

# RECLAIMING MICHIGAN'S THROWAWAY KIDS



## Students Trapped IN THE School-to-Prison Pipeline



## **Michigan's Throwaway Kids: Students Trapped in the School-to-Prison Pipeline**

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“There can be no keener revelation  
of a society’s soul than the way  
in which it treats its children.”

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– NELSON MANDELA –

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## FROM THE EXECUTIVE DIRECTOR



This report assumes the very best of intentions of educators and administrators who are confronted with complex problems in their schools. It also assumes the very best of intentions of the people of Michigan who because of their commitment to the most basic notions of fairness will not consciously and deliberately defend discriminatory discipline.

The ACLU of Michigan is pleased to offer this report as a trigger for a productive, fact-based, statewide dialogue about how we can keep our schools safe, and at the same time ensure that we are educating as many future leaders as we can. I would also like to extend my thanks to all those who reviewed early drafts of this report and provided helpful feedback and to staff attorney Mark Fancher who has admirably led this project.

Michigan's economic future depends largely upon how well we use the energy, creativity and productivity of its youth. Therefore, we can only succeed if we insist that every policy discussion about education have the "best interests of the child" as its driving force and that every child has the right to an adequate education if they are to have any hope of reaching their individual potential.

We may have shared values and ideals, but this report highlights some stark contradictions. As a community, we believe children should have the chance to go to school, but as a matter of fact, we have yet to make education a constitutionally guaranteed right.

We may understand that our state will never move ahead economically, politically or socially without an educated citizenry, but we nevertheless resort with ever-growing frequency to the removal of children from school by way of suspension and expulsion. As a community, we recognize that excluding children from school eliminates disruption of the school environment only until the excluded children return—often with heightened resentment and a new determination to create even greater disturbances.

The good news is that "restorative practices" and comparable methods of getting to the root of student misconduct without excluding children from school are gaining attention and support. The bad news is that here in Michigan the current rates of suspension are not only unacceptably high they are also disproportionately aimed at a single segment of the student population.

On the day that President Barack Obama took the oath of office, and millions of people around the world celebrated what many regard as a racial breakthrough, there were thousands of children of African descent who should have been in school watching the inauguration with their classmates, but who were instead away from the school grounds because they had been suspended. Suspended black children have long been invisible, but in this report they are under a spotlight because they alone are consistently suspended at rates that are disproportionate to their representation in the student population. Many of these same students are ultimately incarcerated. Why does this happen? Why do we let it happen?

Against a backdrop of a state economy that is nearing collapse and an exploding prison budget, we face a special challenge and a unique opportunity to correct this problem, the unintended consequences that have emerged from the state's enactment of zero tolerance laws, and to make manifest our shared values while laying the groundwork for the best use of all human potential.

**Kary L. Moss**  
*Executive Director*  
ACLU of Michigan



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## EXECUTIVE SUMMARY

This report documents the disproportionate suspensions of public students of African descent in a significant number of school districts throughout Michigan. The school-to-prison pipeline problem experienced by these students and others is due in significant part to the following:

- a.) Lack of universal access to quality education;
- b.) Institutional obstacles that limit educational opportunities of children enrolled in school;
- c.) The loss of educational opportunities by large numbers of students because competing institutional concerns displace consideration of what is in the best interest of the child;
- d.) Sometimes insurmountable obstacles to restoration of lost educational opportunities;
- e.) The criminalization of students who lose their educational opportunities.

These problems are manifested in the following specific ways:

### ACCESS TO EDUCATION

- Children have no “right” to an education. Michigan’s constitution [Art. 8, Section 2] requires only that the state “maintain and support” a system of free schools in a non-discriminatory manner. By contrast, the constitutions of more than 30 states require, in some form, that the state provide all children with a quality education. Michigan is one of only eleven states that fail to give students a right to a quality or adequate education. Thus, when Michigan’s racially disparate suspension and expulsion patterns and other factors remove large numbers of children from the educational system many have no prospects for access to additional education or the means to re-enter the educational system.

### INSTITUTIONAL THREATS TO EDUCATIONAL OPPORTUNITIES

- Michigan’s “zero tolerance” expulsion law is broader in scope than federal law requires, and it increases the chances of expulsion for all students, including students of African descent who are already expelled at high rates. The impact of this law on expulsion rates is compounded when administrators decline to exercise permissible discretion when considering whether the law’s harsh penalties are appropriate.
- The absence of uniform procedural guidelines for suspensions and expulsions has sometimes resulted in failure to provide adequate opportunities for accused students to be heard and to otherwise defend themselves against accusations of misconduct.
- The absence of safeguards against cultural misunderstanding, cultural ignorance and cultural conflict that account to some extent for disproportionate discipline of black students.
- Some school districts’ failure to comply with laws that require evaluation and/or treatment of students with disabilities prior to suspension or expulsion.
- Mechanical application of rules leading to suspension and expulsion without use of discretion or individualized consideration of circumstances that indicate that exclusion of certain children from school is inappropriate.

## LOSS OF EDUCATIONAL OPPORTUNITIES

- In a significant number of Michigan school districts, students of African descent are suspended and expelled at rates that are disproportionately high relative to their representation in the school population. In contrast, white students tend to be disciplined at rates that are proportionate to their numbers, or disproportionately less than their representation in the school population.
- Many students who are suspended long-term, or who are expelled drop out of school altogether.

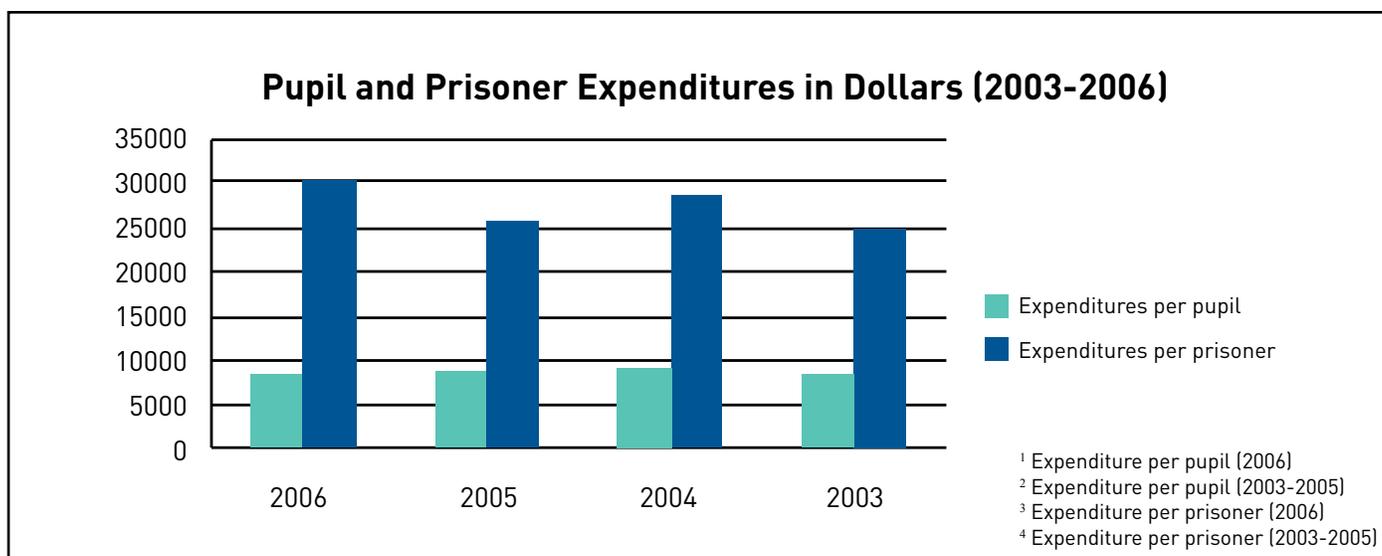
- Many students who have been suspended long-term or expelled have no alternative opportunities for learning or other productive activities. A 1985 Attorney General’s opinion that concluded that school districts are not required to establish or maintain alternative education programs has apparently contributed to confusion about whether, when and by whom these programs should be established. Nevertheless, Michigan’s statutory framework suggests that in some way, the state is responsible for providing alternative education opportunities to students who are excluded from school for extended periods of time.

## OBSTACLES TO RESTORATION OF LOST EDUCATIONAL OPPORTUNITIES

- The process for readmission to school after expulsion is complex and may present insurmountable obstacles to low-income families that lack the wherewithal to prepare and timely submit required petitions.

## THE CRIMINALIZATION OF STUDENTS

- When school administrators refer some student discipline matters to law enforcement agencies, there is a consequent criminalization of many students whose offenses would otherwise have been dealt with entirely by school officials.



- The growing presence in schools of “school resource officers,” and police personnel generally has resulted in not only arrests of students on school premises, but also incidents of police misconduct on school grounds.
- It costs the state more to maintain a prisoner than it does to educate a student. This results in not only an immediate financial loss, but a long-term loss of the productive capacity of former students.

## RECOMMENDATIONS

- 1. Establish uniform statewide procedural protocols for the discipline of students that ensure that students accused of misconduct have full and fair opportunities to explain their actions and otherwise defend themselves.**

These procedures should minimally include: notice to the students of the offenses that they are accused of committing; disclosure of evidence and testimony that will be offered against the accused students; opportunities for the students to contact and consult with parents before responding to accusations; opportunities for accused students to test or challenge evidence and testimony offered against them; a clear articulation of the evidentiary standards and burdens of proof that will apply at the time of the students’ hearings, along with an understandable explanation of how those standards will be applied by the decision maker; and advance notice of whether the incident will be referred to law enforcement officials. In the case of long-term suspensions and expulsions, there should also be both opportunities for students to obtain (at least at their families’ expense) the counsel or representation of attorneys and a formal hearing conducted by an impartial decision maker.

In all cases students should receive clear explanations of appeal procedures, and have opportunities to appeal disciplinary decisions.

- 2. Michigan’s expulsion law should be amended to conform more strictly to the scope of federal requirements by making only firearms offenses subject to mandatory automatic expulsions.**

Expulsions should be an option for other serious offenses that are currently subject to automatic expulsion, including criminal sexual conduct and arson, but expulsion should not be automatic and school administrators should have full discretion regarding the propriety of expulsion or other forms of discipline for these offenses. Additionally, school administrators should become more aware of, and more willing to use provisions of the Michigan expulsion law that grant them discretion to determine whether automatic expulsion is appropriate in particular cases involving firearms.

- 3. School administrators should explore alternatives to suspension and expulsion, including restorative practices, and adopt and incorporate these methods when they reasonably conclude that such approaches will effectively address issues and problems that contribute to student misconduct.**
- 4. “Alternative education” should be re-conceptualized when necessary to ensure that these programs do not become dumping grounds for students who have been suspended long-term or expelled. Convenient, useful alternative education programs that provide genuine opportunities for learning should be available for every student who is expelled or suspended long-term.**

5. **School administrators should involve the criminal justice system in matters concerning student discipline only as a last resort in those cases where the conduct of a student creates an imminent danger to that student or others, and that danger is one that school personnel are unable to address lawfully, safely and effectively. School administrators should, as a first resort, involve the students' parents and when necessary and helpful, school psychologists and other professionals who are capable of effectively identifying and resolving those problems that are the cause of the students' misconduct.**
  
6. **The State of Michigan should amend its Constitution to make quality education a "right" for all Michigan children.**

Will these recommendations make a significant difference if adopted and implemented? Is it worth the effort and resources required to keep students in school? There are never guarantees, but various strategies that are intended to limit removal of students from school when it is prudent to do so have, according to school administrators, actually caused reductions in suspensions and other forms of punishment. For example:

- *Administrators at Clare Middle School in Clare, Michigan reported that the school substantially reduced student misconduct by using a method called "Responsible Thinking Process."*
- *In Charles County, Maryland, school administrators reported there has been a steady four year decline in suspensions that results from a shift in focus from suspensions to the promotion and celebration of positive behavior.*
- *In Ontario, Canada, administrators reported the Durham school district's change in emphasis from automatic suspensions to time*

*out rooms and restorative practices (discussed at length later in this report) caused a seven year low in suspensions during the 2007-08 school year.*

- *At Palisades High School in Kintnersville, Pa., the guidance counselor reported that restorative practices were initiated in 1998, and between 1999 and 2003, the number of disciplinary referrals to the principal's office dropped from 1,752 to 815. The number of incidents of disruptive behavior decreased from 273 to 142. The number of out of school suspensions decreased from 105 to 53.*

These and other cases involve strategies that place less emphasis on suspensions and greater emphasis on keeping students in school by focusing on each student as an individual. The recommendations in this report are offered in that spirit. It is urged that school administrators avoid blind, mechanical application of rules designed to purge students from the school roster, and that instead they give careful individualized consideration to the circumstances of each child. Laws and policies should also give educators the freedom to individually assess students without fear that their responsible use of discretion will cause them to overstep their authority. Due process procedures should afford maximum opportunity for careful evaluation of the particular circumstances of misconduct. In zero tolerance cases, administrators should likewise fully employ the discretion given them by the expulsion statute to retain rather than expel students when appropriate. In fact, standard disciplinary processes should be avoided altogether if restorative practices or similar procedures are available and it appears that they will be effective. It has been demonstrated that calculated efforts to retain rather than remove students from school can make a difference. Also, most states that have made quality education a constitutional right have graduation rates that are higher than Michigan's.

It is possible, if not likely, that the racial disparities presented in this report will be met with indifference and inaction in some quarters. In many cases, this will have less to do with malicious bias than it will with a public that may have become unwittingly numb to a seemingly endless torrent of news about chronic problems and injustices that specifically affect black youth. For example, the information in this report about a “suspension gap” appears against a backdrop of longstanding reports about the “achievement gap.” Analysis in this report of the criminalization of black students’ school disciplinary cases appears amidst widespread awareness of the frequency and impact of racial profiling of black youth, police harassment and the extraordinary disproportionate incarceration of the black youth demographic. Certainly for those who bring with them an unfounded belief that black youth are a pathological lost cause, the findings in this report will serve only to affirm their decisions to

neglect these young people. However, even those who believe that black youth are the target of pervasive, unwarranted, destructive, institutionalized attacks may become paralyzed by the apparent complexity of the social forces that produce the various racial inequities referenced above, and those which are discussed in this report. As readers will note, this report’s recommendations are not race-specific. They are also not presented as a panacea. However, if implemented, they will effectively give black students better opportunities to defend themselves against unjust exclusion from school and unwarranted criminal prosecution. Placing the black community in a better position to fight for itself is a worthwhile endeavor that will hopefully inspire a more widespread commitment to eradicating the complex institutional forces that are at the root of racial disparities.



**BILL** was a gifted middle school student who loved math. The only boy in a family of eight, he could not wait to join his older sisters in high school. The first day of 9th grade he was suspended for being in the wrong hallway after the free breakfast program. His infraction was nothing more than being lost in a new school. In the next 6 months, Bill was suspended over 30 times. Because each time the school required a meeting with his mother, who had no transportation and was on oxygen for a heart problem, Bill missed a total of 89 days that semester. Desperate to earn credits for the year, Bill reached out to the community and located The Student Advocacy Center. He asked for help with missed school assignments and came to the Center every afternoon to work. Despite his efforts, he kept falling behind and not because he couldn’t understand the work, but because the suspensions kept on coming. At 15, he was arrested for shoplifting snacks from 7/11, at a time when he would have been in Social Science if he had not been suspended for being tardy. He spent 30 days in the Juvenile Detention

Center and was in and out of lock-up over six times for violating his probation. The violation was failure to participate in weekly youth meetings which he could not get to because the public bus service stopped running in his neighborhood at 8 P.M. At 16, Bill dropped out of school. The week after the school dropped him from the roll, the testing that the Advocacy Center had requested came back. It showed that Bill was reading at a college level. At 17, he was tried as an adult for distribution of controlled substances. He is now awaiting sentencing.

## I. HOW THIS REPORT WAS COMPILED

This report is a record of research conducted over a period of nearly two years by the ACLU of Michigan Racial Justice Work Group and the Racial Justice Project staff. Information was compiled by: submitting Freedom of Information Act (FOIA) requests to strategically selected school districts across the state; conducting interviews of students, parents, educators and others associated with public education; providing advocacy to students facing discipline; reviewing and compiling relevant media reports; initiating lawsuits on behalf of aggrieved students; reviewing studies and scholarly reports; and conducting legal analyses.

School districts that received FOIA requests included some which are located on the perimeter of the City of Detroit. It was suspected that these districts were likely to have been destinations for significant numbers of families of African descent that have been relocating out of Detroit, and who account for the city's continuing population loss. There was interest in the collective experience of these families in predominantly white suburban schools. FOIA requests were also directed to various districts located in Michigan's southwestern, western, central and northern regions where it was believed that there were significant populations of students of color. (Except where otherwise noted, FOIA requests sought only data concerning the secondary schools in each district. For the most part, the findings in this report do not reflect the circumstances of elementary schools.)

Interviews were conducted of a considerable number of individuals who were able to relate first-hand experiences about the issues that are of particular concern in this report. These persons reside throughout the state, and not necessarily in school districts that received formal requests for data. Collaborative work with the Student Advocacy Center of Michigan allowed researchers to have a front row seat during negotiations, disciplinary hearings and other proceedings that

were intended to lead to the suspension and expulsion of various students. Litigation on behalf of selected students facing discipline also provided a good vantage point for the observation of how disciplinary systems function.

This document does not purport to provide a fully comprehensive portrait of circumstances that exist in all school districts throughout the state. It does provide snapshots of conditions that exist in a number of strategically selected school districts that highlight the need for further investigation and a plan for reform.

**A note on terminology:** Throughout this report there are references to: "students of African descent" and "black students." For purposes of this document, the two terms are interchangeable, and they are an acknowledgment that there are some immigrant families in Michigan from Africa, the Caribbean and other regions outside of the United States who are impacted by the problems discussed in this report, but who would escape the contemplation of some readers if the term "African American" were used to identify affected groups of children.

**SCHOOL DISTRICTS  
THAT COMPILED DATA USED IN THIS REPORT**

[Source of Population Figures: "2005-2007 American Community Survey 3-Year Estimates." U.S. Census Bureau, 2005-2007 American Community Survey (ACS). All population estimates are based on individual county fact sheets through American FactFinder. [http://factfinder.census.gov/home/saff/main.html?\\_lang=en](http://factfinder.census.gov/home/saff/main.html?_lang=en). (Last Accessed 3/5/09).]

<b>Districts in Wayne County</b> (County population exceeds 2 million)	<b>Regional character of the district</b>
Allen Park	suburban
Crestwood	suburban
Detroit	urban
Flat Rock	suburban
Garden City	suburban
Inkster	suburban
Plymouth-Canton	suburban
Riverview	suburban
Romulus	urban/suburban
Southgate	suburban
South Redford	suburban
Taylor	suburban
Woodhaven-Brownstown	suburban
Wyandotte City	suburban

\*Wayne County has an estimated population of 2,008,283.

<b>Districts in Oakland County</b> (County population between 1 and 2 million)	<b>Regional character of the district</b>
Ferndale	suburban
Lamphere	suburban
Novi	suburban
Oak Park	suburban
Royal Oak	suburban
Southfield	suburban
Troy	suburban
Walled Lake	suburban

\*Oakland County has an estimated population of 1,207,603.

<b>Schools in Macomb and Kent Counties</b> (County Populations Between 500,000 and 1 Million)	<b>County and regional character of the district</b>
Centerline	Macomb/suburban
Chippewa Valley	Macomb/suburban
Clintondale	Macomb/suburban
Fitzgerald	Macomb/suburban
Fraser	Macomb/ suburban-quasi-rural
Grand Rapids	Kent/urban
Roseville	Macomb/suburban
Utica	Macomb/suburban
Van Dyke	Macomb/suburban
Warren Consolidated	Macomb/suburban
Warren Woods	Macomb/suburban

\*Macomb County has an estimated population of 828,972.

Kent County has an estimated population of 600,659.

Schools in Counties With Populations Between 250,000 and 500,000	County and regional character of the district
Ann Arbor	Washtenaw/urban/suburban
Flint	Genesee/urban
Lansing	Ingham/urban
Lincoln Consolidated	Washtenaw/suburban/quasi-rural
Ypsilanti	Washtenaw/urban/suburban

\* Genesee County has an estimated population of 437,405.  
 Washtenaw County has an estimated population of 347,670.  
 Ingham County has an estimated population of 280,097.

Schools in Counties With Populations Between 100,000 and 250,000	County and regional character of the district
Muskegon	Muskegon/urban/suburban
Saginaw	Saginaw/urban

\*Saginaw County has an estimated population of 204,612.  
 Muskegon County has an estimated population of 174,236.

Schools in Counties With Populations Under 100,000	County and regional character of the district
Alpena	Alpena/rural

\*Alpena County has an estimated population of 29,902



**“JULIA”** – Julia (of African descent) was a student at an urban all-girls high school. Julia had no history of disciplinary problems. Each day, she and other students were required to go through a metal detector when entering the school building. They were also required to submit to searches of their purses. During a search of Julia’s purse, school personnel discovered a folding pencil-sized device that was designed to “arch” the eyebrows. They chose to regard the device as a “weapon” because it contained a razor-like blade that was one inch by one-eighth of an inch in size. Although Julia explained that she used the device to groom her eyebrows, she was nevertheless recommended for expulsion. Julia’s mother quickly intervened, and school officials threatened to refer the matter for criminal prosecution. After considerable effort, Julia’s mother pressured administrators into downgrading the offense. Although Julia was able to avoid expulsion, she was nevertheless suspended for several days, the matter remains on her record, and she was emotionally traumatized and demoralized by the incident.

## II. MISCONCEPTIONS ABOUT THE RESEARCH

Some teachers, parents, administrators and others connected with public education may view with suspicion the call to reform institutional policies that facilitate suspensions and expulsions. It is understandable that there are questions about whether reformers are naive, or ignorant of the dangers of allowing certain students who are disruptive or dangerous to remain in school where they are likely to destabilize the educational environment. **There should be no mistake about the fact that this report stands unequivocally for the proposition that the school environment must be safe and conducive to learning.** Suspensions and expulsions can be useful in achieving this objective only when the disciplinary process is purged of the widespread discrimination and injustice documented in this report.

For example, this report highlights the attempted expulsion of a 6-year-old for innocently bringing a toy cap pistol to school. The report also illustrates how African descended students are suspended at rates that are far out of proportion with their numbers. A number of additional problems are also discussed. Attention given to such occurrences should not be interpreted as a plea for a lenient approach to discipline that will threaten the safety and good order of the schools. The discussion of these incidents should properly be regarded as a call for discipline that, when used as a last resort, is fair, non-discriminatory and equitable.

Schools are safer when discipline is administered fairly and directed precisely at students for whom discipline is warranted and appropriate. This is evidenced by the fact that in some cases, the defense of a challenged decision to suspend or expel a student demands that school administrators and teachers expend considerable time and effort preparing and collecting records, attending meetings, conducting hearings, etc. If in fact the challenged disciplinary measure was improper, time and resources committed to its defense are then not available to address the incidents of student misconduct that may actually be

causing danger or distractions for students who are making diligent efforts to learn.

Finally, this report poses the question of whether suspensions and expulsions are, in all cases, the most effective method of addressing chronic violence and other forms of misconduct in the schools. Currently, it is possible for a Michigan student who is suspended for an extended period for criminal or anti-social behavior to become even more deeply involved in undesirable activities. This behavior pattern is likely to continue in the school after the student is re-admitted. This report challenges legislators, educators, parents and others to give serious consideration to alternatives to discipline such as restorative practices that are designed to not only identify the causes of misconduct, but to effectively remedy them as well.



### BENEFITS OF INDIVIDUALIZED CONSIDERATION FOR STUDENTS

School districts around the country and in Canada have implemented various strategies intended to limit removal of students from school when it is prudent to do so. In many cases, according to school administrators, these strategies caused reductions in suspensions and other forms of punishment.

