



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Hawai'i

BY EMAIL

August 5, 2019

Re: Responsibility of Hawai'i Department of Education Complex Area Superintendents and Principals to Remedy Disparities in Out-of-School Suspensions

Dear Complex Area Superintendent and High School Principals,

Schools across Hawai'i are suspending students longer than schools on the continental United States and these suspensions are disproportionately affecting local students of color and students with disabilities. As described in this letter, many of these suspensions are unnecessary and counterproductive and principals and Complex Area Superintendents have the power to make things right starting today.

We can all agree that schools and complex areas have the power and responsibility to make schools safe and welcoming learning spaces for Hawai'i public school students today. As the 2019-2020 school year commences, the ACLU of Hawai'i calls on you to curtail unnecessary suspensions, decrease racial disparity in school discipline, and curb the harm that suspensions inflict on students' education and lives. Towards that end, we have analyzed student discipline data for your school and complex area and are sharing it with you through this letter.

Data for this analysis comes from the U.S. Department of Education's Civil Rights Data Collection ("CRDC")¹. Our recommendations for addressing disparities in school discipline include ending "zero tolerance" discipline policies, ensuring due process in suspension hearings, and supporting statewide legislation that would limit or reduce the use of suspensions and expand disciplinary tools for teachers by providing support for restorative justice and trauma-informed care practices.

¹ U.S. Department of Education, Civil Rights Data Collection 2016 [hereinafter CRDC] available at <https://ocrdata.ed.gov>.

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Analysis of federal education data shows that schools across the Hawai'i Department of Education ("HIDOE") system deprive students of their access to education far longer than most in the country. Nationally, students lost 23 days of instruction per 100 students enrolled as a result of suspensions, but in Hawai'i, students lost 41 days per 100 students.² HIDOE meted out 7,300 total out-of-school suspensions during the 2015-16 school year alone.³ **Hawai'i has the nation's highest number of student days lost per capita as a result of suspensions.** Critically, it also has racial disparities and disparities among students with disabilities and their similarly situated peers. We are not suggesting these racial disparities and disparities based on student disabilities are the result of overt bias by any school administrator, but rather they are the results of systemic implicit bias, which must be challenged.

We focused our attention specifically on out-of-school suspensions because they occur in such large numbers and appear to be the default disciplinary tool of schools. 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.⁴

² Daniel Losen and Amir Whitaker, The Center for Civil Rights Remedies of UCLA's Civil Rights Project and The American Civil Liberties Union of Southern California, *11 Million Days Lost: Race, Discipline, and Safety at U.S. Public Schools* 6 (2018) [hereinafter *11 Million Days Lost*], available at https://www.aclu.org/sites/default/files/field_document/final_11-million-days_ucla_aclu.pdf.

³ CRDC.

⁴ 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

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.⁵ Unfortunately, the data shows that this is not a problem restricted to the continental United States: Hawai'i students are subject to the same disparate treatment.

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 commit more disciplinable offenses than their peers, but in aggregate they receive substantially more school discipline, with longer and harsher sanctions.⁶ This fundamentally unfair meting out of disciplinary sanctions has negative effects on classroom cohesion and engagement for teachers and students, and increases the likelihood that students will be involved in the juvenile justice system.⁷

Native Hawaiian and Pacific Islander students and students with disabilities are disciplined at much higher levels than their mainland counterparts. Native Hawaiians and Pacific Islander students lost 75 days per 100 students enrolled—or **three times the national average.**⁸ Hawai'i enrolls 26% of the nation's Pacific Islander students, yet is responsible for 65% of the nation's days lost to suspension by Pacific Islander students.⁹ And while Native Hawaiian and

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).

⁵ 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>.

⁶ 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>.

⁷ *Id.*

⁸ *11 Million Days Lost* at 8.

⁹ CRDC; see also Amir Whitaker, *School Suspensions in Hawaii, Tableau Data Dashboard* [hereinafter Data Dashboard], available at

Pacific Islander students comprise 30.4% of Hawaii's enrollment, they receive 48.2% of suspensions.

