

# ***The Discipline Dish***

**Bimonthly newsletter about the school-to-prison pipeline in Wake County**

**May/June 2011**

## **Background**

The school-to-prison pipeline is a system of laws, policies, and practices that pushes students out of schools and into the juvenile and criminal justice systems. Unmet educational needs (including special education), academic failure, high-stakes testing, excessive use of suspension and expulsion, over-policing, excessive school-based arrests and court referrals, and a lack of interventions and alternatives all contribute to students ending up in the pipeline.

Wake County has one of the largest school-to-prison pipelines in the nation. Last school year (2009-2010), the Wake County Public School System (WCPSS) had:

- 19,392 short-term suspensions (lasting one to 10 school days), 837 long-term suspensions (lasting the rest of the school year), 10 365-day suspensions, and 10 expulsions (permanent removal from the school system);
- 54 law enforcement officers, six security investigators, and dozens of private security guards assigned full-time to public schools;
- 648 school-based court referrals for students age 15 and younger (WCPSS does not track the number of school-based arrests and criminal court referrals for students age 16 and older); and
- Huge racial disparities—e.g., Black students represented 26% of students in WCPSS, but received 61% of short-term suspensions, 63% of long-term suspensions, 80% of 365-day suspensions, 80% of expulsions, and 63% of school-based delinquency complaints.

For more background on the school-to-prison pipeline, visit: [www.legalaidnc.org/acs/stpp](http://www.legalaidnc.org/acs/stpp).

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## ACS RELEASES NEW REPORT ON SUSPENSIONS AND EXPULSIONS IN WAKE COUNTY PUBLIC SCHOOLS

On March 22, 2011, Advocates for Children's Services (ACS) released a new report: *Suspensions and Expulsions in Wake County Public Schools (2009-10)*. Key findings for the 2009-10 school year include:

- Suspensions declined; however, they remain high. There were 19,392 short-term suspensions (suspensions lasting 1-10 school days) and 837 long-term suspensions (suspensions lasting the entire rest of the school year).
- Five students were suspended for 365 days and 10 students were permanently expelled from WCPSS.
- Male students, Black students, and students with disabilities were suspended at hugely disproportionate rates. For example, students receiving special education services were 12.7% of all students, yet 29.9% of students who received at least one suspension. Male students were 50.9% of all students, yet 69.6% of students who received at least one suspension. Black students were 25.9% of all students, yet 57.6% of students who received at least one suspension. They were 6.0 times more likely than White students to receive a short-term suspension and 6.9 times more likely than White students to receive a long-term suspension. They also were given 80% of 365-day suspensions and 80% of expulsions. Finally, 17.0% of all Black students received at least one suspension or expulsion, compared to 3.4% of White students.
- WCPSS ranked 2nd and 70th in NC in terms of the number and rate of short-term suspension, respectively.
- WCPSS ranked 1st and 5th in NC in terms of the number and rate of long-term suspension, respectively.
- Suspension numbers and rates varied greatly across schools.
- Out-of-school suspension was used for minor violations. For example, there were 4,598 short-term suspensions for "non-compliance" and 2,326 short-term suspensions for "class/activity disturbance." There were also 64 students suspended for the rest of the school year "non-compliance," "intimidation/disrespect," or "class/activity disturbance."

The report was distributed to thousands of Wake County citizens and covered in *The News and Observer*, WakeEd Blog:

- <http://blogs.newsobserver.com/wakeed/advocates-for-childrens-services-look-at-wakes-2009-10-student-suspension-data>

For the full report, visit:

- [www.legalaidnc.org/Public/ACS/IssueBrief\\_Mar-11\\_WCPSSsusp-expul\\_09-10.pdf](http://www.legalaidnc.org/Public/ACS/IssueBrief_Mar-11_WCPSSsusp-expul_09-10.pdf)

## SUPERINTENDENT'S PROPOSED BUDGET INCLUDES ADDITIONAL SEATS IN ALTERNATIVE SCHOOLS AND PROGRAMS



WCPSS has not expanded seats for alternative learning paths since the opening of River Oaks in 2005, even though the student population in the district has grown by 19% (120,540 to 143,289). From 1996-97 to 2008-09, WCPSS contracted with Richard Milburn School to serve middle and high school students who were long-term suspended. Funding for the school was eliminated by the Board in 2009, leaving only four alternative schools with the capacity to serve a total of 530 students.

In November 2010, the WCPSS Evaluation and Research Department recommended expanding alternative options for students at risk of, or experiencing, short- and long-term suspension. The Department's report noted:

"Students at WCPSS alternative schools receive benefits such as smaller classes and greater access to counseling services. Student data also indicate that these environments help build student resiliency. Base school personnel understand some aspects of the alternative schools, but greater transparency is needed, especially at the high school level. Additional alternative education sites are needed to better meet the needs of at-risk elementary students. Comprehensive services and settings for long-term suspended students and students with severe behavioral issues who are ineligible for special education services should also be created...WCPSS does not provide a physical site for long-term suspended students and most other districts do. The capacity for WCPSS students served at each setting is generally lower as well...The largest gap appears to be in serving more at-risk elementary students. Additionally, the district is in need of a site for students with severe behavioral issues who are not eligible for special education services and a separate setting for students serving long-term suspensions. WCPSS should also partner with community agencies to provide more alternative education sites."

The report presented five recommendations:

- 1) Increase the capacity for serving students district-wide by creating more alternative options for students;
- 2) Make information about the alternative education options more readily available and accessible and clearly specify the purpose and target population serve;
- 3) Increase communication to base schools regarding the services available and student progress and establish a more standardized transition process;
- 4) Frequently review and adjust alternative school allotments; and
- 5) Increase the intentional building of protective factors at alternative schools to increase resiliency among students facing life challenges.

