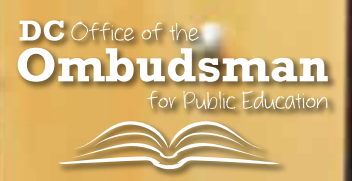




2017 ANNUAL REPORT

DC Office of the Ombudsman for Public Education

Joyanna Smith, Ombudsman for Public Education



OFFICE OF THE OMBUDSMAN FOR PUBLIC EDUCATION

ANNUAL REPORT 2017

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EXECUTIVE SUMMARY

Continued strong performance in caseload and calls to office in School Year 2016-17

Due to more than three successful years in operation, the Ombudsman's Office continues to receive many requests for assistance compared to our overall case acceptance rate (54%). Our office received 699 calls in School Year 2016-2017 (SY 2016-17) and accepted 380 complaints. We made a strategic decision to 1) accept fewer cases, 2) shift most of the casework to full-time staff and 3) apply lessons learned from individual casework to more deeply engage in education systemic work that will improve learning for all students.

Overview of Complaints During School Year 2016-17

In SY 2016-17, the Office received complaints from all eight wards and the breakdown of the top three wards are still Wards 5, 7, and 8, which comprised 67% of the total amount of complaints received. This represents a 7.8% increase from these three wards compared with SY 2015-16. Similar to SY 2015-16, the majority of complaints (62%) were from parents of District of Columbia Public School students and in comparison, more than one-third (35%) of the 380 complaints came from parents of students in D.C. public charter schools. In SY 2015-16, the top complaints were special education, access, school environment, academic progress, and student discipline. In SY 2016-17, the top complaints were special education, school environment, access, school discipline, and academic progress.

Representative Accomplishments During School Year 2016-17

- Convinced a school to reconsider an eligibility determination for a student with an intellectual disability. The school found him eligible for an Individualized Education Program (IEP) and moved him into an appropriate setting to meet his needs.
- Ensured that an expelled middle school student continued to receive supports for his disability while he awaited a new placement.
- Assisted a family with enrolling in their in-boundary school after their child was denied enrollment. We also helped secure an expedited evaluation. The student was found to have a disability and is now receiving supports.
- Successfully intervened to reverse the decision to expel a high school student with a disability.
- Accompanied a homeless parent to help her enroll her five-year old son at a DCPS school. The school had previously denied the parent permission to re-enroll.
- Assisted a parent of a student with high-functioning autism transfer into a more appropriate placement.
- Worked with a charter school to update their staff training to prevent informal school push-out and school enforced withdrawal.
- Successfully intervened to reverse the retention of a charter school student who would undergo an evaluation for special education services. School instead agreed to provide interventions and other supports.
- Secured translation services for a deaf parent who spoke American Sign Language. The school initially thought they did not need to provide translation services for the parent. We clarified the requirements of the Language Access Act for the school, which required them to provide translation services for the parent.

Examples of Ombudsman Systemic Work

School-Level

- In SY 2016-17, we started to receive referrals from the DCPS Grievance Office regarding communication issues between schools and families. We also received requests to mediate communication issues in order to give families an opportunity to have a third party present. Charter schools have also requested that we mediate conversations between school leaders and families concerning education related issues.

City/State Level

- Provided testimony at the State of School Discipline Roundtable SY 2015-16 and the State of Special Education and Disability Services in Public Schools Roundtable to help advocate for reforms in special education and discipline practices in D.C. public schools.
- Provided technical support and guidance to the ESSA Accountability Plan Committee on non-academic indicators regarding school discipline for implementation under ESSA.
- Submitted written recommendations for OSSE's Chapter 30 special education proposed rulemaking.
- Invited to conversations regarding equitable family engagement practices and ways to promote more equitable practices that included DCPS, DME, and other education stakeholders.
- Invited to serve on working group and provided recommendations to the Committee on Education within the Council of the District of Columbia regarding school discipline reforms.
- Participated as a panelist at the American Bar Association (ABA) Mid-year Conference and the International Ombudsman Association Conference in which we discussed Education Ombudsman best practices and educational equity for students of color and students with disabilities.



Design of an Ombudsman Special Education Dispute Resolution System

The Office of the Ombudsman enlisted the services of the Harvard Law School Negotiation and Mediation Clinic to help design a special education dispute resolution system to meet an unmet need within the D.C. special education dispute resolution continuum. Currently, a D.C. special education dispute resolution landscape consists of a number of formal dispute resolution mechanisms, such as OSSE's Office of Dispute Resolution, which adjudicates due process complaints; Children's Law Center provides special education related client based representation services for vulnerable children in foster care, in the juvenile justice system, and in temporary housing. The University Legal Services provides support to students with disabilities transitioning to college, career and other post-secondary aspirations, students who have been illegally restrained and secluded, and adults with disabilities. These organizations offer dispute resolution systems, which are all formal in scope, and are not designed to address disputes to that occur at the early stages. Typically, disputes requiring binding, legal action have reached a point where children have fallen several grades behind, have not received any services, or who would likely qualify for compensatory education. Further, adding legal support in addressing early disputes creates an adversarial relationship between the parent and school.

In contrast, the Ombudsman's office offers a flexible, informal dispute resolution system that enables schools and families to utilize their best problem-solving skills to address a problem collaboratively. We use an early, voluntary, and facilitative mediation process. The Clinic analyzed the D.C. and national dispute resolution landscape and summarized best practices informed by other jurisdictions that provide special education dispute resolution services. The Clinic then incorporated these best practices into the Office's basic framework for special education disputes and also developed six core values:

- Everyone deserves to be heard and respected.
- Addressing conflict early can create transformative opportunities.
- Schools and families share ownership of conflicts that affect kids' education.
- Our independence and impartiality allow us to support families and schools.
- Good outcomes center on students.
- We improve education across D.C. by identifying common challenges.

LETTER FROM THE OMBUDSMAN FOR PUBLIC EDUCATION



November 15, 2017

To: District of Columbia State Board of Education

We are delighted to have completed our fourth school year in the re-established Office of the Ombudsman for Public Education. This year was marked by growth: a strong caseload, varied outreach efforts, sustained involvement in education policy discussions, and continued partnerships with government agencies and community groups. We are grateful to Chairman David Grosso and the Committee on Education for their continued support of our office. Over the last three fiscal years we have been able to increase our staff in the office to meet the ongoing demand for our services.

In the 2016-17 school year, we made an intentional decision to accept fewer cases so that we could focus on the quality of our services to students and families. Further, in thinking about quality, we developed a more streamlined intake process and prioritization of cases to ensure that we provide services to the most vulnerable populations in D.C. Over the last year, we began working with the Harvard Law School Negotiation and Mediation Clinical Program to engage in program evaluation of our office, and to develop a formal special education alternative dispute resolution system for our office during the Spring of 2017. We also reduced our overall office caseload in order to fulfill our statutory mandate regarding systemic work.

During the past school year, our office also focused on making the quarterly reports to the State Board more helpful with a focus on systemic trends and ways that the SBOE could become involved by fulfilling their role as a representative body of the residents of all eight wards. These conversations provide SBOE with an opportunity to further engage in thought leadership in areas that are typically outside of their specific jurisdiction such as special education, school discipline, bullying, and enrollment.

We also focused on the organizational structure of the Ombudsman office. Accordingly, we proposed statutory amendments regarding the ability to publish reports, seek independent legal advice, hire and fire our employees, and independent budget authority in order to better align with best practices for Classical Ombudsman offices. As of October 1, 2017, we are now an independent Office operating within the SBOE. This is an important accomplishment as an independent and autonomous office is a core principle of an effective and credible Ombudsman office. Such independence is critical to the premise of good government and integral to the fabric of our democratic society.

I am pleased to present the data and recommendations on the following pages. As we embark on the 2017-2018 school year, I look forward to working in partnership with the D.C. State Board of Education, the District of Columbia Public Schools system, the D.C. Public Charter School Board, and charter LEAs to improve educational outcomes for D.C. students.

Warmly,

A handwritten signature in black ink that reads "Joyanna Smith". The signature is written in a cursive, flowing style.

Joyanna S. Smith



Section I: The Office of Ombudsman for Public Education

Staff

Joyanna Smith, Ombudsman for Public Education
Clarence Parks, Assistant Ombudsman for Public Education
Khadijah Williams, Program Associate
Beryl Trauth-Jurman, Assistant Ombudsman
(started February 2017)

Fellows

Collin Murdock, Jessica Battle, Cyrus Huncharek, Grady Deacon, and Hela Baer

What Is an Ombudsman?

The word “ombudsman” is derived from a Swedish word meaning an “entrusted person” or “grievance representative.” The word has come to denote a trusted agent who looks after the interests of a particular group. In the United States, numerous public ombudsman offices have been created—through legislative, executive, or judicial authorization—as independent agencies that monitor the delivery of services for certain populations. However, less than a handful of jurisdictions have independent Ombudsman’s offices for public education.