Students with disabilities are twice as likely to be suspended as their peers nationally.¹⁰ The ACLU of Hawai'i and ACLU of Southern California analyzed the out-of-school suspensions recorded in the most recent federal civil rights data collection, finding that students with disabilities lost 95 days of instruction due to out-of-school suspensions per 100 students enrolled. In fact, **Hawai'i is the worst state in the nation for students with disabilities when it comes to out-of-school suspensions.** In Hawai'i, students who are identified with a disability under the Individuals with Disabilities Education Act (IDEA) comprise 10.3% of total enrollment, but 26.2% of the out-of-school suspensions.¹¹

Black students in Hawai'i lost 34 days of instruction per 100 students enrolled; white students, 28; and Asian students, 24.¹² **The days lost for Asian students is worse in Hawai'i than in any other state.** School systems across the country are currently submitting CRDC data for the 2017-18 school year; we urge HIDOE to accurately collect, report, and publicize this data in an easy-to-understand way. We will be updating the data dashboard created by ACLU of Southern California Staff Attorney, Amir Whitaker, with 2017-18 data when it is released. This data will be available on our website at www.acluhi.org/educationjustice/2019tableau.

Key Findings in Your Complex Area and School

Apart from these national and HIDOE-wide data, we also analyzed your complex area and school. We provide our key findings below.

Aiea-Moanalua-Radford

Total enrollment in the 15-16 school year was 4,371 students. There were 202 suspensions, with a total number of days lost of 2,089. The mean suspension length was over 10 days.

<https://public.tableau.com/profile/dr.knucklehead.esq#!/vizhome/ACLUofHIEdJusticeTool/Story1?publish=yes>.

¹⁰ "Beyond Suspensions."

¹¹ CRDC.

¹² *Data Dashboard*.

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1. Aiea: There were 45 total out-of-school suspensions that year. Native Hawaiians and Pacific Islanders comprise 31.1% of the total enrollment but 51.1% of out-of-school suspensions, demonstrating racial disparity in school discipline. Of students enrolled, 12.1% are identified as having a disability yet 46.7% of students receiving a suspension were identified as having a disability. This demonstrates a disparity in the use of school discipline based on a student's disability.
2. Moanalua: Moanalua lost 1,917 days for its 1,972 enrolled students. There were 129 out-of-school suspensions that year. This means that each suspension averaged 15 days of missed class time. Students with disabilities were particularly affected. Students with disabilities comprise only 8.8% of overall enrollment, yet 33.3% of the out-of-school suspensions were for a student with a disability. This demonstrates a disparity in the use of school discipline based on a student's disability. Native Hawaiians and Pacific Islanders comprise 13.3% of the total enrollment but 27.1% of out-of-school suspensions, demonstrating racial disparity in school discipline.
3. Radford: Radford lost 172 days total for its 1345 students. Black students comprise 11.4% of the enrollment, they represent 21.4% of all out-of-school suspensions. Similarly, Hispanic enrollment was 11.9%, and they were overrepresented in out-of-school suspensions at 35.7%. This demonstrates a disparity in the use of school discipline based on a student's race or ethnicity.

Baldwin-Kekaulike-Maui

Total enrollment in the 15-16 school year was 4,344 students. There were 259 suspensions, with a total number of days lost of 4,534. The mean suspension length was over 17 days.

1. Baldwin: There were 107 total out-of-school suspensions that year. With an average suspension term length of over 16 days, the total days lost to suspension were high, at 1,781. Native Hawaiians and Pacific Islanders comprise 38% of the total enrollment but 51.4% of out-of-school suspensions, demonstrating racial disparity in school discipline. Of students enrolled, 10.1% are identified as having a disability yet 22.4% of students receiving a suspension were identified as having a disability. This demonstrates a disparity in the use of school discipline based on a student's disability.

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2. Kekaulike: Kekaulike lost 1,561 days for its 1,039 enrolled students. There were 62 out-of-school suspensions that year. This means that each suspension averaged over 25 days of missed class time. This is an egregious overuse of suspension and punitive discipline. Native Hawaiians and Pacific Islanders comprise 36.5% of the total enrollment but 45.2% of out-of-school suspensions, demonstrating racial disparity in school discipline. Of students enrolled, 14.1% are identified as having a disability yet 19.4% of students receiving a suspension were identified as having a disability. This demonstrates a disparity in the use of school discipline based on a student's disability.
3. Maui: Maui enrolled 1,912 students that year, with 90 total suspensions and an average suspension term length of 13 days. Native Hawaiians and Pacific Islanders were particularly affected. They comprise less than a quarter (23%) of the total enrollment but nearly half (48.9%) of all suspensions. Students with disabilities were also negatively affected. Students with disabilities comprise 9.7% of overall enrollment, yet 22.2% of the out-of-school suspensions were for a student with a disability. This demonstrates a disparity in the use of school discipline based on a student's disability and/or race.

