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GEORGIA APPLESEED CENTER FOR LAW & JUSTICE

EFFECTIVE STUDENT DISCIPLINE: KEEPING KIDS IN CLASS

IMPROVING THE “SCHOOL TO SUCCESS PIPELINE”



AN ASSESSMENT OF GEORGIA’S PUBLIC
SCHOOL DISCIPLINARY POLICIES,
PRACTICES AND OUTCOMES AND
RECOMMENDATIONS FOR CHANGE



Mission of Georgia Appleseed: To increase justice in Georgia through law and policy reform

Georgia Appleseed Center for Law & Justice is a non-partisan not-for-profit organization devoted to law that serves the public interest. Using the skills of hundreds of volunteers, mainly lawyers and other professionals, Georgia Appleseed focuses on achieving root-deep changes to laws and policies that unfairly impact children, the poor and other large groups of marginalized people in our state. Georgia Appleseed is an independent affiliate of the national Appleseed network.

JUSTGeorgia is a statewide juvenile justice coalition of community organizations and individuals created in 2006. Its purpose is to advocate for change to Georgia's juvenile code and the underlying social service systems to better serve Georgia's children and promote safer communities. The lead partner organizations are Georgia Appleseed, The Barton Child Law and Policy Center of the Emory University School of Law, and Voices for Georgia's Children. Learn more at www.JUSTGeorgia.org.

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Our JUSTGeorgia Partners



Georgia Appleseed Center for Law and Justice is pleased to collaborate with our JUSTGeorgia lead partners, Voices for Georgia’s Children and the Barton Child Law and Policy Center of Emory Law School, in this effort to assess the disciplinary policies and practices of the Georgia public school system. **JUSTGeorgia** is a statewide juvenile justice coalition created in 2006 to advocate for change to Georgia’s juvenile code and the underlying social service systems to better serve Georgia’s children and promote safer communities.

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Consulting Committee

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EFFECTIVE STUDENT DISCIPLINE: KEEPING KIDS IN CLASS

PREFACE – PURPOSE AND SCOPE

This nation was shocked by the tragedy of student violence at Columbine High School in Colorado in the spring of 1999. One month later, six students at Heritage High School in Conyers, Georgia, suffered injury at the hands of a fifteen-year old classmate. As this report was in preparation, a Nebraska high school student, reportedly removed from school and suspended for driving his car on the school's football field on New Year's Day 2011, returned to shoot and kill the Assistant Principal. In March, 2011 an Indiana middle school student returned to the school after being removed and shot a classmate. In April, 2011, a kindergartner in Houston, Texas, brought a loaded gun to school which accidentally discharged injuring that student and two others.

Understandably, school administrators around the country have searched for ways to assure that their students can come to school and learn in a safe environment. Many decided to address this challenge by adopting a tougher approach to student discipline including the institution of "zero tolerance" policies. Such policies mandatorily require the initiation of disciplinary action and can result in the imposition of harsh sanctions without regard to the student's intent, prior disciplinary history, or other mitigating factors.

Some observers have argued that these more rigorous approaches to student discipline have overreached, resulting in unintended consequences. Incidents of severe punishment for minor or inadvertent violations of student codes of conduct have been reported from around the country and in Georgia. These include the ten-day suspension of an eleven-year-old in Cobb County, Georgia, for her possession of a "Tweety Bird" key chain and the arrest and suspension of a ten-year old Newton County boy who brought a small cap gun to a "show and tell" about the civil war.

Late in 2009, a fourteen-year old student in Morgan County misplaced his regular school backpack one morning. He picked up one that he used on camping trips as a substitute. On the way to school, he realized that the backpack contained a fishing knife. He quickly disclosed this mistake to the principal. Ultimately, however, the matter was reported to law enforcement authorities. The boy was taken into custody and was suspended from school.

The Morgan County incident motivated a Georgia state senator to introduce a bill designed to limit the consequences of such behavior. This legislation developed strong bipartisan support and was passed by the General Assembly on the last day of the 2010 legislative session. Another bill passed affecting the law that has been used to charge a student with a violation of the prohibition against "disrupting" a public school.

The Georgia Appleseed *Effective Student Discipline: Keeping Kids in Class* project has collected and reported information that should be helpful to all stakeholders involved in any assessment of the effectiveness of Georgia's public school system student discipline process.

In our Phase I Report issued in June 2010¹, we presented our preliminary findings, which included:

(a) an analysis of student discipline data collected from the schools and school districts by the Georgia Department of Education,

(b) a review of the student discipline policies in place in a representative sample of sixty schools in fifteen school districts located throughout the state, and

(c) an assessment of the current state law concerning public school student discipline.

In addition, we offered a first look at alternative approaches for managing student behavior that can supplant harsh and often ineffective disciplinary actions.

Following publication of the Phase I Report, we initiated a more detailed Phase II review and analysis of the now seven years worth of student discipline data reported by Georgia's public schools. In addition, we coordinated interviews with over 200 stakeholders whose positions in our state and local educational system require them to be committed both to the safety of Georgia's students and to the reasonable opportunity for each student to obtain a quality high school education that will prepare him or her for the work force or for further education. These stakeholders included district superintendents and administrative staff, school administrators, counselors and teachers, school resource officers, and juvenile court judges and other participants in the juvenile justice process. In addition we sought the input of parents and students through an online survey instrument.

The results of these Phase II efforts, along with our Call to Action suggesting specific steps that can be taken to improve student discipline practices and outcomes in Georgia's K-12 public school system, are presented in this Report.²

¹ GEORGIA APPLESEED CENTER FOR LAW & JUSTICE, EFFECTIVE STUDENT DISCIPLINE: KEEPING KIDS IN CLASS-PHASE I REPORT (June 2010)[hereinafter "Phase I Report"], available at <http://gaappleseed.org/keepingkidsinclass/phase1-report.pdf>.

² Those readers who have read the Phase I Report will note that several portions of that report are repeated here either without change or with appropriate updates. We elected to create a single stand-alone document to reduce the need for continued cross-references between this report and our earlier publication.

EXECUTIVE SUMMARY

Introduction

All of us became vividly aware of the tragic consequences of school place violence as we watched the chilling events unfold at Columbine High School in Colorado over a decade ago. More recent shooting events at Nebraska and California schools serve as continuing reminders that our schools must maintain an environment for all students that assures their physical safety and provides a setting that is conducive to teaching and learning. It is also vitally important that schools provide each individual student, even one who may present disciplinary challenges, with a reasonable chance to complete a quality high school education. After all, in many states, access to primary and secondary public education is a constitutional right. In Georgia, for example, the state constitution imposes upon the state the primary obligation to assure that *all* students are provided with an adequate education.

Some have argued that many school systems have reacted to the threat of school violence and to the need for an orderly learning environment by applying overly rigorous disciplinary practices which needlessly force kids out of class and increase their likelihood of dropping out permanently. These include certain "zero tolerance" policies, expanded use of law enforcement personnel in school discipline, and other policies and practices. Recent studies carried out in Florida, Texas, Louisiana, and the City of Philadelphia revealed the extensive use of serious disciplinary action for relatively minor misbehavior. In addition, disciplinary action is being imposed on African-American students at a rate significantly greater than that group's percentage of the public school population. The latter phenomenon was also noted in a 2005 report issued by the Georgia Department of Education ("GaDOE").

The adverse individual and societal impacts associated with an elevated high school drop out rate are enormous. The existence of the "school to prison pipeline" is beyond reasonable debate. In this Twenty-First Century, a young person who does not obtain *at least* a quality high school education will have enormous difficulties in becoming gainfully employed and potentially may be more susceptible to engaging in unlawful behavior. This is particularly true if the person is introduced into the criminal justice system prematurely.

Thus, school administrators and teachers face a very difficult task in balancing two potentially conflicting obligations: the right of all students to have a safe and effective school learning environment and the right of each student to have a reasonable chance to obtain at least a quality high school education.

Effective Student Discipline: Keeping Kids in Class

The Georgia Appleseed *Effective Student Discipline: Keeping Kids in Class* project has collected information that will be helpful to all stakeholders who are involved in assessment of the effectiveness of Georgia's public school system student discipline process. In this report, we present our findings and recommendations which include:

- A review and analysis of **student discipline data** collected from the schools and school districts by the GaDOE;
- a review of the **student discipline policies** in place in sixty schools in fifteen school districts located throughout the state;
- a summary of “**Voices from the Field**” compiling the results of interviews with over 200 educators and other stakeholders and of surveys of several hundred parents and students;
- an assessment of the **current state law** concerning public school student discipline.
- a summary of critical **Keys to Effective Student Discipline**;
- a suggestion for careful reconsideration of district **zero tolerance policies**, and
- a **Call to Action**

Disciplinary Action Data Review & Analysis

Georgia Appleseed, in cooperation with the Atlanta office of a Big Four accounting firm, reviewed and assessed student disciplinary data collected by school districts and compiled by GaDOE for seven years (school years 2003-04 through 2009-10).

Our key findings include:

- In School Year 2009-10, 8.1 percent of students in Georgia's K-12 public school system received at least one out of school suspension ("OSS") disciplinary action. This reflects an overall reduction from the 9.3 to 9.5% rate experienced in the first five years of the period under review.
- During the most recent school year for which credible national data are available (2005-06), Georgia ranked tenth highest among all states and the District of Columbia in the rate of OSS discipline.
- Use of exclusionary discipline is highly variable among the school districts in Georgia. In some districts, its use is rare. Other school districts consistently impose OSS on more than 20 percent of the school population annually. In some individual schools, the percentage of OSS actions can affect up to 40 percent of the students per year.

- OSS rates and graduation rates are negatively correlated. That is, schools with relatively high OSS rates tend to have lower than average graduation rates. For example, in School Year 2009-10, the cohort of schools with the highest OSS rates for the seven year period that we analyzed had an average graduation rate of 74.8 percent. This was six points lower than the reported state average graduation rate of 80.8 percent. It was also almost 15 percentage points lower than the average reported graduation rate (i.e., 89.4 percent) of the group of school districts with the lowest OSS rates during the same period.
- The vast majority of OSS actions were taken for nonviolent actions. For example, in School Year 2009-10, 69 percent of the OSS actions were imposed for such behavior. A very substantial percentage of the incidents were not described with specificity but were categorized as "other discipline incident."
- Male students received two-thirds of the OSS actions and three-quarters of the expulsions during the period under review.
- African-American students were consistently more than three times as likely to receive an OSS than students of other racial classifications. This is a state-wide phenomenon with more than 90 percent of all school districts regularly reporting OSS data suggesting potential disproportional use of this disciplinary action. Poor African-Americans were markedly more likely to receive OSS than more affluent African American students.
- Other student subgroups may also be disproportionately subjected to OSS discipline:
 - Students eligible to participate in the free or reduced meal payment program (a status often used as a surrogate for children in poverty) and English Language Learner students were subject to OSS discipline at a rate more than twice as high as students who were not in these subgroups.
 - Special Needs Students received OSS at a rate slightly higher than 1.5 times the rate experienced by General Education students.

District/School Policies

In cooperation with the Atlanta office of the law firm of Nelson Mullins Riley & Scarborough, LLP, Georgia Appleseed carried out an examination of the publicly available disciplinary policies of fifteen Georgia school districts plus individual public schools within those districts. The analysis focused on identifying any zero tolerance policies in place but also more generally assessed the disciplinary policies.

Key findings include:

- All of the districts reviewed imposed zero tolerance policies for the limited number of student behaviors for which such discipline is mandated by state law.
- Districts often impose zero tolerance or similar policies for various types of behavior beyond state mandates. There is wide variation in the types of offenses covered.
- The overarching characteristic of the policies of the districts reviewed is the broad discretion granted to school officials in the handling of most of the day-to-day disciplinary challenges faced by teachers and administrators.

Voices from the Field

During the fall of 2010, Georgia Appleseed volunteers conducted interviews throughout the state with over 200 student discipline stakeholders. These stakeholders were school district staff members (including several district superintendents) along with principals and assistant principals, teachers, counselors and other staff members with student discipline responsibilities from elementary, middle and high schools. A total of 17 school resource officers (“SROs”), i.e., law enforcement personnel whose “beat” is a school or school system, were also interviewed. We also talked with a number of attorneys who regularly advise school boards on student discipline.

In addition, we met with stakeholders from outside the school system who deal with student discipline matters that involve referrals to the juvenile or criminal justice system. Juvenile court judges, intake officers, probation officers, prosecuting attorneys and defense lawyers participated.

Finally, Georgia Appleseed distributed an electronic survey instrument designed to elicit the view of the two other key stakeholder groups involved in student discipline issues—students and their parents. This survey was created and distributed in close cooperation with the Georgia PTA.

The large number of often widely varying views expressed cannot be readily summarized in this Executive Summary. The reader is encouraged to review the “Recurring Themes” outlined at pages 63-74 and 77-78 below.

Legal Setting

Most of the statutory law related to public school student discipline is found in Title 20, Chapter 2, Article 16, Part 2 of the Georgia Code. The current statute reflects the substantial revision of the law in this area that occurred when the Georgia General Assembly passed the "Improved Student Learning Environment & Discipline Act of 1999." Some vestiges of the earlier law remain in force and the 1999 legislation has been subject to some amendments.

Local Control

Perhaps the overarching theme of Georgia's student discipline law is the strong reliance on local control in the development of overall discipline policies and the application of those policies in individual cases. Thus, primary responsibility for student discipline policy development and implementation rests with the local school districts and the schools are subject only to a limited number of state mandates or minimum standards. Districts are mandated to "... provide for disciplinary action against students who violate student codes of conduct." In addition, districts are directed to provide for parental involvement in developing and updating the codes.

The student codes of conduct must address a long list of behaviors that may occur on school grounds, at school-related activities, or on school buses. These behaviors range from physical assault and weapons offenses to "disrespectful conduct" and truancy. Each district must send a copy of its adopted policies to the GaDOE in order to be eligible for state education funding but the law makes no mention of any substantive review by GaDOE.

Georgia law continues the theme of local control by emphasizing the authority of the individual classroom teacher to maintain order. The teacher also has broad authority to remove from the classroom a student who repeatedly or substantially interferes with the teacher's ability to teach, subject to oversight and review by the local school principal.

Limited State Mandates

Georgia law does include a limited number of provisions establishing minimum standards or other requirements that are to be implemented by local school districts. Some of these provisions arguably weigh in favor of imposing a zero tolerance approach to student discipline. Other provisions, however, seem to point the way to a more nuanced discretionary approach.

For the most part, Georgia law defers to the districts the responsibility for determining the appropriate level of disciplinary response to violations of student codes of conduct. In a limited number of situations, however, the General Assembly has mandated certain minimum disciplinary responses which can be interpreted as "zero tolerance." Specifically, these provisions

can be activated by bringing a firearm to school, by multiple incidents of bullying, or by committing an act of physical violence against a teacher or other school personnel.

On the other hand, a number of statutory provisions arguably require the exercise of sound discretion in the development of school disciplinary policy. Of particular interest is the provision that requires that the district discipline policies include a "progressive discipline process." This process is defined as one designed to create the expectation that the degree of discipline will be in proportion to the severity of the behavior leading to the discipline, that the previous discipline history of the student being disciplined and other relevant factors will be taken into account, and that all due process procedures required by federal and state law will be followed. This provision can be read to prohibit any sort of zero tolerance or other policy that would limit the discretion of a school disciplinary official to take into account the factors listed in the statute.

In addition, a few statutory provisions require that codes of conduct be "age appropriate." At least implicitly, this is recognition that codes of conduct should provide sufficient discretion to take into account the relative culpability of students of significantly different levels of maturity.

The following language appears at several points in the school discipline statute: "It is the policy of this state that it is preferable to reassign disruptive students to alternative educational settings rather than to suspend or expel such students from school." This language would seem to be a clear statement that, at least as to "disruptive" students, out of school suspensions or expulsions alone should be an option of last resort. The law also authorizes training programs in conflict management and resolution and in cultural diversity for voluntary implementation by local boards of education for school employees, parents and guardians, and students. Finally, GaDOE is required to provide assistance upon request to school districts seeking to establish a "climate management program." One of the purposes of such a program is to decrease "... student suspensions, expulsions, dropouts, and other negative aspects of the total school environment."

Keys to Effective Student Discipline

An effective student discipline program in a school is one that properly balances the need to maintain an environment for *all* students that is safe and conducive to learning with the right of *each* student to have a reasonable opportunity to obtain an adequate education. While there are circumstances that warrant the imposition of disciplinary action that removes a student from the classroom, such action should be taken only after a reasonable effort is made to address the student's behavior through less stringent measures unless immediate action is required to protect the safety of the student or others.

Based upon our interviews with educational stakeholders from around the state and our independent research and analysis, Georgia Appleseed has identified the following attributes of an effective student discipline program. Many of these attributes are the same as those that contribute to a school's overall educational excellence. This is not surprising since effective

student discipline does not exist in its own discrete “box” but rather must part of an integrated learning delivery strategy.

In the report, we address and discuss in detail the need for:

- Focused and Intentional Leadership
- Committed and Well-Trained Teachers
- Parental/Community Engagement, and
- An Integrated Approach involving equally robust attention to all four required elements of a student code of conduct:
 - Standards of Behavior
 - Progressive Discipline Process
 - Student Support Process
 - Parental Involvement Process

We also spend substantial time in the report discussing the potential implementation of the “positive behavioral interventions and supports” (“PBIS”) framework as at least one avenue to an integrated approach to effective student discipline and behavior management. A PBIS effort recently initiated in one Georgia school district was described as follows:

Positive Behavior Support, commonly referred to as PBS, is a proactive school-wide approach to discipline. In essence, it's a way to stop misbehavior before it starts through a systematic process of teaching, modeling, and reinforcing expected school behavior. PBS focuses on the creation of effective and positive learning environments as a means of increasing academic achievement. PBS methods are research-based and have a strong track record of significantly reducing the occurrence of problem school behaviors. Results include increased academic performance, increased safety, and more positive school climates.

A Perspective on Zero Tolerance

Many Georgia school districts have adopted zero tolerance policies designed to deter and punish various types of misbehavior. These policies mandate out-of-class discipline (and sometimes court referrals) for the prohibited behaviors without regard to the student’s intent or other mitigating circumstances. Several of the educators who participated in our interview process strongly support such policies and argue that they have been effective in limiting undesirable behavior such as fighting and drug use. Others argue against the use of these policies or at least urge that some level of discretion be exercised in their application. Doubters

point to numerous examples of absurd results that can be the unintended consequences of strict adherence to zero tolerance.

School districts have substantial authority to re-evaluate and modify any zero tolerance policies that go beyond state mandates. Furthermore, with regard to the state-mandated policies, two of the three expressly apply only to intentional acts so that the issue of intent must already be addressed in applying these policies. Avenues also exist to allow for the application of some discretion in the context of the firearms in school statute.

Given the strong divergence of views on this issue, Georgia Appleseed urges each school district to initiate a process to review carefully its zero tolerance policies. In particular, we suggest that districts consider whether it would be appropriate to make it clear that such policies apply only to knowing and intentional actions. This effort could be undertaken as part of the annual review of the student code of conduct carried out by most districts.

Call to Action

Georgia Appleseed has assessed student disciplinary data submitted by all schools in Georgia for the last seven complete school years. Georgia Appleseed has comprehensively analyzed the student discipline requirements imposed on and guidance provided to school systems by the General Assembly and by the state Department of Education. We have considered the findings of researchers who have assessed student discipline in other states. We have heard the voices of hundreds of education stakeholders through our interviews and the parent/student survey. Based on these efforts, Georgia Appleseed makes the following recommendations for action by state education policy makers and the parents of Georgia's current and future public school students.

Public Education as "Priority No. 1"

Public policy in an era of limited resources mandates the establishment of clear governmental spending priorities. Assuring quality public education for all of Georgia's children should be Priority No. 1.

The investment that we make in our children today will pay a significant return in the form of the personal enrichment of each individual's life, the enhanced capacity of each individual to participate meaningfully in our democracy, and the heightened potential economic productivity of each individual. In addition, society will collectively benefit from reduced costs for social services and prisons. If we do not commit to this level of effort, however, even in the face of limited economic resources, we face the grim reality of a growing permanent underclass with all its associated economic and societal costs.

Full Disclosure

Georgia Appleseed recommends that each public school be required to make full public disclosure annually of its student discipline performance using data that is required to be collected under existing law. Specifically, the school should report incidence rates for in-school suspensions, out-of-school suspensions, and expulsions (with and without an alternative education setting placement). The incidence rates (i.e., percentage of students at the school and in the district receiving such discipline) should be compared to the state average incident rate and to the range of incident rates statewide for the school year in question. The data should be presented for all students and for individual subgroups based on grade level, gender, race, students with disability status, and eligibility for free and reduced lunch.

Assessment of Alternative Education Settings

The need for more and better alternative education options for students who do not perform well in the traditional general education setting was a recurring theme in our education stakeholder interviews. Georgia Appleseed recommends that the Georgia Department of Education carry out an assessment of the alternative education settings currently in place in Georgia and issue a report to the General Assembly and the public. The report should assess the quality of the educational experience in such settings based upon criteria to be developed by the Department. The report should also include recommendations as to actions that should be taken to assure that every alternative education setting provides a quality education opportunity to each assigned student.

Training and Support

Effective Behavior Management

The General Assembly should assure that adequate resources are provided so that training and support services are available to assure that every school that wishes to implement an integrated student behavior management program should be able to do so within the next five years.

Special Education Students

Another recurring theme, especially in survey comments from parents, was that general education teachers were often ill prepared to manage the behaviors of students with disabilities assigned to their classroom. A detailed study of the extent to which general education teachers receive such specialized training and the feasibility of expanding such training opportunities were beyond the scope of this report. Because of the prevalence of these comments, however, Georgia Appleseed recommends that the Georgia Department of Education evaluate any such need for increased training.

Statutory Revisions

School Disruption

Section 20-2-1181 of the Georgia Code makes it unlawful "... for any person to knowingly and intentionally or recklessly disrupt or interfere with the operation of any public school, public school bus, or public school bus stop." A violation of this provision is punishable as a misdemeanor of a high and aggravated nature.

Based on our review of a number of juvenile court records this "disruption" statute is widely used and sometimes reflects the highest number of individual counts filed. Despite a recent amendment, this law provides too great an opportunity for unnecessary criminalization of behavior that should be handled at the school level rather than by the court system. Any serious misbehavior by a student can still be charged under a wide variety of specific statutory provisions.

Since the statute may well have a legitimate purpose if applied to someone who is not a student at the school, we suggest that language be added to the statute to make it clear that it does not apply to a student who is enrolled in the public school or is assigned to the school bus or bus stop where the disruption occurs.

Tribunal Witness Subpoenas

Before a long term suspension or an expulsion is imposed, the student may dispute the proposed action at an administrative hearing or "tribunal." In tribunal proceedings, due process for students includes, among other rights, the ability to present evidence relevant to the disposition of the disciplinary matter. Georgia law provides that school boards have the authority to summon witnesses. Students and their parents periodically request that subpoenas be issued to witnesses to compel their presence at tribunal hearings. A recent Georgia appeals court ruling concluded that such summons were not enforceable. As a matter of fundamental fairness, we urge the General Assembly to enact legislation as soon as possible to make school board subpoena power enforceable.

Student Discipline Reporting Matters

Our analysis revealed that school referrals to juvenile and adults courts are not being consistently reported by all school systems. In addition, many school systems make extensive use of an identifier code designated "other discipline incident" which makes it difficult to assess the reported data meaningfully. It is important to all of Georgia's K-12 public education stakeholders that student discipline data be accurately and consistently reported at the school, district and state level. We urge GaDOE to work with the stakeholders to:

- Add appropriate codes to the student discipline data reporting guidance to assure accurate reporting of disciplinary referrals to alternative education *programs*;

- Clarify the scope of the requirement to report court referrals from the schools;
- Clarify the circumstances in which the Discipline Incident Type Code 24 ("Other Discipline Incident") may be used.

It Takes a Parent

In most Georgia school districts, the student codes of conduct focus much more on standards of behavior and progressive discipline procedures than they do on student supports and parental involvement. We urge the school systems to address this issue through the implementation of an integrated behavioral management approach that gives proper effect to all four co-equal requirements for the student code of conduct.

This call, however, is directed to parents.

Georgia Appleseed recognizes that many parents are already deeply and effectively involved in the education of their children. Many parents, however, are not. Georgia Appleseed is also fully aware of the many obstacles to effective parental involvement especially for low income or single parent families or for parents who are English Language Learners or are from cultures where direct involvement in schools is not the norm.

The unfortunate truth, however, is that systemic change will not likely occur in many school districts without an effective demand for such change by a broad cross section of parents. Therefore, we urge parents who review this report to become aware of the disciplinary practices and outcomes in their district and school and to advocate for change in circumstances where the system relies excessively upon out of class disciplinary actions.

Georgia Appleseed hopes to be able to facilitate a response to this call for enhanced parental involvement. We will advocate for the full disclosure of disciplinary action data as discussed in this Call to Action. We also plan to present the findings of this report to groups of parents around the state. Such presentations will be tailored to present data relating to the district and schools in the locale where the presentation is being made. In cooperation with other stakeholder and advocacy groups we will also seek to inform parents as to effective means to coalesce on a “grassroots” level and present their views to decision makers at the state, district and school level.

Many important players must be involved to assure that Georgia students have both a safe school environment and a meaningful opportunity to obtain a quality high school education. One thing is sure though: It takes a parent!

INTRODUCTION – THE ANALYTICAL CONTEXT

A substantial body of commentary has developed over the last decade on issues related to student discipline practices and the effects of such practices on dropout rates. We do not intend here to provide a comprehensive literature review. Rather, outlined below are several of the key findings of researchers and commentators for the purposes of establishing the context in which we have carried out our analysis in Georgia. An extensive bibliography of pertinent research material and other commentaries is attached as Appendix A.

I. High School Dropout Consequences

At the outset of this analysis it is important that we recognize why it is vitally important that we keep kids in class. The existence of the "school to prison pipeline" is beyond reasonable debate. In this Twenty-First Century, a young person who does not obtain *at least* a quality high school education will have enormous difficulties in becoming gainfully employed and potentially may be more susceptible to engaging in unlawful behavior. This is particularly true if the person is introduced into the criminal justice system prematurely. In 2003, The Civil Rights Project at Harvard University reported:

Adult prisons and juvenile halls are riddled with children who have traveled through the school-to-prison pipeline. Approximately 68 percent of state prison inmates in 1997 had not completed high school. Seventy-five percent of youths under age eighteen who have been sentenced to adult prisons have not completed tenth grade. An estimated 70 percent of the juvenile justice population suffers from learning disabilities, and 33 percent are reading below the fourth grade level. The single largest predictor of subsequent arrest among adolescent females is having been suspended, expelled or held back during the middle school years.³

As will be discussed in greater detail below, the failure to keep kids in class and out of the school to prison pipeline may have an even more alarming impact on children of color whose discipline rates significantly exceeds their percentages of the public school population.⁴

In the fall of 2009, the Center for Labor Market Studies at Northeastern University issued a detailed report on the link between dropping out of high school and economic status and incarceration rates.⁵ Based on 2006-2007 data, the report concludes that, among incarcerated

³ JOHANNA WALD & DANIEL J. LOSEN, THE CIVIL RIGHTS PROJECT AT HARVARD UNIVERSITY & NORTHEASTERN UNIVERSITY'S INSTITUTE ON RACE AND JUSTICE, DEFINING AND REDIRECTING A SCHOOL-TO-PRISON PIPELINE 11 (2003)(citations omitted), *available at* http://media.wiley.com/product_data/excerpt/74/07879722/0787972274.pdf.
⁴ *Id.*

⁵ See ANDREW SUM, ISHWAR KHATIWADA, JOSEPH MCLAUGHLIN & SHEILA PALMA, CENTER FOR LABOR MARKET STUDIES, NORTHEASTERN UNIVERSITY, THE CONSEQUENCES OF DROPPING OUT OF HIGH SCHOOL: JOBLESSNESS AND JAILING FOR HIGH SCHOOL DROPOUTS AND THE HIGH COST FOR TAXPAYERS (2009), *available at* http://www.clms.neu.edu/publication/documents/The_Consequences_of_Dropping_Out_of_High_School.pdf.

young persons (sixteen to twenty-four years of age), high school dropouts are institutionalized at a rate sixty-three times higher than young college graduates and six times higher than high school graduates.⁶ In addition the report noted: "*Nearly 1 of every 10 young male high school dropouts was institutionalized on a given day in 2006-2007 versus fewer than 1 of 33 high school graduates.*"⁷ The report also presented data showing the dramatic negative economic consequences for students who fail to complete a high school education.

In Georgia, the state Department of Corrections reported that, of the 19,486 persons admitted to prisons in the state in Fiscal Year 2009 for whom educational data was reported, 13,335 (or 68.4%) had less than a high school education or GED.⁸

II. Safe Schools v. Individual Student Opportunity: A Difficult Balance

It is imperative that our schools maintain an environment for all students that assures their physical safety and provides a setting that is conducive to teaching and learning. It is also vitally important that schools provide each individual student, even one who may present disciplinary challenges, with a reasonable chance to complete a quality high school education. After all, in many states, access to primary and secondary public education is a constitutional right. In Georgia, for example, the state constitution imposes upon the state the primary obligation to assure that *all* students are provided with an adequate education.⁹

Thus, school administrators and teachers face a difficult task in balancing these two potentially conflicting obligations. Their approaches to this "balancing act" have been subject to increasing scrutiny in the last several years both here in Georgia and at the national level. In 2006, the Georgia Children & Youth Coordinating Council wrote:

Over the past decade, Georgia's schools have faced a daunting challenge as they seek to ensure the safety of students and staff in an era of intense public concern over ... school safety in light of events such as those which occurred in Columbine, Colorado. Faced with public pressure to take every possible step to ensure safe and orderly school environments, many school systems in Georgia, and across the nation, have adopted more punitive disciplinary practices providing for sanctions against students for any action that might be interpreted as a threat to school safety.