The Office of the Ombudsman for Public Education is an independent, neutral office that helps parents and students resolve school complaints individually and collectively, transforming problems into solutions that compel systemic progress for all public education in D.C.^{1*} As established by law, the Ombudsman’s mission is to be a “single office” that coordinates “transparency and accountability” by helping D.C. families navigate the five education agencies that govern and operate the public schools in D.C.¹ The D.C. Public Education Reform Amendment Act (PERAA) law laid out responsibilities for the Office of the Ombudsman that includes reaching out to parents and residents; serving as a vehicle for communication; receiving complaints and concerns, determining their validity, and developing a response; identifying systemic concerns using a database; making recommendations based on observed patterns; and issuing annual reports.²

Our Mission

To provide equitable access to education for all students within District of Columbia public and public charter schools, and to support student engagement and achievement.

Our office aims to ensure access to equitable public education for all students, regardless of race, class, income, disability status or ward of residence. We consider ourselves an “activist” ombudsman office. We believe it is our responsibility to speak out against the systemic inequities that hurt our city’s children.

We address issues that are brought to our attention by providing direct intervention; we also address these same issues on the systemic level through our engagement with local, state, and national education leaders. Our office is a venue for parents, students, and families to have a real voice in addressing systemic inequities that are causing our children, particularly children of color, to fail. We believe that by highlighting the systemic inequities in our school system, we will create a system in which education equity extends beyond formal equality and fosters a barrier free system where students have the opportunity to benefit fully from their public school systems.

Our Vision

We envision an educational system where all parents, families, educators and students are fully engaged in the public school systems and are empowered to make informed decisions that improve student achievement.

Race and Equity Overview

The District has long sought to improve outcomes for its students through education reform. The most significant reform in recent years occurred in 2007, when the Public Education Reform Amendment Act (PERAA) dramatically shifted the structure of the D.C. public education system, shifting control from the School Board and giving increased oversight to the mayor and local education agencies. Since then, additional legislation has been passed to target discipline and special education practices. In 2015, new

^{1*} DCPS, PCSB, DME, OSSE and SBOE.

legislation added protections for students with disabilities, prohibited schools from suspending Pre-K students, and expanded reporting requirements for schools to increase transparency surrounding discipline practices.

Despite these education reforms, our office continues to observe that educational rights are not applied equitably to all students, and that such practices have resulted in more black, brown, and disabled students being unfairly disciplined, being ignored when requesting evaluations for special education services, and failing at higher rates than their white peers. Too frequently, we hear from families such as Ms. Bartello and her son, Tyrone**, a second grade African American boy who was illegally disciplined because his principal said that she could not figure out any other way to help him learn without disrupting his peers. Consequently, for several weeks, he missed critical instruction time as he sat in unofficial suspension. Not only did he miss the learning that came from being absent from class, causing him to fall behind academically, but he also experienced first-hand what it feels like to be abandoned by his school.

Similarly, at a Ward 7 public charter school, Ms. Jones sought to have her elementary aged children Javari and Simon evaluated to determine if they had a disability that would make them eligible for specialized instruction. However, school administrators informed Ms. Jones that Javari and Simon could not be evaluated because they felt they would have to evaluate most of the children in the school if they honored all requests due to the economic status of many of the families in the city and in that ward. This raised several questions about systemic practices based on economic and racial factors and perceptions of students who typically are black or brown, disabled, or from economically disadvantaged backgrounds. Students like Javari and Simon are often denied services based on factors outside their control, and are punished, through punitive practices, for manifesting the effects of those very same factors in the classroom.

Unfortunately, the stories of Tyrone, Javari, and Simon are not unique. In D.C., African American students are 6.8 times more likely to be suspended from school than their white peers.³ This is especially egregious given that research has shown a strong correlation between exclusionary discipline and increased interactions with the juvenile and criminal justice systems.⁴ Ultimately, these practices contribute significantly to the educational disparities that persist as recent data from the D.C. PARCC scores from SY 2016-17 demonstrate that only 22 and 28.9 percent of African American and Latino students scored proficient and above on their English Language Arts (ELA) exam, demonstrating

growth of 2.7 percent and 4.2 percent respectively, compared to 82 percent of White students who scored proficient and above, with growth of 7.7 percent from the previous year.⁵ In other words, only one-in-four of African American and Latino students are on grade level for reading. Yet as the achievement gap between these groups of students grows, our District continues to foster school level and institutional practices that are fundamentally detrimental to our most vulnerable students' academic and socio-emotional growth.

Our casework has consistently shown the continuing need for an Ombudsman Office within the District of Columbia public school systems, particularly for black, brown, disabled, and economically disadvantaged students. Out of the nearly 400 cases our office accepted this past school year, 89% of those cases involved students of color, and almost one-third of these students resided in Ward 8, our District's poorest ward. Additionally, special education and school discipline were among the top five complaint areas presented to our office. Our inquiries have uncovered that schools in our poorest wards are committing illegal practices, such as placing students in "alternative education settings" in Tyrone's case or refusing to evaluate a student for special education services because the school principal stated that the child is poor and therefore had an inferior educational background. The school principal connected the academic failure of the student to his "inferior" educational background rather than the student actually needing services in order to allow him to access his education. Then, after our office's intervention, the student was finally evaluated and diagnosed with a disability. In reality, some schools are setting up our most vulnerable students to fail by denying them a basic and fundamental right to an education. Our data demonstrates that the quality of the educational experience of our District's children is often defined by the zip code in which they live or the color of their skin. As mentioned earlier, we have found in our daily work with students and families that 67% of our cases for SY 2016-17 were residents of Wards 5, 7, and 8. This represents an increase from SY 2015-16 in which we had 59.2% of our cases from the same three wards. While there are some changes that need to be made regarding our education laws and policies, we have observed that one of the primary challenges our most vulnerable children face is that the laws and policies are not applied in an equitable and just manner. The families we work with the most are often marginalized, their requests are often ignored by school personnel, and they are often not the recipients of empathetic decision-making when their children need it the most. Instead, many parents from these wards are perceived as weak and powerless which creates an imbalance of power that continues to exist between school leaders and parents. This

** Names of students and families have been changed to protect confidentiality.

imbalance of power also renders parents unable to effectively advocate for their children, which also leads to inequitable learning outcomes for students of color and students with disabilities.

Accordingly, if we truly want every child to be college and career ready, we must do a better job of removing the structural racism and the institutional barriers that adversely impact our District's economically disadvantaged students and students of color. We know that our students come to school with challenges such as: homelessness, food scarcity, single parent families, poverty, and violence,

among other issues. However, the D.C. public schools have also incorporated other institutional barriers that further complicate the lives of our most vulnerable students and families. We will only be able to dismantle these barriers and ensure that these most vulnerable students have successful pathways to student achievement if we re-orient ourselves to how we teach, lead, and make policy decisions that affect them. Accordingly, in our annual report, we will introduce an educational equity framework for decision-makers who regularly engage in making education policy decisions to consider for D.C. public schools.





