

respect ability

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To: U.S. Commission on Civil Rights, Office of General Counsel
1331 Pennsylvania Ave NW, Suite 1150, Washington, DC 20425.
From: Jennifer Laszlo Mizrahi, President, RespectAbility
Re: Public Comments on the School to Prison Pipeline: Intersections of Students of Color with Disabilities
Date: January 16, 2018

RespectAbility hereby submits the following comments to the U.S. Commission on Civil Rights in strong support of ending the disproportionate, unjust and counterproductive use of suspensions and expulsions for children with disabilities and students of color. The continued use of these tools of exclusion worsens educational outcomes and decreases safety for all students. Much like criminal justice reform, there should be bipartisan consensus on the need to support students and prevent these harms from occurring. We believe OCR/DOJ school discipline guidance stands as a beacon of common sense in a sea of complexity. While education and disability can be confusing, the reality is that serious [racial disproportionality](#) occurs in special education. [Keeping regulations](#) aimed at changing these disparities is critical to promoting a better and safer school system.

Thank you for your hearing on the School to Prison Pipeline: Intersections of Students of Color with Disabilities. We too are concerned about the school to prison pipeline that unfairly traps thousands of students of color with disabilities. We have reflected on these issues in our own [Disability & Criminal Justice Reform: Keys to Success report](#).

RespectAbility is a nonprofit organization fighting stigmas and advancing opportunities for and with people with disabilities. We advocate for the 1-in-5 Americans who have a physical, intellectual, sensory, learning, attention, mental health or other disability. This includes 6 million students with diagnosed disabilities who are enrolled in America's public schools.

People can be born with a disability or acquire one due to an accident, illness, trauma or aging. Disability can be visible, such as it is for people who are blind, deaf or use a wheelchair. It can also be "invisible" such as people with learning, attention, sensory, mental health or other issues. People with all kinds of disabilities face "ableism" - direct or indirect prejudice against people with disabilities. Ableism happens, for example, when non-disabled people look at people with disabilities through a "pity" lens. It is also when the human potential, dignity and equality of people with disabilities are devalued, degraded or dismissed. Ableism manifests itself in many ways, including when a student with multiple identities and multiple experiences, such as a person of color and/or ELL student with disabilities, does not receive the accommodations and expertise they need to succeed. We can see it in the disproportionate number of instances when students with disabilities are bullied, raped or abused.

We emphasize the fact of multiple identities and multiple layers of experience because disability impacts every demographic group. We also emphasize these issues because of the need for an [intersectional approach](#) in this work. As Kimberlé Crenshaw, [the scholar who coined the term intersectionality](#), said: "The way we imagine discrimination or disempowerment often is more complicated for people who are subjected to multiple forms of exclusion. The good news is that intersectionality provides us a way to see it."

To take that intersectional approach, one needs a firm grounding in the facts of demography. As such, we want to share a snapshot of the scale of the disability community as it connects with other minority communities and identities. According to the U.S. Census there are:

- 56 million people with disabilities in the United States, and 22 million of them are working age. Out of that number, [1.2 million](#) are between the ages of 16 and 20.
- There are 6 million students with disabilities receiving services under the counted under the Individuals with Disabilities Education Act ([IDEA](#)).
- There are 1,107,606 African American/black students with disabilities [enrolled](#) in America's public schools.
- Likewise, there are 1,531,699 Latino students with disabilities in our schools today.
- [Overall](#), only 65 percent of students with disabilities graduate high school compared to 84 percent of students without disabilities.
- Similarly, only 57 percent of black students with disabilities graduate high school compared to 76 percent of black students without disabilities.
- Only 59 percent of Latino students with disabilities graduate high school, compared to 79 percent of Latino students without a disability.

[Bipartisan polling](#) shows that 82 percent of likely voters are looking for candidates who support “Ensuring that children with disabilities get the education and training they need to succeed.” It also shows that 87 percent of voters’ support “ending the rape and abuse of children and adults with disabilities.” I am writing from the perspective of our organization plus my personal experience. As someone living with an invisible disability, dyslexia, who was the victim of rape at school when I was in the sixth grade – no one cares more about school safety than I do. I am also writing from the perspective of a parent who knows what it means to have a child with disabilities who was repeatedly victimized through wrongful suspensions.

We know that, like us, you are committed to equality and success for all. We are thrilled to see your focus on improper use of out of school discipline for students of color with disabilities, something that leads to dropping out and to what is indeed a “school-to-prison pipeline.” But there is more to the story, including these key facts:

- 1) FOCUS ON THE ISSUE OF SUSPENSIONS ALONE IS NOT ENOUGH:** We agree with the testimony that school suspensions for all marginalized students must be dramatically reduced. The [data is clear](#) on how suspensions, expulsions and referrals to law enforcement harm students with disabilities of all backgrounds.