At the same time, the desire to avoid perceived legal liability and possible accusations of discriminatory or unfair actions against students has led many systems to develop rigid disciplinary codes

⁶ *Id.* at 8.

⁷ *Id.* at 9.

⁸ GA. DEP'T OF CORR., INMATE STATISTICAL PROFILE: INMATES ADMITTED DURING FY2009 44 (2009), available at <http://www.dcor.state.ga.us/Reports/Annual/pdf/inmadmFY2009.pdf>. The actual total number of prison admissions was 20,737. *Id.*

⁹ GA. CONST. art. VIII, § I, p. I.

with prescriptive penalties for student misbehavior without regard to individual circumstances.¹⁰

A 2009 *New York Times* article discussed the balancing act faced by teachers and school administrators in dealing with student discipline. The article focused on the case of a first grader in Delaware who was so excited at joining the Cub Scouts he brought a camping utensil that contained a knife, fork and spoon so he could eat his lunch with it. He was referred to "reform" school for 45 days for violating the district's zero tolerance policy regarding bringing knives to school.¹¹

This incident and numerous other examples of arguable overreaction to relatively innocuous behavior lead many critics to call for a greater exercise of discretion on the part of school administrators when making disciplinary decisions. Others argue, however, that the collective safety of all students is of paramount concern and that it is appropriate to err on the side of being overly punitive rather than take a chance that could result in tragedy. Furthermore, advocates of zero tolerance assert that discretion can be exercised in a way that can lead to claims of disparate treatment based, for example, on the race, ethnicity, or other status of the child.

III. Potential Factors in Student Discipline Decisions

As noted above, one of the causes of the reported increase in removal of students from the mainstream classroom over the last decade is the pressure to assure safe schools, which has reportedly led many school districts to adopt a "zero tolerance"¹² approach to relatively minor misconduct. Some have characterized the zero tolerance approach as an inappropriate outgrowth of the "get tough" policy on drugs arising in the 1980s and of the severe punishments mandated for possessing firearms at school mandated by federal law in the mid-1990s.¹³

Commentators have also suggested other causes for the increase in diverting students out of the classroom. Some argue that an increased reliance by school administrators on local police or school resource officers can lead to an increased criminalization of student behaviors.¹⁴

¹⁰ GA. DEP'T OF EDUC., CHILDREN & YOUTH COORDINATING COUNCIL, SUGGESTED PRACTICES FOR SCHOOL ADMINISTRATORS REGARDING LAW ENFORCEMENT AND STUDENT DISCIPLINARY ISSUES 1 (2006), available at http://juvjustice.njcn.org/media/resources/public/resource_183.pdf.

¹¹ Ian Urbina, *It's a Fork, It's a Spoon, It's a . . . Weapon?*, N.Y. TIMES, Oct. 11, 2009, at A1. This punishment was subsequently rescinded in response to widespread criticism. *Id.*

¹² Narrowly defined, the term "zero tolerance" refers to the practice of mandatorily initiating disciplinary actions with the potential for harsh sanctions for a particular set of behaviors without regard to mitigating factors such as intent or the prior disciplinary history of the student. Some commentators have used the term more generally as a surrogate for all actions that may lead to the removal of students from the classroom. As discussed in this section, however, a zero tolerance policy is only one of several factors that may be responsible for the reported increased use of out of school suspensions, expulsions and referrals to the court systems in school disciplinary actions.

¹³ ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT: HOW 'ZERO TOLERANCE' AND HIGH STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON-PIPELINE (2010), available at http://www.advancementproject.org/sites/default/files/publications/rev_fin.

¹⁴ *Id.*; see also UDI OFER, ET. AL., N.Y. CIVIL LIBERTIES UNION & ANNENBERG INSTITUTE FOR SCHOOL REFORM, SAFETY WITH DIGNITY: ALTERNATIVES TO OVER-POLICING OF SCHOOLS (2009), available at http://www.annenberginstitute.org/pdf/Safety_Report

Others argue that inadequate due process protection in school disciplinary actions, including lack of meaningful access to legal counsel, is a contributing factor.¹⁵ Still others assert that the increasing pressure to achieve adequate yearly progress ("AYP") under the federal No Child Left Behind ("NCLB") law is an incentive to shunt underperforming students into alternative education settings or out of school altogether so that their scores do not count in the AYP calculation.¹⁶ In particular, a report issued in January 2010 by the Advancement Project argues strongly that "high stakes testing" is an important factor in the increasing flow of students through the school-to-prison pipeline.¹⁷ In March, 2011, the Advancement Project, jointly with a number of other education advocacy organizations, issued a position paper calling for several changes to NCLB "to begin dismantling the School-to-Prison Pipeline."¹⁸

IV. Experience in Other Jurisdictions

A. Florida

The Florida State Conference NAACP Advancement Project carried out a statewide assessment of student disciplinary practices in that state in 2005 and issued a report, *Arresting Development*, in the spring of 2006.¹⁹ The report characterizes the situation in Florida as a "school discipline crisis."

Many Florida districts, like many districts in other states, have turned away from traditional education-based disciplinary methods—such as counseling, after-school detention, or extra homework assignments—and are looking to the legal system to handle even the most minor transgressions. Children are being criminalized, handcuffed, arrested, booked, and sent to court for minor misconduct in school.²⁰

Among the findings is the fact that 76% of the referrals from the schools to the juvenile justice system were for minor (misdemeanor) offenses.²¹ In addition, the use of out of school suspensions has risen from the 1999-2000 school year to the 2004-2005 school year at a rate significantly higher than the overall school population growth rate. Discipline was arguably exercised in a racially disproportionate manner in that African-American students received 46%

¹⁵ See, e.g., NATIONAL JUVENILE DEFENDER CENTER, DEFENDING CLIENTS WHO HAVE BEEN SEARCHED AND INTERROGATED AT SCHOOL 2 (2009), available at http://www.njdc.info/pdf/defending_clients_who_have_been_searched_and_interrogated_at_school.pdf.

¹⁶ See ACLU Georgia, *School to Prison Pipeline*, <http://www.acluga.org/schooltoprison.html> (last visited June 1, 2010).

¹⁷ ADVANCEMENT PROJECT, *supra* note 11.

¹⁸ ADVANCEMENT PROJECT, ET AL., FEDERAL POLICY, ESEA REAUTHORIZATION, AND THE SCHOOL-TO-PRISON PIPELINE 4 (March 2011) available at <http://advancementproject.org/sites/default/files/Federal%20Policy%20ESEA%20Reauthorization%20and%20the%20School-to-Prison%20Pipeline%20-%202003%2009%2011.pdf>.

¹⁹ NAACP LEGAL DEFENSE & EDUCATIONAL FUND, ARRESTING DEVELOPMENT: ADDRESSING THE SCHOOL DISCIPLINE CRISIS IN FLORIDA (2006), available at http://www.naacpldf.org/content/pdf/pipeline/arresting_development_full_report.

²⁰ *Id.* at 6.

²¹ *Id.*

of out of school suspensions but comprised only 22.8 % of the school population. Students with disabilities were also disproportionately impacted by school discipline.²²

B. Texas

Texas Appleseed²³ has also carried out a statewide assessment of school discipline policies. In a report issued in October 2007, Texas Appleseed noted that nearly two-thirds of the referrals of students to alternative education settings in Texas are discretionary and are based upon nonviolent offenses. More than 100,000 students in Texas are referred to alternative discipline programs annually and such students have five times the dropout rate of students in mainstream settings.²⁴

Thirteen percent of the total number of enrolled students in Texas public schools were given out-of-school suspension during the 2005-2006 school year while thirty-seven percent were given in-school suspension. (In Texas, in-school suspension does not generally involve any instructional content.) As in Florida and consistent with national trends, Texas Appleseed confirmed that African-American students are disproportionately subjected to more rigorous disciplinary action.²⁵

The 2007 Texas Appleseed report focused on in-school and out-of-school suspensions and referrals to a Disciplinary Alternative Education Program. In April 2010, the organization issued follow up findings based upon an analysis of student expulsions.²⁶ Texas Appleseed reports that African-American students are disproportionately subject to discretionary expulsions.²⁷ In addition the report states that special education students make up only 10% of the public school population in Texas but accounted for 21% of all expulsions in school year 2008-09.²⁸ The report notes that 71% of all expulsions in Texas in that school year were discretionary, arising out of conduct that was less serious than that which would trigger mandatory expulsion under Texas law.²⁹

C. Louisiana

In Louisiana, a report issued in April 2010, by the National Economic and Social Rights Initiative and by Families and Friends of Louisiana's Incarcerated Children characterized the situation in that state as a human rights crisis.

²² *Id.*

²³ Texas Appleseed is an independent affiliate in the national Appleseed network and one of Georgia Appleseed's sister centers. For more information about Texas Appleseed, please go to its website at www.texasappleseed.net.

²⁴ DEBORAH FITZGERALD FOWLER, TEXAS' SCHOOL TO PRISON PIPELINE: DROPOUT TO INCARCERATION 10 (Janis Monger ed., Texas Appleseed 2007)[hereinafter "*Texas Appleseed 2007 Report*"].

²⁵ *Id.* at 4.

²⁶ *Id.*

²⁷ *Id.* Texas law provides for mandatory expulsion for certain serious criminal behavior and for discretionary expulsions for more minor offenses committed when assigned to a DAEP. *Id.*

²⁸ *Id.*

²⁹ *Id.*

In Louisiana over 86,000 students are suspended out of school and over 7,000 are expelled each year. State laws and local school district policies rely on these punitive practices to respond to minor instances of disruption and conflict ranging from fighting to disrespecting school staff to “willful disobedience.” Suspensions and expulsions for these vague and subjective offenses are applied unevenly by schools, targeting students of color, students from poor communities and students with disabilities at higher rates. For example, Louisiana schools are more than twice as likely to suspend African-American students as white students. Schools also increasingly involve security guards and police in disciplinary matters, resulting in arrests for problems once dealt with by educators.³⁰

This analysis formed the basis for a follow up report issued in January 2011 by the Southern Poverty Law Center which presents a series of profiles of students in the New Orleans Recovery School District.³¹ The report asserts that students in this district often are subject to abusive disciplinary measures which can lead to life long adverse consequences.³² On the other hand,

... other profiles of students who have participated in restorative justice circles --where schools work to solve disputes as opposed to removing children from their schools -- demonstrate the benefit of true innovations. These innovations include implementing research-based discipline practices, restorative justice and positive behavior interventions and supports.³³

D. City of Philadelphia

In January 2011, Youth United for Change and the Advancement Project issued a report highly critical of the School District of Philadelphia's significant reliance upon strict zero tolerance disciplinary policies.³⁴ Key findings from the report include the following:

- Every year, tens of thousands of young people – and especially youth of color and students with disabilities – are being criminalized in Philadelphia schools or are being pushed out of school by the use of out-of-school suspensions, disciplinary transfers to alternative schools, and expulsions.

³⁰ ELIZABETH SULLIVAN & DAMEKIA MORGAN, PUSHED OUT: HARSH DISCIPLINE IN LOUISIANA SCHOOLS DENIES THE RIGHT TO EDUCATION i (2010) (citations omitted), *available at* http://www.nesri.org/fact_sheets_pubs/Pushed_Out_Report.pdf.

³¹ SHAKTI BELWAY, ACCESS DENIED, NEW ORLEANS STUDENTS AND PARENTS IDENTIFY BARRIERS TO PUBLIC EDUCATION (2011), *available at* http://www.splcenter.org/sites/default/files/downloads/publication/SPLC_report_Access_Denied.pdf.

³² *Id.* at 2.

³³ *Id.* at 3. See the discussion of positive behavioral interventions and supports *infra* at pp. ____.

³⁴ YOUTH UNITED FOR CHANGE & ADVANCEMENT PROJECT, ZERO TOLERANCE IN PHILADELPHIA-DENYING EDUCATION OPPORTUNITIES AND CREATING A PATHWAY TO PRISON (Jan. 2011), *available at* <http://www.advancementproject.org/sites/default/files/publications/YUC%20Report%20Final%20-%20Lo-Res.pdf>.

- Many, and perhaps most, of these harsh disciplinary actions are in response to low-level behavior that does not pose a serious threat to school safety and does not necessitate removal from school.
- There is evidence to suggest that students of color are being punished more harshly than their peers for the same behavior.
- There are strong negative relationships between the use of exclusionary discipline and both graduation rates and academic achievement rates, meaning that schools with high suspension and arrest rates are far more likely to have low graduation rates and low achievement levels.³⁵

The report also states:

Additionally, zero tolerance appears to be contributing to poor levels of academic achievement throughout the District. This should be unsurprising, given the massive amount of learning time lost due to these policies and practices. Moreover, while many policymakers around the City are rightfully concerned with the “dropout crisis” and the racial gap in academic achievement, what usually goes unnoticed is how inter-connected zero tolerance is with these problems, and how it actually makes them even worse. The students facing the devastating effects of zero tolerance are the same ones struggling academically in school, and they are overwhelmingly Black and Latino and youth with disabilities. These young people already have to struggle to catch up to peers who have been provided greater educational opportunities, and zero tolerance sets them back even further, not only with respect to their counterparts in Philadelphia, but outside the City as well. These young people are, in effect, being penalized for having the misfortune of attending schools that have set them up to fail.³⁶

This report was followed up by a companion piece issued in February, 2011, titled "Pushed Out: Youth Voices on the Drop Out Crisis in Philadelphia" which presents conclusions and recommendations based in large part on interviews with and surveys of affected students.³⁷

³⁵ *Id.* at 5.

³⁶ *Id.* at 3.

³⁷ Available at <http://youthunitedforchange.com/2011/02/17/pushed-out-youth-voices-on-the-droupout-crisis-in-philadelphia/>.

E. *Around the Nation*

The Florida, Texas, Louisiana, and Philadelphia studies are consistent with the findings contained in several earlier reports, which assessed disciplinary practices in a number of local school districts from around the country. The earliest of these evaluations was a comprehensive assessment of zero tolerance initiatives by the NAACP Advancement Project in cooperation with The Civil Rights Project at Harvard University. In a report issued in June 2000, the authors concluded:

School safety is a critically important issue. Recent tragedies have heightened the public's fear and led to legitimate calls for stronger preventive measures. However, we must remember that 'schools remain one of the safest places for children and youth.' Yet, the evidence gathered in this Report make clear that efforts to address guns, drugs, and other truly dangerous school situations have spun totally out of control, sweeping up millions of school children who pose no threat to safety into a net of exclusion from educational opportunities and into criminal prosecution.³⁸

V. Initial Steps in Georgia

A. *GaDOE 2005 Report*

In June 2005, the Georgia Department of Education ("GaDOE") issued an analysis of statewide disciplinary actions in public schools based on data reported by local school districts for school years 2000-2001 through 2004-2005.³⁹ The report, discussed in more detail below, noted certain trends indicating potential disproportional application of discipline to African-American students. The report stated that this trend "... indicates a need for further research comparing the types of disciplinary actions by racial group to determine if disparities in the discipline data can be attributed to differential treatment of the various racial subgroups."⁴⁰ Other findings in the report also triggered a suggestion for further study and analysis. To date, GaDOE has not followed up on these findings.

B. *Recent Georgia Legislation*

On the last day of the 2010 session of the Georgia General Assembly, the legislature passed Senate Bill 299. This legislation, primarily sponsored by State Senator Emanuel Jones,

³⁸ ADVANCEMENT PROJECT & HARVARD CIVIL RIGHTS PROJECT, OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO TOLERANCE AND SCHOOL DISCIPLINE POLICIES 1 (2000) (quoting William Modzeleski, Safe and Drug-Free Schools Program Director, U.S. Department of Education (Statement of Feb. 18, 2000), available at http://www.eric.ed.gov/ERICWebPortal/custom/portlets/recordDetails/detailmini.jsp?_nfpb=true&_ERICEstSearch_SearchValue_0=ED454314&ERICEstSearch_SearchType_0=eric_accno&accno=ED454314). This statement and several similar reports may be accessed at: <http://www.stopschoolstojails.org>.

³⁹ GA. DEP'T OF EDUC., POLICY DIVISION REPORT: 2004-2005 ANALYSIS OF STATEWIDE DISCIPLINARY DATA (2005).

⁴⁰ *Id.* at 1-2.

was passed in direct response to the experience of a fourteen-year old student who was subjected to arrest and suspension from school for inadvertently bringing a fishing knife to school despite the fact that he promptly reported the mistake and turned over the knife to the principal upon arrival at school. The details of this law and a related bill are discussed below.⁴¹ The fact that a state legislator in the minority party was able to marshal bipartisan support for this bill may indicate growing legislative concern about zero tolerance issues. We expect that efforts may be undertaken in future legislative sessions to address student discipline issues in a comprehensive way.

VI. Summary

In summary, a number of studies from throughout the country have concluded that changes in school disciplinary practices since the mid-1990's have arguably caused significant negative unintended consequences. Racial minorities and children with disabilities appear to be adversely affected at a rate disproportionate to their overall presence in the student population. The limited assessments of the Georgia data have resulted in a call for further studies by GaDOE staff, but these studies have not been carried out. Furthermore, child advocates in Georgia report that Georgia is not immune from the same types of practices that have been reported in other states.

It is in this context that Georgia Appleseed has undertaken to evaluate student discipline practices and outcomes in Georgia's public schools. In Phase I of the project, we completed (a) a preliminary review of the reported data on student disciplinary actions applied to Georgia's children, (b) a summary of the published disciplinary policies of many Georgia school districts and individual schools, and (c) a comprehensive outline of the Georgia student disciplinary legal setting.

In Phase II, we completed a much more detailed analysis of the student discipline data reported by all of Georgia's public schools and we reached out to a large number of education stakeholders (district and school-level administrators, teachers, counselors, school resource offices, juvenile court judges, probation officers, school board lawyers, prosecutors and defense counsel, parents and students) to listen to their views on student discipline. In this report we summarize our data assessment findings, we report on what we heard from the "Voices from the Field", we present our views on the key elements of an effective student discipline system, and we issue a Call to Action.

⁴¹ See *infra* pp. 87-88. In addition, a bill amending Georgia's law prohibiting disruption of public schools was enacted. See *infra* p. 85.

SUMMARY OF PHASE I FINDINGS

I. Disciplinary Action Data Review & Analysis

Georgia Appleseed, with the *pro bono* assistance of the Atlanta office of a national accounting firm, reviewed and assessed student disciplinary data collected by school districts and compiled by GaDOE for six years (school years 2003-04 through 2008-09).⁴²

Key preliminary findings were:

- *Total* disciplinary actions are trending slightly downward; however, assignments to alternative educational settings for disruptive students increased by 40% over the six-year period and expulsions increased by 19%. Corporal punishment actions declined by 31% and removals from class at teacher's request declined 48%.

- There is wide variability among school districts as to incidence of discipline. For example, students in some school districts had Out-of-School Suspensions ("OSS") imposed at a rate 10 to 20 (or more) times the rate experienced by their counterparts in other school districts.

- In 2008-09, the high school graduation rates in the 20 school districts with the highest incidence of OSS were almost all below the reported state average and lagged markedly behind the graduation rates reported by the 20 school districts with the lowest incidence of OSS.

- Throughout the period of review, the vast majority of students subjected to OSS and expulsion had committed minor offenses. For example, in 2008-09, 71% of OSS actions and 59% of expulsions were premised on minor offenses.

- African-American students, special education students, and students eligible for the free or reduced lunch ("FRL") program are receiving discipline at a rate significantly in excess of their percentage of the public school population.

- In 2008-09, African-Americans were administered 58.9% of the disciplinary action although they were only 37.7% of the student body. With regard to OSS, 66.3% of the students receiving OSS were African-American, and African-Americans received 63.4% of the expulsions.⁴³

- Despite only making up only 11% of the Georgia public school student body, special education students were the subject of 18.2% of the OSS imposed and 23.7% of the expulsions in 2008-09.

⁴² In our Phase II analysis discussed below, a seventh year of information (for school year 2009-2010) was added to the analysis.

⁴³ Based on Phase I's statewide data analysis, no other racial or ethnic group experienced out of school discipline at a rate in excess of its respective percentage of the student body population. In Phase II, we examined the data at more granular levels to allow us to address this issue in more detail. *See infra* p. 56.

■ FRL students composed 53% of the student population in 2008-09. In that year, however, 73% of students receiving OSS had FRL status.

■ Overall, in 2008-09, African-American students were subjected to OSS at a rate 76% greater than their percentage of the school population; special education students were subjected to OSS at a rate 65% greater than their percentage of the school population, and FRL students were subjected to OSS at a rate 38% greater than their percentage of the school population.

II. District/School Policies

In cooperation with the Atlanta office of the law firm of Nelson Mullins Riley & Scarborough, LLP, Georgia Appleseed carried out an examination of the publicly available disciplinary policies of fifteen Georgia school districts plus individual public schools within those districts. The analysis focused on identifying any zero tolerance policies in place but also more generally assessed the disciplinary policies. A copy of the report of findings is attached as Appendix B.

Key preliminary findings were:

- All of the districts reviewed imposed zero tolerance policies for the limited number of student behaviors for which such discipline is mandated by state law.

- Districts often impose zero tolerance or similar policies for various types of behavior beyond state mandates. There is wide variation in the types of offenses covered.

- The overarching characteristic of the policies of the districts reviewed is the broad discretion granted to school officials in the handling of most of the day-to-day disciplinary challenges faced by teachers and administrators.

RESULTS OF PHASE II ANALYSES

I. Disciplinary Action Data Review & Analysis

A. *GaDOE 2005 Study*

In June 2005, GaDOE issued an analysis of statewide disciplinary actions in public schools based on data reported by local school districts for school years 2000-2001 through 2004-2005.⁴⁴ A copy of this report is attached as Appendix C.

1. Rate of Out-of-School Discipline

The report noted that during the reporting period approximately 80% of all reported disciplinary actions involved either in-school suspensions (approximately 50%) and out-of-school suspensions for less than 10 days (approximately 30%). More stringent disciplinary measures such as long-term suspensions, temporary or permanent expulsions, referrals to juvenile court, or assignments to alternative education, each constituted less than one percent of all disciplinary actions.⁴⁵

While this summary of the data is correct, it tends to underplay the significance of the shorter-term in-school and out-of-school suspensions. First, as will be discussed in greater detail below, many students receive multiple shorter-term suspensions during a school year so that cumulatively they are spending a significant amount of time out of their regular classroom. In addition, many researchers have concluded that:

Exclusion from the class room for even a few days disrupts a child's education and may escalate misbehavior by removing the child from a structured environment, which gives the child increased time and opportunity to get into trouble. Studies show that a child who has been suspended is more likely to be retained in his or her grade, to drop out, to commit a crime, and to be incarcerated as an adult.⁴⁶

⁴⁴ GA. DEP'T OF EDUC., POLICY DIVISION REPORT: 2004--2005 ANALYSIS OF STATEWIDE DISCIPLINARY DATA (2005).

⁴⁵ *Id.* at 5.

⁴⁶ CATHERINE Y. KIM, ET AL., THE SCHOOL-TO-PRISON PIPELINE: STRUCTURING LEGAL REFORM 3, n.14 (2010) (citing Committee on School Health, American Academy of Pediatrics, *Out-of-School Suspension and Expulsion*, 112 PEDIATRICS 1206, 1207 (2003) and numerous other authorities). See also TABBY ALI & ALEXANDRA DUFRESNE, MISSING OUT: SUSPENDING STUDENTS FROM CONNECTICUT SCHOOLS 3-5 (Connecticut Voices for Children 2008), available at <http://www.cpacinc.org/wp-content/uploads/2010/04/Missing-Out-Report.pdf> (citing numerous authorities).

2. Racial Disparity

Another key finding in the 2005 GaDOE report states:

Although Black students represent 38% of the student population in Georgia, for many types of disciplinary actions, they represent over 50 percent of students who were assigned each type disciplinary action. For certain disciplinary actions, the percentage of Black students receiving certain types of disciplinary actions is more disparate than others. For example, Black students comprised 74 percent of the students who were assigned removal from class by teacher's request during the 2003-04 school year.⁴⁷

The 2005 GaDOE report also shows that in school year 2004-05 approximately 67% of the students receiving short-term suspensions, 68% of the students receiving long-term suspensions and 62.5% of the students receiving permanent expulsion were African-American.⁴⁸

The report goes on to state that this trend "... indicates a need for further research comparing the types of disciplinary actions by racial group to determine if disparities in the discipline data can be attributed to differential treatment of the various racial subgroups."⁴⁹

Later, the report notes that, for a number of years, national data have indicated racial disparities in disciplinary practices. The report cites possible causes for such disparities to include: "... 1) cultural misperception and misrepresentation, 2) student defiance, and 3) lack of academic and social support."⁵⁰

To better understand student discipline in Georgia, demographic data of the student, the teacher referring the student and the administrator who assigned the disciplinary action are needed. Data indicating the academic success of the student and the type of discipline infraction are also necessary. These data can be analyzed to determine if the trends in the discipline data of students in Georgia are similar to trends identified in the national literature. If so, changes in discipline policies and practices ... can be used to impact the disparities that exist in Georgia.⁵¹

To date, we have seen no indication that GaDOE has embarked on the further research referenced in the 2005 report.

⁴⁷ *Id.* at 1 (citation omitted).

⁴⁸ *Id.* at 13, 15.

⁴⁹ *Id.* at 1--2.

⁵⁰ *Id.* at 7.

⁵¹ *Id.* at 7--8.

B. Georgia Appleseed Review & Analysis

1. Overview - The Data

a. Statutory Requirement

Section 20-2-740 of the Georgia Code, enacted in 1999, requires each school district to file a report with GaDOE by August 1 of each year providing detailed information concerning disciplinary actions taken in the immediately prior school year. The report must address the following actions:

- (1) Actions in which a student was assigned to in-school suspension;
- (2) Actions in which a student was suspended for a period of ten days or less;
- (3) Actions in which a student was suspended for a period of more than ten days but not beyond the current school quarter or semester;
- (4) Actions in which a student was expelled beyond the current school quarter or semester but not permanently expelled;
- (5) Actions in which a student was permanently expelled;
- (6) Actions in which a student was placed in an alternative educational setting;
- (7) Actions in which a student was suspended from riding the bus;
- (8) Actions in which corporal punishment was administered; and
- (9) Actions in which a student was removed from class pursuant to subsection (b) of Code Section 20-2-738.⁵²

The statute requires that each district report the number of students who were subject to each type of disciplinary or placement action listed above as well as the age and grade level of such students; their race and gender; and the number of affected students who were eligible for free or reduced price meals under federal guidelines.⁵³ This information is collected at the school level and typically is reported to the district electronically pursuant to detailed student record data collection protocols.⁵⁴

GaDOE is required to evaluate these data annually "for the purpose of determining trends in discipline" and to submit a report on this evaluation to the General Assembly.⁵⁵ The GaDOE 2005 Report discussed above was issued in response to this mandate.

⁵² O.C.G.A. § 20-2-740(a) (1)-(9).

⁵³ *Id.* § 20-2-740(b).

⁵⁴ *See, e.g.*, GA. DEP'T OF EDUC., FY 2010 STUDENT RECORD DATA COLLECTION DATA ELEMENT DETAIL (Feb. 15, 2010) and FY 2011 STUDENT RECORD DATA COLLECTION DATA FILE LAYOUT-DISCIPLINE FILE LAYOUT (Sept. 9, 2010).

⁵⁵ O.C.G.A. § 20-2-740(c).

b. Phase I Data Sets

In our Phase I effort, we reviewed data sets provided to us by GaDOE covering six school years, i.e., 2003-04 through and including 2008-09. Although the 2005 GaDOE report assessed data from the three prior school years, we were advised that those data were no longer in existence.⁵⁶

These data were provided to us by GaDOE in a format designed to maintain the confidentiality of individual student information.⁵⁷ As we discussed in the Phase I Report,⁵⁸ the redacted nature of the data imposed limitations on our ability to assess student discipline practices. In particular, it was necessary to do most of the analyses based on total disciplinary actions even though very often a single student may be the subject of multiple disciplinary actions in a year. In addition, we were limited in our ability to do multi-variable analysis. In other words, we could determine how many OSS actions were administered to female students, for example, but we could not simultaneously determine what type of behavior by a female student most often triggered an OSS.

c. Phase II Data Sets

Following publication of the Phase I Report, Georgia Appleseed initiated discussions with GaDOE representatives concerning the possibility of obtaining more robust access to student discipline data so as to enhance our research efforts. The Department readily agreed and worked with Georgia Appleseed and our pro bono national accounting firm collaborator to develop and execute a detailed Nondisclosure Agreement that authorized our receipt and use of un-redacted data subject to stringent requirements designed to assure that the data are held in confidence and that the management of the data and release of our report will not invade the privacy of any student or parent.

Thus, for this Phase II analysis we have had essentially full access to the student disciplinary history for each student⁵⁹ in Georgia's K-12 system for the last seven years.⁶⁰ This has allowed us to carry out the substantially more detailed and granular analysis summarized below.

A summary report on the data compilation and assessment process is contained in Appendix D. The complete data base is maintained on a confidential basis by our pro bono accounting firm collaborator. Detailed data reports supporting the findings summarized below are maintained in the offices of Georgia Appleseed. A more detailed report of data findings with associated back up information will be issued separately in the near future.

⁵⁶See e-mail from Mr. Mark Vignati, Operations Analyst, Georgia Department of Education, to Robert Rhodes, Director of Legal Affairs, Georgia Appleseed (May 11, 2010) (on file at the offices of Georgia Appleseed).

