orleans promised to establish a district-wide Discipline Oversight Committee, comprised of parents, students, advocates, and school community members, that will monitor and analyze school discipline data and make recommendations for reform.¹⁵³

B. Recommendation: Make more complete data about prevention, intervention, and alternative learning efforts publically available in an easy to understand format.

- a. Current Policy and/or Practice: The WCPSS Evaluation and Research Department has published various reports over the years analyzing various prevention, intervention, and alternative learning efforts.¹⁵⁴ However, the reports are not as frequent or as comprehensive as they should be.

- b. **Recommendation:** Examples of data (including availability, usage, and effectiveness for each) that should be made available include:
 - i. Use of positive behavior interventions and support programs;
 - ii. Use of prevention programs;
 - iii. Use of intervention programs; and
 - iv. Use of alternatives to suspension.
- c. Example: Denver Public Schools policy requires individual schools and the district to “evaluate and monitor the effectiveness of the school discipline plan using school disciplinary data disaggregated by race, ethnicity, and sex of student.” Schools are also required to submit annual reports detailing the following: intervention and prevention strategies; the number of referrals, in-school suspensions, out-of-school suspensions, expulsions, tickets, and arrests, disaggregated by race, ethnicity, age, grade, disability, and gender of the students, where available; differences in referrals among staff members; and the extent to which discipline policy is consistently applied to all students. Schools are also “encouraged to establish a discipline committee of school personnel, parents, and students to develop, monitor, and evaluate school discipline policy and school climate.”¹⁵⁵

C. Recommendation: Make more complete data about suspension, expulsion, school-based delinquency and criminal complaints, and school-based arrests publicly available in an easy to understand format.

- a. **Current Policy and/or Practice:** It is our understanding that Wake County does not publish any data about suspensions, expulsions, school-based delinquency and criminal complaints, or school-based arrests. Each year, the North Carolina Department of Public Instruction publishes a statewide study of suspensions and expulsions.¹⁵⁶ The study provides the following limited information about Wake County: the number of short-term suspensions, long-term suspensions, and expulsions disaggregated by race; and the number and rate of short-term suspensions among high school students.
- b. **Recommendation:** The data should be disaggregated and analyzed by:
 - i. Race;
 - ii. Gender;
 - iii. Age;
 - iv. Grade;
 - v. School;
 - vi. Disability status (i.e., disabled or non-disabled);
 - vii. Free and reduced lunch status
 - viii. English language learner status;
 - ix. Primary policy violation;
 - x. Type of exclusion (i.e., short-term suspension, long-term suspension, or expulsion);
 - xi. Prior suspensions (e.g., number of previous short-term and long-term suspensions); and

xii. Length of suspension (i.e., number of school days missed).

D. Recommendation: Make more complete data about school resources officers publically available in an easy to understand format.

- a. Current Policy and/or Practice: Wake County does not publish any data about its school resource officers. Each year, the North Carolina Department of Juvenile Justice and Delinquency Prevention (DJJDP)—Center for the Prevention of School Violence publishes a “School Resource Officer Census” (however, recent budget cuts have eliminated the Center; therefore, DJJDP may no longer publish the annual census).¹⁵⁷ The census provides very limited information about Wake County.
- b. Recommendation: The data should be disaggregated by:
- i. School(s);
 - ii. Type of coverage (i.e., exclusive to one school or share among schools);
 - iii. Employer (e.g., police department, sheriff’s department, or school district);
 - iv. Years of experience as a SRO;
 - v. Salary;
 - vi. Gender;
 - vii. Race;
 - viii. Age;
 - ix. Type of weapon(s) carried (e.g., pepper spray, TASER, gun);
 - x. Number of school-based delinquency complaints filed;
 - xi. Number of school-based criminal complaints filed; and
 - xii. Number of school-based arrests made.

APPENDIX A: SAMPLE SIMPLIFICATION OF THE LANGUAGE CURRENTLY USED IN THE WCPSS CODE OF CONDUCT

Policy Number	Existing Language	Sample New Language
6400	Code of Student Conduct – All students shall comply with the Code of Student Conduct of the Wake County Public School System, state and federal laws, school board policies, and local school rules governing student behavior and conduct....	Code of Student Conduct – All students have to follow the Code of Student Conduct of the Wake County Public School System. Students also have to follow all state and federal laws, school board policies, and their school’s rules.
6410	Inappropriate Student Behavior – Since an educated citizenry is essential to good government and can be attained only in an atmosphere conducive to teaching and learning, the board requires the maintenance of good order in the schools.	Student Behavior <i>Eliminate superfluous language.</i>
6410.7	Noncompliance – Students shall comply with all directions of principals, teachers, substitute teachers, teacher aides, bus drivers, and all other school personnel who are authorized to give such directions. Including but not limited to: A. Repetitive tardies B. Skipping class/school C. Leaving campus without permission D. Being in an unauthorized area Failure to comply may result in short term suspension.	Following the Rules – Students must follow directions from teachers, principals and other people who work at schools. Directions can be about: A. Coming to class late more than one time B. Skipping class or school C. Leaving school without permission D. Being somewhere that a student is not allowed to be If a student does not follow directions, the school can give the student a short-term suspension.
6410.8	Inappropriate Language – Cursing or use of vulgar, profane, or obscene language is prohibited.	Inappropriate Language – Students are not allowed to use curse words or words that are obscene.
6410.9	Theft – No student shall steal, attempt to steal, or knowingly be in possession of stolen property.	Stealing – Students are not allowed to take or try to take things that do not belong to them. Students are not allowed to have things that are

		stolen.
6420.6	Extortion – No student shall attempt to extort money, personal property, or personal services.	Tricking Someone into Giving You Something – Students are not allowed to trick another person into giving them money or things. Students are not allowed to trick another person into doing something for them.
6420.10	Aiding and Abetting – No student shall aid or abet another student in violating any rule in the Code of Student Conduct.	Helping Another Student Break the Rules – Students are not allowed to help another student break a school rule.
6420.1 R&P	<p>Disruption of School – PROCEDURAL STEPS:</p> <p>1. On substantiating the offense, the principal will determine the appropriate level of threat.</p> <p>Level One (<i>Mild</i>): May result in a short-term suspension, school-based behavior intervention counseling and/or conference with the parent/student/counselor and administrator.</p> <p>Level Two (<i>Moderate</i>): Short-term with recommendation for long-term and referral to the school TMAC assessment team.</p> <p>Level Three (<i>Severe</i>): Short-term with recommendation for long-term suspension/ 365-day suspension/ expulsion the parents and the student are encouraged to participate in a community intervention program that includes threat and anger management counseling.</p>	<p>What Happens When a Student Breaks a Rule –</p> <p>1. When the principal finds out that a student broke a rule, the principal will decide the appropriate punishment. Here are the different levels of punishment:</p> <p>Level One (<i>Mild</i>): The student can get:</p> <ul style="list-style-type: none"> ▪ a short-term suspension ▪ behavior intervention counseling; and/or ▪ a conference with the parent, student, counselor, and administrator. <p>Level Two (<i>Medium</i>): The student can get:</p> <ul style="list-style-type: none"> ▪ a short-term suspension with a recommendation for a long-term suspension; and ▪ sent to the school Threat Management Through Assessment and Counseling (TMAC) team. (a team that handles threats) <p>Level Three (<i>Severe</i>): The student can get:</p> <ul style="list-style-type: none"> ▪ a short-term suspension with a recommendation for long-term suspension; ▪ a suspension for 365 days; or