Campbell-Kapolei

Total enrollment in the 15-16 school year was 5,042 students. There were 299 suspensions, with a total number of days lost of 3,448. The mean suspension length was over 11 days.

1. Campbell: Campbell lost 2,522 days for its 3,013 enrolled students. There were 179 out-of-school suspensions that year. This means that each suspension averaged 14 days of missed class time. Of students enrolled, 8.6% are identified as having a disability yet 20.7% of students receiving a suspension were identified as having a disability. Native Hawaiian and Pacific Islander students comprised 25.5% of the total enrollment, and 38% of the out-of-school suspensions. This demonstrates a disparity in the use of school discipline based on a student's disability and/or race.
2. Kapolei: Kapolei lost 926 days for its 2,029 enrolled students. There were 120 out-of-school suspensions that year. This means that each suspension averaged over 7 days of missed class time. Native Hawaiian and Pacific Islander students comprised 34.2% of the total enrollment, and 46.7% of the

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out-of-school suspensions. This demonstrates a disparity in the use of school discipline based on a student's race or ethnicity.

Castle-Kahuku

Total enrollment in the 15-16 school year was 2,568 students. There were 139 suspensions, with a total number of days lost of 889. The mean suspension length was over 6 days.

1. Castle: There were 50 total out-of-school suspensions that year. Of students enrolled, 15.8% are identified as having a disability yet 30% of students receiving a suspension were identified as having a disability. This is an overrepresentation of students with disabilities in out-of-school suspensions.
2. Kahuku: Kahuku lost 624 days for its 1,381 enrolled students. There were 89 out-of-school suspensions that year. This means that each suspension averaged 7 days of missed class time. Students with disabilities were particularly affected. Students with disabilities comprise only 12.1% of overall enrollment, yet 28.1% of the out-of-school suspensions were for a student with a disability. This demonstrates a disparity in the use of school discipline based on a student's disability.

Farrington-Kaiser-Kalani:

Total enrollment in the 2015-2016 school year was 4,818 students. There were 191 suspensions, with a total number of days lost of 4,918. The mean suspension length was nearly 26 days.

1. Farrington: Native Hawaiians and Pacific Islanders comprised only 32% of total enrollment but 53% of out-of-school suspensions, demonstrating racial disparity in the use of school discipline. Of students enrolled, 10% are identified as having a disability, yet 22% of students receiving a suspension were identified as having a disability. This demonstrates a disparity in the use of school discipline based on a student's disability.
2. Kaiser: Kaiser lost 2,178 days for its 1,123 enrolled students. There were only 44 out-of-school suspensions that year. This means that each suspension averaged nearly 50 days of missed class time. This level of school suspension is egregious.
 - a. Students with disabilities were particularly affected. Students identified as having a disability comprised 8% of total student

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enrollment, yet 34% of the out-of-school suspensions. Students with disabilities lost 1,457 days per 100 students enrolled.

3. Kalani: Kalani lost 1,530 days total for its 1,330 students. The average length of its 50 suspensions was nearly 31 days. While Native Hawaiians and Pacific Islanders comprise 12.5% of enrollment, they represent 28% of all out-of-school suspensions. Similarly, enrollment of students with disabilities was 10.5%, and students with disabilities were overrepresented in out-of-school suspensions at 26%.

Hana-Lahainaluna-Lanai-Molokai

Total enrollment in the 15-16 school year was 2,253 students. There were 116 suspensions, with a total number of days lost of 1,331. The mean suspension length was over 11 days.

1. Hana: Hana is a K-12 combined high school and elementary school. There were only 4 total out-of-school suspensions that year. This number is too small to draw meaningful conclusions about disparities.
2. Lahainaluna: Lahainaluna lost 740 days for its 976 enrolled students. There were 50 out-of-school suspensions that year. This means that each suspension averaged 15 days of missed class time. Native Hawaiians and Pacific Islanders comprise 25.3% of the total enrollment but 34% of out-of-school suspensions. This demonstrates a disparity in the use of school discipline based on a student's race or ethnicity.
3. Lanai: Lanai lost 25 days total for its 584 students. There were 14 suspensions total. It is also a combined high school and elementary school. The number is too small to draw meaningful conclusions about disparities.
4. Molokai: Molokai lost 522 days with an enrollment of 338 students. With 48 suspensions, the average term length was nearly 11 days.

Hilo-Waiakea

Total enrollment in the 15-16 school year was 2,342 students. There were 167 suspensions, with a total number of days lost of 1,284. The mean suspension length was almost 8 days.