For example:

Administrators at **Clare Middle School** in Clare, Michigan reported that the school substantially reduced student misconduct by using a method called “Responsible Thinking Process,” a process by which students are taught to monitor their own behavior by focusing on how they can achieve their goals without getting in the way of others who are trying to do the same thing.

### III. THE EXTENT OF LOSS OF EDUCATIONAL OPPORTUNITIES

At the very heart of Michigan’s school-to-prison pipeline problem is the disproportionate exclusion of students of African descent from public schools. Once black students leave educational programs, they are in many cases immediately sent careening through the slippery pipeline toward prison. The statistics that demonstrate that black students are disproportionately losing their educational opportunities are both telling and disturbing. The loss of educational opportunities occurs most often because of suspensions, expulsions and the dropout problem.

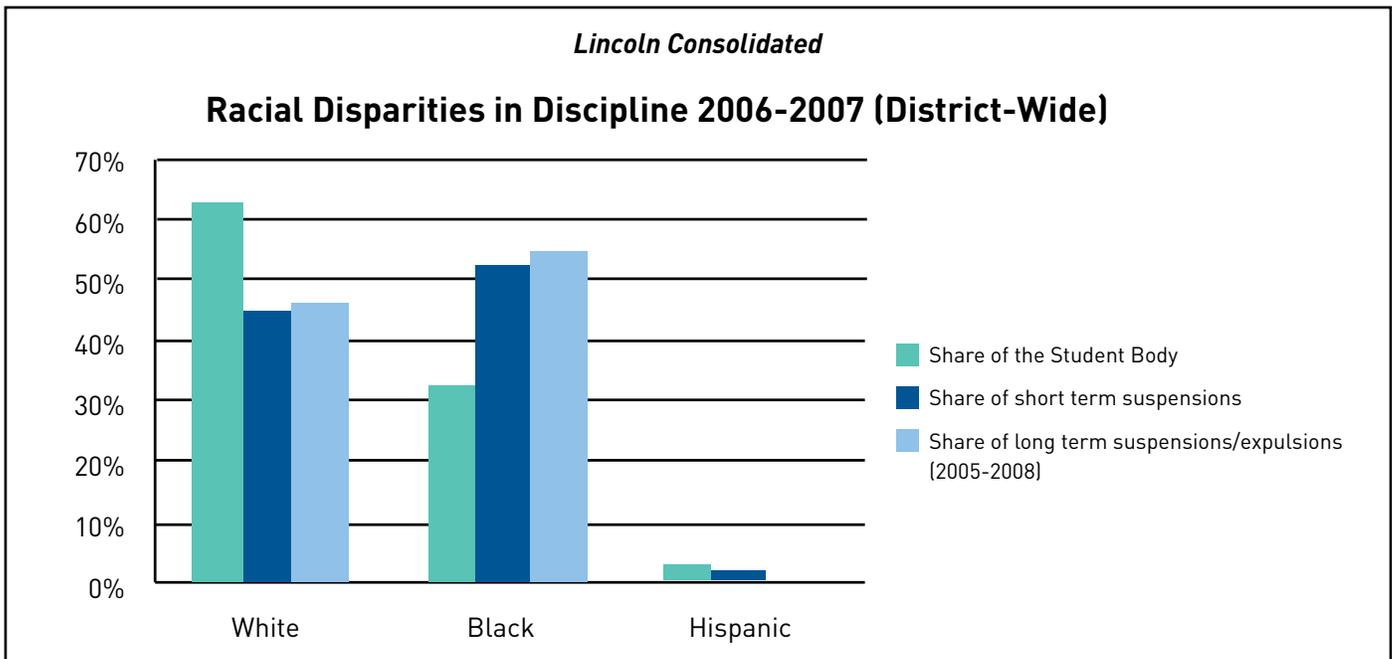
In Michigan, the most consistent problem in most of the school districts examined is disproportionate discipline of students of African descent. Conversely, in many districts, suspension rates for white students are in proportion to their representation in the student body, or their suspension rates are lower than what would be expected for a population of their size. This phenomenon is sometimes referred to as “the suspension gap.”

For example:

1. In the **Lincoln Consolidated School District**,
  - **white students were just under 63%** of a total secondary school student population of 2,786 in 2006-2007, but they received only **44.8%** of the 870 suspensions.
  - **black students who were just under 33%** of

#### RACIAL DISPARITIES IN DISCIPLINE

Although in the year 2000, African-descended students constituted only 17% of the student population nationwide, they were 34% of students who were suspended.<sup>5</sup> As a consequence, students of African descent were 2.6 times as likely to be suspended as white students.<sup>6</sup>



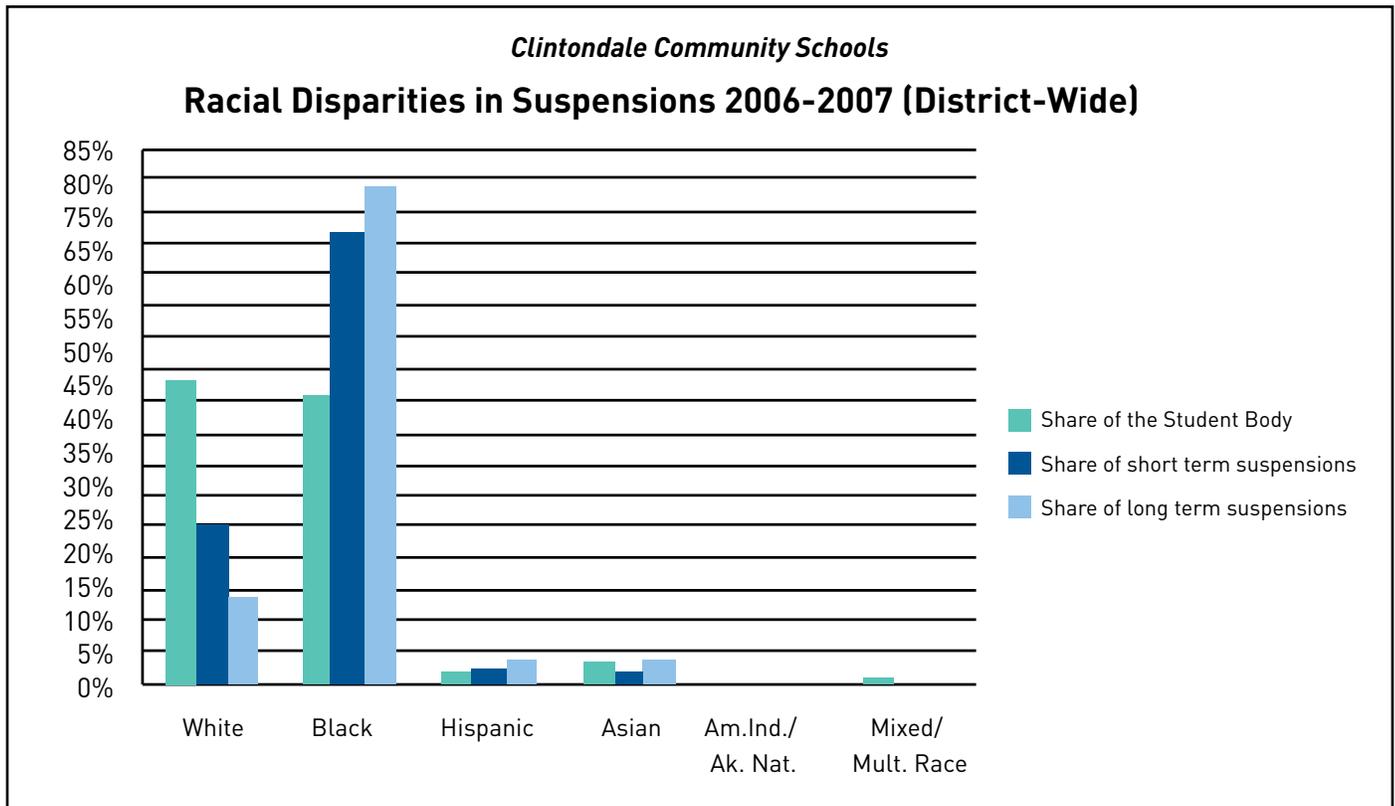
the student population, received **52%** of the suspensions.

2. In the **Fitzgerald School District**,
  - **black students were only 28.6 %** of a total secondary school student population of 1,684 during the 2006-2007 academic year, but they received more than **42%** of the 3,004 suspensions.
3. In the **Southgate School District**,
  - **black students were only 4.8%** of a total secondary school student population of 2,912, but they received **10.7%** of the 477 suspensions during the 2005-2006 school year.

color are disproportionately suspended in particular school districts. But based on data collected for this report, black students have been disproportionately excluded from almost every school district that supplied data for this study.

- In the **Van Dyke School District** during 2007/08 black students were 32% of a secondary school student population of 973 but they received 58% of 317 short-term suspensions. Nine of 12 students who received long-term suspensions were black, and all four students who were expelled that year were of African descent.
- In the **Ann Arbor School District** during 2006/07 black students were 18% of a secondary school student population of 9,655 but they received 58% of the 817 suspensions.

These problems may not always break down along simple black and white lines, and other students of



- In the **Taylor School District** from 2005 through 2007 black students were 20% of a secondary school student population of 10,221 but they received 35% of the 10,898 short-term suspensions.

The appendix to this report contains charts and tables that reflect this trend in still other school districts.

There are likely those who incorrectly presume that these disparities in discipline exist because black students tend to misbehave with greater frequency than their white counterparts. However, researchers have concluded:

“Despite the ubiquity of findings concerning the relationship between race and behavior-related consequences, investigations of behavior, race, and discipline have yet to provide evidence that African American students misbehave at a significantly higher rate.”<sup>7</sup>

If rates of misbehavior of white and black students are comparable, what accounts for the disparities in rates of discipline? Misconduct is often in the eye of the beholder, and subjective opinions about the conduct of white and black students may be a significant reason for disciplinary disparities. Researchers point out that suspensions begin with referral of students to the school’s administrative office, and the reasons for these referrals differ substantially. Their report states:

“Black students in this sample appear to be referred to the office for infractions that are both less serious and more subjective in their interpretation than white students. White students were significantly more likely than black students to be referred to the office for smoking, leaving without permission, vandalism, and obscene language. Black students were more likely to be referred for disrespect, excessive noise, threat and loitering.”<sup>8</sup>

This pattern can be seen in Michigan. For example, only 18% of the Ann Arbor school district student population is of African descent. Yet, during 2006/2007, black students were suspended for insubordination 83



## BENEFITS OF INDIVIDUALIZED CONSIDERATION FOR STUDENTS

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For example:

**In Charles County, Maryland, school administrators claim there has been a steady four year decline in suspensions that results from a shift in focus from suspensions to the promotion and celebration of positive behavior.**

times versus 20 suspensions of white students for that reason. Black students were suspended 102 times for creating disruptive conditions, while white students were suspended only 37 times for that reason. Black students were also suspended more often for loitering, and this pattern for all of these subjective offenses was consistent for at least the two preceding years as well.

Much of this might result from cultural ignorance and misunderstanding. Culturally-rooted gestures, language, posture and language that may be considered normal behavior by some black youth may be perceived as threatening, disrespectful or boisterous by some white teachers who are unaccustomed to such behavior, and who instinctively respond with office referrals and suspensions. (A full discussion of cultural misunderstanding is presented later in this report.) Thus, black students may not be any more disrespectful or insubordinate than white students, but they are perceived to be so, and their suspension rates likely reflect that perception.

Questions are sometimes raised about whether the high disciplinary rates among black students are less

a consequence of race than of the disproportionate representation of black students among the ranks of the poor. The University of Missouri announced a study of 2,270 schools across the country that led the researcher to conclude that poverty has a significant impact on disciplinary rates.<sup>9</sup> If it is true that there is a correlation between poverty and high disciplinary rates, then that fact may account to a significant degree for the staggering number of suspensions in the predominantly black Flint and Detroit school districts where, according to data from the U.S. Census Bureau, child poverty rates exceed 40%.<sup>10</sup> In Detroit, where the enrollment during the 2007-2008 school year for grades K through 12 was 102,494, there were 46,033 short-term suspensions system-wide during the academic year. In the Flint school district, there were 18,081 secondary school students enrolled during the 2006-2007 academic year, and 15,165 suspensions.

It is nevertheless difficult to conclude that poverty is the sole cause of overall quantitative racial disparities. Data was collected for this report from a considerable number of suburban school districts where poverty rates are relatively low. Also, additional tables and charts appended to this report graphically illustrate that regardless of the socio-economic profiles of the various school districts throughout the state, black students are consistently disciplined at levels that are disproportionate to their representation in student

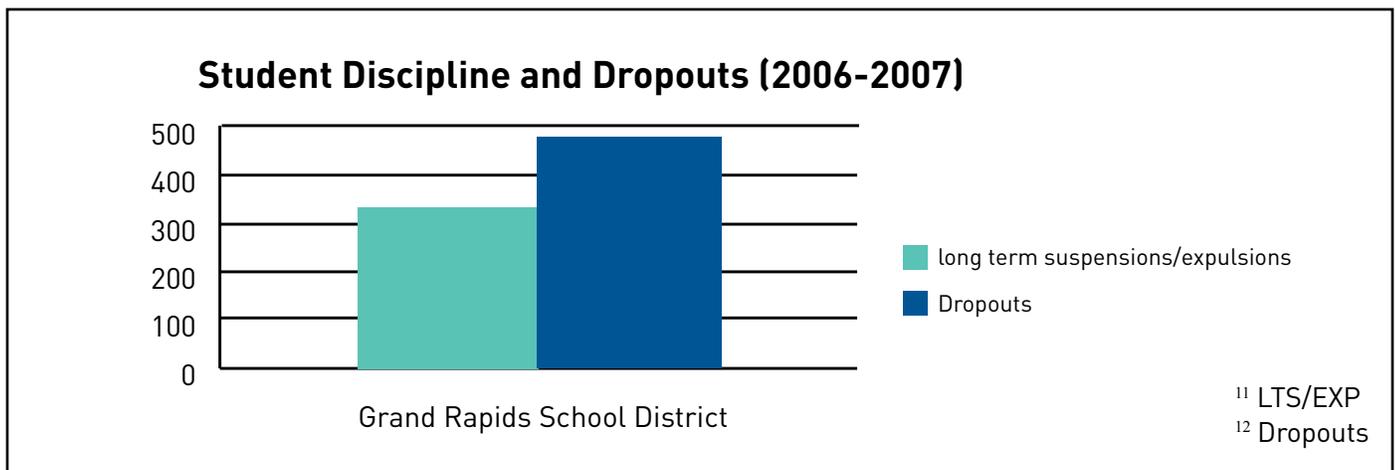
populations. It appears that regardless of their economic status or where they are enrolled, black students are at very high risk of exclusion from school.

### THE DROPOUT CRISIS

Studies show that when students are repeatedly suspended, they are at substantially greater risk of leaving school altogether. When they leave they become known as “dropouts” but a growing number of observers regard the term as a misnomer because it fails to reflect the extent to which many students are “pushed out” of school because of administrative expedience, discrimination, and other reasons.

A rough correlation between involuntary long-term exclusion from school and students’ voluntary abandonment of the educational process can be seen in the Grand Rapids School District.

In at least one study, 31% of students with three or more suspensions before spring semester of their sophomore year of high school dropped out, while only 6% of students with no history of suspensions dropped out.<sup>13</sup> Since the 1970s, the drop-out rate has tripled for students between grades nine and ten.<sup>14</sup> There are few efforts made to track the whereabouts of students who leave school. But the fact that 68% of state prisoners are high school dropouts strongly indicates that



when students drop out, they are at very high risk of incarceration.<sup>15</sup>

It is generally acknowledged that calculating the number of dropouts with precision presents special challenges. Prompted by graduation reporting requirements of the No Child Left Behind Act, the National Governors Association developed the “Graduation Counts Compact.” To honor the compact, Michigan adopted what is known as the “cohort” formula to determine the number of graduates and dropouts each year. The 21,185 dropout figure calculated for 2007 is consistent with the estimate of 20,000 students who drop out of Michigan’s schools every year.<sup>16</sup> **The number of Michigan “non-graduates” (which includes more than dropouts) is estimated by a June 2008 Issue Brief published by the Alliance for Excellent Education ([www.all4ed.org](http://www.all4ed.org)) to be 45,305 for the 2007-2008 school year. That number and the figure of 41,319 Michigan juvenile arrests in 2007 are strikingly close.**

All of this has racial implications because according to the Sentencing Project, in Michigan, there are 412 white prisoners per 100,000 white residents in the state, compared to 2,262 black prisoners for every 100,000 black residents in the state. When these statistics are considered along with data<sup>17</sup> that shows that

in 2006, black males in Michigan graduated at a rate of 33%, compared to a white male graduation rate of 74%, the correlation between dropout rates and incarceration becomes even more apparent.

Even if they don’t end up in jail, dropouts tend to require welfare and public health care. They are also far less likely to contribute to the tax base. Thus, each year, the cost of Michigan’s dropouts to local, state and federal governments is \$2.5 billion.<sup>18</sup> There is an additional consequence of high dropout rates that is experienced more directly by the broader society. According to one study, the approximately 1.2 million dropouts who fail to graduate from high school nationwide each year will earn considerably less income than they would have earned had they completed school.<sup>19</sup> In concrete terms, if the dropouts scheduled to graduate in 2007 had completed school, the nation’s economy would have had the benefit of an additional \$329 billion in earnings over the course of their lifetimes, and dropouts from Michigan’s class of 2008 would have contributed \$11,779,231,953 during their working years had they graduated.<sup>20</sup> If current circumstances remain unchanged, it is projected that more than 12 million students will drop out during the next 10 years, and the cost to the nation will be a loss of \$3 trillion.<sup>21</sup>



**CLAUDIUS** was only in school for three days when he was suspended on grounds that he was not in compliance with the provisions of the school’s dress code that require “closely-cropped” hair. As a ninth grader at the public charter school in Detroit, he and his mother expressed to school officials that they maintain a sincerely held religious belief based on a verse in Leviticus that says he is forbidden to cut his hair. Despite the religious basis for his long hair, the school suspended him and referred him for expulsion for violating its “closely cropped” hair policy. Shortly after his suspension, the ACLU filed a lawsuit in Wayne County Circuit Court against the school for violating Claudius’ religious freedom rights under the Michigan and U.S. Constitutions and the Michigan Civil Rights Act. The judge issued an injunction ordering the school to let Claudius come back to school.

## IV. WHY THE PROBLEM EXISTS - INSTITUTIONAL THREATS TO EDUCATIONAL OPPORTUNITY

There is no finite list of factors that account for the disproportionate exclusion of students of African descent from schools. But there are several institutional features that present pitfalls for them that can at any time land them on the street. These institutional threats include the following:

### DUE PROCESS

A considerable number of suspensions occur because students do not have a reasonable opportunity to tell their side of the story or to otherwise defend against accusations of misconduct. School districts have used their discretion to establish suspension and expulsion procedures that vary widely in the degree to which students are allowed to challenge efforts to remove them from school. But the U.S. Supreme Court has held that all public school students are entitled to due process of some kind when they are facing short-term suspensions.

In the case of *Goss v. Lopez*,<sup>22</sup> the Supreme Court concluded that although public school students do not have a “right” to an education, they do have a “property interest” in education that entitles them to some measure of due process. The court addressed only the question of “short-term” suspensions, which it defined as suspensions of 10 days or less. The court held that at a minimum, a student facing short-term suspension is entitled to “oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.”<sup>23</sup> This does not require much of the school authorities.

The court noted: “In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred. We hold only that, in being given an opportunity to

explain his version of the facts at this discussion, the student first be told what he is accused of doing and what the basis of the accusation is.”<sup>24</sup>

Thus, the child who is accused of misbehaving in class is not legally entitled to much more than the opportunity to explain his conduct to the teacher who has taken him to task. If, however, the student’s conduct warrants a suspension of longer than 10 days, then, in the opinion of the court, the circumstances “may require more formal procedures.” In the end, this is the only guidance that the court gives to school districts around the country. There are no universal standards for suspension and expulsion procedures. From district to district across the country there are different policies and procedures used to remove students from school. There is always a concern that these procedures will result in arbitrary or discriminatory decisions.

Some Michigan school districts have adopted policies and procedures that, on their face, provide reasonable assurance to students that when they are facing the prospect of discipline, they will be treated fairly, and they will have sufficient opportunities to be heard and to defend themselves against improper accusations. Other school districts have not. In all districts, whether procedures are good or bad, there is always the question of what happens in practice.

For example, the Grand Rapids school district’s Student Policy Handbook provides:

“Attorneys are permitted [to participate in disciplinary proceedings] only when criminal charges are pending against the student arising out of the same events giving rise to the school’s disciplinary charges.”<sup>25</sup>

Presumably, this rule allows students who are at risk of incriminating themselves to have the assistance of

legal counsel. However, if in any given case, the school district chooses to actually enforce this rule, the student involved has legitimate reasons to be concerned about the implications for his/her Fifth Amendment rights even if no criminal charges are pending. During a single three month period in the 2006-2007 school year, more than 190 incidents were referred by the Grand Rapids school district to law enforcement officials. Even if criminal charges are not pending at the time of disciplinary hearings for referred incidents, charges might be brought at some time thereafter. During the school disciplinary proceedings, a student who is unaware of his future exposure to criminal liability may, in his efforts to defend himself against school-related charges, make statements that are incriminating or that in other ways have harmful consequences for any future criminal prosecution. An attorney can be instrumental in protecting a student's interests from the outset.

There are inherent problems for still other procedures. The student codes of conduct for many Michigan school districts essentially track the requirements of *Goss v. Lopez*<sup>26</sup> for short-term suspensions (suspensions for 10 days or less). In many districts, in some form or fashion, students are given prior notice of their rights and responsibilities. When they are accused of wrongdoing, they are in some way advised of the accusation, and they are given the opportunity to explain. Such measures may technically satisfy constitutional requirements as spelled out in *Goss*, but they are no guarantee that students' due process rights will be adequately protected.

One such problem is illustrated by the discipline system established by East Detroit Public Schools, the district that serves Eastpointe. In a presumed attempt to ensure objectivity in discipline, the district established a "point system" whereby a predetermined number of "points" are assigned to particular types of offenses (e.g., a student who cuts class will receive one disciplinary point, while a student who makes a bomb threat will receive 15 points). There is a predetermined punishment for each quantity of points (e.g. one point will result in a warning and possible

after-school detention, six points triggers a three day suspension, etc.). An accumulation of 15 points triggers a 30 day suspension. The accumulation of even more points can lead to even longer term suspensions and expulsion.

The presumed objective of a system of this kind is to avoid claims of bias. In other words, if student A and student B are both caught cutting class, their punishment is not individually designed. Both will presumably receive the same number of penalty points. Nevertheless, this type of system alone, when implemented mechanically and without ongoing critical review and monitoring, will not protect against bias that can intrude into the discretion teachers and administrators have regarding whether to charge a student with an offense in the first place. For example, an administrator can still decide that student A will be charged, and as to Student B the administrator can look the other way.

Conversely, a responsible administrator who recognizes that one student requires a special response in order to address the causes of the student's misbehavior will feel hamstrung by a rigid system that gives no opportunity to tailor the discipline, counseling or other remedies to the child's individual needs. Uniform, formal due process procedures are important, but they must at the same time ensure both non-discrimination and opportunities for responsible use of educators' discretion when designing discipline or rehabilitative services for particular students.

Designing policies and procedures that effectively address the complexities of student discipline is a challenge that should be taken on by the state as a whole. Thus, it is recommended that there be uniform statewide procedural protocols for the discipline of students that ensure that students accused of misconduct have full and fair opportunities to explain their actions and otherwise defend themselves. These policies should also ensure individualized evaluation of each student's behavior and appropriate responses to each student's conduct.

