



Lost Opportunities

How Disparate School Discipline Continues to Drive Differences in the Opportunity to Learn

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Executive Summary

During the 2015–16 school year, according to national estimates released by the U.S. Department of Education in May 2020, there were 11,392,474 days of instruction lost due to out-of-school suspension. That is the equivalent of 62,596 years of instruction lost. The counts of days of lost instruction were collected and reported for nearly every school and district by the U.S. Department of Education. For the very first time, one can see the impact of out-of-school suspensions on days of lost instruction for every student group in every district in the nation. Considering the hardships all students are experiencing during the pandemic, including some degree of suspended education, this shared experience of having no access to the classroom should raise awareness of how missing school diminishes the opportunity to learn. The stark disparities in lost instruction due to suspension described in this report also raise the question of how we can close the achievement gap if we do not close the discipline gap.

The racially disparate harm done by the loss of valuable in-person instruction time when schools closed in March 2020 is even deeper for those students who also lost access to mental health services and other important student support services. The same losses, plus the stigma of punishment, is what suspended students experience when removed from school for breaking a rule, no matter how minor their misconduct.

According to experts, the coronavirus is likely more harmful to children from low-income families, those with disabilities, and children of color. As Kathleen Minke, Executive Director of the National Association of School Psychologists, recently wrote, “There is little doubt that there will be substantial increases in mental- and behavioral-health problems for students and adults when schools reopen.... The effects will not be equally distributed.” Coming on the heels of a massive loss of instructional time, and of mental health and special education supports and services, we argue in this report that the data describing the high rates of lost instruction and the inequitable disparate impact of suspensions in these times of extreme stress should compel educators across the nation to do more, once students are allowed to return, to reduce disciplinary exclusion from school. Like our prior reports, the analysis presented here helps to convey how high and disparate levels of exclusionary discipline in terms of days of lost instruction time contribute to large inequities in educational opportunity.

The key findings of most significance in this report are:

- In many districts, secondary students lost over a year of instruction (per 100 enrolled students). The disaggregated district data showing the rates of lost instruction are often shocking to the conscience and are the only data of their kind available. The U.S. Department of Education provided the raw data from nearly every school and district but not the comparable rates of lost instruction created for this report.
- Rates of lost instruction reveal that due to out-of-school suspensions, students at the secondary level lose instruction at rates that are five times higher than those at the elementary level. The distinction between elementary and secondary rates, presented at the national and state levels and for nearly every district in the nation, is unique to this report. It also demonstrates how the traditional form of reporting the data for all grades, k–12, obscures the highest rates and largest disparities.

- National trend lines in rates of student suspension for 2015–16 show reduced reliance by schools on both in- and out-of-school suspensions, and a slight narrowing of the racial discipline gap, yet there are many districts in which student suspension rates are much higher than the national average, and many also show rising rates and widening racial disparities.
- This is the first report to document that students attending alternative schools experience extraordinarily high and profoundly disparate rates of lost instruction.
- There is a widespread failure by districts to report data on school policing despite the requirements of federal law. Specifically, over 60% of the largest school districts (including New York City and Los Angeles) reported zero school-related arrests. The prevalence of zeros suggests that much of the school-policing data from 2015–16 required by the federal Office for Civil Rights (OCR) were incomplete or missing. OCR completed its data collection from the 2017–18 school year in June 2019. As of August 6, 2020, none of the newer data have been publicly reported by the U.S. Department of Education.
- In addition, this report indicates widespread noncompliance with the reporting requirements of the Every Student Succeeds Act of 2015 (ESSA) that explicitly requires public reporting of the collected school-policing data in annual state and district report cards (in accord with the OCR data collection). As of July 2020, not one state had fully met ESSA's state and district report card obligation regarding their 2017–18 school-policing data.

In all districts, including those that show a decline in the student suspension rate, policymakers, advocates, and educators must pay closer attention to the rates of lost instruction for students at the secondary level, the use of suspension in alternative schools, and the use of referrals to law enforcement as a response to student misconduct in school. The data analyzed in this report, all of which was collected by the U.S. Department of Education, reveal deeply disturbing disparities and demonstrate how the frequent use of suspension contributes to inequities in the opportunity to learn.

Part I: The Disparate Impact on Educational Opportunity Is Measured in Days of Lost Instruction Due to Out-of-School Suspensions

Students in U.S. public schools lost over 11 million days of instruction due to out-of-school suspensions in 2015–16. This report breaks that total down at the state and local levels, enabling policymakers to understand the impact of suspensions on every racial group and on students with disabilities. This report is the first to capture the full impact on instructional time from differences in use of out-of-school suspensions at the state and district levels. These rates are calculated by dividing the actual reported total days lost due to out-of-school suspensions from every school and district in the nation by each school's reported enrollment data.