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1. Hilo: There were 107 total out-of-school suspensions that year from an enrollment of 1,150 students. Average suspension length was 7 days. Native Hawaiians and Pacific Islanders comprise 52.8% of the total enrollment but 68.2% of out-of-school suspensions, demonstrating racial disparity in school discipline. Of students enrolled, 17.9% are identified as having a disability yet 28% of students receiving a suspension were identified as having a disability. This demonstrates a disparity in the use of school discipline based on a student's disability.
2. Waiakea: Waiakea lost 479 days for its 1,192 enrolled students. There were 60 out-of-school suspensions that year. This means that each suspension averaged 8 days of missed class time. Students with disabilities were not disproportionately represented among out-of-school suspensions. They comprise 13% of enrollment and 13.3% of all out-of-school suspensions. Native Hawaiians and Pacific Islanders comprise 39.1% of the total enrollment and 45% of out-of-school suspensions.

Honokaa-Kealakehe-Kohala-Konawaena:

Total enrollment in the 15-16 school year was 2,917 students. There were 201 suspensions, with a total number of days lost of 2,461. The mean suspension length was over 12 days.

1. Honokaa: There were 73 total out-of-school suspensions that year with an average length of nearly 10 days. Native Hawaiians and Pacific Islanders comprise 46.8% of the total enrollment but 56.2% of out-of-school suspensions. Hispanic students comprise 5.9% of the population, but 11% of the students suspended, demonstrating racial disparity in school discipline. Of students enrolled, 17.2% are identified as having a disability yet 46.6% of students receiving a suspension were identified as having a disability. This is evidence of disparities among students with disabilities and their similarly situated peers.
2. Kealakehe: Kealakehe lost 697 days for its 1,246 enrolled students. There were 45 out-of-school suspensions that year. This means that each suspension averaged over 15 days of missed class time. Students with disabilities were particularly affected. Students with disabilities comprise only 11.5% of overall enrollment, yet 33.3% of the out-of-school suspensions were for a student with a disability. This demonstrates a disparity in the use of school discipline based on a student's disability.

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3. Kohala: Kohala lost 218 days total for its 254 students. The total number of suspensions was 28. Students with disabilities were particularly affected. Students with disabilities comprise only 17.3% of overall enrollment, yet 28.6% of the out-of-school suspensions were for a student with a disability. This demonstrates a disparity in the use of school discipline based on a student's disability.
4. Konawaena: Konawaena lost 820 days and enrolled 742 students that year. There were 55 total suspensions, with an average length of nearly 15 days. Students with disabilities were particularly affected. Students with disabilities comprise only 10.8% of overall enrollment, yet 30.9% of the out-of-school suspensions were for a student with a disability. This demonstrates a disparity in the use of school discipline based on a student's disability.

Kailua-Kalaheo

Total enrollment in the 15-16 school year was 1,649 students. There were 114 suspensions, with a total number of days lost of 2,018. The mean suspension length was nearly 18 days.

1. Kailua: There were 51 total out-of-school suspensions that year. The average suspension length was nearly 26 days. Of students enrolled, 18.2% are identified as having a disability yet 27.5% of students receiving a suspension were identified as having a disability. This demonstrates a disparity in the use of school discipline based on a student's disability.
2. Kalaheo: Kalaheo lost 697 days for its 913 enrolled students. There were 63 out-of-school suspensions that year. This means that each suspension averaged 11 days of missed class time. Students with disabilities comprise only 10.4% of overall enrollment, yet 19% of the out-of-school suspensions were for a student with a disability. Native Hawaiians and Pacific Islanders comprise 19.5% of the total enrollment but 23.8% of out-of-school suspensions. This demonstrates a disparity in the use of school discipline based on a student's disability and/or race.

Kaimuki-McKinley-Roosevelt

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Total enrollment in the 15-16 school year was 3,718 students. There were 178 suspensions, with a total number of days lost of 3,115. The mean suspension length was nearly 18 days.