The Superintendent's proposed budget, and accompanying re-allocation of funds, would add the resources necessary for an additional:

- 130 seats in alternative schools (see chart below for more information);
- 90 seats for elementary school students in the BRIDGES (Building Resources for Individual Developmental Growth and Educational Success) Program, a short-term intervention for students with disruptive behavior located at the Mount Vernon site;
- 330 in-school suspension seats in middle schools (up to 45-day placement for students with persistently disruptive behavior);
- 210 in-school suspension seats in high schools (up to 45-day placement for students with persistently disruptive behavior); and
- Transportation for 60 middle and high school special education students to Heritage High School and for 100 high school students to Mary E. Phillips High School night school.

The total cost of salary and benefits for the expansion is \$1,892,164 and the total cost for the additional transportation is \$682,062, for a total of \$2,574,226. A reduction to contract services and removal of one-time allotment of tutor funds would be used to cover the expansion of alternative school programs.

School	Description	Existing Seats	New Seats	Total Seats
Mt. Vernon	Middle school students w/ attendance, academic, and/or behavioral challenges	105	0	105
River Oaks	Middle school students w/ attendance, academic, and/or behavioral challenges	105	0	105
Mary Phillips	High school students w/ attendance, academic, and/or behavioral challenges	200	100 (in night program)	300
Longview	Has been for middle and high school students receiving special education services; however, non-disabled students would be added under the proposed budget	120	30	150
<b>Total:</b>		<b>530</b>	<b>130</b>	<b>660</b>

For the Evaluation and Research Department report on alternative educational options, visit:

- [www.wcpss.net/evaluation-research/reports/2010/1015alt\\_options.pdf](http://www.wcpss.net/evaluation-research/reports/2010/1015alt_options.pdf).

For coverage of the Superintendent's proposed budget, visit:

- [www.wcpss.net/budget/2011-12-spb/2011-12-spb.pdf](http://www.wcpss.net/budget/2011-12-spb/2011-12-spb.pdf)
- [www.newsobserver.com/2011/03/15/1056106/tatas-budget-plan-would-cut-jobs.html](http://www.newsobserver.com/2011/03/15/1056106/tatas-budget-plan-would-cut-jobs.html)
- [www.newsobserver.com/2011/03/16/1056680/schools-budget-spare-teachers.html](http://www.newsobserver.com/2011/03/16/1056680/schools-budget-spare-teachers.html)

For the Superintendent's complete proposed budget, visit:

- [www.wcpss.net/news/2011\\_mar15\\_budget-proposal/](http://www.wcpss.net/news/2011_mar15_budget-proposal/)

## **WAKE COUNTY SUPERIOR COURT JUDGE RULES IN FAVOR OF STUDENT SUSPENDED FOR FIGHT AT BUS STOP**

In September 2009, WCPSS long-term suspended a ninth grade Millbrook High School student for a fight that occurred at a bus stop before school. The student appealed to the Superintendent and Board of Education, both of which upheld the long-term suspension. The case was then appealed to the Wake County Superior Court.

In March 2011, Judge Carl Fox ruled that WCPSS should not have suspended the student. He reasoned that the Board did not have jurisdiction to suspend the student because the incident did not occur in school, on school property, at a school-sponsored event, or at a related school activity. Ultimately, Judge Fox reversed the decision by the Board to uphold the long-term suspension and ordered the Board to remove any reference to the misconduct from the student's records.

*Submitted by: The student's attorney*

I recently had the 4th appeal hearing in the case of yet another North Carolina public school student suspended for an entire school year. I continue to expect to hear that there is some event or condition I earlier missed in the proceedings or alleged events that will justify the District's action. We have been through appeal to the Superior Court and still, opposing counsel has nothing new to say; no justification for the bizarre waste of time and school resources prosecuting this case.

This sounds like I am blaming the school system for the actions of a misbehaving student. Frankly, I think I am as concerned for the safety of our public school students as anyone, but safety is clearly not the issue here. Even their attorney during our hearing yesterday was noticeably uncomfortable trying to make the case that this young high school student, with no prior record, plenty of provocation, no real connection of the alleged event to a school, and no significant resulting injury to anyone, should remain out of school for an entire school year.

When I tell these stories to friends, other lawyers, people with no connection to the legal system, but with kids or grandchildren in school, they are amazed. I have to wonder, why is this still amazing? For example, Wake County public schools continues to remove more kids for the remainder of the school year, per capita, than any other district (14 times that of Durham; more than 7 other districts combined; almost 30% of all in NC).

Why no public outcry about this? People must not know how clearly unfair are the school system actions. Just as an example, my client in this case is learning disabled; in his 2nd year of 9th grade; receiving special services for his disability; and working hard. He has committed no prior significant misbehavior. On the particular occasion complained of, there were threats or shoving or both, and my client hit the other student for terrorizing and racially demeaning his little brother, and himself. Shortly thereafter the two boys mounted their respective school buses, and went to their respective schools and that was the end. In fact, after complaint by my client's parents to the middle school authorities about the alleged "victim" in our case, the family moved out of the neighborhood – Yes, my client's family moved out of the neighborhood to protect their son from these bullies – there was no more trouble at home, on the bus or at school.

It is for this that my client was suspended from school until the end of the school year. You would expect that some serious injury resulted from my client's actions, or that his behavior took the form of extreme retaliation. There was no such allegation. There was no such evidence. The "victim" did not even show up to testify or submit a statement. There was no outcry from his parents; no medical report or bill. Yet my client was summarily removed for the remainder of the school year.

I mentioned he is learning disabled as that term is understood within the Exceptional Children division of the school district and governed by Federal Law (20 USC §1400 et seq). What the school system offered as alternative education during his suspension was "homebound services." We all know that this consists of between 2 and 6 hours per week of meetings – outside of school – with a certified teacher. The one assigned to my client refused to teach him math because she determined that she was not capable of teaching a learning disabled child in math. She apparently determined that there was no one else who might be helpful for him in math, because he only received help in one other subject.

