

# Missouri's School-to-Prison Pipeline

Statewide Legal Services Training  
Kansas City, Missouri  
October 23, 2015

Presented by the Children's Legal Alliance  
Legal Services of Eastern Missouri



# Legal Services of Eastern Missouri

- We provide free civil legal assistance to low-income individuals and the elderly in 21 counties\* of eastern Missouri.
- Low income means individuals at 125% of the Federal Poverty Level or below.

\*These counties include: Adair, Clark, Franklin, Jefferson, Knox, Lewis, Lincoln, Macon, Marion, Monroe, Montgomery, Pike, Ralls, Schuyler, Scotland, Shelby, St. Charles, St. Louis, St. Louis City, Warren & Washington.



# Children's Legal Alliance

- Four attorneys dedicated to education law matters
- Focus on school enrollment, school discipline, special education, and other access issues (bullying)
- No current social worker
- Partnership with Affinia Health Care with current Mental Health Board grant



General Information:

# **THE SCHOOL-TO-PRISON PIPELINE**



# THE SCHOOL-TO-PRISON PIPELINE

- Phenomenon describing practices within the **education**, juvenile justice, and criminal justice systems that create a path from school to prison\*
- Greater effects on students of color and students with disabilities

\*Source: [www.aclu.org/print/racial-justice/what-school-prison-pipeline](http://www.aclu.org/print/racial-justice/what-school-prison-pipeline)



# Role of the Education System

- Failing Public Schools
- Zero-Tolerance Policies
- Policing School Hallways
- Disciplinary Alternative Education (or lack thereof entirely)
- Barriers to School Attendance



# Role of the Education System: **Failing Public Schools**

- Inadequate resources
- Overcrowded classrooms
- Underqualified teachers
- Insufficient funding
  - Counselors
  - Special Education services
  - Social Workers
- Test-based accountability



# Role of the Education System: **Zero-Tolerance Policies**

- Automatic imposition of severe punishment regardless of discretion
- Suspension and expulsion
  - Increased rates overall, especially for students of color and students with disabilities
  - Lack of due process protections





# Role of Education System: Policing School Hallways

- School security guards
- School-based arrests for disruptive behavior

\*DOJ: Ferguson school resource officers too quick to use force. See [http://www.stltoday.com/news/local/education/doj-ferguson-school-resource-officers-too-quick-to-use-force/article\\_e5d7a423-aa4e-5689-91b4-cabb698000e6.html](http://www.stltoday.com/news/local/education/doj-ferguson-school-resource-officers-too-quick-to-use-force/article_e5d7a423-aa4e-5689-91b4-cabb698000e6.html)



# Role of Education System: **Disciplinary Alternative Schools**

- Private, for-profit companies
- Different accountability standards
  - Classroom hours
  - Qualified teachers
  - Curriculum requirements
- Almost impossible to catch-up



# Role of Education System: Barriers to School Attendance

- “Homeless Students in Missouri on the Rise”\*
  - Five years ago, roughly 1700 students in City of St. Louis Public Schools considered homeless; now number has ballooned to more than 5500 out of the total number of 24,869 students enrolled.
  - Numerous studies have indicated that homelessness puts students at greater risk of falling behind their peers and quitting school altogether.

\* See <http://news.stlpublicradio.org/post/homeless-students-missouri-rise-some-clique-vacant-buildings> (December 2014) which references a report from America’s Alliance and the Center for Promise at Tufts University which found that a student who experienced homelessness is 87% more likely to drop out of school (see <http://gradnation.org/sites/default/files/DCTD%20Final%20Full.pdf>).



The School-to-Prison Pipeline:

# **MISSOURI/ STATISTICS**



# 2014 DESE Statistics

## State of Missouri Overall

- 50.3% of all Missouri students qualify for Free or Reduced-Price Lunch
- Overall Graduation Rate: 87.53%
  - Black: 75.48%; Hispanic: 80.72%; White 90.56%
  - Free or Reduced Lunch 80.58%; Limited English Proficient 65.63%; Special Education 75.17%
- Overall Dropout Rate: 2.3%
  - Black: 6.3%; Hispanic: 4.0%; White 1.4%
- Overall Number of Suspensions for greater than 10 days: 10,742
- Overall Number of Expulsions: 54



# 2014 DESE Statistics

## Ferguson Florissant (St. Louis County)

- % of students who qualify for Free or Reduced-Price Lunch: 75.1%
- Overall Graduation Rate: 79.07%
  - Black: 78.75%; Hispanic: 61.54%; White 76.79%
  - Free or Reduced Lunch 77.23%; Limited English Proficient 100%; Special Education 73.73%
- Overall Dropout Rate: 7.2%
  - Black: 7.7%; Hispanic 4.9%; White 5.4%
- Overall Number of Suspensions for greater than 10 days: 657
- Overall Number of Expulsions: 1



# 2014 DESE Statistics

## Springfield, MO

- % of students qualify for Free or Reduced-Price Lunch: 54%
- Overall Graduation Rate: 89.41%
  - Black: 87.5%; Hispanic: 84.13%; White 89.84%
  - Free or Reduced Lunch 83.31%; Limited English Proficient 63.16%; Special Education 74.10%
- Overall Dropout Rate: 2.3%
  - Black: 3.6%; Hispanic: 2.5%; White 2.2%
- Overall Number of Suspensions for greater than 10 days: 542
- Overall Number of Expulsions: 0



