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**I. Introduction**

Thank you for inviting me to participate in this hearing. On behalf of Secretary Duncan: thank you, Senator Durbin, and Members of the Subcommittee, for convening a discussion on an issue that affects the educational and life outcomes of millions of youth across our Nation. I appreciate the opportunity to share with you the Department's efforts to support all of America's children by keeping them in school, engaged in learning, and, most especially, out of the judicial system and prison.

Over the past 18 months, the Department's efforts have been galvanized by the results of the 2011 Breaking Schools' Rules study, a longitudinal study covering more than one million public school students in the State of Texas, by the Council of State Governments (CSG), and the Department of Education's own 2012 Civil Rights Data Collection (CRDC), both of which suggest three disturbing trends: first, an overreliance on suspensions, expulsions, and referrals to law enforcement as means of managing student behavior; second, the disproportionate impact of such practices on students of color, students with disabilities, and other subgroups; and, last, the increased risk of juvenile justice involvement for students who are suspended or expelled.

While many schools and school districts have begun to implement evidence-based strategies for managing student behavior, and many educators demonstrate effective practices in their classrooms, it is clear that too many schools are overly reliant on discipline practices that remove students from school. Based on data from the 72,000 schools that participated in the last CRDC, which we released last spring, we estimate that over 3 million students were suspended out of school during the 2009 – 2010 school year. During that same time frame, 108,000 students were expelled, and over 240,000 students were referred to law enforcement.

However, one research study suggests that many of these disciplinary actions are not related to student safety. In one study of a large urban school district, most suspensions were for minor infractions of school rules (such as attendance issues, disobedience, classroom

disruption, or insubordination) rather than for dangerous or violent acts, with fighting and bullying making up 19 percent of suspensions.

In one case study of a midwestern State, only 5 percent of all out-of-school suspensions in 2006 were for weapons or drugs, while 95 percent of all out-of-school suspensions were for “disruptive behaviors.” In California, more than 40 percent of the 700,000 suspensions handed out statewide in 2010-11 were for “willful defiance” which is defined as any behavior that disrupts a classroom or other school setting.

School discipline practices that unnecessarily remove students from their classrooms directly conflict with our goal of ensuring that schools provide students with the tools to achieve college and career readiness. Simply stated, students have access to the best education services we have to offer when they are in their classrooms and fully engaged in learning.

Overreliance on exclusionary discipline results when a school does not address the important role of school climate in the teaching and learning process and, in the absence of a strong, positive climate, struggles to find ways to keep students safe and on task. Until more schools: (1) emphasize the essential relationships interconnecting social, emotional, and behavioral skills and student achievement; (2) play an active role in addressing the underlying causes of student misbehavior, like substance abuse, mental illness, and social and emotional disorders; (3) provide students with behavioral supports that directly address or prevent misconduct; and (4) build the capacity of teachers and leaders to implement prevention-based strategies while adhering to appropriate discipline policies; we will not be successful in creating learning environments that are both safe and productive for all of America’s children.

And we do mean *all* of America’s children. Studies indicate alarmingly large disparities in the rate of disciplinary sanctions, particularly for students of color, students with disabilities, and male students. When African-American students are more than 3 ½ times as likely to be suspended or expelled as their White peers, or students with disabilities are more than twice as likely to receive out-of-school suspensions as their non-disabled peers, as they are today – it raises concerns that some of our schools are not providing equitable access to education, in potential violation of civil rights laws.

To ensure that all students are treated equitably, we need a multi-pronged and multi-disciplinary comprehensive strategy that encourages educators to proactively monitor their discipline practices for disproportionality, assess for root causes where disproportionality exists, and engage in a broad-based community and school effort to develop an action plan to root out discrimination in the administration of discipline. This strategy is based on the

recognition that schools must be deliberate and proactive to ensure that students are equitably treated. To demonstrate the Department's commitment to this approach, we have included this strategy as a program requirement in our Race to the Top-District competition, a \$400 million investment designed to promote comprehensive, local reforms in our nation's schools through grants to school districts. This inclusion signals the importance of student disciplinary processes and their impact on student achievement.