Recall that this was his second year in 9th grade. Obviously, he is headed for a third. Yet, as in all things, he accepted the judgment of the District in all this, doing what he could with what was provided. His parents are not from this country. They do not speak English well and struggle to keep food on the table for 4 children, the youngest being just a baby. They are not able to, nor have they the time to, learn and demand their rights of the public school system.

The school system charged my client with intentionally causing serious bodily injury, fighting/aggression, causing a school/class disturbance, and threats and intimidation. You should really read the first and the last of these, as they could not be more puzzling and bizarre for having been leveled at my client. The first is fairly self-explanatory, but includes a long list of that which could be considered "serious physical injury," e.g. broken bones, lacerations needing stitches, permanent injury, that which requires more than simple first aid care. The last allegation is even more puzzling: "Intimidation, bullying, repeated teasing or taunting, or the use of offensive or degrading language including, but not limited to, remarks that demean a person's race, religion, sex, national origin, disability, intellectual ability or physical attributes are specifically prohibited."

This could not have been more on target for the offenses committed by the "victim" in our case, as an accurate description of what he did to my client's little brother on a daily basis. Why the school did not instead devote time to trying to bring these two families together (assuming the "victim" has a family), or to encouraging or requiring the "victim" to get a professional evaluation of his hateful behavior, I cannot understand. Counsel for the school system has no idea what if any effort has been made in that regard. My client is back in school, doing his best to be able to graduate some day -- compliant as ever.

I will say that when we reached the Board of Education level of appeal, the panel of Board members did vote to end the suspension and placed my client in a true structured educational setting where he got the

help he needed. This was almost 7 months after the suspension began. I have to think this was some acknowledgment of mistake on the part of the system. Yet there was no apology or other attempt to right a wrong, nor any other encouragement.

I said in the beginning that I still wait to learn of something I have missed that would justify all that has befallen this young man. I conclude there is no justification, and our school system has become a failed bureaucratic structure that settles for teaching those who will learn in most any setting, and removing or neglecting those who need our assistance the most. This situation was such an obvious “teachable moment” for all concerned, and our schools failed to do the easy, right and least costly thing. Unfortunately, this is not the exception, but only the most recent example of such disgraceful and angering action.

For Judge Fox's order, visit:

- [www.newsobserver.com/content/media/2011/3/23/courtorder.pdf](http://www.newsobserver.com/content/media/2011/3/23/courtorder.pdf)

For coverage of the case, visit:

- [www.newsobserver.com/2011/03/22/v-print/1071608/judge-rules-in-favor-of-student.html](http://www.newsobserver.com/2011/03/22/v-print/1071608/judge-rules-in-favor-of-student.html)
- <http://blogs.newsobserver.com/wakeed/judge-rules-wake-cant-suspend-student-for-fight-at-bus-stop>

## WAKE COUNTY EDUCATION JUSTICE ADVOCATES PARTICIPATE IN DIGNITY IN SCHOOLS CAMPAIGN'S DAYS AT THE CAPITOL

*Submitted by: Bridgette Burge, Director of Advocacy and Community Initiatives at the YWCA of the Greater Triangle*



From left to right: Ronald Battle, Akiba Byrd, Rukiya Dillahunt

YWCA of the Greater Triangle's mission is to eliminate racism and empower women. YWCA's Advocacy and Community Initiatives department supports groups like the Parent Advocacy Work Group (PAWG), which aims to strengthen a community of confident, knowledgeable adult and student advocates for equity and justice in public education.

The YWCA of the Greater Triangle recently signed on to the Dignity in Schools Campaign's (DSC) letter to Congress proposing important education reforms in the Elementary and Secondary Education Act (ESEA), which is a piece of No Child Left Behind (NCLB) legislation. DSC challenges the systemic problem of pushout in our nation's schools and advocates for the human right of every child to a quality education and to be treated with dignity. DSC invited organizations that signed on to the letter to participate in Lobby Days in DC from April 10-13. YWCA invited three members of PAWG to attend: Rukiya Dillahunt, PAWG chair; and Akiba Byrd and Ronald Battle, parent advocates in Wake County public schools. Bridgette Burge, YWCA's director of Advocacy and Community Initiatives, accompanied them on the trip.

The ESEA is a core part of federal law about public education that is supposed to be reauthorized every five years, but it is now four years overdue. It was originally enacted in 1965 during the tumultuous Civil Rights Movement to legalize and enforce racially integrated public schools. Since 2002, ESEA has become commonly known as NCLB. Grassroots education justice advocates from ten states came to DSC's Days at the Capitol to call for prompt reauthorization of ESEA because we understand the important role this federal legislation plays in fighting decades of racist policies supported by state governments.

However, some important changes need to be included in ESEA's reauthorization. NCLB ushered in some important reforms such as mandating disaggregated data from school systems so that communities could see how students of different subgroups (race, class, disability, first language, and others) perform academically and how subgroups are treated in disciplinary matters. Unfortunately, NCLB also took some devastating missteps. It has created a culture of drill-and-kill high-stakes testing, punishment of teachers and schools for underperforming, and has led to an increase in racist and classist school pushout.

The four members of the North Carolina delegation met with staff members of Senator Kay Hagan and Senator Richard Burr, and attended lobby sessions with two other high-level, influential committees. We are calling for ESEA reauthorization to:

- Improve disciplinary data collection;
- Implement positive, well-funded reforms to decrease pushouts and oppressive discipline practices;
- Create new funding for community partnerships to help reduce students' exposure to the juvenile justice system; and
- Ensure federal oversight and accountability for 100% of schools, not just the lowest performing 5% of schools. We know that even in the "best" systems there are "schools within schools" that harm students of color, students with disabilities, students learning English, and low-wealth students.

We will join DSC again in July for another round of Days at the Capitol. We will also be working more closely with allied organization in the southeast and in other parts of the country. This summer, PAWG will host a Parent Education Justice Institute and we are planning a regional activist camp in partnership with the Advancement Project, DSC, and other wonderful organizations.

Join us! [www.ywcatriangle.org](http://www.ywcatriangle.org) or [www.wakehelp.org](http://www.wakehelp.org).