# DESE Statistics on Homelessness\*

- State wide numbers have continued to **increase** from 2007-2008 academic school year to 2013-2014 academic school year (from 11,977 to 29,680, respectively).
- Specific school district examples—
  - City of St. Louis Public Schools' numbers have steadily increased (1732 in 2009-2010 to 5,033 in 2013-2014)
  - Ferguson Florissant (St. Louis Co.) numbers have increased (1287 in 2009-2010 to 1585 in 2013-2014)
  - Springfield, MO numbers have increased (461 in 2009-2010 to 978 in 2013-2014)

\*Federal definition under McKinney Vento of "Homeless" (broad category that includes doubling up or sharing the housing of others due to loss of housing, financial hardship, or a similar reason)





# The Process

- Visit <http://www.ed.gov/>
- Click on “Data”
- Under “Data Search Tools,” click “Civil Rights Data Collection”
- Click the Orange Arrow
- Type in your school or school district, and select your state
- Click on the district link
- On the left bar, click “Discipline, Restraints/Seclusion, Harassment/Bullying”
- Refine through “Additional Facts”



# Ferguson-Florissant School District (2011-2012): All Students

## Total District Enrollment Percentages

- American Indian 0.1% (orange)
- Asian 0.6% (blue)
- Black 77.1% (yellow)
- Hispanic 2.3% (pink)
- Two or more 4.3% (purple)
- White 15.6% (turquoise)

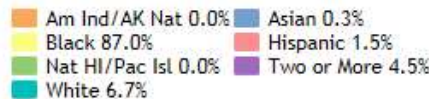
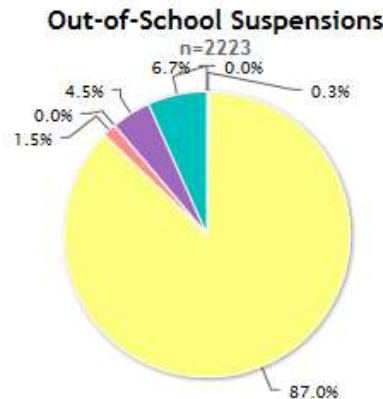
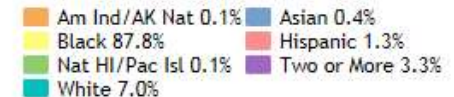
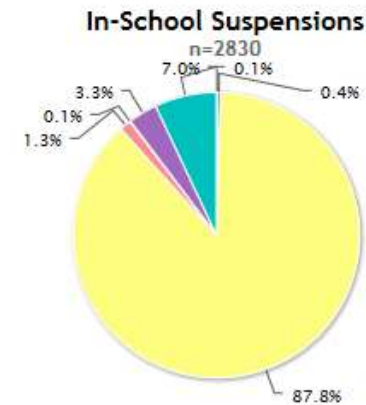
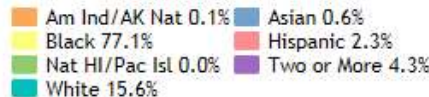
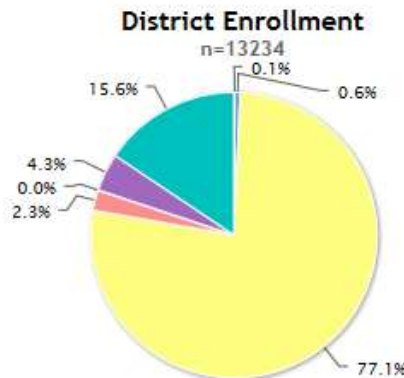
## In-School Suspension Percentages

- American Indian 0.1%
- Asian 0.4%
- Black 87.8%
- Hispanic 1.3%
- Two or More 3.3%
- White 7%

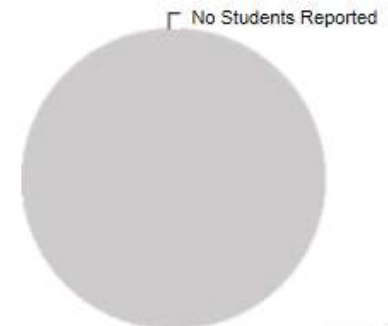
## Out-of-School Suspension Percentages

- American Indian 0.0%
- Asian 0.3%
- Black 87.0%
- Hispanic 1.5%
- Two or More 4.5%
- White 6.7%

Compared to overall enrollment, what is the race/ethnicity of students receiving In-School Suspensions, Out-of-School Suspensions, or Expulsions?