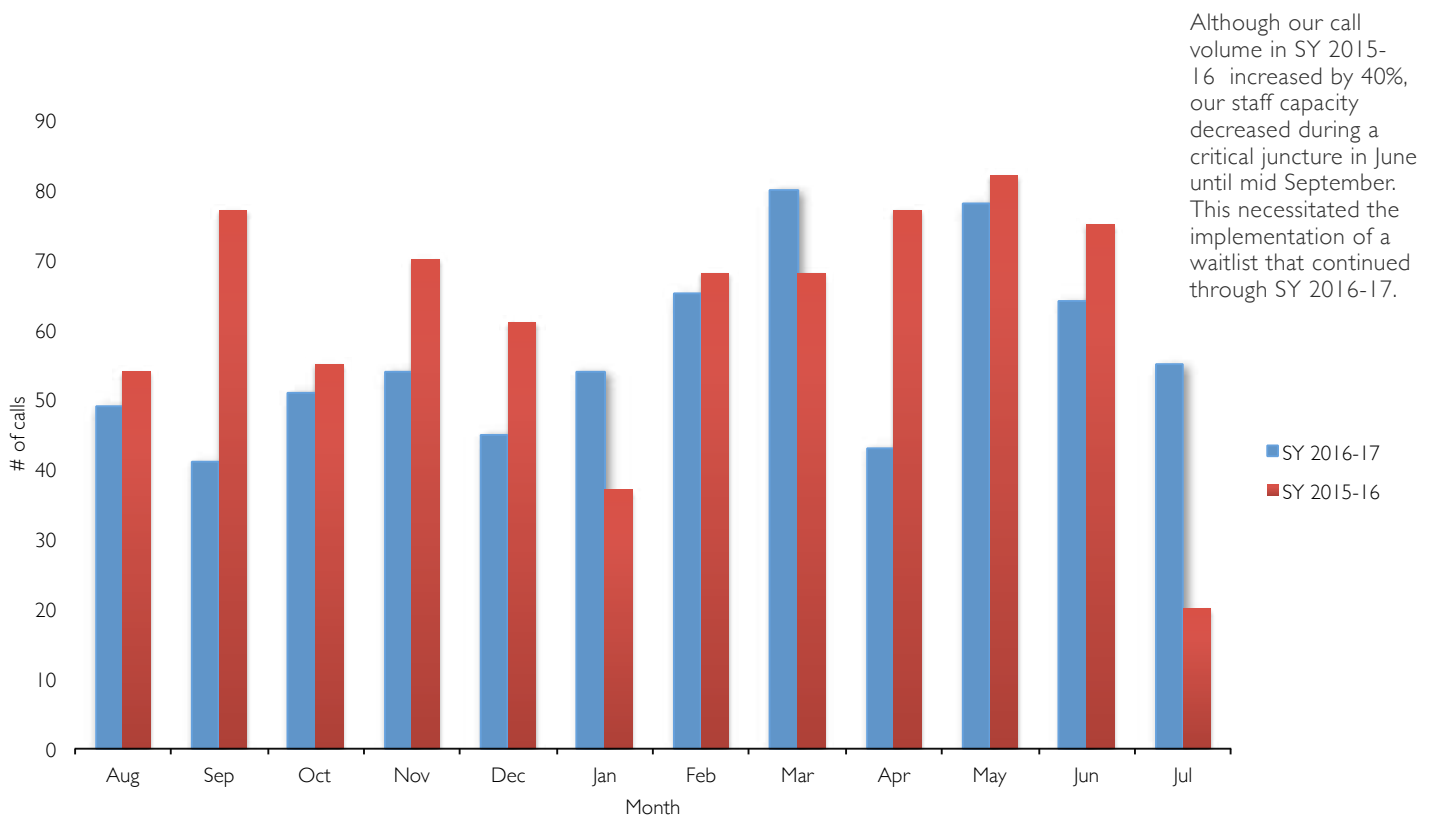
Section II: 2017 Ombudsman's Office Data

Who We Serve

In School Year 2016-17, we received 699 calls and accepted 380 complaints. We made a strategic decision that our cases needed to be handled by experienced, full-time staff members. We spent a great deal of time evaluating the quality of casework performed over the last two years and decided to no longer rely on Ombudsman fellows to engage in a significant portion of the casework. Instead, Ombudsman fellows now work on no more than 3-5 cases at a time with heavy supervision, which means that cases performed by Ombudsman fellows only accounted for 14% of the overall cases in SY 2016-17 compared to 48% of the caseload in SY 2015-16. We also decided to devote more time to our statutory mandate to be more involved in systemic work. Accordingly, we shifted the majority of the casework to two full-time staff members while also reducing the total amount of cases that we assigned to fellows.

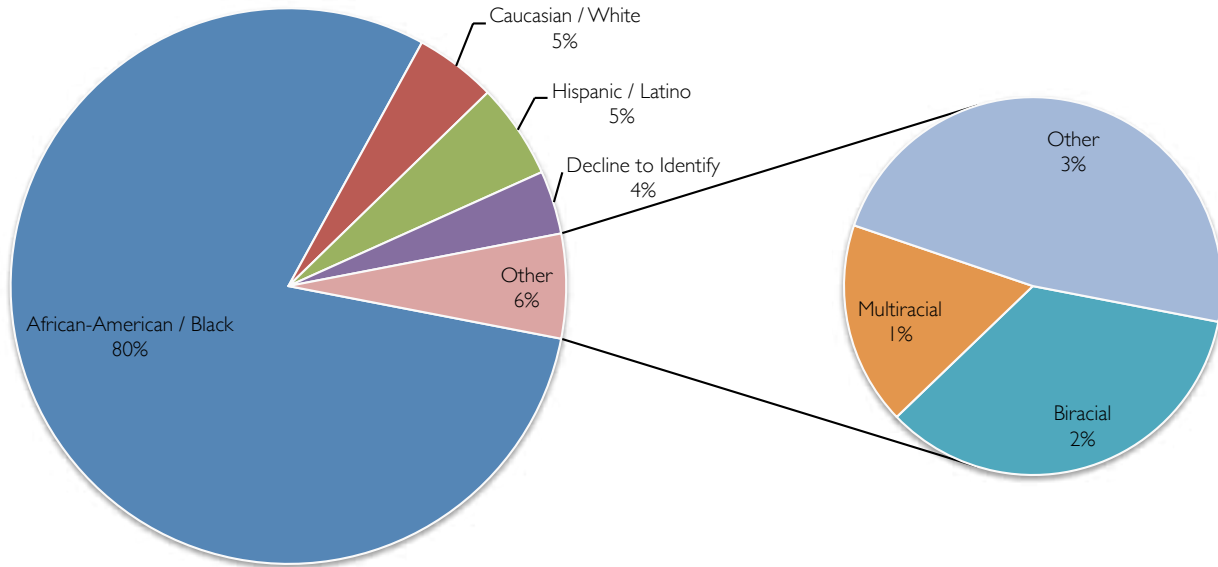
CALLS BY MONTH:

We received the highest amount of calls in September, November, April, May, and June.



STUDENT RACE:

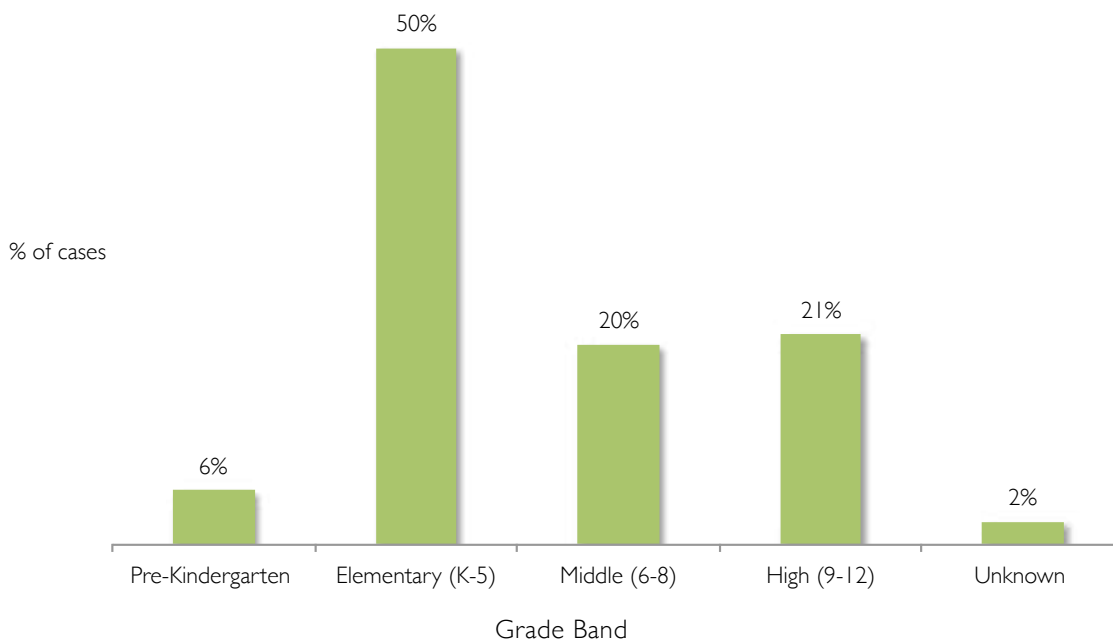
91% of calls received involve students of color. This is an increase from the previous year, however the increase is consistent with an overall trend of the majority of calls involving students of color.



NUMBER OF COMPLAINTS BY GRADE BAND:

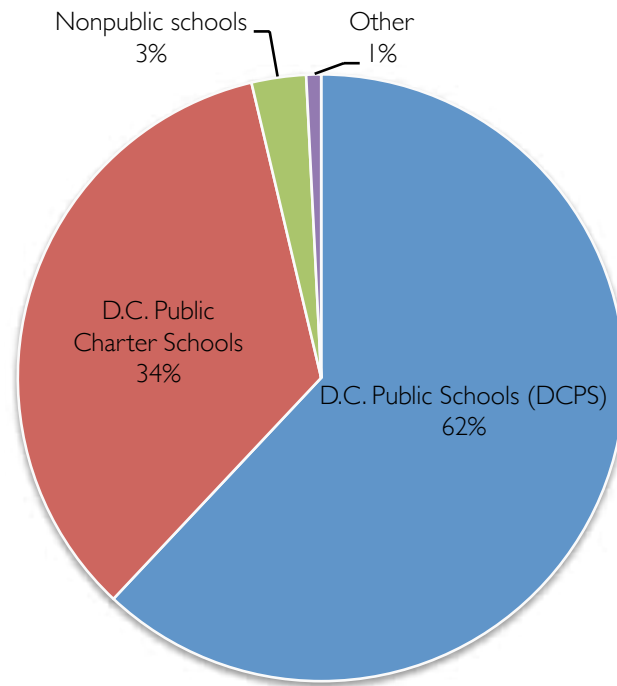
The majority of complaints received concerned elementary school students followed by high school students. The single grade level with the most complaints was 2nd grade, followed by 4th, 1st, 3rd, 7th and 5th grades. The majority of complaints involved special education, school environment, access, academic progress, and school discipline.