		<ul style="list-style-type: none"> ▪ an expulsion, which means permanent removal from school. The school will encourage students to participate in a community intervention program that includes counseling for anger management and threatening behavior.
6424	<p>Gang and Gang Related Activities – Before being suspended for a first offense of wearing gang-related attire (when not involved in any other kind of gang-related activity or behavior), a student may receive a warning and be allowed to immediately change or remove the attire if the school administration determines that the student did not intend the attire to show gang affiliation. Reference policy 6400 for disciplinary action.</p>	<p>Gang and Gang Related Activities – After a student’s first time wearing gang-related clothing or objects, the school can warn the student and allow the student to take off the clothes or object. The school will only give the student a warning if the school decides that the student did not mean to wear a gang symbol. Read Policy 6400 because it lists possible punishments a student can get for gang activity.</p>
6425	<p>Physical Aggression/ Fighting or Assault – Fighting and assaults on students and other people are prohibited. A student who is attacked may use reasonable force in self-defense, but only to the extent necessary to get free from the attack and notify proper school authorities. A student who exceeds reasonable force may be disciplined even though someone else provoked the fight....</p>	<p>Physical Aggression or Fighting – Students are not allowed to physically fight, hit, try to hit, or fight anyone at school.</p> <p>A student who is attacked or hit by another student, may defend himself/herself, but only enough to get free and tell a teacher or administrator. If a student defends himself/herself with more force than is necessary, that student may be punished.</p>
6427	<p>Weapons and Dangerous Instruments/ Substances – No student, pre-kindergarten – 12, shall possess, handle, or transmit any weapon, facsimile of a weapon, dangerous instruments, substances or other object that can reasonably be considered or used as a weapon or dangerous instrument. This does not apply to any student who finds a weapon or dangerous instrument on school property or receives it from another person on school property</p>	<p>Weapons and Dangerous Objects – No student is allowed to have a weapon, a dangerous object, or an object that looks like a real weapon or dangerous object.</p> <p>A student will not be punished if he/she finds a weapon or dangerous object on school property or gets it from another person on school property and tells a teacher or administrator right away.</p>

	and who immediately reports the weapon or dangerous instrument to school or law enforcement authorities....	
6500	Discipline – A school climate conducive to serious study and respect for oneself, other people, and property is essential for a school to meet the needs of youth. Each principal has the authority and responsibility to take whatever reasonable and legal action is necessary to establish and maintain appropriate student behavior in accordance with board policy.	Discipline <i>Eliminate superfluous language.</i>

APPENDIX B: SAMPLE SIMPLIFICATION OF THE LANGUAGE CURRENTLY USED IN THE WCPSS DUE PROCESS PROCEDURES

Policy Number	Existing Language	New Language
6530	<p>Due Process – North Carolina law requires teachers to maintain good order and discipline in their school. The law further gives principals the power and duty to discipline students and to assign duties to teachers with regard to discipline and general well being of students. Suspension from school is a serious measure. Principals should utilize every reasonable resource at their disposal to effect another solution to student misconduct.</p>	<p>The Rights of Students/ Due Process <i>Eliminate superfluous language.</i> Suspension from school is a serious punishment for any student. So, principals should: 1) use interventions to stop future misbehavior; and 2) discipline a student with other punishments before suspending a student.</p>
6530.8	<p>Due Process – Rules governing the suspension of exceptional children shall be in compliance with state and federal guidelines.</p>	<p>Due Process – All of the rules about suspending exceptional children (i.e., children with special education needs) must follow state and federal guidelines.</p>
6530.4 R&P	<p>School-Based and Superintendent Levels of Appeal - To the extent required by law, at the hearing the student will have the opportunity to examine evidence and present evidence to confront and cross-examine witnesses supporting the charge, and to call witnesses to verify the student’s version of the incident. If the student intends to call another student as a witness, the student witness must have written permission from his/her parent to appear during the hearing. The parent must make arrangements for the student’s witnesses to attend if the hearing is after school.</p>	<p>Student’s Right to Appeal Discipline Decision at the School and with the Superintendent - A student can have a hearing to challenge the principal’s disciplinary decision. During the hearing, the student will be allowed to:</p> <ul style="list-style-type: none"> ▪ look over the evidence the school has against him/her; ▪ ask questions of the school’s witnesses; ▪ give evidence; and ▪ call his/her own witnesses. <p>If the student wants to call another student as a witness, the witness has to have written permission from his/her parent to speak at the hearing. If the</p>

		hearing is after school, the witness's parent must make arrangements for the student witness to attend the hearing.
6530.7 A. R&P	<p>Suspension of Students with Disabilities – A. RECURRING SHORT-TERM SUSPENSION OF STUDENTS WITH DISABILITIES: Behavior of the exceptional student which results in recurring suspension may indicate an inappropriate placement. Reevaluation may be indicated even before the usual three-year reevaluation date.</p>	<p>Suspension of Exceptional Children/ Students with Disabilities – A. MULTIPLE SHORT-TERM SUSPENSION of EXCEPTIONAL CHILDREN/STUDENTS WITH DISABILITIES: Usually, schools reevaluate the placement of exceptional children every three-years. However, if an exceptional child has received several suspensions because of bad behavior, the child's placement may need to be reevaluated before the typical three-year reevaluation.</p>
6530.7 B. R&P	<p>Suspension of Students with Disabilities – B. The Individualized Educational Program Team (IEP Team) shall review pending recommendations for long-term suspensions of students with disabilities to determine if the misconduct is a manifestation of the disability within ten (10) school days of the suspension.</p> <p>1. Should no manifestation be determined, the parent may appeal the suspension in accordance with regulations and procedures 6530.4 to 6530.5 or appeal the IEP Team's decision by filling a petition for an impartial due process hearing with an administrative law judge as outlined within the North Carolina Department of Public Instruction <u><i>Procedural Safeguards: Handbook on Parents' Rights</i></u>.</p>	<p>Suspension of Exceptional Children/ Students with Disabilities – B. If a student with a disability is recommended for long-term suspension, the Individualized Educational Program Team (IEP Team) must meet within ten school days of the suspension to decide if the child's behavior was caused by or closely related to the child's disability.</p> <p>1. If the IEP Team decides that the misbehavior was not caused by or closely related to the child's disability, the child's parent can appeal the suspension. To do so, the parent has to follow Rules 6530.4 (School-Based and Superintendent Levels of Appeal) and 6530.5 (Board Level Appeal). The parent can also appeal the IEP Team's decision by asking for a hearing with an administrative law judge.</p>

		Parents can find out more information about these appeals in the North Carolina Department of Public Instruction's <u><i>Procedural Safeguards: Handbook on Parent's Rights</i></u> .
6600.3	Automobile Searches – Students are permitted to park on school premises as a matter of privilege, not of right....	<i>Eliminate superfluous language.</i>
6600.4	School Computers – School computers and any data they contain remain under control of the school and are subject to inspection at any time.	School Computers – The school can search school computers at any time because the computers are school property.

**APPENDIX C: THE 10 WORST WAKE COUNTY SCHOOLS
IN VARIOUS STPP CATEGORIES (2008-09)¹⁵⁸**

Short-Term Suspension

High School	No. of Short-Term Suspensions
Knightdale	1403
Garner	854
Athens Drive	768
Wakefield	673
Sanderson	633
Broughton	612
Enloe	542
Millbrook	521
Fuquay-Varina	481
Middle Creek	476

High School	Rate of Short-Term Suspensions ¹⁵⁹ (per 100 students)
Knightdale	80.08
Athens Drive	43.89
Garner	38.16
Sanderson	33.65
Middle Creek	29.11
Broughton	27.91
Fuquay-Varina	27.04
Wakefield	25.50
Southeast Raleigh	24.37
Millbrook	22.10

Middle School	No. of Short-Term Suspensions
Dillard Drive	488
E. Millbrook	467
E. Garner	449
N. Garner	387
Carnage	386
Daniels	381
Leesville	371
Ligon	351
W. Millbrook	
Wakefield	317

Middle School	Rate of Short-Term Suspensions (per 100 students)
Moore Square	50.32
Dillard Drive	42.25
E. Millbrook	41.40
E. Garner	40.41
Wendell	36.75
Reedy Creek	35.65
Carnage	35.64
W. Millbrook	35.62
N. Garner	33.59
Ligon	32.26

Elementary School	No. of Short-Term Suspensions
River Bend	105
Reedy Creek	101
Creech Road	90
Smith	68
Washington	63
Wilburn	59
Lockhart	54
Stough	
Vandora Springs	
Lincoln Heights	53

Elementary School	Rate of Short-Term Suspensions (per 100 students)
River Bend	19.81
Creech Road	15.46
Smith	13.74
Reedy Creek	12.64
Washington	10.81
Vandora Springs	10.74
Wendell	9.78
Wilburn	9.66
Zebulon	8.97
Stough	8.82

Long-Term Suspension

High School	No. of Long-Term Suspensions
Enloe	84
Garner	81
Sanderson	53
Knightdale	49
Middle Creek	45
Millbrook	41
Athens Drive Leesville Road	36
Southeast Raleigh	35
Wakefield	33

