



Written Testimony of Texas Appleseed  
Senate Judiciary Committee  
Subcommittee on the Constitution, Civil Rights, and Human Rights  
Hearing: "Ending the School to Prison Pipeline"

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Texas Appleseed appreciates the opportunity to present written testimony before the Subcommittee on the Constitution, Civil Rights and Human Rights of the Senate Committee on the Judiciary. We commend the Subcommittee for its interest in the problems associated with exclusionary student discipline, often referred to as the “School to Prison Pipeline” (Pipeline).

Texas Appleseed, a non-partisan, non-profit, 501(c)(3) organization, is part of a national network of 16 public interest law centers in the United States and Mexico. Our mission is to promote justice for all Texans by leveraging the volunteered skills and resources of lawyers and other professionals to identify practical solutions that create systemic change in broad-based issues of social equity. Texas Appleseed has been researching the existence of the Pipeline in Texas schools and advocating for change at the local and state level for the last seven years.<sup>1</sup>

The “school-to-prison pipeline” is not a problem that is unique to a single state, or a handful of school districts, but rather a problem that exists nationwide. It is marked by the increased use of suspension and expulsion in the years following adoption of sweeping “zero tolerance” laws at the state level. It is also marked by an increased reliance on school-based law enforcement to handle what used to be routine student discipline issues. Anecdotal stories in Texas abound, and are much like those that have surfaced in other states:

- An 11-year old student in suburban Houston arrested and expelled for pulling a fire alarm.
- A 12-year-old girl given a Class C misdemeanor ticket for “Disruption of Class” for spraying perfume on herself after other students told her she smelled bad.
- A 17-year old honors student arrested and jailed for truancy when she missed school to work two jobs to support herself and her siblings.

Perhaps most relevant to this Subcommittee, this is a problem with significant implications for the judiciary and those who safeguard constitutional rights. Nationally, juvenile and criminal court judges have complained of the growing reliance on the court system to handle low-level student misbehavior.<sup>2</sup> In Texas, these problems spurred the Texas Judicial Council to create a Juvenile Justice Committee focused specifically on this issue.<sup>3</sup> And, as will be discussed, the impact of these policies on African American students and students with disabilities raises critical issues regarding protection of constitutional rights.

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<sup>1</sup> See Texas Appleseed, *Texas’ School to Prison Pipeline: Dropout to Incarceration (2007)*; *Texas’ School to Prison Pipeline: School Expulsion (2010)*; *Texas School to Prison Pipeline: Ticketing, Arrest & Use of Force in Schools (2010)*; *Breaking Rules, Breaking Budgets: Cost of Exclusionary Discipline in 11 Texas School Districts (2012)*.

<sup>2</sup> See Judge Steve Teske, *A Perfect Storm, an Imperfect System Equals Injustice (2011)*, available at <http://jjie.org/judge-steve-teske-perfect-storm-imperfect-system-equals-injustice/8817>

<sup>3</sup> See Texas Judicial Council webpage for committees, available at <http://www.courts.state.tx.us/tjc/cte-active.asp>

Ultimately, the question for policy makers to ask is whether this type of discipline is working to promote good student outcomes – both for those who are disciplined, and for the rest of the student population. Texas Appleseed’s research and that of others indicates it is not, and that better solutions exist.

## **I. Texas’ Research Shows Reliance on Exclusionary Discipline is Ineffective**

What is unique about Texas is our access to data collected each year by the Texas Education Agency (TEA). Few states are collecting discipline data that is as robust as the data Texas collects. This data has allowed Texans to study the existence and effects of the Pipeline by examining trends in discipline and outcomes associated with it.

Texas Appleseed’s first two reports analyzed suspension and expulsion data *for every school district in the state*, and our third report analyzed arrest and Class C ticketing data for 26 school districts. The findings of these three reports were surprisingly consistent, though they focused on different aspects of discipline and policing, revealing:

- **Wide variation in disciplinary referral and use of law enforcement** to ticket or arrest students, suggesting that *where a student attends school*, and not the nature of his or her behavior, determines the likelihood of disciplinary or law enforcement action.
- Discretionary school decisions to suspend, expel, and refer to an alternative school **disproportionately impact African American and special education students.**
- **Students become involved in the Pipeline at an early age.** Our research showed that elementary school students – even as young as kindergarten -- are subject to suspension, referral to alternative education programs, and ticketing and arrest by school-based police officers.