1. Kaimuki: Native Hawaiians and Pacific Islanders comprise 46.4% of the total enrollment but 61.9% of out-of-school suspensions, demonstrating racial disparity in school discipline. Of students enrolled, 21.6% are identified as having a disability yet 38.1% of students receiving a suspension were identified as having a disability. This demonstrates a disparity in the use of school discipline based on a student's disability.
2. McKinley: McKinley lost 1,890 days for its 1,607 enrolled students. There were 104 out-of-school suspensions that year. This means that each suspension averaged over 18 days of missed class time.
 - a. Pacific Islanders and Native Hawaiians comprised 22.7% of the school's enrollment, but 44.2% of total suspensions, demonstrating racial disparity in school discipline.
 - b. Students with disabilities were particularly affected. IDEA enrollment is only 10.4% overall, yet 26% of the out-of-school suspensions were for a student with a disability. This demonstrates a disparity in the use of school discipline based on a student's disability.
3. Roosevelt: Roosevelt lost 876 days total for its 1,366 students. The average length of its 32 suspensions was over 27 days. While Native Hawaiians and Pacific Islanders comprise 21.8% of the enrollment, they represent 43.8% of all out-of-school suspensions. Similarly, students with disabilities comprise 9.8% and were overrepresented in out-of-school suspensions at 56.3%. This demonstrates disparities in school discipline.

Kapaa-Kauai-Waimea

Total enrollment in the 15-16 school year was 2,718 students. There were 276 suspensions, with a total number of days lost of 2,223. The mean suspension length was 8 days.

1. Kapaa: There were 62 total out-of-school suspensions that year. Total suspension term length was 10 days. Of students enrolled, 11.2% are identified as having a disability yet 33.9% of students receiving a suspension were identified as having a disability. This is evidence of disparity among students with disabilities and their similarly situated peers.

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2. Kauai: Kauai lost 1,185 days for its 1,132 enrolled students. There were 100 out-of-school suspensions that year. This means that each suspension averaged nearly 12 days of missed class time. Students with disabilities were particularly affected. Students with disabilities comprise only 8.9% of overall enrollment, yet 31% of the out-of-school suspensions were for a student with a disability. Native Hawaiians and Pacific Islanders comprise 26.1% of the total enrollment but 38% of out-of-school suspensions, demonstrating racial disparity in school discipline.
3. Waimea: Waimea lost 409 days total for its 580 students. There were an alarming 114 suspensions that year. Students with disabilities comprise only 12.2% of overall enrollment, yet 26.3% of the out-of-school suspensions were for a student with a disability. This demonstrates a disparity in the use of school discipline based on a student's disability.

Kau-Keaau-Pahoa

Total enrollment in the 15-16 school year was 2,108 students. There were 294 suspensions, with a staggering total number of days lost of 3,021. The mean suspension length was over 10 days.

1. Kau: There were 73 total out-of-school suspensions that year. The average suspension length was 8 days. Native Hawaiians and Pacific Islanders comprise 53.9% of the total enrollment but 60.3% of out-of-school suspensions. Of students enrolled, 10.5% are identified as having a disability and 17.8% of students receiving a suspension were identified as having a disability.
2. Keaau: Keaau lost 1,349 days for its 988 enrolled students. There were 121 out-of-school suspensions that year. This means that each suspension averaged 11 days of missed class time. Students with disabilities were particularly affected. Students with disabilities comprise only 17.5% of overall enrollment, yet 31.4% of the out-of-school suspensions were for a student with a disability. This demonstrates a disparity in the use of school discipline based on a student's disability. Native Hawaiians and Pacific Islanders comprise 46.3% of the total enrollment but 62.8% of out-of-school suspensions, demonstrating racial disparity in school discipline.

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3. Pahoa: Pahoa lost 1,083 days total for its 589 students. The average days lost for its 100 suspensions was nearly 11. Students with disabilities comprise 18.2% of overall enrollment, yet 25% of the out-of-school suspensions were for a student with a disability. This demonstrates a disparity in the use of school discipline based on a student's disability.

Leilehua-Mililani-Waialua

Total enrollment in the 15-16 school year was 4,892 students. There were 182 suspensions, with a total number of days lost of 762. The mean suspension length was just over 4 days. This complex area suspended fewer students and for shorter durations than other complex areas.