The majority of complaints received involved DCPS schools. There was a slight decrease in overall percentages from 65% in SY 2015-16 to 62% in DCPS schools and we observed a slight increase in the overall public charter school cases, which increased from 29% to 35%. We observed a constant percentage in cases involving nonpublic schools, which represented 3% of our overall caseload.



SCHOOL TYPE:

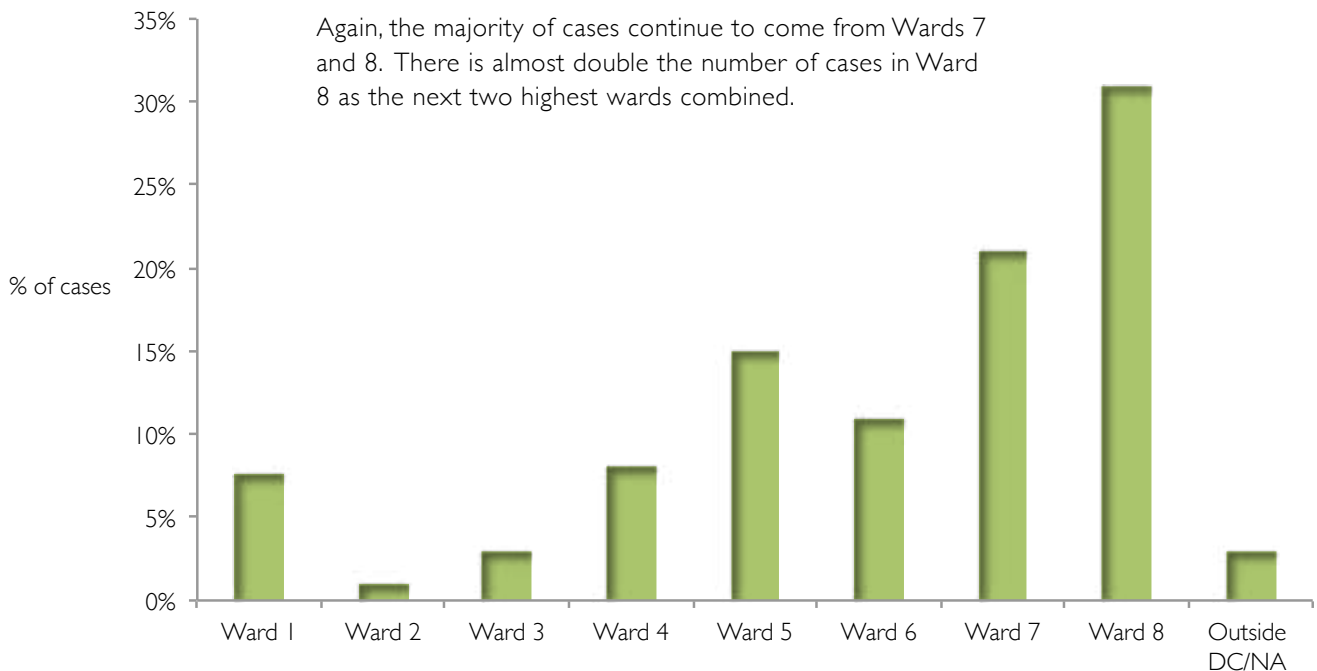
D.C. Public Schools continue to represent the majority of cases.



We have observed an increase in the number of charter school cases compared to last school year. D.C. Public Schools continue to represent the majority of cases we've received.

NUMBER OF COMPLAINTS BY WARD:

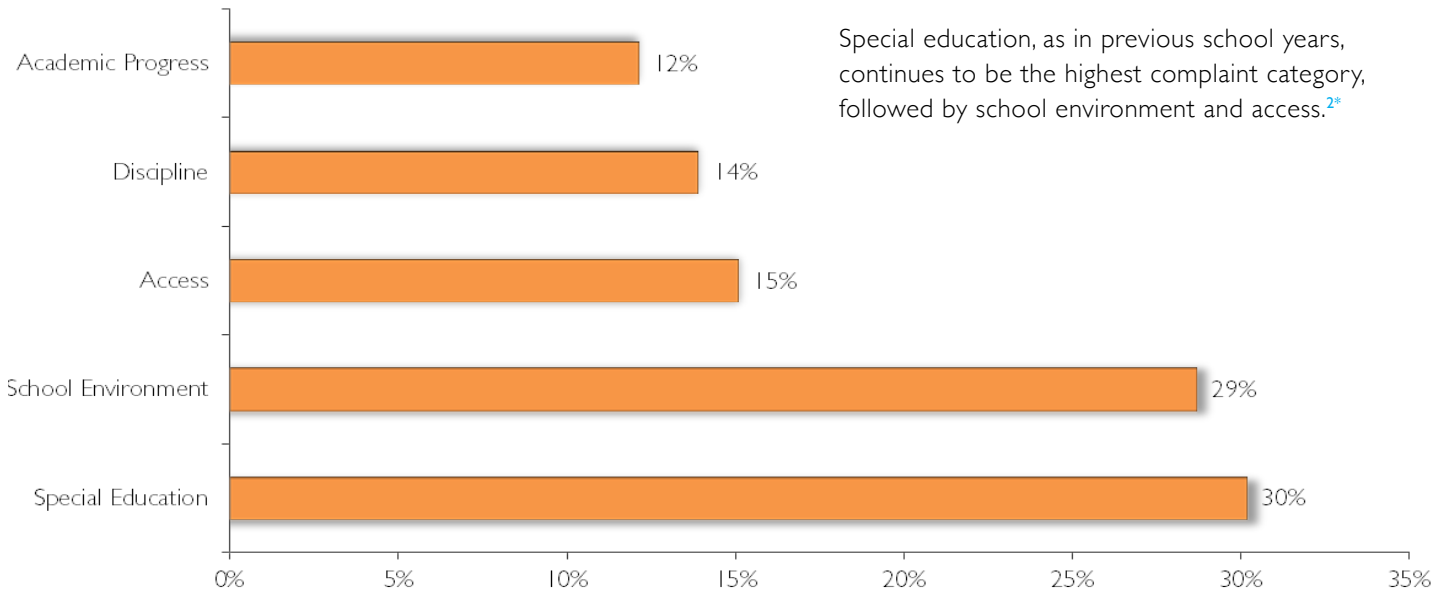
We received complaints from all eight wards. Similar to data presented in SY 2015-16, Wards 5, 7, and 8 were the most highly represented. This school year, we observed a higher percentage of cases from Wards 7 and 8 than in the prior school year. We also observed an increase in cases from Ward 6, and a significant increase of cases received from Ward 5.



Again, the majority of cases continue to come from Wards 7 and 8. There is almost double the number of cases in Ward 8 as the next two highest wards combined.