Perhaps most distressing was our finding that though good information is readily available about research-based programs proven successful in reducing behavioral problems and improving academics, relatively few Texas districts are implementing such programs.

In 2011, The Council of State Governments (CSG) used Texas data to conduct a landmark study of the correlation between student discipline, academic attainment, and involvement in the juvenile justice system.<sup>4</sup> This report relied on a student-for-student match of data between the TEA data system and data maintained by the Texas Juvenile Probation Commission. This unique data set allowed CSG to conduct a multivariate analysis – allowing them to test single predictors of poor outcomes and focus specifically on the effects of student discipline.

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<sup>4</sup> The Council of State Governments, *Breaking Schools’ Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement* (2011).

Among the reports key findings:

- **Six in ten public school students** were ‘suspended’ or expelled at least once between their 7<sup>th</sup> & 12<sup>th</sup> grade school years, and **97 percent of the disciplinary referrals** were made at the discretion of school officials for low-level misbehavior, rather than for the serious mandatory violations included in the state’s “zero tolerance” provisions.
- **31 percent of students** with one or more suspensions or expulsions repeated their grade level at least once, and **Nearly 10 percent of students** with one disciplinary contact dropped out compared to 2 percent of those with no disciplinary contact.
- Students who were suspended or expelled for discretionary violations were **nearly three times as** likely to be in contact with the juvenile justice system the following year.

CSG’s findings showed the same trend Texas Appleseed’s research revealed regarding race and student discipline, showing **83 percent of African American male students had at least one discretionary disciplinary referral**, though their rate of mandatory referrals was lower than that of other students. When the effect of race alone was isolated as part of the multivariate analysis, African American students were shown to have a **31 percent higher likelihood** of a discretionary discipline referral when compared to other students. Students with disabilities were also significantly more likely to have a discipline referral.

Another surprising finding from the CSG report indicates that the oft-quoted defense of exclusionary discipline – that removing disruptive students from the classroom works to promote learning for those who remain – does not hold true. CSG compared disciplinary rates between campuses with virtually identical student and campus characteristics and found, “**a school that makes frequent use of suspension and expulsion does not necessarily create an environment that enables the overall school to achieve better academic outcomes.**”<sup>5</sup>

Perhaps the most important lesson to be learned from the Texas research – both Appleseed’s and CSG’s – is that the traditional methods of handling student discipline simply don’t work for today’s students. Not only do they fail to lead to positive student outcomes in the form of improved behavior and academic success – they appear to be more harmful than helpful. Further, they have a particularly harsh impact on African American students and students with disabilities – student populations that are already at increased risk for dropout and juvenile justice system involvement.

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<sup>5</sup> Council of State Governments, *supra* note 4 at 82.

## II. The Role of “Criminalization” in the Texas Pipeline

In addition to problems associated with internal student discipline, more recent research indicates that increased reliance on school police (sometimes referred to as “School Resource Officers” (SROs)) to handle low-level, non-violent misbehavior also plays a role in the Pipeline. Texas Appleseed’s third School to Prison report, published in late 2010, focused on this piece of the Pipeline.<sup>6</sup> Again, this is not a problem that is confined to Texas – reports from across the nation reveal similar patterns.<sup>7</sup>

In Texas, perhaps one of the more unique manifestations of this problem is the very high number of Class C misdemeanor citations – or tickets – issued to children by school police officers. Low-level misconduct such as cursing, chewing gum, or disrupting class—misbehaviors formerly dealt with by a detention or a trip to the principal’s office—are now met with criminal charges. This practice of ticketing is widespread throughout the state -- last year alone over 229,000 non-traffic citations were issued to juveniles in Texas.<sup>8</sup> Texas Appleseed just completed an updated analysis of ticketing and arrest data for 42 school districts, finding:

- The most commonly cited “offenses” in all of the school districts that provided data were “Disruption of Class” or “Disorderly Conduct.” Students are frequently cited for making too much noise in class or for using profanity, but are also often cited for schoolyard fights.
- As is true of internal disciplinary referrals, African American students are overrepresented in school-based ticketing and arrest. In many districts, they received tickets at rates two-to-three times their representation in the student body.

The consequences of even a Class C violation can be very serious for students and their families. First, the student’s parent or guardian must appear in court with the student, requiring the parent to take time off from work for as many appearances as are necessary to resolve the case. Fines represent a serious financial costs in addition to any wages lost to the parent’s time off from work. The fine for a Class C Misdemeanor can be up to \$500. Students are also assessed court costs of at least \$70 dollars in addition to a fine.