## Expulsions



# Ferguson-Florissant School District (2011-2012): Students with Disabilities

## Total Enrollment of Students with Disabilities

- Black 78.0% (yellow)
- Hispanic 1.1% (pink)
- Two or More 2.2% (purple)
- White 18.6% (turquoise)

## Students with Disabilities with one or more In-School Suspension (ISS)

- Black 82.4%
- Hispanic 2.1%
- Two or More 4.5%
- White 10.1%

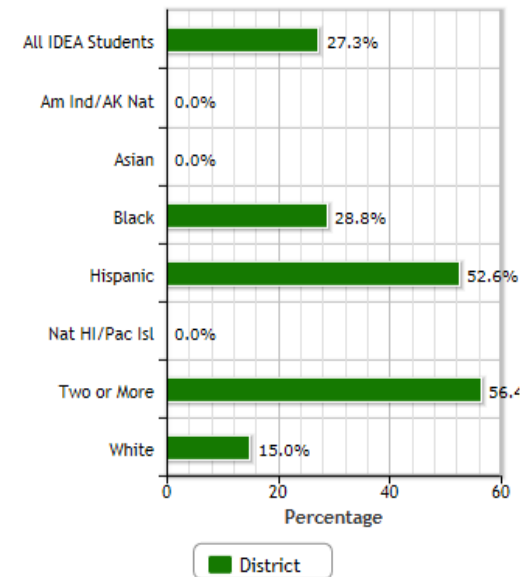
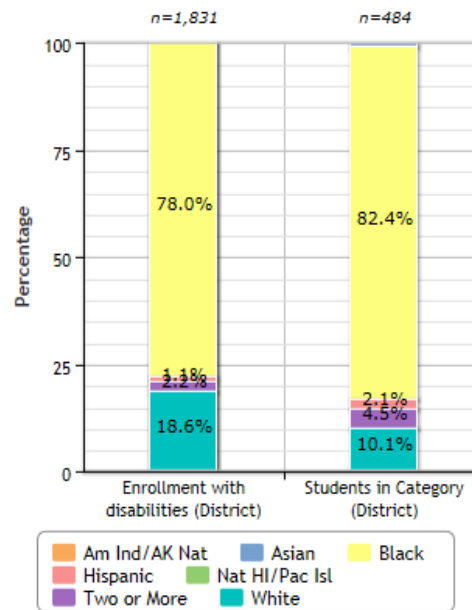
## Proportion of all Students with Disabilities with one or more ISS

- Generally 27.3%
- Black 28.8%
- Hispanic 52.6%
- Two or More 56.4%
- White 15.0%

Compared to enrollment of students with disabilities, what is the race/ethnicity, sex, and LEP/disability status of students with disabilities who received one or more in-school suspensions?

Of the total students with disabilities enrolled in the district, what proportion received one or more in-school suspensions?

Race/Ethnicity



# Ferguson-Florissant School District (2011-2012): Students with Disabilities

## Students with Disabilities with one out-of-School Suspension (OSS)

- Black 79.2% (yellow)
- Hispanic 4.1% (pink)
- Two or More 7.1% (purple)
- White 9.6% (turquoise)

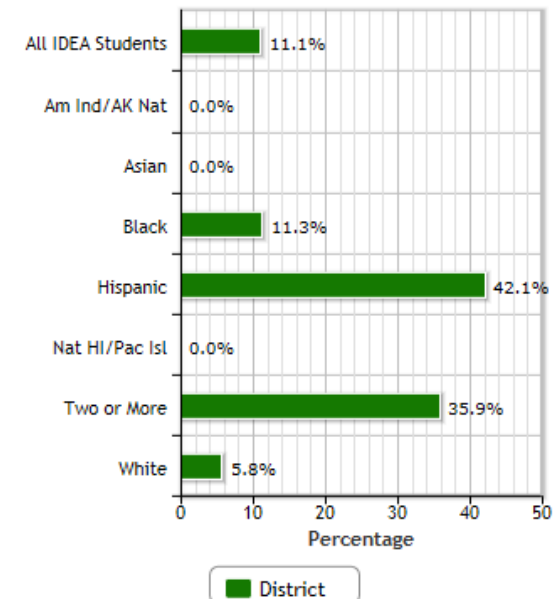
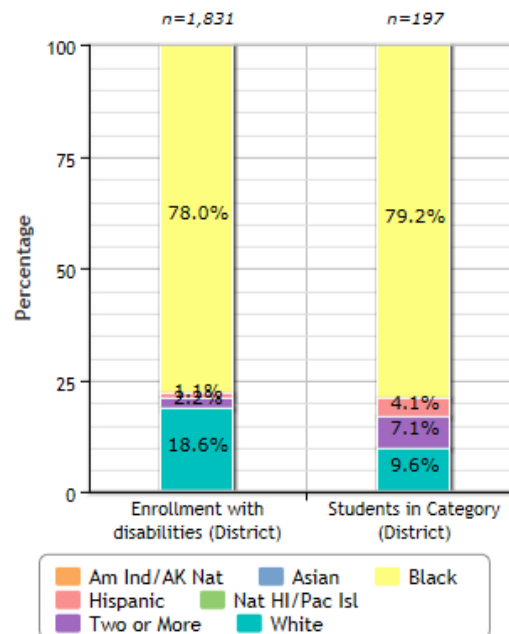
## Proportion of all Students with Disabilities with one OSS

- Generally 11.1%
- Black 11.3%
- Hispanic 42.1%
- Two or More 35.9%
- White 5.8%

Compared to enrollment of students with disabilities, what is the race/ethnicity, sex, and LEP/disability status of students with disabilities who received one out-of-school suspension?