High School	Rate of Long-Term Suspensions (per 100 students)
Garner	3.62
Enloe	3.26
Sanderson	2.82
Knightdale	2.80
Middle Creek	2.75
Southeast Raleigh	2.21
Athens Drive	2.06
Fuquay-Varina	1.80
Millbrook	1.74
Leesville	1.48

Middle School	No. of Long-Term Suspensions
E. Millbrook	28
E. Garner	27
E. Wake	25
N. Garner W. Cary	24
Wakfield-Rolesville	16
Carroll Ligon W. Millbrook	14
Carnage West Lake Zebulon	13

Middle School	Rate of Long-Term Suspensions (per 100 students)
E. Millbrook	2.48
E. Garner	2.43
E. Wake	2.37
N. Garner W. Cary	2.08
Carroll	1.78
Moore Square	1.69
W. Millbrook	1.57
Zebulon	1.53
Wakfield-Rolesville	1.39

School-Based Delinquency Complaints

High School	No. of School-Based Delinquency Complaints
Broughton	54
Millbrook	41
Leesville	35
Athens Drive	27
Enloe	23
Garner	19
Holly Springs	15
Knightdale	12
E. Wake Sanderson	10

Middle School	No. of School-Based Delinquency Complaints
Dillard Drive E. Wake	44
Martin	28
Carroll	26
Heritage	25
W. Millbrook	21
W. Cary	20
Apex	19
E. Garner E. Millbrook Ligon	18

APPENDIX D: MEDIA COVERAGE OF WAKE COUNTY'S SCHOOL DISCIPLINE PROBLEM

Looking at Wake's suspension and dropout rates
Keung Hui, News and Observer, May 26, 2010

Guess what's the top reason why Wake County students receive a short-term suspension?

A short-term suspension is defined as one that's for less than 10 days of school. In 2008-09, 20,651 short-term suspensions were given to 10,918 students in Wake, costing 57,650 school days.

The top reason in Wake was:

Disrespect of staff accounted for 24.4 percent of Wake's short-term suspensions last school year. In contrast, it only accounted for 7.1 percent of the state's short-term suspensions.

The second-highest reason in Wake last school year was fighting, which accounted for 21.8 percent of short-term suspensions. Statewide, it accounted for 13.8 percent of that category.

In third in Wake was inappropriate language at 12.1 percent. Fourth was disruptive behavior at 11.5 percent.

Knightdale High had the most short-term suspensions of any school at 1,403.

In terms of long-term suspensions, the top reason in Wake last school year was possession of an illegal substance at 18.9 percent. Next came minor assault at 18.8 percent and possession of a weapon at 10.3 percent.

The highest count for long-term suspensions in Wake was Enloe High at 84 and Garner High at 81.

Long-term suspensions in Wake are those that exceed 10 days. While some districts will vary how much longer it is than 10 days, all long-term suspensions in Wake run for the whole school year.

In 2008-09, 1,015 long-term suspensions were issued. This resulted in 87,227 days of school being lost.

This data, along with info on dropout rates, was shared with the school board's student achievement committee earlier this month.

Replace program, Wake Told
Keung Hui, News and Observer, May 11, 2010

The state Department of Public Instruction has ordered the Wake County school system to develop an alternative program for special-education students who receive long-term suspensions.

In a report made public Monday, state investigators faulted Wake for not having an adequate replacement for Richard Milburn High School, an alternative school that served long-term suspended students before being shut down last year to save money.

In lieu of Richard Milburn, run by a private company contracted by the school system, investigators found that about 200 suspended students are receiving less than six hours a week of instruction at home from visiting teachers. The report concluded that Wake wasn't providing these students with the guaranteed legal right of a free and appropriate public education and must develop a program for them by the start of the 2010-11 school year.

"If they don't have the time and the money, they'll have to find it," said Jason Langberg, a lawyer for Advocates for Children's Services, a project of Legal Aid of North Carolina, which had filed the complaint that started the state investigation.

Michael Evans, a Wake schools' spokesman, said district officials are reviewing how to comply with the orders in the state report.

Wake annually issues more than 1,000 long-term suspensions, meaning those students are out of their regular school for the rest of the school year. Many of those students are also classified to receive special-education services that are protected under state and federal law.

For several years, Wake had hired Milburn Schools, a national company, to run a high school to educate long-term suspended students. The students received instruction both from teachers in a classroom and through an online program.

Closing is budget move

But to save money, Wake terminated the contract. Richard Milburn was replaced with the district's SCORE program, through which long-term suspended students take online courses in a school. The report said SCORE didn't meet the needs of students with disabilities, resulting in many special education students' getting home instruction instead.

Langberg said it was unrealistic to expect that these suspended students could keep up academically when they're getting less than six hours of week of instruction at home.

Without Wake's money, Richard Milburn High shut down this school year. But Milburn's parent company filed an application to operate the school as a charter school. It's one of seven applicants whose representatives will meet with state Board of Education members.

The report also found that many of the special education students receiving home instruction this year had been suspended multiple times and had not been promoted several times. Wake was ordered to develop an individualized plan for each of these students.

"They need to follow federal law or else they'll hear from plenty of lawsuits," Langberg said.

State finds Wake violated law for special-education students
Keung Hui, News and Observer, May 10, 2010

The state Department of Public Instruction has ordered the Wake County school system to develop a new alternative program for long-term suspended students after concluding that the district had violated state and federal law for special education students.

State investigators concluded late last month that around 200 Wake County long-term suspended students who are being educated at home this year are not receiving a free and appropriate public education. The report faulted Wake for not having developed an adequate replacement to the Richard Milburn High School for long-term suspended students that was discontinued last year for budget reasons.

Wake annually issues more than 1,000 long-term suspensions, meaning those students are out of their regular school for the rest of the school year. Many of those students are also classified also receive special-education services that are protected under state and federal law.

At Richard Milburn, students attended classes in a building with both physical and virtual teachers. This year, students take online courses only.

The report said the new program didn't meet the needs for students with disabilities.

In the absence of Richard Milburn, the report noted that long-term students were receiving instruction at home on weekends and after-school. But the report found that the Wake was providing these students with less than six hours of weekly instruction.

The report also found that many of the long-term suspended students receiving homebound instruction had not been promoted several times and had been suspended several times without getting proper special education services.

The investigation began after a complaint was filed by Advocates for Children's Services, a nonprofit group which has represented a number of students who've received long-term suspensions.

Should schools relax zero-tolerance disciplinary policies?
News and Observer, January 4, 2010

Don't ease the discipline, Matthew Eisley, Staff Writer

Maybe some of the thousands of disruptive, violent or criminal students Wake County suspends each year need a more constructive alternative than getting kicked out of school.

In-school suspensions, reform schools or community service might be better alternatives than life at home, in a gang, or on the street, away from the chance to learn.

But if Wake's school board tinkers with its "zero-tolerance" disciplinary policy, as some board members want to do, it should take care not to make matters worse for teachers and the majority of students who work hard and behave.

The job of students is to learn. The job of teachers is to teach. The job of schools is to make it happen, not to coddle troublemakers.

Granted, some troubled students need and want help. They come from broken homes or suffer emotional, developmental or learning disabilities. We must not abandon them.

And there's no doubt that some misbehaving students booted from school only graduate to professional lives of crime, preying on innocent victims and requiring still more public attention, effort and treasure. Reform school is cheaper than prison. We need effective programs to shrink the pipeline of despair.

But we must maintain peace and order in our schools. Students who want to learn need their teachers' full attention. And we should expect teachers to be teachers, not social workers.

Otherwise we invite and empower disruptive students to steal the educations of their peers, a grievous theft we cannot allow.

Zero-tolerance is bad policy, Keith Sutton, Wake County school board member

Zero-tolerance school disciplinary policies have outlived their usefulness. Once thought of as the solution to an upward trend in school violence following the 1999 Columbine High School shootings, such policies produce thousands of suspensions and expulsions of Wake County students every year.

Zero tolerance is a practice or culture defined by rules/laws that are consistently applied to a certain class of offenses or infractions, without regard to the circumstances surrounding the event.

Zero-tolerance policies have become the main valve in the school-to-prison pipeline, with more than 5,000 suspensions levied for instances of noncompliance in one year.