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<sup>6</sup> Texas Appleseed, Texas School to Prison Pipeline: Ticketing, Arrest & Use of Force in Schools (2010).

<sup>7</sup> Justice Policy Institute, *Education Under Arrest: The Case Against Police in Schools* (2011); Charles Hamilton Houston Institute for Race and Justice, *First Do No Harm: How Educators and Police Can Work Together More Effectively* (2010); Lisa H. Thureau and Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools*, 54 N.Y.L. SCH. L. REV. 977, 1015 (2009); American Civil Liberties Union of Connecticut, *Hard Lessons: School Resource Officer Programs and School-Based Arrests in Three Connecticut Towns* (2008); New York Civil Liberties Union, *Criminalizing the Classroom, The Over-Policing of New York City Schools* (2007); Pennsylvania Protection & Advocacy, Inc., *Arrested Development: Students with Disabilities and School Referrals to Law Enforcement in Pennsylvania* (2004).

<sup>8</sup> Based on FY 2012 data from the Office of Court Administration, *available at* <http://www.courts.state.tx.us/pubs/AR2012/toc.htm>. It is not clear that this includes data for all courts; this figure is likely conservative.

For students with multiple tickets, these fines can multiply. One municipal court providing data to Texas Appleseed indicated a youth had received as many as 11 tickets. In the same court, more than 350 youth had received multiple tickets, with some receiving as many as six. The financial repercussions of a ticket, or multiple tickets, can be devastating for families with limited resources. One parent explained to Texas Appleseed:

*My son has received tickets for various offenses ranging from horseplay...[to] having cigarette butts in his jean pockets . . . three for foul language, [and] one huge one for missing school (classes – not whole days). The total for said tickets was \$1,520, [but] it might as well have been a million to someone in my financial situation.*

Financial penalties are not always the most serious aspect of a youth's ticketing case. Failure to pay a fine or satisfy the obligations of a deferred disposition can result in a youth's arrest once he or she turns 17. Furthermore, while a Class C criminal conviction may not seem important to a 14 year-old, a criminal record can have serious implications for the student's college plans and professional future. Because these misdemeanor tickets are prosecuted in adult criminal courts rather than in the juvenile system, they carry the same consequences that a criminal conviction carries for adults – the protections afforded to youth in the juvenile system do not apply to these cases. Youth appear in court without appointed counsel and often simply plead guilty or "no contest." If a student is convicted, he or she may have to reveal the conviction on college and job applications. These convictions may also bar a student from joining the military, and can carry consequences for professional licenses.

Students also may be arrested on Texas campuses when they are charged with a Class B misdemeanor offense or higher. Appleseed's data shows that most school-based arrests are made for non-violent offenses. In many cases, the behavior does not appear to merit this harsh result. Examples of stories that parents or attorneys have shared with Texas Appleseed include:

- An 11-year old special needs student who was arrested for "assault on a public servant" after throwing a packet of papers at her teacher.
- A 17-year-old student with Asperger's who was arrested and put in jail for striking her teacher's aid. The student, who weighed 95 pounds and was barely five feet tall, did not injure the aid.
- A middle school student who became annoyed with the boy behind her who was kicking the back of her chair. After repeatedly telling him to stop, she jabbed his ankle with her pencil. The pencil broke the skin – requiring the boy to get a bandaid from the nurse's office. The young woman was arrested for "aggravated assault with a deadly weapon."

While Texas Appleseed in no way condones classroom disruption, use of profanity, schoolyard fights, or assaultive behavior – it is in not clear that the use of law

enforcement is an appropriate or effective way of managing this type of low-level misbehavior.

Rather, there is a great deal of evidence that suggests that use of school-based law enforcement to correct non-violent misbehavior leads to poor outcomes. Multiple studies have documented the problems associated with relying on school police to correct misbehavior through arrest or referrals to the juvenile justice system.<sup>9</sup> In Texas, Tarrant County recently hired the National Center for School Engagement to conduct a review of the underlying reasons for truancy in the county's school districts. NCSE found, "Police tickets seem to serve to alienate students from school."<sup>10</sup> This tends to confirm conversations that Texas Appleseed has had with students and parents statewide. In fact, Texas Appleseed has learned that in some cases, high fines associated with tickets lead some parents to un-enroll their children from school, feeling their financial circumstances left them with no other option.

