



Hawai'i

Committees: House Committee on Lower and Higher Education
Hearing Date/Time: February 4, 2020 at 2:30pm
Place: Room 309
Re: Testimony of the ACLU of Hawai'i in Support of H.B. 2203, Relating to Disciplinary Actions in Public Schools

Dear Chair Woodson, Vice Chair Hashem, and members of the Committee:

The American Civil Liberties Union of Hawai'i writes in **support of H.B. 2203**, which eliminates school suspensions in pre-kindergarten through elementary school, and caps suspensions to ten aggregate days per school year in middle and high school. The bill makes clear differences in out-of-school, in-school, and ad hoc suspensions, and collects data on disparities in the use of such suspensions. This bill is an essential step in protecting a student's right to an education, decreasing the likelihood of juvenile or adult criminal legal system outcomes, and increasing academic proficiency.

Such suspensions are drastic sanctions in any student's school career. These should only be used as a last resort. Studies have shown that suspensions not only fail to address the root causes of disruptive behavior, but also are related to future undesirable outcomes such as dropping out of school and becoming enmeshed in the criminal justice system. **Suspensions have a profoundly negative impact on students, denying them valuable education time, increasing drop-out rates, and fueling the school-to-prison pipeline.**¹

Research indicates that the negative effects of exclusionary discipline are more pronounced for males, students of color and students with disabilities — groups that have historically experienced higher rates of suspension and expulsion.² In addition to the problem of lengthy suspension terms, **disparities in the number and/or length of suspensions across race and disability create even more obstacles to obtaining a quality education.** Students of ethnic or racial minorities do not

¹ Nancy Heitzeg, "Criminalizing Education: Zero Tolerance Policies, Police in the Hallways, and the School to Prison Pipeline," *Education to Incarceration*, 2014, available at https://www.hamline.edu/uploadedFiles/Hamline_WWW/HSE/Documents/criminalizing-education-zero-tolerancepolice.pdf (citing the National Association for the Advancement of Colored People's definition of the school-to-prison pipeline: "In the last decade, the punitive and overzealous tools and approaches of the modern criminal justice system have seeped into our schools, serving to remove children from mainstream educational environments and funnel them onto a one-way path toward prison...the School-to-Prison Pipeline is one of the most urgent challenges in education today).

² Alyssa Rafa, Education Commission of the States, *The Status of School Discipline in State Policy*, available at <https://www.ecs.org/wp-content/uploads/The-Status-of-School-Discipline-in-State-Policy.pdf>.

commit more disciplinable offenses than their peers, but in aggregate they receive substantially more school discipline, with longer and harsher sanctions.³

Using positive alternatives to suspension leads to better school outcomes. After implementing alternative discipline methods⁴ school systems realized large decreases in their rates of suspension; California saw a 46 percent drop across its districts over a five-year span and Dekalb County in Georgia witnessed a 47 percent decrease in discipline rates.⁵ Administrators say the change resulted in focusing on the underlying causes of student behavior and providing student supports rather than resorting to reactionary, punitive measures.⁶ A Baltimore Public School System official testified their school district created “a shift from thinking about behavior management to thinking about building competency among students to regulat[e] their own behavior as well as build social[-]emotional competencies among adults.”⁷

Without this bill, students’ due process rights are often not protected. Students and their parents often are not informed of their due process rights—including the right to be informed about the details of the suspension, the procedures for contesting such a suspension, and for appealing a decision to impose suspension. The ACLU of Hawai‘i has learned of incidents where students have been suspended for 30, 40, or even 92 days without notice of their right to a hearing or appeal. The process outlined in Chapter 19 is fundamentally stacked against the student and their family and likely violates their constitutional due process rights by denying them a pre-deprivation opportunity to argue against suspension.⁸ This bill helps ensure due process protections by giving parents and

³ U.S. Commission on Civil Rights, “Beyond Suspensions: Examining School Discipline Policies and the Connections to the School-to-Prison Pipeline for Students of Color with Disabilities,” July 2019 Briefing Report, available at <https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf>.

⁴ See Haw. Admin. Rules § 8-19-6(d) for a partial list of already-established non-suspension disciplinary action.

⁵ Tom Torlakson, “State Schools Chief Tom Torlakson Announces Fifth Year in a Row of Declining Student Suspensions and Expulsions,” California Dep’t of Education, Nov. 1, 2017, <https://www.cde.ca.gov/nr/ne/yr17/yr17rel80.asp>; Martha Dalton, “DeKalb Sees Drop in Discipline Incidents After Adopting ‘Restorative Practices,’” WABE, May 1, 2018, <https://www.wabe.org/dekalb-sees-drop-discipline-incidents-adopting-restorative-practices/>.

⁶ *Id.*

⁷ Sarah Warren, Executive Director for Whole Child Services and Support in the Baltimore Public School System, Maryland State Advisory Committee to the U.S. Commission on Civil Rights, testimony, Briefing Transcript, p. 42-43.

⁸ We believe the existing rules are likely unconstitutional, which warrants that schools provide even more care in guaranteeing due process rights. See *Wynar v. Douglas County Sch. Dist.*, 728 F.3d 1062, 1073 (9th Cir. 2013) (acknowledging that suspensions of over ten days requires a “formal process” and upholding process that included written notice of charges, list of witnesses, right to have an advocate, right to present and confront evidence, and pre-deprivation hearing); see also *Hunger v. Univ. of Hawaii*, 927 F. Supp. 2d 1007, 1018 (D. Haw. 2013) (finding that due process rights of student were violated where he was not given sufficient time to meet with Student Conduct Administrator).

guardians seven school days to appeal a suspension. Students should not be suspended for more than ten days until such hearing takes place.

Data is needed to determine disparities in school discipline. The ACLU of Hawai‘i found evidence of DOE’s non-compliance with federal reporting requirements on instances of restraint⁹ and seclusion from the 2009-10 school year to the 2016-17 school year. The DOE also had to resubmit its federal 2015-16 Civil Rights Data Collection data last year when the ACLU of Hawai‘i discovered large disparities in suspensions for Native Hawaiians and students with disabilities.¹⁰ The ACLU of Hawai‘i has submitted numerous public records requests related to school discipline disparities, but these requests have been returned unfulfilled because the DOE does not maintain these types of records. This is basic information that all interested parents, community members, advocates, and students should have access to; requiring analysis of disparities and that the DOE take steps to address any disparities found, means that students will be identified and served.

School is a place to learn math, reading, and right from wrong. H.B. 2203 focuses on reducing punitive and disparate school discipline so all students can access a quality education. For these reasons, the ACLU of Hawai‘i supports H.B. 2203.

Thank you for the opportunity to testify.

Sincerely,

Rae Shih
Legal Fellow
ACLU of Hawai‘i

The mission of the ACLU of Hawai‘i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai‘i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai‘i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai‘i has been serving Hawai‘i for 50 years.

⁹ U.S. Department of Education, Civil Rights Data Collection, *Restraint and Seclusion: Resource Document* (2012) (defining “physical restraint” as “[a] personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely” and a “mechanical restraint” as “[t]he use of any device or equipment to restrict a student’s freedom of movement.”).

¹⁰ Suevon Lee, “Hawaii DOE Releases Revised Data on Student Suspensions,” *Civil Beat* <https://www.civilbeat.org/2019/08/hawaii-doe-releases-revised-data-on-student-suspensions/> (August 15, 2019).