In addition, according to research conducted by Jason Langberg and Cary Brege at Action for Children's Services, 84 percent of school-based delinquency complaints were for minor misdemeanors. This is where the pipeline begins, and black students are affected disproportionately.

Once students enter the juvenile justice system, many with educational or mental disabilities, they and their families face judges, lawyers, court counselors and detention centers.

Yet many of our school principals are left with few options for addressing behavioral issues, especially when they are charged with maintaining a safe learning environment.

When my predecessors on the Wake County Board of Education instituted these policies, they had very good intentions. As we enter a new decade, my colleagues on the school board and I must, and hopefully will, confront this challenge head-on.

Kids to save

Staff Editorial, News and Observer, January 2, 2010

Perhaps even the Hatfields and McCoys occasionally located common ground, some shared problem or situation each of the feuding clans had an interest in addressing. So it is with the two factions on the Wake County school board. There seems to be a recognition on both sides of the "holler" that the school system's harsh suspension policies are due a second look.

If so, count it as progress. Wake no doubt has had the best of intentions in kicking misbehaving students out of school at the highest rate in the Triangle (in a state with the third-highest long-term suspension rate in the country). But mindful of how exile from school can become a gateway to serious misconduct, even crime, some school board members to their credit are calling for a revamped, more flexible approach.

Keith Sutton is in the board minority when it comes to his support of using family income to help decide which schools students attend. John Tedesco was one of four candidates who ran in opposition to the board's socioeconomic diversity policy in their successful campaigns last fall. Now, as The N&O reports, Sutton and Tedesco are voicing skepticism about an overreliance on suspension as schools try to keep the lid on.

The practice in Wake, when a student messes up big-time (for example, by getting involved in a gang fight or by dealing dope), is to suspend him or her for the rest of the

school year. There no doubt are instances where that's the right choice – when maintaining order and safety on campus must take precedence.

But as Tedesco suggests, year-long suspension also heightens the risk that kids will be dragged down by the same gangs-and-drugs culture that probably had something to do with getting them in trouble in the first place.

As someone who works with troubled young people professionally, Tedesco has a valuable perspective, as does his board colleague Sutton, an official with the state Department of Juvenile Justice and Delinquency Prevention. "There are ways we can partner with the community to help provide guidance and discipline," Sutton says.

Agencies and organizations that can help with that kind of effort shouldn't hesitate to pitch in. It's a framework that can help keep youngsters from jumping the behavioral track to the point where their presence on campus can't be tolerated.

And every time a kid is rescued in that fashion, it means less of a chance that he or she will drop out of school and become doomed to a life of lowered expectations, perhaps to years in prison. A meeting of the minds over alternatives to suspension would represent good work by Wake school leaders - and perhaps pave the way for useful dialogue on other fronts as well.

Schools rethink discipline

Keung Hui, News and Observer, December 28, 2009

The state's largest school district could take a softer line on student suspensions, easing back on zero tolerance policies that are among the strictest in North Carolina.

Members of opposite camps of a deeply divided Wake County school board have come together to call for a review of student discipline policies. They're questioning policies that require students to be suspended for the rest of the school year for a wide range of offenses, including drug possession and fights that cause serious injuries.

Wake issues long-term suspensions to more than 1,000 students each year, accounting for more than 20 percent of the statewide total. Wake also issues more than 20,000 short-term suspensions of 10 days or less each year.

"Some people say these kids just need to be suspended," said school board member Keith Sutton. "A lot of these kids are just lacking in discipline and guidance. There are ways we can partner with the community to help provide guidance and discipline."

Sutton's efforts have gotten a boost from the fall election of new school board members. While Sutton and the new board members disagree on issues such as busing for diversity and neighborhood schools, they say they've found common ground on wanting to do more to keep students in school.

"All we're doing is sending these students out for a year where they're getting into drugs and gangs," said new school board member John Tedesco.

Questions about zero tolerance policies have grown nationally because of recent high-profile cases such as the suspension of a Delaware first-grader for bringing a camping utensil to school.

School districts around the nation have adopted zero tolerance policies, first against guns and then other offenses such as fighting, following incidents such as the 1999 Columbine High School shooting.

As of three years ago, 40 percent of North Carolina's 115 school districts had zero tolerance policies, according to William Lassiter, manager of the N.C. Center for the Prevention of School Violence, which closed in October because of state budget cuts.

North Carolina has the fourth highest suspension rate in the country, according to the National Center of Education Statistics.

But Ken Trump, president of National School Safety and Security Services, a Cleveland-based organization that provides school safety consulting services, cautioned against going to the other extreme and discouraging principals from disciplining students in order to reduce suspensions.

"The vast majority of school administrators in the country strive for firm, fair and consistent discipline applied with good common sense," Trump said.

Full-year suspensions

With 140,000 students, Wake is the 18th largest school district in the nation.

Wake goes above what state law requires by saying long-term suspensions cover the entire school year. But the district also offers some students slapped with long-term suspensions the option of taking online courses. Students disciplined for the same offense in other districts may get shorter suspensions of as little as 11 days.

Jason Langberg, an attorney for Advocates for Children's Services, a project of Legal Aid of North Carolina, says Wake has created an "invidious" school-to-prison pipeline in which African American students are the ones most often cited for suspensions and delinquency complaints filed in court.

"We want them to see these kids as individuals, just like we do," said Langberg, whose group represents students at suspension hearings.

Marvin Connelly, Wake's assistant superintendent for student services, said Wake may appear to have so many long-term suspensions compared to the rest of the state because other school districts record them differently.

Connelly said a team of administrators and teachers is reviewing how to lower suspension rates as a way to improve academic performance and graduation rates. But he stressed that the primary focus remains on having safe and orderly schools.

"We won't have any recommendations that are at the expense of safety and order," Connelly said.

The school board may move faster than the administration on the zero tolerance issue.

Sutton, the school board member, wants a 60- to 90-day suspension of zero tolerance policies while a review takes place. He cited as a problem how 5,000 short-term suspensions are issued a year for non-compliance, in which students are disciplined for not following directions.

"The non-compliance suspensions are often not deserved and require teachers and administrators to go the extra mile to reach these children and understand their background," Sutton said.

Tedesco, a member of the new school board majority, said he wants a task force formed to review zero tolerance policies.

Both Tedesco and Sutton come at the issue from a background of working with troubled youngsters. Tedesco is a vice president with Big Brothers Big Sisters of the Triangle, and Sutton is a legislative affairs program manager for the N.C. Department of Juvenile Justice and Delinquency Prevention.

'Different methods'

School board chairman Ron Margiotta said he expects the board will want to begin the review of the discipline policies soon.

"Discipline should be maintained in our schools, but it may be with different methods," Margiotta said.

In the meantime, Tedesco said, he and other new board members are looking for ways to keep students in school at suspension hearings. Students can appeal long-term suspensions to the school board, which can reduce the punishment.

Langberg is encouraged by the school board's willingness to review the issue.

"We're hoping it's not like the old board, which was a rubber stamp for the administrators," he said.

State ranks No. 4 in school suspensions

Sadia Latifi, News and Observer, December 13, 2009

Ricky Green heads over to the bus stop in his neighborhood to catch up on the day's drama and make weekend plans with his closest friends from Hillside High School.

The bus stop conversations about what teachers said, who got into trouble and who's hooking up with whom, may be the most important part of the 17-year-old's otherwise empty day. He's on his third suspension this year from school, this time for the rest of the year after being accused of threatening a teacher.

Ricky is among the 10 percent of North Carolina public school students booted out of class for some period each year, either for serious offenses, such as fighting and making threats, or for infractions such as ignoring the dress code.

Only three other states suspend a higher percentage of their students each year, according to the National Center of Education Statistics. Suspensions are particularly high in the Triangle. Wake County, which educates 9 percent of the state's public school students, accounts for 20 percent of all long-term suspensions. In the 2007-2008 school year, the latest for which statewide statistics are available, Wake handled more than 1,100 long-term suspensions.

"Those are pretty startling numbers, and I think it serves as a wake-up call," says Keith Sutton, appointed to the Wake school board in August.

Black males and special education students are disproportionately represented among the suspended.

The high suspension rate worries advocates for children. Suspended students are three times as likely to drop out, according to Action for Children North Carolina, an advocacy group that pushes school districts to find alternatives to banishment from school for improving student behavior.