### III. Better Options Exist

#### A. School-wide Positive Behavioral Interventions & Supports (SW PBIS)

Better options do exist, and a well-developed body of research supports programs or models that not only reduce the total number of disciplinary referrals, but may also improve overall school culture and academics. One such program – School-wide Positive Behavioral Interventions and Supports (SW PBIS) – is becoming an increasingly popular alternative to “zero tolerance” disciplinary models. Several states have created statewide SW PBIS initiatives, providing technical assistance and support to schools and districts interested in the model.<sup>11</sup>

SW PBIS is based on the proven model that children perform best when they are explicitly taught what to do, when positive behavior is identified and praised, and when behavioral mistakes are corrected and met with effective consequences. Emphasis is on preventing misbehavior before it occurs, and celebrating positive behavior. SW PBIS schools report major improvements in academic performance (including standardized tests),<sup>12</sup> attendance, and school climate. This results in significant reductions in disciplinary referrals, school-based disciplinary actions (such as detentions or in-school

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<sup>9</sup> See Philip J. Cook, Denise C. Gottfredson & Chongmin Na, *School Crime Control and Prevention*, 39 CRIME & JUST. 313, 372 (2010); Catherine Y. Kim, *Policing School Discipline*, 77 BROOKLYN L. REV. 1, 26 (2012); Gary Sweeten, *Who Will Graduate? Disruption of High School by Arrest and Court Involvement*, 23 JUSTICE QUARTERLY 462, (2006).

<sup>10</sup> Tarrant County Truancy Task Force, *Truancy Solutions: A Collaborative Plan for Schools, Police Departments, Community Agencies and the Juvenile Justice System* (2012)(on file with author).

<sup>11</sup> For example, several states – including Florida, Illinois, and Maryland - have created state-level support programs for schools interested in implementing school-wide PBIS.

<sup>12</sup> See *Academic Achievement and the Implementation of School-wide Behavior Support*, available at [http://www.pbis.org/pbis\\_newsletter/volume\\_3/issue1.aspx](http://www.pbis.org/pbis_newsletter/volume_3/issue1.aspx).

suspensions), off-campus disciplinary actions (such as expulsions or placements in alternative schools), and referrals to special education based on behavioral concerns.<sup>13</sup>

## B. Social and Emotional Learning (SEL)

Social and Emotional Learning (SEL) is not one curriculum or program; rather, it is a systems change framework that should occur throughout the entire school.<sup>14</sup> In general, costs of implementing a SEL framework will include training costs and student surveys.<sup>15</sup> Hiring additional personnel is usually unnecessary.<sup>16</sup> Several specific frameworks or programs can be used to implement SEL, including Developmental Assets, Caring School Community program, and Tribes Learning Community.

The goal of SEL is to help children strengthen their ability to work constructively with others, manage their emotions, resolve conflicts with consideration for others, develop positive relationships, work more effectively, and make responsible, safe, and ethical decisions.<sup>17</sup> SEL can foster school improvement and can be implemented from preschool through high school.<sup>18</sup> Effective SEL programming taught consistently can reduce school dropout, nonattendance, conduct problems, and substance use.<sup>19</sup>

## C. Restorative Justice Model

Restorative Justice, when applied to a school setting, focuses on how student behavior has harmed others and how to make amends.<sup>20</sup> Schools often use the Restorative Justice model as a way to build community in schools and to strengthen connections between students and the school as an institution.<sup>21</sup> By building these connections, restorative

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<sup>13</sup> Robert Horner et al., *A Randomized, Wait List Controlled Effectiveness Trial Assessing School-Wide Positive Behavior Support in Elementary Schools*, *Journal of Positive Behavioral Supports*, Vol. 11, pp. 133-148 (2010); Jeffrey R. Sprague & Robert H. Horner, *School Wide Positive Behavioral Supports*, in *The Handbook of School Violence and Safety: From Research to Practice* (2007). For additional research on PBIS, please visit [www.pbis.org](http://www.pbis.org)

<sup>14</sup> Telephone Interview with Donna Black, Educational Consultant (Sept. 17, 2012).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *What Is SEL?*, COLLABORATIVE FOR ACADEMIC, SOCIAL, AND EMOTIONAL LEARNING, <http://casel.org/why-it-matters/what-is-sel/> (last visited Sept. 27, 2012).

