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**The Washington Lawyers' Committee for Civil Rights and Urban Affairs<sup>1</sup>**

**Testimony Before the Council of the District of Columbia**  
**Regarding The Student Fair Access to School Act**  
**and the DCPS Alternatives to Suspension Amendment Act**  
**January 30, 2018**

Thank you for the opportunity to testify on the Student Fair Access to School Act (“SFASA”) and the DCPS Alternatives to Suspension Amendment Act. We believe we share a common goal with all of those who are working to improve public education in the District: to the greatest degree possible, every student should be in a classroom learning with a teacher. The past two decades of academic research, legal action and legislation, and real-world experience of those involved in teaching and mentoring our children, demonstrate that outdated discipline approaches such as out-of-school suspensions and expulsions are misguided, short-term measures that cause serious and long-term problems for students, their families and their communities.

Moreover, because these “old school” discipline approaches so negatively and disproportionately affect students of color, students experiencing trauma and poverty, and students with greater challenges such as language and learning differences, we are encouraged by the direction that the SFASA bill is taking. It significantly restricts the use of suspensions and expulsions, promotes restorative justice measures, encourages trauma-informed training, and applies these more progressive measures uniformly to both the DC charter school sector and DCPS.

While the SFASA bill is a much-needed first step in the right direction for DC, it is not nearly as comprehensive and impactful as it could be. Several states and a growing number of school districts have gone much further in restricting suspensions at higher grade levels, supporting broader restorative justice measures, requiring more trauma-informed training, and making all of their charter and traditional district neighborhood schools play by the same disciplinary rules.

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<sup>1</sup> The Washington Lawyers’ Committee was founded in 1968 to address civil rights violations, racial injustice and poverty-related issues in our community through litigation and other advocacy. The Committee has a long history of working to address racial and other inequity in the DC public schools, which includes its Parent Empowerment Program and its School Partnerships among law firms, businesses and more than 50 DCPS Title I schools. We work closely with the private bar to bring litigation, pursue policy initiatives and support the academic enrichment and other goals of our DC public school communities.

## **Suspensions and Expulsions Disproportionately Affect Students of Color, Students with Learning Differences, and Students Experiencing Trauma and Poverty; they also Have a Detrimental Effect on Student Performance**

Very recent studies of DC public schools and national studies over the years clearly illustrate that students of color, students with learning differences and students experiencing trauma and poverty are suspended and expelled at often alarmingly high rates. Further, students who are suspended are much more likely to drop out and become involved in the criminal justice system.

Therefore, the DC Council ultimately should have a bolder goal with this legislation – to eliminate suspensions as much as possible at all levels through high school, except in the most extreme circumstances. For example, Los Angeles Unified School District<sup>2</sup> and the state of Illinois<sup>3</sup> have restricted suspensions through high school even more than this bill proposes.<sup>4</sup>

The most recent data on DC public school discipline, released by OSSE less than two weeks ago, shows that African American students in the District were 7.7 times more likely to receive at least one out-of-school suspension compared to white students, and 2.8 times more likely than Hispanic students. Students with disabilities were 1.6 times more likely to receive at least one out-of-school suspension as those without disabilities. And while African American students are 67.6 percent of the enrolled population, they constitute 95.3 percent of all students receiving expulsions.<sup>5</sup> Suspensions have a pronounced detrimental impact—as just one example, the average unexcused absence rate jumped by 10% for those students who received an out-of-school suspension, from 43.2 percent to 53.1 percent.

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<sup>2</sup> LAUSD, *District Required Language for Independent Charter School Petitions (New and Renewal) and Material Revisions*, Updated Nov. 3, 2017, at 19-20, available at <https://achieve.lausd.net/site/handlers/filedownload.ashx?moduleinstanceid=10663&dataid=9423&FileName=DRL%202017-2018%20-%20REV%2011-03-17.docx>; LAUSD, *School Discipline Policy and School Climate Bill of Rights*, available at <https://irjrd.org/files/2016/01/2013-School-Climate-Bill-of-Rights-Policy-FINAL.pdf>.