⁵⁷ E-mails from Mr. Mark Vignati, Operations Analyst, Georgia Department of Education, to Robert Rhodes, Director of Legal Affairs, Georgia Appleseed (February 3, 2010) (on file at the offices of Georgia Appleseed).

⁵⁸ Phase I Report at 22-23.

⁵⁹ Of course, we do not know the individual identity of any such student.

⁶⁰ The data for the 2009-10 school year became available in the latter part of 2010.

2. Preliminary Comments

The availability of a comprehensive set of student discipline data, though welcome, carries with it a new set of challenges. There are an almost unlimited number of ways in which the data can be analyzed. In the discussion below, we necessarily confined our analyses to a limited number of key issue areas. We view this undertaking, however, as a beginning rather than an end. We are committed to working with GaDOE so that the data base that we have compiled can be an ongoing, long term research resource to the Department, to district and school personnel, to parents and students, and to other public education stakeholders.

We focus primarily on exclusionary discipline actions, i.e., out of school suspensions ("OSS") and expulsions. In our discussion below, we discuss the data findings at multiple levels. In some cases, we present state-wide composite results. These data can be helpful in attempting to place Georgia in the national context or in identifying overall disciplinary trends. State-wide data, however, are of limited utility especially given the variability of student discipline actions among the 180 school districts in the state.

Accordingly, we also present some results for individual school districts. In addition, we discuss data at the school level, in particular when the school district is relatively large and we have identified significant intra-district variability.

We have identified individual school districts in some of our discussion below. When we discuss individual schools, we have elected not to identify any school with specificity. It is not our intention to "call out" any particular school districts. Each school district is presented with unique challenges and we believe that all district personnel in the state are committed to effective student discipline. Approaching this issue in the context of full disclosure and frank discussion at the district level, however, is the most effective way to develop mechanisms to address any significant student discipline challenges.

3. State Trends

a. OSS

(1) *State-Wide Results*

As a first step in our analysis we calculated the state-wide OSS per student ratio, i.e., the percentage of individual students in Georgia's K-12 system who received at least one OSS action of any duration in a school year. In school year 2010,⁶¹ for example, nearly 142,000 students comprising 8.1 percent of the total student enrollment received at least one OSS action.⁶²

⁶¹ This is the school year beginning in August 2009 and ending in May/June 2010. The data analyses uses the year in which the school year ends to identify the school year under assessment and we will use that same convention in this report.

⁶² The enrollment figures used in this analysis reflect the total number of students who were enrolled in a district or school at any time during the school year and for any period of time. Thus, the enrollment figure differs from

As shown in Figure 1, the state-wide OSS per student ratio held fairly flat in the range of 9.3 to 9.5 percent in the period from 2004 through 2008, but has declined during the last two years in the period under review.

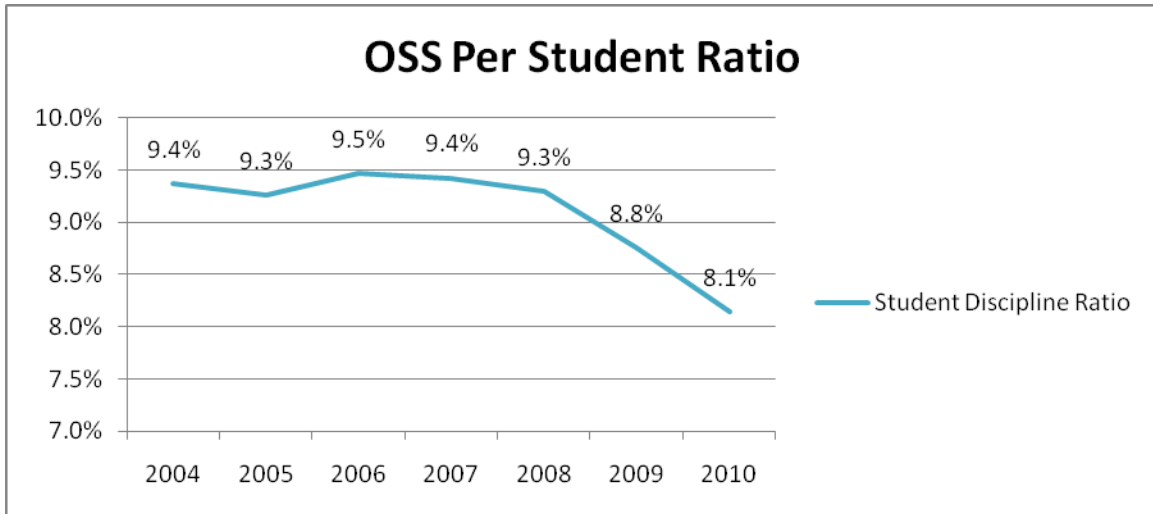


Fig. 1

(2) *National Context*

In an attempt to put the eight to nine per cent state-wide OSS per student ratio into context nationally, we assessed data and projections developed by the Office of Civil Rights (OCR) of the United States Department of Education. The most recent data available from this source are contained a resource titled "2006 National and State Projections."⁶³ The projections are described by OCR as being " ... based on a rolling stratified sample of approximately 6,000 districts and 60,000 schools, and on reported data from those districts that responded to the survey."⁶⁴ We were not able to identify any more recent OSS data at would allow a comprehensive comparison of state results.

Using the OCR OSS projection for Georgia for 2006, we calculated an incident rate of 10 percent which compares reasonably well with the 9.5 percent per student ratio we calculated for this school year using actual state-wide data. One explanation for any deviation may be that OCR excludes from its projections any OSS imposed upon children with special needs.

We then calculated the OSS suspension rates for all other states as projected by OCR. The national average OSS rate for 2006 was 7.9 percent On Table 1, we present the projected

certain total enrollment figures reported by GaDOE which often reflect only a "snapshot" of the student population at a single point in time. Using this approach can mean that a student may be "counted twice" (or even more times) at the district or school level since a significant number of students change schools and even school districts during any school year.

⁶³http://ocrdata.ed.gov/Projections_2006.aspx .

⁶⁴ *Id.*

OSS rates for the ten states with the highest calculated suspension rates and the ten states with the lowest OSS rates. Georgia ranked tenth highest in this analysis.

10 Highest OSS Rate States		10 Lowest OSS Rate States	
South Carolina	13.9%	North Dakota	2.5%
Delaware	12.9%	South Dakota	3.1%
Florida	12.3%	Wyoming	3.3%
North Carolina	12.3%	Iowa	3.4%
West Virginia	12.3%	Utah	3.6%
Louisiana	11.8%	Idaho	4.0%
Mississippi	11.6%	Minnesota	4.3%
Alabama	11.4%	New York	4.4%
Rhode Island	10.1%	Vermont	4.6%
Georgia	10.0%	Nebraska	4.7%

Table 1

With the exception of two small New England states, the states with the highest OSS rates tend to be clustered in the southeast. The data also revealed that several states with student population sizes similar to Georgia had OSS rates below the national average, e.g., Illinois (7.5 percent), New Jersey (6.6 percent), Ohio (7.2 percent). States which are generally regarded as having high quality secondary public schools tended to have relatively low OSS rates, e.g., Iowa (3.4 percent), Minnesota (4.3 percent), and Vermont (4.6 percent).

(3) Type of School

One of the potential pitfalls of the use of state-wide average data is demonstrated when the data are evaluated in terms of the different types of schools in Georgia's K-12 system, i.e., elementary schools, middle schools, and high schools. Intuitively, and based on anecdotal reports, we assumed that OSS actions would be substantially less prevalent in elementary schools than in middle and high schools. The data as depicted in Figure 2 confirm that assumption.

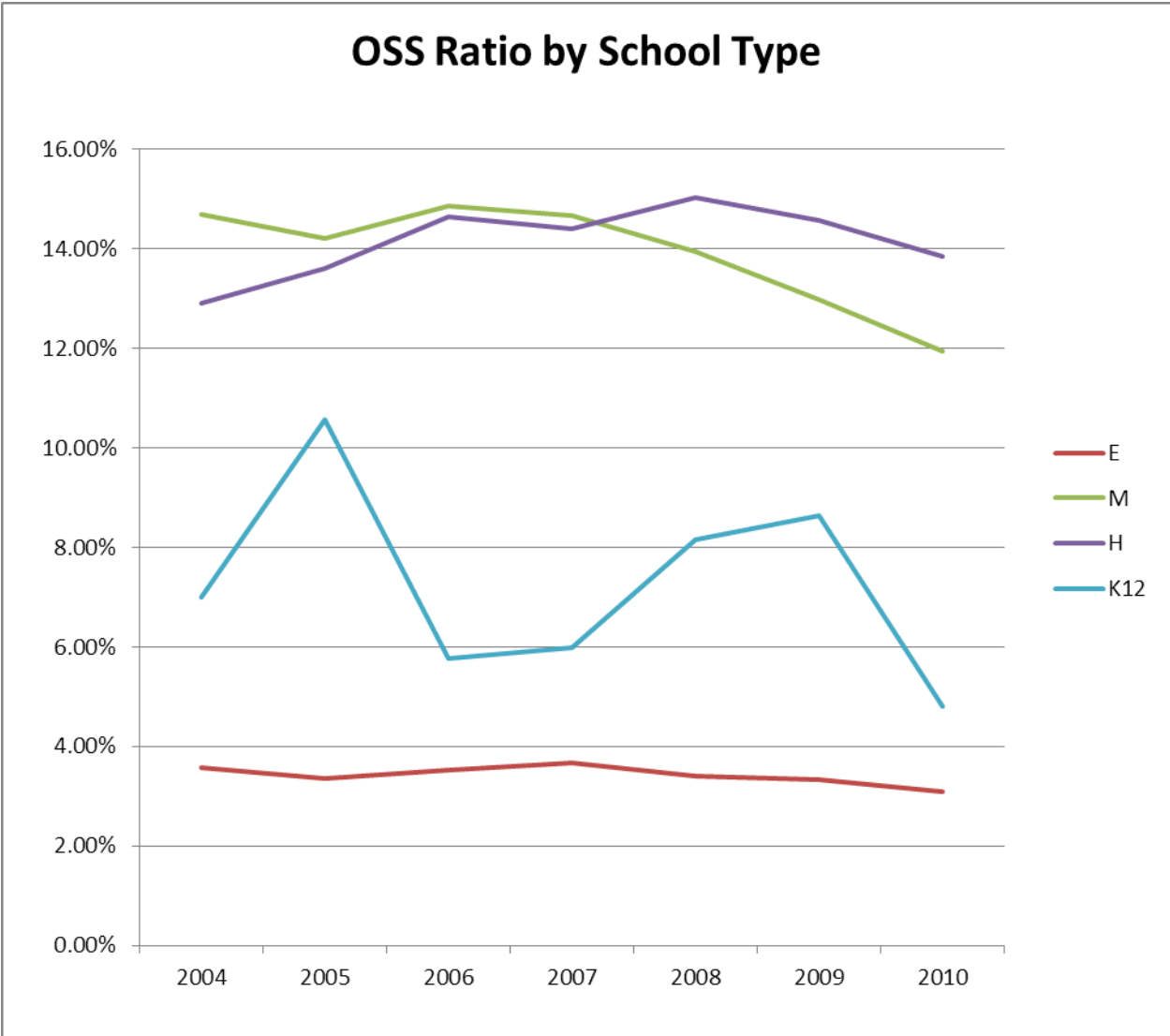


Figure 2

OSS student ratios for elementary schools ranged from approximately 3 to 4 percent over the seven-year period under review while middle school and high school ratios ranged from approximately 12 to 15 percent and from approximately 13 to 15 percent respectively.⁶⁵ Note that in the early years of the period under review, middle school students were given OSS at a rate slightly higher than high school students but that situation has been reversed since 2007.

Accordingly, when we evaluate OSS prevalence at the individual school level, we will assess a school by comparing its OSS ratio to the school-type averages discussed above rather than the state-wide average.

⁶⁵ The K-12 line on the graph reflects the reported data from the very small number of schools where all grade levels are served.

(4) *Frequency and Duration*

Of the students who are administered OSS disciplinary actions in a school year, most receive only one or two such actions. For example, the state-wide frequency of OSS actions per student for School Year 2010 is presented below in Table 2. These data indicate that 110,597 or 78 percent of the students subjected to OSS in that year only had one or two such discipline actions. Of course, this means that 22 percent of the disciplined students were the subject of three or more separate OSS actions.⁶⁶

Number of Students	OSS Count
83270	1
27327	2
13209	3
7289	4
4111	5
2479	6
1554	7
911	8
587	9
400	10
243	11
172	12
124	13
84	14
59	15
40	16
30	17
18	18
14	19
10	20

Table 2

The duration of the vast majority of individual suspensions were short term lasting one, two or three days. In 2010, however, approximately 20,000 five day suspensions were administered and just over 11,000 10-day suspensions were imposed.⁶⁷

⁶⁶ Although not included in the listing in Table 2 because of confidentiality concerns, a very small number of students were reported to have received in excess of 20 individual OSS actions in School Year 2010 ranging up to 32 such separate actions.

⁶⁷ In future analyses focused on specific districts or schools, our data base will allow us to "connect the dots" and determine the actual number of days any particular student was suspended from school during the academic year.

b. Expulsions

(1) *State-Wide Results*

As shown in Table 3, incidents of expulsion are substantially less prevalent than OSS with the affected number of students ranging from 3188 in school year 2004 to 4660 in 2007.

School Year	Students	Incidents	Students-Expulsion	Student Discipline Ratio
2004	1,640,215	3,324	3,188	0.194%
2005	1,676,517	4,031	3,853	0.230%
2006	1,698,914	4,350	4,199	0.247%
2007	1,716,642	4,904	4,660	0.271%
2008	1,731,102	4,690	4,504	0.260%
2009	1,734,543	4,032	3,710	0.214%
2010	1,744,250	3,727	3,556	0.204%

Table 3

The average expulsion per student ratio was, of course, also very small. The state-wide expulsion rate trend depicted on Figure 3 followed the same recent downward trend as was found for OSS.

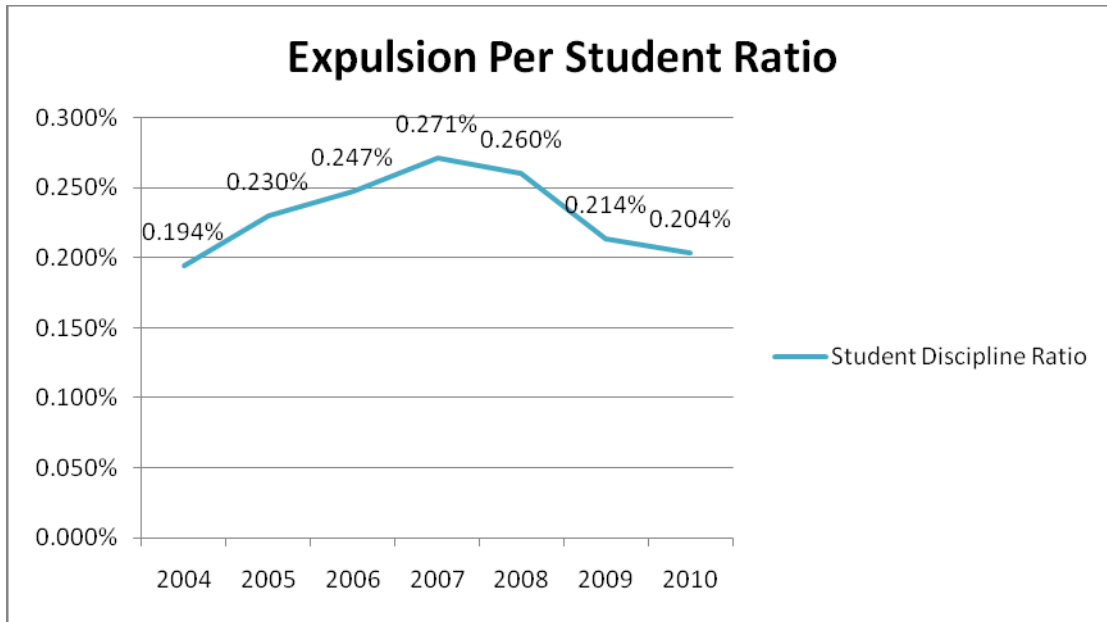


Figure 3

(2) Associated Referrals to Alternative Education Settings

During the course of the interview process discussed below, some educators complained about the use of the "expulsion" discipline action code because such action is often assumed to mean removal from any educational opportunities. They asserted that most often students were offered an opportunity to attend an alternative school or to participate in a alternative education program rather than being "put out on the street."

In an attempt to assess this concern, we reviewed the data to determine how often students who are subjected to an expulsion action or to an OSS of 10 days or more were then referred to an alternative education setting for the same disciplinary infraction. Unfortunately, the current disciplinary data reporting system does not allow for an accurate assessment of this question.

As noted above, one of the statutorily required student discipline report elements is "... actions in which a student was placed in an alternative educational setting" In Georgia, alternative education "settings" include both alternative education "schools" and alternative education "programs." The latter category of settings include on campus or off campus alternative education offerings where the student remains assigned to his or her home school for administrative and accountability purposes.

Unfortunately, the GaDOE student discipline data guidance⁶⁸ only provides codes for referrals to various types of alternative education "schools." Based upon our analysis, the reported data indicate that an expulsion or long term OSS action is followed by a referral to an

⁶⁸ FY 2011 STUDENT RECORD DATA COLLECTION DATA FILE LAYOUT-DISCIPLINE FILE LAYOUT 9 (Sept. 9, 2010).

alternative education *school* for only a relatively small percentage of such disciplinary actions. For example, of the 3556 students who were expelled in School Year 2010 only 229 or six percent were coded in the discipline records as having been referred to an alternative education school for the same disciplinary event. We assume that many other expelled or suspended students were referred to alternative education *programs* but we are unable to quantify this practice.⁶⁹

As will be discussed below, Georgia law establishes a policy that it is preferable for students to be assigned to "alternative education settings" rather than be suspended or expelled. To allow for a more accurate assessment of the extent to which this policy is being implemented, we include in our Call to Action below a suggestion that GaDOE modify its student discipline data guidance to include codes that reflect situations in which students are referred to alternative education *programs* as a consequence of disciplinary action.

c. Court Referrals

The reported data on the number of students referred annually to the juvenile or adult court system is summarized in Table 4.

SCHOOL YEAR	STUDENTS	INCIDENTS	STUDENT REFERRED	Ratio
2004	1,640,215	2,265	2,100	0.1280%
2005	1,676,517	2,492	2,310	0.1378%
2006	1,698,914	2,455	2,242	0.1320%
2007	1,716,642	2,486	2,232	0.1300%
2008	1,731,102	2,218	1,964	0.1135%
2009	1,734,543	1,901	1,746	0.1007%
2010	1,744,250	1,959	1,793	0.1028%

Table 4

These data indicate that only approximately 1700 to 2300 students per year are referred to court by schools state-wide. This is not correct. Based upon information provided to Georgia Appleseed by the DeKalb County Juvenile Court, that court alone received referrals from schools in school years 2004 through 2009 ranging from 4667 to 5898 individual students per year.⁷⁰

⁶⁹ Information concerning student participation in alternative education programs appears to be collected as part of the overall student data collection system. See GA. DEP'T OF EDUC., FY 2010 STUDENT RECORD DATA COLLECTION DATA ELEMENT DETAIL 34 (Feb. 15, 2010). These data, however, were not provided to us in response to our request for "discipline data." Furthermore, these codes are used for all referrals to alternative education programs including those not directly related to a disciplinary action.

⁷⁰ E-mail from Jacinta Rawling, Clerk of Court, DeKalb County Juvenile Court, to Robert Rhodes, Director of Legal Affairs, Georgia Appleseed Center for Law & Justice (January 18, 2011) (on file at the offices of Georgia Appleseed).

School district reporting is very inconsistent in this area. For example, during the six-year time frame discussed immediately above, the DeKalb County School District reported court referrals of less than 10 students in each year. Gwinnett County, on the other hand, reported several hundred court referrals in each year. For example, for school year 2010, Gwinnett reported having referred 706 individual students to court. This compares reasonably well with the 814 referrals independently reported to us by the Gwinnett County Juvenile Court for that year.⁷¹ If one relied solely upon the reported student discipline data, one would conclude that Gwinnett County leads the state in court referrals when, in fact, that is not the case especially taking into account the fact that Gwinnett is the largest school district in Georgia.

Because of the significant uncertainty with regard to what types of court referrals are being reported, we have not used the juvenile court referral data in any of our more detailed analyses.

Court referrals are not among the student discipline actions that are specifically required to be reported by the state statute discussed above in Part B.1.a. Because of the potential significant impact such referrals have on students, reporting of all referrals should be required. In our Call to Action below, we urge GaDOE to clarify this matter to assure the collection of accurate and comprehensive court referral information.

4. Variability

One of the most striking characteristics of the exclusionary student discipline data under review is the substantial variability of incident ratios among school districts.

a. District OSS Ratios

During this period under review, the OSS ratios ranged from a high of 30 percent in one school district in one year to a low of well less than one percent. In school year 2010, 28 school districts had OSS ratios that were at least 50 percent greater than the state-wide average, i.e., greater than 12 percent. On the other hand, 33 school districts had OSS ratios in that year that were less than 50 percent of the state-wide average, i.e., less than 4 percent.

A critical question that must be addressed in any effort to assure effective student discipline and a quality educational environment for all of Georgia's public K-12 students is what factors exist that would cause exclusionary discipline in some school districts to be exercised at a rate that can be as high as 25 to 30 times the rate such discipline is applied in other school districts?

In broad terms the school districts with high OSS rates tend to be majority African-American and reflect relatively high poverty levels but there are numerous exceptions to this

⁷¹ E-mail from Jesse Lawler, Court Administrator, Gwinnett County Juvenile Court, to Robert Rhodes, Director of Legal Affairs, Georgia Appleseed Center for Law & Justice (January 18, 2011) (on file at the offices of Georgia Appleseed). One potential reason for the difference in the number reported by the school district and the number reported by the court may be that the court number included truancy referrals. Truancy is not one of the discipline incidents required to be reported by schools.

generalization. While race and poverty no doubt are key pieces in the solution to the effective student discipline puzzle, it is important not to reach overly simple conclusions based on these factors alone. Consider, for example the review of individual school variability in one school district discussed below in Part B.4.c.

b. OSS Ratios and Graduation Rates

Looking at OSS ratio data for the seven-year review period, we identified those school districts that ranked in the 20 highest OSS ratio school districts for at least four of the seven years under review. This generated a cohort of 17 districts.⁷² We also identified those school districts that rank in the 20 lowest OSS ratio school districts for at least four of the seven years under review. This generated a cohort of 16 districts.⁷³

We then assessed the high school graduation rates for each of the school districts for school year 2010 and the five preceding years as reported on the GaDOE "K-12 Public School Scorecard."⁷⁴ With relatively rare exceptions, the consistently low OSS ratio districts reported high school graduation rates that were above the reported state average while the high OSS ratio districts reported graduation results that lagged behind the state average. In 2010, for example, 15 of the 16 low OSS ratio districts reported graduation rates above the state average while only one high OSS ratio district (Hancock County) reported a graduation rate higher than the state average.

We also compared the average reported high school graduation rates for the two school district cohorts for each of the six school years reported on the Scorecard with each other and with the reported state-wide average graduation rate. As shown on Figure 4, the average graduation rates for the high OSS ratio cohort were below both the state average and the rates for the low OSS cohort.

⁷² These districts were: Bibb (7), Burke (7), Dougherty (7), Richmond(7), Terrell (7), Washington (7), Chatham (6), Talbot (6), Macon (5), Screven (5), Sumter (5), Baldwin (4), Dooly (4), Hancock (4), Stewart (4), Spalding (4), and Worth (4). The numbers in the parentheses reflect the number of times out of seven years that the district was on the highest 20 OSS ratio list. The Baker County and Clay County districts also were on the highest OSS ratio list but were excluded from this analysis because they did not report graduation rates for all the years under review.

⁷³ These districts were: Chickamauga City (7), Fannin (7), Forsyth (7), Houston (7), Union (7), White (7), Catoosa (6), Gainesville City (6), Towns (6), Wheeler (6), Bremen City (5), Calhoun city (5), Dawson (5), Trion City (5), Echols (4), and Oconee (4). The number in the parenthetical reflects the number of times out of seven years the district was on the lowest 20 OSS ratio list. We excluded the district composed of State Schools for the deaf and blind from this analysis.

⁷⁴ <http://gaosa.org/FindASchool.aspx?PageReq=106&FromSection=score&CountyId=ALL&SY=2010>.

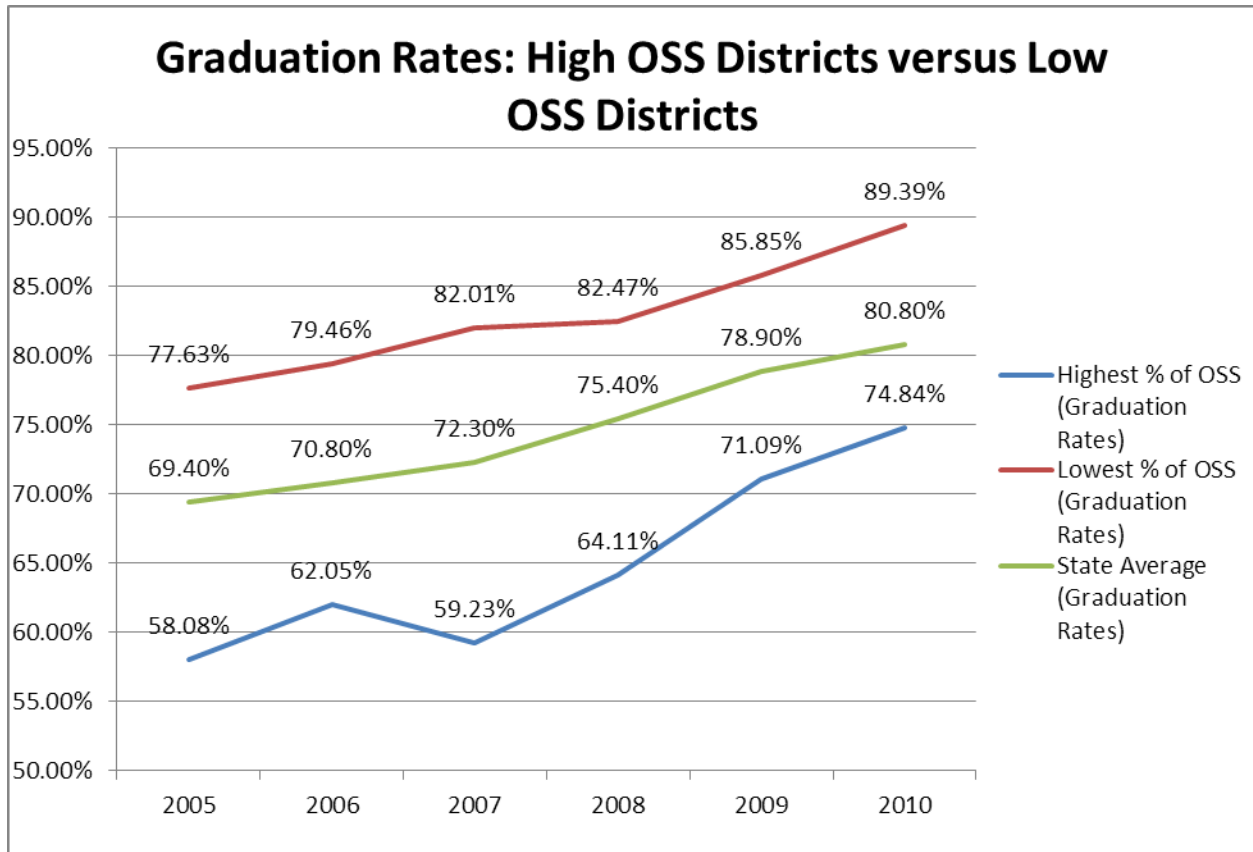


Fig. 4

A wide variety of factors affect high school graduation rates and we do not assert necessarily a direct causal relationship exists so that a reduction in OSS rates will result in a proportional increase in graduation rates. It seems logical, however, that students who are excluded from class for significant periods are less likely to graduate than those who are not so excluded.

c. School OSS Ratios

We have also been able to dive deeper into the data to evaluate intra-district variability in discipline. For example, we examined OSS ratios for high schools in a mid-sized school district outside of the Atlanta metropolitan area which had an district-wide OSS ratio of approximately 11 percent in school year 2010. One high school had an OSS suspension rate of 30.1 percent which is more than double the state-wide high school average of approximately 14 percent for this school year. Three other high schools had OSS ratios greater than 20 percent. One high school had a OSS ratio close to the state average (15.5 percent) while four other high schools had ratios ranging from 1.1 percent to 6.2 percent.

The variability in these results cannot be readily explained by demographic differences. While the school with the highest OSS ratio had a student population that was 84 percent African-American and a relatively high population percentage eligible for free or reduced cost

meals,⁷⁵ the high school with a 6.1 percent OSS ratio was 91 percent African-American with a similar free or reduced cost meals eligible population. Furthermore the high school with the lowest OSS ratio was a small "early college academy" with a student population that was 85 percent African-American.

On the other hand, a potential correlation between race and OSS experience is much more apparent in the data reported by one Metro-Atlanta school district. This district had an overall average OSS ratio of 8.22 per cent in 2010, almost exactly the state-wide average. Yet the individual school results are widely divergent. Five high schools had OSS ratios ranging from 24.5 percent to 38.3 percent. In the highest ranking high school, this means that 940 students out of a student population of 2453 were suspended at least one time during the year. On the other hand, nine high schools had OSS ratios ranging from 12.2 percent down to 0.3 percent. In other words all of these high schools had OSS ratios less than the state-wide average of approximately 14 percent and most of these schools had low single digit ratios.