Of the total students with disabilities enrolled in the district, what proportion received one out-of-school suspension?

### Race/Ethnicity



# Ferguson-Florissant School District (2011-2012): Students with Disabilities

Students with Disabilities with more than one out-of-School Suspension (OSS)

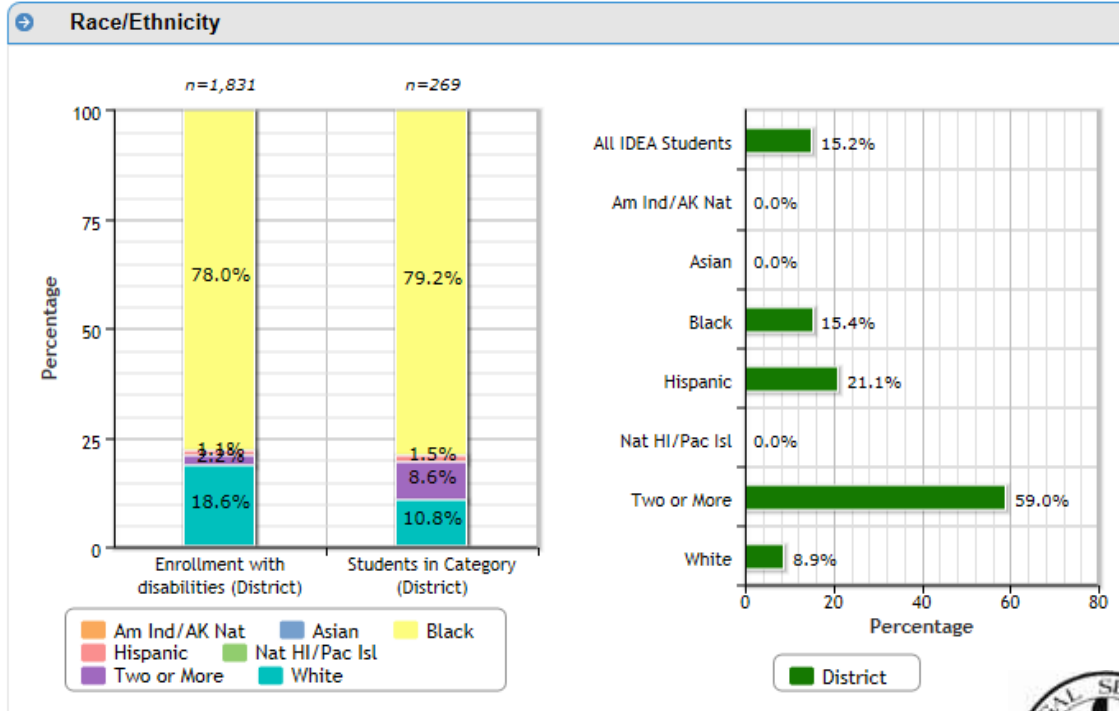
- Black 79.2% (yellow)
- Hispanic 1.5% (pink)
- Two or More 8.6% (purple)
- White 10.8% (turquoise)

Proportion of all Students with Disabilities with more than one OSS

- Generally 15.2%
- Black 15.4%
- Hispanic 21.1%
- Two or More 59.0%
- White 8.9%

Compared to enrollment of students with disabilities, what is the race/ethnicity, sex, and LEP/disability status of students with disabilities who received more than one out-of-school suspension?

Of the total students with disabilities enrolled in the district, what proportion received more than one out-of-school suspension?



# Springfield School District (2011-2012): All Students

## Total District Enrollment Percentages

- American Indian 0.6% (orange)
- Asian 2.4% (blue)
- Black 7.8% (yellow)
- Hispanic 4.3% (pink)
- Hawaiian/Pacific Islander 0.5% (green)
- Two or more 1.7% (purple)
- White 87.2% (turquoise)