*To limit discrimination and self-incrimination, due process procedures should minimally include:*

- *notice to the students of the offenses that they are accused of committing;*
- *disclosure of evidence and testimony that will be offered against the accused students; opportunities for the students to contact and consult with parents before responding to accusations;*
- *opportunities for accused students to test or challenge evidence and testimony offered against them;*
- *a clear articulation of the evidentiary standards and burdens of proof that will apply at the time of the students' hearings, along with an understandable explanation of how those standards will be applied by the decision maker; and*
- *advance notice of whether the incident will be referred to law enforcement officials.*
- *In the case of long-term suspensions and expulsions, there should also be both opportunities for students to obtain (at least at their families' expense) the counsel or representation of attorneys and a formal hearing conducted by an impartial decision maker.*
- *In all cases students should receive clear explanations of appeal procedures, and have opportunities to appeal disciplinary decisions.*

On those occasions when suspension/expulsion appears to be the most appropriate response to student misconduct, following the procedures listed above is more likely to protect both the accused students, and the educators making the accusations. The students are better protected because accusers are compelled to make a case against them that is documented and available for scrutiny. If the accusations are discriminatory, a developed record will likely contain challengeable evidence of the improprieties. School administrators are equally well served by a

credible record because it serves as an effective shield against claims of bias in those cases where there has been no discrimination.

Because exclusion from school is generally a less favored option, school administrators should have authority to employ the full range of alternatives to suspension (e.g., counseling, therapy, restorative practices, etc.) whenever appropriate.

### "ZERO TOLERANCE"

In 1994, Congress passed the Gun-Free Schools Act.<sup>27</sup> The act essentially requires that states that receive federal education funds enact a law that requires mandatory one year expulsions of students who possess firearms. Such legislation is popularly known as "zero tolerance" laws. A state's law must also require referral of students who bring firearms to school to law enforcement or juvenile justice authorities. The new legislation was presumably a response to an increase in school violence, but there was a subsequent increase in the number of students who were expelled from school. For example, in Wisconsin, there were 400 expulsions during the 1991-92 academic year. By the 1996-97 academic year, the number of expulsions had grown to 1,122.<sup>28</sup> The number of expulsions reached 1,329 by the 1999-2000 school year.<sup>29</sup> In Chicago, there were only 10 expulsions during the 1993-94 school year. During the 1996-97 school year, there were 172 expulsions. By the end of the 1990s there were more than a thousand expulsions each year.<sup>30</sup>

Michigan's zero tolerance law has a broader reach than federal legislation requires. Federal law requires only that states enact laws that concern "firearms" on school property.<sup>31</sup> However, Michigan's law requires the expulsion of students who possess a "dangerous weapon."<sup>32</sup> The term "dangerous weapon" is defined as: "a firearm, dagger, dirk, stiletto, knife with a blade over 3 inches in length, pocket knife opened by a mechanical device, iron bar, or brass knuckles."<sup>33</sup> As discussed later, subjecting students to expulsion for

possession of “dangerous weapons” has caused tragic consequences for some unsuspecting, generally well-behaved students.

The statute’s reach does not end with dangerous weapons. Expulsions are also required for criminal sexual conduct and arson.<sup>34</sup> Also, if a student in the sixth grade or higher commits a physical assault against a school employee or volunteer the school board is required to expel the student permanently.<sup>35</sup> A “verbal assault” or bomb threat can result in either a suspension or expulsion to be determined in the discretion of the school board.<sup>36</sup>

The legislation does not, in theory, close the door completely on students who are expelled. It provides that an expelled student may petition for reinstatement. For students in the sixth grade or higher, reinstatement cannot occur before the passage of 180 days. (Younger students are eligible for earlier reinstatement.)<sup>37</sup> Nevertheless, there are a number of practical barriers to reinstatement that can be insurmountable obstacles for students from low income households.

Specifically, it is the student and/or the student’s family who must take responsibility for preparing the petition. “A school board is not required to provide any assistance in preparing the petition.”<sup>38</sup>

Preparing a petition for reinstatement means that a family that struggles daily for its subsistence, and which may have considerable instability in the household, is nevertheless expected to: dutifully calendar the date of eligibility for the filing of a petition; on the date of eligibility initiate the preparation of the petition; somehow ascertain on their own the criteria for reinstatement that are specified by the statute (e.g, age and maturity of the child, child’s attitude concerning the incident leading to expulsion, degree of support that parents can be expected to provide, etc.)<sup>39</sup>; prepare the petition in a way that addresses the criteria; file the petition with the proper authority; and meet with the school board to negotiate terms and conditions for the child’s return to school.

Regardless of whether it is objectively reasonable to require parents to take these steps, student advocates have observed that the reality is that many intelligent, capable students are not fortunate enough to have parents who are likely to pursue reinstatement with diligence or to be in a position to respond to school officials’ occasional demands that they demonstrate that their children received continuing education during the period of expulsion. Regardless of what the legislature may have intended, too often, the door to education is effectively closed to students because of their families’ circumstances.

There is yet another problem with Michigan’s zero tolerance law that was likely unintended, and that manifests itself on the front end of the process. Knowing that notwithstanding the “zero tolerance/strict liability” nature of the legislation, the legislature apparently understood that school administrators will need some degree of flexibility when they confront situations that involve students engaged in serious misconduct.

*Michigan law includes a series of exceptions to zero tolerance treatment of certain students. When a student is caught with a weapon, he/she might escape expulsion if it is established “in a clear and convincing manner” that at least one of the following circumstances is present:*

1. *The object or instrument possessed by the pupil was not possessed by the pupil for use as a weapon, or for direct or indirect delivery to another person for use as a weapon.*
2. *The weapon was not knowingly possessed by the pupil.*
3. *The pupil did not know or have reason to know that the object or instrument possessed by the pupil constituted a dangerous weapon.*
4. *The weapon was possessed by the pupil at the suggestion, request, or direction of, or with the express permission of, school or police authorities.<sup>40</sup>*



## BENEFITS OF INDIVIDUALIZED CONSIDERATION FOR STUDENTS

School districts around the country and in Canada have implemented various strategies intended to limit removal of students from school when it is prudent to do so. In many cases, according to school administrators, these strategies caused reductions in suspensions and other forms of punishment.

For example:

In Ontario, Canada, administrators claim the **Durham school district's** change in emphasis from automatic suspensions to time out rooms and restorative practices discussed at length later in this report caused a seven-year-low in suspensions during the 2007-08 school year.

These exceptions give school administrators the authority to exercise discretion, and to avoid, when necessary, extreme, unjust results. Unfortunately, too many administrators ignore or abuse their discretion. Stories that follow about students (whose names have been changed here to protect their privacy) illustrate the problem well:

**“Gerald”** – Gerald (of African descent) was six years old when he took a toy gun to his public charter school to play with during the latchkey program that was privately administered on the school premises. Gerald played quietly with the toy, and then put it aside on a table. Later, another child shouted: “He’s got a gun! He’s got a gun!” In response to a general inquiry by one of the program’s teachers, Gerald admitted that the toy was his. The Student Services Coordinator suspended Gerald from the latchkey program for two days. Subsequently, the principal suspended Gerald from school for five days pending possible expulsion. An expulsion hearing was scheduled, but the principal canceled it and rescinded the suspension in response

to pressure from the child’s family and because he concluded that the student code of conduct did not explicitly include toy guns in its zero tolerance provision. The principal nevertheless indicated to the parents that he planned to amend the student code of conduct to include a provision for zero tolerance for toy guns as well as real guns.

**“George”** – George (First Nations/American Indian) was a fifteen year old student at a high school in suburban Detroit. He had no history of disciplinary problems, but he was suspended indefinitely after a classmate called attention to a cigarette lighter (three inches in length and containing no butane) that was in George’s possession. The lighter was a novelty item that was shaped like a pistol. George was asked to leave the school immediately. For more than 13 days, he was provided with no written notice regarding the basis for the suspension, and he was given no hearing and no official indication that there would be a hearing. George’s mother tried repeatedly without success to get some indication from school officials about plans for her son. Her calls were not returned, and during personal visits with the principal she received no direct responses to her inquiries. The school was likewise unresponsive to her requests that she be provided with her son’s homework so that he might attempt to keep up while at home. Ultimately, with the assistance of the Student Advocacy Center of Michigan and American Indian Services, Inc., an agreement was negotiated with the school district that allowed for the child to voluntarily withdraw from the school so that he would be able to re-enroll in another district.

**“Horace”** – Horace (of African descent) was a high school student who purchased an inexpensive 2 ½ inch knife while on vacation. Without much thought, he tossed the knife into his backpack and forgot that it was there. Upon his return to Michigan, he used the same backpack for school. Later, a school administrator asked for permission to search the backpack. Horace assumed that there would be no harm in allowing the administrator to search because he believed that the backpack contained no contraband.

However, the forgotten knife was discovered and Horace was recommended for expulsion. Ultimately, the school principal began to speak against expulsion, but he was overruled by a panel of administrators who voted to expel the student. Horace's parents retained an attorney, and friends mobilized a campaign for reinstatement. An appeal to the school board resulted in a reversal of the decision to expel only because of the pressure exerted in this case, and which is absent in most cases—particularly those of students who are from low income households.

**“Julia”** – Julia (of African descent) was a student at an urban all-girls high school. Julia had no history of disciplinary problems. Each day, she and other students were required to go through a metal detector when entering the school building. They were also required to submit to searches of their purses. During a search of Julia's purse, school personnel discovered a folding pencil-sized device that was designed to “arch” the eyebrows. They chose to regard the device as a “weapon” because it contained a razor-like blade that was one inch by one-eighth of an inch

in size. Although Julia explained that she used the device to groom her eyebrows, she was nevertheless recommended for expulsion. Julia's mother quickly intervened, and school officials threatened to refer the matter for criminal prosecution. After considerable effort, Julia's mother pressured administrators into downgrading the offense. Although Julia was able to avoid expulsion, she was nevertheless suspended for several days, the matter remains on her record, and she was emotionally traumatized and demoralized by the incident.

Beyond the ill-considered actions of school administrators that posed serious threats to the academic careers of these students, the factor that is present in all of these stories is the involvement of committed and passionate advocates who successfully worked in the interests of these students. It is likely that the overwhelming majority of students who are faced with unjust expulsions lack advocates who are willing to vigorously and stubbornly insist that expulsion is improper.



**GREGORY** is a seventeen year old who struggles with ADD, ODD, and another learning disability. As a young child, Gregory witnessed the murder of his father and his older brother was killed shortly after. Gregory's disability along with his traumatic past has understandably forced him to deal with extreme anxiety and panic of close personal contact. Therefore, when a teacher violated his personal space and forced him to feel cornered and attacked, Gregory made several verbal attempts asking the teacher to get out of his way. When she didn't, Gregory brushed past the teacher and exited the classroom. The teachers were specifically notified of Gregory's condition and agreed to give him the necessary space needed. After his incident with the teacher, Gregory was charged with assault and sent to the court house. Because of a tremendous support system, Gregory has overcome tremendous adversity to achieve the success that he has today. He is currently in the eleventh grade and plans on graduating in a couple of years.

## THE CULTURAL DISCONNECT

Issues of law and policy do not fully explain racial disparities in school disciplinary practices. Earlier in this report, it was demonstrated that black students are often sent to the office and suspended for offenses that are more subjective than those which are the basis for discipline of white students. “Even the most serious of the reasons for office referrals among black students, threat, is dependent on perception of threat by the staff making the referral.”<sup>41</sup>

Perceptions are often shaped by the cultural background and life experiences of the observer. Consequently, cultural ignorance and cultural misunderstanding may be significant reasons for the frequency of office referrals. Researchers suggest:

“Student reactions to a negative climate and classroom management may be exacerbated by cultural discontinuities that place African American students, especially African American male adolescents, at a disadvantage in many secondary classrooms. [One researcher] suggests that many teachers, especially those of European American background may be unfamiliar and even uncomfortable with the more active and physical style of communication that characterizes African American adolescents; the impassioned and emotive manner popular among young African Americans may be interpreted as combative or argumentative by unfamiliar listeners. Fear may also contribute to over-referral. Teachers who are prone to accepting stereotypes of adolescent African American males as threatening or dangerous may overreact to relatively minor threats to authority, especially if their anxiety is paired with a misunderstanding of cultural norms of social interaction.”<sup>42</sup>

Evidence of this is found in the case of “Derek,” a Michigan student who challenged a suspension for insubordination. The white teacher who made the accusation stated during a hearing that as a general matter, he was so bothered by Derek’s attitude and demeanor that on one occasion, he implored Derek to shed his “hard” facade and to behave like a “nice”

young man. The teacher said that Derek intimidated the other students, and they tip-toed around him, even though the teacher was unable to cite any specific examples. He began his account of the incident in controversy by characterizing Derek’s conduct during the episode as “defiant,” and confrontational. However, after detailed questioning and a request that he specify any defiant acts and words, he acknowledged that in fact, Derek sat quietly and passively during the entire incident.

The potency of black male stereotypes has the potential to obscure issues in school disciplinary hearings in the same way that certain evidence might tend to inflame a jury and prevent honest deliberation. This dilemma was present when five black male students at Belleville High School were expelled in 2007 because they appeared in photographs posted on MySpace.com seated around a table filled with what appeared to be assault weapons, drugs and money. The students contended that the weapons, drugs and money were all props and facsimiles, and that the posed photographs were for the cover of a planned recording by their rap group. But even if the items were real, one issue was whether the students could be punished when the photographs were apparently not taken on school grounds. The school district asserted that there was circumstantial evidence that at some point the students had the purported contraband on school property.

However, in a case like this one where a decision maker must make inferences based purely on circumstantial evidence, there must be serious concerns about whether in a rural predominantly white school district, the decision will truly be honest and objective, or whether the analysis will be fatally tainted by the historical and sociological impact of the very idea of black males with dangerous weapons. This concern about stereotype-induced bias should be present in many more far less dramatic cases. School districts should proactively design measures calculated to minimize the incidence and impact of culture-based improprieties and unfairness.

## THE FAILURE TO EVALUATE FOR DISABILITIES

Under both Michigan and Federal law, school districts are prohibited from suspending students before a determination has been made of whether the conduct that is the cause of the proposed suspension is the result of a disability.<sup>43</sup>

“If there is reasonable cause to believe that the pupil [facing suspension] is a student with a disability, and the school district has not evaluated the pupil in accordance with rules of the superintendent of public instruction to determine if the pupil is a student with a disability, the pupil shall be evaluated immediately...”<sup>44</sup>

Notwithstanding the requirement to evaluate, some student advocates contend that there are Michigan school districts that have declined to investigate suspected disabilities before suspending and expelling students. This practice can exacerbate the School-to-Prison Pipeline problem when students of color who actually have disabilities are the target. The problem is evident in the case of “Terrence,” a nine-year-old of African descent who is a student in a southeast Michigan school district. On several occasions each week, Terrence found himself engaged in fights, confrontations with teachers and other incidents that suggested strongly that he had difficulty managing his anger. Terrence’s mother asserts that on repeated occasions when she was summoned to the school, she would request that the principal arrange for her son to receive a disability evaluation. The principal reportedly refused because of her belief that a finding of disability would stigmatize the child for the rest of his life.

Ultimately, Terrence’s mother became fed up and she arranged an intra-district transfer for her son. When Terrence entered his new classroom on the first day, the teacher greeted him by explaining that she knew of his history and that his fits of anger notwithstanding, “You are a new creature here,” she said. She instructed Terrence to let her know when he was feeling angry, and he would be allowed to take a walk and cool off. Before the end of his first day, Terrence found

himself in a fight with a white student. At the time of his suspension hearing, Terrence’s family learned that even though the fight was a mutual affray, the white child was not punished in any way. The family also explained yet again their suspicions that Terrence had a disability and their interest in having him evaluated. Nevertheless, the school district’s board voted to suspend Terrence for the balance of the school year, and to evaluate him when he returned the next fall.

## THE NEED FOR GOOD JUDGMENT IN SCHOOL ADMINISTRATION

There are occasions when suspensions and expulsions are the result of administrators’ enforcement of rules and policies that do not—or should not—apply. Blind, or inappropriately stubborn application of rules can be a prescription for injustice. Innocent students sometimes become casualties as a consequence. This type of behavior can be found in many school districts, but it certainly accounts for missteps at one Detroit public charter school.

In 2007, Old Redford Academy had a dress code that included a provision that required male students to maintain: “Even, neat, close-cropped haircuts. No designer hair cuts, tails, Afros, dreadlocks, braids, facial hair, side burns or goatees. No twisties. No ‘S’ curls.”

On several occasions, Rodell, a black fifth grade honor student, was accused of violating the hair length requirements of the Academy’s Dress Code, even though his hair was neat, even and approximately a half-inch in length. He was given detentions and suspensions, the last being a suspension with a recommendation for expulsion.

At the request of Rodell’s father, the ACLU of Michigan intervened. After negotiations stalled between the ACLU and the school, the ACLU took the matter to court asking that the court issue a temporary restraining order forcing the school to reinstate the

ten-year-old. The judge encouraged the parties to reach a settlement without court intervention. Soon after, the school reluctantly agreed to allow Rodell to come back to school and to clear his school records of this incident.

Only a few months later, the school became entangled in another controversy because of blind application of the hair provision. At the time, Claudius was a black 14-year-old ninth grade student. He was suspended from the school only three days after he enrolled because school administrators claimed he was not in compliance with the hair provision. During the three days that Claudius attended classes, there were no complaints about his conduct.

Claudius wears long hair in keeping with his family's religious beliefs which are grounded in The Old Testament, and which demand compliance with various scriptural laws, including a passage in the Book of Leviticus that the family interprets as forbidding the cutting of hair. After learning of the suspension, Claudius' mother commenced a dialogue with school administrators about her family's religious convictions and her belief that her son should be exempt from the hair requirement on religious grounds. When her efforts failed, she requested the involvement of the ACLU of Michigan. School administrators also refused to comply with the ACLU's demands that Claudius be reinstated. The school agreed to allow Claudius to return to school only after the ACLU sued and won a temporary restraining order. It was argued to the court that the Constitution required the school to accommodate students like Claudius who have sincerely held religious beliefs.

These types of circumstances frequently arise when teachers and administrators attempt to avoid becoming personally involved in controversies by simply "enforcing the rules" without giving much thought to whether in a particular case the rules in question actually apply. Such efforts to avoid controversy often create controversies that would otherwise never occur. Problems also result when administrators stubbornly

defend decisions and actions that are patently wrong, or in some cases illegal. In all cases, students benefit from having teachers and administrators who are circumspect, and who exercise a healthy measure of wisdom in the day-to-day management of school affairs. Laws, policies and rules must be designed to give educators a sense that they can evaluate students as individuals without fear of being penalized.

## V. CRIMINALIZATION OF STUDENTS

The statistics that show the connection between long-term suspension/expulsion and prison may not alarm Michigan communities where there is a perception that residents are insulated from these problems, but there is a quantifiable impact on all regions of the state. Consider the cost to taxpayers of providing a student with a public education versus providing all of his/her necessities of life in a prison. The Michigan Department of Corrections reports that the state spends about \$30,000 per year on each of the more than 50,000 persons incarcerated in its facilities. On the other hand, the *National Center for Education Statistics* reports that the annual cost of providing a public school education for a child is between \$5,000 and \$10,000. Entanglement in the criminal justice system is a high price to pay (by everyone) for school misconduct. This leads logically to questions about how student misconduct leads to criminal prosecution.

### REFERRAL TO LAW ENFORCEMENT

One link between schools and prisons is found in school administrators' referral of discipline matters to law enforcement.

A study by students at the Robert F. Wagner Graduate School of Public Service concluded:

"The theoretical underpinning of Impact Schools is the 'Broken Windows' theory of crime prevention and a 'Zero Tolerance' approach to policing. The fundamental hypothesis of these theories is that small offenses can lead to serious crime, so small offenses should be punished severely with a 'one strike and you're out' approach. Informed by these models, police in the schools punish all offenses, from minor school infractions to fighting, severely. For example, if students break minor school rules and use profanity or talk back to officers, they can be issued a summons and brought before a judge for disorderly conduct."<sup>45</sup>

In Michigan, efforts to document this practice have met with limited success because a number of school districts contend that they do not maintain records of these referrals. This is particularly true of districts that have school resource officers on the premises. Some school administrators claim that once a matter is referred to these police officers whose "beat" is the schools, the school district makes no further efforts to track or document the case.

The records of those school districts that do document referrals to law enforcement are revealing. The Grand Rapids School District provided records that reflect the referrals that were made during a three month period during the 2006-2007 school year. More than 190 referrals were made district-wide during that period. The largest number of these referrals (59) was for "fights." The next largest number of referrals (37) was for "assault." There were 17 referrals for "disorderly conduct." There were 15 referrals for "drugs." There were 12 referrals for "larceny." Referrals for the more serious offenses (weapons, criminal sexual conduct, arson, etc.) were each in the single digits.

The Muskegon School District reported 42 referrals to law enforcement for the 2003-2004 school year. Of those referrals, 23 were for "violence." The student code of conduct does not define "violence" and there is not a separate offense category for fighting.

With the information that has been made available, it is not possible to know the nature and quality of the "fights" and "disorderly conduct" that account for the significant number of referrals to law enforcement, but it is worth considering that the inevitable physical conflicts that occur among school-aged youth were in earlier eras frequently handled by school administrators alone without the involvement of police. During those times students who got into fights might be punished in a variety of different ways, ranging from detention to suspension. But students who graduated

did not begin their adult lives with criminal records. A criminal history can have a crippling impact on academic and career aspirations, even if the student does not spend time in jail. This is particularly tragic when students demonstrate great potential and because of a single youthful misstep, they face dire consequences.

Consider the case of “David,” a 13-year-old in Kalamazoo whose parents are immigrants from Africa. David was enrolled in a course on technology. As part of the course, the class began a unit on rocketry. As a project, the students were going to make working model rockets of their own. Thinking that he was demonstrating initiative and creativity, David found a bullet at home, opened it and emptied gunpowder into a small vial. He then took the vial with him to school the following day. On the school bus, he told a friend about his plans to use the gunpowder to fuel his model rocket. An eavesdropping student reported what he heard, and not only was David suspended for 180 days, the police were called, David was interrogated without his parents present, and he was charged with a felony—“manufacture of explosive device with malicious intent.” The police also began to interrogate and harass David’s younger brother.

It is not simply modern social conditions that give rise to high rates of referrals to law enforcement. For example, in the Wyandotte School District, referrals to law enforcement during the 2005-2006 school year were more limited and more in line with what might normally be expected. In a school district with 2,147 students, there were only eight referrals, and each was for relatively serious offenses. Three students were accused of assaulting school employees. One student was accused of attempted assault on a school employee. There were three students accused of making violent threats. One student was accused of possessing a knife with a blade longer than three inches.

Any presumption that increasing violence in the schools compels the use of referrals fails to consider that not all referrals are for violent conduct. In addition, even some violent incidents have been quelled

by school personnel before decisions are made to refer these matters to law enforcement officials. Thus, imminent danger is not always a rationale for referrals, and the use of other more creative and informed methods of addressing underlying circumstances that might erupt in violence are frequently available to school administrators.

## SCHOOL RESOURCE OFFICERS

As in many states, some of Michigan’s police departments have assigned police officers to schools in an effort to deter and address crime. These officers are sometimes referred to as “school resource officers.”