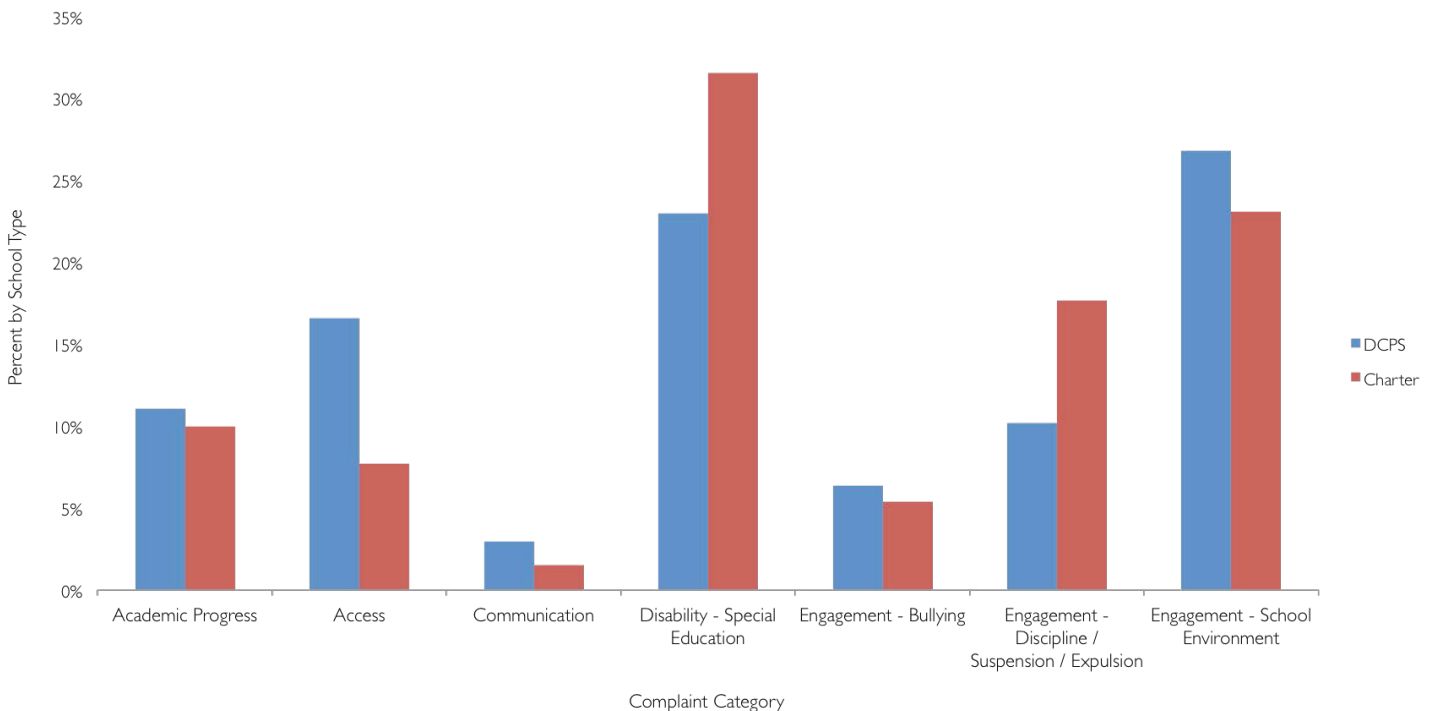
TOP COMPLAINT CATEGORIES IN SY 2016-17:

The majority of complaints were about special education, school environment, school access, and school discipline.



TOP COMPLAINTS BY SCHOOL TYPE:

More charter school related complaints involved concerns about Special Education and School Environment, at 32% and 23%, respectively, than any other complaint category. For DCPS, more related complaints involved School Environment and Special Education, at 27% and 23%, respectively, than any other complaint category.



^{2*} School Environment includes school climate and corporal punishment; Access includes homelessness, enrollment, and transfer issues.



Section III: Observations

A. SPECIAL EDUCATION

40% of the students we have supported in our casework over the past school year have or are suspected of having a disability. These students are typically the most vulnerable students – students with diagnosed or suspected disabilities – and are more likely to be students of color,⁶ live in poverty,⁷ suffer food insecurity,⁸ or be involved in the foster care or juvenile justice system.⁹ Each of these barriers is a risk factor, but students suspected or diagnosed with having disabilities are less likely to live successful, independent, and productive lives. Nationally, students with learning disabilities are more likely to be retained a grade, be suspended, or drop out of high school.¹⁰ Moreover, as adults, students with learning disabilities are less likely to be employed, and more likely to live in poverty than their nondisabled peers.^{11,12,13}

Given these risk factors, it is concerning that D.C. schools are creating additional barriers for students with suspected and diagnosed disabilities. Over the past three years, we have observed LEAs utilize practices that create additional barriers for students to access to learning through the delay or denial of special education services. While D.C. sought to address the risk factors families face through legislation, it was not enough to prevent the creation of barriers by the school system. In one pronounced effort to provide access families for needed services, a package of special education legislation was passed in 2014 to simplify requests for special education evaluations. However, while the 2014 special education legislation was designed to improve the experiences and delivery of special education services to students, many families still face barriers in requesting or receiving services for their children. For example, the Enhanced Special Education Services Act of 2014 includes a provision to decrease the time families must wait to have their children evaluated from 120 days to 60 days.¹⁴ Unfortunately, no funding for this provision will be allocated until SY 2018-19.

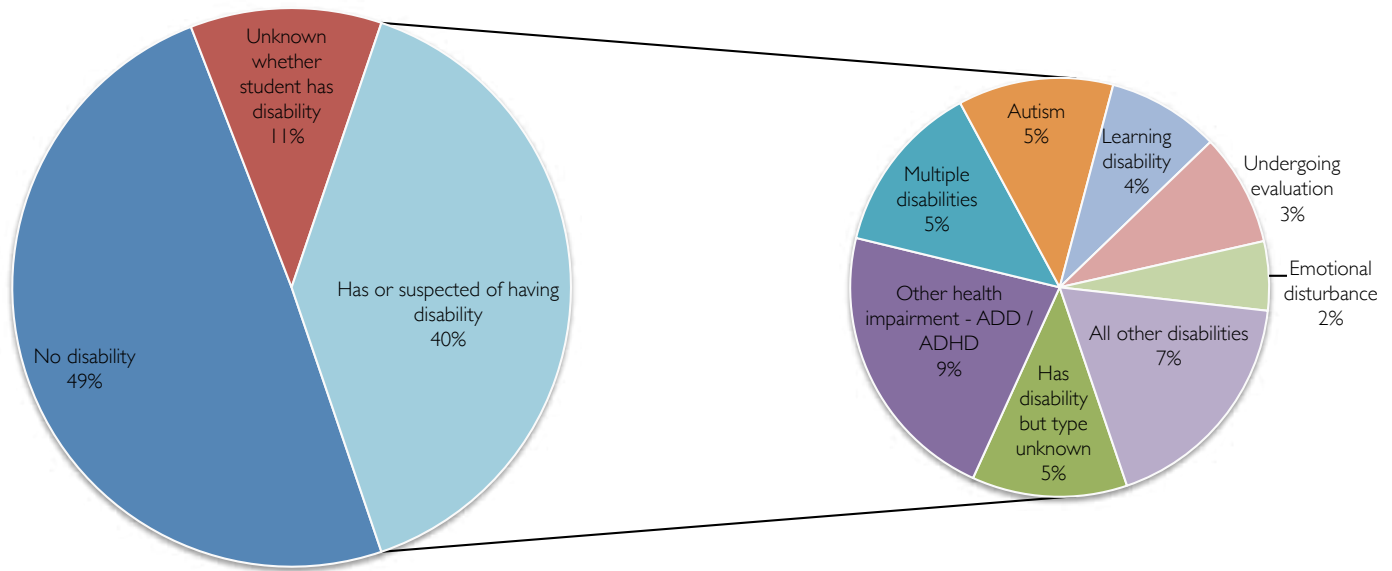
Developing legislation to address these barriers, however, is not enough to ensure equitable outcomes in special education for the District's black, brown, and at-risk^{3*} students. Overall, in D.C., approximately 82% of the students receiving special education or related services are African American.¹⁵ Similarly, 82% of students in our casework with IEPs, 504 plans, or who are undergoing evaluation were African American or Hispanic/Latino, with African American students representing the vast majority of students of color. Moreover, 62% of students in our casework who received an IEP, 504 plan or are undergoing evaluation reside in Wards 5, 7, and 8.^{4*} In fact, local data demonstrates that students in Wards 5, 7, and 8 are 7-16 times more likely to live in poverty and more likely to experience trauma than students in Ward 3.¹⁶ These barriers work in conjunction with the choices that schools make to create institutional barriers to access special education services. As a result, new legislation must address the schools' response to these racial and economic barriers. Targeting areas of school-initiated barriers will address some of the more prevalent challenges observed in our casework. Thus, some of the most challenging barriers to accessing special education services we will address are 1) the use of Response to Intervention to delay evaluation, 2) retention of students with undiagnosed disabilities, and 3) the need for consistent, citywide eligibility criteria for special education services.