The five high schools with the highest OSS ratios had populations that were at least 94 percent minority. In three of the high schools, the African-American population was 96 percent or greater. The low OSS ratio high schools were, without exception, substantially more diverse or had a student population that was predominantly white.

Further district-by-district, school-by-school analyses are beyond the scope of this report. Our purpose here is to highlight the types of data-based assessments that can and should be done by public education stakeholders to identify potential areas of concern in student discipline and seek solutions to such challenges.

d. Expulsions

District variability also exists with regard to the use of expulsions. The data show that in School Year 2010, for example, five school districts in that year expelled more than one percent of their students as compared to the state-wide average rate of 0.2 percent. At the low end of the spectrum many school districts did not expel any students in 2010.

5. Incident Types Triggering Discipline

In this section, we assess the discipline incident types that have triggered exclusionary student disciplinary actions. We have generally categorized the incident types into "violent" and "nonviolent" groupings. That is, of the 27 different incident types that can be reported, we grouped the following as nonviolent: alcohol offenses, computer trespass, drug offenses, tobacco offenses, trespassing, vandalism, and "other discipline incidents." All others have been categorized as violent.

Any effort to categorize discipline incidents can be subject to criticism. It is certainly not our intent to trivialize efforts to control the use of drugs, alcohol or tobacco at school or to

⁷⁵ Such eligibility is often used as a surrogate to evaluate the relative level of poverty in a school district or school. The effect of this status on student discipline is addressed later in this report.

address incidents of trespass or vandalism. We question, however, whether exclusionary discipline is the most effective way of addressing these challenges.

Furthermore, we arguably have been over inclusive in the "violent" category by including some types of misbehavior. For example, theft offenses by definition do not involve threat, violence or bodily harm.⁷⁶ Also, it is likely that many of the "disorderly conduct" incident type actions do not involve violent behavior. GaDOE policy guidance specifically provides that, if the disorderly conduct involves a more serious incident (e.g., battery, serious bodily injury), the school is to report the incident under the code for the more serious behavior.⁷⁷

a. OSS

As depicted in Figure 5, for school year 2010, 69 percent of the students who received an OSS did so for categories of discipline incidents that we have categorized as nonviolent.

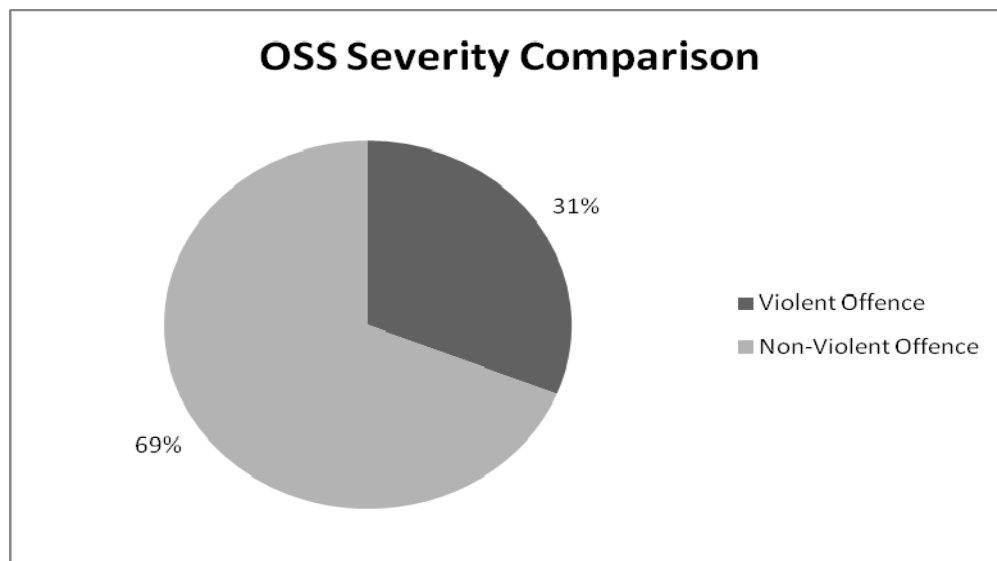


Fig. 5

Furthermore, despite the general downward trend of OSS discipline as a percentage of students over the seven school years under review, Table 5 demonstrates that the percentage of OSS discipline incidents for nonviolent incidents has increased over that time period.

⁷⁶ GA. DEP'T OF EDUC., FY 2010 STUDENT RECORD DATA COLLECTION DATA ELEMENT DETAIL 21 (Feb. 15, 2010).

⁷⁷ *Id.*

School Year	OSS Nonviolent
2010	69%
2009	69%
2008	66%
2007	65%
2006	64%
2005	60%
2004	60%

Table 5

The data also reveal substantial school district variability in this analysis as well although, in most school districts, OSS actions issued for nonviolent incidents exceed those for violent incidents. It is interesting to note that districts with historically low overall OSS rates are not necessarily less likely to impose OSS for nonviolent incidents. For example in 2010, two small school districts with very low OSS rates issued a total of 60 and 80 OSS actions respectively. In the first district, 50 of these actions or 83 percent were for nonviolent incidents. In the second district, 72 of the OSS actions were issued for nonviolent incidents comprising 90 percent of the total.

On the other hand, two other somewhat larger school districts with similarly low OSS rates issued 147 and 302 OSS actions respectively. In these districts, however, violent incidents as a basis for OSS significantly outweighed nonviolent incidents. In the first district only 19 percent of the students were disciplined for nonviolent incidents. In the second district, the percentage was only 16 percent.

b. Expulsion

The expulsion experience generally tracks the trend observed for OSS although substantially fewer students are affected. In school years 2009 and 2010, 69 percent and 65 percent respectively of the students expelled were involved in what we have characterized as nonviolent behavior. During the previous five years this percentage ranged from 55 percent to 61 percent.

c. Use of the "Other Discipline Incident " Code

Our assessment of the incident type issue was confounded to some extent by the extensive use by schools of a single incident code identifier to describe the nature of the disciplinary incident for which exclusionary discipline was imposed. GaDOE guidance includes 27 separate discipline incident type codes to be used when reporting discipline data.⁷⁸ One such code entry is "24 Other." This entry is apparently to be used when the incident is not covered by

⁷⁸ *Id.* at 20-21.

any of the other 26 incident identifiers.⁷⁹ The only GaDOE guidance on the use of this particular code entry gives the following example:

If a student is assigned to In School suspension for repeated violations of a non-reported incident such as chewing gum in class, his/her record would have a Discipline Incident Code of '24 Other Incident' and a discipline Action code of '20 In School suspension.'⁸⁰

Our analysis revealed, however, that the "Other" code is far and away the most often used identifier. Sometimes this code entry is used in conjunction with other more specific incident codes when reporting on a single incident of misbehavior. In an attempt to quantify the significance of the use of the "Other" code entry, we identified only those situations in which the "Other" code was the *only* description of the incident type triggering an OSS disciplinary action. As is shown on Figure 6, during the period under review, well over half of the OSS disciplinary actions imposed on students were premised solely on some "Other" incident type. This percentage has grown during this time frame so that, in school years 2009 and 2010, over 61 per cent of OSS actions were given solely for this category of incident type.

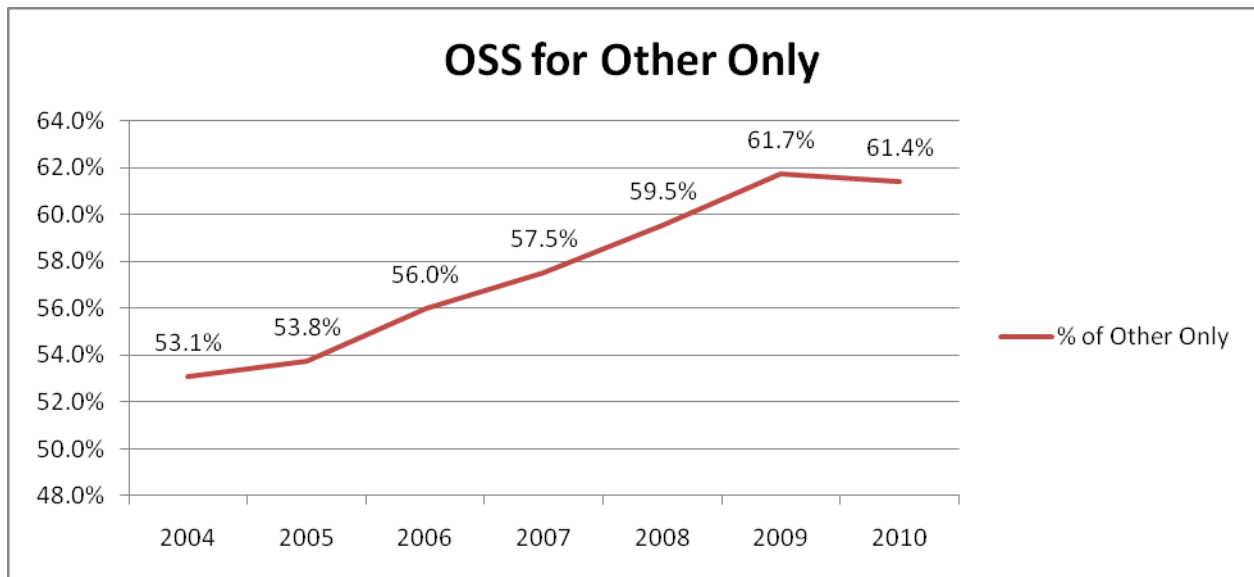


Figure 6

⁷⁹ The other codes are: 01-Alcohol, 02-Arson, 03-Battery, 04-Breaking & Entering-Burglary, 05-Computer Trespass, 06-Disorderly Conduct, 07-Drugs (except alcohol and tobacco), 08-Fighting, 09-Homicide, 10-Kidnapping, 11-Larceny/Theft, 12-Motor Vehicle Theft, 13-Robbery, 14-Sexual Battery, 15-Sexual Harassment, 16-Sex Offenses, 17-Threat/Intimidation, 18-Tobacco, 19-Trespassing, 20-Vandalism, 21-(omitted), 22-Weapons-Knife, 23-Weapons-Other, 25-Weapons-Handgun, 26-Weapons-Rifle, 27-Serious Bodily Harm, 28-Other Firearms. *Id.*

⁸⁰ FY 2011 STUDENT RECORD DATA COLLECTION DATA FILE LAYOUT-DISCIPLINE FILE LAYOUT 11 (Sept. 9, 2010).

During the stakeholder interview process discussed below, we attempted to determine why this incident type code was used so often. Most of the participants in the interview process did not have an opinion and stated that the Other category was not widely used in their school or district. For those who did offer an answer, the most common response was that the listing of incident types provided by GaDOE guidance was not comprehensive enough to encompass all of the types of behavior that trigger discipline.

The use of the Other code appears to be a state-wide phenomenon. While there is variability among the districts, 131 of 180 districts imposed OSS in school year 2010 based solely on an "Other" incident more than 50 percent of the time. Only eight districts imposed "Other only" OSS for less than 10 percent of all OSS actions.

In our Call to Action below, we call upon GaDOE to examine the extensive use of the "Other" incident type code. On its face, the exception appears to be "swallowing the rule." To the extent that there are recurring behaviors that are not adequately identified in the 26 other available codes, they should be identified and included in the guidance documents. Fundamental fairness in any disciplinary system mandates that prohibited behaviors be identified clearly so that the student has a chance to modify his or her behavior to avoid violating the prohibitions.

We suspect, however, that the extensive use of the Other category simply reflects the extensive use of exclusionary discipline for relatively minor student behaviors.

6. Subgroup Assessment by Gender

Over the entire period of record, on a state-wide basis, male students received 66 percent of OSS discipline (Figure 7) and 75% of the expulsions (Figure 8). Put another way, males were twice as likely to be suspended and three times as likely to be expelled than were females.

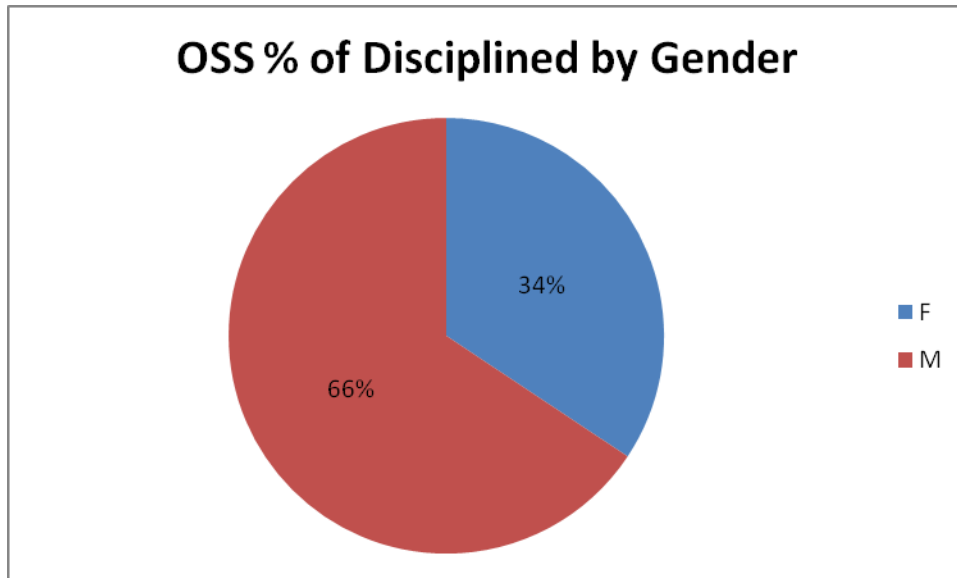


Figure 7

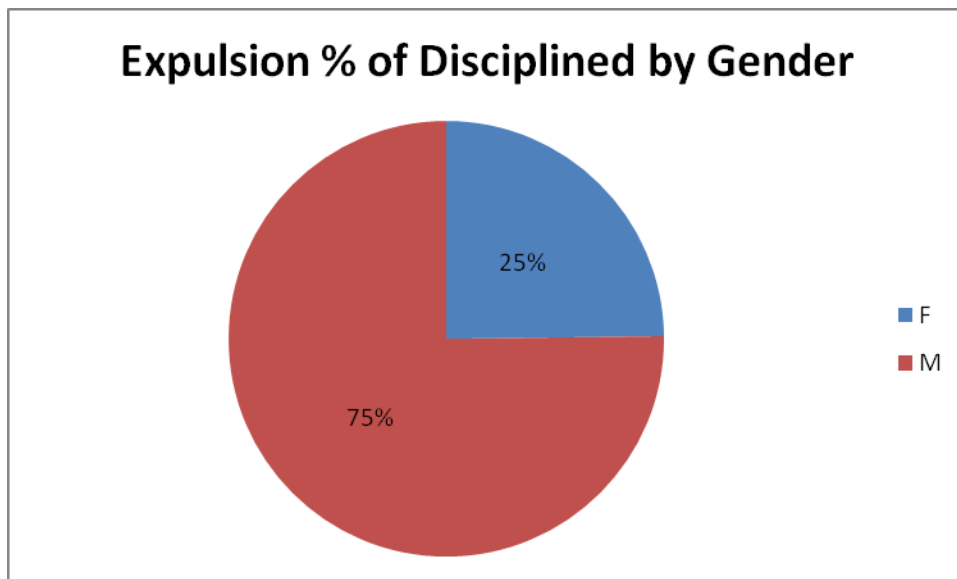


Figure 8

7. Subgroup Assessment by Age and Grade Level

On the average over the period under review, both OSS (Figure 9) and expulsion (Figure 10) disciplinary actions peaked for students at age 15. Figures 11 and 12 demonstrate that the

peak grade level for these exclusionary disciplinary actions peaked in the ninth grade. These trends have not varied significantly over the seven school years under review.⁸¹

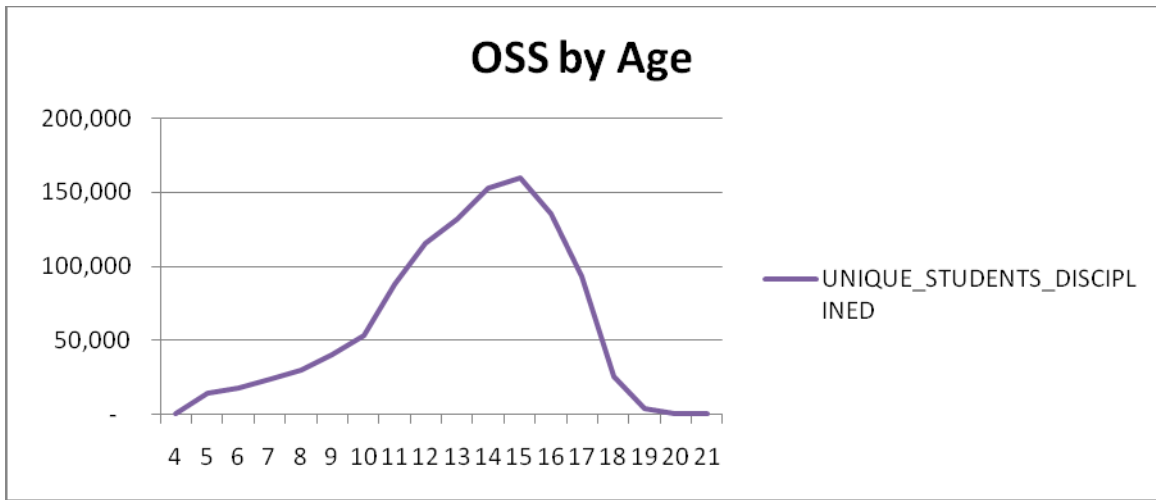


Figure 9

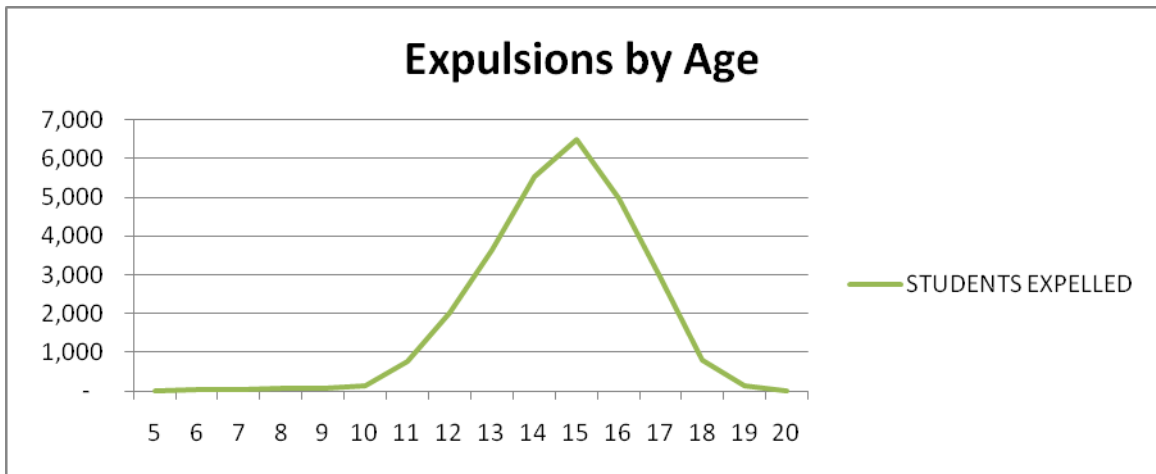


Figure 10

⁸¹ We suspect that these results are influenced to some extent by the fact that children in Georgia are no longer subject to mandatory education requirements after they reach age 16. O.C.G.A. § 20-2-690.1(a).

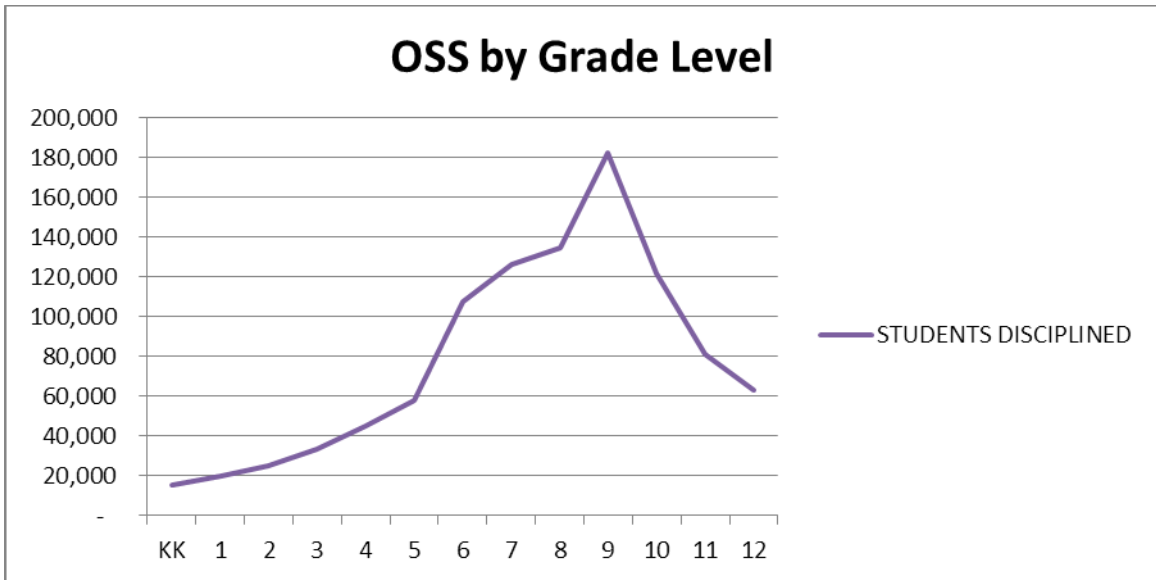


Figure 11

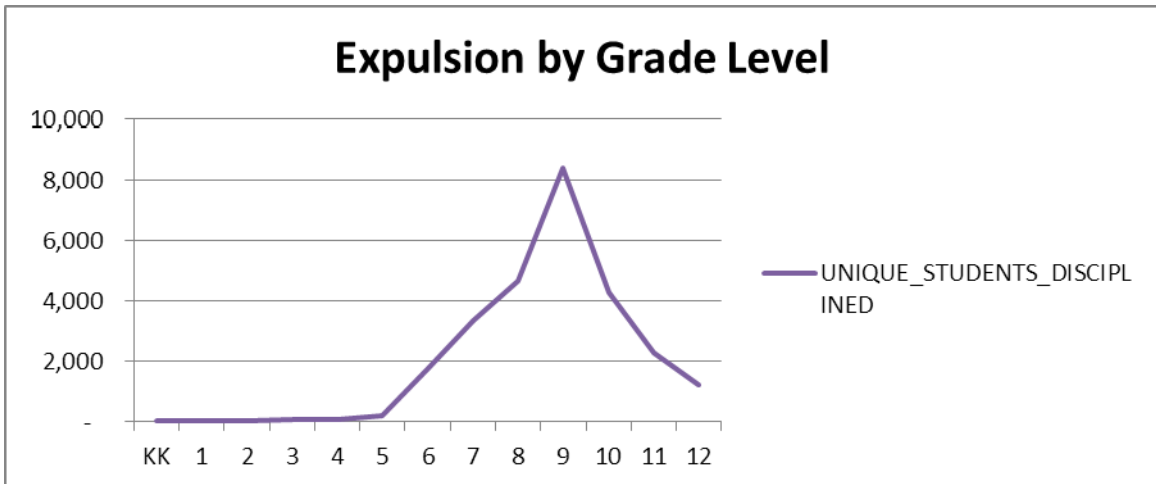


Figure 12

8. Subgroup Assessment by Race

Both the 2005 GaDOE Report discussed above and the Georgia Appleseed Phase I Report noted that African-American students were being impacted by disciplinary actions, especially exclusionary actions, at a rate significantly higher than their relative percentage of the student population. This finding was consistent with the results of many other detailed analyses of student discipline practices carried out in other states and cities in this country.

In this report, Georgia Appleseed explores this issue in greater depth in the hopes of setting the stage for collaborative efforts by student discipline stakeholders to address issues of racial disproportionality that may exist at the school, district, or state level.

Our earlier assessment of disproportionality was based on an assessment of the relationship between a particular racial group's percentage of the school-wide population and that group's share of a particular type of disciplinary action. For example we noted that African-American students comprised approximately 38 percent of the state's public school student population but were issued approximately 66 per cent of the OSS issued in a particular year. These types of comparisons can be helpful when assessing large populations but can become cumbersome as one seeks to dig deeper into the issue.

In the analysis that follows, we make use of a different technique to assess the existence of disproportionality, the "Risk Ratio."⁸² The risk ratio is calculated as follows:

Assume a student population of 1000 students of which 400 are African American. Further assume that in a particular year 260 OSS actions were taken with 200 being issued to African-Americans and the balance of 60 being issued to students in other racial groups.

1. First one calculates what is called the "Risk Index" for the racial group being evaluated, in this case the African-American students receiving OSS. The issue is what is the risk that any particular African-American student will receive an OSS? To calculate this, divide the number of African-American students who received an OSS (200) by the total number of African-American students. $200/400 = 0.5$ or a 50 % chance.

2. Next calculate the Risk Index for all other students at the school. There are 600 hundred other students and they received 60 OSS so their Risk Index is $60/600 = 0.1$ or a 10 percent chance.

3. Finally, you calculate the "Risk Ratio" by comparing the Risk Indices calculated above, i.e., divide the Risk Index for the group being evaluated (in this case African American students receiving OSS) by the Risk Index for all other students. $0.5/0.1 = 5$. This means that, at

⁸² ASHLEY C. GIBB & RUSSELL SKIBA, USING DATA TO ADDRESS EQUITY ISSUES IN SPECIAL EDUCATION, CENTER FOR EVALUATION & EDUCATION POLICY-EDUCATION POLICY BRIEF (2008)[*hereinafter* "GIBB & SKIBA"], available at http://www.indiana.edu/~ceep/projects/PDF/PB_V6N3_Winter_2008_EPB.pdf. See also THE EQUITY PROJECT AT INDIANA UNIVERSITY, GLOSSARY OF EQUITY TERMS, available at <http://www.indiana.edu/~equity/glossary.php#RI>.

this hypothetical school, African-American students had a risk of receiving an OSS five times greater than all other students.

A calculated Risk Ratio of 1.0 means that a particular group's risk is exactly the same as that of all other students. The question arises as to what Risk Ratio level should trigger at least a closer look to assess whether racial disproportionality may be present?

The Risk Ratio tool is widely used by state educational agencies when they assess the possibility of racial disproportionality for special education student placement decisions and with regard to disciplinary actions imposed upon special education students. Such analyses are required by the federal Individuals with Disabilities Education Act ("IDEA").⁸³ Writing in this context, recognized experts in the area of disproportionality have stated:

National standards for disproportionality are still emerging; the most widely accepted standard is that a risk ratio discrepancy of 1.5 times is a level at which we start being concerned about over-representation. The precise definition of 'significant disproportionality' [under IDEA] is, however, left to individual states. Although the federal government has not defined a standard level for significant disproportionality, many states are defining a risk ratio between 2 and 2.5 times discrepant as an indicator of serious or significant disproportionality.⁸⁴

In our review below we have highlighted situations where calculated Risk Ratios exceed 1.5.

a. State-Wide

We summarize in Table 5 the OSS Risk Ratios for the three largest minority populations in Georgia's K-12 system for the seven-year period under review, i.e., African-American, Hispanic, and Asian students. This analysis reveals that the OSS Risk Ratio for African-American students has been 3.1 or 3.2 during each of these years while the Risk Ratio for Hispanic and Asian students has been well under 1.0. The Risk Ratio for White students has also been under 1.0 during this period. Thus, on a state-wide basis, African-American students have been more than three times as likely to receive an OSS disciplinary action than other students.

Black		Hispanic		Asian	
2004		2004		2004	
At Risk Ratio	3.1	At Risk Ratio	0.6	At Risk Ratio	0.3
Black	16.16%	Hispanic	5.85%	Asian	2.56%
Non Black	5%	Non Hispanic	10%	Non Asian	10%

⁸³ See the discussion *infra* at ____.

⁸⁴ GIBB & SKIBA at 4.

Black		Hispanic		Asian	
2005		2005		2005	
At Risk Ratio	3.2	At Risk Ratio	0.6	At Risk Ratio	0.2
Black	16.10%	Hispanic	5.64%	Asian	2.29%
Non Black	5%	Non Hispanic	10%	Non Asian	9%

2006		2006		2006	
At Risk Ratio	3.1	At Risk Ratio	0.6	At Risk Ratio	0.2
Black	16.27%	Hispanic	5.89%	Asian	2.26%
Non Black	5%	Non Hispanic	10%	Non Asian	10%

2007		2007		2007	
At Risk Ratio	3.2	At Risk Ratio	0.6	At Risk Ratio	0.3
Black	16.29%	Hispanic	5.85%	Asian	2.42%
Non Black	5%	Non Hispanic	10%	Non Asian	10%

2008		2008		2008	
At Risk Ratio	3.2	At Risk Ratio	0.6	At Risk Ratio	0.2
Black	16.21%	Hispanic	5.94%	Asian	2.12%
Non Black	5%	Non Hispanic	10%	Non Asian	10%

2009		2009		2009	
At Risk Ratio	3.2	At Risk Ratio	0.6	At Risk Ratio	0.2
Black	15.27%	Hispanic	5.61%	Asian	2.15%
Non Black	5%	Non Hispanic	10%	Non Asian	9%

2010		2010		2010	
At Risk Ratio	3.1	At Risk Ratio	0.6	At Risk Ratio	0.2
Black	14.03%	Hispanic	5.52%	Asian	2.06%
Non Black	5%	Non Hispanic	10%	Non Asian	9%

Table 5

b. By District

When analyzed on a district-level basis, the race/ethnic risk ratio data reflect some variability but not to the extremes reflected in the overall OSS incident rates discussed above. For the period under review, in each year only 12 to 20 school districts had calculated risk ratios for African-American students of less than 1.5 and many of these districts had a very limited enrollment of African-Americans. Put another way, approximately 90 percent of Georgia's school districts consistently had OSS risk ratios for African American students that exceeded the level that experts say require further assessment to evaluate potential racial disproportionality.