1. Leilehua: Leilehua had 106 suspensions with 316 total days lost. Of students enrolled, 15.5% are identified as having a disability yet 36.8% of students receiving a suspension were identified as having a disability. Black students comprise only 8.3% of the total school enrollment, yet represented 24.5% of all out-of-school suspensions. This demonstrates disparities in the use of school discipline based on a student's disability and/or race.
2. Mililani: Mililani lost 271 days for its 2,533 enrolled students. There were 47 out-of-school suspensions that year. Students with disabilities comprised 10.7% of the total enrollment, yet 21.3% of out-of-school suspensions. This demonstrates disparity in the use of school discipline based on a student's disability. In comparisons of Native Hawaiian and Pacific Islander, Black, and Hispanic students, the days suspended reflected the overall enrollment.
3. Waialua: Waialua lost 175 days for its 684 students over 29 suspensions. While Native Hawaiians and Pacific Islanders comprise 24.3% of the enrollment, they represent 37.9% of all out-of-school suspensions. Students with disabilities comprise 11.7% of total enrollment, and students with disabilities were overrepresented in out-of-school suspensions at 27.6%. Hispanic enrollment was 11.5% yet Hispanic students represented 20.7% of all out-of-school suspensions. This demonstrates disparities in the use of school discipline based on a student's disability and/or race.

Nanakuli-Waianae

Total enrollment in the 15-16 school year was 2,843 students. There were 358 suspensions, with a system-high total number of days lost of 8,181. The mean suspension length was nearly 23 days.

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1. Nanakuli: There were 120 total out-of-school suspensions that year. Total number of days lost was 3,291, putting average suspension length at 27 days. Of students enrolled, 21% are identified as having a disability and they were overrepresented in out-of-school suspensions at 31.7%. This demonstrates a disparity in the use of school discipline based on a student's disability.
2. Waianae: Waianae lost a staggering 4,890 days for its 1,777 enrolled students. There were 238 out-of-school suspensions that year. This means that each suspension averaged nearly 21 days of missed class time. Students with disabilities were particularly affected. Students with disabilities comprise 15.8% of overall enrollment, yet 31.1% of the out-of-school suspensions were for a student with a disability. This demonstrates a disparity in the use of school discipline based on a student's disability.

Pearl City-Waipahu

Total enrollment in the 15-16 school year was 4,083 students. There were 221 suspensions, with a total number of days lost of 4,519. The mean suspension length was over 20 days.

1. Pearl City: There were 77 total out-of-school suspensions that year. Native Hawaiians and Pacific Islanders comprise 25.9% of the total enrollment but 36.4% of out-of-school suspensions, demonstrating racial disparity in school discipline. Of students enrolled, 12.2% are identified as having a disability yet 31.2% of students receiving a suspension were identified as having a disability. This demonstrates a disparity in the use of school discipline based on a student's disability.
2. Waipahu: Waipahu lost an overwhelming 3,561 days for its 2,443 enrolled students. There were 144 out-of-school suspensions that year. This means that each suspension averaged nearly 25 days of missed class time. Students with disabilities were particularly affected. Students with disabilities comprise only 9.3% of overall enrollment, yet 20.8% of the out-of-school suspensions were for a student with a disability. Native Hawaiians and Pacific Islanders comprise 21.8% of the total enrollment but 38.2% of out-of-school suspensions, demonstrating racial disparity in school discipline.

Recommendations

Merely confronting a problem—while a necessary first step—is not enough. The ACLU of Hawai'i has the following recommendations for curtailing suspensions, decreasing racial bias in school discipline, and curbing the damage that suspensions can inflict on students' education and lives.

Complex Area superintendents and principals are best-positioned to change disciplinary practices and outcomes for the better, because it is these school administrators who determine when a behavior is something worth sanctioning, and how to sanction it. Specifically, under the relevant HODOE rules, principals or other high-level administrators decide whether a suspension is needed¹³ and Complex Area superintendents must approve suspensions greater than 10 days.¹⁴ **In other words, tomorrow—and for the rest of the school year—the practice of denying children access to education could end without outside action if Complex Area Superintendents simply stop approving suspensions greater than 10 days.**

1. End Zero Tolerance Discipline

Section 302A-1134.6 of the Hawai'i Revised Statutes, titled “Zero Tolerance Policy,” allows students to be suspended for up to 92 days for, among other things, using, possessing, or *appearing to use* illicit drugs or alcohol.¹⁵ A 92-day suspension

¹³ Haw. Admin. Rules § 8-19-5(b) (“Crisis removals and suspensions of ten school days or less may be approved by the principal or designee.”).

¹⁴ Haw. Admin. Rules § 8-19-5(a) (“Suspensions exceeding ten school days or suspensions that will result in the student being suspended more than a total of ten school days in any single semester, disciplinary transfers, dismissals, and extension of crisis removals shall be approved by complex area superintendent.”).