“According to the U.S. Department of Education, between 1999 and 2003, the number of schools reporting the regular presence of armed safety and police officers increased by 30%. While national data is not available, information from individual cities shows an increasing number of arrests of children while in school, again largely for minor misbehavior. For example, in 2003 in Chicago, Illinois, 8,539 students were arrested in public schools, disproportionately youth of color. Almost 10% of those arrested were children age 12 or younger. Black students made up 77% of the arrests, but only 50% of the school population.”<sup>46</sup>

The ACLU of Michigan has had informal discussions with representatives of law enforcement about perceived problems with school resource officers, but a sentiment that has been expressed by some members of the law enforcement community is that school resource officers have proven to be very successful in breaking down walls of mistrust that often exist between students and the police. They claim that the objective of these officers is not to be an intimidating presence, but instead to become regarded as a helpful adult on the school premises who students can trust to address problems that they encounter.

There may be a significant number of school resource officers in Michigan schools who are in fact functioning as “buddies” or “big brothers.” However, the

ACLU of Michigan has received accounts of students' experiences that suggest that there are at least some of these officers whose conduct is anything but nurturing. In one incident involving two feuding middle-school girls of African descent, tempers boiled over and a thrown book erupted into a fight. In a note to the ACLU of Michigan, the mother of one of the girls wrote:

"During the course of events, Officer [name withheld], a community liaison policeman, broke up the fight and handcuffed both girls on the spot and walked them through the hall in handcuffs (no rights were read). He told me over the phone that he felt that other students were in danger, despite the fact that there were no weapons involved. He also said he would talk to the judge about going easy on my daughter since he knew she was a pretty good kid. What he did not say was that he told my daughter that she was going to be an example and ["tasered"] by him if she moved. Now my baby has been ticketed with a misdemeanor charge despite the fact that this school has failed to protect her."

In addition to the human rights concerns raised by this incident (e.g., the handcuffing of 12-year-olds and threats to use a taser) there is also the disturbingly swift, almost routine transfer of students involved in a relatively minor schoolhouse spat into the criminal

justice system. Before the parents had even been contacted, this officer had apparently already made plans for how to frame his comments to the judge at the time of sentencing. The mere fact that this police officer was on the premises and was the first on the scene of the conflict eliminated most, if not all, of the steps that would have been traditionally taken in response to a small school fight. There was no opportunity for the principal or a counselor to convene a private discussion with the girls to determine whether voluntary reconciliation was likely. No opportunity was available for parents to come to the school to discuss matters with their children and school administrators. No consideration was given to the potential benefits of having one or both girls receive counseling. These and other alternatives to criminal prosecution were not explored because a police officer, who is duty-bound to enforce the law was on the school premises and an eye-witness to the conflict.

The parent explained that the automatic arrest procedure is not unique in that school district: "The school administrators told my husband and me during a meeting that ticketing and removing students who fight is their procedure at the high school level and that there was no written policy on how fighting is handled."



**"GEORGE"** – George (First Nations/American Indian) was a fifteen year old student at a high school in suburban Detroit. He had no history of disciplinary problems, but he was suspended indefinitely after a classmate called attention to a cigarette lighter (three inches in length and containing no butane) that was in George's possession. The lighter was a novelty item that was shaped like a pistol. George was asked to leave the school immediately. For more than 13 days, he was provided with no written notice regarding the basis for the suspension, and he was given no hearing and no official indication that there would be a hearing. George's mother tried repeatedly without success to get some indication from school officials about plans for her son. Her calls were not returned, and during personal visits with the principal she received no direct responses to her inquiries. The school was likewise unresponsive to her requests that she be provided with her son's homework so that he might attempt to keep up while at home. Ultimately, with the assistance of the Student Advocacy Center of Michigan and American Indian Services, Inc., an agreement was negotiated with the school district that allowed for the child to voluntarily withdraw from the school so that he would be able to re-enroll in another district.

While the middle school girls were threatened with tasers, there are also documented incidents of actual use by police on school premises. Tasers are hand-held weapons that shoot large needles or “probes” into the clothing or torso of the person targeted. Tethers that link the probes to the gun carry an electric current into the body. During a community meeting, the ACLU of Michigan heard allegations from multiple parties that a school resource officer assigned to Kalamazoo Central High School was armed with a taser, and that he had, on occasion made racially provocative remarks to black male students. It is alleged that this officer then used the taser in response to the students’ demonstrations of outrage about the racist comments. The ACLU of Michigan submitted Freedom of Information Act requests to the Kalamazoo Police Department, but none of the documents received appear to corroborate the allegations as presented. Nevertheless, the documents do provide accounts of taser use on school premises that should at least give cause for concern.

In one incident, a high school student was presented with a letter suspending him for 10 days. According to the police report he used profanity and became increasingly loud, agitated and he refused to leave the school building because he believed that the suspension was unjustified. In his report, the school resource officer states that he attempted to persuade the student to leave the building voluntarily. The report states:

“...He said to me several times shut up talking to him because he was not talking to me. I explained to [name deleted] one final time that he needed to leave the building, and he stated that he was not going outside, nor was he going to leave the building. I told [name deleted] at this point that he was under arrest and that he needed to turn around, and that he was under arrest for trespassing. [Name deleted] backed away from me, turned around and hiked up his pants and balled up his fists as if he were going to become physically combative with me. At this time I pulled out the taser and turned it on and told him that if he did not turn around immediately that I would taser him. He again hiked up his pants, looked at me with his fists

balled up and said, let’s go. At this point I initiated the taser on [name deleted] two probes hitting him just below the chest in the stomach area.”

There is a threshold question of whether tasers are desirable, or even necessary for the routine management of unruly students. While the degree of dangerousness of tasers is a topic that is hotly disputed by activist opponents of the weapons and the taser industry, there is no dispute about the mechanical operation of these devices and the fact that they sometimes result in penetration of flesh, and that they always involve the discharge of electric shocks into the body. School administrators are therefore faced with the question of whether this is in general an acceptable method of controlling their students.

More to the point, this specific incident raises important issues. Even though police may challenge the propriety of civilians second guessing police responses, there are a number of common sense questions that are raised here about the officer’s judgment, and the perils of having dangerous devices available to such officers. It appears from the officer’s account that the student was irate immediately after learning of his suspension. It also appears that the student was approached immediately and a demand was made for him to immediately leave the premises. Might there have been a different outcome if the student had been given a “cooling off” period before he was aggressively confronted and threatened with arrest? What would have happened if at the outset, a parent had been called and a request had been made for the parent to come to the school to attempt to persuade the student to cooperate with school administrators? Why was there resort to the use of a taser when the student was unarmed and gave no indication of efforts to ambush the officer or otherwise subdue him by stealth? In fact, the student squared off, and by saying “let’s go” placed within the officer’s control the future course of the conflict.

In a different incident, parents reported to the ACLU of Michigan that their teen-aged daughter and seven

of her friends—all of African descent—faced harassment in Melvindale. The parents alleged: “[The girls] were walking through the residential neighborhood down the street from [their high school] on their way to McDonalds. A resident approached and stopped the girls. The man was driving a black Ford F-150 pickup truck. He screamed at the girls for being in his neighborhood, and threatened to call the police.”

The account went on to report: “A short time after the incident with the man in the pickup truck, two patrol cars pulled up, and the officers, both of them White men, confronted the girls. They proceeded to frisk the girls, all of whom are underage, and went through their backpacks, purses and coats without asking permission or waiting on a female officer.”

The account goes on to say: “The police officers told the girls to get into the patrol cars, cursing at them saying, ‘Get your asses in the car!’” The parents explained that the girls were taken to their school, and into the principal’s office, whereupon the principal began to reprimand the girls for walking through a residential area rather than on the main streets. “To add insult to injury, [the principal] suspended all eight girls for five days for arguing with Melvindale police. He didn’t bother to take into consideration the girls’ side of the story at all.”

It is possible that many school administrators would return to the belief that police should be invited on to school premises only as a last resort if these administrators were to consider carefully whether other professionals such as psychologists, and social workers might be a superior alternative to those school resource officers who justify their presence on school grounds by claiming that they play something in the nature of a counseling role for the students. Also, the belief that only police are capable of handling violent incidents is not true in many schools where security guards address these problems quite capably. In some cases, school resource officers have caused more problems than they have resolved, and they need not in all cases be regarded as an indispensable element of the school experience.

## EDUCATING STUDENTS FOR CAREERS AS PRISONERS

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The risk to students of a police presence in the schools is not limited to potential criminal liability. In 2007, the New York Civil Liberties Union and the national ACLU issued a report titled: *Criminalizing the Classroom: The Over-Policing of New York City Schools*. The report sheds light on the manner in which a police presence can fundamentally alter—or even shatter—the educational environment.

“Students and faculty alike expressed concern about the metal detector program’s effects on the atmosphere of the school. ‘This is ridiculous,’ one student stated during the scan. ‘This is so unnecessary. This isn’t a school anymore, this is Rikers.’ Another yelled: ‘We in prison guys! We in prison!’ Principal Aurelia Curtis also felt the scan had done more harm than good. She described the officers as ‘abrasive’ and complained that they treated students with disrespect. ‘No weapons were found,’ Curtis says. ‘The whole tone of the building was disrupted and many students stayed home.’<sup>47</sup>

The student who shouted: “We in prison” is not alone. That perception is shared by at least one scholar who has examined the use of America’s institutions—from the institution of slavery, to the “ghetto,” to prisons—as instruments for the control of populations of color. In an article on the topic, the following observations were made about schools:

“Like inmates, [poor urban black and Latino] children are herded into decaying and overcrowded facilities built like bunkers, where undertrained and underpaid teachers, hampered by a shocking penury of equipment and supplies—many schools have no photocopying machines, library, science laboratory, or even functioning bathrooms, and use textbooks that are thirty-year-old rejects from suburban schools—strive to regulate conduct so as to maintain order and minimize violent incidents. The physical plant of most establishments resembles fortresses, complete with

concertina wire on outside fences, bricked up windows, heavy locks on iron doors, metal detectors at the gates and hallways patrolled by armed guards who conduct spot checks and body searches between buildings. Over the years, essential educational programs have been cut to divert funds for more weapons, scanners, cameras, emergency telephones, sign-in desks, and security personnel, whose duty is to repel unwanted intruders from the outside and hem students inside the school's walls."<sup>48</sup>

The school conditions when considered in this light lead to reasonable questions about whether children are being prepared for responsible, productive careers, or instead for lives behind bars. "...[T]he carceral atmosphere of schools and the constant presence of armed guards in uniform in the lobbies, corridors, cafeteria, and playground of their establishment habituates the children of the hyperghetto to the demeanor, tactics, and interactive style of the correctional officers many of them are bound to encounter shortly after their school days are over."<sup>49</sup>

Prison-like conditions can also be found in Michigan. In Detroit, the use of metal detectors has been in effect for a significant period. In 2006 Detroit Public Schools announced in a bulletin that its police force had been accredited as a "full-fledged law enforcement agency." The force employs approximately 80 full-time police officers and more than 300 security officers and other personnel. The bulletin reported that: "The department's officers have been instrumental in effecting many high profile arrests of criminals in recent years."

On March 5, 2009, a battalion of the school police officers and Detroit police conducted a hallway sweep at Central High School. At the conclusion of their operation, they had arrested 49 young people who were in the corridors and charged them with "loitering." According to student reports, students were forced to remain in a kneeling position with their hands behind their heads for as long as two hours, and their requests to call parents were denied. At least two of the arrested students contend that they were en route

to register for college entrance testing on the instructions of the principal. According to media reports, the police vowed to conduct similar operations in the future at other schools.

In 2006, more than 30 students who peacefully protested the deterioration of Detroit's MacKenzie High School's physical plant, the lack of textbooks and toilet paper as well as other horrific conditions were arrested for disorderly conduct and handcuffed.<sup>50</sup> (The school has since been shuttered.) It was also reported that in a separate incident, middle school and high school students who protested the closing of Detroit schools were abused as well. A 13-year-old was quoted as saying that police used mace on the children, handcuffed them and engaged in verbal abuse and the use of profanity.<sup>51</sup>

Detroit is not alone. Similar complaints about high intensity prison style security measures have come from other urban school districts in Michigan. It is worth noting that the absence of such conditions from many suburban and rural school districts does not necessarily mean that those districts are crime free. An April 18, 2008 Washington Post article reported that in the wake of a stabbing in one D.C.-area suburban school district, and the discovery of loaded guns in a locker in another, parents rejected the idea of installing metal detectors. The article quoted one parent as saying: "I don't want my son to come to school through metal detectors. That's prison."

## VI. RESTORATION VERSUS REJECTION

School districts across the country have attempted a variety of alternatives to discipline, including diversionary programs, mediation and others. However, “Restorative Practices” is a method that is gaining increasing attention from school administrators. There is no procedural protocol for this approach, but to resolve discipline issues, parties attempt to achieve three objectives:

1. The wrong or injustice must be acknowledged;
2. Equity must be restored;
3. Future intentions must be addressed.<sup>52</sup>

The approach has its roots in traditional societies.

“...[I]n Africa, for example, or in North American indigenous communities—restorative justice often serves as a catalyst to reevaluate, resurrect, legitimate, and adapt older, customary approaches. During colonization, the Western legal model often condemned and repressed traditional forms of justice that,

although not perfect, were highly functional for those societies.”<sup>53</sup>

One of the most common approaches to restorative practices involves having those connected to the controversy sit in a circle and work through their problems.

“In a circle process, participants arrange themselves in a circle. They pass a ‘talking piece’ around the circle to assure that each person speaks, one at a time, in the order in which each is seated in the circle. A set of values, or even a philosophy, is often articulated as part of the process—values that emphasize respect, the value of each participant, integrity, the importance of speaking from the heart, and so on.”<sup>54</sup>

Proponents of the approach report that the process gets to issues that are often at the core of controversies in ways that standard disciplinary measures cannot.



**RODELL** was a 10-year-old honor student at a public charter school in Detroit when he was suspended and referred for expulsion because the principal believed that his hair violated the “closely cropped” school rule. Rodell’s hair was no longer than  $\frac{3}{4}$  of an inch, however, he was repeatedly punished with detentions and suspensions for his hair being “too long.” The ACLU sued to prevent the expulsion and, after a hearing on a motion for an injunction, the school permitted him to return and cleared his school records of the incident. Rodell is pictured here with his father (left) and ACLU staff attorney Mark Fancher.

“Our society’s fundamental assumption is that punishment holds offenders accountable. However, for an offending student punishment is a passive experience, demanding little or no participation. While the teacher or administrator scolds, lectures and imposes the punishment, the student remains silent, resents the authority figure, feels angry and perceives himself the victim. The student does not think about the real victims of his offense or the other individuals who have been adversely affected by his actions...

“By simply expressing our feelings to misbehaving students we come to realize they typically don’t have a clue as to how their behavior has affected others. Most young people are very self-absorbed. They are genuinely surprised to find out how they have affected a teacher and as a result, they begin to see their teachers as fellow human beings, not just as those adults who give them a hard time. The change in their relationship with their teacher is sometimes dramatic and almost always meaningful.”<sup>55</sup>

Practitioners of this method report that in the end, students are often genuinely motivated to reform their conduct, and they sometimes begin to encourage other students to do the same. It has been suggested that this result is far better than having a resentful student return from a suspension only to cause further problems in the school.

*At least one Michigan school district claims to have tried Restorative Practices with great success.*

*“In [Lansing], a pilot project begun in Pattengill Middle School in January 2005 introduced restorative practices to manage disciplinary issues. At Pattengill, restorative practices:*

- *Supported a 15% drop in suspensions, while suspension rates at the district’s other middle schools increased.*
- *Averted two expulsions.*
- *Resolved conflicts effectively. 93% of 292 students participating reported using restorative methods to resolve their conflicts.*
- *Taught students new skills. Nearly 90% of participating students reported learning new skills in their restorative experiences, and 86% reported using those skills to peacefully resolve or avert conflicts after their restorative interventions.*

*The program’s success led the district to expand its restorative program to one elementary school, two more middle schools and a high school for 2006-2007. Lansing restorative justice coordinator Nancy Schertzing estimated that through mid-April 2007, restorative interventions had saved Lansing students nearly 1,500 days of suspension.”<sup>56</sup>*

*Other Michigan school districts may or may not regard Restorative Practices as a good fit, but there is much to be said for finding a method of some kind that succeeds in addressing and eliminating underlying factors that account for student misconduct. It is now reasonably clear that in many cases, simply removing students from schools does not resolve the issues that led to their suspension.*

## VII. ALTERNATIVE EDUCATION – OPTIONAL IN MICHIGAN?

The term “alternative education” is defined in various ways depending upon context, but its most practical purpose is to ensure that students who are excluded from school somehow remain engaged in the learning process. Some programs allow students to attend special classes in the evenings. In other programs, assignments to be completed at home are reviewed and graded by teachers. Still other programs provide specialized academic activities. Some districts voluntarily provide these programs, but in many circles there is great uncertainty about whether alternative education is a requirement.

In 1985, the then-Attorney General Frank Kelly was asked whether Michigan’s compulsory education law requires that school districts provide alternative education programs for students who have been expelled. Kelly’s conclusion that school districts have no obligation to create these programs led some to believe that expelled children have no right to an alternative education at all. However, Kelly’s response was to the very narrow question of whether responsibility for alternative education programs rests with school districts.

If Kelly was correct, and school districts aren’t responsible for establishing alternative education programs, does the law require that these programs come into existence by other means? A definitive answer to that question is not provided here, but there is at least one analysis that can lead to the conclusion that some part of government must provide—and expelled students must attend—alternative education programs. Michigan’s Compulsory Education law requires every child between the ages of six and sixteen to attend school.<sup>57</sup> There are exceptions to the compulsory education requirement,<sup>58</sup> but in the absence of one of the enumerated exceptions, parents are required to ensure their children’s attendance at school.<sup>59</sup> Failure to comply subjects parents to possible conviction for a misdemeanor and possible jail time.<sup>60</sup> (Even children

may become liable for delinquency or truancy.<sup>61</sup>) At issue is whether expelled students are subject to these requirements, and if so, whether their compliance must be through participation in alternative education programs.

The idea that expelled students must remain in an educational program is not new. As far back as the 1800s, students who were excluded from their local schools were able to continue to meet their school attendance obligations by attending alternative schools referred to as “ungraded schools” for “incorrigibly turbulent, disobedient or insubordinate children.” These schools were a legislative creation.<sup>62</sup> Under the law of that period, if children did not attend these alternative schools, they were subject to detention in a juvenile facility.<sup>63</sup>

Frank Kelly’s opinion cited a 1971 opinion by one of his predecessors that stated: “A student who by his own volition and action has committed a gross misdemeanor or engaged in persistent disobedience forfeits his rights to a public education.” While this appears to be a departure from a history that suggests that even incorrigibles retain their right to be educated, under current law, if a child is expelled, the statutory scheme provides for alternative methods for the child to receive an education.<sup>64</sup> Specifically, MCL 380.1311(9) addresses the question of how a child’s alternative education will be paid for after expulsion.<sup>65</sup> Additionally, the Office of Safe Schools is charged with compiling, cataloging, and distributing information on existing alternative education programs and nonpublic schools that “may be open to enrollment to individuals expelled.”<sup>66</sup> The Office of Safe Schools is also required to “periodically distribute this information to school districts for distribution to expelled individuals.”<sup>67</sup> School districts have the corresponding responsibility of providing the Office of Safe Schools with detailed information on all alternative education programs they provide.<sup>68</sup>

Development of alternative education programs is also addressed by section ten of MCL 380.1311 which provides that, “[t]he office of safe schools also shall work with and provide technical assistance to school districts, authorizing bodies for public school academies, and other interested parties in developing these types of alternative education programs or schools in geographic areas that are not being served...”<sup>69</sup>

Finally, MCL 380.1311 provides that parents of children and children themselves who were expelled have a “responsibility ...to locate a suitable alternative education program and to enroll the . . . [child] in such a program during the expulsion.”<sup>70</sup>

Thus, even if the 1985 Attorney General opinion is correct in its conclusion that school districts are not required to establish alternative education programs, it can be plausibly suggested that these programs must be established by someone somehow. The sad fact that this has not happened does not mean that it can’t.

Deficiencies in the system are identifiable. For example, the Office of Safe Schools has not fully met its obligations to organize information on existing programs and to develop additional alternative education programs. Since 2005, there have been attempts to compile a list of alternative education programs that

accept students who were suspended or expelled, but Carol L. Wolenberg, the deputy Superintendent of the Department of Education, commented on the challenges facing the Office of Safe Schools. In a memorandum from the State Board of Education, Ms. Wolenberg stated, “[u]nfortunately, through communications with school officials, parents, and attorneys, we have found that compiling an accurate list [of programs] is difficult.”<sup>71</sup>

Apparently, the Office of Safe Schools has been unable to consistently satisfy statutory requirements to “provide technical assistance . . . in developing . . . alternative education programs.”<sup>72</sup> According to Michigan’s Center for Educational Performance, 46% of a group of 1,975 students who had been suspended or expelled during the 2006-2007 school year were provided with either no alternative education services or were provided with no services at all during their absence from school.<sup>73</sup>

The consequences of all of this are serious. Consider “Derek” (whose suspension was discussed earlier as part of the analysis of cultural misunderstanding). He became increasingly frustrated and bored during a 180 day suspension. He eventually became entangled in the juvenile justice system when, during a school day, he was out walking to relieve his boredom and he found himself accused of vandalism by a neighbor.



**“HORACE”** – Horace (of African descent) was a high school student who purchased an inexpensive 2 ½ inch knife while on vacation. Without much thought, he tossed the knife into his backpack and forgot that it was there. Upon his return to Michigan, he used the same backpack for school. Later, a school administrator asked for permission to search the backpack. Horace assumed that there would be no harm in allowing the administrator to search because he believed that the backpack contained no contraband. However, the forgotten knife was discovered and Horace was recommended for expulsion. Ultimately, the school principal began to speak against expulsion, but he was overruled by a panel of administrators who voted to expel the student. Horace’s parents retained an attorney, and friends mobilized a campaign for reinstatement. An appeal to the school board resulted in a reversal of the decision to

expel only because of the pressure exerted in this case, and which is absent in most cases—particularly those of students who are from low income households.

Likewise, “Ronnie” became increasingly discouraged, and doubtful about his willingness or ability to return to school after he was suspended for most of a semester because of accusations that he sold drugs and refused to submit to a search. As noted earlier, statistics demonstrate that students who are away from school for extended periods are much more likely to drop out and become non-productive members of society. This is only one of many reasons why it is so important for alternative education to be available to every child who is excluded from school for extended periods.

If it is not already the case in some school districts, there is the ever-present possibility that alternative education programs will offer little to students that will lead to academic progress. To the extent that alternative education is regarded anywhere as merely a dumping ground for those students who have been suspended long-term or expelled, the concept must be changed. There is nothing gained by warehousing students only to have them ultimately drop out and become prison residents. If an alternative education program is to be at all useful, it must not only provide students with a meaningful academic program, but it must also address any social, psychological, physical or other issues that may account for the student’s behavior that led to the suspension or expulsion.

Lighthouse Academy, which provides alternative education to expelled students from more than 15 Kent County school districts, provides students with a comprehensive curriculum that includes physical education. The facility is operated by Wedgwood Christian Services and was established in 2005. Administrators claim that during the first year of the school’s existence, students’ collective grade point average increased from 1.9 to 3.83. They also say that attendance increased from 30% to 89%.

Inevitably, there will be questions about how government will fund alternative education programs that employ specially-trained teachers, psychologists, career counselors and other professionals who are capable of fully rehabilitating troubled students. Schools like Lighthouse demonstrate the possibilities for private as well as public funding. In reality however, this is not an expense that can be avoided completely even with private assistance. Government funds will be used either for students’ education or incarceration. Statistics demonstrate the high probability that an expelled student will eventually be imprisoned. Earlier in this report, it was demonstrated that the cost of incarceration is more than five times the cost of educating a student. Effective fully funded alternative education ensures at least a fighting chance that the time period when government funds will be used for a troubled student will be finite as opposed to the very high cost of extended incarceration.