<sup>3</sup> *Public Act 99-0456 School District Self-Assessment Checklist* at 2, available at <https://www.isbe.net/Documents/tsdc-pa99-0456-checklist.pdf> (quoting 105 Ill. Comp. Stat. 5/10-22.6(b-5)); *see also* 105 Ill. Comp. Stat. 5/27A-5(g)(2) (providing that charter schools must comply with Section 10-22.6).

<sup>4</sup> Also, Denver has started by eliminating suspensions from kindergarten through third grade. *See* Announcement, <https://www.dpsk12.org/board-approves-discipline-policy-changes/>.

<sup>5</sup> OSSE, *State of Discipline: 2016-17 School Year* at 29, 33, 15, available at [https://osse.dc.gov/sites/default/files/dc/sites/osse/page\\_content/attachments/2016-17%20School%20Year%20Discipline%20Report.pdf](https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/2016-17%20School%20Year%20Discipline%20Report.pdf)

The OSSE report data matches results reported in recent, national studies and reports. In 2016, UCLA’s Center for Civil Rights Remedies analyzed California, Florida, and nationwide data. The study found that national out-of-school suspension rates were 23 percent for African American secondary students, 11 percent for Hispanic secondary students, and 7 percent for White secondary students. The study noted that being suspended led to a dramatic increase in the likelihood that a student would drop out: “[S]tudents who reported either an in-school or out-of-school suspension in the first semester of tenth grade were much less likely to graduate from high school than students with no suspensions. In the U.S., only 71 percent of tenth graders who received a suspension graduated from high school, compared to 94 percent of tenth graders who did not receive a suspension.” The study’s authors calculated the costs of these effects, citing prior studies showing that the fiscal (taxpayer) impact for each student’s dropping out is \$163,340 while the social impact is \$527,695.80. The study concluded that the 67,735 additional dropouts caused by suspensions cost U.S. taxpayers \$11 billion in lost tax revenues over these students’ lifetimes and cost society more than \$35 billion.<sup>6</sup>

A 2017 GAO study showed that charter schools in the District disproportionately suspended African American students and students with disabilities. The study’s authors concluded: “although Black students represented 80 percent of charter school enrollment, they represented 93 percent of those suspended and 92 percent of those expelled.”<sup>7</sup> The study noted that discipline rates had declined in recent years and that the disparities existed in both charter schools and traditional public schools.

Further, this GAO study found that “students with disabilities comprised 12 percent of D.C. charter school enrollment but represented 20 percent of those suspended and 28 percent of those expelled.” (report at 17-18). Nationally, suspension rates for students with disabilities were higher in charter schools (12% v. 6% for students without disabilities) and in traditional public schools (11% v. 5%). The suspension rates for students with disabilities in DC charter and traditional schools were 22% and 25% respectively. (Report at 20).

### **Using Broader Restorative Justice and Foregoing Exclusion Leads to Student Success.**

The available data indicates that broader Restorative Justice measures not only reduce suspensions, absenteeism and dropout rates, they also result in higher reading levels and

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<sup>6</sup> UCLA Center for Civil Rights Remedies, *The High Cost Of Harsh Discipline And Its Disparate Impact* at 14, 20, available at [https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/the-high-cost-of-harsh-discipline-and-its-disparate-impact/UCLA\\_HighCost\\_6-2\\_948.pdf](https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/the-high-cost-of-harsh-discipline-and-its-disparate-impact/UCLA_HighCost_6-2_948.pdf)

<sup>7</sup> GAO, *District of Columbia Charter Schools: Multi-Agency Plan Needed to Continue Progress Addressing High and Disproportionate Discipline Rates*, GAO-17-165 (Feb. 2017), available at <https://www.gao.gov/assets/690/682673.pdf>

graduation rates. There is no reason to limit this positive impact just to students in traditional public schools.