<sup>18</sup> *Id.*

<sup>19</sup> See David Osher et. al, *Developing Safe, Supportive and Effective Schools: Facilitating Student Success to Reduce School Violence*, *Handbook of School Violence and School Safety* (2011).

<sup>20</sup> David R. Karp and Beau Breslin, *Restorative Justice in School Communities*, 33 *Youth & Society* 249, 250 (2001).

<sup>21</sup> *Id.*



justice focuses on student culture as a whole, rather than merely directing change at singular issues, such as drug and alcohol abuse.<sup>22</sup>

In a school setting, restorative justice often occurs in restorative circles in the classroom, where students can deal with the harm of student misbehavior or rule-breaking that has affected the classroom or school community.<sup>23</sup> A restorative circle in the classroom provides an opportunity to use community values to address the problem and allows everyone to communicate.<sup>24</sup> It is essential to have a whole school approach to restorative justice.<sup>25</sup> SW PBIS is a helpful framework to have in place or to implement with restorative justice.<sup>26</sup>

Ed White Middle School in San Antonio implemented the model by providing a two-day training, materials, and a part-time consultant to visit the school three to four days a week and to attend staff meetings.<sup>27</sup> The Institute of Restorative Justice and Restorative Dialogue at The University of Texas at Austin is using the model at Ed White for research on restorative justice.<sup>28</sup> Ed White uses the highly recommended whole school approach to restorative justice.<sup>29</sup>

#### D. These Options are Also More Cost Effective

While schools across the nation are facing budget shortfalls, SW PBIS, SEL, and Restorative Justice not only pay off with increased student attendance and significant reductions in disciplinary referrals, but also achieve these results at a fraction of the cost of suspensions and expulsions.

Texas Appleseed recently completed a survey of the financial costs to 11 school districts of suspension, expulsion, and school security costs.<sup>30</sup> During the 2010-2011 school year, **we found that these 11 school districts spent nearly a combined \$140 million** on out of school suspensions, referrals to Disciplinary Alternative Education Programs, and expulsions to the Juvenile Justice Alternative Education Programs.

In addition, these 11 districts also **spent about \$87 million on security**, monitoring services and campus policing. Spending on school security and policing far outweighs what these districts spend on social work services—a combined \$18.6 million, during the

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<sup>22</sup> *Id.*

<sup>23</sup> Telephone Interview with Dr. Marilyn Armour, Associate Professor, The University of Texas at Austin and Institute for Restorative Justice and Restorative Dialogue (Sept. 24, 2012).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Texas Appleseed, *Breaking Rules, Breaking Budgets: Cost of Exclusionary Discipline in 11 Texas School Districts* (2012).

2010-2011 school year. Spending additional resources on counseling and social work services could do more to address the root causes of student behavioral problems at school.

We compared the costs of exclusionary discipline to those of SW PBIS, SEL, and Restorative Justice and found that these programs are far more cost-effective than the use of traditional, exclusionary discipline.<sup>31</sup>

#### **IV. Conclusion**

Texas-based research demonstrates that the overreliance on suspension and expulsion have serious academic, financial, and public safety consequences. In addition to concerns regarding the effectiveness of suspension and expulsion, we have a growing concern over the “criminalization” common school misbehavior in Texas.

Texas is moving toward solutions. Several legislative initiatives have taken positive steps to decrease internal disciplinary referrals and Class C ticketing.<sup>32</sup> In 2011, the Governor’s office funded a pilot in Waco ISD that has reduced Class C ticketing in that district by 77 percent – and has announced plans to create a competitive grant for districts that wish to replicate this pilot.<sup>33</sup> As discussed in our Cost of Discipline report, many school districts have opted to implement alternatives that have both reduced disciplinary referrals and costs associated with exclusionary discipline.<sup>34</sup> But more remains to be done.

We thank the Subcommittee for its interest in the issue, and for holding this hearing – public forums dedicated to engaging stakeholders in finding solutions to this problem are critical.

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<sup>31</sup> *Id.* at 73.

<sup>32</sup> See Council of State Governments, *supra* note 4, at 9.

<sup>33</sup> Office of the Governor Criminal Justice Division, Waco Independent School District & Public Policy Research Institute of Texas A&M, Powerpoint Presentation: Re-thinking Law Enforcement in Texas Schools (2012)(on file with author).

<sup>34</sup> Texas Appleseed, Cost of Discipline, at 73-76.