Dropouts, particularly African-American males, have great difficulty finding jobs, and according to a new study from Northeastern University in Boston, face higher risks of ending up in jail. The study found that one in four young black male dropouts are incarcerated or institutionalized on an average day.

Parents' rights

The legislature last summer required school districts to give parents detailed, written information about coming suspensions, access to students' records, and more information about their rights to appeals. The Durham district recently revised its policies to comply with the law and to address community concerns about too many suspensions.

School board members know suspensions are common. Most members of the seven-member Durham board have had children or grandchildren in some form of short-term suspension. The children of two school board members were suspended for leaving a field trip with a chaperone without permission.

"We are really trying to reduce suspensions when possible and looking at alternatives to hold students accountable," says Nathan Curry, Durham's due process officer who presides over suspension hearings. "But we don't believe in sacrificing safe schools just to have fewer suspensions."

But state Rep. Deborah Ross, a Raleigh Democrat who co-sponsored the notification bill, notes that students can be suspended for infractions that are not threatening, such as skipping school or not following the dress code.

"The punishment for misbehaving in school should be more school," says Ross, who hopes the new law will encourage more parents to exercise their due process rights. "But sometimes it's easier to take a child out of a classroom rather than deal with the conduct in a more constructive way."

Advocates for children who have raised concerns about high suspension rates agree, adding that teachers and schools need better resources for classroom management.

"Kids are getting what they want. If they act out, they get thrown out of school. Some of these kids don't want to be in school, but do we want these kids on the street?" says Barb Bradley, president of Action for Children. "In my day, rolling your eyes or using filthy language were not offenses for which you were suspended."

'I don't really care'

Ricky Green appears indifferent about missing class.

"To be honest, I don't really care about being back in class," says Ricky, a senior who was a member of the Hillside chess club and a wrestler before his long-term suspension. "When I'm home, I get to sleep, eat, watch TV, do whatever."

Ricky's mother, Karen Alexander, 45, won't give in to that attitude. The single mother has been fighting Durham schools for years to keep her son in class. "If I didn't have to work, I would've pulled him out sooner to home-school. If I had the money, I would've put him in a private school," she said. "But I have to work for a living. We have to eat. So I have to leave him at home every day. I can't parent-lock everything anymore."

Alexander, who works in the student accounts office at N.C. Central University, attends parent-teacher meetings, observes her son's behavior during class visits, and tries to select teachers each semester who she thinks know how best to educate Ricky.

She tells teachers about her son's "tics": He can't sit still. He taps his pencil. He doesn't like it when people get in his "personal space."

Alexander says she's been powerless against the suspension slips that come home with her son seemingly every few weeks for skipping class, talking back to teachers and tardiness. In three and a half years, Ricky has missed more than 150 days of school because of suspensions.

Principals' discretion

In Durham and many other districts, short-term suspensions - 10 days or less - are at the discretion of the principal and can't be formally appealed.

"We encourage principals and administration to look at the circumstances and to weigh balancing the safe and orderly environment of the school with the context of what occurred, and allow judgment there," says Debbie Pittman, assistant superintendent for support services.

When Ricky's short-term suspensions were at their most frequent his freshman year, Alexander eventually stopped signing notification forms as an act of protest.

Parents are often kept in the dark about their rights, say lawyers who represent thousands of suspended students each year in the Triangle. "I give huge kudos to Durham for looking at this seriously, making changes, and using their own experience to apply to the rest of the school system," says Mark Trustin, a suspensions lawyer and community advocate who represented Ricky in his long-term suspension hearing three weeks ago.

But there are still some flaws, lawyers say. Long-term suspension hearings, which start at the school level, are made up of a panel of three teachers. They are tasked to evaluate punishment set forth by their employer, the principal. "As a teacher, do you really have any choice but to agree with your boss?" asks Jason Langberg, a lawyer with the nonprofit Advocates for Children's Services.

One teacher on the panel can be selected by the student. The teacher Ricky wanted to sit on his panel was sick and out on the day his hearing was re-scheduled, according to Alexander. The school canceled the first hearing date for an unknown reason.

Ricky's latest trouble occurred when a teacher chastised him for being in a hallway. He says his language was inappropriate but not threatening. Moreover, he argues that the situation escalated because he found the teacher's language and demeanor threatening to him.

Alexander says the biggest challenge in her son's case was not being able to mention his newly diagnosed oppositional defiant disorder and ADHD, Alexander says. Children with special education needs are legally entitled to an evaluation of their alleged offense

in light of their diagnoses. If a person's behavior might be a manifestation of his or her disability, the punishments could change.

Because Ricky's diagnosis was so recent and there hadn't been documented indications of possible emotional disability before the incident, the new information could not legally be considered in the hearing.

Two days after the hearing, the family received notice that Ricky was suspended for the rest of the year. He was given the option to attend an alternative school in the district, but Alexander did not want him to go there because she thought the education was inferior and the environment dangerous.

"This is not a bad kid. He beats to his own drummer. He's outspoken, and he's got a few bad habits, but if you're in tune to that, he can excel in your class," she says.

Ricky agrees.

"My favorite classes are ones where it's hands-on and interactive," he says. "I get very easily distracted otherwise."

But then, what of the fights? Ricky swears he's not in a gang. All of his fistfight-related suspensions took place his freshman year at Hillside. "You gotta defend yourself, and then they'll [the gangs] leave you alone," he says.

Ricky was too angry to talk after learning of his long-term suspension.

His parents separated when he was in the eighth grade, and Alexander acknowledged the situation was difficult. "He has a problem with male authority figures that remind him of his father," she says.

Ask Ricky about his dad, and his body tenses up. He doesn't want to talk about him, he says, adding that his dad has nothing to do with what's going on with him.

Alexander says she won't surrender her child to life without an education. She insists he will get a GED and enroll in Durham Tech this spring.

Discipline policies vary widely across the state
Sadia Latifi, News and Observer, December 13, 2009

Researchers and advocates for children say flawed and uneven policies governing student conduct explain why so many of the state's public school students are banished from class each year.

"It's not like students in North Carolina are misbehaving more," said Joel Rosch, a researcher at Duke University's Center for Child and Family Policy. "The reason for our high rate is almost all a function of policy."

The policy differences among school districts explain why some, including Wake, have so many more suspensions than others, Rosch said.

"After Columbine, after Virginia Tech, a lot of schools started zero-tolerance policies that changed the culture of schools," said Jason Langberg, an attorney at Advocates for Children's Services, a project of Legal Aid of North Carolina that represents students in suspension hearings. "There's no inherent problem with the safe-schools movement. The problem is we're creating policies that don't actually lead to safe schools."

Districts brought in more school resource officers, hired by local law enforcement, to patrol schools. Punishments for smaller infractions such as dress code violations or truancy became stricter to combat a perceived gang culture, Langberg said.

The state lists 17 "dangerous and violent" acts that must be punished and reported to the state and law enforcement. They include having a weapon on school property. But a butter knife or tool could be classified as a weapon. These acts are at the core of zero-tolerance policies, meaning that suspensions are automatic.

Aside from these acts, school districts have discretion to create their own codes of conduct for which principals determine punishments.

In Durham, a student may get a long-term suspension for an offense, but long-term is defined as 11 days to a full year.

The Wake school system defines a long-term suspension as "removal from the school system for the remainder of the school year." Thus a Wake student may be punished far longer for the same offense.

Wake school board member Keith Sutton said he wants to re-examine the district's zero-tolerance policy in the next few weeks. "We as a community have to do more in terms of teaching our kids about good behavior and respect," Sutton said. "And then in the schools, we have to do more to try to be more innovative, creative, and thinking outside the box, and trying to figure out how we can keep kids in a learning environment."

Budget cuts spell end for Milburn
Ray Martin, News and Observer, June 11, 2009

Students walked across the stage at a Richard Milburn High School graduation for the last time Wednesday night.

The final graduating class for the alternative school comprised eight seniors from six Wake County schools. Milburn served students for 11 years.

The school is the largest of several alternative programs in Wake that offered classes to students suspended from regular schools for the school year. Operated by a private vendor contracted by the Wake County Public School System, Milburn High School served an average of about 165 students a year and more than 200 in 2008-2009.

In the face of declining revenue, Wake officials have decided to trim the \$1.2 million contract from next year's budget.

Now, students dealt long-term suspensions will have to take classes online, either at home or at a public library, or at one of several Wake teaching centers across the county.