A 2014 study of restorative justice in Oakland public schools showed that the reform helped students on a number of fronts. Suspensions declined over the prior three years, most significantly for African American students suspended for disruption/willful defiance, which dropped 40% in only one year. The racial discipline gap also declined. Chronic absenteeism *decreased* by 24% in middle schools with a restorative justice program while the rate actually *increased* by 62.3% in schools without such a program. Reading levels in restorative justice high schools increased, while these schools experienced a 56% decline in dropout rates compared to a 17% decline for non-restorative justice schools. Cumulatively, four-year graduation rates for restorative justice schools increased by a cumulative 60%, compared to only 7% for non-restorative justice schools.<sup>8</sup>

Denver Public Schools implemented restorative justice programs at several pilot sites beginning in 2005. Studies of the results of the programs showed that absence rates improved for about a third of students in the program and that failing grades decreased by half for 30 percent of the students involved.<sup>9</sup>

Likewise, a University of Minnesota study of restorative justice practices in several Minneapolis schools showed improvements in attendance, graduation, and student engagement. Beginning in 2008, Minneapolis Public Schools implemented a program offering restorative justice services for students recommended for expulsion. The results of the program showed that participants' school attendance increased sharply after attending the program, the proportion of students tagged as being on track to graduate increased, students reported higher levels of engagement, and average GPAs increased slightly.<sup>10</sup>

These more formal studies are buttressed by a range of case studies and school-specific results. For example, Chicago's Fenger Academy High School nearly doubled its graduation rate, in part due to its new principal's implementation of a restorative justice program.<sup>11</sup> A

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<sup>8</sup> Sonia Jain et al., *Restorative Justice in Oakland Schools – Implementation and Impacts* (2014), Oakland Unified School Dist. (prepared for U.S. Dep't of Ed., Office of Civil Rights), available at [http://www.datainaction.org/uploads/2/7/8/2/27825255/ousd-rj\\_report\\_revised\\_dec414.pdf](http://www.datainaction.org/uploads/2/7/8/2/27825255/ousd-rj_report_revised_dec414.pdf)

<sup>9</sup> See Colo. Legislative Council Staff Memorandum, *Restorative Justice Programs in Denver Public Schools*, Aug. 30, 2011, available at [http://www.leg.state.co.us/Clics/Clics2011A/commsumm.nsf/b4a3962433b52fa787256e5f00670a71/a2e41f38df142ee2872578fc004c9451/\\$FILE/11SchoolDis0830AttachG.pdf](http://www.leg.state.co.us/Clics/Clics2011A/commsumm.nsf/b4a3962433b52fa787256e5f00670a71/a2e41f38df142ee2872578fc004c9451/$FILE/11SchoolDis0830AttachG.pdf)

<sup>10</sup> Barbara J. McMorris et al., *Applying Restorative Practices to Minneapolis Public Schools Students Recommended for Possible Expulsion*, available at [http://www.legalrightscenter.org/uploads/2/5/7/3/25735760/lrc\\_umn\\_report-final.pdf](http://www.legalrightscenter.org/uploads/2/5/7/3/25735760/lrc_umn_report-final.pdf)

<sup>11</sup> See Jennifer L.W. Fink, *Leading Through Change: A Conversation with Elizabeth Dozier*, St. Thomas University Online, available at <https://online.stu.edu/conversation-with-elizabeth-dozier/>; see also Aditi Das, *Dissertation, From the Margins to the Mainstream? A*

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February 2016 literature review noted the breadth and variety of these studies, and the implementation of restorative justice on a large scale in several states, noting that “[m]ost reports describe the RJ program or model as being successful whether implemented in public, private, or alternative schools, in urban or suburban environments, and whether the program is in one school or every school in the district.”<sup>12</sup>

### **DC Title I Schools Should be Given Incentives to Increase their Trauma-informed Training.**

The current SFASA bill only encourages trauma-informed training and certification, without giving schools a tangible requirement or incentive to do so.