Beyond implications for educational achievement and equity, there is evidence to suggest that school discipline practices have consequences beyond the school yard, and may substantially increase the likelihood of future correctional involvement. According to the Breaking Schools' Rules study, nearly half of the students who were disciplined 11 or more times were in contact with the juvenile justice system. In contrast, only 2 percent of the students who had no school disciplinary actions were in contact with the juvenile justice system. CSG's study also revealed data that a student who was suspended or expelled for a discretionary violation was nearly three times as likely to be in contact with the juvenile justice system the following year, after controlling for campus and individual student characteristics.

While this linkage deserves further exploration, the importance of this particular finding cannot be underestimated. The vast majority of educators work hard to provide their students with the tools they need to succeed and, in assigning suspensions and expulsions, are doing their best to keep their school community, and even the disciplined student, safe from harm and disruption. This finding, however, paints a more complex picture about what suspension or expulsion may mean for the very students whom educators work so hard to support. We must provide teachers and principals with appropriate alternatives to suspensions and expulsions, and begin building the competencies and skills they need to maintain safe, engaging classrooms.

However, our efforts cannot end there. We know that schools are critical partners for providing disconnected and vulnerable youth – such as homeless youth, children in foster care, trafficked youth, youth with mental, emotional, behavioral or substance use disorders, children exposed to violence, and children of incarcerated parents – with the supports they need to avoid misconduct and contact with law enforcement. Additionally, for those youth placed in juvenile detention, educators play an essential role in reducing recidivism by providing pathways to college and career post-release. To provide such supports, cross-agency partnerships involving health, education, justice, and child welfare are critical, as no one system can adequately serve our students effectively.

## II. Department of Education Efforts

In July 2011 – just after the release of the Breaking Schools’ Rules Study – Secretary Duncan and Attorney General Holder launched a partnership between their respective agencies to dismantle what has been named the “school to prison pipeline.” Since that time, the Supportive School Discipline Initiative (SSDI) has functioned as a major coordinating body, providing opportunities for collaboration among federal agencies, including the Departments of Health and Human Services (HHS), Labor, Education, and Justice; facilitating public-private partnerships and creating lines of communication between the field – including parents, students, advocates, practitioners, and other education officials – and the administration, so that we stay informed about the most current needs, approaches, and events as they arise.

From its inception, the SSDI has focused on four key strategies. First, we are working to build national consensus for action through coordination with the CSG and philanthropic colleagues. Second, we identify research and data collection needs and are working to coordinate research investments across agencies and with the field. Third, we are working to issue guidance for state and local educators, school resource officers, and law enforcement personnel and, lastly, we build awareness, knowledge, and skills among stakeholders regarding discipline practices with the priority of keeping students in schools, learning and safe.

In addition to the SSDI, we have worked to improve school climate and discipline across other initiatives focused on related issues – such as student safety, corrections, and student disengagement with school. For example, the Department is one of multiple federal partners supporting the National Forum on Youth Violence Prevention – an interagency initiative to help 10 cities across the Nation to elevate youth and gang violence as an issue of significance; enhance the capacity of participating localities, along with others across the country, to more effectively prevent youth and gang violence; and sustain progress and systems change through engagement, alignment, and assessment.

The Department has continued to partner with the Department of Justice and HHS’ Substance Abuse and Mental Health Services Administration (SAMHSA) since 1999 to address youth violence and social-emotional and behavioral needs of students and communities through the Safe Schools Healthy Students (SS/HS) initiative. Through SSDI and the National Forum on Youth Violence Prevention, the SS/HS initiative has partnered with other federal initiatives to share the important teachings from SS/HS grantee communities.

The Department also worked with a number of agencies to launch the Federal Interagency Forum on Disconnected Youth, which seeks to improve outcomes for young people ages 14-24 who are homeless, in foster care, involved in the juvenile justice system, or are

neither employed nor enrolled in an educational institution, by helping them to achieve success in meeting educational, employment, and other key lifelong goals.

We are also a member of the Re-entry Council, led by the Attorney General, and have worked to develop an internal Correctional Education and Re-entry Strategy to strengthen our contributions to the goals of the Council.