Thus, the need for greater understanding about the state’s obligation to provide alternative education is clear, along with the need for the issue to be given higher priority and greater resources by the educational system.

## VIII. RIGHTS AND ACCESS TO EDUCATION

If every student had a legally guaranteed right to an education, the development of fundamental solutions to many of the problems identified in this report would be much easier. In 1973, the United States Supreme Court held that there is no federal constitutional right to education. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973). Over the past three decades, in the absence of a federal constitutional right to education,<sup>74</sup> education reform activists have used state constitutional provision initiatives to create the opportunity to ensure adequate conditions in our school system and send a clear message that our community sees our children as one of the most valuable investments that we can make in our future.

In response to this ruling, many states set out to establish such a right in their own state constitutions. Today, more than 30 states mandate, in some form, that the state provide a quality education. However, Michigan is one of 19 states with constitutional language that requires only that the state “maintain and support” a system of free schools in a nondiscriminatory manner.<sup>75</sup> In eight of these 19 states, courts have adopted an expansive interpretation of the language that includes a mandate for states to provide a quality or “adequate” education. But Michigan courts have declined to find such a right within the general language of our state constitution.<sup>76</sup> Thus, Michigan is one of only eleven states in the country with no substantive provisions giving students a right to receive a quality or adequate education which means that Michigan is in the bottom tier of state constitutional protections for education.

The lack of such a right in our state constitution means that severe and systemic problems in the educational system are close to impossible to reform, from substandard facilities, lack of textbooks, or fundamental inequities between school districts. The problems belong to everyone and to no one. School

administrators; teachers; teachers unions; parents’ associations; educational associations; sources of external support such as corporations and foundations—all have unique perspectives and reasonable concerns particular to their vantage point. The legislature is hamstrung by budget concerns and fear that their districts will revolt if financing methods are reviewed or revised. At the end of the day, the three branches of government, and their constituencies, must have the political will to fashion meaningful and long-lasting remedies.

While strong constitutional “rights” language has not necessarily ensured that the educational systems in those states are better than in states with weaker constitutional language,<sup>77</sup> such language can, at the



### BENEFITS OF INDIVIDUALIZED CONSIDERATION FOR STUDENTS

School districts around the country and in Canada have implemented various strategies intended to limit removal of students from school when it is prudent to do so. In many cases, according to school administrators, these strategies caused reductions in suspensions and other forms of punishment.

For example:

At **Palisades High School** in Kintnersville, Pa., the guidance counselor reported that restorative practices were initiated in 1998, and between 1999 and 2003, the number of disciplinary referrals to the principal’s office dropped from 1,752 to 815. The number of incidents of disruptive behavior decreased from 273 to 142. The number of out of school suspensions decreased from 105 to 53.

very least, codify for a community the value that all children deserve a decent education and provide one means of reform when nothing else works. It can also provide a legal mechanism to compel the executive and legislative branches to work together. Although never ideal, litigation is sometimes a last resort when there is a lack of political will and effective leadership. Yet Michigan's failure to make education a right for all school-age children coupled with high rates of long-term suspensions and expulsions have all but guaranteed a youthful population set adrift and vulnerable to entanglement in the criminal justice system.

There are examples of how all of this can work. Compare Michigan with New Jersey. The two states are not identical, but there are similarities. Both states have economically depressed urban centers as well as vast stretches of suburban and rural/agricultural regions. According to census figures, New Jersey's overall population is about 8.7 million with about 2.1 million residents under the age of 18. Michigan's overall population is about 10 million, with about 2.4 million residents under the age of 18. There are other incidental similarities, but when it comes to education, significant differences emerge. According to a June 2008 Issue Brief published by the Alliance for Excellent Education ([www.all4ed.org](http://www.all4ed.org)), the projected number of non-graduates from Michigan's schools for the class

of 2008 was 45,305 as compared to only 18,474 from New Jersey's schools. New Jersey's 83.3% graduation rate is the highest in the nation according to the Issue Brief. (Michigan's graduation rate is 70.5%, which is roughly equal to the national average.) What accounts for this difference?

We can start with New Jersey's constitution. Article VIII, Section 4 requires the legislature to:

"... provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years."

This provision was the basis for litigation that led to New Jersey Supreme Court decisions in *Abbott v. Burke*, 119 N.J. 287 (1973); and *Robinson v. Cahill*, 62 N.J. 473 (1973). In these cases, the court defined and affirmed the necessity of a "thorough and efficient" education for all children. In *Abbott*, the court went to great pains to ensure that children living in poor, urban school districts would not be shortchanged by requiring that the legislature assure that "... poorer urban districts have a budget per pupil that is approximately equal to the average of the richer suburban districts, whatever that average may be, and be sufficient to address their special needs." Analysts might debate



**"GERALD"** – Gerald (of African descent) was six years old when he took a toy gun to his public charter school to play with during the latchkey program that was privately administered on the school premises. Gerald played quietly with the toy, and then put it aside on a table. Later, another child shouted: "He's got a gun! He's got a gun!" In response to a general inquiry by one of the program's teachers, Gerald admitted that the toy was his. The Student Services Coordinator suspended Gerald from the latchkey program for two days. Subsequently, the principal suspended Gerald from school for five days pending possible expulsion. An expulsion hearing was scheduled, but the principal canceled it and rescinded the suspension in response to pressure from the child's family and because he concluded that the student code of conduct did not explicitly include toy guns in its zero tolerance provision. The principal nevertheless indicated to the parents that he planned to amend the student code of conduct to include a provision for zero tolerance for toy guns as well as real guns.

whether this court mandate grounded in a constitutional right to education accounts for the differences in education outcomes in New Jersey and Michigan, but the advantages of having such a legal framework in any state should be obvious.

The absence of a right to education also impacts the broader society and this has not been lost on analysts charged with evaluating prospects for the long-term economic viability of the state. In 2004, the Commission on Higher Education and Economic Growth, which was chaired by Lt. Gov. John D. Cherry, Jr., issued a report that focused heavily on the economic necessity of increasing the number of Michigan residents who obtain post-secondary education. But the report also highlighted a crisis in secondary education. The report stated:

“...[F]ar too many Michigan students attend high schools that do not help them find success in life and work. This problem is most acute in low-income communities, exacerbating the ethnic and regional disparities that exist in educational attainment in Michigan. To make real the belief that all students can achieve rigorous academic standards linked to post-secondary success, **Michigan must give all students the opportunity to attend high schools capable of helping them reach that goal.**” (emphasis added)

This conclusion implies that not only must students have a right to receive an education, but that they must also have the right to receive a quality education. The value of such a constitutional provision is evident from the fact that most states that have one have graduation rates that are higher than Michigan’s. Estimated graduation rates for 2004-05 published in the June 2008 Issue Brief published by the Alliance for Excellent Education ([www.all4ed.org](http://www.all4ed.org)) for states where the constitution requires that students receive a “thorough and efficient” education are as follows: Pennsylvania 80.4%; Maryland 73.6%; New Jersey 83.3%; Ohio 75.9%; West Virginia 72.8%. Montana’s constitution explicitly requires a “quality” education for its children, and the estimated graduation rate is 75.7%. Virginia

also requires a quality education, and its rate is 72.9%. Michigan’s rate of 70.5% may be close to the national average (70.6%), but it is significant that it is lower than those of most states which provide better constitutional protection for their children’s education.

A June 2006 Michigan Future report sums up the importance of ensuring a quality education:

“The chief reason to insist on a quality K-12 education system is the moral imperative to insure that all children get a quality education. K-12 education is the principal vehicle available for all children to have a real opportunity to achieve the American Dream. It is an invaluable, but time-limited resource. Each day that a child spends not receiving a first-rate education, some of the potential rewards of a quality education are lost.”

*We therefore recommend for Michigan a constitutional provision that will do the following:*

- 1. Explicitly establish education as a fundamental right or value in the state constitution, thereby enabling litigation that empowers individuals to assert a substantive right to education.**
- 2. Add a requirement to the constitution that Michigan provide a “quality” education.**
- 3. Develop and pursue specific educational reforms, particularly a mandate for early childhood education and protections for students’ due process rights.**

## CONCLUSION

All available credible evidence leads to the inescapable conclusion that Michigan must make quality education a right for every child, and that educational opportunities must be preserved. This necessarily means a de-emphasis of disciplinary measures that remove children from schools. It also means that when exceptional circumstances require the exclusion of students from conventional academic programs, that they be placed in alternative educational programs that allow them to continue the process of learning.

Furthermore, exploding prison populations and the consequent devastating social and economic consequences to the broader society compel movement away from those practices that transform relatively minor infractions of school rules into matters under the jurisdiction of the criminal justice system. Educators, in consultation with law enforcement professionals must begin to explore, as an alternative, diversionary and rehabilitative programs that can be used for school offenses that are now routinely referred for criminal prosecution.

The cost of the School-to-Prison Pipeline to Michigan is not only fiscal. It is the cause of inexcusable waste of human potential that might otherwise be of service to the state. The best evidence of this is found in accounts provided by those who are impacted most directly. When reflecting on his school experience, a Michigan prisoner explained:

“I was in ‘in-house suspension’ in Pontiac Michigan public schools. I felt abandon[ed] and became desensitize[d] to be isolated and disassociated from friends, and moreover the teachers. Because in my mind, school was a place to learn and have fun, but when the teachers began to punish and outcast me, I developed the attitude of ‘I don’t care,” and said rejection socialize[d] me to bond with others who had undevelop[ed] and un-civilized brains. Then I started to think, this is the way things should be, so I felt unaffected by associating with criminals outside of school, because they were my peers in in-house suspension. The bottom line is, it seem[s] to me, suspension prepared me for prison cells, and juvenile hall. I don’t see how isolation civilize[s] a child.”

## APPENDIX

The Freedom of Information Act was used to collect data concerning various issues related to the School-to-Prison Pipeline from school districts located in diverse regions of Michigan. As part of this project, analyses and charts have been developed that concern suspension/expulsion rates, referrals to law enforcement and other relevant issues. All charts, tables and analyses have been posted at [www.aclumich.org](http://www.aclumich.org). This appendix contains charts that demonstrate a consistent pattern of suspension and expulsion of black students at rates that are disproportionate to their representation in the student body. Because of its racial demographics, comparisons of white and black student suspensions are not presented in tables that concern Detroit's schools. However, charts do reflect quantitative data concerning suspensions and related matters in that city's public schools.

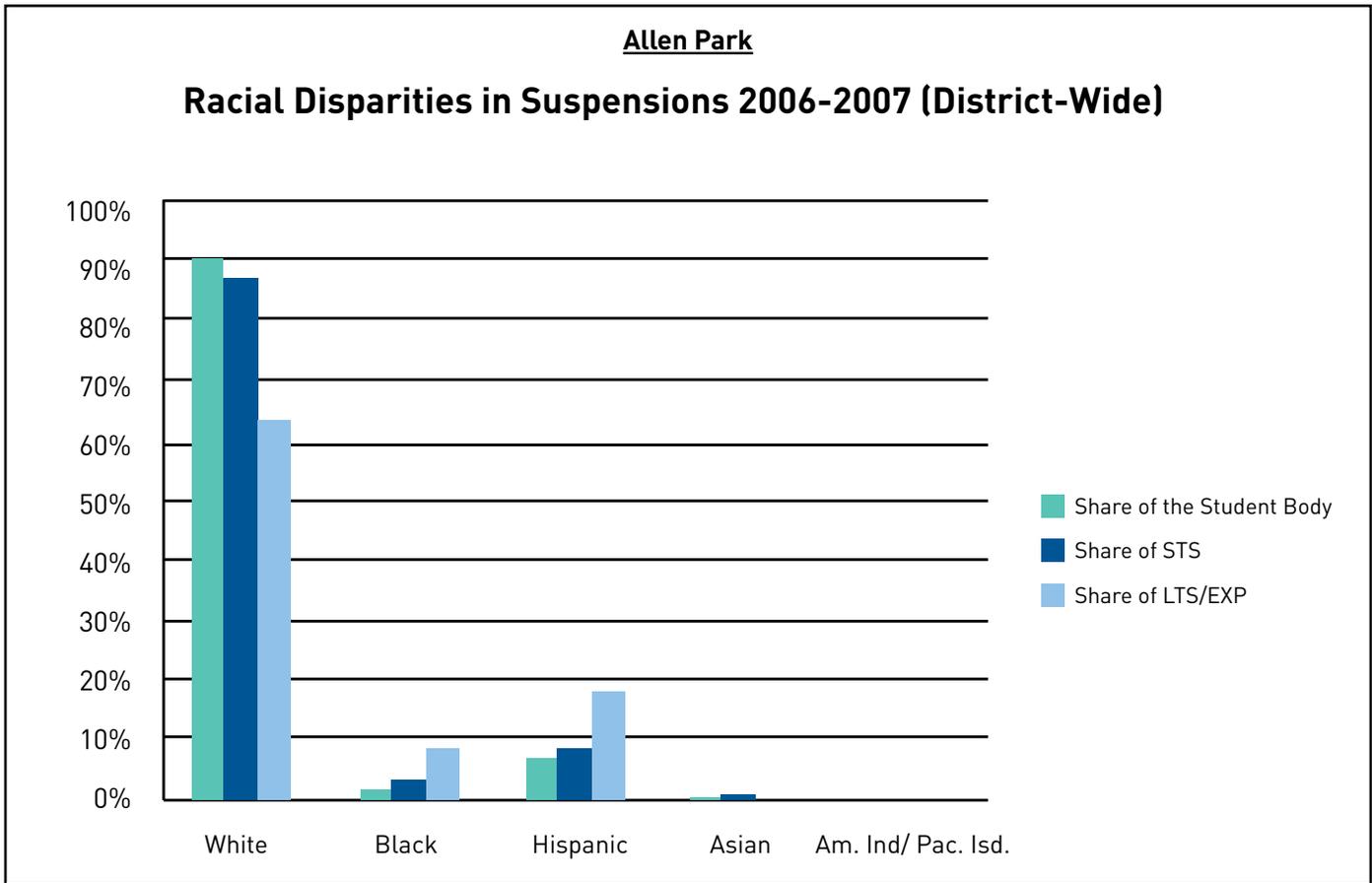
Appended data concerns only school districts specified, and the data cannot be used to draw definitive conclusions about all school districts in the State. Although the ACLU of Michigan has made all reasonable efforts to ensure accuracy in the counting of reported suspensions and in the calculation of proportional discipline along racial lines, as in all cases there is the possibility of human error. However, because of precautions taken, any inaccuracies are likely to be

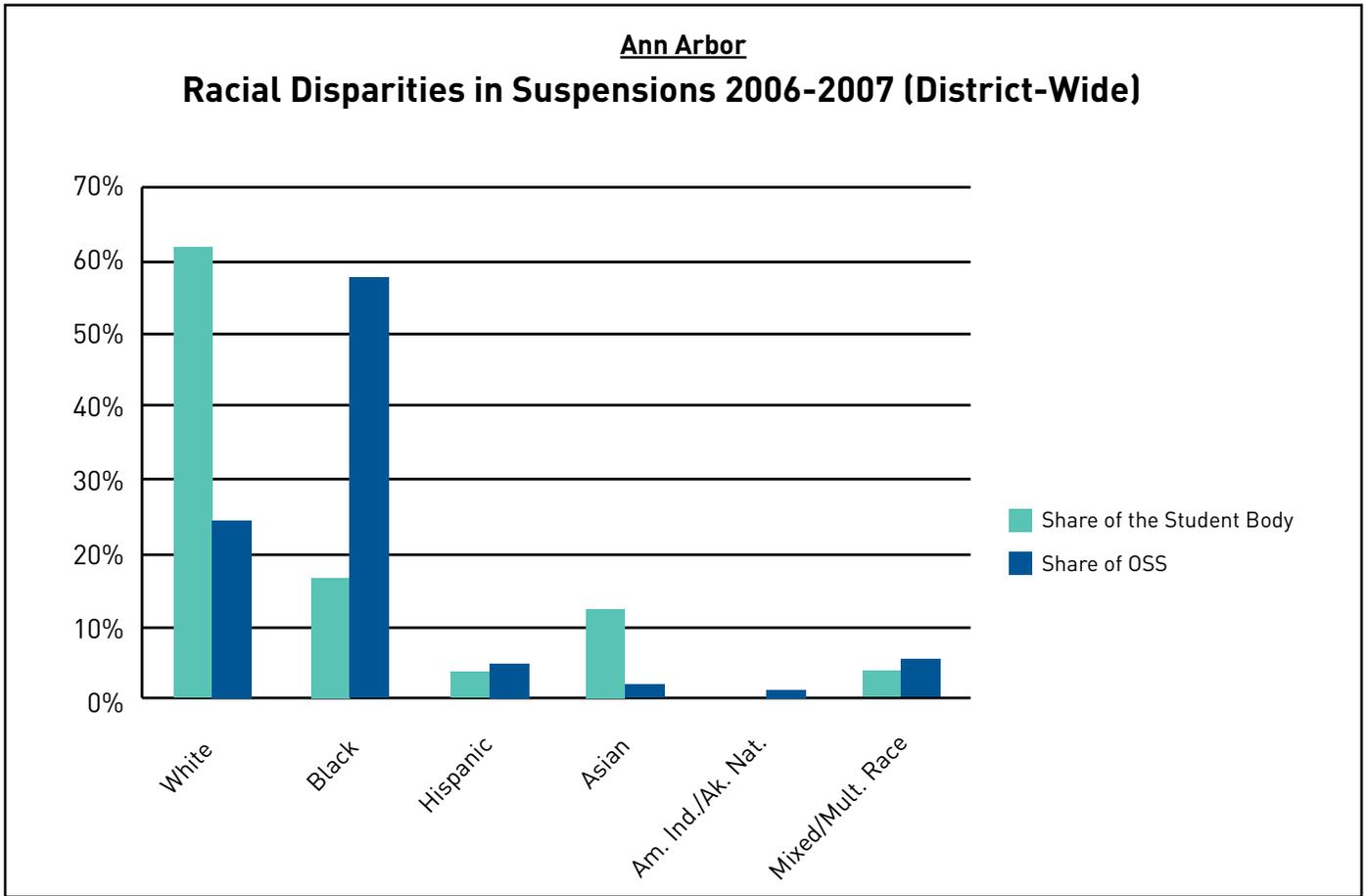
minor and unlikely to have significantly affected the overall trends reflected by appended tables and charts. In addition, the figures that are the basis for statistical calculations were supplied by the school districts themselves, and consequently, the ACLU of Michigan cannot warrant the accuracy of the numbers provided. The district data consists only of secondary school data. Elementary schools in each district are not included in the analyses unless otherwise noted.

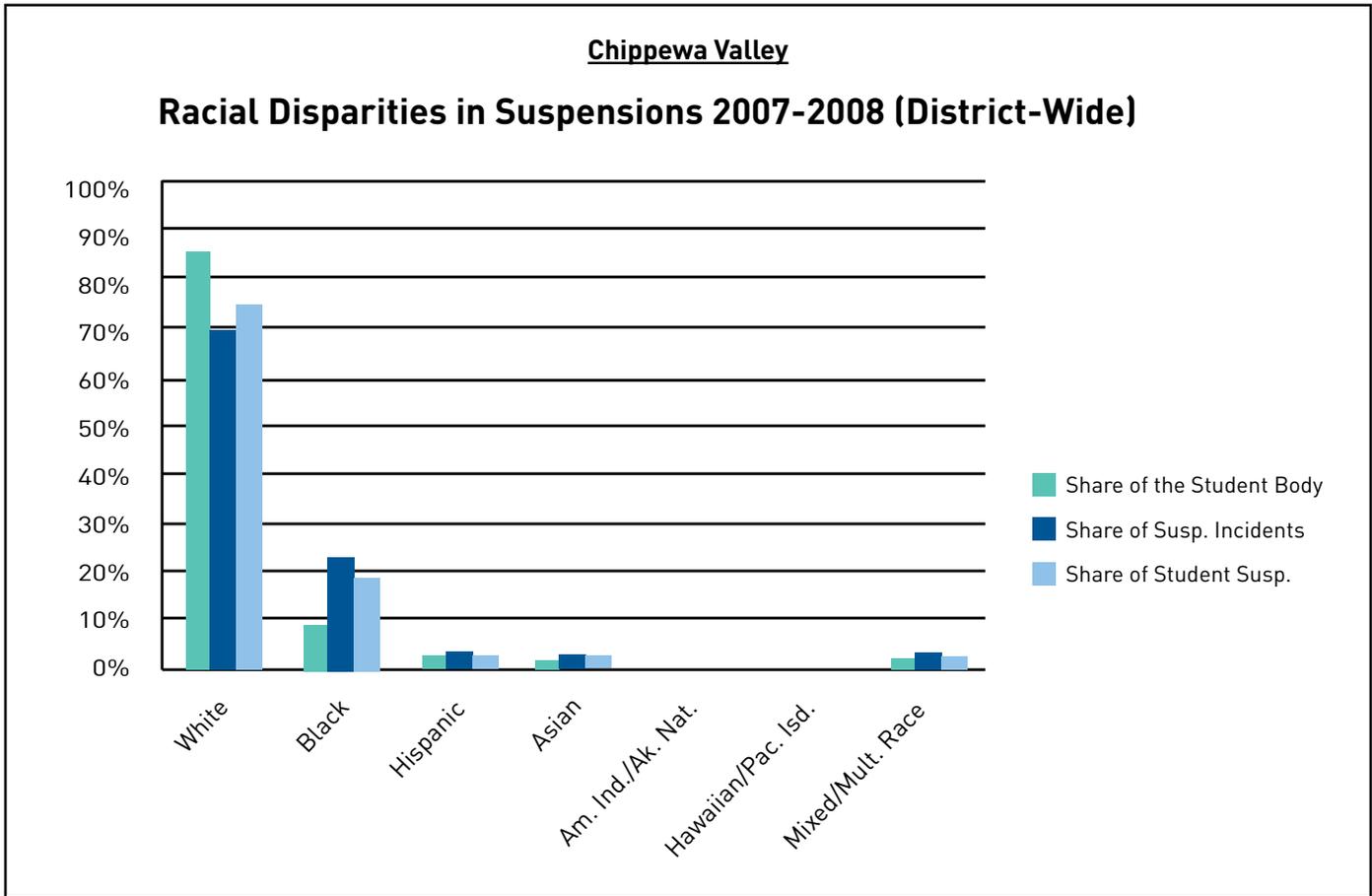
The following abbreviations appear in charts that are used to illustrate statistics.