On the other end of the scale, each year 12 to 15 school districts reflected risk ratios for African-American students greater than 4.0. These were not always the same set of districts but some districts regularly were in this category.⁸⁵

We also evaluated risk ratios for other racial/ethnic classifications. While there were some limited situations in which the risk ratios for Hispanic students exceeded the 1.5 threshold, we were unable to identify any district level recurring or systemic patterns affecting non-African American minorities. In the future, we intend to review this issue at the school level to determine risk ratio levels at schools that host relatively high numbers of Hispanic or Asian students.

c. Impact of Nature of Incident Type

In an attempt to evaluate further the issue of potential racial disproportionality in student discipline, we wondered whether the nature or type of incident had any impact on this issue. In particular, we wanted to test the possibility that African-American students might be more likely to be subjected to exclusionary discipline for disciplinary incidents that were relatively "subjective" in nature allowing the school administrator more discretion in determining whether disciplinary action should be taken.

To test this hypothesis, we identified three relatively subjective discipline incident types, i.e., disorderly conduct, threat/intimidation, and "other discipline incident." In other words, we assumed that a teacher or administrator would often have to make a subjective evaluation as to whether the behavior in question reached the level of disorderly conduct, constituted a threat or effort to intimidate, or amounted to an "other" incident. We then categorized all the other discipline incident types as "objective." In other words, for the most part, incidents such as theft, fighting, tobacco and drug use, etc. either occurred or they did not so that little discretion is exercised in deciding whether an offense occurred.

Looking at 2010 School Year data, a total of 118,031 students received an OSS for a "subjective" incident as we have defined the term. Of these students, 79,514 or 67 percent were African-American. A total of 57,175 students received an OSS for an "objective" incident.

⁸⁵ Districts who had risk ratios of 4.0 or greater for each of the seven years under review included Atlanta Public Schools, Fulton County, Thomasville City and Valdosta City.

36,511 or 65 percent of these students were African-American. While the percentage of affected African-Americans was slightly higher for the subjective offense category, we do not think that the difference is sufficiently great to support the subjective/objective hypothesis on a state-wide basis.

We realize that this was a fairly simplistic approach to this issue and we look forward to working with stakeholders in the future to developed a more nuanced analysis.

9. Assessment of Other Student Subgroups

a. FRM Eligibility

Eligibility to participate Free or Reduced Cost Meals ("FRM") is often used as a surrogate measure to reflect the poverty of the eligible student group.⁸⁶ Therefore, to test the correlation between poverty and discipline, we carried out an Risk Ratio analysis comparing the likelihood that students who are FRM-eligible would receive an OSS as compared to students who are not so eligible.

Figure 13 demonstrates that, on a state-wide basis, FRM-eligible students are more than twice as likely to receive an OSS disciplinary action than their more affluent counterparts. The risk ratio has been trending upward during the seven years under review.

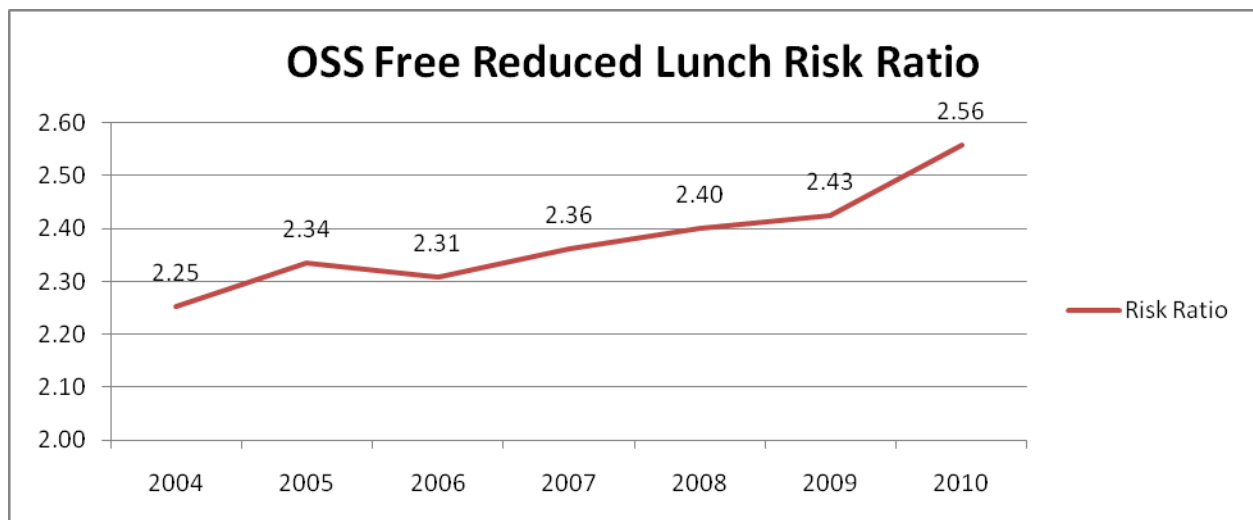


Figure 13

⁸⁶ In 2010, 56 percent of the K-12 student population in Georgia was FRM-eligible. <http://www.gsci.org/ReportCenter/reportcenter.jsp>

b. FRM Eligibility and Race

In the stakeholder interviews summarized later in this report, we asked for views on the apparent disproportional imposition of exclusionary discipline on African-Americans as outlined earlier in this report. Several respondents commented that they thought the issue was not race but poverty. To at least begin the process of testing that premise, we divided the student population up into two separate cohorts--those who are FRM-eligible and those who are not. We then calculated the OSS risk ratio ("RR") for the racial/ethnic groups in each of the two cohorts. The results for African-American students are reported in Table 6.

School Year	FRM-Eligible RR	Non-FRM Eligible RR
2004	2.80	1.36
2005	2.91	1.32
2006	2.85	1.33
2007	2.92	1.30
2008	2.98	1.30
2009	3.02	1.25
2010	3.01	1.14

Table 6

This analysis reveals that the OSS risk ratio for the relatively less affluent FRM-eligible African American students is markedly higher than that of their relatively more affluent counterparts. Indeed the calculated risk ratio for non-FRM-eligible African American students is below the 1.5 threshold of concern and is trending toward 1.0.

We do *not* believe, however, that this analysis supports the proposition that the disproportionality issue is one of poverty rather than race. Rather it underscores the complex interrelationships between race and socio-economic status that must be assessed if we are to achieve effective student discipline and desired educational outcomes for all students.

c. ELL Status

A small but growing percentage of students in our public schools have limited English proficiency and are designated "English Language Learners" ("ELL").⁸⁷ Figure 14 demonstrates that, on a state-wide basis, ELL students, similar to FRM-eligible students, are more than twice as likely to receive an OSS disciplinary action than their English proficient counterparts. Again, the risk ratio has been trending generally upward during the seven years under review.

⁸⁷ In 2010, six percent of the student body statewide were ELL. <http://www.gsci.org/ReportCenter/reportcenter.jsp>

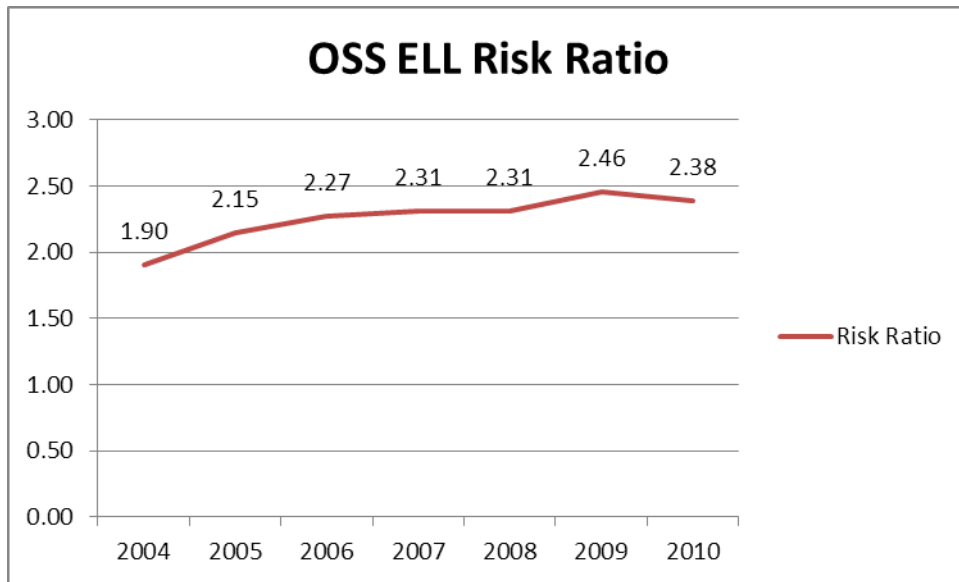


Figure 14

d. Special Needs Status

Ten to eleven percent of the students in Georgia's K-12 systems over the seven-year review period are children with a disability.⁸⁸ Disciplinary disproportionality assessments (among others) are required under federal law for these "special needs" children. As set forth in Figure 15, the OSS risk ratio on a state-wide basis that we calculated for this group of students has hovered between 1.59 and 1.69 for the period under review, i.e., only slightly over the 1.5 threshold of concern.

⁸⁸ See Appendix E at 13-15 for definition of terms and a discussion of the special rules applicable to this group of students.

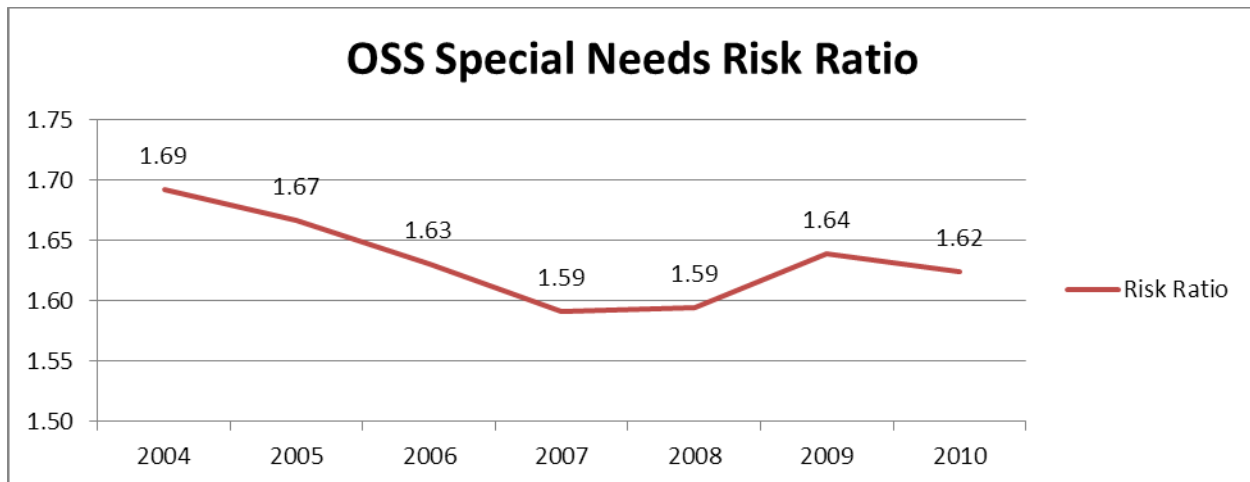


Figure 15

10. Summary

The foregoing analyses only begin to scratch the surface of the complex inter-related issues that affect student discipline outcomes in Georgia. Our hope is that we trigger dialogues around this state on these issues and on how the robust data base that we have developed can be used to help understand and meet the challenges that education stakeholders face in assuring effective student discipline. Our commitment is to participate in these dialogues in a constructive and collaborative way.

II. Voices from the Field

A. Introduction

During the fall of 2010, Georgia Appleseed volunteers conducted interviews throughout the state with over 200 student discipline stakeholders. These stakeholders were school district staff members (including several district superintendents) along with principals and assistant principals, teachers, counselors and other staff members with student discipline responsibilities from elementary, middle and high schools. A total of 17 school resource officers (“SROs”), i.e., law enforcement personnel whose “beat” is a school or school system, were also interviewed. We also talked with a number of attorneys who regularly advise school boards on student discipline.

In addition, we met with stakeholders from outside the school system who deal with student discipline matters that involve referrals to the juvenile or criminal justice system. Juvenile court judges, intake officers, probation officers, prosecuting attorneys and defense lawyers participated.

Finally, Georgia Appleseed distributed an electronic survey instrument designed to elicit the view of the two other key stakeholder groups involved in student discipline issues—students and their parents. This survey was created and distributed in close cooperation with the Georgia PTA.

Recurring themes heard from these voices from the field are summarized below.

B. Methodology

1. Process

While a Georgia Appleseed staff member carried out a number of interviews, most were done by volunteer lawyers and support staff from law firms located in Atlanta and elsewhere in the state. All volunteers were briefed on the purpose of the project and on the interview process -- most by attending one of several in-person or telephonic training sessions convened by Georgia Appleseed. Detailed written instructions were also provided to all volunteers.

To assure consistency in the scope of the interviews, each interviewer was provided with lists of interview questions. The lists were tailored depending on the category of interviewee. That is, although there were a number of questions common to all lists, different questions were addressed to different groups of interviewees depending upon their particular role in the student discipline process.

A copy of the pertinent question list was sent to each interviewee in advance of the interview. For the most part, the interviews were carried out in-person and one-on-one. In some cases, to accommodate scheduling issues, the interviewees participated in groups or were interviewed by phone. Following the interview, the interviewer prepared a written summary (generally using a common format), which was forwarded to the interviewee with a request for

review and comment. Once final, the summaries were forwarded to our lead *pro bono* law firm for compilation.

The survey document was distributed electronically by the Georgia PTA to parents and older students throughout the state. In addition, several stakeholder groups including, for example, JustGeorgia, the Georgia School Councils Institute and the Interfaith Children's Movement, circulated the survey instrument to their constituents. Finally, a few of the school districts participating in the interview process described above made the survey available to parents and students. All survey responses were received and compiled by the Georgia PTA.

2. Sample Limitations

a. Interviews

Georgia Appleseed does not assert that the interview or survey results summarized below represent the views of a “representative sample” of stakeholders in a statistical sense. While the interview process was a major undertaking, the total number of interviewees is still a very small percentage of the total number of these stakeholders on a statewide basis.

In a strategic attempt to obtain a broad range of views, we identified 21 school districts as potential participants in the interview process. (To obtain frank responses to our questions, we assured the candidate districts that the identity of the participating school districts and of the individual participants would be maintained in confidence. Thus, in our summary below we identify our sources only generically.)

These candidate school districts were identified to reflect statewide diversity by focusing on differing student population size, rural and urban districts, relatively affluent and relatively poor districts, districts with varying student racial and ethnic demographics, and districts from various geographic regions of the state. We also included in the candidate list seven districts with historically relatively high out of school suspension (“OSS”) rates and seven districts with historically relative low OSS rates.⁸⁹

Sixteen school districts initially agreed to participate. The remaining five districts did not affirmatively decline but simply failed to respond to numerous contacts. Four of these five nonparticipating districts were in the relatively high OSS rate district category. Subsequently, four of the original participating districts reconsidered and declined to participate -- two affirmatively and two by being unresponsive to numerous follow up requests. Three of these districts were among the relatively high OSS rate district category. Therefore, while we believe that the 12 participating school districts do reflect the desired broad range of diversity elements related to size, location, demographics, etc., unfortunately none of them is a high OSS rate district while five are low OSS rate districts.

It should also be noted that we were dependent throughout this effort on the voluntary cooperation of the school districts and of the individual interviewees, whose desire to contribute to the public good through their participation in this project is commendable and deserving of

⁸⁹ See Phase I Report at 25-26.

our sincere gratitude. Once a school district agreed to participate, district personnel identified for us the school principals that we interviewed and the principals, in turn, identified the schoolteachers and staff to be interviewed. It is likely that this process may have skewed the results to some extent since we suspect that the district staff and principals selected individuals that would best represent the school system. Certainly we were uniformly impressed with the quality and commitment of the individuals we interviewed.

b. Survey

A total of 630 parents and 98 students responded to the survey. Although we had at least one response from each of 52 different school districts, over 60 percent of the respondents responded to a request to fill out the survey by four school districts that participated in the interview process discussed above with 26.7% of the respondents being from one large Metro Atlanta participating school district.

The parent survey recipients were overwhelmingly female (85%) and married (79%). Almost eighty percent of the respondents stated that they worked outside of the home on a -time or part-time basis. The respondents did not mirror the statewide public school population. In particular, 67 percent of the respondents were white and 20 percent were African-American compared to a public school population in school year 2009-2010 that was 46 percent white and 38 percent black. In addition, the respondents appear generally to be more affluent than average with over 60 percent reporting annual income in excess of \$50,000.

c. Summary

Despite the foregoing caveats, we believe that the insights gleaned from the interviews and survey responses, which are presented below, are valuable and should be carefully considered by all stakeholders as we work toward assuring effective student discipline in Georgia's public schools.

C. *Insights from Interviews*

1. *Disciplinary Practices*

a. *Class Room Management*

Many interviewees commented that effective classroom behavior management by teachers was a key element of efforts to keep kids in class. Principals almost unanimously reported a preference for allowing most misbehavior to be dealt with in the classroom. Certain categories of misbehavior, such as "zero tolerance" offenses, however, require an office referral and are not allowed to be handled in the classroom.

In elementary schools, a number of interviewees reported that teachers work with their students to establish specific classroom behavior expectations and consequences so that the students have a "buy in" to the process. Often, "behavior cards" or other graphic records are maintained on a daily basis to track misbehavior and to reflect positive behavior.

Incidents of misbehavior are addressed in the context of the district and school's progressive discipline policy as discussed below. The initial step is usually a warning. A recurrence may then result in some sort of effort to deny the child a privilege such as imposing a "silent lunch." One elementary school teacher discussed the use of the "wisdom walk" where a student is required to walk around the playground at recess contemplating his/her behavior. If the behavior does not cease, then a parental contact is initiated. Classroom misbehavior results in an office referral only if the behavior recurs after all other classroom management efforts are not fruitful.

b. In-School Suspensions

The management of in school suspensions ("ISS") was similar among all the participating school systems. In middle school and high schools, ISS students were assigned to a separate classroom, which is generally managed by a paraprofessional although some schools use certified teachers. The classroom teachers are notified that the student is being assigned to ISS and are required to send work for the student to the ISS room. In turn the students are required to complete the work. Some systems report that if the work is completed the ISS supervisor can supply additional work.

In elementary school, there is often no separate ISS room and other strategies are employed. For example, several systems reported that a student would be sent to a separate active classroom to do his/her work (e.g., a third grader would be sent to a kindergarten class). Teachers in a large Metro Atlanta district reported that they do not have an ISS system at all because the district perceived that some students were actively seeking to be placed in ISS. They now use number of other interventions to eliminate the need for ISS.

One high school math teacher in a small north Georgia system said that ISS is detrimental because it is particularly hard for a student to keep up in math if the regular teacher is not around in real time to answer questions.

c. Out-of-School Suspensions ("OSS")

1. *OSS Incidence Rate Management*

We interviewed a number of stakeholders in school districts with historically very low OSS incidence rates. We explored with them the factors that lead to these results. The factors identified included:

- High Expectations for Students

In one school district, the principal's motto is "Failure is Not an Option." It does not matter where the child comes from, according to this leader's philosophy; enrichment and support will make that child successful.

In another school system, a high school teacher quoted the principal as regularly stating: "There is no un-teachable child."

On the other hand and perhaps proving the point, one Assistant Principal in yet another school system (which is not among the low OSS category) stated: “We are a Title I school and therefore have more discipline referrals.”

- Dedicated High Quality Teachers

One superintendent noted that the affluence of the school district allowed it to attract well-qualified teachers and excellent administrators. In addition they provide high quality professional development training.

Another principal noted that a school would have fewer disciplinary problems if the kids are kept engaged and at work all the times by an effective teacher.

- Effective Parental/Community Involvement

Some of the school districts noted that because their parent base was relatively financially well off and highly educated, they were able to support their children and the school. Indeed one superintendent noted that families move to his district “because of the schools.”

Effective parental support, however, was not limited to affluent school districts. One rural and relatively poor North Georgia school district boasts extremely low OSS rates and admirable graduation rates. There, also, school personnel list strong community support as a key factor.

2. *OSS Policies*

We have focused on OSS in many of our analyses because missing class can often make it difficult for students, especially those who are already struggling academically, to maintain pace with their classmates. In our interviews we have noted that some districts rigorously apply a policy that prohibits a suspended student from making up work and provides that the student will get a zero as a daily class grade while on suspension. One principal vigorously supported this policy as necessary to support the deterrent effect of a threatened OSS.

Other districts either do not have such a policy or do not rigorously enforce the policy. One elementary school teacher said that the consequence of misbehavior should not be an academic penalty. A middle school teacher in the same district said that make up work was provided and noted that, if the student thinks he will be behind, he tends to give up and act out. An administrator in another district stated: “Most systems don’t allow it. But we allow them to make up all work. We don’t have double jeopardy – we don’t penalize the student academically. Our stakeholders are our students.”

A middle school teacher in yet another district supported the concept of helping the student to keep up, but noted that the make up effort is problematic because of the burden on the

teacher to try to re-teach the assignment especially if the student is not self motivated. If a student feels there is no hope of catching up then the student is very likely to give up.

d. Positive Behavioral Interventions and Supports

Two school districts reported that they had adopted PBIS system wide. Other individual schools within the interview cohort reported that PBIS had been implemented for various lengths of time.

Many respondents referenced the “rewards” element of the program. In one of the districts employing PBIS, the elementary and middle schools use a daily behavior card to award “points” for positive behavior. The card is sent home for the parent’s signature. When the student reaches a certain point level, the student is given a treat. The high school awards “[mascot name] Bucks” for good behavior and has instituted a “student of the month” program. The program at the high school emphasizes relationship building.

In a Metro Atlanta district, an elementary school teacher reports that she and her colleagues reinforce positive behavior in the classroom through praise and rewards as well as through notes and calls to parents. Teams are established in classrooms to teach cooperation and to compete for awards for positive behavior such as keeping the room clean.

An elementary school teacher in another district talked about that school’s “chain” system. Each classroom builds its own chain by adding a link whenever one of its students does well. When the classroom chain reaches the floor, then they add a link to the school-wide chain. When the school chain reaches the floor, there is a celebration.

One school district superintendent in a system employing PBIS also discussed the data collection and assessment element of the program. PBIS software allows school administrators to sort the data in a variety of ways including by time of day and day of the week. They review this data and use it for prevention and intervention. For example, one year the data showed that an unusually high number of incidents were occurring during a certain time period each day. School personnel reworked their class and lunch schedules with positive results.

The same superintendent noted that the PBIS initiative was part of a larger comprehensive plan to remove barriers to learning. This plan is carried out in collaboration with a major university’s mental health center. The district has access to more counselors and social workers than the minimum number required and paid for by the state. These counselors and social workers coordinate involvement in the community, try to increase parent involvement, and attempt to identify and remove barriers. They provide family intervention and help students and their families find resources for a variety of issues that may be interfering with the student’s ability to attend to and focus on school (e.g., mental health counseling, sexual abuse, physical abuse, lack of financial resources, lack of stability, drug and alcohol abuse, and teen pregnancy).

Systems and schools that had relatively mature PBIS programs reported very positive results including a significant reduction in office referrals and a reduction in referrals to

alternative education settings. Other programs had only recently been initiated so the results were unclear.

One elementary school teacher said that effective implementation of a PBIS program required a substantial amount of training and the development of a different mindset for the teachers. For PBIS to be effective, this stakeholder said that the teachers “have to be positive all day.”

e. Progressive Discipline Policy

Georgia law requires each school district to implement a system of “progressive discipline.” All district and school representatives interviewed reported using a progressive discipline policy. Descriptions of how the policy is implemented focused upon the systematic approach to the level of discipline applied.

For example, a middle school principal stated that, for minor infractions, teachers can warn (“redirect”) the student, conference with the student, call the parent, have the student confer with the counselor, establish a behavioral contract, hold an in-person parent conference, or impose lunch detention, silent lunch, time out, or after school detention. Any more serious sanctions must go through the administration. The principal looks at discipline referral to see what steps the teacher/team took before referring the student. The principal then applies a progressive discipline policy: after-school detention is the lowest level disciplinary action, followed by “Saturday School” (a three-hour day when students have to come to school and work on their homework), in-school suspension, and out-of-school suspension for one to ten days. The final step would be to suspend the student pending a tribunal hearing to determine if a long-term suspension should be imposed. The principal reports that rigorous application of this policy has reduced the number of tribunal hearings from 41 when he first came to the school to nine last year -- most of which addressed drug offenses.

f. Response to Intervention

One school superintendent reported on a district-wide program called “Response to Intervention” (“RTI”). He described the program as a framework for the district to intervene academically and behaviorally from elementary school through high school. In this district, however, RTI is mostly implemented at the middle and high school levels. He discussed the four “tiers” and noted that there were rigorous data collection and assessment requirements built into the system. For example, the data must document repeated behavioral issues to justify moving a child to Tier 2, which involves a six-week period of working with the child to resolve the behavior issues. The superintendent noted that, prior to implementation of RTI, many behavioral incidents resulted in office referrals. The incidence of such referrals has been reduced as a result of early intervention through RTI.

An elementary school teacher in another district also described that school's RTI program. She reported that with this system in place she has referred only one child to the office in eight years. An elementary school counselor in the same district characterized the RTI program as more focused on academic performance than student discipline. The counselor noted

that the implementation of RTI has reduced the number of students referred for special education testing.

g. Zero Tolerance Policies

Later in this report we will discuss the “zero tolerance” concept and note that state law mandates a zero tolerance policy for only a very limited number of offenses. We also note that many school districts have independently enacted substantially broader zero tolerance policies in their codes of conduct. Some form of zero tolerance is imposed by many school systems for weapons possession (not just firearms as mandated by state law), drug or alcohol use, fighting, sexual offenses, any violence against a teacher or other school employee, gang-related activities, and other offenses.

No issue that we discussed in this process resulted in a starker dichotomy of views than the use of zero tolerance policies. Some stakeholders were vigorous supporters of tough zero tolerance policies. They argue that the clear articulation of consequences for certain types of behavior followed by consistent implementation of the policy has been an effective deterrent. Several respondents noted that some behaviors such as fighting and on-campus drug offenses became almost nonexistent after the first violators were taken to juvenile detention centers.

Others argue just as strongly that zero tolerance provisions are misguided and that school officials should have the discretion to evaluate all the relevant circumstances surrounding the student’s actions on a case-by-case basis including consideration of intent. Many cite examples of unintended consequences in which a “good kid” is suspended for unintentional actions. In particular in rural counties, teachers report that car searches often turn up a hunting knife used on a weekend outing and left in the trunk. A north Georgia juvenile court intake office noted the case of a farmer’s son who forgot about the knife in his pocket that he was using to cut the twine around bales of hay.

School teachers and administrators at the elementary school level, in particular, believe that, while zero tolerance may be effective in dealing with discipline issues in middle school and high school, these policies are not effective in their schools because their kids are simply too young to understand the concept.

h. Student Discipline Data

One school superintendent expressed concern about the requirement that the state student discipline data reporting system apparently requires the use of a code designated “expulsion” even if the student is assigned to the alternative school. He asserts that parents and others interpret the term “expulsion” to mean an exclusion from the system without any instruction. Another district staff person reports that they have had only one true permanent expulsion in over ten years. They urge the Georgia Department of Education to develop a code designation for long-term suspension when the student is allowed to attend an alternative education school or program.

In the Phase I report,⁹⁰ we expressed concern about the extensive use of the “Other” category when entering the designation of the behavior giving rise to the disciplinary action in the state student discipline record system. Most of the participants in the interview process either had no views or stated that the “other” category was not regularly used in their school district. Some, however, noted that there might not be a sufficient number of choices available among the menu of offense options and teachers and administrators.

An attorney experienced in representing multiple school districts noted that there is a significant disconnect between (a) the specific offenses listed in the Georgia Code for which the school districts are required to impose discipline, (b) the listing of offenses found in many Student codes of Conduct, and (c) the offense coding system found in the student discipline data system.

2. **Disciplinary Disproportionality**

a. Racial

We asked all interviewees what factors might contribute to racial disproportionality in the imposition of OSS and expulsions. In particular, we noted the over representation of black males in both of these disciplinary categories. (Our focus on black males was triggered by the statewide disproportionality for this group noted in the 2005 GaDOE report and the similar findings in our Phase I study and in prior studies in other jurisdictions. Statewide data in Georgia does not reflect a negative disciplinary disproportionality for Hispanic, Asian or other explicitly identified racial/ethnic groups. This issue is addressed in further detail in the discussion of our Phase II data assessment above.)

Despite data showing disproportionality on a statewide basis, most interviewees did not believe that there was such disproportionality in their own district or school. With regard to the question in general, many respondents opined that the issue was not one of race but of the socio-economic status of the students. They believed that the poverty level of the student was the key determinative factor.

Several respondents expressed the opinion that parental involvement and support for education was limited or nonexistent for many black students. In addition it was the impression of several of these respondents that many black students were living in single parent homes without effective role models. These students, thus, were without sufficient family discipline or structure systems, which made it very difficult for the students to function in the more rigorous school discipline and structure systems.