## In-School Suspension Percentages

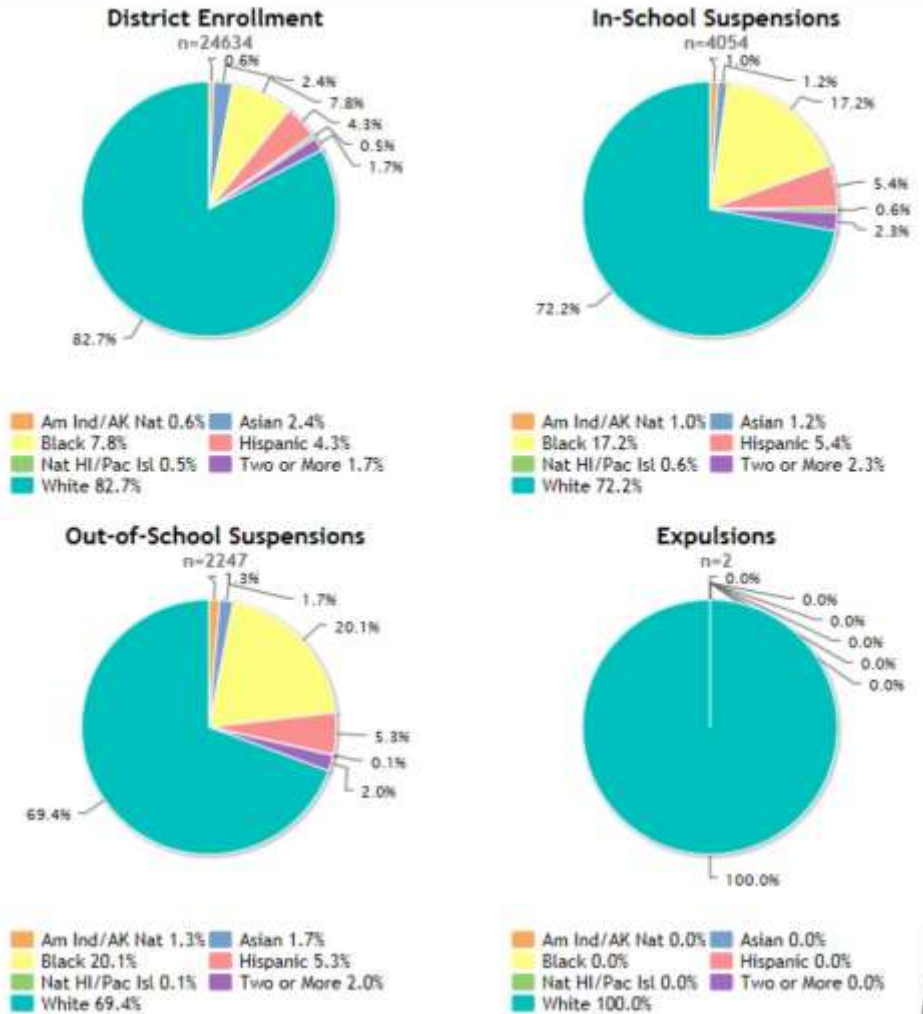
- American Indian 0.1%
- Asian 1.2%
- Black 17.2%
- Hispanic 5.4%
- Hawaiian/Pacific Islander 0.6%
- Two or More 2.3%
- White 72.2%

## Out-of-School Suspension Percentages

- American Indian 1.3%
- Asian 1.7%
- Black 20.1%
- Hispanic 5.3%
- Hawaiian/Pacific Islander 0.1%
- Two or More 2.0%
- White 69.4%

Expulsions – White (no disability) 100%

Compared to overall enrollment, what is the race/ethnicity of students receiving In-School Suspensions, Out-of-School Suspensions, or Expulsions?





# Springfield School District (2011-2012): Students with Disabilities

## Total Enrollment of Students with Disabilities

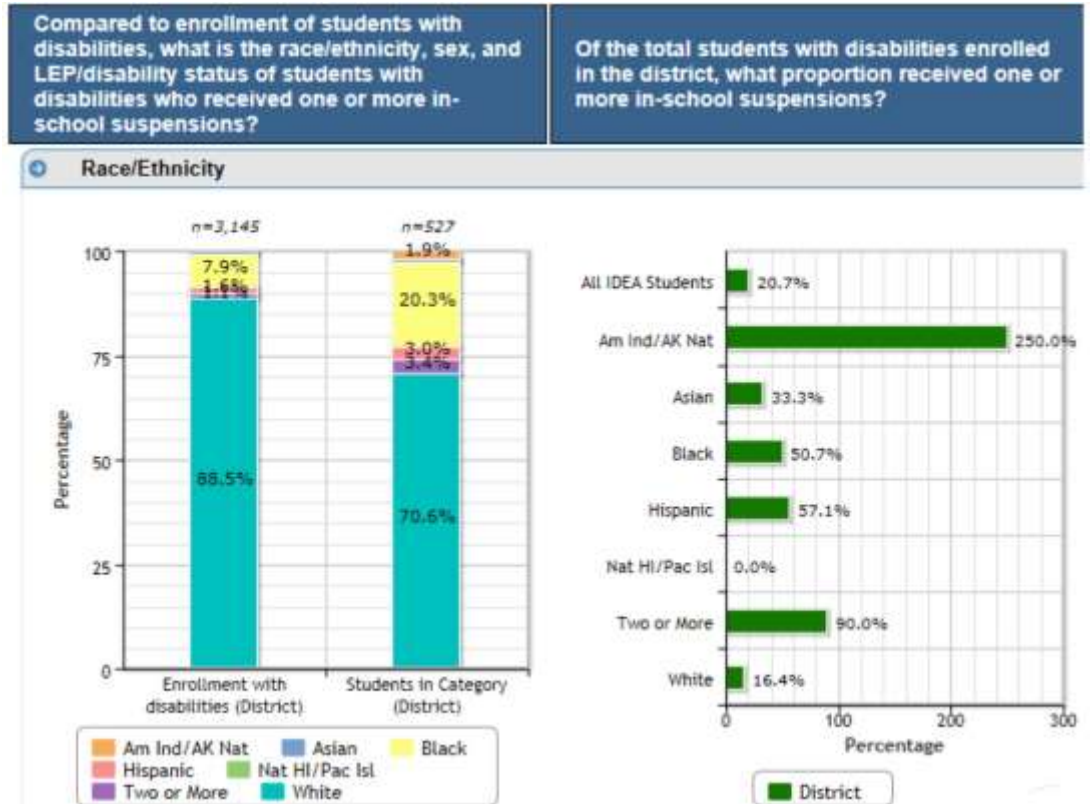
- American Indian 0.3% (orange)
- Asian 0.6% (blue)
- Black 7.9% (yellow)
- Hispanic 1.6% (pink)
- Two or More 1.1% (purple)
- White 88.5% (turquoise)