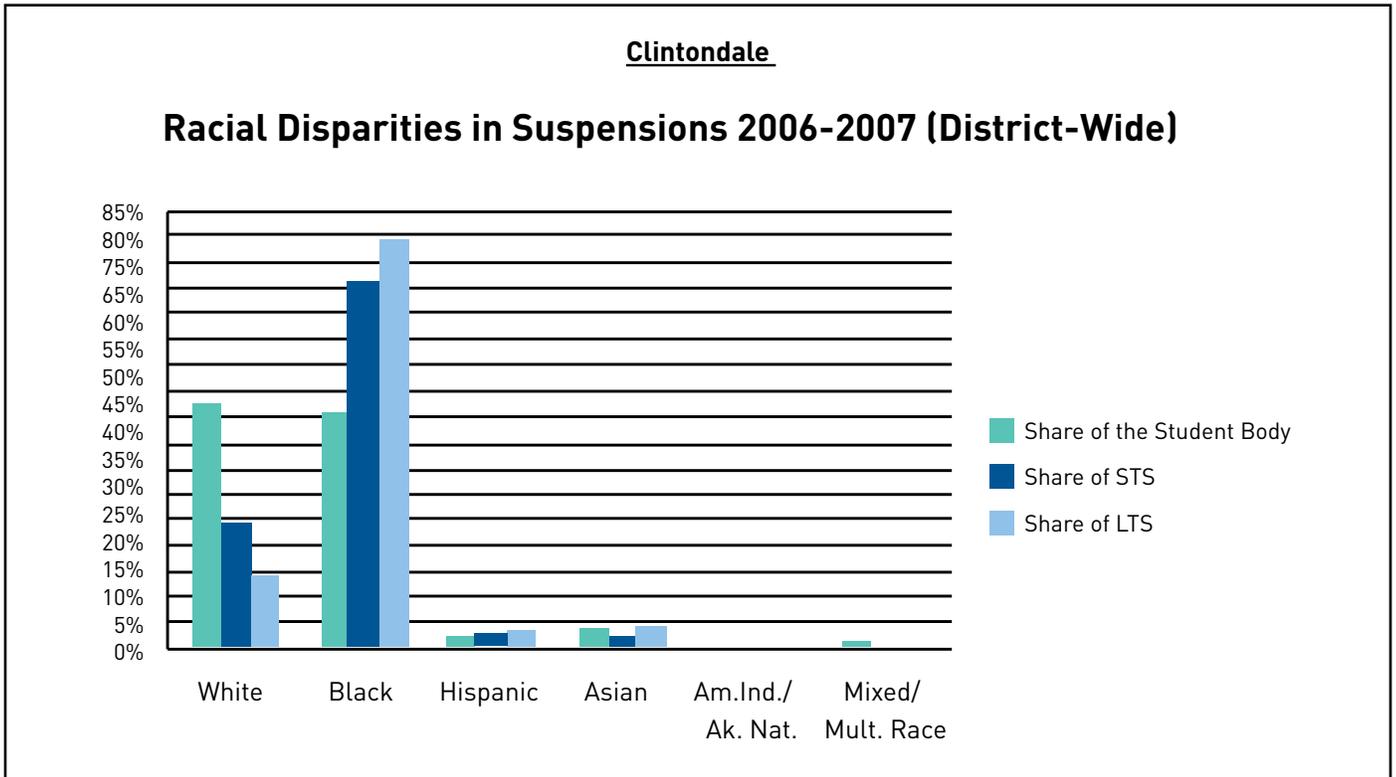
### Abbreviations Key

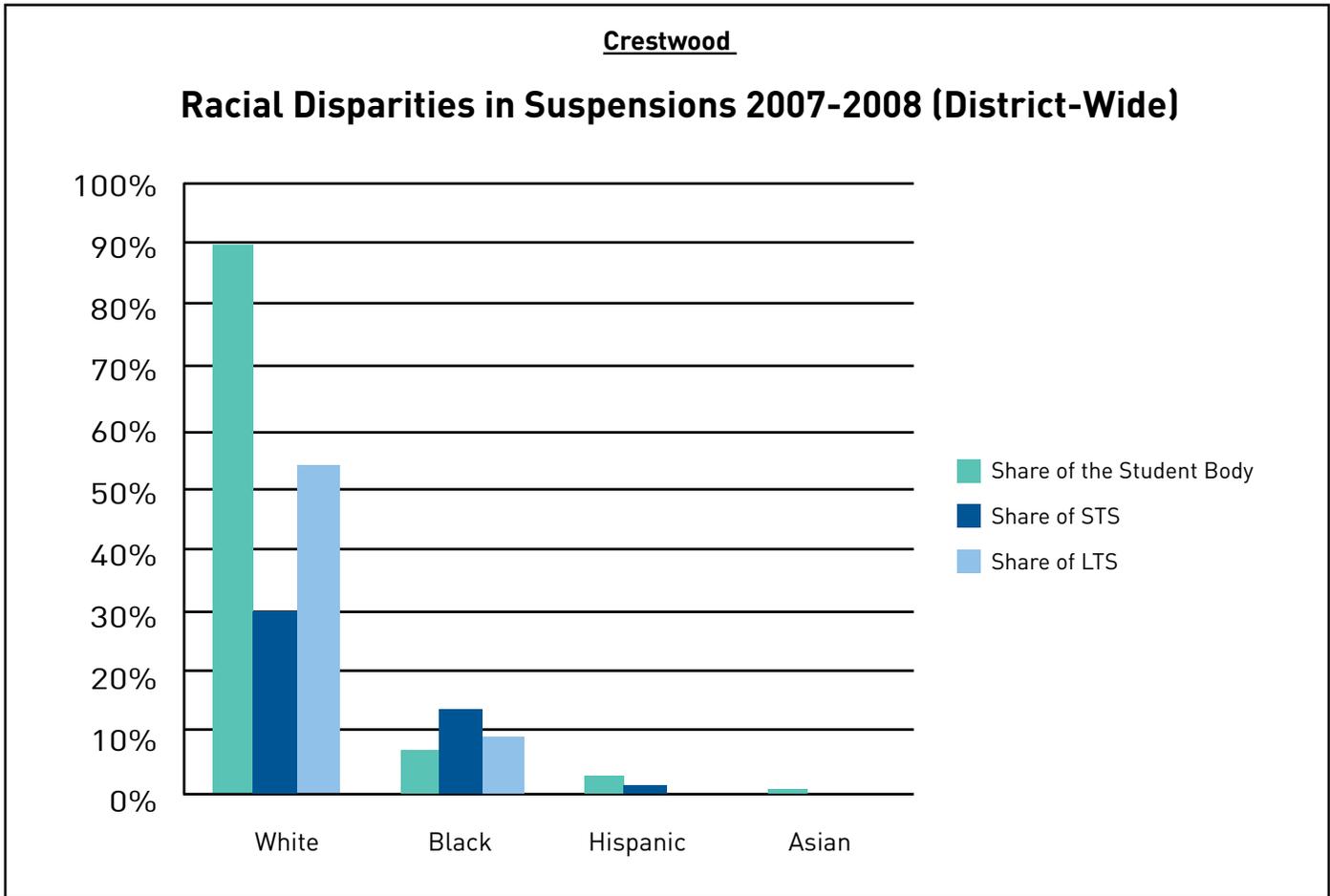
W – White  
 B – Black  
 H – Hispanic  
 AS – Asian  
 AK – Alaska Native  
 AI – American Indian  
 MR – Mixed Race  
 STS – Short-term suspension  
 LTS- Long-term suspension  
 EXP – Expulsion  
 OSS – Out of School Suspension  
 SB – Student Body

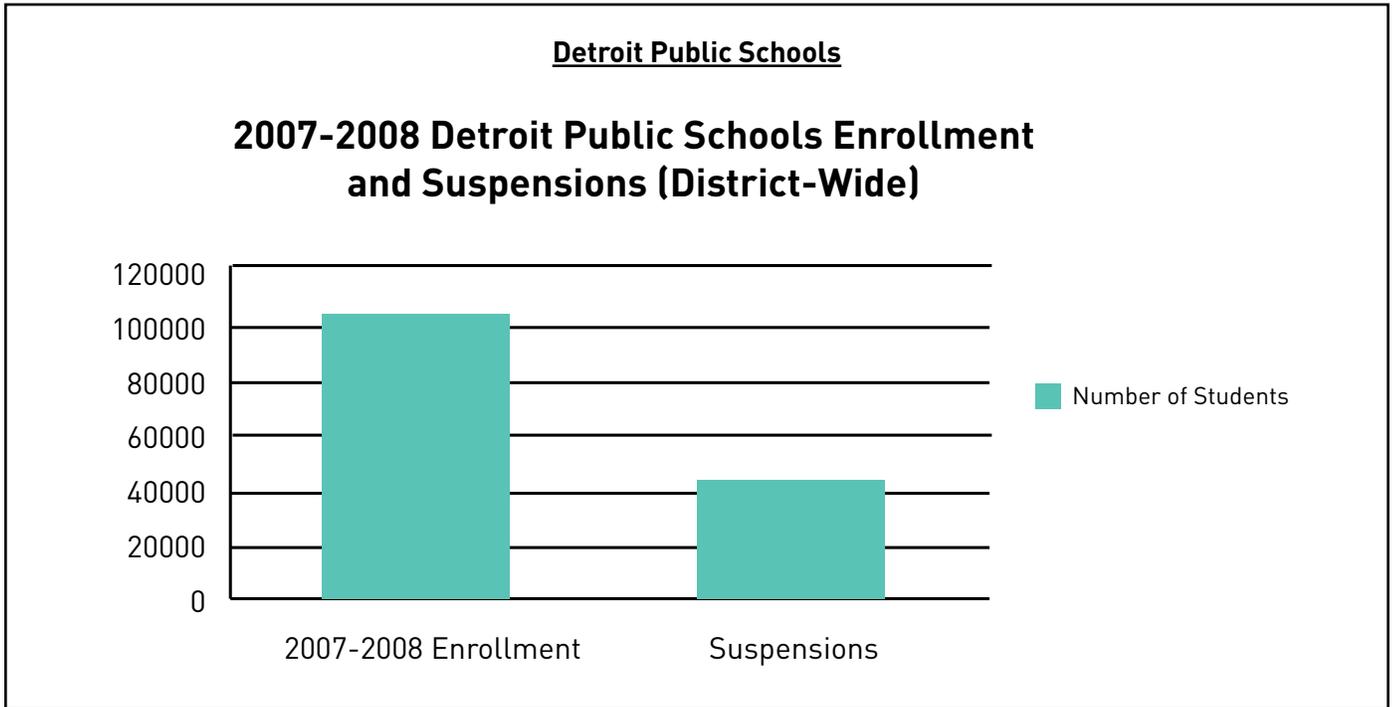












**District Enrollment (as reported by Center for Educational Performance and Information)**

Year	Enrollment
2007-2008	102,494
2006-2007	114,401
2005-2006	131,568
2004-2005	141,406
2003-2004	153,034

**DPS Pupil Personnel Services Report (2007-2008 School Year)**

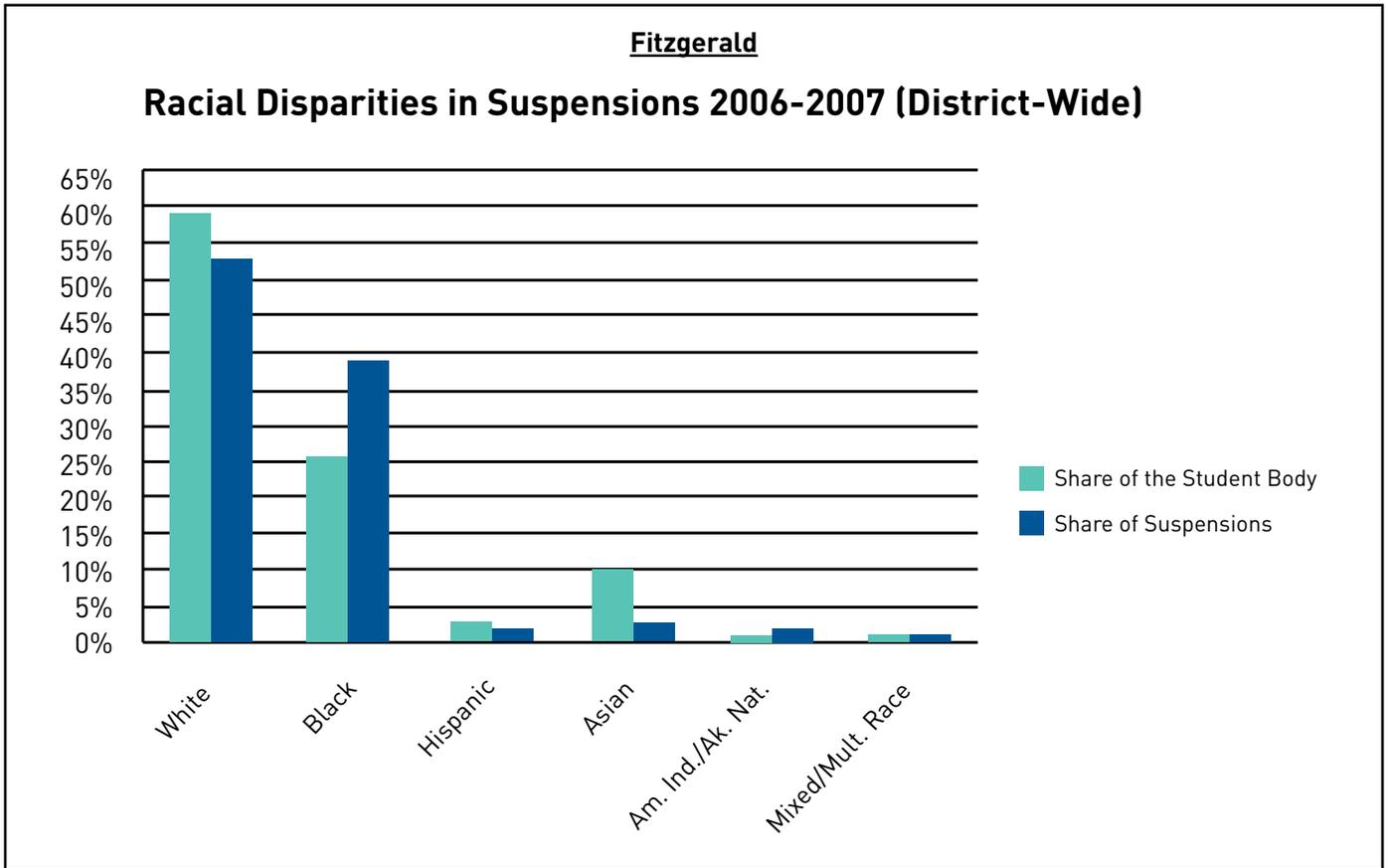
Code of Conduct	Number of Students
Administrative Transfers	212
Short-term Suspensions	46,033
Long-term Suspensions	8
Expulsions	528
Expulsion Hearings	764
Returns	299
Reinstatement	213
Readmissions	77
Truancy	9,042
<b>Total</b>	<b>57,176</b>

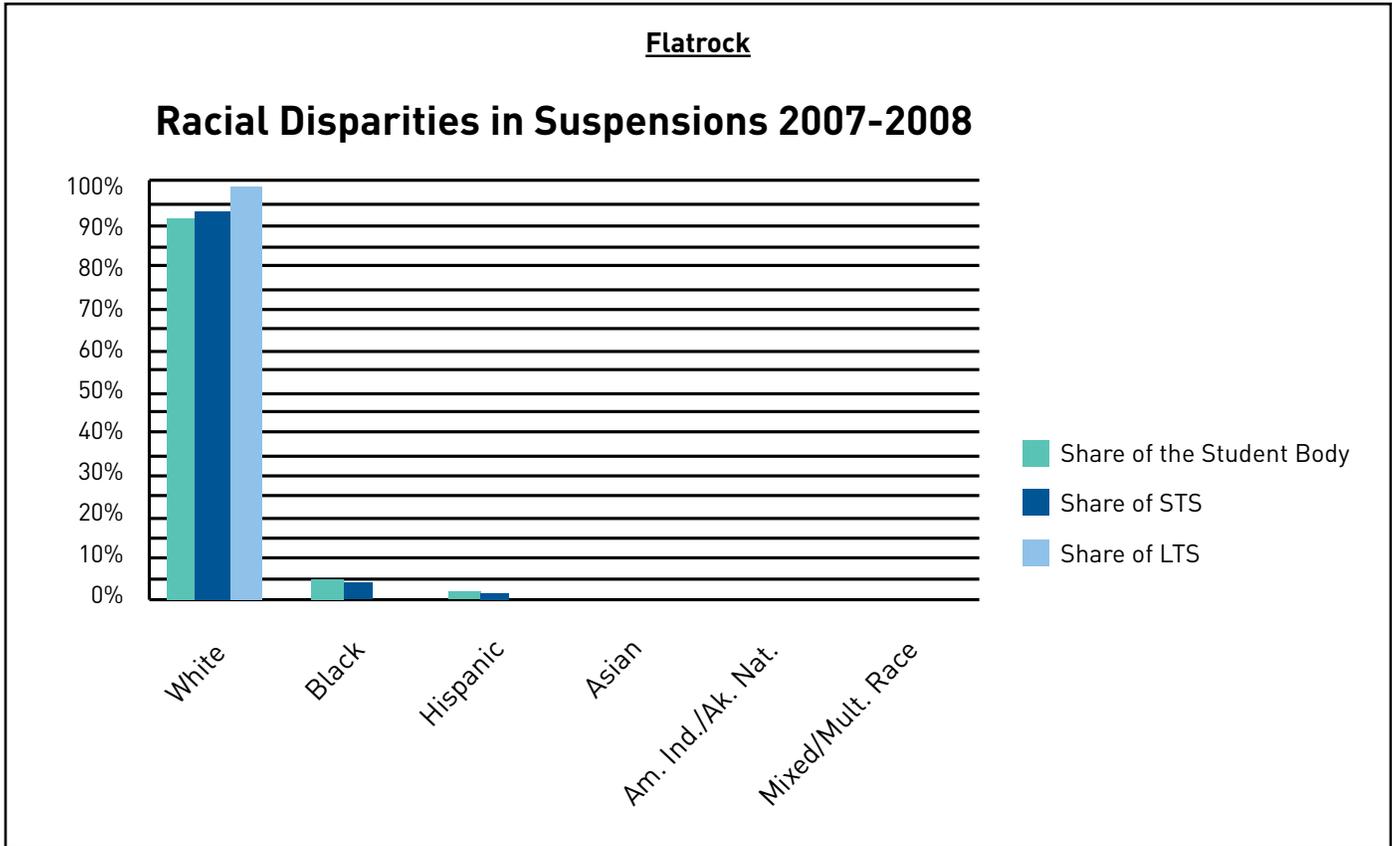
**2007 Final Graduation and Dropout Rates (as reported by DPS)  
4 Year Graduation Rate – 1 Year Dropout Rate**

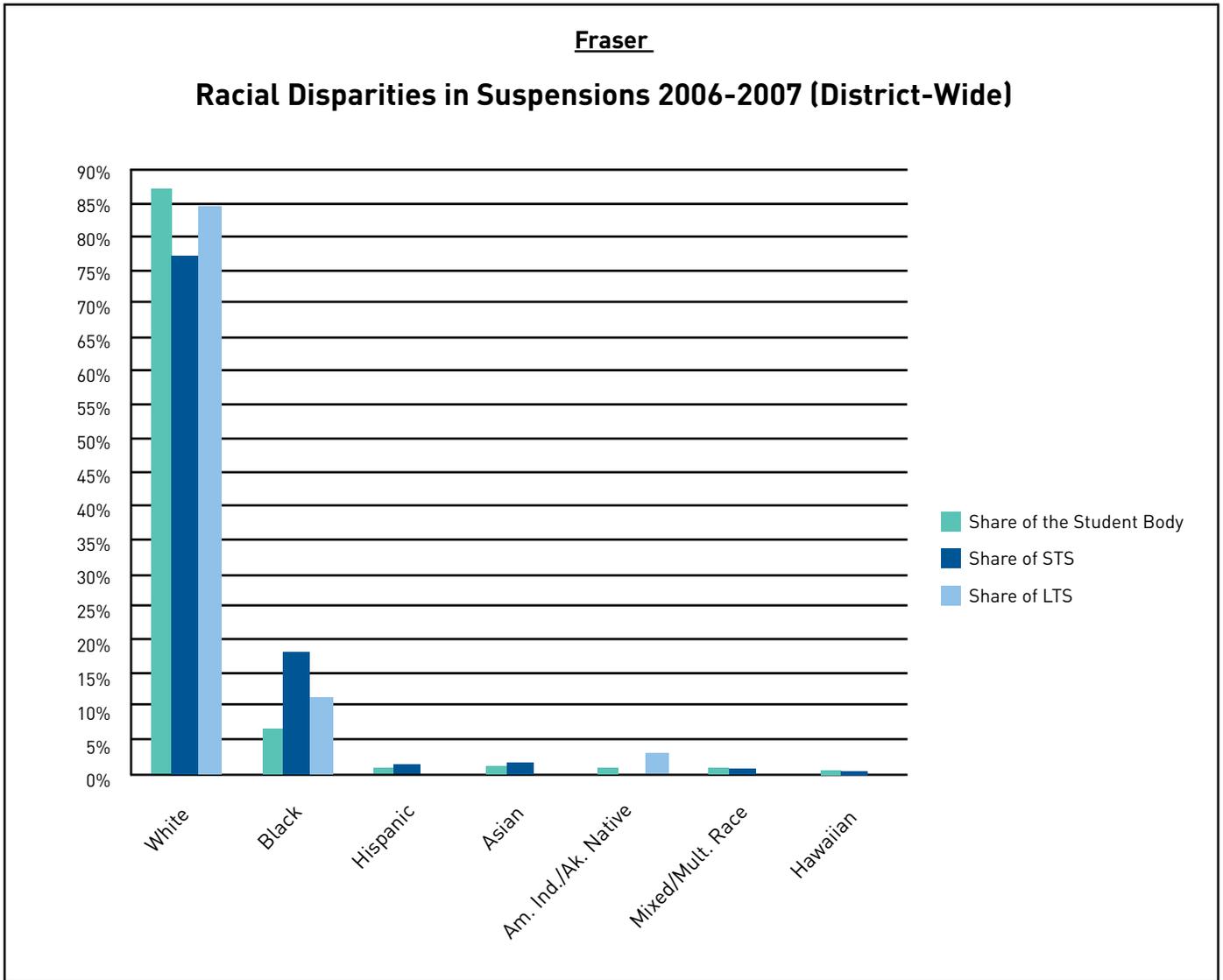
	2003 Graduation Rate	2003 Dropout Rate	2004 Graduation Rate	2004 Dropout Rate	2005 Graduation Rate	2005 Dropout Rate	2006 Graduation Rate	2006 Dropout Rate	2007 Graduation Rate	2007 Dropout Rate
<b>District</b>	44.5	19.2	60.89	12.73	67.93	10.72	66.8	10.03	58.37	n/a