A School Resource Officer assigned to a mid-sized urban school district offered his view that black male students often have a more pronounced "macho attitude" and that they tend to give more "attitude" to authority figures.

Other respondents, however, cited other factors that may contribute to racial disproportionality in the application of discipline. For example a group of high school teachers

⁹⁰ Phase I Report at 26-27

in one large Metro Atlanta district stated that some administrators and teachers might misunderstand cultural differences. Also they said that they thought that there was a general expectation that black students will misbehave more often than other categories of students. An elementary school teacher in the same district stated that many educators are not trained to deal with African-American children. A black female counselor in the district asked: “Do the teachers match the culture? Does the curriculum match the culture of the students?”

District office personnel in another part of the state acknowledged a slightly higher application of OSS punishment to African-American students and stated that the district was trying to educate principals and teachers about the factors causing this situation. These interviewees felt that race had less to do with the higher application of OSS than did the poverty level of the students. The district is employing community mentor programs particularly seeking male African-American mentors to be involved.

A superintendent of a north Georgia school district noted differing cultural norms at home and at school for black students as opposed to other racial groups attending his schools. He shared his understanding that studies show that African-American students often learn better through oral instruction and that the relationship between a student and teacher is critical to success. In his view, it is important for teachers to understand the different needs and learning styles of African-American students but believes that most teachers are not so trained. Also, the Superintendent noted that, if the parents themselves had negative experiences when they were in school and do not trust the schools and the teachers, then they can instill that distrust in their own children, making it more difficult for teachers to develop good relationships.

A middle school teacher in a coastal Georgia district believes that some children must be disciplined differently based on cultural differences. She noted that “trust” can be a big issue for some African-American students and that teachers may need to be more nurturing to cultivate that trust.

In a predominantly white north Georgia school district, one high school teacher noted that the black students tended to sit together at lunch. She also observed that the African-American students tended to be more boisterous at their tables than did the white students at the other tables. She said that, technically, the black kids could be “written up” every lunch period but are not because the adults monitoring the lunch room recognize that the students are simply being themselves and are not intending to be disruptive.

b. Students with Disabilities

Our Phase I Report also noted an apparent disproportionality in the discipline rates for students with disabilities. Many respondents cited a need for more specialized training of classroom teachers to assist them in responding to the behaviors of students with disabilities.

A district level disciplinary tribunal hearing officer commented:

Although a proponent of inclusion and a parent of a special needs student, I strongly oppose the mandatory inclusion of “all” special needs students regardless of their exceptionality. Many special needs students require and are

better served both academically and in relation to socialization in non-traditional classroom settings. The vast majority of regular education teachers, even in the team teaching mode, simply are not adequately trained, equipped, or emotionally ready to understand and employ the best practices necessary to facilitate successful outcomes in the educational setting. Educators are asked to identify special needs students by 5th grade and place them in inclusion classrooms by 6th grade. This short time frame is simply inadequate to assess and address the individual needs of these students. The push for all special education teachers to be interrelated[ly] certified did away with schools having experts in EBD and MID, two very different student populations. The certification programs do not require these educators to have classes in these specific areas of expertise. It is effectively the same thing as going to see your general family medicine practitioner to operate on a brain tumor.

A juvenile court probation officer from the same district opined that there needs to be more education for teachers and other school staff members because in many cases they are under-qualified to handle the special education students. Specifically, she reports seeing an increase in students with autism and Asperger's Syndrome in the court system. She thinks this increase is in large part due to the teachers and administrators within the school system not knowing how to handle these two conditions.

3. Other Perspectives

a. Juvenile Justice Perspectives

Juvenile justice stakeholders from outside the school system sometimes presented a relatively critical view of the practices in the school districts with which they interact.

One juvenile court intake officer questioned whether it was necessary to charge every child who gets into a fight. She suggested mediation or some sort of diversion program such as "Community Safety" where the child is required to write an apology. She also stated that the schools should not use the court as a mechanism to enforce school rules. Finally, she expressed her concern that students who are put on probation are subject to unfairly close scrutiny when they return to school. She gave as an example a situation when a student on probation "passed gas" in the classroom. The student was deemed to have been "disruptive" and was reported to the probation officer.

An Assistant District Attorney said that he has noted inconsistencies in the school's decision to refer a child to the juvenile court system. The ADA questioned if these inconsistencies were caused by the school's perception of the student as a "good kid" or a "bad kid" perhaps based on such factors as the student's economic status or the parents' status in the community. The same ADA also questioned whether students were being afforded due process in the system's tribunal process asserting that tribunal members often have made up their minds about the appropriate disciplinary action before the tribunal hearing is held. In addition, parents often cannot afford a lawyer to help in the discipline process.

A probation officer whose jurisdiction includes a north Georgia district expressed concern that there was a district wide approach to "get rid of bad kids" by quickly moving them through the discipline process and into alternative schools. She noted that students who get an early reputation for behavior problems might be stereotyped for the remainder of their school years.

Other juvenile justice stakeholders, however, reported on excellent cooperation and coordination with their school system and opined that their districts effectively struck the right balance when deciding on court referrals.

b. School Resource Officers

Many of the school districts that participated in the interview process employed "school resource officers" ("SROs"), i.e., law enforcement personnel whose primary responsibility is to support safety and discipline at one or more public schools. Typically, SROs work full time in high schools and in some middle schools. The full time presence of an SRO at an elementary school is rare and SRO's typically are used in this setting to teach specific classes or are called in on an as-needed case-by-case basis.

Two basic organizational models are used. The most prevalent approach is for the school district to contract with a local law enforcement agency (Sheriff's Department or Police Department or both) to provide uniformed officers to serve as SROs. Sometimes the school district pays a portion of the salary or provides other payment to the law enforcement agency for this service. In this model, the SRO continues to work for the law enforcement agency and is part of that chain of command. While the SRO necessarily must consult and work with the school administration, the officer does not "work for" the school principal. The SROs receive regular performance reviews by their agency supervisor who obtains input from the school principal or district level personnel.

The other model in place in some larger school districts is to establish a separate SRO district police force. In this case, the cost of the SRO is a district expense. The district force is organized separately and typically is led by a chief or a director of safety who reports to the superintendent.

Several of the SRO's interviewed reported attending a multi-day specialized SRO training course. This does not appear to have been required by the school district, but by the law enforcement agency. The primary requirement imposed by the districts is that the SRO not be a "rookie" in handling school discipline cases.

While there was no absolute bright line, some SROs appeared to view themselves as primarily present to assure student safety and compliance with the law. Others agreed that these functions are key but also viewed themselves as more integrated into the overall school educational setting. All SROs reported efforts to build respect and trust with the students while providing a "presence" that could deter misbehavior and give the students and faculty a sense of safety and well being.

Almost without exception, district personnel, school administrators and teachers gave their SROs high marks and believed that the presence of SROs on campus had a strongly positive impact on safety and student discipline. A recurring theme was that students would confide in the SRO about threatened fights or about drug use. In addition, some respondents noted that SRO presence at parent/school administrator meetings was helpful in keeping participants calm and in defusing tense situations, especially when discussing difficult topics with particularly emotional parents.

4. Other Recurring Themes

a. Alternative Schools/Programs

One recurring theme was the need for more and different high quality alternative education schools or programs to accommodate students with academic and behavior management needs that are not being met in the traditional public school setting.

The District Superintendent in a north Georgia community reports that a relatively new “non-traditional” high school there is fully enrolled with a long waiting list. This option allows students to earn their high school diploma through blended learning and flexible scheduling. Students with a variety of challenges can benefit from this approach including those who lack transportation to school, who have different learning styles, who are teen mothers without day care, or who work during normal school hours.

A District Superintendent in another district expresses pride in that district’s alternative school. According to a teacher at the school, the school was a “mad house” when he arrived eight years ago. The administration instituted a program using the “Think Time” strategy, which has substantially reduced discipline issues. The main problem now is a lack of student motivation and the fact that many students lag far behind because of the time they spent out of school before being assigned to the alternative school. Both the District Superintendent and the Alternative School Principal state that their philosophy at the school is: “It is not the student’s last chance; it is the school system’s last chance.”

A number of interviewees commented on the problems with “over-age” kids. That is kids who may have been left back a time or two in elementary school but then are administratively passed into high school where they are two to three years older than the other students in their grade level. The alternative school addresses this issue by allowing a student to be placed “a grade above” so that they can start to catch up with their class if they want to return to their original school.

An Assistant District Attorney (“ADA”) working in another school district was significantly more critical of alternative education opportunities in that setting. Asserting the view that children should not be completely removed from school without an opportunity for an adequate education, the ADA asserts that the district’s alternative education options are too limited. Only a “specific kind” of student is allowed to attend and then may enroll only one time. The ADA also views the online home schooling alternative used in the district as

ineffective since it works only when used by a motivated self-starter—an attribute rarely found in at-risk youth.

An SRO in yet another district was highly critical of the outsourced alternative education program in that community. The largely web-based program had significant discipline problems and, since students were only in class for a half day session, the students were left unsupervised and at risk for continuing misbehavior during “prime burgling time,” i.e., during the day when adults were at work and away from home.

b. Bullying

The Georgia General Assembly amended the state’s anti-bullying law provisions in early 2010. Public awareness and concern about this issue have only increased since then as a result of national coverage of the tragic suicide at Rutgers University in late 2010. This issue was also on the minds of several of the interview participants.

A probation officer in a coastal county said that the school systems need to play catch up especially with the prevalence of cell phones being used to send threatening or sexually explicit messages.

Other interviewees expressed concern about an over-reaction especially if zero tolerance is going to be applied to a one-time event. Others argue that more explicit detailed definitions of what constitutes “bullying” should be developed.

D. *Insights from the Survey*

1. Student Discipline Experience and Perception

We asked the parents to provide information about the experience of their eldest child currently enrolled in a Georgia public school and sought responses both about any prior school and about their current school.⁹¹ More than fifty percent of the respondents (51.5%) reported that this oldest student had never been the subject of any disciplinary action while enrolled in public school.

a. Incidence Rates

With regard to *prior* schools, one quarter (25.6%) of the parents reported that their oldest child had received at least one “low level” disciplinary action⁹² and 10.6 percent reported that their oldest child had received at least one out-of-class disciplinary action to include in-school suspension (“ISS”), out-of-school suspension (“OSS”) or expulsion. When asked to focus on the student’s *current* school, the discipline incidence rate substantially increased with 44.6 percent of the parents reporting at least one low level disciplinary action and 24.4 percent reporting at least one out-of-class disciplinary action. The differential at least in part arises from the likelihood

⁹¹ We also asked about a second child but the number of responses was limited so we focus here on the eldest child’s experience.

⁹² Defined in the survey as detentions, silent lunches, time outs or similar actions that do not involved removal from class.

that the "prior" school was often an elementary school where out-of-class disciplinary actions are generally less prevalent than in middle and high schools.

It should be noted that black parents reported that 19.4 percent of their students received an out-of-class disciplinary action in the prior school while only 7.2 percent of white parents reported such action. At the current school, 33.3 percent of black respondents reported out-of-class discipline while 20.5 percent of white respondents reported such action. These data arguably reflect the apparent racial disproportionality in student discipline discussed elsewhere in this report.

b. Fairness

We asked the respondents to assess the fairness of the student disciplinary process. With regard to discipline imposed in the prior school, 56.9 percent of the respondents' report that they believe their student was treated fairly in the process while 31.7 percent of the respondents do not think the process was fair.⁹³ With regard to the current school, 59.8 percent of the respondents believe that their student was treated fairly, while 33.1 percent do not. While a majority of the respondents thus affirm the fairness of the administration of student discipline, it is troubling that nearly one-third of the respondents do not perceive the system as fair at any of the Georgia public schools with which they have had experience.

There are also some differences in the perception of fairness based on the race and gender of the child. For example, only 20 percent of the white student respondents report that they felt that the prior school did not act fairly while 52 percent of the black student respondents do not believe their prior school experience reflected fairness.⁹⁴ Also, one third of the male students perceive the discipline at both the prior and current schools to be less than fair compared to one quarter of the females who feel the same way.

c. Other Discipline Issues

We also asked the respondents to weigh in on several questions related to school safety and student discipline. The questions and responses are summarized in Table 7.

⁹³ The remainder of the respondents were unsure.

⁹⁴ With regard to existing schools, the racial differences are not as stark. 29.3 percent of white respondents and 33.3 percent of black respondents each perceived the existing school's action not to be fair.

	ALL PARENTS	GRADE OF OLDEST CHILD			RACE		GENDER OF OLDEST CHILD		DISCIPLINE EXPERIENCE	
		PK – 5	6-8	9-12	WHITE	BLACK	MALE	FEMALE	NO EVENT	FORMAL EVENT
<i>THOSE WHO AGREE COMPLETELY OR SOMEWHAT....</i>										
My child feels safe in this school	91.2%	91.3%	90.2%	91.4%	95.0%	86.8%	88.9%	92.3%	95.1%	75.4%
This school provides a learning environment where my child can hear and talk to the teacher and work quietly without being interrupted	81.8%	76.8%	87.9%	80.6%	83.6%	81.0%	84.0%	77.9%	93.1%	74.1%
This school does a good job of informing students about the disciplinary rules and expectations	87.1%	86.1%	91.7%	85.5%	89.7%	85.7%	86.3%	88.2%	87.1%	80.0%
This school does a good job of informing parents about the disciplinary rules and expectations	82.0%	79.7%	91.0%	78.6%	83.9%	81.0%	79.7%	84.0%	83.4%	66.3%
It is a good idea for this school to have a school resource officer (full time police officer who spends most of his/her time at the school)	74.6%	53.1%	76.7%	83.5%	75.4%	71.1%	75.9%	72.3%	79.2%	72.4%
This school does a good job of consistently enforcing discipline across the entire student population	60.4%	60.9%	69.9%	55.2%	61.9%	59.0%	61.2%	58.8%	66.4%	40.3%

Table 7

The reported results show that 80 to 90 percent of the respondents have generally positive views about their child's safety at school, about the adequacy of the learning environment at the school, and about the job schools are doing informing students and parents about disciplinary expectations. A slightly smaller but still significant majority of parents (74.6 percent) support the presence of SROs at their school. On the other hand, only about 60 percent of the respondents believe that student discipline was being applied consistently at their school while 40 percent disagree or are unsure.

These results also suggest that, while small differences in perception do exist between respondents of different gender, race or age, those parents whose students have had a formal discipline encounter are the least likely to commend their school for its performance in these areas. This segment of the population is much less likely to agree that their child feels safe or that information is clearly shared among the administration, students and parents. This segment is also the least likely to agree that disciplinary efforts are consistently applied at their current school.

2. Narrative Comments

The respondents were given an opportunity to explain their responses on the fairness of the schools' student discipline process and to make recommendations for improvements to the student discipline system. Several hundred individual comments were generated in this process

Consistent with the results of the survey discussed above, many respondents praise the disciplinary practices of their school district and school. A substantial number of respondents, on the other hand, are highly critical reflecting perhaps substantial variability in discipline practices among districts and schools. While we do not attempt here to provide a comprehensive summary of the comments,⁹⁵ we highlight below certain recurring themes.

a. Inconsistency

Many parents opine that the student discipline system in their students' schools is not applied in a consistent manner. Certain behaviors subject some students to discipline while the same behaviors are ignored for other students. Several reasons are put forward for this inconsistency. For instance, disciplinarians may allow student athletes greater latitude because of the students' contributions to the teams on which they play. Another example may be a disciplinarian's decision to ignore negative behavior by students who have special relationships with the administration or whose parents have high stature in the community. In related comments, many respondents assert that the teachers and administrators are unwilling to listen and consider the "side of the story" presented by the accused student.

b. Students with Disabilities

Another set of prevalent comments relate to the treatment of students with disabilities. Many commenters assert that their special education student has been improperly disciplined for behavior arising out of the student's disability. The asserted lack of adequate training of general education teachers to manage the behavior of special education children is also a common comment.

c. Bullying

Many commenters noted that bullying is a widespread and growing problem in their students' schools and are concerned that teachers and administrators are not effectively responding to reports of bullying incidents. The alleged failure of the schools to respond effectively gives rise to another commonly raised concern, i.e., "self defense." Many commenters argue that their student was simply defending himself/herself from a bully's aggression (often because teachers or administrators had failed earlier to intervene) but was punished nevertheless because of school policies that require both students in a fight to be disciplined. The commenters view this result as unfair.

⁹⁵ We also have not attempted to verify the assertions made in these comments and recognize that often the comments only represent "one side of the story."

d. Zero Tolerance

A large number of respondents oppose zero tolerance policies and argue that discretion should be exercised to take into account all the circumstances on a case-by-case basis. They decry any sort of "one size fits all" approach to student discipline.

e. Class Room Disruption

On the other hand, many commenters have little tolerance for students who repeatedly disrupt the classroom dominating the teacher's attention and making it difficult for the other students to learn. They urge relatively quick removal of these children from the general classroom to other alternative settings.

f. Collective Discipline

A number of respondents object to the use of "collective discipline," i.e., the practice of some teachers to impose a disciplinary action such as a "silent lunch" on the whole class based on the misbehavior of one or a few students.

g. School Safety

While, as noted above, most respondents express a positive view of student safety while at school, numerous commenters assert major issues of safety at their schools including widespread drug use, gang-related activity, physical intimidation and assault, and inappropriate sexual activity. In particular several commenters report that their students were afraid to use the rest rooms at the school for fear of being attacked.

LEGAL SETTING - KEY THEMES

Most of the statutory law related to public school student discipline is found in Title 20, Chapter 2, Article 16, Part 2 of the Georgia Code.⁹⁶ The current statute reflects the substantial revision of the law in this area that occurred when the Georgia General Assembly passed the "Improved Student Learning Environment & Discipline Act of 1999." Some vestiges of the earlier law remain in force and the 1999 legislation has been subject to some amendments.

A comprehensive summary of the major statutory provisions affecting Georgia public school discipline policies, practices and procedures is found at Appendix E. Here, we summarize some of the most important aspects of the law that may affect student disciplinary practices.

I. Local Control

A. *School District Responsibilities*

Perhaps the overarching theme of Georgia's student discipline law is the strong reliance on local control in the development of overall discipline policies and the application of those policies in individual cases.⁹⁷ Thus, primary responsibility for student discipline policy development and implementation rests with the local school districts and the schools are subject to only a limited number of state mandates or minimum standards. The law provides that:

each local board of education shall adopt policies designed to improve the student learning environment by improving student behavior and discipline. These policies shall provide for the development of age-appropriate student codes of conduct containing standards of behavior, a student support process, a progressive discipline process, and a parental involvement process. The State Board of Education shall establish minimum standards for such local board policies. The Department of Education shall make available for utilization by each local board of education model student codes of conduct, a model student support process, a model progressive discipline process, and a model parental involvement process.⁹⁸

Districts are mandated to "provide for disciplinary action against students who violate student codes of conduct."⁹⁹ In addition, districts are directed to provide for parental involvement in developing and updating the codes.¹⁰⁰ The student codes of conduct must

⁹⁶ Except where otherwise indicated, textual references to a "Section" of pertinent Georgia statutory law will be to the most recent provision found in the Official Code of Georgia Annotated, e.g., "Section 20-2-730."

⁹⁷ In a different context, the Supreme Court of Georgia has very recently noted the "... fundamental principle of exclusive local control of general primary and secondary ('K-12') public education" *Gwinnett County School Dist. v. Cox*, No. S10A1773, 2011 WL 1836092, at *1 (Ga. May 16, 2011).

⁹⁸ O.C.G.A. § 20-2-735(a) (2009).

⁹⁹ *Id.* § 20-2-736(b).

¹⁰⁰ *Id.* § 20-2-736(c).

address a long list of behaviors that may occur on school grounds, at school-related activities, or on school buses. These behaviors range from physical assault and weapons offenses to "disrespectful conduct" and truancy.¹⁰¹ Each district must send a copy of its adopted policies to the GaDOE in order to be eligible for state education funding but the law makes no mention of any substantive review by GaDOE.¹⁰²

B. *Teacher Authority*

Georgia law continues the theme of local control by emphasizing the authority of the individual classroom teacher to maintain order.

A teacher shall have the authority, consistent with local board policy, to manage his or her classroom, discipline students, and refer a student to the principal or the principal's designee to maintain discipline in the classroom. The principal or the principal's designee shall respond when a student is referred by a teacher by employing appropriate discipline management techniques that are consistent with local board policy.¹⁰³

The teacher also has broad authority to remove from the classroom a student who repeatedly or substantially interferes with the teacher's ability to teach, subject to oversight and review by the local school principal.¹⁰⁴

II. State Requirements

As noted above, Georgia law does include a limited number of provisions establishing minimum standards or other requirements that are to be implemented by local school districts. Some of these provisions arguably weigh in favor of imposing a zero tolerance approach to student discipline. Other provisions, however, seem to point the way to a more nuanced discretionary approach.

A. *Zero Tolerance?*

For the most part, Georgia law defers the responsibility for determining the appropriate level of disciplinary response to violations of student codes of conduct to the districts. In a limited number of situations, however, the General Assembly has mandated certain minimum disciplinary responses.

1. Weapons at School

Section 20-2-751.1 requires each district to adopt a policy requiring the expulsion from school for a period of not less than one calendar year of any student who is determined to have

¹⁰¹ *Id.* § 20-2-751.5; *see* Appendix E at pp. 3--4 for a complete listing of the offenses that must be addressed.

¹⁰² *Id.* § 20-2-741.

¹⁰³ *Id.* § 20-2-738(a).

¹⁰⁴ For a detailed discussion of the removal process, *see* Appendix E at pp. 5--8.

brought a weapon to school.¹⁰⁵ For the purpose of this section, a "weapon" is defined as a firearm as that term is defined under federal law.¹⁰⁶ The district, however, is authorized to modify such expulsion requirement on a case-by-case basis and a student violator can be assigned to an alternative education setting.¹⁰⁷

2. Bullying

Georgia's student "bullying" statute, Section 20-2-751.4, was amended in the 2010 session of the Georgia General Assembly.¹⁰⁸ The revised provisions of the law are discussed in detail in Appendix E. Likely in response to recent highly publicized events in which bullying reportedly led to tragic consequences, the definition of where and how bullying may occur has been substantially expanded.¹⁰⁹

For the purposes of this analysis, however, the potential "zero tolerance" element of the law was not changed; that is, upon the third bullying offense in a school year by a student in grades six through twelve, the student must be assigned to an alternative school.¹¹⁰

3. Physical Violence

Georgia law also mandates that districts adopt specific discipline policies for students committing acts of physical violence against a teacher, school bus driver, or other school official or employee.¹¹¹ The term "physical violence" is defined to establish two categories, i.e., (1) intentionally making physical contact of an insulting or provoking nature with the body of another person; or (2) intentionally making physical contact which causes physical harm to another unless the student can make a valid self defense claim.

The law requires that a student accused of either category of physical violence must be suspended pending a disciplinary hearing.¹¹² If a student is found to have committed Category 1 physical violence then the student *may* be disciplined by expulsion, long-term suspension, or short-term suspension.

If a student is found to have committed Category 2 physical violence, then the student *must* be expelled from the public school system for the remainder of that student's eligibility to attend public school. The district may, but is not required to, allow the student to attend an alternative education program for the period of expulsion. If the student is in kindergarten through eighth grade at the time of the offense, the district may allow the student to return to

¹⁰⁵ This provision was likely adopted in response to a mandate found in the federal Gun-Free Schools Act of 1994, 20 U.S.C. § 2151 (2009).

¹⁰⁶ O.C.G.A. § 20-2-751(4); *see also* 18 U.S.C. § 921 (2009).

¹⁰⁷ O.C.G.A. § 20-2-751.1(b) (c).

¹⁰⁸ S.B. 250, 150th Gen. Assem., 2d Reg. Sess. (Ga. 2010).

¹⁰⁹ For more information, consult GA. DEPT OF EDUC., POLICY FOR PROHIBITING BULLYING, HARASSMENT AND INTIMIDATION (Sep. 9, 2010), *available at* http://www.gadoe.org/sia_titleiv.aspx?PageReq=SIABully.

¹¹⁰ SB 250 *codified at* O.C.G.A. § 20-2-751.4(b)(2).

¹¹¹ O.C.G.A. § 20-2-751.6.

¹¹² The disciplinary hearing process is discussed in Appendix E at pp. 11--13.

public school for the ninth through twelfth grade if the tribunal holding the hearing so recommends.¹¹³

Furthermore any student who is found to have committed Category 2 physical violence against a teacher, school bus driver, school official, or school employee *must* be referred to juvenile court with a request for a petition alleging delinquent behavior.

B. *Other Approaches*

It should be noted that the state mandates discussed immediately above, by their own terms, often allow some level of discretion to be exercised by the local school officials even for conduct that was deemed to be sufficiently egregious to warrant a special statutory provision. Other provisions of state law also call for the exercise of sound discretion in exercising disciplinary authority.

1. Age Appropriate

A few statutory provisions require that codes of conduct be "age appropriate."¹¹⁴ At least implicitly, this is a recognition that codes of conduct should provide sufficient discretion to take into account the relative culpability of students of significantly different levels of maturity.

2. Progressive Discipline Process

Georgia law requires that the district discipline policies include a "progressive discipline process."¹¹⁵ This process is defined as one

. . . designed to create the expectation that the degree of discipline will be in proportion to the severity of the behavior leading to the discipline, that the previous discipline history of the student being disciplined and other relevant factors will be taken into account, and that all due process procedures required by federal and state law will be followed.¹¹⁶

Arguably, this provision explicitly prohibits any sort of zero tolerance or other policy that would limit the discretion of a school disciplinary official to take into account the factors listed in the statute.

3. Preference for Alternative Educational Setting Assignment

The following language appears at several points in the school discipline statute: "It is the policy of this state that it is preferable to reassign disruptive students to alternative

¹¹³ In addition, if there is no alternative education setting in the district program for students in kindergarten through grade six, the local school board at its discretion may permit a student in kindergarten through grade six who has committed a Category 2 act of physical violence to reenroll in the public school system.

¹¹⁴ See, e.g., O.C.G.A. §§ 20-2-735(a); 20-2-751.5.

¹¹⁵ *Id.* § 20-2-735(a).

¹¹⁶ *Id.* § 20-2-735(d).

educational settings rather than to suspend or expel such students from school."¹¹⁷ This language would seem to be a clear statement that, at least as to "disruptive" students, out-of-school suspensions or expulsions should be an option of last resort.¹¹⁸

4. Training and Support

GaDOE is mandated to offer certain training and support services that recognize that student discipline problems may arise out of socio-economic or other factors that should be addressed prior to the time a discipline crisis develops.

a. Conflict Management/Diversity Training

Section 20-2-739 requires that GaDOE "... shall provide training programs in conflict management and resolution and in cultural diversity for voluntary implementation by local boards of education for school employees, parents and guardians, and students."

b. School Climate Management Program

Section 20-2-155 provides that GaDOE is to establish a "state-wide school climate management program" designed to assist local schools and systems requesting assistance in developing school climate improvement and management processes. Such projects are to be designed to optimize local resources through voluntary community, student, teacher, administrator, and other school personnel participation. These processes are also to be designed for, but will not be limited to, promoting positive gains in student achievement scores, student and teacher morale, community support, and student and teacher attendance, while decreasing student suspensions, expulsions, dropouts, and other negative aspects of the total school environment. GaDOE, upon request of a local school system, is authorized to provide the necessary on-site technical assistance to local schools and systems and to offer other assistance through regional and state-wide conferences and workshops, printed material, and such other assistance as may be deemed appropriate.

III. Other Statutory Provisions

A. *Reports to/Involvement with Law Enforcement*

One provision of Georgia law mandates an immediate report to law enforcement officials when a student is reasonably suspected of committing one of a list of serious offenses.¹¹⁹ Indeed the knowing and willful failure to make a report required under this section is a criminal misdemeanor.¹²⁰

¹¹⁷ *Id.* §§ 20-2-735(f); 20-2-751.5(d); 20-2-768(c).

¹¹⁸ We recognize that many observers question the quality of education received by students at many alternative educational settings in Georgia. A detailed assessment of that issue is largely beyond the scope of this Phase I analysis.

¹¹⁹ O.C.G.A. § 20-2-1184. See Appendix E at pp. 16--17 for a listing of the offenses subject to mandatory reporting.

¹²⁰ *Id.* § 20-2-1184(d).

Another provision, however, grants broad discretionary authority to school officials to report "any alleged criminal activity by a student" to law enforcement. Critics argue that this discretionary provision is interpreted over broadly by some school officials resulting in unnecessary "criminalization" of relatively minor student misconduct.

B. *School Disruption Statute*

Prior to 2010, Georgia law made it a misdemeanor of a high and aggravated nature for "any person to disrupt or interfere with the operation of any public school, public school bus, or public school bus stop."¹²¹ In the 2010 session of the Georgia General Assembly, this law was amended as will be discussed below.¹²²

Some commentators have asserted that some school districts have historically used this rather broadly worded statute to criminalize a wide variety of relatively minor misbehavior. The then Director of the Georgia Children & Youth Coordinating Council reported in a paper issued in 2004:

No definition of 'disruption' is provided [in Section 20-2-1181] and this code section is interpreted in widely varying ways. Some schools rarely charge youth with this offense while other[s] frequently apply this law to behavior such as sleeping in class, talking loudly, and engaging in typical adolescent behavior. Thousands of youth are formally charged with this offense each year- 1600 in Fulton County alone last year.¹²³

To begin to quantify the frequency of the use of the school disruption statute as a basis for juvenile court referrals, Georgia Appleseed carried out an assessment of the records of charges filed in the following juvenile court systems:

Gwinnett County¹²⁴ (for school years 2006-07 through 2009-10)

Clayton County¹²⁵ (for school years 2003-04 through 2007-08 and 2009-10)

Chatham County¹²⁶ (for school years 2003-04 through 2009-10)

In Gwinnett and Clayton Counties for all the years reviewed, the individual offense of disrupting a public school was the number one offense charged. In Chatham County,

¹²¹ *Id.* § 20-2-1181.