Across all grades, for every 100 students enrolled, there were 23 days of instruction lost due to out-of-school suspensions. However, this holistic view of all students in all grades obscures the reality that in secondary schools, the rate of lost instruction is more than five times higher than the elementary rates: 37 days lost per 100 middle and high school students compared to just 7 days per 100 elementary school students.

Rates of lost instruction for each racial group reveal far larger differences in the opportunity to learn than more traditional rates might suggest:

At the secondary level, the disparities are the most pronounced:

- Black students lost 103 days per 100 students enrolled, which is 82 more days than the 21 days their White peers lost due to out-of-school suspensions.
- Hawaiian/Pacific Islander students had the second highest rate, at 63 days lost per 100 students enrolled.
- Native American students lost 54 days per 100 students enrolled.
- Students with disabilities at the secondary level lost 68 days per 100 students enrolled, which was about twice as much as secondary students without disabilities.

Even more alarming disparities are observed when we look at race with gender:

- Black boys lost 132 days per 100 students enrolled.
- Black girls had the second highest rate, at 77 days per 100 students enrolled, which was seven times the rate of lost instruction experienced by White girls at the secondary level.

These differences suggest that we cannot expect to close the racial achievement gap if we do not close the discipline gap. These overarching concerns rise to an acute level in some locations when we examine the disparate impact on instructional time for every state and district in the nation. Some of the states at the secondary level with the largest racial gaps compared to White students include the following:

- Missouri: Black students lost 162 more days than White students.
- New Hampshire: Latinx students lost 75 more days than White students.
- North Carolina: Native American students lost 102 more days than White students.

Secondary students with disabilities in North Carolina, Tennessee, Virginia, Delaware, and Missouri lost between 119 and 137 days per 100 students enrolled. In every state, students with disabilities lost more instruction than their nondisabled peers.

The state-level data reveal only a small part of the problem. Secondary students in many districts lost instruction at rates that shock the conscience. Each of the following large districts had rates of well more than a year's worth of school, over 182 days per 100 students. Specifically, in each of the following districts, students lost:

- 416 days per 100 students in Grand Rapids, MI;
- 352 days per 100 students in Richmond City, VA;
- 320 days per 100 students in Buffalo City, NY;
- 276 days per 100 students in Youngstown, OH;
- 250 days per 100 students in Little Rock, AR; and
- 230 days per 100 students in Danville, IL.

In these districts, the rates of lost instruction for Black students and students with disabilities were even higher.

This report also reveals that the impact of suspensions on lost instruction varies dramatically from one district to the next. Although we did not report on any individual schools, we did find some of the most disturbing rates and disparities when we looked at alternative schools across the nation: Specifically (after excluding schools that are part of the juvenile justice system) at the secondary level, the following race and gender breakdown describes the rates of lost instruction due to out-of-school suspensions, expressed as days lost per 100 students enrolled in our nation's alternative schools:

- Black boys lost 235 days per 100 students.
- Black girls lost 156 days per 100 students.
- Boys with disabilities lost 170 days per 100 students.
- Girls with disabilities lost 94 days per 100 students.
- White boys lost 109 days per 100 students.
- White girls lost 48 days per 100 students.

Research indicates that observed differences in the frequency of suspensions often reflect differences in leadership, policies, and practices. Often overlooked is the degree to which school districts use alternative disciplinary schools. This report reveals that alternative schools, in the aggregate, have the highest rates of lost instruction and the largest racial disparities. One concern is that school districts that do not replace harsh policies may give the appearance that they are reducing their use of suspensions, but rather than making improvements, they are instead relying on disciplinary removal to alternative schools or finding other ways to remove students, such as referring them to law enforcement while not issuing a suspension.

A review of the most recent data provides a useful snapshot, but a review of the trends in rates over time provides a clearer picture, one that can help educators and policymakers begin to distinguish effective reforms from those that are not well implemented. To report on these trends, this report, in Part II, uses the “risk” for suspension, which we report for nearly every district in the nation. The “risk” for suspension is a conservative measure because it does not reflect the frequency or duration of suspensions. Despite these limits, we use it because 2015–16 was the first year the Civil Rights Data Collection (CRDC) required the collection and reporting of days of lost instruction data, making the risk for suspension the only viable measure available for tracking trends in the use of suspension.

Part II: High Rates and Large Disparities and Trends Over Time

Elementary rates have not declined. Since 2009–10, at the elementary school level, the risk for suspension increased by less than one half of 1 percentage point, nationally. This was true for Black, White, and Latinx students.