## Students with Disabilities with one or more In-School Suspension (ISS)

- American Indian 1.9%
- Asian 0.8%
- Black 20.3%
- Hispanic 3.0%
- Two or More 3.4%
- White 70.6%

## Proportion of all Students with Disabilities with one or more ISS

- Generally 20.7%
- American Indian 250%
- Asian 33.3%
- Black 50.7%
- Hispanic 57.1%
- Two or More 90.0%
- White 16.4%



# Springfield School District (2011-2012): Students with Disabilities

Students with Disabilities with one out-of-School Suspension (OSS)

- American Indian 1.0% (orange)
- Black 17.1% (yellow)
- Hispanic 4.0% (pink)
- Two or More 5.0% (purple)
- White 72.9% (turquoise)

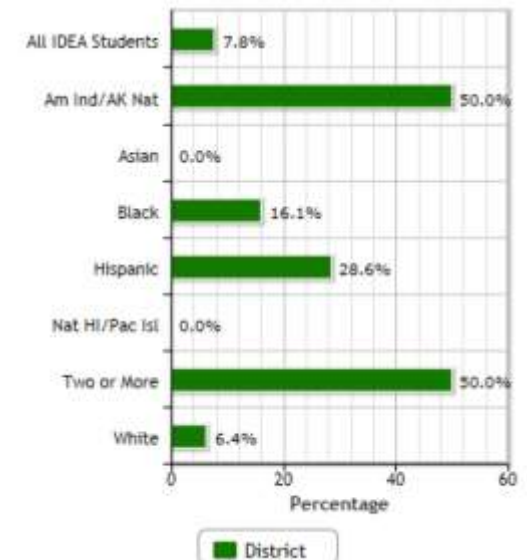
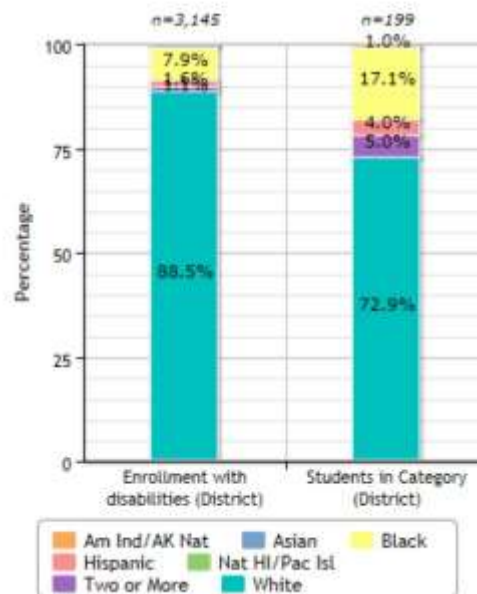
Proportion of all Students with Disabilities with one OSS

- Generally 7.8%
- American Indian 50.0%
- Black 16.1%
- Hispanic 28.6%
- Two or More 50.0%
- White 6.4%

Compared to enrollment of students with disabilities, what is the race/ethnicity, sex, and LEP/disability status of students with disabilities who received one out-of-school suspension?

Of the total students with disabilities enrolled in the district, what proportion received one out-of-school suspension?

Race/Ethnicity





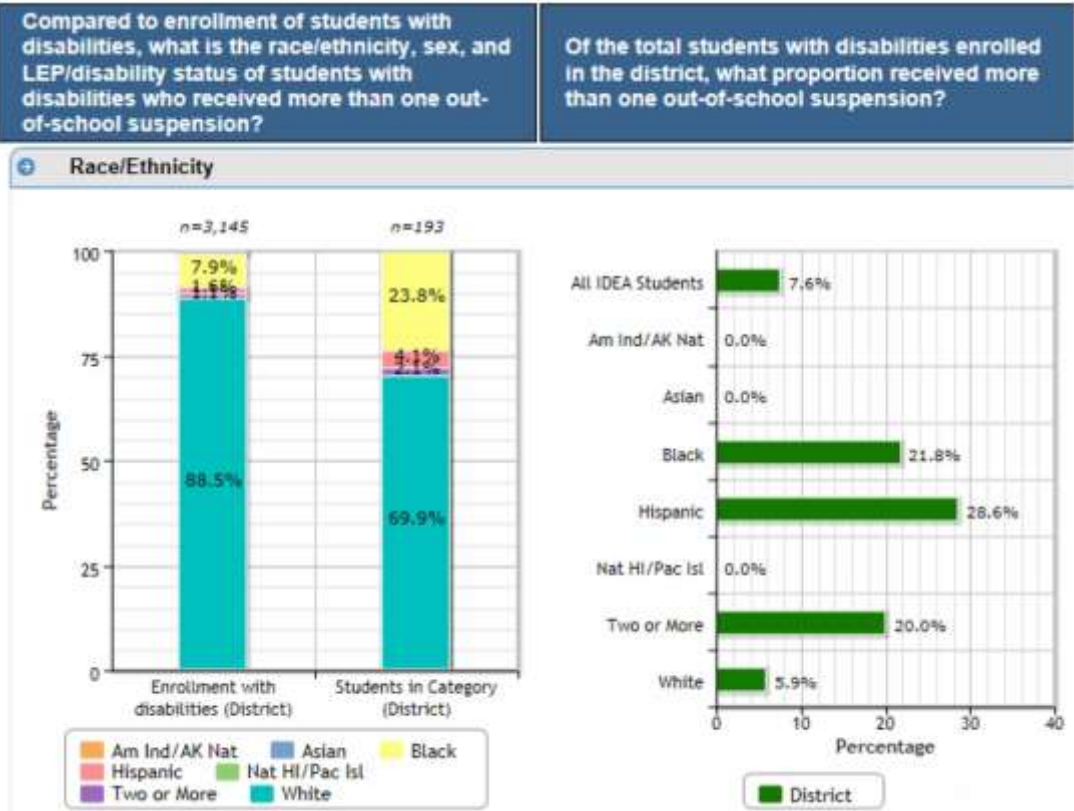
# Springfield School District (2011-2012): Students with Disabilities