Through these efforts, over the past 18 months, the Department has accomplished the following: (1) convened leaders from multiple systems to develop consensus for action and encourage state action; (2) emphasized school climate and discipline in our signature grant initiatives; (3) vigorously enforced civil rights laws; (4) strengthened investment in data collection and research; and (5) begun analyzing the larger continuum of correctional education while working on a strategy to improve outcomes from prevention to re-entry.

#### 1. Convening Leaders to Elevate and Collaborate on School Discipline Practices

At the core of the SSDI is an effort to develop a broad consensus on the steps that the education, judicial, and health communities must take to realize essential changes. As part of this effort, the Departments of Education and Justice have supported the efforts of the Council of State Governments Justice Center, in concert with members of the philanthropic community (including the Atlantic Philanthropies, the California Endowment, and Novo Foundation), to lead the development of consensus-based recommendations on how to keep school environments safe and students productively engaged in school. Over the course of the next year, this national consensus-building project will convene groups from multiple disciplines – including education, behavioral health, juvenile justice, social services, law enforcement, and child welfare—to first identify key issues related to academic success, juvenile justice concerns, and safe and engaging learning environments, and then recommend solutions that keep students engaged in school and out of the justice system. The strength of this work lies in its ability to bring together adults from different sectors that care about our most vulnerable children and to encourage collective action on behalf of these youth.

The Department also partnered with the New York Permanent Judicial Commission on Justice for Children last spring to bring together state-level education and judicial leaders to discuss ways to improve school discipline practices and reduce contact with the juvenile justice system. In all, forty-five state teams attended this critical summit. Many of these teams, which included state-level education and judicial leaders, have since begun their own initiatives, and have expressed their interest in launching taskforces dedicated to school discipline reform or hosting summits in their own states. To support these efforts, the Department has developed a

web-based community of practice to provide ongoing opportunities for the states to share their efforts and learn from one another.

## 2. Emphasizing School Climate and School Discipline in Grant-Making

Despite dramatic decreases in dedicated federal funding for school climate improvement and to promote preventative measures, the Department has continued to emphasize strategies for creating positive school climates through the Department's grant activities. From fiscal year (FY) 2011 until the present, the President's budget has called for a new Successful, Safe, and Healthy Students program, a consolidation of several existing, sometimes narrowly targeted, programs including Safe and Drug-Free Schools and Communities National Activities (Elementary and Secondary Education Act, as amended, Title IV, Part A, Subpart 2, Section 4121 and 4122, 20 U.S.C. 7131-7132). The Administration's proposal features a new approach to improve student health and safety through a focus on school climate and student supports. In FY 2013, the Administration requested \$196 million, including \$54 million for new grants that support states and districts in promoting positive school climates and student behavior.

Instead, reductions to the National Activities appropriation, without the new, consolidated program, have significantly impacted our capacity to offer financial support and technical assistance related to school climate, discipline and safety. In FY 2011, the National Activities appropriation was reduced by 38 percent to \$119 million. As a result, the Department was able to fund only continuation grants for programs dedicated to reducing drug use and improving student behavior and school safety, no funding was available for new grants as called for in the President's budget request. The FY 2012 appropriation for National Activities included another 46 percent reduction, which left only \$65 million available for such activities. As a result, we were similarly constrained this past fiscal year and only able to support continuation grants, but not provide new awards.

Aside from these limitations, and our continued belief that dedicated funding is critical, the Department has built activities related to school climate into leading programs – including our School Improvement Grants and Race to the Top programs – to help educators better integrate school climate considerations into their academic improvement efforts.

In this year's Race to the Top – District competition, a \$400 million investment to help school districts to implement comprehensive education reform, we included a program requirement that districts with students of color or students with disabilities overrepresented in the district's discipline rates must conduct a root cause analysis and develop a plan to address these root causes. Further, the sole competitive priority of the competition was

devoted to integrating public and/or private resources to augment school capacity to provide student and family supports that address the social, emotional, and behavioral areas of high-need populations.