¹²² *See* SB. 250.

¹²³ PETER COLBENSON, CRITICAL SCHOOL SAFETY ISSUES RELATIVE TO LAW ENFORCEMENT, SCHOOL SYSTEMS, AND THE JUVENILE JUSTICE/CHILD WELFARE SYSTEMS IN GEORGIA 2 (2004).

¹²⁴ E-mails from Mr. Jesse Lawler, Court Administrator, Gwinnett County Juvenile Court, to Robert Rhodes, Director of Legal Affairs, Georgia Appleseed (Mar. 22, 2010 and updated as of Jan. 2011) (on file at the offices of Georgia Appleseed).

¹²⁵ E-mail from Mr. Ed Palmer, Information Technology Coordinator, Clayton County Juvenile Court, to Robert Rhodes, Director of Legal Affairs, Georgia Appleseed (Apr. 19, 2010 and updated as of Jan., 2011) (on file at the offices of Georgia Appleseed).

¹²⁶ E-mail from Mr. John Beam, Chatham County Juvenile Court, to Robert Rhodes, Director of Legal Affairs, Georgia Appleseed (Sept. 8, 2010) (on file at the offices of Georgia Appleseed).

this offense was the most prevalent charge in five of the seven years reviewed including the five most recent years.

The counties did differ in the frequency of the disruption charge as compared to all offenses charged in the periods under review. In Gwinnett, disrupting a public school accounted for between approximately 16 and 19 percent of all offenses charged. In Chatham the range was between 8.0 and 21 percent although in the last four years the range was from between 17 and 21 percent. On the other hand, Clayton experienced a markedly higher frequency of disruption charges with 47.6% (in 2003-04), 42.3% (in 2004-05), 44.2% (in 2005-06), 41.3% (in 2006-07), 35.7% (in 2007-08), and 40% (in 2009-10).

It should also be noted that this analysis reviewed reports of offenses charged. In many cases, an individual is charged with more than one offense in the same filing. Therefore, we cannot determine the extent to which the charge of school disruption was the sole or primary basis for the filing.

As noted above, the disruption statute was amended in 2010 by a bill sponsored by Senator Bill Hamrick to add an "intent" requirement. The law now makes it unlawful for "any person to *knowingly and intentionally or recklessly* disrupt or interfere with the operation of any public school, public school bus, or public school bus stop."¹²⁷

In an attempt to assess the impact, if any, this amendment may have on the rate of charging students with school disruption, we reviewed the filing history in Gwinnett County for the period from August 1, 2010 through December 31, 2010, i.e., the first half of the school year following the effective date of the statute. A total of 434 offenses were charged in this time period and 64 were for disrupting public schools for a rate of 14.7 percent, which is within the historic range discussed above. We also looked at the same data points for August 1, 2009 through December 31, 2009, i.e., the year before the amendment to the statute was enacted. A total of 456 offenses were charged with 70 being for school disruption for a rate of 15.3 percent.

We performed the same analysis of charging information received from Clayton County for the two time frames. Both in the 2009 period under review and in the 2010 period, disruption offenses constituted approximately 40 percent of the total offenses charged. A similar analysis was carried out for Bibb County and showed no decrease in the percentage of disruption charges when the two time frames were compared.¹²⁸

Based on these short-term analyses, there is no indication that the change in the law has resulted in any immediate significant reduction in the number of charges filed under the school disruption statute.

¹²⁷ SB 250, *codified at* O.C.G.A. § 20-2-1181(emphasis added).

¹²⁸ Telephone conversations between Darcy Sutton, Clerk, Bibb County Juvenile Court, and Robert Rhodes, Georgia Appleseed (January & February 2011).

C. *Expulsion or Suspension for Felonies*

Section 20-2-768(a) states:

Each local board of education is authorized to refuse to readmit or enroll any student who has been suspended or expelled for being convicted of, being adjudicated to have committed, being indicted for, or having information filed for the commission of any felony or any delinquent act under Code Section 15-11-28 which would be a felony if committed by an adult. If refused readmission or enrollment, the student or the student's parent or legal guardian has the right to request a hearing pursuant to the procedures provided for in Code Section 20-2-754.

On its face, the plain language of the statute seems to deal only with the proposed readmission or new enrollment of a student that has *previously* been suspended or expelled. Practitioners advise us that some districts are interpreting this provision as providing authority for initial suspensions. In any event, the language at least implies that a suspension or expulsion could be based not only upon conviction or adjudication but also solely upon having an indictment issued or information filed, i.e., pre-conviction, even though the student is entitled to the presumption of innocence until proven guilty or adjudicated delinquent.

The statute does provide for a disciplinary hearing but it is not entirely clear that the fundamental decision to deny admission is subject to review. Subsection (b) of this provision states that, if a student is denied enrollment, a tribunal "shall be authorized to place a student denied enrollment ... in an alternative educational system as appropriate and in the best interest of the student and the education of other students within the school system."¹²⁹ Thus, it is not clear if the tribunal could override the district's decision and find that the student should be enrolled in a "regular" school.

School districts also rely upon Section 20-2-751.5(c) when imposing suspension or expulsion upon students for felonious conduct. This section states:

Each student code of conduct shall also contain provisions that address any off-campus behavior of a student which could result in the student being criminally charged with a felony and which makes the student's continued presence at school a potential danger to persons or property at the school or which disrupts the educational process.

The statute, thus, requires two separate conditions to be met prior to imposing a suspension or expulsion: (i) conduct which could result in the student being criminally charged with a felony and (ii) a nexus between the conduct and the school system. With respect to the first requirement, because those in juvenile court are not "criminally charged," the language would seem to indicate that the statute only applies to students who are eligible for trial in the

¹²⁹ O.C.G.A. § 20-2-768(b).

adult criminal system. With respect to the second requirement, school systems arguably should be required to present evidence at a due process hearing demonstrating the relationship between the off-campus conduct and a disruption to the educational environment.

An experienced juvenile justice practitioner has asserted that many school systems have expanded the scope of the statutory language in several ways, for example by eliminating the requirement that the off-campus conduct be felonious.¹³⁰

IV. Recent Legislation - SB 299/HB 1103

As we have noted earlier in this report, in 2010, the Georgia General Assembly adopted SB 299, a piece of legislation that came to be referred to as the "zero tolerance" bill. This action was at least partially in response to the arrest and disciplinary action imposed upon a student who inadvertently brought a fishing knife to school in late 2009.

The student had not violated the weapons prohibition in Section 20-2-751.1 because that provision only relates to firearms.¹³¹ Section 16-11-127.1 of the criminal code of Georgia, however, forbids any person to carry, possess or control any "weapon or explosive compound" within a "school safety zone or at a school building, school function, or school property, or on a [school] bus" Under this statute, the definition of the term "weapon" includes not only firearms but also a number of other objects including any knife with a blade greater than two inches in length.¹³² The fishing knife in question had a blade longer than two inches, which meant that the student's physical possession of the fishing knife on school property put him in violation of Section 16-11-127.1.

As noted above,¹³³ Section 20-2-1184 mandates that school officials report certain student behaviors to law enforcement officials and can be criminally charged if they do not do so. Included in the list of behaviors triggering mandatory reporting is any violation of Section 16-11-127.1. Thus, we surmise that, despite the student's lack of intent and his voluntary admission, a school official felt compelled to report the incident to local law enforcement.

Prior to the passage of SB 299, Section 16-11-127.1 provided: "A child who violates this subsection shall be subject to the provisions of Code Section 15-11-63." Section 15-11-63 is referred to as the "designated felonies" provision of Georgia's Juvenile Code. An adjudication that a child has committed a designated felony can result in the imposition of significantly more rigorous sanctions than may be imposed for other types of misconduct.

SB 299 addresses the designated felony provision by modifying the circumstances under which a violation of Section 16-11-127.1 would trigger the imposition of designated felony sanctions. Specifically, only a second offense would trigger designated felony status unless the first offense (a) involved an assault, (b) involved a firearm as defined by Section 16-11-131, or

¹³⁰ E-mail from Randee Waldman, Esq., Director, Barton Juvenile Defender Clinic, Emory University School of Law, to Robert Rhodes, Director of Legal Affairs, Georgia Appleseed (May 31, 2010)(on file at the offices of Georgia Appleseed).

¹³¹ *See supra* pp. 35--36.

¹³² O.C.G.A. § 16-11-127.1(a)(2).

¹³³ *See supra* pp. 38--39.

(c) involved a dangerous weapon or machine gun as defined in Section 16-11-121.¹³⁴ In addition, the 2010 legislation modifies Section 16-11-127.1 to provide that a child who violates the prohibition "may" (rather than "shall") be subject to the designated felony provisions of the Juvenile Code.¹³⁵

A separate bill introduced by Senator Emanuel Jones also passed. HB 1103 requires annual reporting by each school district on disciplinary actions taken with regard to any student determined to have brought a weapon to school.¹³⁶

SB 299 and HB 1103, while relatively narrow in scope, may be viewed as important first steps in a comprehensive assessment of Georgia's student disciplinary practices.

V. Summary

Georgia law contains no clear requirement that school districts or individual schools adopt broad-based zero tolerance or other draconian student disciplinary policies. Indeed, certain provisions of the law encourage the development of policies that involve the use of sound discretion to assure that the "punishment fits the crime."

The broad and sometimes ambiguous language of the law, however, when combined with the overarching emphasis on deference to local control of public education can set the stage for the development of policies that can be applied in a way that moves kids out of the classroom and potentially on their way to unproductive lives or worse.

¹³⁴ S.B. 299, Sec. 1, 150th Gen. Assem., 2d Reg. Sess. (Ga. 2010) *codified at* O.C.G.A. § 15-11-63(2)(C.2).

¹³⁵ S.B. 299, Sec. 2, 150th Gen. Assem., 2d Reg. Sess. (Ga. 2010) *codified at* O.C.G.A. § 16-11-127.1(b).

¹³⁶ H.B. 1103, 150th Gen. Assem., 2d Reg. Sess. (Ga. 2010) *codified at* O.C.G.A. § 20-2-751.1(d).

KEYS TO EFFECTIVE STUDENT DISCIPLINE

An effective student discipline program in a school is one that properly balances the need to maintain an environment for *all* students that is safe and conducive to learning with the right of *each* student to have a reasonable opportunity to obtain an adequate education. While there are circumstances that warrant the imposition of disciplinary action that removes a student from the classroom, such action should be taken only after a reasonable effort is made to address the student's behavior through less stringent measures unless immediate action is required to protect the safety of the student or others.

Based upon our interviews with educational stakeholders from around the state and our independent research and analysis, Georgia Appleseed has identified the following attributes of an effective student discipline program. Many of these attributes are the same as those that contribute to a school's overall educational excellence. This is not surprising since effective student discipline does not exist in its own discrete "box" but rather must part of an integrated learning delivery strategy.

Focused and Intentional Leadership

The success stories that we have observed in some districts and schools around the state almost without exception began with recognition by a district superintendent or a principal that the student discipline program in the district or school was not effective and that significant change was needed. This recognition was followed by the development of a plan of action which was implemented with continuing oversight and leadership of top level management coupled with clear benchmarks and accountability for the changes contemplated in the plan.

While this could be viewed as a truism out of "Management 101," it is important to recognize that an effective student discipline program can only be developed if such a program is a high priority for the leadership in the district or school and only if clear metrics for success are established and measured and all participants in the program are held accountable for success.

Committed and Well-Trained Teachers

At the risk also of stating the obvious, it is hard to overstate the importance of the classroom teacher in any effective student discipline program. Students who are truly engaged by the teacher's presentation of the curriculum are less likely to be disciplinary problems. Teachers who clearly establish and enforce behavior expectations and who build a relationship of mutual respect and trust with their students are less likely to face disruptive behaviors in the classroom.

As we discuss in our Call to Action below, we must provide our teachers with the training and other professional development opportunities necessary to implement effective discipline in the classroom and to deal with their often diverse array of students.

Parental/Community Engagement

In the interview process, those school systems that have experienced low OSS rates and high graduation rates often credited committed parental involvement as a key factor. In addition, the respondents, especially in smaller districts, referenced overall community support as an important positive factor in effective student discipline.

Integrated Approach

Georgia law requires each local school district to “... adopt policies designed to improve the student learning environment by improving student behavior and discipline.”¹³⁷ The statute goes on to require the development of “age-appropriate student codes of conduct” which must contain (1) standards of behavior, (2) a student support process, (3) a progressive discipline process, and (4) a parental involvement process.¹³⁸

The statute describes the required content of each of these mandated elements of the code of conduct:

- Student *standards of behavior* developed pursuant to this subpart shall be designed to create the expectation that students will behave themselves in such a way so as to facilitate a learning environment for themselves and other students, respect each other and school district employees, obey student behavior policies adopted by the local board of education, and obey student behavior rules established by individual schools.
- *Student support processes* developed pursuant to this subpart shall be designed to create the expectation that the process of disciplining students will include due consideration, as appropriate in light of the severity of the behavioral problem, of student support services that may help the student address behavioral problems and that may be available through the school, the school system, other public entities, or community organizations.
- *Progressive discipline processes* developed pursuant to this subpart shall be designed to create the expectation that the degree of discipline will be in proportion to the severity of the behavior leading to the discipline, that the previous discipline history of the student being disciplined and other relevant factors will be taken into account, and that all due process procedures required by federal and state law will be followed.
- *Parental involvement processes* developed pursuant to this subpart shall be designed to create the expectation that parents and guardians, teachers, and school administrators will work together to improve and enhance student behavior and academic performance and will communicate freely their concerns about and actions in response to student behavior that detracts from the learning environment.¹³⁹

¹³⁷ O.C.G.A. § 20-2-735(a) (2009).

¹³⁸ *Id.*

¹³⁹ *Id.* § 20-2-735(b)-(e)(emphasis added).

Thus, the statute clearly mandates that student codes of conduct must address on a co-equal basis each of the four policies described above. As we discuss below such an integrated approach to student discipline makes perfect sense and, indeed, is critical to the implementation of an effective student discipline program.

Unfortunately, in practice, these four key policies often are not implemented in an integrated manner. Most participants in our stakeholder interview process focused on the standards of behavior and the progressive discipline elements.¹⁴⁰ Only rarely did interviewees refer to student support processes as being regularly used in their student discipline program. Parental involvement was more regularly mentioned but more in the context of a reactive call to a parent when misbehavior occurs as opposed to an ongoing effort to foster parental involvement in the overall effort to establish a positive learning environment in the school.

It is, of course, important that the student code of conduct establish clear expectations for student behavior and clear consequences for failure to meet these expectations. It is also important that the code follow the statutory mandate that these consequences be imposed pursuant to a progressive disciplinary policy. But these elements alone are not sufficient to assure effective student discipline.

GaDOE's "Guiding Principles" for the state's "progressive discipline process" makes clear the importance of an integrated approach to effective student discipline.¹⁴¹ For example, Guiding Principle No. 4 affirms the importance of parental involvement: "Parents are viewed as integral partners to be utilized when addressing students' misbehavior."¹⁴² Guiding Principle No. 5, in turn, cross references student support processes by stating: "Students who engage in continual minor acts of misconduct as well as those who engage in even a single act of more serious misconduct, are considered candidates for the school's Behavior Support Processes."¹⁴³

In discussing the student support process element of student discipline, GaDOE notes:

Students have changed as society has changed. Students today come to school with needs that seemingly are different from the needs of students in the past. Therefore, they need services that exceed what a regular classroom teacher can provide. These services must recognize the need for comprehensive and flexible support that is community based and available to all children and their families. The behavior support process must recognize and build on strengths that exist in all young people, their families and

¹⁴⁰ GaDOE policy statements may contribute to the tendency to compartmentalize the multiple elements of effective student discipline. In a detailed discussion of student discipline policy, GaDOE includes a section that is titled "Student Code of Conduct" when the discussion is actually about the standards of behavior policy that is required to be part of a Student Code of Conduct. See http://www.doe.k12.ga.us/sia_titleiv.aspx?PageReq=SIASStudent. As discussed in the text above, however, a careful reading of the GaDOE policy statements underscores the integrated nature of the four elements of a student code of conduct.

¹⁴¹ GA. DEP'T OF EDUC., *Progressive Discipline Process*, available at http://www.doe.k12.ga.us/sia_titleiv.aspx?PageReq=SIAProgress.

¹⁴² *Id.*

¹⁴³ *Id.*

communities, creating a system of supports and opportunities that promote positive choices and behavior.¹⁴⁴

Many, if not most, school systems in the state employ a student code of conduct that includes robust standards of behavior and progressive discipline policies. For many students, these two elements will be sufficient. In other words, many students will respond well to clearly articulated behavior expectations and will be deterred from failing to meet these expectations by the disciplinary consequences of such action. For a wide variety of reasons, however, these two elements alone will not be effective in addressing the “different needs” of a substantial number of students. Absent an intervention that seeks to uncover and address the reasons for continued misbehavior, the standards for behavior and progressive discipline policies simply become a procedural mechanism for channeling these students out of class and out of school.

The student support and parental involvement elements of student discipline programs in many of Georgia’s school districts are not as fully developed as the standards of behavior and progressive discipline elements. This must change if we seek to assure that every child is afforded a meaningful opportunity to obtain a quality high school education.

Positive Behavioral Interventions and Supports

While there can be many approaches to developing a comprehensive integrated student behavior management program, a number of Georgia schools are reporting significant improvement in student discipline outcomes and academic performance through the use of the Positive Behavioral Interventions and Supports (“PBIS”)¹⁴⁵, which effectively employs the four mandated elements in a balanced, co-equal manner.

What is PBIS?

GaDOE describes PBIS as “an evidence-based, data driven framework proven to reduce disciplinary incidents, increase a school’s sense of safety and support improved academic outcomes.”¹⁴⁶ The U.S. Department of Education Office of Special Education Programs emphasizes that PBIS “is not a curriculum, intervention, or practice, but is a decision making framework that guides selection, integration, and implementation of the best evidence-based academic and behavioral practices for improving important academic and behavior outcomes for all students.”¹⁴⁷

In layman’s terms, Georgia’s Gainesville City school district described its planned implementation of PBIS as follows:

¹⁴⁴ GA. DEP’T OF EDUC., *Behavior Support Process*, available at http://www.doe.k12.ga.us/sia_titleiv.aspx?PageReq=SIABehavioral at 1.

¹⁴⁵ Also sometimes referred to as “PBS” (positive behavior support).

¹⁴⁶ GA. DEP’T OF EDUC., *Positive Behavioral Interventions and Supports*, available at http://public.doe.k12.ga.us/ci_exceptional.aspx?PageReq=CIEXCPBS at p.1.

¹⁴⁷ OSEP Technical Assistance Center on Positive Behavioral Interventions and Supports, *What is School-Wide Positive Behavior Interventions & supports*, available at http://www.pbis.org/school/what_is_swpbs.aspx.

Although summer break for students and most staff of Gainesville City Schools arrived at the end of May, planning is underway this summer for implementation of system-wide Positive Behavior Support when school resumes in August [2009]. With assistance from the Georgia Department of Education's Positive Behavior Support Unit, teams from each of the Gainesville City system schools participated in two full days of introductory training in mid-May to prepare them to implement this new initiative. ***

Positive Behavior Support, commonly referred to as PBS, is a proactive school-wide approach to discipline. In essence, it's a way to stop misbehavior before it starts through a systematic process of teaching, modeling, and reinforcing expected school behavior. PBS focuses on the creation of effective and positive learning environments as a means of increasing academic achievement. PBS methods are research-based and have a strong track record of significantly reducing the occurrence of problem school behaviors. Results include increased academic performance, increased safety, and more positive school climates.

The initial training provided to each school team by the Georgia Department of Education included information on each component of the PBS framework. Each school team then generated unique ideas to meet the specific needs of their school. When staff and students return to school in August, teams will present their ideas to the rest of the staff, students and their families for feedback. School-level plans will be adjusted based on this feedback. ***

Each participating school is now in the process of developing school-wide rules and expectations for all areas of the school campus including classrooms, hallways, cafeterias, and playgrounds. These rules and expectations address all aspects of the school day, including the bus for those students who ride buses to and from school. Each rule and expectation will be taught and reviewed throughout the year. Discipline data will be gathered and analyzed throughout the year and will be guide the school's PBS team as they develop effective interventions to decrease inappropriate behavior and increase desired behavior across campus. The data analysis will allow the school teams to identify problem areas and to identify what rules and expectations to target. Students will receive various rewards and recognitions for demonstrating expected school behavior. Effective consequences

will be used to discourage and address inappropriate school behavior.¹⁴⁸

While PBIS is not a ready-made "one size fits all" program, the framework is premised upon certain core principles:¹⁴⁹

- All children can be taught appropriate behavior.

This principle encompasses both the premise that appropriate behavior can and should be taught along with reading, math, science and other academic subjects and the premise that there are no "un-teachable" children provided the right teaching techniques and learning environments are in place.

- Early intervention is very important.

Ideally, the teaching process should occur before targeted negative behaviors occur. Interventions are much more manageable in the context of affirming positive behavior rather than reacting to undesirable behavior.

- A multi-tier model of service delivery should be used to reflect the varying needs of individual students.

Not all students learn at the same rate or respond optimally to the same teaching techniques. This is true both for academic subjects and for behavior. Thus, the PBIS framework contemplates a three-tiered approach to reflect these differences. The "primary" tier refers to the school-wide proactive teaching process that is provided for all students. Proponents of PBIS believe that this level of intervention should be effective to limit new cases of problem behavior for most (approximately 80%) students. The "secondary" tier focuses upon that smaller percentage of students (estimated at 10-15%) who are deemed at-risk and who may benefit from targeted group instruction or simple individual behavior plans. The "tertiary" tier is reserved for that still smaller group of students (estimated at 5-10%) who exhibit high-risk behavior and require special individualized behavior management interventions.

- Interventions should be research-based and scientifically validated.
- Student progress should be regularly monitored and decisions about effectiveness of the overall program and individual student interventions must be driven by data.

¹⁴⁸ *Implementing Positive Behavior Support*, HALL COUNTY MAGAZINE (July--August, 2009) at 37.

¹⁴⁹ This discussion is derived from the discussion of "Primary Prevention" by the U.S. Department of Education Office of Special Education, available at http://pbis.org/school/primary_level/default.aspx.

What About RTI?

There are strong similarities between the PBIS framework discussed above and the structure of another proactive program called "Response to Intervention" ("RTI").¹⁵⁰ In Georgia, RTI is defined as

... a practice of academic and behavioral interventions designed to provide early, effective assistance to underperforming students. Research-based interventions are implemented and frequent progress monitoring is conducted to assess student response and progress. When students do not make progress, increasingly more intense interventions are introduced.¹⁵¹

Although the definition quoted above makes reference to "behavioral interventions," all but a page and a half of the 86-page Georgia RTI guidance document addresses student academic performance evaluations and intervention. The relationship between academic performance and behavior management, however, is briefly discussed in a brief portion of the guidance document titled "RTI and Behavior" where GaDOE notes:

The problematic behavior of many students is directly related to academic deficits and their desire to escape difficult tasks. Therefore it is essential that academic performance be reviewed and any deficits be addressed in conjunction with providing behavioral interventions.¹⁵²

The RTI guidance document only makes an incidental passing reference to PBIS and the relationship between the two frameworks in Georgia is unclear. Presumably, in a system that is committed to implementation of RTI, the PBIS framework would well address the RTI behavior interventions element. Systems or schools using PBIS as a stand alone approach to student behavior management will no doubt need to consider the relationship between behavior and academic performance referenced in the comment by GaDOE quoted above.

History of PBIS in Georgia¹⁵³

In 2004, GaDOE allocated funds from a three year State Improvement Grant to implement a project titled, Effective Behavioral Interventions and Supports (EBIS). Contracted personnel from universities around the state provided training and coaching to develop and implement school-wide and classroom management systems based in Positive Behavior Supports principles to approximately 100 schools in Georgia.

¹⁵⁰ See T. Sandomierski *et al.*, *Response to Intervention and Positive Behavior Support: Brothers from Different Mothers or Sisters from Different Misters?*, PBIS NEWSLETTER (June 2007), available at http://www.pbis.org/pbis_newsletter/volume_4/issue2.aspx.

¹⁵¹ GA. DEP'T OF EDUC., RESPONSE TO INTERVENTION: GEORGIA'S STUDENT ACHIEVEMENT PYRAMID OF INTERVENTIONS 13 (Oct. 23, 2008).

¹⁵² *Id.* at 36.

¹⁵³ This discussion is based on information provided in a personal interview of Ginny O'Connell, Program Manager, Positive Behavior Supports, Georgia Department of Education, conducted by Robert Rhodes of the Georgia Appleseed Center for Law & Justice on October 14, 2010. A summary of the interview is on file at the offices of Georgia Appleseed.

In 2007-2008, at the conclusion of the grant, GaDOE initiated work on PBIS with training and support provided to Student Support Teams (SST) working with individual students exhibiting behavior/discipline problems. During the course of that school year, the GaDOE formed a State PBIS Leadership Team, developed a state action plan and began to receive technical assistance from the National PBIS Technical Assistance Center established by the Office of Special Education Programs, U.S. Department of Education. As training and support continued for SST teams, GaDOE recognized the continued need for PBIS efforts on a school-wide basis and utilized for the entire general and special education population.

Additional federal funding sources were accessed and a revitalized PBIS program was initiated in the summer of 2008 with the training of a number of school-wide teams. In particular, middle and high schools with high dropout rates that had identified student behavior and discipline issues as contributing factors sent school teams to PBIS training. Training programs continued in the following two summers and now personnel at 230-250 schools have been trained to use the PBIS framework. (A limited number of schools that received training opted not to implement school-wide PBIS. Also, some schools have done their own research and claim to be implementing PBIS but without full compliance with its balanced approach; e.g., these schools seem to rely only on a “rewards” program.)

Beginning in 2009, GaDOE required that districts interested in PBIS training first demonstrate a commitment to developing capacity and providing ongoing support to assure sustained implementation of the program. Evidence of such support includes showing the capacity to monitor data and interventions at the school level and to provide local support of school PBIS coaches.

Historically, personnel assigned to the Special Education Division have managed the PBIS program effort. Recently a cross-divisional Positive School Climate Committee has been formed at GaDOE to assure that all relevant programs (e.g., Safe & Drug Free Schools, Nutrition, Transportation, etc.) are at the table.

Results

Data are being collected to evaluate the effectiveness of the programs and the impact on discipline incidents at the school. During the first year of implementation and GaDOE support, schools are required to collect and monitor discipline data using the School Wide Information System (SWIS). SWIS is a web based progress-monitoring program that enables schools to identify the problem behaviors, the students involved, the time of day, the location of infractions, and the impact following interventions, as well as over 1,000 other reports. While SWIS is required for the first year, most schools have continued to use it for the concise, visual reports and the easy access to such important data. Schools also use PBIS Evaluations, an online assessment system to monitor and evaluate fidelity of school-wide PBIS implementation. GaDOE has access to these evaluations, which will enable it to produce annual reports.

Because implementation of the PBIS framework is a recent development, GaDOE does not yet have detailed publicly available data to assess the effectiveness of PBIS implementation.

Based on the anecdotal experience of schools that have implemented PBIS in Georgia and elsewhere, GaDOE reports that participating schools that implement PBIS with full fidelity (no shortcuts) have experienced up to a 50% reduction in office referral rates per year with a corresponding reduction in suspension and expulsion rates. In addition, schools using the PBIS framework report improved attendance rates, improved academic achievement, and improved staff morale.

Obstacles to Use of PBIS

Use of the PBIS framework requires that the participants be open to change and willing to work hard and with fidelity to the program. One teacher in a school that has just begun to use PBIS commented that it hard to stay "positive" all the time. Understandably, implementing fundamental change in any organization is a major challenge and can encounter many obstacles.

Some education stakeholders firmly believe that the standards of behavior and progressive discipline elements of the student codes of conduct should be sufficient to manage student behavior. In other words, they argue that using a series of increasingly serious discipline levels (upping the ante) is an effective means of behavior control and constitutes a "teaching tool." As we have discussed above, such an approach may work in certain settings and with certain students. Many schools and districts with fully developed progressive discipline policies, however, still issue a relatively high level of out-of-class disciplinary actions. For those schools and for the affected students, the progressive discipline policy alone is simply not working.

Another obstacle is the lack of a full understanding of PBIS. Some educators see the framework as another layer of bureaucracy on top of an existing system as opposed to a fundamental systemic change.¹⁵⁴ Others focus only on the "rewards" element of the framework that urges positive feedback when students exhibit desired behavior. These critics bridle against what they see "bribing kids to behave." Of course, positive support is only part of the PBIS framework and appropriate disciplinary consequences are still available to address inappropriate behavior.

The greatest current obstacle to PBIS is the lack of resources available to GaDOE and the school districts to expand implementation to new schools beyond those currently using the framework. Because Georgia Appleseed believes that use of the PBIS framework holds enormous promise for the development of effective student discipline outcomes (especially in those school currently in disciplinary distress) our Call to Action below urges that states and school districts assure that adequate funding is made available for PBIS training and support.

¹⁵⁴ Similar comments have been made about RTI. See Elaine Mulligan, *RTI: Thoughtful, Effective Practice or 'One More Thing'?*, LEADCAST BLOG (Dec. 15, 2010), <http://www.niusileadscape.org/bl/?cat=74>.

