



**Written Testimony of Advancement Project's National
Office**

**Submitted to the U.S. Commission on Civil Rights for its
public briefing on *The-School-To-Prison Pipeline: The
Intersections of Students of Color with Disabilities***

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Introduction

On behalf of Advancement Project's National Office, we enthusiastically submit this written testimony to the U.S. Commission on Civil Rights following its public briefing, *The School-to-Prison Pipeline: Intersections of Students of Color with Disabilities*, which was held on December 8, 2017. This written testimony supplements the live testimony that our organization provided during the open comment portion of the hearing.

Founded in 1999, Advancement Project is a next-generation, multi-racial civil rights organization that is committed to moving America toward its full promise of a just democracy. Using legal, policy, and communications strategies, we work with community partners across the country to tackle civil rights challenges in the areas of education, voting rights, immigrant justice, and criminal justice, among other issues of concern. Our national office is based in Washington, D.C., and our California office is located in Los Angeles, CA.

Soon after its origin, our organization's national office co-authored a groundbreaking report with the Harvard Civil Rights Project entitled *Opportunities Suspended*. This document identified and named the school-to-prison pipeline, the policies and practices that push children out of school and on a pathway to prison; and outlined its harmful effects upon Black and Brown children, students with disabilities, and other groups of marginalized children. In the nearly 20 years of our existence, we have worked with various community partners across the country to dismantle the egregious civil rights violation known as the school-to-prison pipeline, as well as advocate for reforms aimed at creating safe and supportive school environments for all children.

The primary purpose of our written remarks concerns the school discipline guidance released by the Obama Administration in January 2014. We offer our strong support for the maintenance of this document; it simply seeks to clarify existing federal laws and has yielded a positive impact on reducing disparities in school discipline in schools districts throughout the country. Additionally, since the document is not legally binding, any effort to rescind the guidance constitutes poor resource allocation on the part of the U.S. Departments of Justice and Education. Stated another way, the document is not detrimental to anyone, ranging from the students who are most impacted by the school-to-prison pipeline, to the federal employees who are tasked with enforcing the nation's anti-discrimination laws.



Additionally, we must note that the court of public opinion has continually weighed in on this issue as Americans have become more informed. Shifting away from the zero tolerance policies that dominated the narrative during the last quarter of the twentieth century, many education stakeholders, including teachers' unions and superintendent associations, now endorse a move away from exclusionary discipline practices and toward efforts to create positive school communities through the use of restorative justice and other measures.

Restorative justice is a philosophy that emphasizes building relationships. When there is a need to repair harm caused by conflict and wrongdoing, restorative justice provides an opportunity for everyone impacted by an incident to come together in a safe space to address their feelings and needs, and reach a resolution that heals and restores relationships. Additionally, the full incorporation of restorative justice into schools typically results in drastically improved academic outcomes, including increased attendance and graduation rates. This change in thinking has undoubtedly been driven by a deeper societal understanding of the harms precipitated by the school-to-prison pipeline. The Obama Administration was ostensibly tuned into this occurrence as it underwent the process of drafting and publishing its school discipline guidance.

Moreover, the guidance reflects the culmination of the hard work of dedicated student and parent organizers who used their personal stories to illuminate the negative effects of the school-to-prison pipeline on children, families, and communities. Groups like *Padres y Jovenes Unidos (PJU)* in Denver, CO, *Power U Center for Social Change (Power U)* in Miami, FL, and *Citizen Action of New York (CANY)* in Buffalo, NY labored to call attention to the issue, and they ultimately achieved the adoption of revised codes of conduct in their school districts. However, due to the stalled state of implementation of these codes of conduct, the guidance serves as a necessary tool to ensure that this imperative work will be completed. Most importantly, its rescission would be felt deeply by the families and students who have worked so hard for meaningful reform on this issue.

Recurring themes often manifest themselves in stories throughout the country, with victories taking years to materialize and even longer to become actionable. These stories demonstrate that the fight to dismantle the school-to-prison pipeline is far from over, and the guidance from the Obama Administration is still quite germane in this effort.