"We aren't doing away with the services to those students," said Marvin Connelly, Wake's assistant superintendent for student support services. "We're just going to provide the services ourselves rather than contracting it out to a vendor. It won't save us the entire \$1.2 million, but it will definitely save us money."

Connelly said the feedback from parents and faculty in the Wake school system has been positive.

"I think once everyone ... figured out that we weren't doing away with the services, they were on board," he said.

Parents and students at Richard Milburn, though, were less optimistic about the school closing.

"Without this school, there's no telling where my son would be," said Andrea Tyler, whose son, Melvin Williams, graduated and gave the opening remarks at the ceremony. "The school gives students people to interact with who encourage them and give them hope of a better life. I've seen how Melvin has changed."

Williams said he plans to attend Wake Tech in the fall before transferring to a university where he hopes to run track. Before Wednesday's ceremony, he received praise from his mother and his principal for changing his attitude since he was suspended from Leesville Road last year for an altercation with another student.

"I probably would have dropped out and got my GED if it weren't for Richard Milburn," he said. "There were people to push me and make sure I was doing what I needed to be doing. It gave us a sense of pride to know people believed in us."

With more than eight long-term suspensions per 1,000 students, Wake had the 10th highest rate of long-term suspensions of the state's 115 school districts last year.

Bad alternative

Editorial, News and Observer, March 25, 2009

For students who disrupt public school classes with fighting or other outrageous behavior, long-term suspensions are a viable option, based on the principles that it's not fair to allow them to ruin the educational experience for others and that misconduct has consequences. But once that step is taken, and it ought to be viewed as a drastic step, it's not smart, or right, to deny those students at least a chance at continuing to attend class in a separate setting.

That chance has been offered in Wake County, but with budgets being tightened, school officials are thinking about doing away with alternative classes in favor of online learning. This would not be a wise or practical move. And the money it would save in the here and now likely would be spent later on, sadly on the suspended students who dropped out and gravitated toward crime and the prison system, which surely some of them would.

Wake uses long-term suspensions more than most systems. Of the 5,000-plus such punishments in North Carolina in 2007-2008, over 1,000 of them, or 21 percent, were in Wake County. The school district ranked 10th in the state out of 115 districts in the number of such suspensions per student.

Those who are so punished don't tend to be easy to defend, even though many typically come from troublesome family situations and poverty. But the school system can't or shouldn't give up on them, and that's what the alternatives have been about. This is because school officials understand the issues raised last Saturday on the opposite page by Beth Jacobs of the N.C. Justice Center and Cary Brege of Legal Aid of North Carolina.

Label them bleeding-hearts if you wish, but they made compelling points about these children, one of the first being that they are indeed children. Further, they noted that black students in North Carolina's public schools are suspended at three times the rate of white children, that black students with learning disabilities are three times more likely to be suspended from school than white students with such disabilities, that students who are suspended are more likely to drop out. And those who drop out wind up with more problems through life, from poverty to bad health to, yes, crime and imprisonment.

Alternative classes at least offer a chance to interrupt that cycle for some. The online option is problematic. It's difficult to oversee, and some of the kids on long-term suspension may not have ready access to computers. Thus, they'd be even more inclined to drop out.

No one envies the school board's tough choices here. Members face money pressure, and doubtless the expenditures for alternative programs are an easy target for some critics who shrug their shoulders and cynically believe kids on long-term suspensions don't have much chance of success anyway. But consider the words of Elvia Walker,

who works with such students in alternative classes at Richard Milburn School in Raleigh. She fears that if such students were denied a chance, they would gravitate to gangs, an increasing problem here and everywhere.

"These kids have made mistakes, but they can be saved," she said. And shouldn't we try?

Dealing with long-term suspended students
Keung Hui, News and Observer, March 24, 2009

Do schools in Wake issue long-term suspensions for students more quickly than they should?

As noted in today's article, that's a concern raised by some groups as Wake has one of the higher long-term suspension rates in the state. It's more of an issue now that Wake is proposing to eliminate the alternative programs for long-term suspended students in favor of offering them online courses from home.

At 8.3 long-term suspensions per 1,000 students, Wake had the 10th highest rate in the state last school year. In contrast, Durham's rate was 2.7 long-term suspensions per 1,000 students.

"Durham has just decided not to suspend so many kids," said Jane Wettach, director of Duke Law School's Children's Law Clinic.

In addition to the number of long-term suspensions, Wettach and Charlotte Turpin, president of the Harriet B. Webster Task Force for Student Success, questioned their length.

The state defines a long-term suspension as anything that lasts for 11 days or longer. Wake goes further by saying that they'll run the rest of the school year.

Wettach said too many students are being suspended for the rest of the year due to fighting.

"These are not hardened criminals," Wettach said. "They made minor mistakes."

Turpin said that, short of egregious offenses, Wake should reduce long-term suspensions to a shorter amount, such as for a month.

The Harriet B. Webster Task Force is one of the groups that would lose funding to provide services to long-term suspended students.

Long-term suspensions, long-term failures

Beth Jacobs and Cary Brege, News and Observer, March 21, 2009

Schools across the nation have seen an explosion in the number of suspensions, mainly due to zero tolerance policies that rely heavily on harsh disciplinary practices. The “zero tolerance” approach to school discipline in North Carolina has resulted in the use of suspension/expulsion for a broad variety of violations, even for minor infractions.

In fact, as actual school crime rates are decreasing, suspensions are increasing dramatically, and NC suspends students at a rate 45% higher than the national average. This suspension crisis threatens students’ right to an education.

It is true that officials must remove violent students from classrooms in order to secure safe and orderly schools. Nevertheless, Wake County’s designation of having the highest long-term suspension rate in the state suggests the practice may be overused, and research suggests it is counterproductive. In 2007-2008, there were 5,225 long-term suspensions in North Carolina. Wake County alone gave 1,103 long-term suspensions, or 21% of all long-term suspensions for the entire state North Carolina. These suspended students were—by definition—removed from school without any educational services, and many of those suspensions were for non-violent offenses such as tardiness or rule violations.

In the words of former Deputy State Superintendent of Education Brad Sneed: “We need to learn to solve problems and not put band-aids over them.” Although suspensions can be a legitimate disciplinary tool, North Carolina has the obligation to educate all students – even disruptive ones. Too often, suspensions are used as a quick fix for student disciplinary problems that require a more supportive and involved response. Suspending a child from school does not address the cause of the student’s misbehavior, nor does it teach the child how to behave differently in the future.

Excluding non-violent students from school is a drastic approach that does not further the school’s interest in safety. Studies have shown that suspending or expelling a student without an alternative education is ineffective at improving student behavior. According to the American Psychological Association, suspension is ineffective in reducing overall violence in schools and instead correlates with increased disciplinary problems and dropout rates in middle schools and high schools.

Many suspended students are disconnected from society and are vulnerable to life-long economic hardship and social failure. Health experts emphasize that students who are removed from the learning environment are more likely to engage in deviant behavior and identify with deviant peers. Punishing students by excluding them from school increases “student shame, alienation, rejection” while failing to seize the opportunity to teach students responsibility, the effect their behavior has on others, as well as trust and respect for authority figures.

Our state's over-reliance on suspensions places barriers around the educational opportunities of our most vulnerable youth – students of color, low income students, and students with special needs. Students who are suspended are disproportionately those who need educational opportunities the most. Students in districts with the lowest socioeconomic indicators are nearly four times as likely to be suspended as students in other school districts.

The extreme over-representation of students of color in the juvenile justice system is alarming – and is a direct result of the overuse of long-term out-of-school suspensions in North Carolina. Black students in public schools are suspended or expelled at nearly three times the rate of white youths and are punished more severely for lesser offense. Black students with learning disabilities are three times more likely than white students with learning disabilities to be removed from school.

Being suspended makes a student three times more likely to drop out, which leads to a lifetime of difficulty. The uneducated are primed for unemployment or marginal employment and all that often comes with it: impoverishment, criminal victimization and temptation, poorer health, shorter lives, political powerlessness, and despair. One year's "class" of North Carolina dropouts costs the state over \$1.3 billion in prison, parole and welfare costs.