I know this from both statistics and personal experience. As the parents of a “twice exceptional” child (both gifted and with disabilities), our family lived a nightmare when our local public school was unprepared (and unwilling to learn) to appropriately serve our child. The school principal repeatedly told us (incorrectly) that because our child was above grade level academically, that there was no way for him to be evaluated and served as a student with a disability. Our bright son was restrained, physically hurt by teachers, isolated in a small room with no windows and repeatedly suspended. Time after time my husband and I were called to the school to come pick up our child “immediately”. Finally, because we could afford private assessments, an educational expert and a lawyer, our child got the Individual Education Plan (IEP) that he needed. Indeed, the county we lived in admitted that they did not know how to serve our child. They explained that the nearest school that could succeed with our child was in a neighboring county. Our family moved so that our child could get the education that any child should be able to have. Now our child is enrolled in Montgomery County Public Schools. He is now straight A student, became our state chemistry champion, has friends and a future.

I am white, educated and able to afford the assessments, the lawyers and the doctors we needed. I could commit my time and my energies to fight the school district. We could afford to move to a better school district, an action beyond the means of the majority of families of children with disabilities. Many parents cannot afford the supports to ensure that their child gets an IEP fitted to their needs. My testimony is inspired by the fact that I know that EVERY child should have the opportunities they need to succeed, not just children of privilege.

Neuroscience shows that children’s brains are neuroplastic and that early intervention can help children overcome disabilities. I have seen this first hand as a parent. But parenting a child with a disability can be

almost a full-time job. Thus, I am especially concerned about students in single-parent families or parents for whom English is a second language or have not yet learned advocacy skills. We are also very concerned for those in foster care and/or who are homeless and thus change schools frequently or do not have a consistent parent-advocate.

Taking an intersectional approach shows how racism, ethnocentrism, and ableism combine into a toxic brew of low expectations and broken systems. That toxicity would only be perpetuated if actions taken to improve equity for students with disabilities were undone, withdrawn or delayed. As the part Secretary of Education [stated](#): “We have a moral and a civil rights obligation to ensure that all students, with and without disabilities, are provided the tools they need to succeed, regardless of background. IDEA exists for the purpose of ensuring that students get the unique services they need.” Protecting the Equity in IDEA rule would deliver on that obligation and positively impact the lives of thousands of students of color with disabilities.

There is something inherently wrong with a system when the success of a child with a disability is dependent on the engagement or activism of “tiger-moms” or “super dads.” A system is badly broken when there is an entire industry of education attorneys paid so that children with disabilities get the accommodations they need to succeed. This dramatically disadvantages people from marginalized communities and at-risk-family situations. Because of the Opioid crisis we are seeing more children who acquire trauma induced mental-health or other disabilities. As such, the numbers of foster care children with disabilities is exploding.

Reducing suspensions is an important first step, but it cannot be the only step. When students with disabilities are suspended, frequently they are the proverbial canary a coal mine indicating there is an underlying problem of lack of adequate staffing and training in that school. As a [recent article](#) on the subject of suspension said, “Local realities matter.” The problem can be a lack of a good diagnosis, an inadequate IEP/504, a missing Behavioral Intervention Plan (BIP) or a school that does not use positive behavioral supports. High suspension rates for students with disabilities are warning signs of a lack of knowledge, competency and capacity to appropriately educate children with disabilities.

- 2) **COMPETENCY AND CAPACITY OF STAFF:** RespectAbility has long worked on issues of workforce development and talent pipelines. As such, we view the workforce of special educators, para-educators and professionals helping students with disabilities as a key issue. There are over 600,000 people who work to directly help students with such issues as speech therapy, OT, etc. These professionals receive focused training to prepare them for the classroom. However, schools represent a broader infrastructure of general educators, school resource officers and administrators who all need some understanding of disability. This is especially true of "invisible disabilities" such as dyslexia, ADHD, executive function and mental health disorders. Many do not understand how to recognize the difference between when a child CAN'T follow multi-step instructions due to an executive function disorder, ADHD or other cognitive issues, as opposed to WON'T follow instructions due to defiance. We feel that online and in-person educational opportunities need to be developed further and offered for free to school professionals. Further, as clear example of how behavior in school underscores existing realities, we invite you to consider the [2012 Senate testimony](#) of Steven Teske Chief Judge Juvenile Court of Clayton County, Georgia. Teske gives a powerful example of how discipline reform, connected to improve training of school staff, saved the life of a victim of rape and led to the arrest and conviction of a child rapist. His experience shows the reality of underlying trauma that shapes student behavior and why suspension or expulsions can be harmful, hurtful and counterproductive. In microcosm, this example also shows that rethinking school discipline can help diminish the harm to children, promote educationally sound adult interventions and above all, keep kids in school.
- 3) **THE LARGER ISSUE OF ABSENTEEISM IS CRITICAL:** We need to look at ALL the causes of absenteeism for students with disabilities. There are more than 6 million students with disabilities and they all have talents and potential as well. However, when a student misses too much school, they can get too far behind in their academics, raising their risk of dropping out, getting kicked out or being suspended. As such, **there are several factors that impact the risk of absenteeism among students with disabilities:**