Further, this is a critical time for school districts and states to rethink human capital management – how we select, support and evaluate educators. Given the feedback we’ve received from educators – that student misbehavior often interferes with instruction – school climate and student supports must be part of this conversation. This is why we have directed our new Effective Teachers and Leaders Center, one of our major technical assistance efforts to assist in building the capacity of state education departments, to help states integrate the competencies that create safe, supportive schools into comprehensive teacher and principal evaluation systems, professional development, and other essential activities for supporting and enhancing our educator workforce.

As we continue forward, we are seeking ways to provide schools and communities with a clear, evidence-based roadmap to safer school climates that support students. We are looking closely at multi-tiered behavioral frameworks – such as Positive Behavioral Interventions and Supports – to determine if such frameworks might help us to better organize and focus our technical assistance and financial support. In doing so, we will build upon the work and successes of the Office of Special Education and Rehabilitative Services, which has invested in behavioral research, demonstration, and technical assistance activities for more than 20 years.

As a starting point, we will work closely with the Departments of Justice and Health and Human Services to strengthen the use of behavioral frameworks in the National Forum for Youth Violence Prevention. As the ten cities<sup>1</sup> that comprise the National Forum have pledged to strengthen local capacity to prevent youth violence and gang violence, we see behavioral frameworks as a key strategy that their schools can use to boost capacity and better support their students.

### 3. Vigorous Enforcement of Civil Rights Law

Since the beginning of this Administration, the Department has been actively engaged in eliminating discriminatory discipline practices and other civil rights violations that represent

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<sup>1</sup> The 10 cities that current comprise the National Forum for Youth Violence Prevention as, as of December 2012: New Orleans, LA; Philadelphia, PA; Minneapolis, MN; Camden, NJ; Boston, MA; Chicago, IL; Detroit, MI; Memphis, TN; Salinas, CA; and San Jose, CA.

barriers to educational equity in this country, such as inequitable access to resources and harassment.

Over the last four years (FY 2009 – 2012), the Department’s Office of Civil Rights (OCR) has intensified its enforcement activities to ensure that students are not disciplined more severely or frequently because of their race, color or national origin. During this time, OCR launched 20 proactive investigations in schools with significant racial disparities in discipline. Five of those were launched in the last six months based on the most recent data from the CRDC.

Additionally, during the last four years, OCR received more than 1,250 complaints from parents, students or other concerned individuals about possible civil rights violations involving school discipline systems. OCR also held two major conferences with the Department of Justice on issues relating to student discipline. Disparate discipline investigations have revealed incidents of harsher treatment of African-American students and other students of color than White students who commit similar infractions and who have similar discipline histories. These cases reveal school climates in which the expectations and consequences regarding typical juvenile behavior and misbehavior are significantly more severe for African-American and other students of color.

In resolving disparate discipline investigations, OCR works with school districts to design robust remedies appropriate to the facts and circumstances of each case. School districts and their stakeholders are critical partners in this effort, for they have the expertise to develop strategies that can lead to real institutional change. The goal is to ensure that all students are provided schools that are safe and conducive to learning.

#### 4. Strengthened Data Collection and Research on School Discipline

In order to improve school discipline practices and decrease disproportionality, we have to know where the possible problems are and invest in research so that we have evidence-based solutions.

To that end, the Civil Rights Data Collection (CRDC) has been greatly expanded. The 2009-10 data collection, which was released in the spring of 2012, represented a sample of nearly 7,000 school districts, including all districts above 3,000 students and a sample of smaller districts. In all, the 2009-10 sample represented 72,000 schools and 85 percent of students in the nation. The data we released early this year now shows how different groups of students, such as boys and girls of color or students with disabilities, are treated across a range of discipline indicators. The database tracks the total number of students receiving in-school and



out-of-school suspensions and expulsions, the number of students referred to law enforcement, the number of students with school-related arrests, and the total number of students expelled under zero-tolerance policies.

OCR is currently collecting data regarding the 2011-12 school year from all school districts in the country (approximately 17,000 districts). Of course, statistics alone cannot replace the thorough investigation necessary to prove a violation of civil rights law. And while there may be a range of reasons why we find so many cases of disproportionate discipline in our schools, this much is clear: we have a serious problem that we must acknowledge and address if we are going to achieve equity and excellence for our children.