For more information about the DSC Days at the Capitol 2011, visit:

- [www.dignityinschools.org/content/report-back-dsc-days-capitol-2011](http://www.dignityinschools.org/content/report-back-dsc-days-capitol-2011)

## **WAKE COUNTY EDUCATION JUSTICE ADVOCATES CONDUCT SCHOOL-TO-PRISON PIPELINE WORKSHOP AT THE NC JUVENILE SERVICES ASSOCIATION SPRING CONFERENCE**



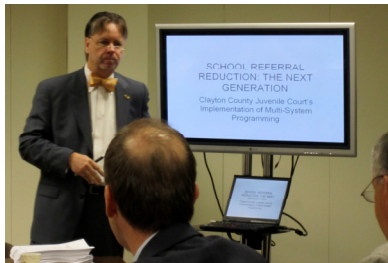
From left to right: Omisade Burney-Scott, Rukiya Dillahunt

On March 31, 2011, three Wake County education justice advocates--Omisade Burney-Scott, Rukiya Dillahunt, and Jason Langberg--conducted a two-hour workshop at the North Carolina Juvenile Services Association Spring Conference. The Conference was held in Carolina Beach and attended by over 200 services providers (e.g., juvenile court counselors) from across the state. The approximately 80 workshop attendees: participated in reflective activities; learned about the size and complexity of North Carolina's school-to-prison pipeline, potential solutions, students' rights, and how to work effectively with families and schools; and engaged in group discussion and planning. Omisade, Rukiya, and Jason were able to use their experiences fighting Wake County's school-to-prison as examples throughout the workshop. They have since been asked to conduct presentations in counties throughout North Carolina.

## JUDGE TESKE VISITS WAKE COUNTY TO DISCUSS SCHOOL-BASED COURT REFERRALS

Last state fiscal year in Wake County:

- There were 54 law enforcement officers, six security investigators, and dozens of private security personnel assigned full-time to Wake County public schools;
- There were 648 school-based delinquency complaints filed against students age 15 and younger;
- 63% of the school-based delinquency complaints were against Black students, even though they only represented 26% of students in WCPSS; and
- Hundreds of complaints were filed for minor offenses, such as disorderly conduct (68), communicating threats (14), and simple assault (91).



On April 13, 2011, Steven Teske, a juvenile court judge in Clayton County, Georgia, visited Wake County to conduct a presentation at the Legislative Services Building. State officials, representatives from the North Carolina Department of Juvenile Justice and Delinquency Prevention, advocates, and others attended the presentation.

Clayton County, Georgia has made substantial improvements in the number of students being sent from schools to the juvenile justice system. This effort was spearheaded by Judge Teske after he learned that referrals to law enforcement skyrocketed as soon as school resource officers were stationed at local schools. In fact, in the mid- to late nineties, there were only 89 referrals per year, but in 2004, after the placement of these officers, referrals increased to 1,400. To combat these numbers, in 2001, Judge Teske helped enact a school conflict diversion program as an alternative to law enforcement. Also, Judge Teske found that those students who became involved with the court system were more likely to recidivate, or commit another crime at a later point, than those who were disciplined more informally or were enrolled in a diversion program instead. He also found that zero tolerance was widely used throughout county schools, despite the fact that there was little to no evidence of its effectiveness.

Judge Teske decided to spearhead a community-driven process to create an agreement that would prevent and reduce the number of referrals to juvenile court. To engage as many people as possible to form a working group, he spoke with local civic groups and churches, and placed an advertisement in local newspapers. To ensure that the working group's product would be effective, the members engaged in the following steps:

- Identified key stakeholders and gained their input and perspective, including school officials, juvenile court officials, prosecutors, public defenders, law enforcement members, and county citizens;
- Identified a neutral moderator to lead the group and developed principles and guidelines for drafting the agreement;
- Educated stakeholders on best practices, namely that low-risk youth be sent to diversion programs; and
- Mandated cross-training be provided to law enforcement, counselors, school staff, and juvenile intake officials to ensure understanding of how to use the agreement before it was put in place.

In the summer of 2004, members of the juvenile justice system, law enforcement, the local school system, and social services groups teamed up to draft a cooperative agreement aimed at limiting the overall number of school referrals to juvenile court and reducing the disproportionate contact students of color have with school discipline and the juvenile justice system. The cooperative agreement ensures that "misdemeanor delinquent acts," like fighting, disrupting the public school, disorderly conduct, most obstruction of police, and most criminal trespass, do not result in the filing of a complaint unless the student commits a third or subsequent similar offense during the school year, and the principal conducts a review of the student's behavior plan. Thus, youth receive warnings after a first offense and referral to

mediation or school conflict training programs after a second offense. Furthermore, elementary school-aged youth cannot be referred to law enforcement for “misdemeanor delinquent acts” if committed on school premises.

Since 2004, when the agreement was implemented, the existence of dangerous weapons on campuses has decreased by 70%. Moreover, police officers’ relationships with students have improved, allowing students to converse more comfortably with the officers and be more willing to provide critical information on serious school crimes when necessary. In addition, since the cooperative agreement was put into place, there has been an 87% decrease in fighting offenses and a 36% decrease among other “Focus Acts,” which includes disorderly conduct, obstruction of an officer, and disrupting a public school. Furthermore, there was an 86% and 64% decrease in referrals for fighting and disruption of public school offenses, respectively, specifically for African American youth. Since the agreement was implemented, graduation rates have increased by 20%. (*The above overview is excerpted from the Advancement Project’s Stop the Schoolhouse to Jailhouse Track website.*)

For more information about the agreement in Clayton County, Georgia, visit:

- [www.stopschoolstojails.org/clayton-county-georgia.html](http://www.stopschoolstojails.org/clayton-county-georgia.html)
- [www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative/Resources/May10newsletter/FeatureStory.aspx](http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative/Resources/May10newsletter/FeatureStory.aspx)