Students with Disabilities with more than one out-of-School Suspension (OSS)

- Black 23.8% (yellow)
- Hispanic 4.1% (pink)
- Two or More 2.1% (purple)
- White 69.9% (turquoise)

Proportion of all Students with Disabilities with more than one OSS

- Generally 7.6%
- Black 21.8%
- Hispanic 28.6%
- Two or More 20.0%
- White 5.9%



# Remedies

## OCR Filing

- File official complaint form with OCR within 180 Calendar days of discriminatory event
  - School information
  - Person discriminated against
  - Details of discrimination
  - Contact information
- OCR determines whether they will move forward
- Fact-finding process
- Facilitated resolutions and issued findings



# Remedies:

## OCR Filing Examples

### South Orange-Maplewood School District (October 9, 2014)

- The ACLU filed an OCR complaint against the South Orange-Maplewood School District (SOMSD) in New Jersey alleging out-of-school suspension creates a disparate impact on students of color and those with disabilities in violation of Title VI and Section 504.

### Loleta & Eureka Sch. Dist.(December 18, 2013)

- The National Center for Youth Law and ACLU filed an OCR complaint alleging the towns of Loleta and Eureka intentionally discriminate against Native American and Black students, as well as those with disabilities by levying disproportionate discipline for minor infractions and forcing these populations out of mainstream schools at disproportionate rates.
- Alleges school faculty and staff encourage pervasive racial harassment and physical assaults and teach a racially-offensive and culturally-denigrating curriculum.



The Law

# FEDERAL AND MISSOURI



# Missouri Law – Enrollment

- Mo. Rev. Stat. 167.020
- Resident of district
  - “a person both physically resides within a school district and is domiciled within that district”
  - Domicile of minor = domicile of parent/guardian
- Homeless student enrollment guided by McKinney Vento (permanent housing = “fixed, regular, and adequate”)



# Case Law- Procedural Due Process

- *Goss v. Lopez*, 419 U.S. 565 (1975):
  - Education is a property interest protected by the Due Process clause
  - For all out-of-school suspensions, “the student [is] given 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”



# Missouri Law – All Students

## 167.161: Suspension or Expulsion

- School board may suspend or expel for “conduct which is prejudicial to good order and discipline in the schools or which tends to impair the moral or good conduct of the pupils”
- Prior disciplinary actions cannot be sole basis
- Procedural requirements
  - notice and hearing
  - “good faith effort” to have parent and child present
- Right to appeal expulsion decision in court



# Missouri Law – All Students

## 167.171: Summary and Statewide

- Principal may suspend up to 10 days (short-term suspension)
- Superintendent may suspend for up to 180 days (long-term suspension)
  - Right to appeal long-term suspension to Board of Education
- No re-admittance or enrollment for violation of the Safe Schools Act (may get alternative education)
- If enrolling in new school district while under suspension or expulsion, Superintendent may determine whether to uphold
  - Determine whether new district would suspend/expel for same conduct





# Missouri Law – All Students

## 167.164: Duty to Educate

- Suspension and expulsion “shall not relieve the state or the suspended student’s parents or guardians of their responsibilities to educate the student”
- Districts encouraged to offer discipline alternatives prior to suspension/expulsion (ex-ISS)
- District pays cost of alternative education, but may contract with public or private agencies to provide services



# Missouri Law – All Students

## 160.261: Safe Schools Act

- Districts must have written discipline policy
  - Provide written copy to parents and educate staff on specifics
- Report acts of school violence
  - “exertion of physical force by a student with the intent to do physical injury”
  - On school property, on school bus, during school activities
- Report certain offenses to law enforcement (ex- murder, manslaughter, kidnapping, assault, rape, sodomy, burglary, robbery, distribution of drugs, arson, property damage, weapon possession, child molestation, sexual misconduct, sexual abuse, harassment, and stalking)
- Weapons at school- suspension for no less than 1 year