Other jurisdictions have done more than just encourage trauma-informed training. This includes the Commonwealth of Massachusetts, which has established a statewide “safe and supportive schools framework” to address students exposed to trauma, including providing a self-assessment tool, technical assistance, and grants to school districts.<sup>13</sup> Washington State created a public-private partnership to advance trauma-informed education in schools.<sup>14</sup>

We recommend that this bill should have greater incentives for trauma-informed trained personnel in every Title I school. The bill could include a goal of increasing trauma-informed certified personnel by 15-20% each year to achieve a goal of 75-80% of the personnel in each school within five years, and the bill could tie increased funding to those schools that achieve those goals.

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*Comparative Case Study of Restorative Justice Implementation and Integration Within Public Schools*, Univ. of Chi., Aug. 2017, available at [https://knowledge.uchicago.edu/bitstream/handle/11417/688/Das\\_uchicago\\_0330D\\_13967.pdf](https://knowledge.uchicago.edu/bitstream/handle/11417/688/Das_uchicago_0330D_13967.pdf)

<sup>12</sup> Trevor Fronius et al., *Restorative Justice in U.S. Schools: A Research Review*, WestEd Justice & Prevention Research Center, Feb. 2016, available at [https://jprc.wested.org/wp-content/uploads/2016/02/RJ\\_Literature-Review\\_20160217.pdf](https://jprc.wested.org/wp-content/uploads/2016/02/RJ_Literature-Review_20160217.pdf)

<sup>13</sup> Trauma and Learning Policy Initiative, *Safe and Supportive Schools*, <https://traumasensitiveschools.org/get-involved/safe-and-supportive-schools/>

<sup>14</sup> ACES Too High, *State, Federal Lawmakers Take Action on Trauma-Informed Policies*, programs, <https://acestoohigh.com/2014/04/30/state-federal-lawmakers-take-action/>; see also Christopher Blodgett et al., *A Selected Review of Trauma-Informed School Practice and Alignment with Educational Practice*, at 52, available at <http://ext100.wsu.edu/cafru/wp-content/uploads/sites/65/2015/02/CLEAR-Trauma-Informed-Schools-White-Paper.pdf>

## **Jurisdictions Commonly Require Identical Disciplinary Policies for Charter Schools and Traditional Public Schools.**

Numerous large school districts throughout the country require charter schools to follow the same disciplinary policy as traditional public schools. These include jurisdictions covering two of the three largest districts (Los Angeles Unified and City of Chicago).<sup>15</sup> Several of these jurisdictions have embraced a “restorative justice” approach, requiring all schools to limit suspensions and expulsions in favor of non-exclusionary behavioral responses.

**Los Angeles Unified School District (“LAUSD”)** – the LAUSD requires that each charter school contract include language mandating that the school ensure its disciplinary policies and procedures regarding suspension and expulsion conform to state law. In addition, school staff must comply with the LAUSD’s own discipline policies.<sup>16</sup> Highlighting the importance of this requirement, the LAUSD recently implemented a policy change that allows charter school operators to negotiate more terms of their contracts, but it treated as “non-negotiable” the requirement that operators comply with the district’s disciplinary policies.<sup>17</sup>

**Illinois** – Illinois recently passed a law requiring all schools, including charter schools, to limit and justify the use of expulsions and out-of-school suspensions. As a state board of education guidance document explains, the law “creates new discipline and training requirements that apply to all publicly-funded schools in Illinois, including charter schools.”<sup>18</sup> The document explains that the state now forbids “zero-tolerance policies,” and that all schools must “limit the use of suspension and expulsion ‘to the greatest extent practicable.’”<sup>19</sup>

**Denver** – Denver Public Schools, with enrollment of almost 90,000 students, requires charter schools to comply with the district’s discipline policy as a condition of their contract. As a

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<sup>15</sup> Nat’l Ctr. for Educ. Statistics, *Enrollment of 120 Largest School Districts, by Enrollment Size in 2014*, available at [https://nces.ed.gov/programs/digest/d16/tables/dt16\\_215.30.asp](https://nces.ed.gov/programs/digest/d16/tables/dt16_215.30.asp).