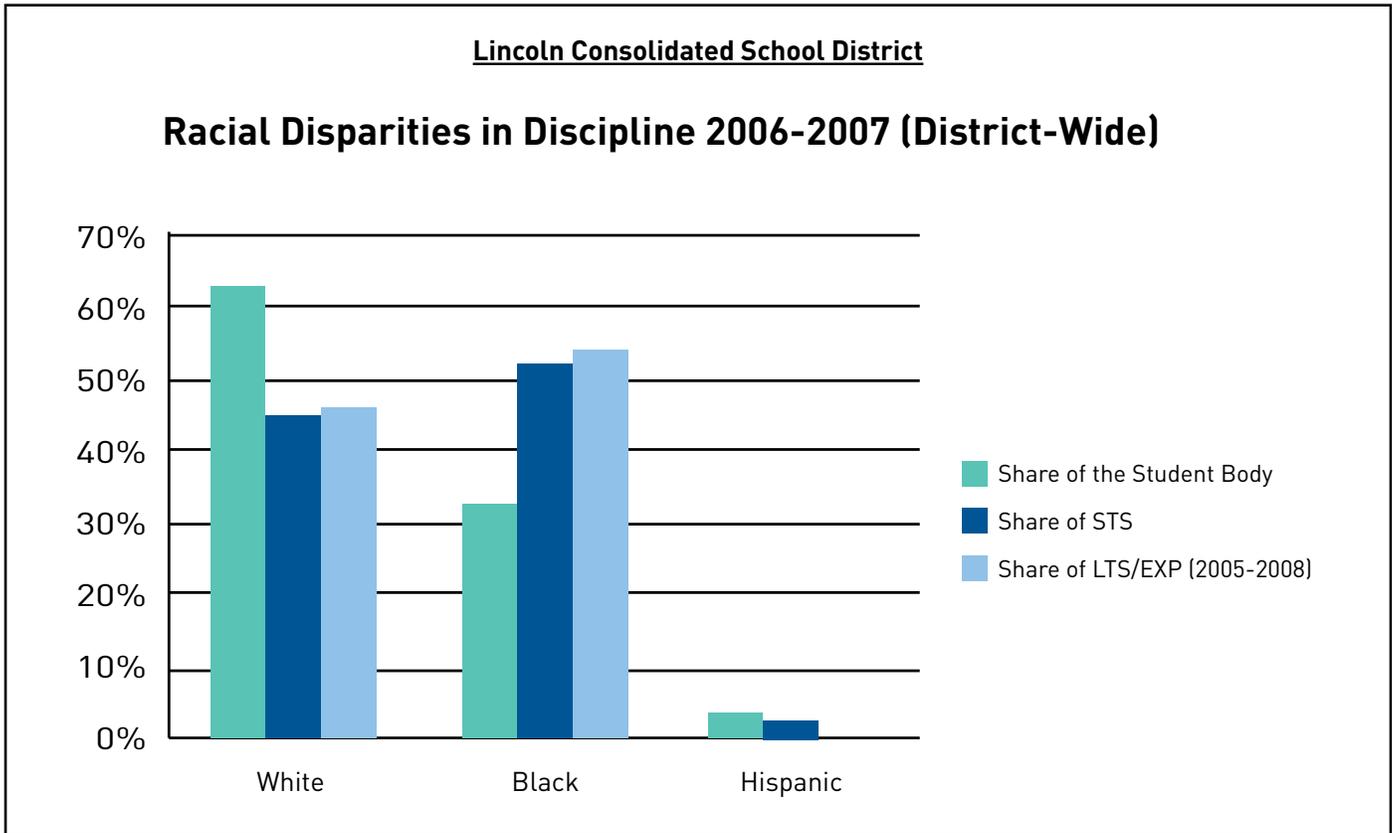
**State of Michigan 2007 4-Year Cohort Graduation/Dropout Rate Report (as reported by CEPI)**

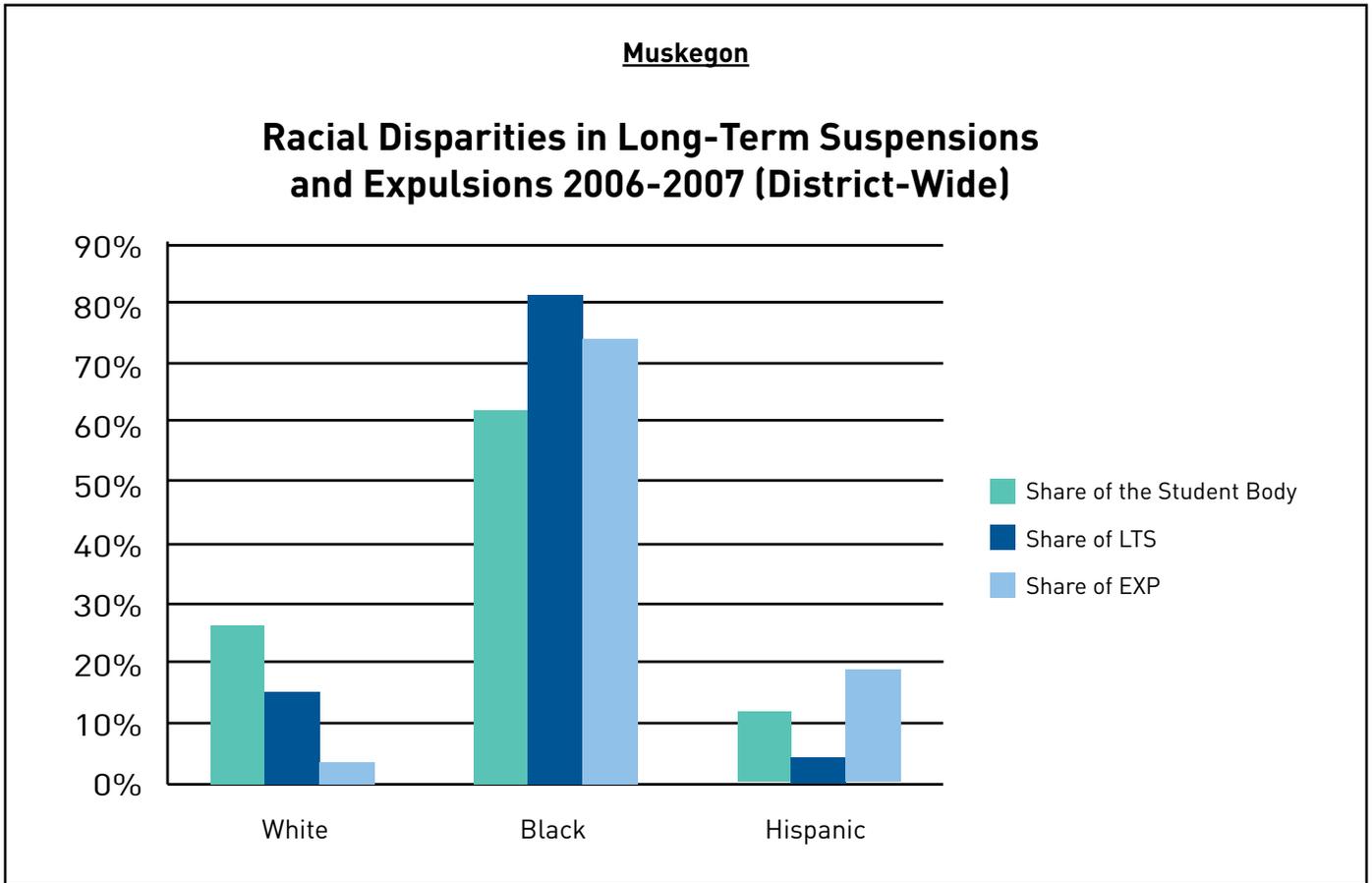
Dropout Rates	Grades and Settings	2007 Cohort Total	Dropouts (Reported & MER)	# of H.S. Grades in School or District	Dropout Rate
Detroit City School District (82010)	K-12, Alt, Spec, AE	9,739	2,921	4	29.99%
State		140,353	21,185	4	15.09%