Similar efforts have taken place in Jefferson County, Alabama. For more information, visit:

- [www.stopschoolstojails.org/content/jefferson-county-alabama](http://www.stopschoolstojails.org/content/jefferson-county-alabama)
- [www.juveniledefender.org/files/Childish Behavior, Criminal Behavior.pdf](http://www.juveniledefender.org/files/Childish%20Behavior,%20Criminal%20Behavior.pdf)

For ACS’ most recent report about law enforcement officers in Wake County public schools, visit:

- [www.legalaidnc.org/public/learn/statewide\\_projects/acs/ACS\\_Publications/IssueBrief\\_Feb-11\\_LawEnforcementOfficersInWakCountySchools-Human-Educ-FinancialCosts.pdf](http://www.legalaidnc.org/public/learn/statewide_projects/acs/ACS_Publications/IssueBrief_Feb-11_LawEnforcementOfficersInWakCountySchools-Human-Educ-FinancialCosts.pdf)

For additional publications about the presence of the law enforcement officers in schools, visit:

- [www.dignityinschools.org/content/policing-criminalization-and-pushout-0](http://www.dignityinschools.org/content/policing-criminalization-and-pushout-0)

## STATE LEGISLATION PROPOSED THAT COULD IMPACT STUDENT DISCIPLINE IN WAKE COUNTY

*Submitted by: Chris Hill, Education and Law Project Director, North Carolina Justice Center*



There have been a number of bills introduced in this session of the North Carolina General Assembly that concern student discipline.

House Bill 467 with the short title “Improve School Discipline” revises G.S. 115C-390 by adding language that states that any student seeking to sue school personnel for the use of excessive force must file an appeal to the board of education in the school district and for a determination that excessive force was used before filing an action in court. If the school board finds that excessive force was not used then the student who is suing must overcome the presumption that the school personnel used reasonable force. The bill also creates a new

section called the “Teacher Prevention Act.” This act protects school personnel from being sued for certain actions related to control of students as well as other actions. It also creates penalties for students who make false reports.

Companion bills to modify the law on corporal punishment have been introduced in the House and Senate. House Bill 579 and Senate Bill 498 would only allow students to be subject to corporal punishment if their parent or guardian signed a form allowing it. Senate Bill 498 passed out of the

Education/Higher Education Committee but was re-referred after there was discussion whether the law should be for parents to have to opt-in to have their children subject to corporal punishment or whether they should have to opt-out. An amendment to the bill was offered in committee which changed the bill to one where parents would have to affirmatively opt-out of having their students subject to corporal punishment.

House Bill 770 short titled “Reduce & Prevent School Discipline Problems” addresses issues to reduce disruptive behavior as well as to reduce the rates of suspensions and expulsions. The bill encourages boards of education to create policies in their safe school plans that create alternatives to suspension and the prevention of disruptive behavior through positive behavioral intervention and conflict resolution.

Two bills to amend the laws regarding school discipline have been filed. House Bill 736 and Senate Bill 648 intend to clarify the school discipline law and codify court cases that have been decided since the law was first written. The bills are designed to make the school discipline law easier to navigate and create less litigation. They will also keep students from being overly disciplined for minor issues like dress code violations. House Bill 736 was ordered engrossed out of the House. Senate Bill 648 was amended and passed out of the Senate’s Education/Higher Education Committee.

Senate Bill 394 clarifies the process for principals about what offenses they have to report to law enforcement. This bill addresses a requirement by the State Board of Education that every offense that takes place on school grounds be reported to law enforcement. This can lead to the over-criminalization of student conduct. The language in the bill would only require principals to report the offenses named in the law.

Senate Bill 707 which carries the short title of the “School Violence Prevention Act” would require a local board of education to expel a student or provide alternative education to a student who “has been convicted of a felony, adjudicated delinquent for an offense that would be a felony if committed by an adult, arrested two or more times, or alleged to be delinquent or undisciplined two or more times.” This would mean that a student could be removed from school simply for allegations of delinquency. This bill also creates the offense of and penalties for “cyber-bullying.”

For information about the status of these bills or any other legislation, visit the North Carolina General Assembly website: [www.ncga.state.us](http://www.ncga.state.us).

## **SUPREME COURT OF THE UNITED STATES HEARS NORTH CAROLINA CASE ABOUT INTERROGATIONS IN SCHOOLS**

*Submitted by: Barbara Fedders, Assistant Clinical Professor of Law, UNC-Chapel Hill School of Law*



On March 23, 2011, the United States Supreme Court heard arguments in a case that originated in Chapel Hill but will affect the rights of youth nationwide. *J.D.B. v. North Carolina* started over three years ago in Smith Middle School. J.D.B. was a 13-year-old special education student who was pulled out of his social studies class on orders of an off-campus police officer, brought to the principal’s office, and interrogated about a crime that had occurred in his neighborhood a few days earlier. The off-campus officer questioned him in the presence of a school resource officer, the principal, and an adult intern with the office door closed. J.D.B.’s legal guardian, his grandmother, was never called.

While J.D.B. did not initially want to talk with the officer, he eventually relented and made incriminating statements when the officer told him to “do the right thing” and tell the truth and then threatened to obtain a detention order. Only after the confession did the officer read him his Miranda warnings. J.D.B. was

eventually convicted of a break-in offense, and he appealed. Three years later, the U.S. Supreme Court agreed to hear his appeal when the North Carolina Supreme Court ruled against him.

The issue that the Supreme Court considered is what rights youth are entitled to when being questioned by the police. People suspected of crimes must be given warnings – known as “Miranda” warnings, after the 1965 case *Miranda v. Arizona* – if they are questioned while in police custody. An individual is typically considered to be in custody if a reasonable person in his or her position would not feel free to leave. Specifically, the issue before the Court in *J.D.B.* was whether the age of a suspect is a relevant factor for the police and courts to consider in determining whether that individual is in custody for Miranda purposes.