<sup>16</sup> LAUSD, *District Required Language for Independent Charter School Petitions (New and Renewal) and Material Revisions*, Updated Nov. 3, 2017, at 19-20, available at <https://achieve.lausd.net/site/handlers/filedownload.ashx?moduleinstanceid=10663&dataid=9423&FileName=DRL%202017-2018%20-%20REV%2011-03-17.docx>

<sup>17</sup> Sarah Favot, *LA Charter Schools Win Policy Changes That Give Them More Clarity, Avoid Most Denials*, LA School Report, Nov. 7, 2017, available at <http://laschoolreport.com/la-charter-schools-win-policy-changes-that-streamline-the-approval-process/>

<sup>18</sup> *Public Act 99-0456 School District Self-Assessment Checklist*, available at <https://www.isbe.net/Documents/tsdc-pa99-0456-checklist.pdf>

<sup>19</sup> *Id.* at 2 (quoting 105 Ill. Comp. Stat. 5/10-22.6(b-5)); *see also* 105 Ill. Comp. Stat. 5/27A-5(g)(2) (providing that charter schools must comply with Section 10-22.6).

district guidebook for charter school operators explains, this requirement includes the district’s “criteria for suspension and expulsions.”<sup>20</sup> Moreover, the district encourages charter school operators to use restorative justice approaches and to take advantage of district resources and training to implement such approaches.<sup>21</sup>

**Minnesota** – Minnesota, the first state to pass a charter school law, provides by statute that charter schools are required to follow the state’s Pupil Fair Dismissal Act.<sup>22</sup> That law imposes limitations on when, how, and for how long students may be suspended.<sup>23</sup>

**Ohio** – Ohio similarly requires that each charter/community school operate under a contract that requires the school to comply with state law regarding school discipline. That law imposes limits on when and how students may be suspended.<sup>24</sup>

**Oklahoma** – Oklahoma also requires that charter schools comply with state law imposing due process procedures for suspensions and specifying when students may be suspended.<sup>25</sup>

As another example of the benefit of unifying DCPS and charter school policies, the “Due Process” requirement in this SFASA bill should be strengthened. Several DC charter schools have board members sit on their suspension appeal panels, and that does not ensure an objective hearing. This bill should allow all students to appeal to the DC Office of Administrative Hearings just as they have that right under current DCPS policy.

Finally, the DCPS Alternatives to Suspension Amendment Act appears to only apply to DCPS. Given the extensive research we have presented in this section, we recommend that, if a more stringent suspension evaluation and reporting requirement is favored by the Council, it should also apply equally to all DC charter schools. For example, if the monthly/quarterly reporting scheme is adopted, charter school principals should report their suspensions monthly to their charter LEAs, and each of the charter LEAs should report quarterly to the Mayor and the DC Council. Those quarterly reports should also go to the Office of the State Superintendent of Education.

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<sup>20</sup> Denver Public Schools, *Charter School Leader Guidebook*, at 61, available at [http://portfolio.dpsk12.org/wp-content/uploads/2015/08/DPS-Charter-School-Leader-Guidebook\\_150818.pdf](http://portfolio.dpsk12.org/wp-content/uploads/2015/08/DPS-Charter-School-Leader-Guidebook_150818.pdf)

<sup>21</sup> *Id.* (“All charter schools are obligated to follow the DPS discipline policy. In addition, schools are encouraged to seek out restorative approaches to address discipline incidents rather than using more punitive measures such as suspension.”).

<sup>22</sup> Minn. Stat. § 124E.03, subd. 2(j).

<sup>23</sup> See *id.* §§ 121A.41, subd. 10; 121A.46.

<sup>24</sup> Ohio Rev. Code §§ 3314.03(A)(11)(d); 3313.66.

<sup>25</sup> Okla. Stat. tit. 70 §§ 42.18(A)(12); 24-101.3.

## **Conclusion**

While the SFASA bill is a good first step in the right direction for DC, it is not nearly as comprehensive and impactful as it could be. DC should be trying to catch up faster to the better examples provided by several states and a growing number of school districts that have gone much further in restricting suspensions at all grade levels, supporting broader restorative justice measures, incentivizing or requiring more trauma-informed training, and making all of their charter and traditional district neighborhood schools play by the same disciplinary rules.