^{3*} The at-risk allocation is based on the cumulative students that are at-risk of academic failure. The current definition for at-risk is based on students who are homeless, in the District's foster care system, qualify for Temporary Assistance for Needy Families (TANF) or the Supplemental Nutrition Assistance Program (SNAP), or high school students that are one year older, or more, than the expected age for the grade in which the student is enrolled. According to DC law, at-risk funds are supposed to follow the student to his or her school, with school leaders determining how best to use these additional resources. For additional information see: <http://dcpsbudget.ourdcschools.org/>

^{4*} For additional information on ward demographics see: https://planning.dc.gov/sites/default/files/dc/sites/op/page_content/attachments/Key%20Indicators%202011-2015_0.pdf. Also, see the Annie E. Casey Foundation, KIDS COUNT Data Center: <http://datacenter.kidscount.org>

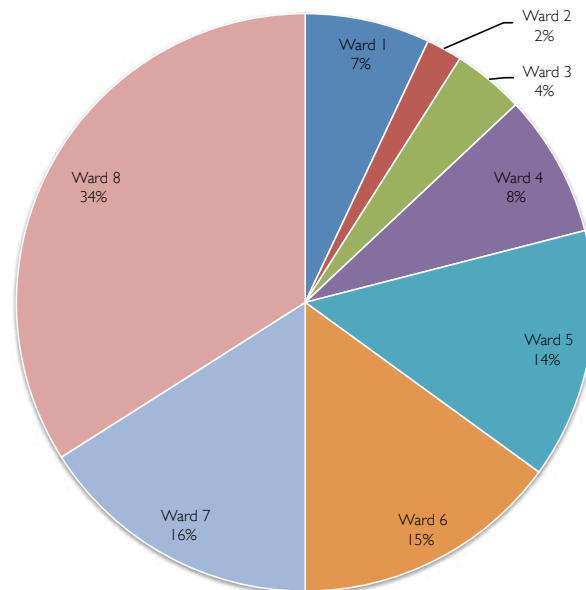
DISABILITY TYPE:

Overall, 40% of cases involve a student with a disability. This number is likely an underrepresentation because 11% of parents could not verify whether or not their child had a disability. There are likely students represented in the "none" or "unknown" categories who may have an undiagnosed disability, or were found to have a disability at the close of the case.



SPECIAL EDUCATION BY WARD:

Wards 5, 7, and 8 represent 64% of our special education cases.



* Data does not include outside D.C. or unknown.

i. Response to Intervention

Families have shared with our office that the Response to Intervention Process (RTI) is preventing their children from accessing special education services. The RTI process, when used as intended, can help students struggling on the margins to improve their ability to be on grade level and decrease the likelihood of retention. Response to intervention "is a multi-tier approach to the early identification and support of students with learning and behavior needs"¹⁷ that utilizes scientifically based interventions.¹⁸ These interventions include ongoing assessment, progress monitoring, and differentiated instruction, which are all designed

to help a student catch up with their grade level peers in a short period of time, approximately 6-8 weeks.^{5*} When used appropriately, RTI provides support to students who do not have Individualized Education Programs,^{6*} are in the process of being evaluated for an IEP, or who do not qualify for special education services but are in need of additional support. Unfortunately, marginalized students are often not given the necessary supports to progress in school, and need schools to deploy interventions and supports expeditiously through RTI and special education services. In two recent cases our office handled, two parents, Ms. Edna, mother of a DCPS kindergartner, Javon**, and Ms. Carter, mother of a charter school third grader, Jeremiah, observed their children struggling in school. In both cases, each parent made an oral request for evaluation. Yet, both schools refused to honor the requests for evaluation.

Ms. Carter noticed that Jeremiah, a charter school student, significantly struggled with reading and suspected that he had a disability. Seeking to understand which supports Jeremiah might need, his mother orally and formally requested an evaluation for her son. However, the school stated that it could not start the formal evaluation process until it completed a RTI process in order to collect enough education-based data. After 3 months, the school invited the parent to attend a RTI meeting and provided the parent with a prior written notice, which stated that the school would not be conducting a comprehensive evaluation to determine whether the child had a specific learning disability. Similarly, the DCPS school informed Ms. Edna that it could not conduct comprehensive evaluations for Javon until it gathered education related data through the RTI process, even though the parent orally and formally requested that an evaluation be conducted. The schools' decision to require the completion of the RTI process before considering conducting an evaluation greatly slowed the process down for a span of several weeks up to half a school year for both families. Both children received some supports through the RTI process, but the use of RTI did not address the parents' special education concerns or the child's disability. Because there is no statewide guidance or procedure available on the RTI process, our office has observed instances where the RTI process is not appropriately used to support undiagnosed students.

Similarly, at a public charter school, a mother noticed that her first grade sons, Jayden and Caleb, were struggling academically. She orally requested the school to evaluate her sons to determine whether they had disabilities in January 2017. However, the school did not contact the parent again until April 2017, which is when the school informed the parent that they would initiate RTI for both students. In this meeting, the parent was informed that the students did not qualify for special education evaluations because of the school's analysis of existing data. Our office grew concerned because the school did not provide any interventions during the months of January and February, yet determined at the initiation of the RTI process, that the students were not eligible for evaluations. In this case, the school denied special education evaluations for the twins by claiming to use the RTI process even though they did not initiate the RTI process until 4 months after the mother shared her concerns with the school. In this case, the school failed the two children through both the delay of RTI and failure to initiate the evaluation processes.

The Special Education Enhancement Act was enacted to protect undiagnosed students like Caleb, Jayden, and Jeremiah by simplifying the evaluation process and shifting the burden of evaluation appropriately to the school. The passage of this legislation demonstrates the city's desire to simplify the special education process for families. The Special Education Enhancement Act is however silent on RTI, which allows for loopholes to honoring oral requests for evaluation. As a best practice, schools should follow up on oral requests by providing a consent form, but our casework indicates that multiple requests, combined with 3rd-party intervention, such as through our office, are often required to have oral requests honored. This means that the 2014 Special Education Enhancement Act's oral request provision, in its current form, does not prevent schools from displacing their obligation to honor oral requests back to the parent, even though doing so contravenes legislative intent. Moreover, current federal and local laws do not provide guidance on how to correctly use the RTI process in conjunction with the special education evaluation process. Federal guidance does make clear that RTI is not a replacement for evaluation. OSEP, in a 2011 memo,

^{5*} RTI is usually conceptualized as a triangle or pyramid with several tiers. Each tier represents a certain level of educational services. In the bottom tier, students receive universal screenings, and based on those screenings some students will receive targeted interventions, like being assigned to a special reading group, that can be done as part of general education.⁷ A smaller number of students who fail to make progress in the first tier will be moved up to the second tier, where they will receive more targeted, small-group interventions.⁸ The remaining students who have failed to make progress are in the third tier and receive higher intensity, individualized instruction.⁹ Models differ in the percentage of students served by each tier, but the basic model has each tier shrink substantially so that only a small percentage students are receiving the most intensive instruction." From Response To Intervention: A Rising Tide Or Leaky Boat? Pg2. Ohio State Journal on Dispute Resolution 2015.

^{6*} Each public school child who receives special education and related services must have an Individualized Education Program (IEP). Each IEP must be designed for one student and must be a truly individualized document." Retrieved from <https://www2.ed.gov/parents/needs/speced/iepguide/index.html>

** Names of students and families have been changed to protect confidentiality.

strongly advised states to refrain from using RTI to delay or deny evaluation: “the use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation, to a child suspected of having a disability.”^{7*} Although the intent of RTI is to provide students with the tools to perform on grade level, using RTI to delay the evaluation process places students with the greatest academic struggles even further behind. It also denies students with the special education services needed to progress in the general education curriculum. This is at odds with RTI’s original intent.¹⁹

Some states, such as Wisconsin, provide stronger protections through the passage of legislation specifying how LEAs are to utilize the RTI process, by specifying the intent of RTI. Delaware legislation, as an example, defines that best practice application of RTI “create[s] a well-integrated system of instruction/intervention guided by child outcome data.”²⁰ As a logical extension of this legislation, New Mexico integrates the RTI and special education processes by designating the third tier of RTI as special education.²¹ The Special Education Enhancement oral request provision does not provide specificity on how to handle oral requests in conjunction with the RTI process, nor does any local legislation exist that defines the tiers and their connection to special education evaluation. As a result of these legislative gaps, our Office’s observations suggest that RTI is utilized under a “wait-to-fail”^{8*} model of intervention. The District should develop a citywide definition of RTI and how it is to be utilized along the special education continuum to align the RTI’s intent with that of the District’s Special Education Enhancement Act.

ii. Retention of Students with Disabilities

In our casework, we have found a number of struggling students who were not timely evaluated or diagnosed with disabilities making them eligible for specialized instruction and related services. Often, parents requested interventions or evaluations earlier in the school year but those requests were delayed or denied. As a result, their children were retained at the conclusion of the school year. This practice is problematic because some of these students could have received services or supports earlier and would have been assessed based on their IEP goals and objectives instead of general education standards. Furthermore, LEAs are able to abdicate their responsibilities regarding these students because IDEA and the DCMR regulations do not explicitly discuss how to handle retention issues for students with disabilities other than that the school principal must consult with the IEP team. Additionally, neither DCMR nor DCPS policy offers a formal appeals process for students who are diagnosed with disabilities late in the school year and are ultimately recommended for retention.²²

LEAs are obligated to either identify students suspected of having a disability under Child Find, or to honor a parent’s request for evaluation.²³ However, in every retention-related special education case presented to our office, LEAs neither adequately identified students suspected of having disabilities nor honored parental requests for evaluation. As a result, these students were retained at the end of the school year. For example, Ms. Rosa noticed that her third grade son, Kevin, exhibited symptoms consistent with a specific learning disability, which include listlessness, lack of focus, and preoccupation with external stimuli at the expense of performing classroom tasks or assignments. Even though Ms. Rosa contacted the school to develop an action plan that could be implemented at the school and supported at home, the school did not develop nor implement an academic intervention plan targeted to the student’s academic weaknesses and his symptoms. While the school could have provided targeted support to the student through the RTI process, Ms. Rosa did not know to ask for RTI specifically, and the school did not offer this as an option to her. The school also failed to communicate that RTI provides interventions they could use to support Kevin. As a result, the student fell further behind grade level. Ms. Rosa then made a formal request for evaluation for special education in May 2017, and the principal informed the parent and our office that she would not retain Kevin if he was determined eligible for special education. However, even though the school had received a request for evaluation much earlier, they did not initiate an evaluation until July 2017. Through the evaluation process, Kevin was subsequently found eligible under the specific learning disability category, but the school principal still decided to retain him. In doing so, the school’s retention decision failed to acknowledge their failure to evaluate in a timely manner, and therefore, the late identification of Kevin’s learning disability, at least partly, led to his retention. Instead, the school incorrectly attributed Kevin’s academic struggles to a lack of motivation and focus, rather than a symptom of his specific learning disability.