Effective alternatives to suspension, in addition to a fair process for schools recommending a long-term suspension, are the answer to North Carolina's dropout crisis. School districts that implement effective alternatives to suspension report a reduction in discipline referrals as well as improved academic engagement and performance. Furthermore, providing suspended or expelled students with alternative education is an effective way to develop positive behaviors, improve academic performance and reduce drop-outs.

Group: suspension rates among black students not improving
Kelcey Carlson, WRAL, August 4, 2007

Traditional schools will be back in session in a few weeks, but one Wake County group is targeting parents now.

They're concerned that suspension rates among black students aren't improving. As advocates focus on parents, educators are looking for new ways to teach.

Delphine Daniels has a personal stake in suspension rates in Wake County. Her sons, who are black, have been suspended multiple times, she said.

"So I just got really concerned, because the suspensions were coming so fast," she said.

Sixty-seven percent of all short-term suspended students in Wake County for the past three years were black or multiracial and mostly boys. Wake County isn't alone. It's a statewide trend.

Calla Wright's advocacy group, Coalition of Concerned Citizens for African American Children, hosts monthly seminars to draw attention to and empower parents on these issues.

"Our goal is that all children are learning and that parents become effective advocates for their children," Wright said.

One way to combat the problem is to look at the way children learn. That was the focus of a program at six schools in Wake County last year.

"They actually studied the different ways boys and girls learn," said school board member Eleanor Goettee. "It rests with the quality of teachers and the training that teacher gets."

Daniels said she is doing her best to break the cycle.

"I'm petrified when my middle school child goes back that they'll be waiting on him, and it will just be a matter of time before here we go again," she said. "We don't have the tendency to forget what happened the year before."

Daniels said the hardest thing about suspensions is that they create reputations that are hard to overcome.

In Wake County, 34 percent of all black students get suspended. That's compared to 6 percent of the white student population.

In 2005-2006, 64 percent of suspensions were black students. Statewide, the numbers show the same trend.

Short-term suspension rates for black and multiracial students in other school districts showed the following:

In Johnston County, 46 percent of short-term suspensions are black or multiracial students. In Durham, the rate is 83 percent. Cumberland posts 73 percent. In Mecklenburg County, 79 percent of suspended students are black or multiracial.

Long-term disasters for youth
Jane Wettach, News and Observer, November 28, 2005

Picture this: High school students changing classes, hanging out with friends, trading comments. A fight starts. Fists fly, friends on either side join in. The fight is broken up by other students after a few minutes and everyone moves on to class. No one is seriously

hurt -- until news of the fight gets to school administrators: all the participants are kicked out of school for the remainder of the year.

As a result of their total exclusion from the educational system, most of them will fail their grade; many will be too demoralized to ever return to school. Some may end up in prison before the time when they are permitted to return to school.

When the Triangle Lost Generation Task Force examines the causes of the downward spiral of certain African-American and Latino men, it should work to bring public attention to the disproportionate and ineffective response of the public school administrators -- particularly in Wake County -- to the behavior of these young men. "Zero-tolerance" policies, which mandate that students who fight must be suspended for an entire school year, affected more than 750 students in Wake County in 2003-04, the last year for which statistics are available from the state Department of Public Instruction. Well more than half of those affected were African-American and Latino boys.

This "zero tolerance" approach is defended on the grounds that the school must be safe and violence cannot be tolerated. Students must learn that education is a privilege and if it is abused, it will be taken away. The "bad apples" must be removed to allow for the rule-abiding students to have the opportunity to learn without the disruptions and danger presented by the students who disobey the rules.

On their face, these justifications have rhetorical appeal. Regrettably, they rarely hold up in practice.

Social science research studies about long-term suspensions are virtually unanimous in reaching the conclusion that frequent suspensions, particularly long ones, are an ineffective discipline tool that neither makes schools safer nor improves the behavior of the offending child. The studies indicate that long suspensions are more likely to encourage antisocial behavior than prevent it, and schools that routinely use suspensions create an overall negative atmosphere that exacerbates the dysfunctional behavior of students.

Why don't suspensions work? First, suspension is an abandonment of the teaching role. Rather than trying to build a relationship with the student, model good behavior, offer alternative strategies for dealing with anger or solving disputes, schools that suspend children for long periods provide them with no useful tools. The suspended children feel discarded and rejected. When (and if) they return to school, they are academically behind, without a known peer group because they must repeat a grade, and alienated from school administrators.

Second, both neuroscience and psychological research shows that adolescents are, by and large, developmentally incapable of moderating their impulses and making fully rational decisions that take long-term consequences into account. As a society, we recognize that adolescents are not fully mature. This accounts for our separate juvenile

division of the courts, as well as for restrictions from entering into contracts, consenting to medical procedures, voting and driving, for example. Although even young children know the difference between right and wrong, that is an entirely different matter than having the skill, when under pressure, to exercise adult-like self control.

Yet we punish adolescents with very severe consequences -- extended exclusion from school -- as if they had the capacity to make fully reasoned and rational decisions and act accordingly.

While fighting need not be tolerated, a year-long suspension is the wrong response from educators. Long-term exclusion from school should be reserved only for those students who truly endanger their classmates, and few fights do. Most take place in the halls, on the sidewalks or off-campus, and thus do not disrupt the learning environment for the rule-abiding students.

By contrast to Wake's 758 long-term suspensions in 2003-04, Charlotte-Mecklenburg reported only 39 in that year, indicating that administrators can take other approaches. For one thing, they could impose significantly shorter suspensions. Better yet would be the adoption of school-wide "positive behavior support" programs that have good track records of reducing rule violations, or mandating participation in social skills workshops or school community service.

At the same time, society as a whole has a role. Many of the suspended students are those from the poorest families, with the lowest academic achievement and the least amount of family and social support. Their anger may well be expressing the distress of living in poverty amid a society of material excess, of living in a home without a father, of attending schools that do not recognize their learning needs or respect their culture. Until we are willing to address these greater problems in an aggressive and forthright way, the school-to-prison pipeline is not likely to be interrupted.

APPENDIX E: RECOMMENDED PUBLICATIONS

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AMERICAN CIVIL LIBERTIES UNION, LOCATING THE SCHOOL-TO-PRISON PIPELINE, *available at* http://www.aclu.org/files/images/asset_upload_file966_35553.pdf.

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⁶⁸ NEW ORLEANS RECOVERY SCHOOL DISTRICT, STUDENT CODE OF CONDUCT 13-17, *available at* <http://www.rsdl.net/Files/2008-2009%20Student%20Code%20of%20Conduct.pdf>.

⁶⁹ Denver Public Schools, Policy JK-Student Discipline, *available at* <http://www.dpsk12.org/policies/Policy.aspx?-db=policy.fp3&-format=detail.html&-lay=policyview&-sortfield=File&-op=eq&Section=J&-recid=32883&-find=>; Denver Public Schools, Policy JK-R-Student Conduct and Discipline Procedures, *available at* <http://www.dpsk12.org/policies/Policy.aspx?-db=policy.fp3&-format=detail.html&-lay=policyview&-sortfield=File&-op=eq&Section=J&-recid=32967&-find=>.

⁷⁰ ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT: HOW “ZERO TOLERANCE” AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE, PART FIVE: COMMUNITY PUSHBACK 35, *available at* <http://www.advancementproject.org/digital-library/publications/test-punish-and-push-out-how-zero-tolerance-and-high-stakes-testing-fu>.

⁷¹ CONN. GEN. STAT. § 10-233c, *available at* <http://www.cga.ct.gov/2007/ACT/PA/2007PA-00066-R00HB-07350-PA.htm>.

⁷² Linda Conner Lambeck, *Schools Get Good Grades in Reducing Suspensions*, CTPOST.COM (June 3, 2010), *available at* www.ctpost.com/news/article/Schools-get-good-grades-in-reducing-suspensions-5099.

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⁷⁴ SEATTLE PUBLIC SCHOOLS, STUDENT RIGHTS & RESPONSIBILITIES, STUDENT DISCIPLINE APPEALS 8, *available at* <http://www.seattleschools.org/area/discipline/AppealsOnly-English.pdf>.