Secondary rates have declined, and the racial gap has narrowed slightly, since 2009–10. During this same time period, the Black secondary student risk for suspension has declined 6 percentage points. That is slightly more than it has declined for Latinx students (-5.4) and over twice the decline for White secondary students (-2.5).

Further, the declines were not offset by increases in the use of in-school suspensions.

We also looked at how racial disparities among students with disabilities had changed since 2011–12 and found that despite their relatively higher rates, all groups showed a decline, and both Black and Latinx students with disabilities had narrowed the racial gap with their White peers.

Despite the downward trends in secondary schools nationally, some districts had very large increases in the risk for suspension. Secondary students in the following large districts experienced the greatest overall increase in their risk for out-of-school suspension:

- Richmond City, GA: 17 percentage points
- Trenton, NJ: 15 percentage points
- Ferguson-Florissant, MO: 15 percentage points
- South Bend, IN: 14 percentage points
- Reynoldsburg City, OH: 14 percentage points

In Part II, we highlight those districts where Latinx and Native American students also experienced unusually high suspension rates. Our key findings include:

- The 20 highest-suspending districts for Latinx students came from just 11 states. Pennsylvania and New Jersey each had three of the highest-suspending districts, and California and Colorado each had two.
- The 20 highest-suspending districts for Native American students were located in just six states. Eight were located in Arizona, four in Montana, and three in Minnesota.

Part III: School Policing, Lost Instruction, Referrals to Law Enforcement, and School-Related Arrests

Given that there have been recent changes to federal education policy, including funding and recent encouragement to add school police in the wake of school shootings, this report looks at what we know from the required reporting of school-related arrests and referrals to law enforcement. This report documents a major policy and oversight failure with regard to this critical information. Although these data have been required since 2009–10, many of the nation's largest districts, including Los Angeles, New York City, and Boston, reported no school-related arrests. Given that referrals to law enforcement must, by definition, include all calls to police about student misconduct as well as all school-related arrests, the widespread failure to report the data on arrests means that the referral to law enforcement and school-related arrest data are likely inaccurate and underreported. In Part III, we provide details on which districts are missing data and analyze only those districts that reported some referrals or arrests.

Equally important, in Part III, this report documents widespread noncompliance with federal requirements that every district report its data on referrals to law enforcement and school-related arrests as part of its annual school district report card. In 2015, when Congress passed ESSA, it intended the public to see the data on school policing, as it required that these data be added to every state's and district's annual public report card. These are the same data that must be reported to federal civil rights enforcement agencies as part of the CRDC. Therefore, the widespread failure to report the data on school policing is especially disconcerting in the wake of the resurgence of concerns about how racism affects policing.

Recommendations

Eliminate unnecessary removals

Generally, policymakers at the federal, state, and local levels should eliminate the use of out-of-school suspensions and expulsions for lower-level offenses and should reduce the length of suspensions for other moderate and serious offenses, when practicable. In some cases, like suspensions for truancy, eliminating grounds for suspension requires no replacement.

Switch to more effective policies and practices that serve an educational purpose

In many other cases, policymakers should replace punitive discipline with supportive and inclusive responses that research indicates will likely serve a clear educational purpose. Toward this end, educators should pursue nonpunitive strategies—alternatives that teach responsibility, enhance social and emotional learning, and help students improve their conduct. Policymakers should consider supporting a range of alternatives, including trauma-informed, restorative, and culturally responsive practices that emphasize remedying root causes. A focus on the educational purpose should also encourage those using suspensions to reduce their duration. The success of alternative approaches frequently entails training to help teachers to improve classroom management skills in ways that are aligned with these responses. Administrators must also be provided with the training and support they need to implement discipline reforms with integrity and to improve equity in resources and outcomes.

Review and respond to discipline disparities to promote more equitable outcomes

Equitable approaches should include efforts to diminish the influence of racism and improve the multicultural responsiveness of all adult members of the school community, including regular reflection on the disparities in exclusionary discipline and its impact on the opportunity to learn. Therefore, a comprehensive understanding of the impact of disciplinary exclusion disparities along the lines of race, gender, English learner, and disability status ultimately entails evaluating the disparities in days of lost instruction due to disciplinary removal. The point of such reflection is not only to discourage the use of suspensions, but also to reduce their length when they are used which will help diminish their disparate impact as much as possible.

Policymakers should also consider supporting teacher training designed to improve teacher–student engagement. These and other approaches that improve the quality of relationships between teachers and students have also shown promise for reducing suspensions and their racially disparate impact on educational opportunity. More efforts are needed to understand and eliminate the impact of racial discrimination on disciplinary decisions, including the invocation of law enforcement.