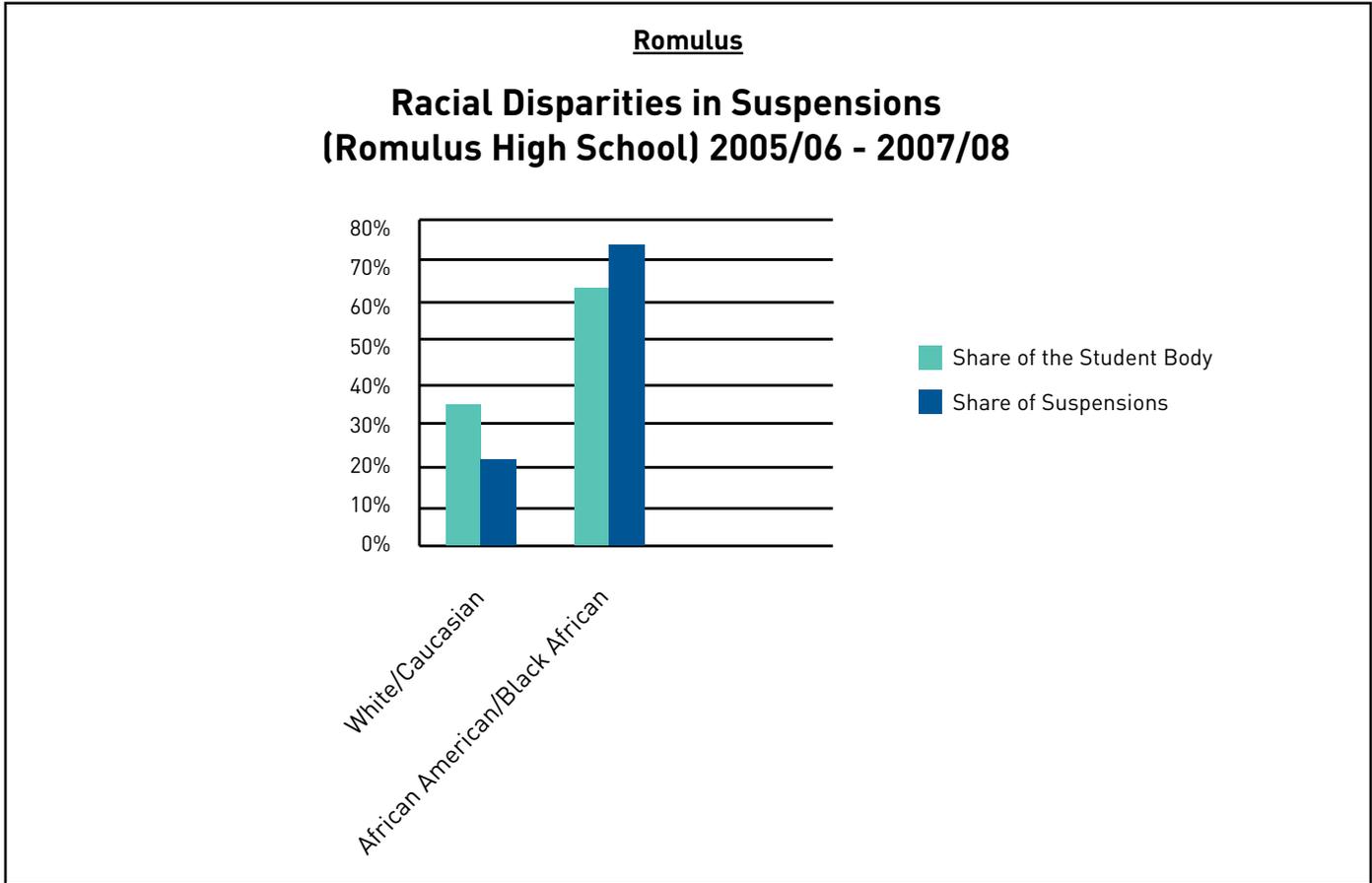




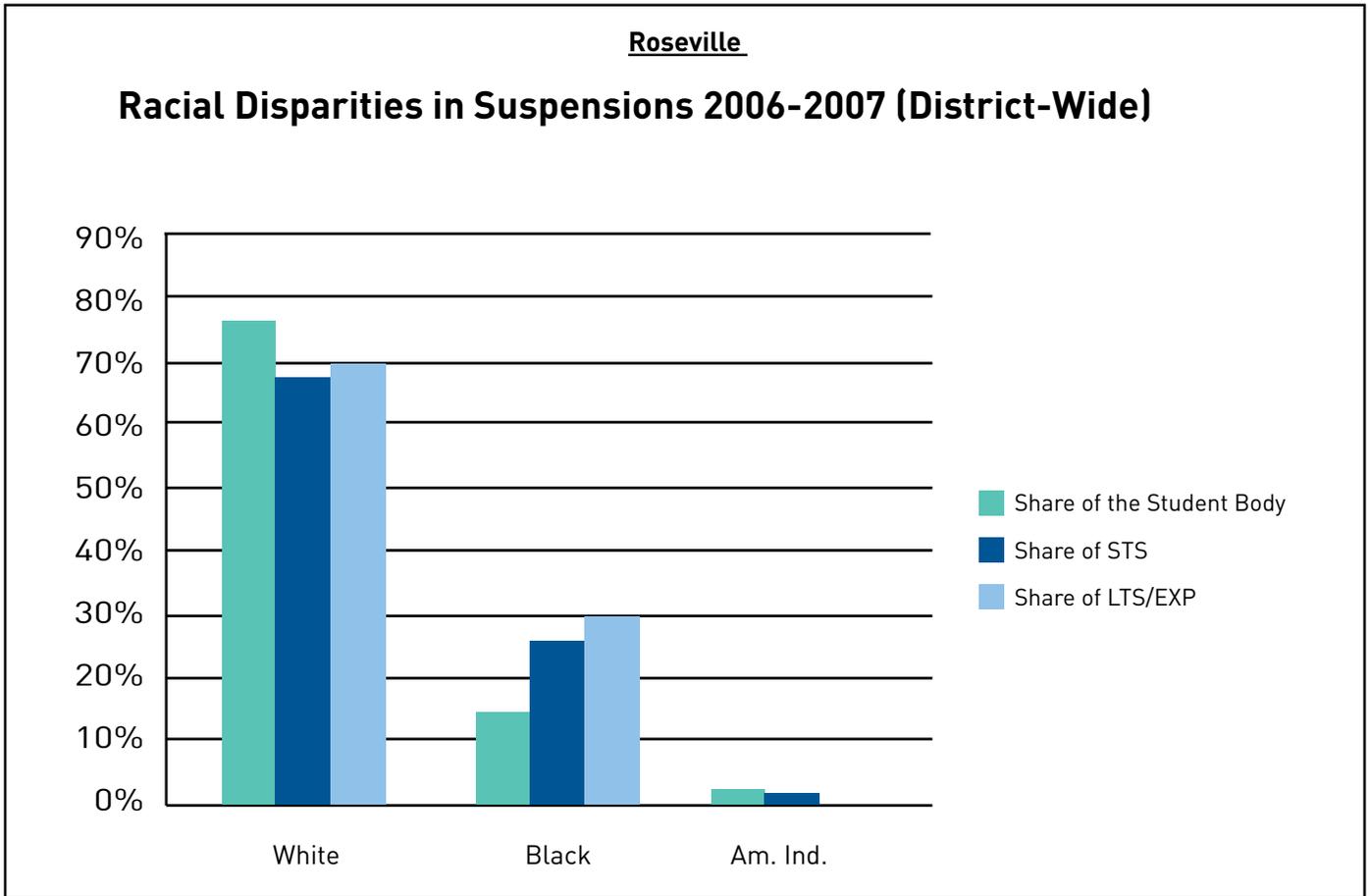


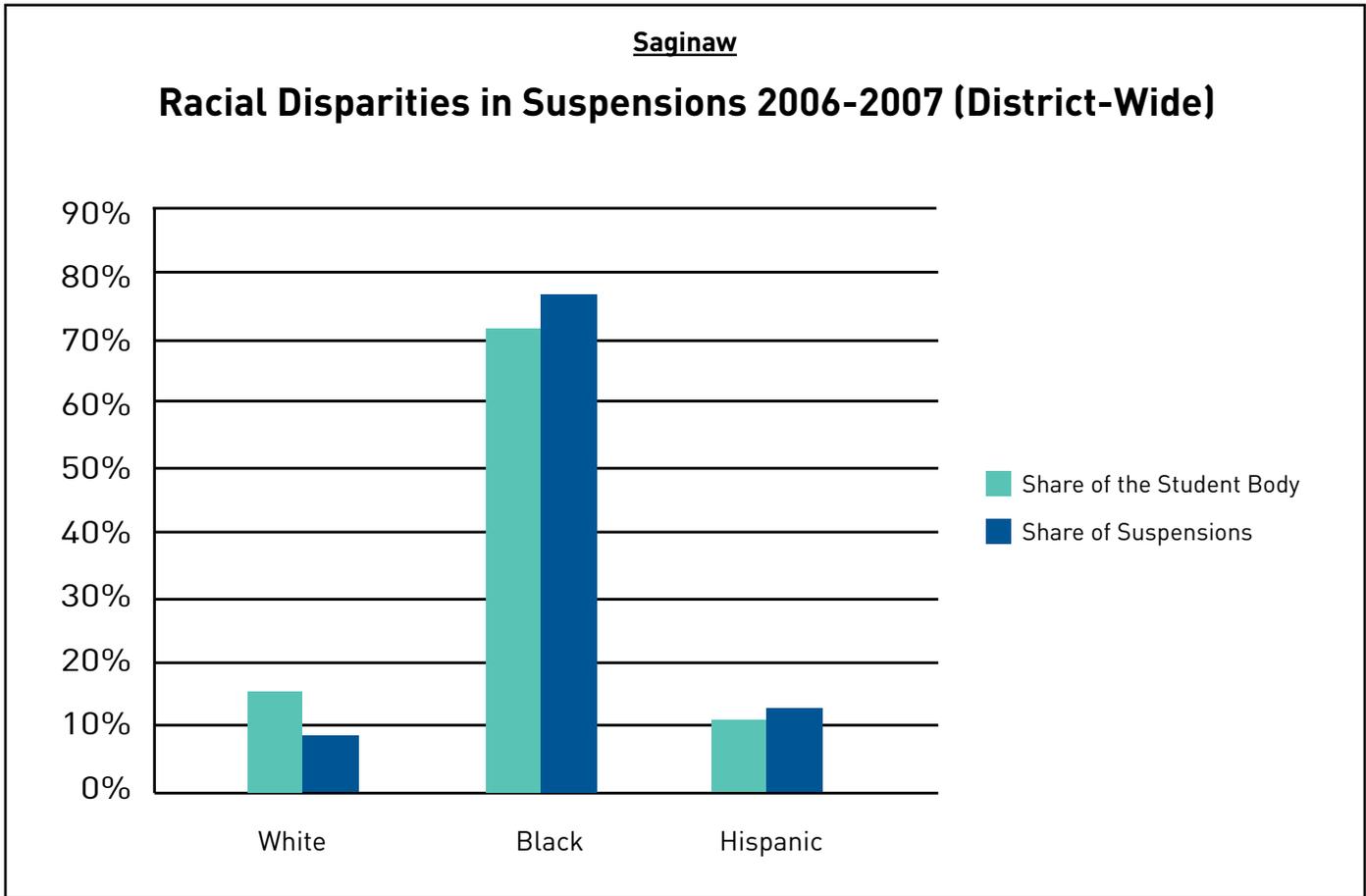


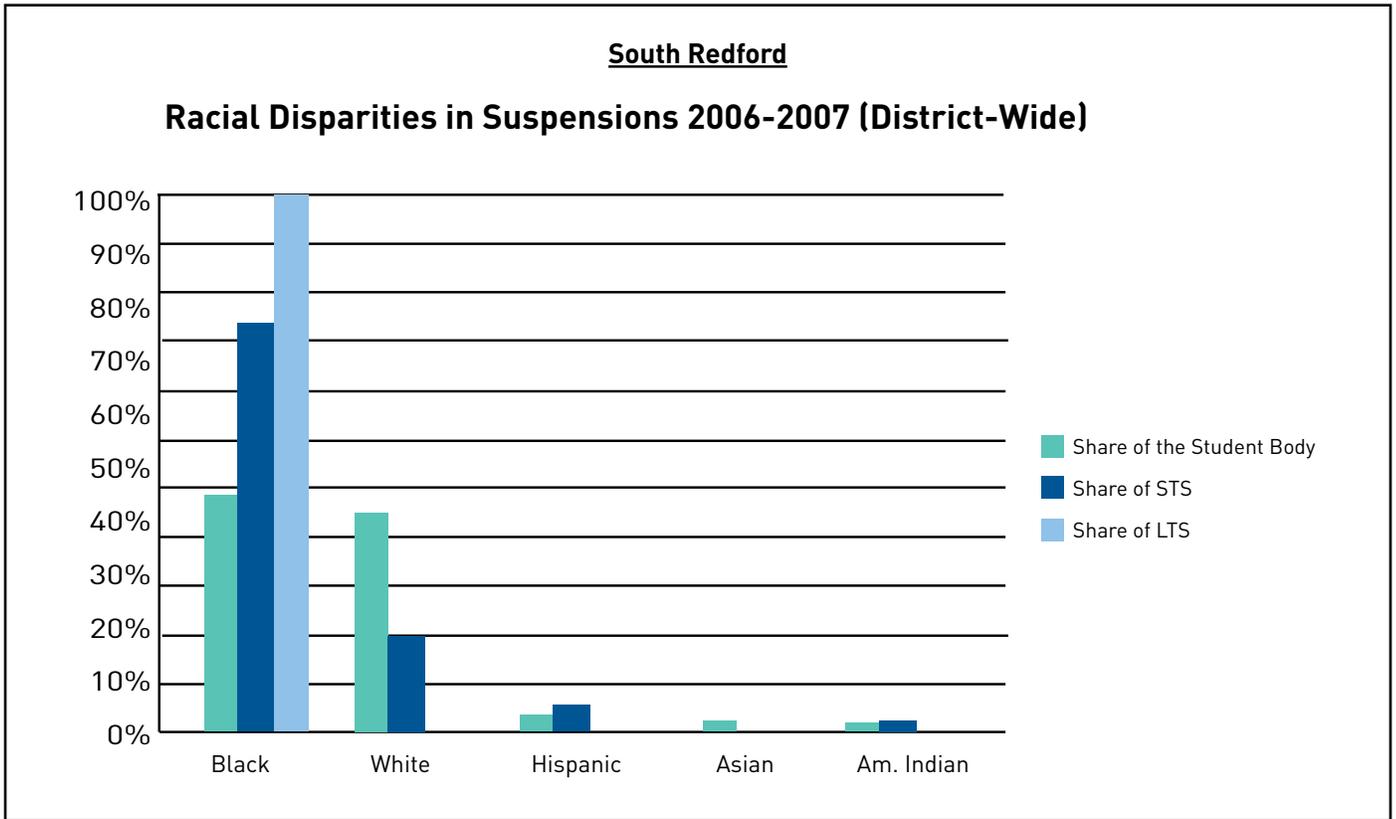


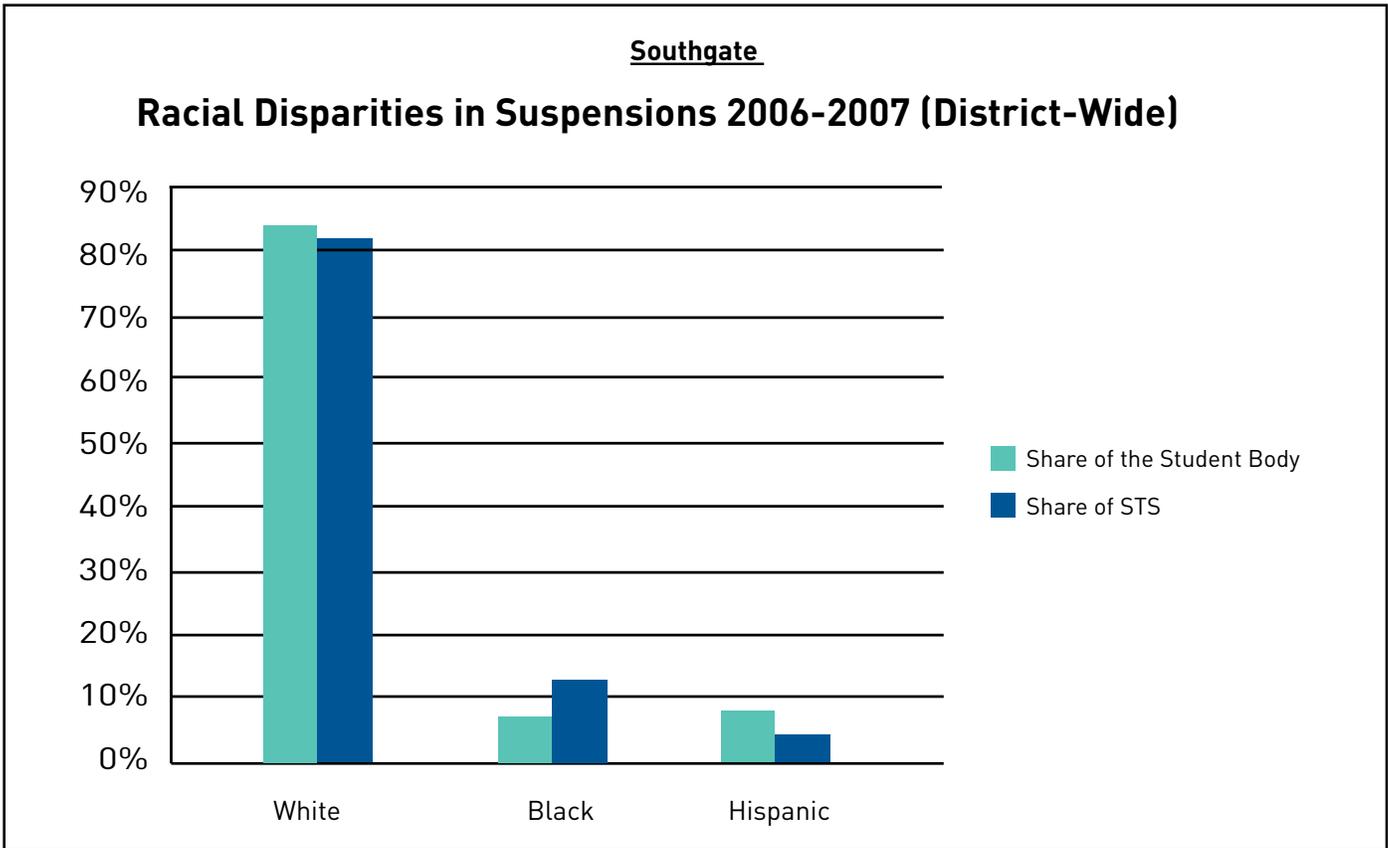


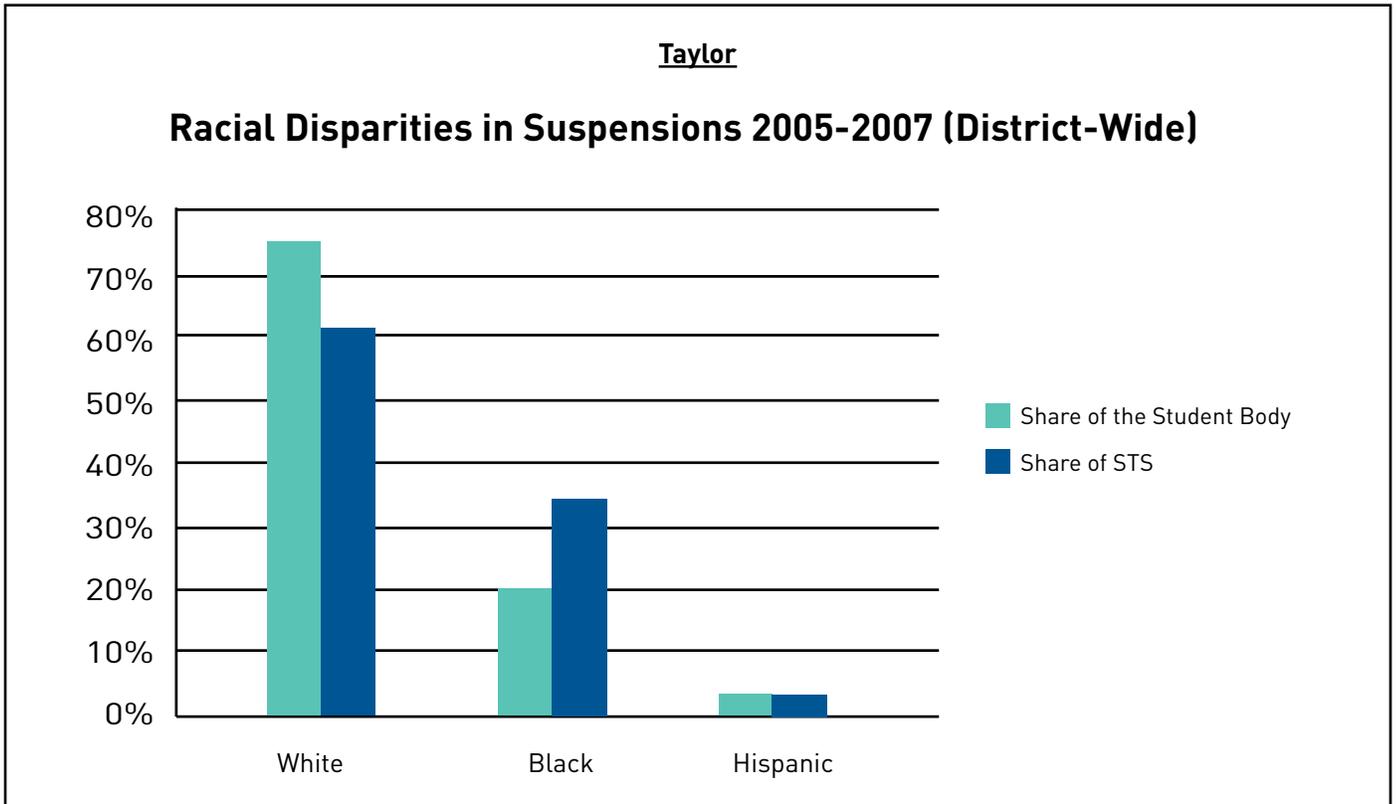
\*Graph reflects calculations made by the Romulus School District

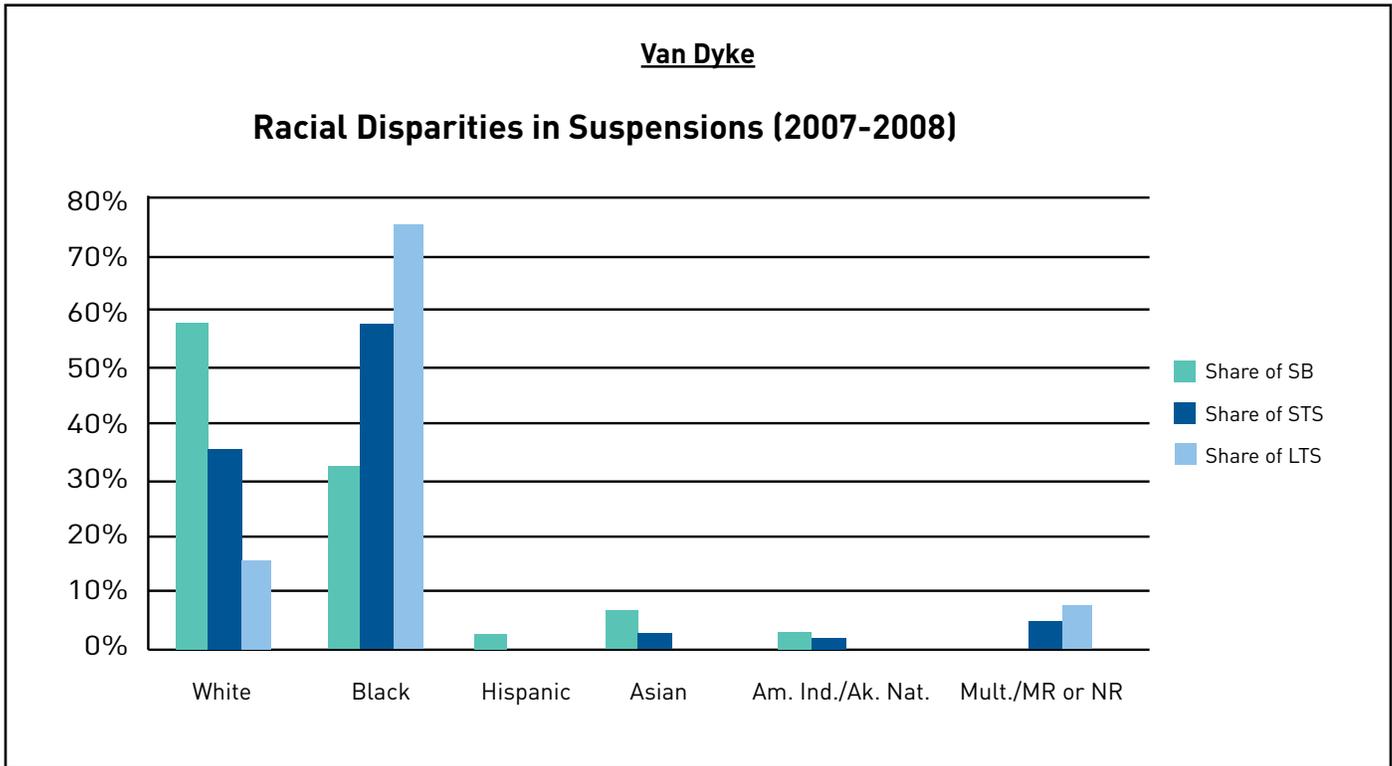


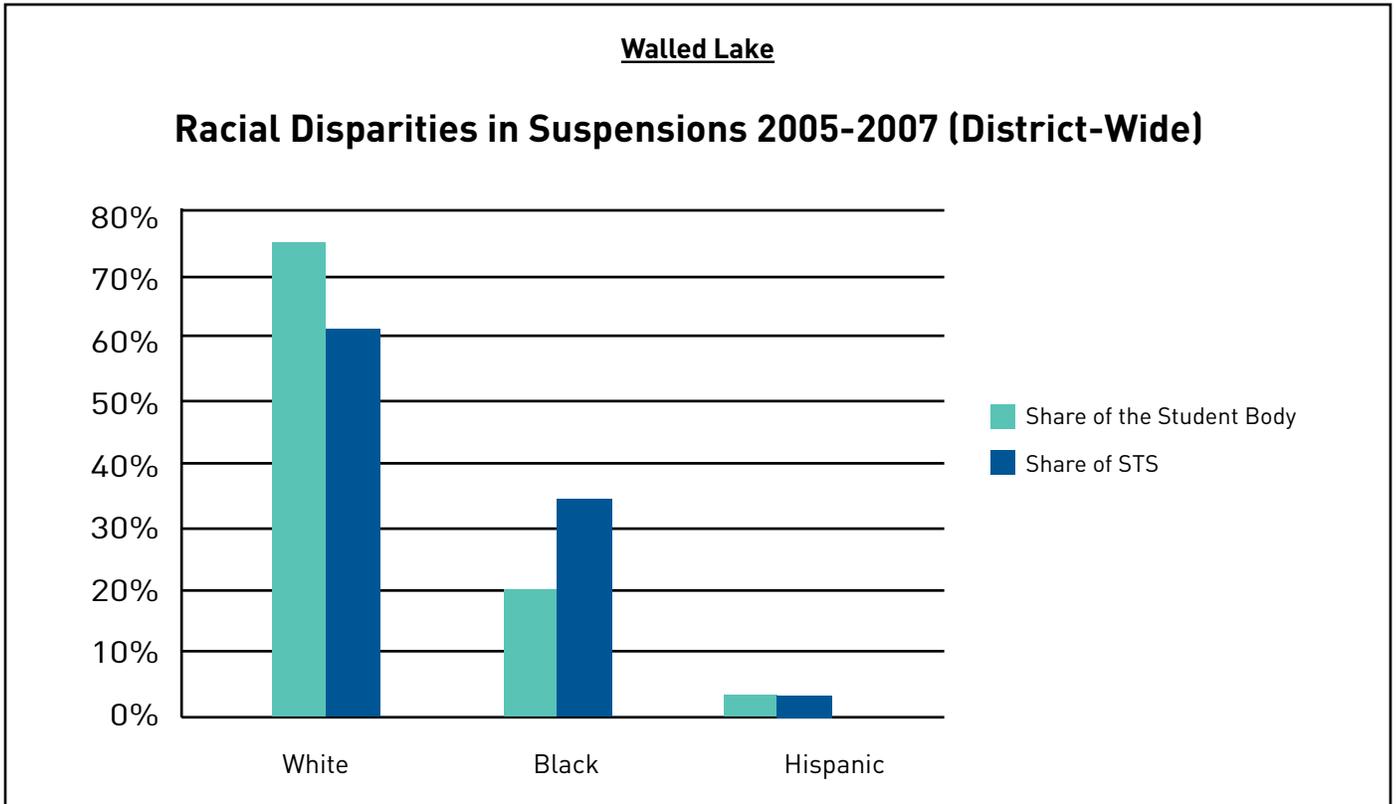


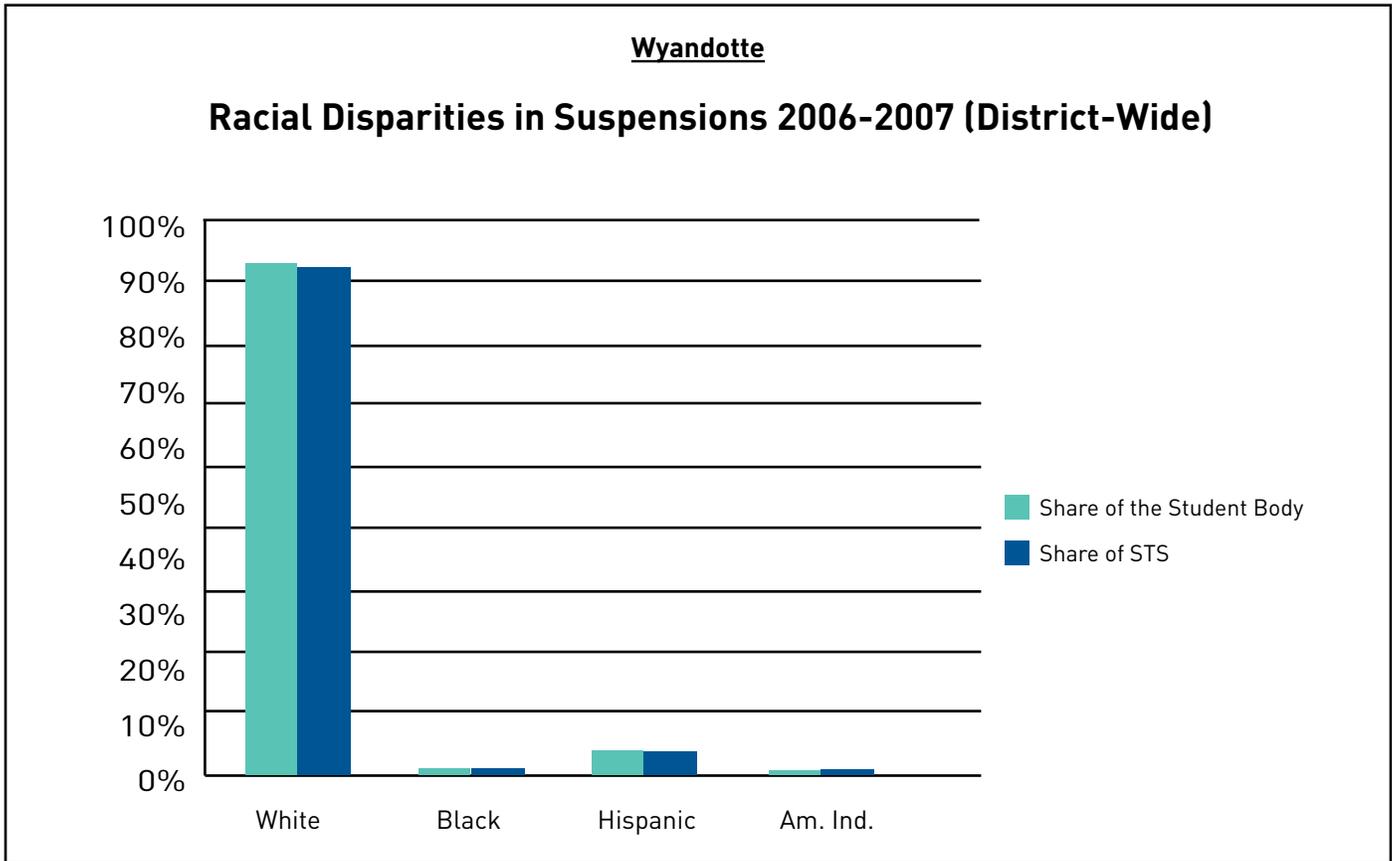












## ENDNOTES

- 1 National Center for Education Statistics (NCES). "Revenues and Expenditures for Public Elementary and Secondary School Districts: School Year 2005-06 (Fiscal Year 2006)." Table 6. [http://nces.ed.gov/pubs2008/revexpdist06/tables/table\\_06.asp](http://nces.ed.gov/pubs2008/revexpdist06/tables/table_06.asp). (Last Accessed 11/7/08). "The National Center for Education Statistics (NCES) is the primary federal entity for collecting and analyzing data related to education."
- 2 National Center for Education Statistics (NCES). "Digest of Education Statistics 2007 (Tables and Figures)." Table 174. [http://nces.ed.gov/programs/digest/d07/tables/dt07\\_174.asp](http://nces.ed.gov/programs/digest/d07/tables/dt07_174.asp). (Last Accessed 11/7/08).
- 3 Patricia L. Caruso (Director, Michigan Department of Corrections). Memoranda on Prison Population Projections. "\$30, 120 per inmate." [http://www.michigan.gov/documents/02-01-06\\_-\\_Section\\_401\\_149197\\_7.pdf](http://www.michigan.gov/documents/02-01-06_-_Section_401_149197_7.pdf). (Last accessed 11/13/08).
- 4 Michigan Department of Corrections. "Annual Report." 2003-2005. <http://www.michigan.gov/corrections/0,1607,7-119-1441---,00.html>. (Last accessed 11/13/08).
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- 6 *Id.*
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47 *Criminalizing the Classroom: The Over-Policing of New York City Schools*. A report by the New York Civil Liberties Union and the American Civil Liberties Union (March 2007) p. 14.

48 *Deadly Symbiosis: When Ghetto and Prison Meet and Mesh*, Loic Wacquant, *Punishment and Society* 3(1) p. 108.

49 *Id.*

50 *8 Charged with Disorderly Conduct*, by Chastity Pratt, Detroit Free Press March 29, 2006

51 *DPS Children Describe Police Assault*, Diane Bukowski, Michigan Citizen, May 21, 2007.

52 *The Little Book of Restorative Justice* by Howard Zehr, Good Books (2002) p.45.

53 *Id.* at 43.

54 *Id.* at 51.

55 *Restoring Community In A Disconnected World*, by Ted Wachtel (www.safersanerschools.org)

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57 MCL. § 380.1561 (1)-(2) Except as otherwise provided in this section, every parent, guardian, or other person in this state having control and charge of a child from the age of 6 to the child's sixteenth birthday shall send that child to a public school during the entire school year. The child's attendance shall be continuous and consecutive for the school year fixed by the school district in which the child is enrolled. In a school district that maintains school during the entire calendar year and in which the school year is divided into quarters, a child is not required to attend the public school more than 3 quarters in 1 calendar year, but a child shall not be absent for 2 or more consecutive quarters.

(2) A child becoming 6 years of age before December 1 shall be enrolled on the first school day of the school year in which the child's sixth birthday occurs. A child becoming 6 years of age on or after December 1 shall be enrolled on the first school day of the school year following the school year in which the child's sixth birthday occurs.

58 MCL. § 380.1561 (3)(West 2008) A child is not required to attend a public school in any of the following cases:

- (a) The child is attending regularly and is being taught in a state approved nonpublic school, which teaches subjects comparable to those taught in the public schools to children of corresponding age and grade, as determined by the course of study for the public schools of the district within which the nonpublic school is located.
- (b) The child is less than 9 years of age and does not reside within 2-1/2 miles by the nearest traveled road of a public school. If transportation is furnished for pupils in the school district of the child's residence, this subdivision does not apply.
- (c) The child is age 12 or 13 and is in attendance at confirmation classes conducted for a period of 5 months or less.
- (d) The child is regularly enrolled in a public school while in attendance at religious instruction classes for not more than 2 class hours per week, off public school property during public school hours, upon written request of the parent, guardian, or person in loco parentis under rules promulgated by the state board.
- (e) The child has graduated from high school or has fulfilled all requirements for high school graduation.
- (f) The child is being educated at the child's home by his or her parent or legal guardian in an organized educational program in the subject areas of reading, spelling, mathematics, science, history, civics, literature, writing, and English grammar.

59 *See In the Matter of Marable*, 282 N.W.2d 221, 222 (Mich. App. 1979) ("It would be unreasonable to hold that the Legislature intended to require parents to send their children to school without a requirement that the children must attend. The purpose of the [compulsory education] statute is obviously to require attendance of the child at school and not merely to insure that a parent sends the child off in that direction..")

60 MCL § 380.1599

61 MCL § 712A.2(a)(1),(4) [Conferring jurisdiction of the juvenile court of juveniles who, "willfully and repeatedly absents himself or herself from school or other learning program intended to meet the juvenile's educational needs, or repeatedly violates rules and regulations of the school or other learning program"]; *Marable*, 282 N.W.2d at 222 (finding that the compulsory education statute requires a child by law to attend school).

62 Michigan Law of 1885, Pub. Act No. 95 § 5

63 Michigan Law of 1885, Pub. Act No. 95 § 7 (When, . . . it becomes certain that all legal means have been exhausted in their attempts to compel the attendance at school of a juvenile disorderly person, the truant officer shall, in case the person in parental relation to the child neglects or refuses to do so, make a complaint against such juvenile disorderly person before a court . . . that said child is a juvenile disorderly person as described in section five of this act. The . . . court shall issue a warrant and proceed to hear such complaint; and if said . . . court shall determine that said child is a juvenile disorderly person within the meaning of this act, then said . . . court shall thereupon . . . sentence such child, if a boy, to the Industrial School of Boys in Lansing. . . . ; or, if a girl, to the Industrial Home of Girls at Adrian.)

64 MCL § 380.1311(9),(10)

65 MCL § 380.1311(9) (“If a pupil expelled from a public school district pursuant to subsection (2) is enrolled by a public school district sponsored alternative education program or a public school academy during the period of expulsion, the public school academy or alternative education program shall immediately become eligible for the prorated share of either the public school academy or operating school district’s foundation allowance or the expelling school district’s foundation allowance, whichever is higher.”)

66 MCL § 380.1311 (10) (“The office of safe schools in the department shall compile information on and catalog existing alternative education programs or schools and nonpublic schools that may be open to enrollment of individuals expelled pursuant to subsection (2) and pursuant to section 1311a, and shall periodically distribute this information to school districts for distribution to expelled individuals. A school board that establishes an alternative education program or school described in this subsection shall notify the office of safe schools about the program or school and the types of pupils it serves. The office of safe schools also shall work with and provide technical assistance to school districts, authorizing bodies for public school academies, and other interested parties in developing these types of alternative education programs or schools in geographic areas that are not being served.”)

67 Id.

68 Id.

69 Id. (emphasis added)

70 MCL § 380.1311(10)

71 Memorandum to Intermediate School District Superintendents; from Carol L. Wolenberg, Deputy Superintendent; re Alternative Schools Accepting Suspended and Expelled Students (February 21, 2008).

72 MCL § 380.1311

73 Michigan Center for Educational Performance and Information, “Expulsions, School Building Detail Table, 2006-2007” Lansing: CEPI, available at [http://www.michigan.gov/cepi/0,1607,7-113-21423\\_30415--,00.html](http://www.michigan.gov/cepi/0,1607,7-113-21423_30415--,00.html)

74 The United States Constitution does not contain a clause directly addressing education and the Supreme Court has declined to find a federal constitutional right in other constitutional provisions. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

75 See Mich. Const., Art. 8, § 2. The entire text of the Michigan Constitutional Provision for Free Public Elementary and Secondary Schools reads: “The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.”

76 See *Feaster v. Portage Schs.*, 534 N.W.2d 242, 246 (Mich Ct. App. 1995). See also *E. Jackson Pub. Schs. v. State*, 348 N.W.2d 303, 305 (Mich. Ct App 1984); *Palmer v. Bloomfield Hills Bd. of Educ.*, 417 N.W.2d 505, 506 (Mich Ct. App. 1987).

77 For example, the Illinois Constitution has one of the strongest constitutional provisions, but courts in the state have interpreted it to grant very few substantive rights. See also Alexander Natapoff, “*The Year of Living Dangerously: State Courts Expand the Right to Education*,” 92 *W. Ed. L. Rep.* 755 (1993).