¹⁵ Haw. Rev. Stat. § 302A-1134.6(b) & (c) (“Except as provided in subsection (f), any child who possesses, sells, consumes, or uses intoxicating liquor or illegal drugs, while attending school or while attending department-supervised activities held on or off school property, may be excluded from attending school for up to ninety-two school days, as determined by the principal and approved by the superintendent or other individuals designated pursuant to rules adopted by the board Except as provided in subsection (f), any child who reasonably appears to have consumed or used intoxicating liquor or illegal drugs prior to attending school or attending department-supervised activities held on or off school property, may be excluded

is more than half of the 180-day school year. While the 92 days is not mandated as is in traditional zero tolerance settings, a child could be suspended for 92 days simply for appearing that he or she is under the influence of an illicit drug.¹⁶ Indeed, we are aware of at least one situation in which a Hawai'i public school student was suspended for 92 days based on nothing more than a school administrator believing the student smelled like they had been using cannabis. The potential for abuse and mistake is vast. Principals and teachers are not experts in determining whether someone is under the influence of an illicit drug and should instead be trained in effective positive interventions, which should be attempted before and instead of imposing suspensions.

Moreover, school districts do not need exceptionally long suspension periods to promote a positive education environment. But when a school chooses to suspend a student, it should ensure that students receive their school work for credit, have access to equivalent schoolwork, and are able to take exams, while suspended. Other jurisdictions have eliminated school suspensions entirely, or capped school suspensions.¹⁷ This is especially important because even when students subject to out-of-school suspension are given access to equivalent schoolwork, they are still experiencing exclusion that is often unnecessary, for which no academic work can compensate, and which feeds the school-to-prison pipeline.

2. Use Positive Alternatives to Suspension when Appropriate

Training in restorative justice, positive behavior interventions, trauma-informed care, and conflict resolution should be implemented system-wide for all administrators, teachers, parent liaisons, and school resource officers (when applicable) in order to create a culture of trust, support and empathy. Studies have shown that students who participate in alternatives to punitive discipline, such as conflict resolution, counseling or restorative practices, are happier and more

from attending school for up to ninety-two school days, as determined by the principal and approved by the superintendent or other individuals designated pursuant to rules adopted by the board.”).

¹⁶ See also Haw. Admin. Rules § 8-19-6(c).

¹⁷ Alyssa Raza, 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>.

successful at school.¹⁸ Positive behavioral interventions and socio-emotional learning strategies have increased school safety and reading scores while decreasing discipline referrals and student aggression.¹⁹

After implementing alternative discipline methods²⁰ 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.²¹ 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.²² A Baltimore Public School System official testified their school district created “a shift from thinking about behavior management to thinking about building competency among

¹⁸ After adopting restorative justice policies targeting suspension, rates of suspensions for Black and Latino students at Rochester’s East High School fell more than 75%. The New York Equity Coalition, *STOLEN TIME: New York schools disproportionately impose out-of-school suspensions on Black students* 3 (2018), available at: <https://equityinedny.edtrust.org/stolen-time/>.

¹⁹ Catherine Bradshaw, Tracy Waasdorp, and Philip Leaf, “Effects of School-Wide Positive Behavioral Interventions and Supports on Child Behavior Problems,” *Pediatrics*, vol. 130, no. 5 (2012), 1136-45; Catherine Bradshaw, Mary Mitchell, and Philip Leaf, “Examining the Effects of Schoolwide Positive Behavioral Interventions and Supports on Student Outcomes: Results From a Randomized Controlled Effectiveness Trial in Elementary Schools,” *Journal of Positive Behavior Interventions*, 2010, vol. 12, no. 3, 133-48.

²⁰ See Haw. Admin. Rules § 8-19-6(d) for a partial list of already-established non-suspension disciplinary action.

²¹ 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/>.

²² *Id.*

students to regulat[e] their own behavior as well as build social[-]emotional competencies among adults.”²³

Also, students need improved access to guidance counselors, social workers and/or school psychologists so that valuable interventions can occur both before and after a student breaks a school rule. Currently, there are thousands more law enforcement in our nation’s public schools than social workers.²⁴ Hawai‘i has limited or missing data on the number of law enforcement officers, nurses, school psychologists, and social workers in its schools.²⁵

3. Protect Students’ Due Process Rights When Being Suspended

In any case when a school administrator feels they have no option other than to impose a suspension, students’ rights must be respected throughout the process. Yet 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 92 days without notice of their right to a hearing or appeal, as required by Hawai‘i Administrative Rules Section 8-19-9. This violates the due process rights of both students and their parents. Currently, principals that want to suspend a student for more than 10 days must:

1. Obtain verbal authorization from the Complex Area Superintendent.
2. Make a good-faith effort to inform the parent of the incident, the opportunity to appeal, and that disciplinary action commences immediately.