Some of the recommendations above and some that follow may be beyond the scope of the particular descriptive research presented in this report, but all are based on our prior studies, including research featured in our book, *Closing the School Discipline Gap: Equitable Remedies for Excessive Exclusion*; broader knowledge of the research literature; and experience providing assistance to states and districts. Based on our broader understandings, we also encourage Congress to consider the recommendations specified by the Leadership Conference on Civil and

Human Rights' letter to Congress, titled "Civil Rights Principles for Safe, Healthy, and Inclusive School Climates," which was joined by 295 signatories on June 19, 2020, including the Civil Rights Project at UCLA.

In addition, at all levels, policy changes are needed to ensure that when efforts to address excessive and disparate discipline are undertaken, progress is evaluated using the following two principles:

1. Reduce the harm experienced by those groups that are most often suspended by reducing both the use and the duration of suspensions.
2. Prioritize efforts that help prevent misconduct.

Federal law and policy recommendations: More efforts are needed to eliminate the impact of racial discrimination on disciplinary responses. The following recommendations apply to the federal government, including the presidential administration, and reflect areas of concern raised in the current report.

- The administration should reinstate the U.S. Department of Education (DoED) and U.S. Department of Justice's 2016 guidance on school discipline to inform state and local efforts to eliminate the discriminatory use of exclusionary discipline policies.
- Once the guidance is reinstated, these two enforcement agencies should review the data for districts with large disparities in rates of lost instruction, as well as high and disparate rates of referrals to law enforcement, and intervene as appropriate.
- Congress should increase funding to federal civil rights enforcement agencies to increase their capacity to conduct the suggested reviews and interventions.
- DoED should offer technical assistance, alongside increased oversight and accountability, to ensure that states and districts accurately report their discipline data, including required but often underreported data on referrals to law enforcement and school-related arrests.
- Congress should add a private right of action to ensure that, when necessary, individuals can take recourse in a court of law when asserting systemic forms of discrimination, including policies and practices that may fall afoul of the disparate impact regulations pertaining to race, national origin, gender, and disability discrimination.
- DoED needs to continue to collect and report discipline data, including days of lost instruction due to out-of-school suspensions, and referrals to law enforcement and school-related arrests, but do so annually.
- OCR needs to add to the current CRDC a collection of data on the total number of suspensions. For each suspension, the primary reason for the suspension should also be collected, and these data should be publicly reported on OCR's website.
- Congress should provide federal funding to states and districts to encourage training of teachers and administrators to implement more effective alternatives to punitive and exclusionary forms of school discipline, and to ensure that there are sufficient support personnel to address the needs of students with disabilities as well as students with mental health needs, including youth who have experienced trauma.

- DoED should support additional state- and district-level research regarding more effective policies and practices to use instead of disciplinary removals.
- DoED should also provide additional accountability measures to discourage blatant noncompliance with data collection and reporting.
- DoED should also provide technical support to states and districts to ensure that the public at the state and local levels receives accurate and timely data on school climate, disaggregated across more than one protected category (e.g., race with disability as currently required by the CRDC).
- Members of Congress should request that the U.S. Government Accountability Office conduct a review of the extent of noncompliance with ESSA's state and district report card data requirements pertaining to referrals to law enforcement and school-related arrests.

State law and policy recommendations: State policymakers should improve the collection and public reporting of discipline data and create incentives for districts to reduce the use of suspensions, especially for minor offenses. State policymakers should also consider the following actions:

- State boards of education should review and revise the statewide accountability plan and make school discipline one of the additional nonacademic indicators for district accountability. In California, for example, any district that suspends over 6% of the enrolled student body is flagged as needing improvement, and the state then offers technical assistance.
- State departments of education should identify districts in the state that have problematic racial and disability disparities in discipline and, when applicable, provide support to identified districts to conduct root-cause analyses and effective redirection of Individuals With Disabilities Education Act (IDEA) funds toward coordinated early intervention services.
- State attorneys general should incorporate the federal school discipline guidance and increase enforcement of antidiscrimination laws in our public schools, especially with regard to unjust disciplinary removals. Several attorneys general have issued such statements. In Washington state, a combination of legislation, regulation, and state guidance is being implemented to target high and disparate exclusionary discipline, including transfers to alternative schools.
- Both the state departments of education and attorneys general should ensure the collection and public reporting of accurate discipline data in annual state and district report cards, including days of lost instruction due to out-of-school suspensions, referrals to law enforcement, and school-related arrests.
- State attorneys general should review the state's implementation of IDEA requirements to identify racial disproportionality in discipline among students with disabilities to ensure that state departments of education are appropriately implementing the federal regulations.
- State legislators should limit the use of suspensions to ensure that minor misconduct is not met with disciplinary exclusion from school. California, Texas, Ohio, and Connecticut all have passed legislation limiting the use of suspension for minor misconduct.