In addition to improved data collection, the Department has expanded research opportunities in this area. Our Institute of Education Sciences supports research on school climate and discipline. For example, a FY 2012 project uses cross-sectional data from two large national surveys to identify how security measures are used in schools and their relationship to middle- and high-school students' perceived school safety and academic and behavioral outcomes. A FY 2009 project explored variation in the impact of School-wide Positive Behavioral Interventions and Supports (SWPBIS) to identify for whom, how, and under what conditions SWPBIS is most effective. In the FY 2013 call for applications to the Education Research grants program, the Social and Behavioral Context for Academic Learning topic made explicit that applications would be accepted to investigate school discipline and its relationship to academic achievement. We intend to utilize this approach again in FY 2014 so that we continue to inform the field about the disciplinary policies and practices that work, those that do not, and why.

##### 5. Raising the Profile on Correctional Education and Re-entry

It is important to remember that school discipline and school-based supports are prevention strategies that form one piece of the much larger and more complex issue of correctional education. As educators, we have a unique opportunity to serve as a key partner to prevent involvement with corrections and law enforcement, as I've just discussed, and also to improve the quality of education for students in detention, and to provide all justice-involved youth with pathways to successfully reconnect with their communities and increase access to college and career training post-release.

Under the leadership of the Office of Vocational and Adult Education (OVAE), we are developing a comprehensive strategy spanning from prevention to reentry, including, but not limited to, the following goals for juvenile populations: to implement efforts that improve the quality and availability of educational opportunities for youth residing in secure facilities; to

support effective policies and practices to accomplish reentry into education programs for youth returning to our communities from secure facilities; and to optimize the use of technology to increase access to high-quality educational opportunities available to youth residing in secure facilities. We are carrying this strategy into our reauthorization proposals, such as our Workforce Investment Act proposal that promotes re-entry in specific ways, in our national activities investments, in our interagency work, and in our communications strategies.

To raise the profile of correctional education and provide the public with an opportunity to review the outlines of the Department's strategy and inform its development, we convened a summit of experts on November 19<sup>th</sup> to inform our thinking. Over 80 participants from all over the country – including scholars, researchers, and practitioners with specialized knowledge of education in criminal justice facilities and educational re-entry programs – participated in a day-long facilitated discussion. The group outlined ways the Department could incentivize enhanced educational services and supports for youth and adults in custody. Participants offered recommendations and identified barriers in the field.

Even as we seek public input, we have started to invest in new programs and technical assistance focused on the issue of reentry. In 2012, the Office of Special Education Programs funded three Model Demonstration Projects on Reentry of Students with Disabilities from Juvenile Justice Facilities into Education, Employment, and Community Programs. The purpose of the demonstration projects is to develop, adapt, refine, and evaluate models for facilitating the successful reentry of youth with disabilities from juvenile justice facilities into effective education, employment, and community programs. The demonstration projects are designed to reduce recidivism and to support the successful transition of these youth with disabilities back into their communities.

In FY 2013, OVAE will launch a new discretionary grant program for model reentry education projects linking incarcerated students with education and training opportunities post release – one that will use funding transferred from the Department of Justice that was authorized by the "Second Chance Act." These projects will use a practical reentry education model developed by the Department, with assistance from leading experts, which was published last month.<sup>2</sup>

We are also pleased to note a closely-related initiative funded by several foundations (including the Ford, Gates and Open Society Foundations) at the post-secondary level – helping incarcerated persons start a college career behind bars and continue on this post-secondary

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<sup>2</sup> Reentry Model available at <http://www2.ed.gov/about/offices/list/ovae/pi/AdultEd/reentry-model.pdf>

track after release when they return to their community. The foundation-funded project will have a rigorous technical assistance and national evaluation component, and OVAE expects to collaborate with these efforts in order to test and improve models for reentry education programs.

### **III. Key Areas for Future Activity**

I hope it is clear that improving school discipline and juvenile corrections, and reducing disproportionality and youth contact with the juvenile justice system, will require multiple strategies and strong partnerships spanning multiple disciplines. At the same time, I'd like to highlight two prevention-based strategies that will be critical levers to help educators keep our students in school. First, we must build school capacity to maintain a positive school climate and support students by drawing from evidence-based practices. Second, we must encourage States, schools, and communities to rethink school discipline policies and develop equitable and appropriate codes of conduct. I want to describe each of these in greater detail.