²³ 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.

²⁴ American Civil Liberties Union, *Cops and No Counselors: How the Lack of School Mental Health Staff Is Harming Students* (2019), available at: https://www.aclu.org/sites/default/files/field_document/030419-acluschooldisciplinereport.pdf.

²⁵ *Id.* at 46.

3. Within three days of receiving verbal authorization, mail a written notice of the serious discipline incident to the parent.²⁶

The parent has only until the close of business of the seventh school day after the date of the issued serious discipline incident to submit a written appeal²⁷ to the complex area superintendent. We have asked parents and advocacy groups to report to the ACLU of Hawai'i any such instances of suspensions that do not conform with these due process requirements.

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.²⁸ Complex Area Superintendents should schedule *automatic* hearings for suspensions over ten days with parents and student receiving notice about suspension, rights, and offense well in advance in writing. Students should not be suspended for more than ten days until such hearing takes place.

4. Improve Data Collection and Increase Transparency Surrounding Discipline and Safety Practices

HIDOE should make it easier for families and the public to determine the rates of suspension and disparities in school discipline. Complex areas can easily be more forthcoming about their disciplinary guidelines and the number and type of

²⁶ Haw. Admin. Rules § 8-19-9(a)-(c).

²⁷ *Id.* § 8-19-9(c)(4) (“The parent may present evidence, call and cross-examine witnesses, and be represented by legal counsel and to the extent the parent provides a written notice of legal representation at least ten calendar days prior to the appeal.”).

²⁸ 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).

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violations for which students are suspended, particularly for vulnerable subgroups (including, but not limited to, race, free and reduced lunch status, disability status). Such data should be accessible and should be provided to the public on a regular basis in frequent reports online at each school's website, sent home in student newsletters, via Board of Education reports, or in Complex Area-level newsletters.²⁹ Transparency around and the availability of such statistics—including, for example, the number of suspensions, expulsions, and referrals to law enforcement, and the frequency of physical restraint—enables public input on districts' disciplinary practices. It also provides a platform for the district to acknowledge and address racial disparities in discipline.

The data can also be broken down in ways that are more understandable for families and policymakers. For instance, when analyzing missed days, breaking students out by subgroup and how many have missed under 10 days, how many have missed 11 to 30 days, and so on up to 92 days could inform the specific types of policy changes that need to occur in a specific school.

We have recently found evidence of HODOE's non-compliance with federal reporting requirements on instances of restraint³⁰ and seclusion from the 2009-10 school year to the 2016-17 school year. Any type of federal and state reporting requirement should have clear policies on data collection, central office accountability for accurate data reporting, and standardized definitions for when an instance must be recorded. These figures should be available whenever a parent,

²⁹ See Del. Code Ann. tit. 14, § 703 (West) § 703 (requiring the Delaware Department of Education to compile and release an annual school discipline report that includes statewide and individual school totals for out-of-school suspensions, expulsions, alternative school assignments, and in-school suspensions, disaggregated by race, ethnicity, gender, disability status, grade level, limited English Proficiency, incident type, and discipline duration. Also requiring that schools that have met a certain threshold of suspensions or expulsions for three consecutive years must review their discipline policies, and ensure proper implementation of restorative justice practices, and submit a corrective plan to the department of education).

³⁰ 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.").

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student, or member of the public requests it, with or without a formal public records request.

In addition, districts should ensure that their Codes of Conduct are accessible and understandable to students and families, including in languages other than English. Discipline codes should not be vague or subject to interpretation. Students must be on notice about the types of behaviors that can get them into trouble.

* * *

The vast disparities in school discipline that we see in certain schools and complex areas represent a civil rights issue and denies vulnerable children access to their education. This pattern is not unique to Hawai'i, but it is a pattern that must end, particularly as the state develops new goals under its 2020-2030 strategic plan and addresses its failure to rectify persistent achievement gaps between subgroups. Fortunately, schools and complex areas have incredible power to make schools safe and welcoming learning spaces for students today. Reducing out-of-school suspensions this year to zero takes no legislative, Department, or Board action if the leadership of Complex Area choose to do so. Respecting students' civil rights their right to an education are important to the work that our schools do for our students. If you have any questions or comments, please contact me at 808-380-5422 or rshih@acluhawaii.org.

Sincerely yours,

Rae Shih
Legal Fellow

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