Kevin was then placed in what the school principal called a “non-departmental” classroom as a permanent placement before he was retained and determined eligible for an IEP. The principal communicated to our office that Kevin remains in the “non-

^{7*} 34 CFR §300.304-300.311 Retrieved from: <https://www.gpo.gov/fdsys/pkg/CFR-2011-title34-vol2/pdf/CFR-2011-title34-vol2-sec300-304.pdf> and 34 CFR §300.8. Retrieved from: <https://www.gpo.gov/fdsys/granule/CFR-2012-title34-vol2/CFR-2012-title34-vol2-sec300-8>

^{8*} Archerd, Erin. (2015). Response to Intervention: A Rising Tide or a Leaky Boat? Pg. 3. Ohio State Journal on Dispute Resolution.

departmental” classroom because he will receive more supports than he would in a general education classroom. However, such a decision is problematic because it constitutes a self-contained classroom placement, which is not an appropriate placement for a specific learning disability and it is far more restrictive than necessary.²⁴

Unfortunately, Kevin and similarly situated students were only evaluated for a disability once our office intervened; and at that point, the students had fallen too far behind, academically, to be promoted to the next grade. Moreover, the school placed the burden of identifying a suspected disability on Ms. Rosa, and the school did not offer available options to address Kevin’s learning needs. Additionally, since charter schools are their own LEAs, the provisions are varied. After a cursory review of a number of charter school retention policies, we have observed that some charter schools have policies that are vague and contain insufficient language about appealing a decision to retain a student who has or is suspected of having a disability. Some charters, for example, simply state that they follow applicable IDEA regulations. Through our casework, we have observed some charter schools document their retention policies, but these policies typically do not discuss how their retention policies are individualized for special populations. Charter schools are not required to document how students with suspected disabilities would be supported in the retention process, and so charter students suspected of having a disability may have even fewer protections.

Additional guidance detailing the process for retention of certain struggling populations, such as students who have not yet been evaluated, is necessary to ensure students have an opportunity to receive academic intervention before retention is considered. While each student’s circumstance should be considered individually, it is important for students with suspected disabilities to have additional protections to ensure retention decisions are not made based on the school’s failure to provide required service and support for the student’s disability. Thus, legislation must be narrower in scope to help ensure students are provided the necessary supports and prevent unnecessary retention. For example, the state of California, offers both guidelines and legislation for students with disabilities at risk of retention.²⁵ It offers discretion to schools in retention decisions while preventing the unnecessary retention of students with disabilities. The California laws provide a safeguard for students by allowing teachers to consider alternative interventions to retention.²⁶ For example, if a student requires summer school services, then retention decisions will not be made until the student has finished summer school. Additionally, California requires data collection on retained students, including dropout rates, truancy, and chronic absenteeism, and discipline.²⁷ D.C. should consider adopting some of these policies and extend these protections to students suspected of having a disability in order to provide additional protections while tracking the outcomes of retained students. Other state policies require that a state board of education or state education agency publish aggregated retention data, disaggregated by race, at-risk status, disability status, and other contributing factors that could contribute to a student’s inability to demonstrate proficiency on a particular subject. This guidance is best specified in a policy that clearly incorporates the LEA’s requirement to identify students in need of evaluation.

iii. Lack of Statewide Eligibility Standards: Addressing the Needs of Our At-Risk Students Through Consistent Statewide Eligibility Criteria

In our casework, we have observed that LEAs are creating barriers for our most vulnerable students through inconsistent eligibility criteria to qualify for special education. LEAs in the District have significant autonomy to determine whether a student exhibits sufficient symptoms or whether the child’s educational performance is adversely impacted enough for the child to qualify for specialized instruction and related services. Some LEAs, for instance, compare the student’s progress to that of same aged peers, some use grade level, and still others use evidence of prolonged academic failure or retention. This level of discretion to determine who receives services also enables LEAs to both oversee the process and set the terms of evaluation. This discretion, if not applied judiciously, can create additional institutional barriers to access for students who already face economic, environmental, or psychological barriers prior to coming to school.

DCPS, for example, imposes stringent “adverse effect on educational performance” standards for students who have been diagnosed with ADHD, ADD, and ODD. Often, students with these diagnoses are determined ineligible for specialized instruction because there is not enough of an “adverse effect” on educational performance, meaning that the disability does not meaningfully impact a student’s access to the learning environment. Though not required nor encouraged in federal law, it is DCPS’ practice to find a student eligible for ED or OHI only if the student has a deviation of two grade levels below his/her peers or a history of retention in order to justify enough of an adverse effect on the student’s educational performance. DCPS’s stringent criteria requires a minimum failure threshold to be met in order to determine eligibility, rather than a review of how a student’s disability impacts their ability to access the learning environment. This means that a child would not receive services until the child is

already severely behind, two grade levels behind. It is the position of our office that such criteria not only creates an additional institutional barrier for DCPS students, but also encourages a checklist approach to diagnosing disabilities that does not account for the myriad of ways that disabilities manifest. IDEA gives states some discretion in determining adverse affect on educational performance. Unfortunately, this means that LEAs within states without statewide eligibility criteria have only vague criteria for adverse affect on educational performance, rendering undiagnosed students particularly vulnerable to overly stringent eligibility criteria developed by D.C. public schools. We have observed that a lack of a statewide definition provides 62 LEAs with too much discretion to determine eligibility.

In response to our office's concerns, DCPS has argued that the eligibility criteria are merely used for guidance purposes and are not designed to restrict the students who may be diagnosed with a disability to receive services and supports under an IEP. School staff have indicated that these "guidelines" are the process they are expected to follow. While made permissible, in combination with other observable and assessment based data under IDEA, the use of minimum thresholds to determine eligibility are more stringent than federal and local law require. Similar to the concerns that service providers have expressed to our office regarding the eligibility requirements, special education coordinators have also expressed a desire to evaluate many of the children we have worked with and find them eligible for services, but are bound to these additional eligibility requirements imposed by DCPS. Accordingly, the application of stringent criteria often serves to restrict eligibility for special education services for some of the students who are most in need of it.

For example, our office worked with a DCPS family whose child, Jonathan, was violent and presented suicidal ideation. School-based related service providers confidentially shared with our office, that because Jonathan was not testing at two grade levels below his current grade, they would not be able to recommend that Jonathan be determined eligible for an OHI or ED disability classification. The service providers also shared their concerns about their restrictions from diagnosing Jonathan, who was clearly presenting severe social, emotional, and psychological challenges but not meeting the grade deviations. Although the mother asked for an evaluation, and the service providers agreed with the parent, Jonathan was instead given a 504 plan and determined not to be struggling enough to be evaluated. The school felt that their hands were tied to apply the strict eligibility criteria they were expected to follow even if it meant not finding Jonathan eligible for special education services. In another case, a student, Robert, diagnosed with ADHD was provided with a 504 plan rather than an IEP. According to the State of Learning Disabilities 2017 Report, it is typical for students with ADHD to be considered lazy or unintelligent rather than as a student in need of specialized instruction under an OHI diagnosis.²⁸ However, Robert's behavior began to deteriorate and the school contacted the parent almost daily for support. As a result, the parent requested that Robert be evaluated to determine whether he had a disability that would make him eligible for an IEP. Upon evaluation, Robert was determined ineligible for an IEP because he had a standard deviation of 1.6, which was 4/10's shy of the minimum 2.0 below grade level requirement. After the determination of ineligibility for special education services, Robert's behavior continued to worsen and the parent eventually filed a due process complaint. In both cases, the related service providers mentioned that their observations of the behavior would have been consistent with the diagnosis of emotional disturbance and OHI in the previous school years. Unfortunately, the current DCPS practice of requiring a minimum threshold for determining special education eligibility creates a more stringent standard than that outlined in IDEA which already includes observations, expert opinion, prior academic and behavioral history, and assessments.²⁹