#### **1. Investing in Evidence-Based Practice**

To illustrate the importance of climate and multi-tiered supports, I would like to introduce the Committee to Garfield Elementary – a public, comprehensive community school that serves students in the northeast community of Kansas City, Missouri. The school serves a very diverse community with students from more than 12 countries representing a variety of cultures. Over 300 students receive specialized assistance through the English Language Learners program, 96 percent receive free or reduced lunch, and over 80 percent are students of color.

Garfield Elementary encourages positive behavior through the Missouri Positive Behavior Intervention Support (PBIS) initiative. From research, and from the experience of our Office of Special Education and Rehabilitative Services, we at the Department know that schools that implement PBIS with fidelity benefit in the following ways: (1) more than 80 percent of their students and staff can indicate the desired positive behavioral expectations for a given school setting; (2) more than 70-80 percent of their students have not experienced an office discipline referral for a disciplinary rule infraction; (3) they have a good idea about which students require more intensive behavior supports; and (4) these school have systems for regular review of their discipline data to guide their action planning and implementation decision making.

The purpose of Garfield's PBIS initiative is to create a safe and empowering community for diverse students to achieve and excel in school, and to teach students to use these positive behaviors with their families and in their communities. Garfield uses the acronym SOAR to help

remind students how they are to act in different areas of the school: (1) Show Respect; (2) Own Your Community; (3) Always Safe; and (4) Ready to Learn. From focusing on individual student behaviors, to recognition of whole-class behaviors, to the engagement of the entire staff in acknowledging appropriate behaviors, the entire community is included in the initiative. Students receive awards which can be combined for a class celebration. The framework supports educators by helping them to match the best services they have to offer with the students whose complex and intensive needs demand their best expertise.

Both Missouri's PBIS network and Garfield Elementary serve as examples of how a behavioral framework can improve school climate and discipline. They should be commended for their efforts to sustain implementation of an evidence-based framework, to dedicate resources and expertise at the regional and district levels, and to sustain their work even when budgets are reduced. These efforts have been effective for Garfield by eliminating or improving the behaviors that impact a student's ability to engage in and benefit from instruction.

## 2. Rethinking School Discipline Policy

To illustrate the importance of rethinking school discipline policies, I encourage the Committee to look to states like Colorado. Colorado began its reform effort by convening the Legislative Task Force to Study School Discipline, a body comprised of legislators, educators, law enforcement personnel, restorative justice experts, parents, schools, and advocates. After reviewing zero tolerance policies, the use of law enforcement in schools, and the interaction between schools' discipline policies and referrals to the juvenile justice system, the task force developed new legislation that requires schools to utilize preventative, constructive disciplinary approaches, determine which violations require a referral to law enforcement, and provide students with opportunities to learn from their misbehavior.

The drafting of this legislation represented a community effort to engage in deep discussions about how we keep students safe and in school. In the end, this effort paid off – on May 9, 2012, the Smart School Discipline Bill was signed into law.

The new law discourages the use of law enforcement for minor misbehavior, provides flexibility and discretion to school administrators and local school boards by eliminating mandatory suspensions and expulsions for all offenses except carrying a firearm, and requires schools to apply their discipline policies equally to all students. School districts must create and enforce discipline codes in compliance with the new law by August 1, 2013.

The State of Colorado is to be commended for taking these critical first steps, and, potentially, for providing a road map to common-sense, community-supported school discipline policy.

### 3. Conclusion

The challenge that lies before us is complex, as it requires careful consideration of seemingly competing factors. How do we keep our students safe, while seeking school-based responses to misconduct? How do we provide educators with flexibility and encouragement to pilot alternatives to suspension, while retaining the support of communities and parents? How do we transition school cultures into environments of support while addressing specialized needs often exhibited by our most challenged students? These are not easy questions. For sure, their answers lie in the best of our collective thinking and work, and in the recognition that this is not a zero-sum game. America's children deserve nothing less than our collective energies, best thinking and commitment to equity.