Barbara Blackman, a Durham, N.C. lawyer representing J.D.B., focused her argument on the fact that age is an objective factor similar to other characteristics – length of interrogation, whether a suspect is handcuffed, location of the interrogation – that police and courts consider in determining whether a suspect is in custody. She also noted that while age may sometimes be difficult for an officer to discern, it certainly was clear given that the interrogating officer had gone to a middle school to question J.D.B. The attorneys for the state argued against any requirement that a child’s age be considered in the custody analysis. They contended that to do so would lead down a slippery slope in which police and courts would then also be required to consider a suspect’s mental status and language abilities prior to determining whether to administer Miranda warnings. That, they noted, would improperly complicate what should be a bright-line rule.

Based on their questions and comments during the lawyer’s arguments, as well as the views they have expressed in prior cases, the Supreme Court justices appeared divided; four seemed sympathetic to J.D.B.’s case, and four expressed concern that allowing a consideration of age would open the floodgates to a host of other challenges to Miranda. The key would seem to be how Justice Kennedy decides, yet his views were difficult to determine. At one point during the argument, Kennedy seemed troubled by the argument that age was something that police should have to take into account prior to questioning suspects. Later, though, he expressed puzzlement over how the “reasonable person” test made any sense without consideration of a suspect’s surrounding circumstances – i.e., whether he was questioned in a school, and whether he was a child at the time of the questioning. Kennedy is the author of *Roper v. Simmons*, the 2005 case that abolished the death penalty for people who committed crimes while younger than 18, and *Graham v. Florida*, the 2010 case that ruled that life without parole was unconstitutional for non-homicide crimes committed by people under age 18. Yet his views in the past have been against expanding the Miranda analysis to include additional characteristics in the custody analysis. However, what Justice Kennedy decides may well determine whether a young person’s age is taken seriously or ignored by the police and by our courts for the near future.

A decision is expected sometime this summer.

The transcript of the argument can be found here:

- [www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/09-11121.pdf](http://www.supremecourt.gov/oral_arguments/argument_transcripts/09-11121.pdf)

The audio of the argument can be found here:

- [www.supremecourt.gov/oral\\_arguments/argument\\_audio\\_detail.aspx?argument=09-11121](http://www.supremecourt.gov/oral_arguments/argument_audio_detail.aspx?argument=09-11121)

All of the briefs can be found here:

- [www.americanbar.org/publications/preview\\_home/publiced\\_preview\\_briefs\\_march2011.html-carolina](http://www.americanbar.org/publications/preview_home/publiced_preview_briefs_march2011.html-carolina)

An interview with some of the original court officials involved in the case can be found here:

- [www.wchl1360.com/archivesHomewide.html?sid=890](http://www.wchl1360.com/archivesHomewide.html?sid=890)

For coverage of the case, visit:

- [www.cnn.com/2011/CRIME/03/23/scotus.child.suspects/](http://www.cnn.com/2011/CRIME/03/23/scotus.child.suspects/)
- [www.newsobserver.com/2011/03/23/1076324/us-supreme-court-hears-nc-case.html](http://www.newsobserver.com/2011/03/23/1076324/us-supreme-court-hears-nc-case.html)

- [www.newsobserver.com/2011/03/24/1077030/highest-court-hears-cooper.html](http://www.newsobserver.com/2011/03/24/1077030/highest-court-hears-cooper.html)
- [www.npr.org/2011/03/23/134800896/Supreme-Court-Weights-Miranda-Rights-For-Juveniles](http://www.npr.org/2011/03/23/134800896/Supreme-Court-Weights-Miranda-Rights-For-Juveniles)
- [www.latimes.com/news/opinion/commentary/la-oe-birckhead-miranda-20110502,0,3446986.story](http://www.latimes.com/news/opinion/commentary/la-oe-birckhead-miranda-20110502,0,3446986.story)

## PARENT'S PIECE

*The following was written by the mother of a WCPSS middle school student who was long-term suspended.*

I don't know how to start as it is a little complicated to talk about the frustrations of the scholastic programs, especially SCORE, as it is difficult to understand the system. To do that, I would have to take some classes. It is difficult and complicated, at least for my son, and the school is not doing much to help him. After they suspended him, they were not capable of providing him with the PEP, a necessary support. The classes are going to end and I have not seen any help. In reference to the long-term suspension, my son needs help and the methods they are using are not doing that. I had to put in Internet, something that I did not want in my home because right now, it is another bill for me. It is too much time to have kids being inactive and it is also frustrating for my son. What I hope and trust is that the system changes and a solution is given soon.

*The following was written by the mother of a WCPSS high school student who was long-term suspended.*

I am a stay at home mom with 4 kids. My oldest is in his first year of high school, the other three are in elementary school. A few months ago I was resting at home recovering from a severe case of pneumonia when the phone rang. The voice on the other end said, "We need for you to come down to the school as soon as possible. Your son has gotten himself in quite a bit of trouble. He has been charged with arson and is looking at a 365-day suspension." My heart sank. I couldn't even understand what the principal was saying to me. I ran and got dressed and flew to the school.

My son was being held in another room and they ushered me into an office with a police officer. The principal met me in there and told me that my son and another student had set the boys bathroom on fire and that they were identified by security cameras. I was told that they both confessed to it and wrote it down on paper. I asked why they would write it down and the principal told me that they asked them to, so they couldn't change their story later. Questions went through my mind like, "I thought children couldn't be questioned like that without parents present," "was he given the chance to remain silent," etc. I was in shock. Come to find out, my son and the other student had skipped the last few minutes of class. The other student mentioned he thought it would be funny to light the paper towel holder on fire and get everyone out of class. As they walked into the bathroom, the other student, who is a smoker, lit up the paper towels and they ran out of the bathroom.

Relief flooded over me. While I was still disturbed, I thought, "Well, my son didn't actually set anything on fire, no one was hurt, the school wasn't burned down, he was just in the wrong place at the wrong time. Surely his punishment won't be so severe." Boy was I wrong! They were going to charge him the same as the other student.