Other Potential Effective Student Discipline Alternatives -- The Connecticut Experience

While, as noted above, Georgia Appleseed will urge that policy makers work toward implementation of PBIS in many school districts, we are also very aware that very few public policy challenges are amenable to a "one size fits all" solution. Accordingly, in this section, we present information on the response of another state faced with the challenge of improving the outcomes of its student discipline program.

In 2007, reacting to the high rate of OSS discipline in the Connecticut public school system, that state's legislature enacted a law that mandated the use of in-school suspensions ("ISS") for school misbehavior subject to certain limited exceptions.¹⁵⁵ The law¹⁵⁶ was originally to go into effect as of July 1, 2008, but subsequent amendments deferred the effective date until July 1, 2010.¹⁵⁷

Despite the deferred effective date, several school districts initiated innovative programs in anticipation of the impending state-imposed limitations. These efforts were recently assessed by the Connecticut Appleseed center in a report issued in February 2011.¹⁵⁸ This report concluded that OSS rates in Connecticut are already on a downward trajectory.¹⁵⁹ The report also confirmed that school discipline in Connecticut disproportionately affects Black, Hispanic and special education students consistent with the findings in many other jurisdictions.¹⁶⁰

The primary focus of the Connecticut Appleseed report, however, was on efforts that appear to be working to reduce OSS rates and to improve disciplinary outcomes.

Changed Approach to ISS

The Connecticut Appleseed report notes that several schools had adopted an approach to ISS that involves "ambitiously aggressive" combinations of instruction, mentoring and counseling.¹⁶¹ This approach can make an impression on the involved students.

Conversation with a middle school focus group was eye-opening -- disciplined students dread close monitoring. Their descriptions of in-school suspension: "They're so on you;" "It's like jail;" "You can't even move." ***

But confinement and close supervision seem to motivate behavioral change. As a whole the 8th grade students participating

¹⁵⁵ Conn. Gen. Assembly, Pub. Act 07-66 (May 2007). *See generally* TABBY ALI & ALEXANDRA DUFRESNE, MISSING OUT: SUSPENDING STUDENTS FROM CONNECTICUT SCHOOLS (Connecticut Voices for Children 2008), available at <http://www.cpacinc.org/wp-content/uploads/2010/04/Missing-Out-Report.pdf>.

¹⁵⁶ CONN. GEN. STAT. § 10-233c(g).

¹⁵⁷ CONNECTICUT APPLESEED, KEEP KIDS IN CLASS: IMPROVING SCHOOL DISCIPLINE 1-2 (2011), available at www.ctappleseed.org.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 6.

¹⁶⁰ *Id.* at 7--9.

¹⁶¹ *Id.* at 11.

in the middle school focus group -- each of whom had served at least six out-of-school suspensions in the 2009-2010 school year -- - had not been so disciplined a single time during the first five weeks of the 2020-2011 school year.¹⁶²

Behavioral Supports

The Connecticut Appleseed report noted that school systems or individual schools were using a variety of programs to reinforce positive behavior. The report characterized these efforts as ranging from a very low cost effort like establishing a chess club for disruptive students to a "moderate cost" effort such as the RTI effort employed in two relatively large urban school districts to the relatively high cost PBIS initiatives being undertaken in seven Connecticut school districts.¹⁶³ With regard to PBIS, the report notes: "Overwhelmingly, in both formal and informal conversations, district officials spoke positively and optimistically about PBIS. Parents in our online survey also gave PBIS the most favorable possible ratings."¹⁶⁴

Deterrence Best Practices

Several Connecticut schools have implemented programs designed to deter students from engaging in misbehavior. One group of these best practices are characterized as "interventions" and include the use of student participatory peer mediation processes and programs focused on de-escalation techniques. Other intervention programs enlist adult community leaders or the school faculty. One such program involves the use of "Juvenile Review Boards" composed of community members for first offenders to divert these students away from the juvenile justice system in a way that often involves "restorative justice" measures designed to heal or compensate a victim of the student's behavior. Another program pairs a student returning from suspension with a faculty member who can counsel and mentor the student to avoid future disciplinary action.¹⁶⁵

Another type of program deterrence best practice is characterized in the Connecticut Appleseed report as "alternative sanctions." For example, some schools now mandate that certain student offenders attend a three-hour "Saturday School." Reportedly, students "rarely need to repeat" this sanction. Other schools impose community service obligations on kids after normal school hours. Finally, some school systems withhold certain privileges, e.g., the right to attend the prom, if the student accumulates too many points for inappropriate behavior.¹⁶⁶

¹⁶² *Id.* at 7.

¹⁶³ *Id.* at 12--13.

¹⁶⁴ *Id.* at 13.

¹⁶⁵ *Id.* at 13--15.

¹⁶⁶ *Id.* at 15--16.

Other Potential Effective Student Discipline Alternatives -- Data-Based Analyses

Two education policy researchers very recently presented a summary report identifying a number of alternative non-punitive approaches to effective student discipline.¹⁶⁷ The authors summarize their findings as follows

This brief has highlighted several effective, nonpunitive alternatives to zero tolerance. Nonpunitive approaches towards negative behavior—such as targeted behavioral supports for at-risk students—have been shown to reduce violent behavior in school. Other alternatives to zero tolerance that take a largely preventive approach to violence and misbehavior—such as character education or social-emotional learning programs and School-Wide Positive Behavior Interventions and Supports—have also been shown through rigorous, experimental evaluations to have significant, positive impacts on student behaviors, as well as on academic achievement in some cases.¹⁶⁸

The authors also note that there has been very little rigorous scientific research to verify that zero tolerance policies are effective.¹⁶⁹

A. PERSPECTIVE ON ZERO TOLERANCE

I. The Zero Tolerance Debate

Many Georgia school districts have adopted zero tolerance policies designed to deter and punish various types of misbehavior. These policies mandate out-of-class discipline (and sometimes court referrals) for the prohibited behaviors without regard to the student's intent or other mitigating circumstances. As we reported above in our summary of stakeholder interviews, several of the educators who participated strongly support such policies and argue that they have been effective in limiting undesirable behavior such as fighting and drug use. Others argue against the use of these policies or at least urge that some level of discretion be exercised in their application. Doubters point to numerous examples of absurd results that can be the unintended consequences of strict adherence to zero tolerance.

As recently as early in 2011, for example, Kansas City area school officials were criticized for imposing a three-month suspension on a fifth grade girl who was playing along with a number of other children with a clear plastic toy gun on the school playground on a Sunday.¹⁷⁰ The 2009 incident in Morgan County in which a 14-year old accidentally brought a

¹⁶⁷ CHRISTOPHER BOCCAFUSO & MEGAN KUHFIELD, MULTIPLE RESPONSES, PROMISING RESULTS: EVIDENCE-BASED, NONPUNITIVE ALTERNATIVES TO ZERO TOLERANCE, CHILD TRENDS-RESEARCH TO RESULTS BRIEF (March 2011), available at http://www.childtrends.org/Files/Child_Trends-2011_03_01_RB_AltToZeroTolerance.pdf.

¹⁶⁸ *Id.* at 9.

¹⁶⁹ *Id.*

¹⁷⁰ Mary Sanchez, *Zero Tolerance Policies are Failing Children*, ATLANTA JOURNAL-CONSTITUTION, JANUARY 3, 2011 at A-8. See also *supra* pp. 24-25 for the recent extensive criticism of zero tolerance policies in the City of Philadelphia.

fishing knife to school triggered expressions of concern from some members of the Georgia General Assembly about zero tolerance policies. During our interview process, we heard a number of reports about “good kids,” especially in rural school systems, who have received zero tolerance discipline for inadvertently bringing hunting knives to school.¹⁷¹

II. Zero Tolerance and the Exercise of Discretion

State law mandates few of the district zero tolerance policies currently followed in Georgia. As we discussed in our review of the school discipline statutory setting, only three state laws arguably impose zero tolerance obligations upon the school districts. These laws address multiple acts of bullying, physical contact with a school official, and the possession of firearms at school. The bullying and physical contact statutes make it clear that the prohibited behaviors must be intentional.

The Georgia firearms law does not include specific intent language. The law simply provides for the imposition of a minimum one-year expulsion for “... any student who is determined, pursuant to this subpart, to have brought a weapon to school.”¹⁷² This law was adopted in response to the federal Gun Free Schools Act which was originally enacted in 1994 and mandated that states that want to receive federal education aid must impose at least a one year expulsion on any “... student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school....”¹⁷³

As authorized by the federal law, the state school firearms law provides that the local school board has the discretion to modify any expulsion requirement on a case-by-case basis.¹⁷⁴ Some states and school districts have enacted provisions specifically addressing the circumstance in which this discretion may be exercised. In Michigan, for example, the school board may elect not to impose the expulsion

... if the pupil establishes in a clear and convincing manner at least one of the following:

¹⁷¹ Some of our interviewees also reported that students have been subjected to zero tolerance discipline when their cars were subject to random drug checks and hunting rifles or shot guns were discovered. It should be noted that the federal law was amended in 2002 as part of the No Child Left Behind law to add the following provision:

Exception: Nothing in this section shall apply to a firearm that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the local educational agency and the local educational agency adopts appropriate safeguards to ensure student safety.

This provision has not been incorporated into state law but there now is no federal prohibition against exempting firearms locked in a vehicle on school property from triggering zero tolerance provisions if such storage is legal under state law.

¹⁷² O.C.G.A. § 20-2-751.1

¹⁷³ 20 U.S.C. § 7151(b)(1).

¹⁷⁴ O.C.G.A. § 20-2-751.1(b)(c)

(a) The object or instrument possessed by the pupil was not possessed by the pupil for use as a weapon, or for direct or indirect delivery to another person for use as a weapon.

(b) The weapon was not knowingly possessed by the pupil.

(c) The pupil did not know or have reason to know that the object or instrument possessed by the pupil constituted a dangerous weapon.

(d) The weapon was possessed by the pupil at the suggestion, request, or direction of, or with the express permission of, school or police authorities.¹⁷⁵

A school district in Vermont has adopted a similar approach in its disciplinary policies:

A student found by the school board after a hearing to have brought a firearm to school shall be expelled for at least one calendar year. However, the school board may modify the expulsion on a case by case basis when it finds circumstances such as, but not limited to:

1. The student was unaware that he or she had brought a firearm to school.
2. The student did not intend to use the firearm to threaten or endanger others.
3. The student is disabled and the misconduct is related to the disability.
4. The student does not present an ongoing threat to others and a lengthy expulsion would not serve the best interests of the pupil.¹⁷⁶

Thus, these jurisdictions have elected to address the situation in which a firearm is inadvertently brought to school by using the case-by-case discretion of the school board. This approach does have a potential drawback if the student is subjected to an out of school suspension pending the discretionary decision by the school board.

The Commonwealth of Kentucky apparently elected to address the issue more directly in its school firearms statute. After directing each school board to adopt a policy requiring the minimum one year expulsion, the law states¹⁷⁷ that in determining whether a student brought a weapon to school, the board is to use a definition found in a separate statute which states, in part:

A person is guilty of unlawful possession of a weapon on school property when he *knowingly* deposits, possesses, or carries, whether openly or concealed, for purposes other than instructional or school-sanctioned ceremonial purposes, or ... any firearm or other deadly weapon, destructive device, or booby trap device in any public or private school building or bus, on any public or

¹⁷⁵ MICH. COMP. LAWS § 380.1311(2).

¹⁷⁶ *Springfield (Vermont) School District Policy*, Code F21 (Dec. 15, 2008).

¹⁷⁷ KY. REV. STAT. ANN. § 158.150(2)(a)

private school campus, grounds, recreation area, athletic field, or any other property owned, used, or operated by any board of education, school, board of trustees, regents, or directors for the administration of any public or private educational institution.¹⁷⁸

Rather than relying on the discretion of the school board, the Kentucky approach addresses the issue directly by imposing expulsion only for “knowing” possession.

III. A Suggested Approach

School districts have substantial authority to re-evaluate and modify any zero tolerance policies that go beyond state mandates. Furthermore, with regard to the state-mandated policies, two of the three expressly apply only to intentional acts so that the issue of intent must already be addressed in applying these policies. As discussed above, avenues also exist to allow for the application of discretion in the context of the firearms in school statute.

Given the strong divergence of views on this issue, Georgia Appleseed urges each school district to initiate a process to review carefully its zero tolerance policies. In particular, we suggest that districts consider whether it would be appropriate to make it clear that such policies apply only to knowing and intentional actions. This effort could be undertaken as part of the annual review of the student code of conduct carried out by most districts.

Another recurring issue arises in connection with zero tolerance policies for fighting. In some school districts, all participants are subjected to discipline and referred to the court system. In our survey, a number of parents questioned the fairness of this approach in circumstances in which they asserted that their child was acting only in self defense. We suggest that districts consider whether fighting policies should be modified to allow a determination that one of the participants was not the primary aggressor and was acting in reasonable self defense.

We anticipate that zero tolerance proponents will argue against considering these changes on at least two grounds. First, a key element in the potential deterrent effect of these provisions is that the consequences of the prohibited action be made clear and be consistently applied. Interposing an intent requirement could undermine this deterrent effect because the student may think that he or she can avoid discipline by simply saying, “I did not mean to.” Second, any ability on the part of the school administration to exercise discretion in the administration of zero tolerance policies (such as considering intent issues or determining who was the primary aggressor in a fight) leaves the administration open to claims of favoritism for or bias against a particular student or class of students.

Clearly established behavioral expectations and consequences for failure to comply with those expectations are important elements of any effective student discipline system. Georgia Appleseed does not believe, however, that zero tolerance provisions have much, if any, deterrent effect on truly inadvertent behavior. We also believe that spurious claims of inadvertence will not be difficult to discern and reject.

¹⁷⁸*Id.* § 527.070(1)(emphasis added).

Georgia Appleseed also recognizes that strict zero tolerance provisions appear straightforward to apply and can, therefore, have the benefit of avoiding bias claims. Though the goal is to treat everyone “equally fairly,” we see the problem of also treating everyone “equally unfairly” and question the message we send to kids by using a system that does not have the capability of addressing patently unfair results. In any event, zero tolerance policies are only a small part of any district’s disciplinary toolbox. Teachers and administrators exercise discretion daily in the application of the rest of the discipline tools; therefore, there should be no serious objection to the application of discretion to avoid unfair results that common sense would indicate were unintended by the policymakers.

Although we have expressed Georgia Appleseed’s view on these issues, we do not presume to know the “right” answer for each individual school district in Georgia. Our purpose here is simply to encourage each school district to initiate a conversation about such policies among educators, other stakeholders such as juvenile justice officials and advocates, parents, and students. The outcome may be a decision to retain current policies unchanged or to modify them as suggested here or in some other way.

CALL TO ACTION

Georgia Appleseed has assessed student disciplinary data submitted by all schools in Georgia for the last seven complete school years. Georgia Appleseed has comprehensively analyzed the student discipline requirements imposed on and guidance provided to school systems by the General Assembly and by the state Department of Education. We have considered the findings of researchers who have assessed student discipline in other states. We have heard the voices of hundreds of education stakeholders through our interviews and the parent/student survey. Based on these efforts, Georgia Appleseed makes the following recommendations for action by state education policy makers and the parents of Georgia's current and future public school students.

Public Education as “Priority No. 1”

While we do not believe that the specific recommendations outlined below will require an extraordinary expenditure of new monetary resources (or reallocation of existing resources), some costs will need to be incurred. As this report is being prepared, we are aware that the nation and the state (as well as a great many individual citizens) continue to face very difficult financial times and that governmental and individual resources are being stretched thin.

In the absence of increased revenues, spending cuts become the order of the day and many argue that all state programs should be required to “share the pain.” Georgia Appleseed believes, however, that public policy in an era of limited resources mandates the establishment of clear spending priorities. Assuring quality public education for all of Georgia’s children should be Priority No. 1.

To underscore the paramount importance of public education, we need look no further than the unanimous view on this issue expressed by the United States Supreme Court in *Brown v. Board of Education*:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state

has undertaken to provide it, is a right which must be made available to all on equal terms.¹⁷⁹

These words were true in 1954 and they are even more true in the Twenty-First Century.

The quality of K-12 public education in Georgia must improve to increase the number of students who graduate with an adequate education and who can go on to obtain postsecondary or technical training which is more and more necessary to be successful in today's economy. The quality of public education in Georgia also must be substantially improved if we want to be able credibly to assure potential new or relocating businesses that the state can provide them with an educated work force.

In the longer term, the investment that we make in our children today will pay a significant return in the form of the personal enrichment of each individual's life, the enhanced capacity of each individual to participate meaningfully in our democracy, and the heightened potential economic productivity of each individual. In addition, society will collectively benefit from reduced costs for social services and prisons. If we do not commit to this level of effort, however, even in the face of limited economic resources, we face the grim reality of a growing permanent underclass with all its associated economic and societal costs.

Full Disclosure

Georgia Appleseed recommends that each public school be required to make full public disclosure annually of its student discipline performance using data that is required to be collected under existing law. Specifically, the school should report incidence rates for in-school suspensions, out-of-school suspensions, and expulsions (with and without an alternative education setting placement). The incidence rates (i.e., percentage of students at the school and in the district receiving such discipline) should be compared to the state average incident rate and to the range of incident rates statewide for the school year in question. The data should be presented for all students and for individual subgroups based on grade level, gender, race, student with disability status, and eligibility for free and reduced lunch.

The underlying data necessary to create these reports are already reported annually to the Georgia Department of Education. Georgia Appleseed urges that each individual school be required to disclose the incident rate data discussed above in the same manner that the school currently reports on its Adequate Yearly Progress status under the federal No Child Left Behind Law. Georgia Appleseed believes that required public disclosure will afford parents and other affected stakeholders a more clear understanding of student discipline practices in their schools and may also encourage school administrators to evaluate more carefully the effectiveness of their disciplinary practices.

¹⁷⁹ Brown v. Board of Education, 347 U.S. 483, 493 (1954).

Assessment of Alternative Education Settings

The need for more and better alternative education options for students who do not perform well in the traditional general education setting was a recurring theme in our education stakeholder interviews. Georgia law provides: "It is the policy of this state that it is preferable to reassign disruptive students to alternative educational settings rather than to suspend or expel such students from school."¹⁸⁰ Implicit in this expression of policy is that the alternative education settings should be capable of providing the assigned students with a constitutionally adequate educational experience.

An in-depth assessment of the Georgia alternative education schools and programs was beyond the scope of our Phase II effort. Based on our limited review, however, we believe that the quality of alternative education settings in Georgia is highly variable and it is likely that many such settings do not provide an opportunity for the assigned student to have a quality education experience. Often, according to education stakeholders who we interviewed, adequate resources are not available to assure accessibility to adequate alternative education settings.

Georgia Appleseed recommends, therefore, that the Georgia Department of Education carry out an assessment of the alternative education settings currently in place in Georgia and issue a report to the General Assembly and the public.¹⁸¹ The report should assess the quality of the educational experience in such settings based upon criteria to be developed by the Department. The report should also include recommendations as to actions that should be taken to assure that every alternative education setting provides a quality education opportunity to each assigned student.

Training and Support

Effective Behavior Management

In this report we have summarized some of the necessary components of an effective, comprehensive, and integrated student behavior management program. A critical part of such a program, in our judgment, is the establishment of school wide effective learning environments through the implementation of positive behavioral interventions and supports (or similar) initiatives. Administrators and teachers must be trained to use these tools and ongoing mentoring and coaching resources need to be available in the early stages of implementation. Data management systems must be provided so that results can be tracked and evaluated.¹⁸²

State law already provides for this level of effort. Section 20-2-155 requires GaDOE to establish a "state-wide school climate management program" designed to assist local schools and

¹⁸⁰ O.C.G.A. §§ 20-2-735(f); 20-2-751.5(d); 20-2-768(c).

¹⁸¹ In the alternative, the Department of Audits and Accounts could be requested to carry out such an assessment similar to that recently completed for the Georgia Network of Educational and Therapeutic Support. See GA. DEPT OF AUDITS AND ACCOUNTS, *Performance Audit 09●21* (Oct. 2010).

¹⁸² Georgia Appleseed notes that a number of school districts and individual schools are already making great strides toward implementing comprehensive integrated behavior management programs.

systems requesting assistance in developing school climate improvement and management processes. Such projects are to be designed to optimize local resources through voluntary community, student, teacher, administrator, and other school personnel participation. These processes are also to be designed for, but will not be limited to, promoting positive gains in student achievement scores, student and teacher morale, community support, and student and teacher attendance, while decreasing student suspensions, expulsions, dropouts, and other negative aspects of the total school environment. The GaDOE, upon request of a local school system, is authorized to provide the necessary on-site technical assistance to local schools and systems and to offer other assistance through regional and state-wide conferences and workshops, printed material, and such other assistance as may be deemed appropriate

The General Assembly should assure that adequate resources are provided so that training and support services are available to assure that every school that wishes to implement an integrated student behavior management program should be able to do so within the next five years.

Special Education Students

Another recurring theme, especially in survey comments from parents, was that general education teachers were often ill prepared to manage the behaviors of students with disabilities assigned to their classroom. A detailed study of the extent to which general education teachers receive such specialized training and the feasibility of expanding such training opportunities were beyond the scope of this report. Because of the prevalence of these comments, however, Georgia Appleseed recommends that the Georgia Department of Education evaluate any such need for increased training.

Statutory Revisions

School Disruption

Section 20-2-1181 of the Georgia Code makes it unlawful "... for any person to knowingly and intentionally or recklessly disrupt or interfere with the operation of any public school, public school bus, or public school bus stop." A violation of this provision is punishable as a misdemeanor of a high and aggravated nature.

Based on our review of a number of juvenile court records, this "disruption" statute is widely used and sometimes reflects the highest number of individual counts filed. We understand though that often the disruption statute is included in a multiple count filing and may be used largely as a back up in the event that some problem is encountered proving the other counts.

This statute has been criticized as providing a broad and ambiguous vehicle for criminalizing incidents of schoolyard misbehavior. During our interview process, one school resource officer was asked whether he regularly enforced noncriminal aspects of the student code of conduct such as the dress code. He replied that he did not but that he might point out a

violation to a school official. He went on to say that if the student refused to obey the school official's direction to remedy the dress code violation: "Then I've got him for disruption."

The 2010 amendment to the law requiring that the disruption be carried out "knowingly and intentionally or recklessly" may serve to limit the use of the statute but it is unclear whether the intent requirement will be applied simply to the conduct of which the student is accused or whether it will be interpreted to require "intent to disrupt." Our limited study revealed no recent change in the frequency of use of this charge.

In any event, this law continues to provide too great an opportunity for unnecessary criminalization of behavior that should be handled at the school level rather than by the court system. Any serious misbehavior by a student can still be charged under a wide variety of specific statutory provisions.

Since the statute may well have a legitimate purpose if applied to someone who is not a student at the school, we suggest that language be added to the statute to make it clear that it does not apply to a student who is enrolled in the public school or assigned to the school bus or bus stop where the disruption occurs.

Tribunal Witness Subpoenas

At administrative tribunals held in connection with long term suspensions or expulsions, due process for students includes, among other rights, the ability to present evidence relevant to the disposition of the disciplinary matter. Georgia law provides that school boards have the authority to summon witnesses. Students and their parents periodically request that subpoenas be issued to witnesses to compel their presence at tribunal hearings.

That is what occurred in 2009 when a student in Forsyth County applied to the school board for witness subpoenas to compel the testimony of witnesses the student thought would corroborate the student's denial of the behavior giving rise to a suspension. The school board issued the subpoenas but, when the school's Vice-Principal delivered the subpoenas to the prospective witnesses, she affirmatively told them as directed by the school's Principal that they were not mandatorily required to attend the hearing. Note that the subpoenas expressly ordered the recipient to appear "under penalty of law."

The disciplined student's parents ultimately sought a criminal arrest warrant against the Vice-Principal asserting that she had violated a provision of the criminal code making it a felony to engage in misleading conduct designed to induce a person not to attend a proceeding to which that person had been summoned by legal process. The trial court denied the application for a criminal warrant concluding that a school board subpoena was not "legal process" in the sense used in the criminal code provision. The parents appealed.

In March, 2011, the Georgia Court of Appeals affirmed the denial of the application for an arrest warrant but on grounds different than those articulated by the trial court. *McIntosh v. Gordy*, 2011 Ga. App. LEXIS 196 (March 15, 2011). The appellate court stated that, while the law does empower a school board to summon witnesses, the law does not contain any provision

providing for the enforcement of this power. Absent an express statutory provision providing such a enforcement mechanism, the court concluded that witnesses were not mandatorily required to testify in response to a school board subpoena. Since the Vice-Principal's statement to the witnesses that attendance at the hearing was not mandatory was true, she did not engage in any misleading behavior.

The result reached by the court is troubling. The right of students to present evidence at tribunal hearings is clearly articulated in Georgia law. Implicit in that right is the ability to call even reluctant witnesses. Why else would the statute empower a school board to summon witnesses? The right of students to present evidence and the power of school boards to summon witnesses have been rendered hollow by the appellate court's ruling. This is of particular concern since often witnesses adverse the student's position include teachers, school resource officers, or other administrators who will likely attend the tribunal without the necessity of a subpoena.

Georgia Appleseed recognizes the argument that school discipline tribunals are not intended to be full blown adversarial proceedings with all the trappings of a criminal trial. (For example there is no right for indigent students to have appointed counsel.) On the other hand, given the adverse impacts that long term suspensions and expulsions can and do have on students, the interests of the students and the school system demand that disputed facts be resolved on all relevant evidence.

Accordingly, we suggest that the General Assembly enact legislation as soon as possible to make school board subpoena power enforceable. One approach would be to include in Code Section 20-2-1160 which contains the school board authority to summon witnesses language that states that subpoenas issued by a school board "... upon application by a student or the local education agency to the Superior Court with jurisdiction over matters arising in the location of the main office of the local education agency, shall be enforced in the same manner provided by law for the service and enforcement of subpoenas in a civil action."

Student Discipline Reporting Matters

It is important to all of Georgia's secondary public education stakeholders that student discipline data be accurately and consistently reported at the school, district and state level. In our discussion above we point out some specific concerns in this area. We urge GaDOE to work with the stakeholders to:

- Add appropriate codes to the student discipline data guidance to assure accurate reporting of disciplinary referrals to alternative education *programs*;
- Clarify the scope of the requirement to report court referrals from the schools;
- Clarify the circumstances in which the Discipline Incident Type code 24 ("Other Discipline Incident") may be used.

It Takes A Parent

In Georgia, each student code of conduct is required to include parental involvement processes designed to create the expectation that parents and educators will work together to improve and enhance student behavior and academic performance. These processes must also enhance free communication of concerns about and actions in response to inappropriate student behavior.¹⁸³

In 2006, following an extensive national study, the national Appleseed organization issued a report that found:

Effective and wide-ranging parental participation in the education of their children is one of the most important factors in a child's success in school and, correspondingly, a central characteristic of successful schools. Too frequently, however, schools and districts continue to face challenges that impede efforts to effectively advance parental involvement, especially for parents of students who have the greatest academic challenges and related needs. As one educator put it, in many cases there is a “remarkable level of disengagement” between parents and schools. Thus, parental involvement frequently is not the kind of priority that it should be for schools, districts and other policymakers, despite convincing research about its success in raising student achievement.¹⁸⁴

In most Georgia school districts, the student codes of conduct focus much more on standards of behavior and progressive discipline procedures than they do on student supports and parental involvement. Elsewhere in this report, we urge the school systems to address this issue through the implementation of an integrated behavioral management approach that gives proper effect to all four co-equal requirements for the student code of conduct.

This call, however, is directed to parents.

Georgia Appleseed recognizes that many parents are already deeply and effectively involved the education of their children. Many parents, however, are not. Georgia Appleseed is also fully aware of the many obstacles to effective parental involvement especially for low income or single parent families or for parents who are English Language Learners or are from cultures where direct involvement in schools is not the norm.¹⁸⁵

Sometimes a parent's first meaningful interaction with the school will be in the context of a proposed disciplinary action. It is, of course, important that the parent be effectively involved

¹⁸³ O.C.G.A. § 20-2-735(b)-(e).

¹⁸⁴ APPLESEED & HOLLAND & KNIGHT, LLP, *IT TAKES A PARENT: TRANSFORMING EDUCATION IN THE WAKE OF THE NO CHILD LEFT BEHIND ACT 4 (2006)*(citations omitted), *available at* <http://www.appleseednetwork.org/Portals/0/Documents/Publications/TransformEduNoChildLeft.pdf> .

¹⁸⁵ Some of these impediments are discussed in greater detail in the *It Takes A Parent* report cited immediately above.

in such individual disciplinary actions.¹⁸⁶ It would be much more desirable, however, if the school behavior management system operated in a way that individual disciplinary actions requiring the involvement of a parent were minimized.

The unfortunate truth, however, is that systemic change will not likely occur in many school districts without an effective demand for such change by a broad cross section of parents. Therefore, we urge parents who review this report to become aware of the disciplinary practices and outcomes in their district and school and to advocate for change in circumstances where the system relies excessively upon out of class disciplinary actions.

Georgia Appleseed hopes to be able to facilitate a response to this call for enhanced parental involvement. We will advocate for the full disclosure of disciplinary action data as discussed in this Call to Action. We also plan to present the findings of this report to groups of parents around the state. Such presentations will be tailored to present data relating the district and schools in the locale where the presentation is being made. In cooperation with other stakeholder and advocacy groups we will also seek to inform parents as to effective means to coalesce on a “grassroots” level and present their views to decision makers at the state, district and school level.

Many important players must be involved to assure that Georgia students have both a safe school environment and a meaningful opportunity to obtain a quality high school education. One thing is sure though. It takes a parent!

¹⁸⁶ Georgia Appleseed has prepared a manual designed to assist a parent in addressing such individual disciplinary actions. See *When My Child is Disciplined at School*, available at www.gaappleseed.org (also available in Spanish).