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- ⁷⁷ CHICAGO PUBLIC SCHOOLS, STUDENT CODE OF CONDUCT 8, *available at* <http://www.cps.edu/Documents/Resources/StudentCodeOfConduct/StudentCodeOfConduct.pdf>.
- ⁷⁸ See e.g., Denver Public Schools, Policy JK-R-Student Conduct and Discipline Procedures § 6-3(B), *available at* <http://www.dpsk12.org/policies/Policy.aspx?-db=policy.fp3&-format=detail.html&-lay=policyview&-sortfield=File&-op=eq&Section=J&-recid=32967&-find=>.
- ⁷⁹ N.C. GEN. STAT. § 115C-391(d5)(5)-(6); *Givens v. Poe*, 346 F.Supp. 202, 209 (W.D.N.C. 1972); *In re Roberts*, 150 N.C.App. 86 (2003); WCPSS Board Policy 6530.4(A).
- ⁸⁰ There are only three organizations that provide free representation for low-income students who are facing long-term suspension: Legal Aid of North Carolina, Inc.; Duke Children's Law Clinic; and the North Carolina Central Juvenile Law Clinic. However, these organizations cannot represent all of the students facing long-term suspension because: they have funding restrictions on who they can represent; they have limited staff and budget sizes, their geographic coverage includes counties other than Wake; and/or their practices also include other types of cases.
- ⁸¹ *Givens v. Poe*, 346 F.Supp. 202, 209 (W.D.N.C. 1972); WCPSS Board Policy 6530.4(A).
- ⁸² Data obtained through a public records request.
- ⁸³ N.C. GEN. STAT. § 115C-391(d5)(7); WCPSS Board Policy 6530.4(A).
- ⁸⁴ *Givens v. Poe*, 346 F.Supp. 202, 209 (W.D.N.C. 1972); WCPSS Board Policy 6530.4(A).
- ⁸⁵ *Givens v. Poe*, 346 F.Supp. 202, 209 (W.D.N.C. 1972); WCPSS Board Policy 6530.4(A).
- ⁸⁶ N.C. GEN. STAT. § 225C-45(a).
- ⁸⁷ N.C. GEN. STAT. § 115C-391(c); WCPSS Board Policy 6530.4(B), 6530.5.
- ⁸⁸ Data obtained through a public records request.
- ⁸⁹ N.Y.C. DEPT. OF EDUC., REGULATION OF THE CHANCELLOR, STUDENT DISCIPLINE PROCEDURES, A-443, pp. 37, 41-42, *available at* <http://docs.nycenet.edu/docushare/dsweb/Get/Document-22/A-443.pdf>.
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- ⁹⁴ LOUISIANA RECOVERY SCHOOL DISTRICT – NEW ORLEANS, 2010-2011 STUDENT CODE OF CONDUCT, DUE PROCESS PROCEDURES FOR SUSPENSIONS 22, *available at* <http://www.rsdl.net/StudentsAndFamilies.aspx>.
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- ⁹⁶ SEATTLE PUBLIC SCHOOLS, STUDENT RIGHTS & RESPONSIBILITIES, STUDENT DISCIPLINE APPEALS 13, *available at* <http://www.seattleschools.org/area/discipline/AppealsOnly-English.pdf>.
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- ⁹⁸ BOSTON PUBLIC SCHOOLS, CODE OF DISCIPLINE 24, *available at* <http://www.bostonpublicschools.org/files/BPS%20Code%20of%20Discipline.pdf>.

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¹⁰⁰ Russell Skiba, Indiana Youth Services Association, *Zero Tolerance: The Assumptions and the Facts*, 2(1) EDUCATION POLICY BRIEFS 2, 3, 5 (Summer 2004), *available at* http://ceep.indiana.edu/projects/PDF/PB_V2N1_Zero_Tolerance.pdf.

¹⁰¹ Emailed sent to Jason Langberg, Attorney, Advocates for Children's Services (July 12, 2010) (on file with author).

¹⁰² Brief for Educators Supporting Petitioners, *Graham v. Florida*, 130 S.Ct. 2011 (2010) (Nos. 01-7412 & 08-7621) (internal citations omitted).

¹⁰³ N.C. GEN. STAT. § 115C-47(32a).

¹⁰⁴ See <http://www.wcpss.net/school-directory/special.html>.

¹⁰⁵ Specifically, the North Carolina Department of Public Instruction found the following:

- "The WCPSS is found to be in noncompliance with the regulations for failing to develop an IEP based upon the unique needs of each student with a disability who is long-term suspended."
- "The WCPSS is found to be in noncompliance with the IDEA regulations for failing to provide a continuum of placements, for limiting its IEP Team to only one option when determining the appropriate IAES, and for failing to provide students with disabilities who are long-term suspended, with a placement in the least restrictive environment (LRE)."
- "The WCPSS is also found to be in noncompliance for failure to convene monthly meetings to determine the continued appropriateness of homebound instruction for each student with a disability whose H/H placement was for a disciplinary removal."
- "The WCPSS is in noncompliance for failing to report valid and reliable information on the April 1, 2010, Child Count."
- "The WCPSS is found to be in noncompliance with the IDEA for failure to provide a free appropriate public education for the students who were placed on H/H for LT suspension and for behavior."

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¹⁰⁷ Denver Public Schools, Policy JK-R-Student Conduct and Discipline Procedures § 6-6E, *available at* <http://www.dpsk12.org/policies/Policy.aspx?-db=policy.fp3&-format=detail.html&-lay=policyview&-sortfield=File&-op=eq&Section=J&-recid=32967&-find=>.

¹⁰⁸ Denver Public Schools, Policy JK-R-Student Conduct and Discipline Procedures § 6-1D, *available at* <http://www.dpsk12.org/policies/Policy.aspx?-db=policy.fp3&-format=detail.html&-lay=policyview&-sortfield=File&-op=eq&Section=J&-recid=32967&-find=>.

¹⁰⁹ KENTUCKY REV. STATS. § 158.150.

¹¹⁰ CHICAGO PUBLIC SCHOOLS POLICY MANUAL 7, *available at* <http://policy.cps.k12.il.us/documents/705.5.pdf>.

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¹¹³ For more information about the Juvenile Justice Project, visit <http://law.campbell.edu/pubs/jjp.html>.

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¹¹⁶ “Restorative Justice [RJ] is a philosophy and an approach to addressing misbehavior, conflict, and offenses while keeping students in school and making them accountable for their actions. RJ asks three questions: what was the harm caused to both the individual and the community; who is responsible for causing the harm and making things right; and how can the harm be repaired and relationships restored to the greatest extent possible. RJ often involves dialogue between two or more parties or group conferencing—meeting including the victim, the offender, and the affected community. The main goals are to: provide a safe space so that the victim and community have a say in how to fix the problem and help determine appropriate consequences; put a ‘face’ on the problem so that the offender can understand the impact of their actions; and provide an opportunity for those responsible for the problem to fix it. This restores relationships and reduces the chances of future misbehavior.” ADVANCEMENT PROJECT, ALTERNATIVES TO SUSPENSION, EXPULSION, AND SCHOOL-BASED ARREST 2, *available at*

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¹¹⁹ AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN, RECLAIMING MICHIGAN'S THROWAWAY KIDS: STUDENTS TRAPPED IN THE SCHOOL-TO-PRISON PIPELINE 41 (2009).

¹²⁰ DAVID RICHART, BUILDING BLOCKS FOR YOUTH, NORTHERN LIGHTS: SUCCESS IN STUDENT ACHIEVEMENT AND SCHOOL DISCIPLINE AT NORTHERN ELEMENTARY SCHOOL 9-10 (Apr. 2004), *available at* <http://www.buildingblocksforyouth.org/kentucky/kentucky2.pdf>.

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¹²³ BALTIMORE CITY PUBLIC SCHOOLS, ADMINISTRATIVE REGULATIONS 3, *available at* <http://www.boarddocs.com/mabe/bcpss/Board.nsf/Public?OpenFrameSet>.

¹²⁴ HELEN WESTMORELAND, ET AL, HARVARD FAMILY RESEARCH PROJECT, SEEING IS BELIEVING: PROMISING PRACTICES FOR HOW SCHOOL DISTRICTS PROMOTE FAMILY ENGAGEMENT 6 (July 2009), *available at* <http://www.hfrp.org/family-involvement/publications-resources/seeing-is-believing-promising-practices-for-how-school-districts-promote-family-engagement>.

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¹⁵⁶ Available at <http://www.ncpublicschools.org/research/discipline/reports/>.

¹⁵⁷ Available at http://www.ncdjjdp.org/cpsv/school_resource_officer.html.

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