In order for you to fully understand how this situation has impacted our family, you have to have a little background about my oldest son, my exceptional son. I will try to keep this as brief as I can. My son has struggled academically all the way through school since he was in the 3rd grade. In fact, although he was promoted to 4th grade, I made the decision to retain him and home school him, so I could work with him on learning his multiplication tables. I enrolled him back in school into the 3rd grade for the second semester of school.

He continued to struggle even with the retention, with barely passing grades through the remainder of elementary school. By 6th grade, middle school, we really had a problem. In fact, his math teacher sent me an e-mail towards the end of the second semester stating that my child was "at a beginning 5th grade

math level.” I can’t express how many conferences I requested to discuss the reports that came home regarding my child’s “lack of organization,” “inability to turn in assignments,” “not asking questions in class”...in the middle of all of this, my son’s father who had not played a very active roll decided to sue me for custody because the court ordered him to pay child support after 10 years of getting off the hook. My son was interrogated and unnerved every time he had to visit. So unnerved in fact that he developed an ulcer. The case was eventually dropped, but left scars.

Meanwhile, because of an assignment in art class, my son became interested in an American contemporary artist by the name of Jasper Johns. He would check out books with his paintings in them, look him up online and asked us for some acrylics and canvases. He started to paint amazing pictures, some abstract, some impressionism, and when he would run out of canvases; he would look around for scrap wood to paint on. He was only 13 at this time.

His younger brother was given an electric guitar as a gift and before long my older son picked it up and began to play around with it. He asked if we would get him an acoustic for his birthday, which we did. A few months went by and after all the requisite AC/DC, Lynard Skynard, and Van Halen songs had been mastered and played to death, one day I heard coming from the other room “Für Elise” by Beethoven being played. What?! I went in to check it out and he had learned it by ear. He started playing Spanish guitar and found that he really enjoyed classic blues music. Not from the 60’s, 70’s or 80’s, but music from the 30’s. Artists like Robert Johnson, Blind Lemon Jefferson, and James “Son” House were his heroes and he sat for hours learning to play their songs by ear.

He became interested in bluegrass music and asked us for a mandolin. He quickly picked up this instrument and became skilled enough that he was asked to play gospel hymns for several church functions. Six months ago a friend of ours who was moving gave us an entire trap drum set. My son set it up in his room and began to play. I was outside recently working in my yard while he was playing and my neighbor (who happens to be a music teacher) asked me how long he had taken lessons. When I told her he had never had lessons and that he had only gotten them six months ago she was flabbergasted. When I say my son is exceptional, I mean he is gifted, he is profound and he is an amazing artist.

My son is a Jr. Deacon at our church and is the first to help out with church maintenance. He takes pride in the upkeep and beautification of the church and grounds. Whenever there is a fellowship meal or function, he seeks out the head deacon and inquires if there is anything he can do to help. Even though he struggled all through middle school, EVERY ONE of his teachers would tell me how polite and helpful he was and that they loved him so much.

He is no angel. He is a typical teenager with lots of mouth and he can be moody at home, but when he is with others, there are never any reports that would make me ashamed of him. This is why I was so taken back by this incident at school.

Finally, during his 8th grade year, another parent told me I should ask the school to have him evaluated and that they could diagnose him with any learning disabilities that he might have. I was a little angry that it was this easy and that even with all the conferences we have had none of the teachers or counselors bothered to let me in on this. Anyway, turns out, he was Learning Disabled (LD) in math and had issues with Executive Functioning and in Working Memory. He received an Individualized Education Program (IEP) that was put in place towards the end of his 8th grade year. This would be his saving grace during the suspension.

My son had given up by this time. He frequently expressed how he couldn’t wait until he turned 16 so he could quit school. This hurt my heart. I suffered from all of the same issues as my son during school and didn’t have any help. This led me to drop out in my second year of 9th grade. I couldn’t let this happen to him.

My son was lined up for his first semester of 9th grade with 4 core classes and no electives. This was overload and he failed all his classes for the first semester with the exception of his Curriculum Assistance class. He hated school. I would get e-mails that he had been sent to in-school suspension

(ISS) for skipping class. Teachers would tell me that he would just put his head down on his desk during class and not even try. Every morning was a nightmare getting him to get up and get ready for school. He seemed very frustrated and angry and expressed almost daily that he was going to quit school and didn't care if he failed. With the heavy workload and a not so adequate IEP, it seemed he was basically set up for failure.

As we rode home from the school the day he was suspended, I learned that a team of officers came and got him out of class and "frisked" him. I don't know the law, but to me, this was excessive. This was my baby. He made the statement to me that he absolutely was not going back to school, ever. He said, "I already got held back one time, if I get held back again I'll be two years behind my friends." He was embarrassed, ashamed and was mortified when I told him I was going to have to ask some of his friends' parents and elders and deacons in our church for character reference letters.

I was informed that because he had an IEP he was entitled to receive some home hospital classes away from school. We would be meeting the teachers at the library or coffee house and he would spend an hour or two a day with them receiving help with his studies. If he had not had an IEP in place, this would not have been available to him. As far as I know, the other student may not have this afforded to him and most likely will repeat the 9th grade next year. It's very unfortunate.

Because my son is receiving one-on-one instruction from his teachers now, he is thriving in his studies. He doesn't throw a fit when I ask him if he has homework and he sees that he is able to be successful and is learning to have confidence in himself. It is my opinion that if he had been given the help he needed earlier we wouldn't have ended up in this situation in the first place.