- State policymakers should eliminate the use of federal, state, and local funds for school police and/or security staff and encourage the elimination of police involvement in addressing routine school discipline. When practicable, funds delineated for police and security should be redirected toward direct supports for students, teachers, and administrators.

Recommendations for local policymakers: Even in the absence of federal or state policy changes, there is a great deal that individual school districts can do, including the following:

- Track the frequency and rates of lost instruction from out-of-school suspensions and use the data to inform local discipline policy.
- Have school boards conduct a public review and discussion of discipline disparities at least twice each year at school board meetings, including the amount of lost instruction due to discipline and the resulting disparities. For districts in which suspensions are frequent and disparities are wide, they should develop an action plan with specific goals for implementation informed by input from the community members most affected.
- Continue to use the DoED's and U.S. Department of Justice's 2016 guidance on school discipline to evaluate and guide how and when to make changes to the code of conduct.
- Require that all suspensions over a certain length be subject to review and approval by the district's central office to ensure that disparate patterns are noticed and that lengthier suspensions are justified in light of the educational purpose.
- Demand that local and state educational agencies report annually disaggregated data on referrals to law enforcement and school-related arrests.
- Audit public school funding and seek the elimination or reduction of funding for school police and security guards. Compare allocations for police and other security with funding for student support personnel. Use the best available research on the impact of school police on school climate to inform decisions regarding security personnel.
- Decriminalize disorderly conduct and other nonviolent and non-drug-related behavior so that school behavior incurs school-based responses.
- Set aside the resources needed for leadership and staff training and for intervention programs that will address the unjustified loss of instruction due to disciplinary removal.
- Use school climate surveys, behavior incident reports, and other monitoring to ensure that school reforms are improving the conditions of learning.
- Seek partnerships with other organizations and dedicate resources to evaluating reform efforts to distinguish the effective remedies from ineffective discipline reform efforts.

About the Authors

Daniel J. Losen, J.D., M.Ed., is Director of the Center for Civil Rights Remedies, an initiative of the UCLA Civil Rights Project/Proyecto Derechos Civiles. He has worked at the Civil Rights Project since 1999, when it was affiliated with Harvard Law School, where he was a lecturer on law. Losen's work concerns the impact of law and policy on children of color, including the reauthorization of the Elementary and Secondary Education Act, with a focus on promoting diversity, access to effective teachers, and improving graduation rate accountability; the Individuals With Disabilities Education Act and racial inequity in special education; school discipline and revealing and redressing the "school-to-prison pipeline"; and protecting English learners' right to equal educational opportunity. On these and related topics, Losen conducts law and policy research; has published books, reports, and articles; and works closely with federal and state legislators to inform legislative initiatives. Both for the Civil Rights Project and independently, he provides guidance to policymakers, educators, and advocates at the state and district levels. Before becoming a lawyer, Losen taught in public schools for 10 years and was a founder of an alternative public school.

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About the UCLA Civil Rights Project's Center for Civil Rights Remedies

The UCLA Civil Rights Project's Center for Civil Rights Remedies (CCRR) is dedicated to improving educational opportunities and outcomes for children who have been discriminated against historically due to their race or ethnicity and who are frequently subjected to exclusionary practices, such as disciplinary removal, overrepresentation in special education, and reduced access to a college-prep curriculum. CCRR has issued numerous reports about the use of disciplinary exclusion, including the 2015 report *Are We Closing the School Discipline Gap?*, which was recognized as the best policy report of the year by the American Educators Research Association. Recent reports include *Disabling Punishment: The Need for Remedies to the Disparate Loss of Instruction Experienced by Black Students With Disabilities* (2018) and *Is California Doing Enough to Close the Discipline Gap?* (2020). CCRR also provides technical assistance directly to states, school districts, and civil rights enforcement agencies.

CCRR is an initiative of the UCLA Civil Rights Project/Proyecto Derechos Civiles (CRP), which is co-directed by Gary Orfield and Patricia Gándara, research professors at UCLA. Founded at Harvard in 1996, CRP's mission is to create a new generation of research in social science and law on critical issues of civil rights and equal opportunity for racial and ethnic groups in the United States. CRP has monitored the success of U.S. schools in equalizing opportunity and has been the authoritative source of segregation statistics. CRP has commissioned more than 500 studies, published more than 20 books, and issued numerous reports from authors at universities and research centers across the country.

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External Reviewers

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