From Zero Tolerance to Restorative Justice

In the 1980s, the country saw an expansion of the presence of police officers and zero tolerance policies in schools.¹ This trend continued well into the 21st century, with Democratic and Republican Administrations fueling this expansion. However, as more data steadily became available, a number of stakeholders began to realize how dire the situation had become. The philosophy of zero tolerance transcended all grade levels and disproportionately impacted Black and Brown children, with its impact even felt by children enrolled in preschool. We later learned through data released by the Obama Administration that Black students represented nearly 50 percent of preschoolers suspended more than once, despite only accounting for 18 percent of total preschool enrollment across the country.²

With a recognition that the philosophy of zero tolerance had gone much further than originally imagined, various education stakeholders started to reevaluate their stance on the issue. For example, the American Federation of Teachers and the National Education Association (NEA), the nation's largest teachers' unions, expressed their support of restorative justice in 2014.³ In 2016, NEA took further step at its annual Representative Assembly when they adopted a [Policy Statement on Discipline and the School to Prison Pipeline](#) that establishes standards and guidance on how the union will address this issue. We have seen similar actions from the National School Boards Association, National Association of State Boards of Education, the Council of Great City Schools, and AASA, the school superintendents' association, through their release of a document that outlined restorative justice principles and their benefits.⁴ The pronouncements from these organizations demonstrate how public perception of the school-to-prison pipeline has evolved. At the local level, community organizers have been able to rely on the guidance and statements from national organizations to move

¹ *Unraveling Zero Tolerance*, The New York Times, October 2, 2016, available at <https://www.nytimes.com/video/us/10000004683057/unraveling-zero-tolerance.html> (last visited on January 16, 2018)

² *Expansive Survey of America's Public Schools Reveals Troubling Racial Disparities*, U.S. Department of Education, March 21, 2014, available at <https://www.ed.gov/news/press-releases/expansive-survey-americas-public-schools-reveals-troubling-racial-disparities> (last visited on January 16, 2018)

³ Mary Ellen Flannery, *NEA and Partners Support Restorative Justice in Schools*, National Education Association, March 24, 2014, available at <http://neatoday.org/2014/03/24/nea-and-partners-promote-restorative-justice-in-schools/> (last visited on January 16, 2018)

⁴ *Restorative Justice Overview*, AASA, September 2014, available at https://www.aasa.org/uploadedFiles/Childrens_Programs/RJ_Overview_9.15.14.pdf (last visited on January 16, 2018)



local teachers' unions, superintendents, and school board members who have been reluctant to change their discipline policies and practices.

Denver

In 2008, following a six-year collaborative campaign, PJU won a monumental victory in the fight against the school-to-prison pipeline. This achievement entailed the adoption of new discipline policies in Denver Public Schools (DPS).⁵ The new code of conduct moved away from harsh zero tolerance policies in favor of practices informed by the philosophy of restorative justice.⁶ PJU's victory resulted from the tireless work of students, families, community organizers, and lawyers, and it signified one of the first achievements of its kind in the nation. Following the official ratification of the new code of conduct, PJU has spent the last decade fighting to ensure that the document is properly implemented. According to recent data, students of color in Denver were 3.1 times more likely to be suspended or expelled than their white peers.⁷

These persistent disparities indicate that a revised code of conduct that lacks proper implementation can only go so far. Particularly in the case of Denver, PJU often sees the on-going presence of exclusionary discipline and the selective use of restorative justice – usually to the detriment of Black and Brown children; as such, PJU remains committed in its fight to end the school-to-prison pipeline and will be for the foreseeable future. The Obama Administration's guidance on school discipline serves as a useful tool for the organizers at PJU to carry on their fight for just and equitable learning environments.

Miami

In 2007, Power U began a campaign to end the school-to-prison pipeline in Miami-Dade County Public Schools (MDCPS). The campaign achieved a victory in 2012, when the school district agreed to end the use of suspensions for low-level infractions. Additionally, the school district committed to incorporating restorative justice into its schools. Over the past five years, Power U has seen this promise devolve into surface-level reforms with the same harmful effects as prior policies. Most notably, MDCPS

⁵ *Movement Building*, Padres y Jovenes Unidos, available at <https://padresunidos.org/about/movement-building/> (last visited on January 16, 2018)

⁶ *Id.*

⁷ *Denver Campaign*, Padres y Jovenes Unidos, available at <https://padresunidos.org/campaigns/end-the-school-to-jail-track/local-denver-campaign/> (last visited on January 16, 2018)



created ‘Success Centers’ in 2015, which were conceived to ensure that students subjected to exclusionary discipline did not disrupt classrooms.⁸

Our organization released a report with Power U in October 2017 that shed light on the on-going civil rights violations of students in MDCPS.⁹ The report details the deplorable and discriminatory conditions that students in MDCPS face years after Power U received the initial commitment from the school district. For example, of the 324 school-based arrests during the 2015-2016 academic year, Black youth represented 51 percent of them, although they are only 21.9 percent of the students in MDCPS.¹⁰