# Federal Law- Students with Disabilities

- Individuals with Disabilities Education Act (IDEA):
  - Qualifying disabilities include learning disabilities, emotional disturbance, Other Health Impairment (includes ADHD), autism, speech/language impairment, etc.
  - Children with disabilities entitled to “Free Appropriate Public Education” - individualized special education and related services which allows student to make progress in school at no cost to parent
  - Services provided in “Least Restrictive Environment”
  - Disciplinary protections



# Federal Law- Students with Disabilities

- Section 504 of the Rehabilitation Act:
  - Nondiscrimination statute- children with disabilities must be provided equal access to education
  - Qualifying disabilities- an impairment (ex- medical diagnosis) that substantially limits a major life activity
  - Includes mental health diagnoses
  - Provide accommodations and modifications- “504 plan”
  - Disciplinary protections



# Federal Law- Disciplinary Protections for Students with Disabilities

- Manifestation Determination:
  - If 10+ day suspension recommended
  - Meeting held within first 10 days of suspension
  - If conduct in question is 1) directly and substantially related to child's disability, or 2) result of school's failure to implement IEP, cannot suspend more than 10 days
  - Also includes pattern of short-term suspensions that add up to 10 days
  - Applies to students in the process of being evaluated



# Remedies:

## Special Education

- Administrative Complaints (“Due Process Complaint”)
  - Discipline cases- challenge manifestation determination
  - Educational services- failure to follow IEP or IEP not sufficient for child to make progress
  - Settlement conference within 15 days, 30 day settlement period, 45 day timeline for hearing
  - Hearing officer from Missouri Administrative Hearing Commission
  - 2 year statute of limitations



# Remedies:

## Missouri Litigation Example

- D.S. v. HSD (North St. Louis County school district):
  - D.S. was 13 year old boy (7<sup>th</sup> grader) expelled for non-violent offense and HSD refused to provide any alternative education.
  - Filed in circuit court in St. Louis County against HSD and State and others seeking declaratory and injunctive relief, asking Defendants to provide an adequate alternative education to D.S. during his expulsion.
  - We argued Defendants' actions violated the Missouri Constitution, 167.164 RSMo., and the Equal Protection Clause under the Missouri Constitution since HSD and the State provided alternative education to other similarly situated students.
  - Resulted in negotiated settlement which included Board policy change on provision of alternative education to expelled students (will be considered on a case by case basis)



# Remedies:

## Missouri Litigation Example

- L.W. v. SLPS (March 2015, 22<sup>nd</sup> Judicial Circuit)
- 9<sup>th</sup> Grade student L.W., an indigent child, transferred to a Virtual Learning Center as a disciplinary measure
  - Three hours/day
  - Online program with available instructor
- L.W. disciplined for allegedly stealing public bus tickets during first day at VLC
  - Removed from school
  - Continue virtual learning at home INDEFINITELY
  - No computer at home, limited computer access at library, history of educational disabilities
  - No additional educational support provided by District
- LSEM on behalf of parent files case requesting declaratory and injunctive relief for L.W. to return to the school environment → Second Amended Complaint requests declaratory relief and compensatory education
- Alleges de facto expulsion without due process rights
  - Significantly Different and/or Inferior Program
  - Official discipline designation; Not told of right to appeal
- Alleges improper discipline
  - Disciplined for Type 1 offense: incidents that severely interfere with safety and learning, threatening or harmful, Safe Schools Act violations
  - Stealing bus tickets not harmful or safety risk





# Remedies:

## US Dept. of Ed. Recommendations

1. Create positive climates and focus on prevention
  - Tiered supports and levels of assistance
  - Social-emotional learning programs
  - School-based mental health supports
  - Properly trained security officers with clearly defined roles
  - Professional development and training for all staff
2. Develop clear, appropriate, and consistent expectations and consequences to address disruptive student behaviors
  - Set high expectations
  - Clear, developmentally appropriate, and proportional consequences
  - Help students learn from mistakes, improve behavior, and meet expectations
  - Appropriate protections (due process and IDEA)
  - Keep students in school and engaged in learning as much as possible → remove students only as a last resort and for serious violations
  - Those removed should have meaningful instruction and their return to the classroom should be a priority
3. Ensure fairness, equity, and continuous improvement
  - Cultural competence/implicit bias training
  - Regular evaluation of policies
  - Keeping data and internal and community review



# Remedies:

## Ferguson Commission Recommendations

- Signature Priorities:
  - Reform School-Based Discipline (see next slide)
  - Improve Childhood Physical and Mental Health
    - Establish school-based health centers
    - Create trauma-informed school districts
  - Enhance Early Childhood Education
    - Universal Pre-K
  - Reform school accreditation system
  - Education task force to design equitable and integrated school system in St. Louis area



# Ferguson Commission: Reform School Discipline

- Eliminate out-of-school suspensions and expulsions for Pre-K through 3<sup>rd</sup> grade
- Create systems/supports to monitor and prevent disproportionality in discipline, special education, advanced courses, etc.
- School personnel collaborate with community organizations to develop alternative behavioral interventions
- Cultural responsiveness and anti-racism training for teachers and staff, including school-based law enforcement
- School-based law enforcement- focus on improving school safety, reduce inappropriate referrals to law enforcement



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