While this has been good in that my child is now getting the education he needs, it has been a burden and a hardship on our family. My husband and I made the decision for me to be a stay at home mom so I could be available for our children while they were in school. My husband is a mechanic and we always have everything that we need but there is not a lot of extra. The teachers won't come to our home, which I understand, but it leaves me no choice but to drive him every day to his class. There is no bus transportation. The problem is that my other three children get out of school at the same time I have to have him to class. They rode the bus home from school which helped with the gas budget every month. Now, I drop my oldest off, fly across town (in our Suburban which only gets 14 miles to a gallon of gas) to pick up the elementary kids, get back over to the other side of town and do any errands I may need to do in town since I'm trying to combine trips as I'm already spending an EXTRA \$70 a week in gas. Then we go pick up my older son, hurry home and by this time it's almost 5pm. I rush around trying to get dinner ready without much time to help anyone with their homework. My husband leaves the house at 6am and doesn't get home from work until around 7pm. He generally works 6 days a week and doesn't take a lunch break. Needless to say, I try to have homework, dinner, and drama done before he gets home so he can have some family time.

The only reason I have been able to be so involved in making sure my son is able to get to his classes, going to meetings with the attorneys that are helping to make sure he is getting his needs met and picking my kids up as opposed to them riding the bus is due to the fact that I am a stay at home mother. My sister, on the other hand, is a single mom. There would be no way she could have been so successful in getting her child help if she were in my shoes.

It doesn't seem fair to me that the kids who don't have LD aren't given the opportunity to finish their studies. It doesn't seem fair that without even understanding the circumstances behind a child's motives that such a severe punishment would be administered. Especially when my child didn't even do anything except to be standing in the wrong place when this all went down. To me, a more natural consequence for both of the boys would have been to take away some of their weekend time and have them paint the bathroom and clean up the smoke damage and maybe even stay after school and help out with other necessary maintenance. Instead, they banished the kids and possibly set them on a path to a life of mediocrity at best.

Every child has a significant story. Every child's history and home life should be taken into consideration before something so extreme is sentenced on that child. These are living, breathing, feeling, thinking beings. They are not numbers and statistics. I believe that children respond to love, a little caring and respect. Most of the time they are crying out for help and don't know how to ask for it. It's my opinion that a little more research into each individual child is warranted before a punishment like long-term suspension or expulsion is ordered.

My child's story is significant just like every child's story is significant. I imagine after reading about my kid you would like to meet him. Nobody bothered to look into his life and consider his circumstances before he was sentenced to long-term suspension. I feel this was an injustice. He is indeed exceptional and I am very proud of him. We all make mistakes.

### Resources for Students, Parents, and Advocates

For legal assistance with education issues:

- Advocates for Children's Services, [www.legalaidnc.org/acs](http://www.legalaidnc.org/acs), 919-226-0052
- Duke Children's Law Clinic, [www.law.duke.edu/childedlaw](http://www.law.duke.edu/childedlaw), 919-613-7169

To become more involved in advocating for an end to the school-to-prison pipeline in Wake County:

- YWCA of the Greater Triangle, [educationadvocates@ywcatriangle.org](mailto:educationadvocates@ywcatriangle.org), 919-828-3205 ext. 19

For research and information about the national movement to end the school-to-prison pipeline:

- Advancement Project, [www.stopschooltojails.org](http://www.stopschooltojails.org)
- Dignity in Schools Campaign, [www.dignityinschools.org](http://www.dignityinschools.org)

### WORDS OF WISDOM

"Even as the effectiveness of zero tolerance policies is being questioned, educational research has found a strong link between the types of punishment associated with these policies—suspension and expulsion—and a host of negative outcomes. Being suspended from school significantly increases the likelihood of subsequent suspension or expulsion. Students who receive a suspension in middle or high school are also significantly less likely to graduate on time and are more likely to drop out. Higher suspension rates have also been found to be related to lower school-wide academic achievement and standardized test scores, even when controlling for factors such as race and socioeconomic status... Psychological research has suggested that suspension and expulsion are likely to further reinforce negative behavior by denying students opportunities for positive socialization in school and nurturing a distrust of adults, both of which inhibit adolescent development. Educational research has suggested that school discipline policies are related to student engagement. Students who trust their teachers, and feel that their teachers are respectful, fair, and attentive, are more likely to form bonds with and perform well in school. By restricting the ability of school staff to put student actions into context in some cases, zero tolerance policies can inhibit the formation of school bonds. Questions also have been raised about the appropriateness of these policies for preventing bullying. The concern is that threats of severe punishment—such as suspension or expulsion—may actually deter children and adults from reporting bullying that they observe...Some schools have adopted nonpunitive approaches to deal with these problems. These programs emphasize social, behavioral, and cognitive skill-building; character education; or targeted behavioral supports for students who are at risk for violent or illegal behavior. In contrast to the lack of rigorous research about the effectiveness of zero tolerance policies, several experimental or quasi-experimental program evaluations indicate that programs using a nonpunitive approach to school discipline have had positive impacts on student behavior and academic achievement."

- Christopher Boccanfuso and Megan Kuhfeld, *Multiple Responses, Promising Results: Evidence-Based, Nonpunitive Alternatives to Zero Tolerance*, Child Trends, Research-to-Results Brief, Publication #2011-09, March 2011.

### **ABOUT THE DISCIPLINE DISH**

The goal of *The Discipline Dish* is to provide the citizens of Wake County with the information they need to:

- Understand the school-to-prison pipeline crisis and recent events related to the crisis;
- Hold policymakers accountable; and
- Advocate for more fair, just, and equitable school discipline policies and practices.

*The Discipline Dish* is published by Jason Langberg, an Equal Justice Works Fellow at Advocates for Children's Services (ACS). ACS is a statewide project of Legal Aid of North Carolina, Inc. ACS' managing attorney, three staff attorneys, and paralegal primarily engage in the following activities:

- Direct representation: ACS staff provide free, high-quality legal advice and representation for children from low-income families, primarily in education law matters, including school suspension and special education.
- Community education: ACS staff conduct "Know Your Rights" workshops for students and parents, as well as trainings for local service providers and advocacy organizations. Additionally, ACS staff engage in media outreach and publish fact sheets, reports, policy briefs, self-help guides, op-eds, articles, and other materials.

For more information about ACS, visit [www.legalaidnc.org/acs](http://www.legalaidnc.org/acs).