The occurrences in MDCPS fall into a growing nationwide trend. After attaining assurances from a school district that will ostensibly lead to the dismantling of the school-to-prison pipeline, community members and organizers witness lackluster enforcement and half-hearted changes. In MDCPS, Success Centers merely operate as alternative schools where students receive inadequate instruction and continue to face harsh discipline. Regardless of their names, these reforms tend to result in Black and Brown students continually being pushed out of school at disproportionate rates compared to their white peers. More troubling, this fact is exacerbated when one considers the intersection of race and disability.

Buffalo

In 2010, following the tragic death of Jawaan Daniels – a student who had been suspended from school for roaming the halls – in Buffalo, CANY and Alliance for Quality Education (AQE) launched a campaign to bring attention to the harmful impact of zero-tolerance policies in their community.¹¹ This initiative, entitled Solutions, Not Suspensions, culminated in the revision of the Buffalo Public Schools (BPS) Code of Conduct in April 2013.¹² The new code of conduct features language that promotes

⁸ John O’Connor, *Miami-Dade Eliminating Out-of-School Suspensions*, StateImpact Florida, July 29, 2015, available at <https://stateimpact.npr.org/florida/2015/07/29/miami-dade-schools-eliminating-out-of-school-suspensions/> (last visited on January 16, 2018)

⁹ *Miami-Dade County Public Schools: The Hidden Truth*, Power U Center for Social Change and Advancement Project, October 2017, available at http://b.3cdn.net/advancement/39bd72098c5b19e650_mlbrgj7q8.pdf (last visited on January 16, 2018)

¹⁰ *Id.*

¹¹ *Restoring Justice in Buffalo Public Schools: Safe and Supportive Quality Education for All*, Citizen Action of New York, Alliance for Quality Education, Public Policy and Education Fund, and Advancement Project, July 2015, available at <http://www.ageny.org/wp-content/uploads/2015/07/Buffalo-Report-Restoring-Justice-FINAL-WEB.pdf> (last visited on January 16, 2018)

¹² *Id.*



positive behavioral interventions and responses and removed phrases that endorsed harsh exclusionary discipline practices.

Since the new code of conduct took effect, disparities continue to manifest. Although the revised document came with improved data collection, data illustrates that Black and Brown children still disproportionately represent the percentage of students who receive short-term and long-term suspensions in BPS. Data from the 2016-2017 academic year indicate that Black students are 7.9 times more likely to receive a short-term suspension and 6.8 times more likely to receive a long-term suspension than their white peers.¹³ Students with disabilities in Buffalo also face disparities in the administration of harsh discipline.¹⁴ Moreover, restorative justice implementation has stalled considerably since the 2013-2014 academic year.

Community members in Buffalo remain committed to the full implementation of the revised code of conduct. Like the organizers in Denver and Miami, the work continues with a recognition that while significant achievements have been made, a great deal of labor remains. Policy change is only the beginning. An equal weight must be placed on the implementation of these policies. The Obama Administration's guidance will assist families, students, and community organizers in the fight for proper implementation of codes of conduct across the nation's school districts.

Conclusion

Despite years of activism, the school-to-prison pipeline remains alive and well. As these three case studies demonstrate, changes to language within codes of conduct must be accompanied by deliberate implementation of the principles for which they stand. The Obama Administration's guidance on school discipline has been and continues to be one such avenue to ensure that meaningful reforms are adopted and sustained. The detrimental impact of the guidance's rescission would be felt within many marginalized communities across the country. We urge the Commission to advocate for the maintenance of the guidance and call for additional protections to safeguard the civil rights of children of color with disabilities.

¹³ *September 2016 - June 2017, Suspension Report*, Buffalo Public Schools, available at [https://www.buffaloschools.org/site/handlers/filedownload.ashx?moduleinstanceid=2162&dataid=14451&FileName=September 2016 - June 2017_ Suspension Report.pdf](https://www.buffaloschools.org/site/handlers/filedownload.ashx?moduleinstanceid=2162&dataid=14451&FileName=September%202016%20-%20June%202017_Suspension%20Report.pdf) (last visited on January 16, 2018)

¹⁴ *Id.*



We thank the Commission for its attention to this matter, and we invite you to contact our office with any additional questions you may have.

Respectfully submitted,

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