- a. **Abuse/School Climate** – [Youth with disabilities](#) are 3 times more likely to be victims of abuse. This happens both inside and outside of school. The school climate around bullying and abuse dramatically impacts students with disabilities who may stay home because they feel unsafe or unwelcome. As we look to reduce suspensions, policy and practices must be put in place to ensure that the safety inside the school does not deteriorate. Students with disabilities are at huge risk for bullying. The evidence from Los Angeles and other places that have reduced the use of suspensions and replaced it with better teaching has shown that a reduction of suspensions does not reduce school safety.
- b. **Teacher Training** – [Preparing teachers](#) to adequately, appropriately and successfully teach students with disabilities can be challenging. However, teachers make or break the classroom environments and this issue merits further attention. Likewise, teachers require the support of principals; thus principals must also understand disabilities.
- c. **Lack of diagnosis and accommodations** that are appropriate for the student, which leads to failure, frustration and worse.
- d. **Health** – Physical or mental health issues can [impact attendance](#) as can access to healthcare. It is hard to teach a student who comes to class with an open wound whether physical or psychological.
- e. **“Dumping”** of students in alternative schools so that their home schools can boost their own metrics. Both Georgia and New York City are guilty of this practice.

4) RESOURCES & MENTORING FOR PARENTS OF CHILDREN WITH DISABILITIES -- INCLUDING THOSE WHO ARE SPANISH SPEAKERS: Schools are only a part of the solution for overcoming racial disparities and promoting great equality for all. A crucial point, that cannot be missed, is the critically important role that parents and mentors play in the success of children with disabilities. As discussed before, engaged parents need to be prepared to fight for the right of their child with a disability to a free and appropriate public education. Yet the economic, social and racial realities facing many families impact the opportunities they have and the resources they have to navigate a complex system. As such, RespectAbility believes that much more must be done to empower the parents of children with disabilities. Access to resources or disability information, presented in a culturally competent manner or in someone’s native language, is a good starting point. As an example, we have started offering [free resources in Spanish](#) so that people can gain access to local resources.

5) HIGH EXPECTATIONS FOR EDUCATION, JOBS & INDEPENDENCE FOR YOUTH WITH DISABILITIES: Despite progress in recent years, students with disabilities are behind their non-disabled peers in educational attainment. Nationally, [only 65 percent](#) of students with disabilities complete high school and [less than 7percent of people](#) with disabilities are completing college. For youth of color with disabilities and English Language Learners with disabilities, those outcomes are even worse. Several [years ago](#), an [assessment](#) of lowered standards for students with disabilities found that “African-American students with learning disabilities were up to six times more likely to be assessed on these low-rigor tests than were similar Caucasian or Latino students.” As it is vital to promote high expectations, we invite you to read the words and work of David Johnson from the [Institute on Community Integration](#). He [wrote](#) that “if you’re setting high expectations for everybody...that should mean everybody.” Lowering standards just to boost graduation rates runs contrary to what needs to be done.

6) APPRENTICESHIPS AND SCHOOL TO WORK TRANSITIONS: We also wish to raise the opportunities that apprenticeship programs offer. Anyone who works hard should be able to get ahead in life. Students with disabilities deserve the opportunity to earn an income and achieve independence, just like anyone else. For those students with disabilities who are not diploma bound, RespectAbility believes that apprenticeships are critical.

Nationally, apprenticeship has rapidly become a key priority in workforce development. Nationally, there already are two models that are achieving extraordinary success with work based learning opportunities: [Project SEARCH](#) and [Bridges from School to Work](#). SEARCH is a unique, employer driven transition program that prepares students with disabilities for employment success. Likewise, the Bridges program offers assessments, workshops and job matching. This model has grown to more than 300 programs in 46 states and

served nearly 3,000 youth in 2015. Among those young people, more than 78 percent found jobs. These are transformative results for a population that faces serious barriers to pursuing life and liberty. These results also show how a focused commitment to school-to-work transitions can create brighter futures for students with disabilities.

- 7) DISABILITY IMPACTS EVERY ASPECT OF THE CRIMINAL JUSTICE SYSTEM – FROM THE SCHOOL-TO-PRISON PIPELINE TO RETURNING CITIZENS:** In 2016, RespectAbility explored many of the critical issues covered in your public briefing on December 8th. Today there are at least 750,000 people with known disabilities behind bars in our nation. The majority did not complete high school, lack literacy and are people of color. Ultimately, we called for action on the issues that cause so many students with disabilities to fall through the cracks of our society. We are especially glad to see your Commission’s focus on the disproportionate impact on and the discrimination experienced by students of color with disabilities. We invite the Commission to consider our report in full and to reflect on our recommendations.

In closing, you should know that our organization is ready and eager to partner with you. I was greatly assisted in preparing this testimony by our Policy and Practices Director, Philip Kahn-Pauli. We hope you will find them useful. If you have further feedback or questions on our comments, please contact Jennifer Laszlo Mizrahi at JenniferM@RespectAbility.org or Philip Kahn-Pauli at PhilipP@RespectAbility.org. Thank you.