Economic barriers, in particular, have been shown to adversely impact student learning, but it is currently an exclusionary factor for identification of a specific learning disability under IDEA. We have observed that IDEA's exclusionary criteria³⁰ for specific learning disabilities, does not account for the impact poverty has on children's brain development. This means that the majority of the District's students in poverty are under a particular risk for academic failure, and are being denied services. According to James Ryan, a legal, special education, and school equity scholar, the special education law as it is currently written does not consider the impact poverty has on developing minds and future special education needs.³¹ According to Ryan, the exclusionary clause in IDEA, excludes children from qualifying for special education if their challenges are due to poverty, poor schooling, or other external factors, was developed due to a belief that disability was strictly related to intellectual ability.³² However, disabilities are not just related to intellectual ability and research has found that both environmental and genetic factors impact a child's cognitive ability. This is highly problematic for the children for whom educational impact is tied to their parents' poverty. Under the presumption that special education is just tied to intellectual ability, most children in Wards 5, 7, and 8 would not qualify for special education, even though many students likely need such services. Student access to learning for vulnerable populations, such as students of color, are further complicated when parents try to challenge a schools' eligibility determination. Such a challenge typically requires an advanced knowledge of special education eligibility requirements and the collection of multiple forms of evidence demonstrating a disability from the school, the child's doctor, and a special education expert. Well-

resourced families often secure an independent evaluation, costing thousands of dollars, which schools must consider, rather than challenging the determination through due process or a state complaint, the only legal options available should the school refuse to pay for an independent evaluation.³³ In contrast, families of vulnerable students must often make repeated requests for an evaluation, and once an evaluation begins, it sometimes takes up to one school year for eligibility determinations and special education services to commence because they do not have the resources and expertise in special education. In the current system, which lacks a statewide definition, students suspected of having disabilities who live in poverty are often subject to the school's beliefs about poverty's impact on achievement. These misguided assumptions create an environment in which a parent needs the financial resources and time to appeal an eligibility decision. Accordingly, exclusionary factors under IDEA, such as poverty coupled with the lack of parental resources to retain special education expertise, often sets up our most vulnerable students for failure.

Developing policy that sets consistent guidelines for eligibility can serve to leverage the experience and expertise of service providers, ensure consistency across LEAs, and set guidelines that do not narrow eligibility requirements beyond what IDEA requires.³⁴ Currently, the District has not defined adverse impact on educational performance and as a result, LEAs are given too much latitude to define it for themselves. Inevitably, overtaxed LEAs can develop definitions and criteria that work in their best interests. However, OSEP has stated that an assessment of whether the child's disability "adversely effects educational performance" must include consideration of "[nonacademic] as well as academic areas" and "the assessment is more than the measurement of the child's academic performance."³⁵ At the same time, a number of jurisdictions have defined adverse impact on educational performance and as result, there is more consistency in how LEAs determine eligibility for students suspected of having disabilities. For example, Georgia, Alabama, Indiana, Montana, Vermont, and West Virginia^{9*} explicitly define educational performance as encompassing both academic and nonacademic factors. West Virginia's legislation merits special consideration, as it provides both definitions of adverse impact on educational performance, as well as guidance on the assessment of educational performance. Specifically, West Virginia provides:

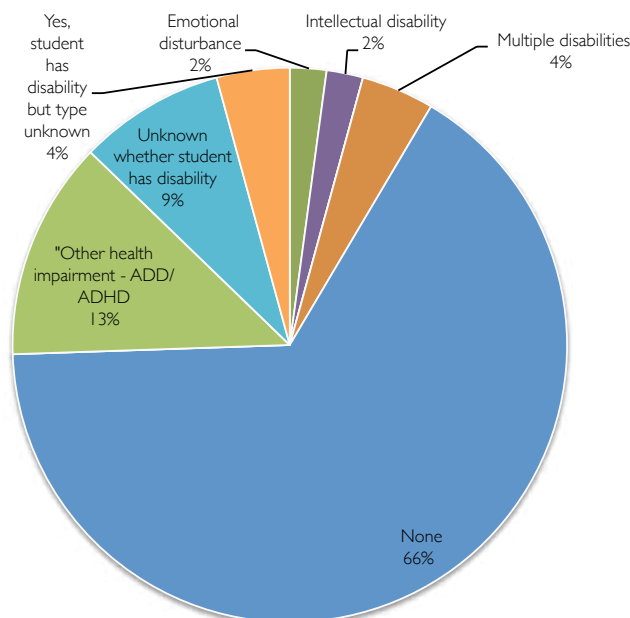
The term adverse effect on educational performance is broad in scope. An adverse effect is a harmful or unfavorable influence of a disability on the student's performance. Educational performance includes both academic areas (reading, math, communication, etc.) and nonacademic areas (daily life activities, mobility, pre-vocational and vocational skills, social adaptation, self-help skills, etc.). Consideration of all facets of the student's condition that adversely affect educational performance involves determining any harmful or unfavorable influences that the exceptionality has on the student's academic or daily life activities. Adverse effect is not solely measured by scores on individual testing but may also be determined through consideration of other data such as classroom performance and retention history. (W.VA. CODE R. 126-16-3)

West Virginia's standard clearly defines what is included in educational performance, meaning that students can qualify as needing special education and related services if their disability impacts their ability to perform academically and engage in basic life and social functions. Adopting a comprehensive definition, such as West Virginia's standard, would ensure that students like Robert and Jonathan are found eligible for special education services due to the significant barriers that their behavioral disabilities placed on their ability to achieve in school.

B. DISCIPLINE

DISCIPLINE BY DISABILITY TYPE:

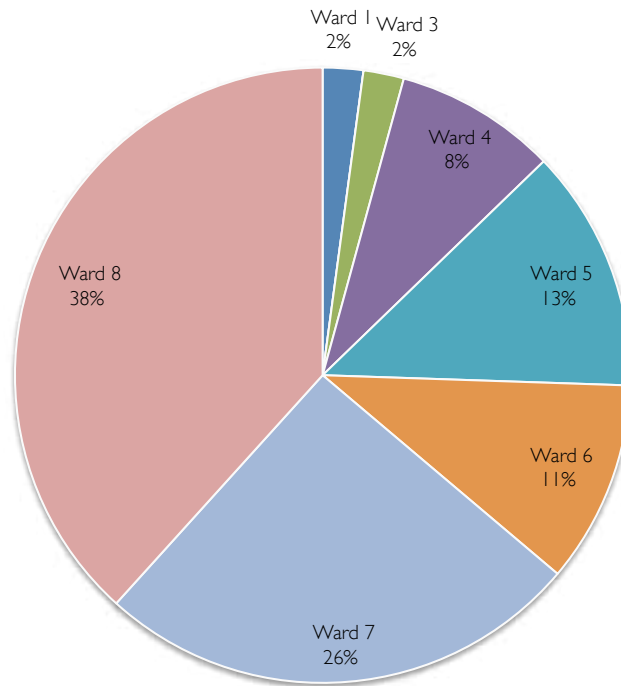
Of the 34% of students who have a known disability, the vast majority of students have a diagnosis of Attention Deficit Hyperactivity Disorder, followed by Multiple Disabilities.



^{9*} Alabama, Georgia, Indiana, Montana, and Vermont have explicit definitions for "adverse impact on educational performance." These definitions can be retrieved from Zirkel, P.A., & Thomas, L. (2010a). State laws and guidelines for implementing RTI. *Teaching Exceptional Children*, 43(1), 60-73; and Zirkel, P.A., & Thomas, L. (2010b). State laws for RTI: An updated snapshot. *Teaching Exceptional Children*, 42(3), 56-63.

DISCIPLINE BY WARD:

77% of our discipline cases involve students in Wards 5, 7, and 8.



* Data does not include outside D.C. or unknown.

Our Discipline Problem

Local analysis of our District's discipline data demonstrates that despite efforts to overcome disparate discipline procedures by developing discipline LEA guidance, enacting the Pre-K Student Discipline Amendment Act of 2015, and piloting restorative justice practices – the District continues to suspend or expel low-income students and students of color at disproportionate rates. In D.C., African American students are 6.8 times more likely to be suspended than their white peers, while Latino students are 2.4 times more likely to have received at least one out-of-school suspension than their white peers.³⁶ For African American students attending D.C. public schools, the level of disproportionality is well above the national average.^{10*} According to OSSE's annual discipline report, being male, Black, economically disadvantaged, receiving special education services, in 7th or 8th grade, and attending more than one school, are the factors most strongly associated with the likelihood of experiencing disciplinary action.³⁷ These classifications are not only associated with populations that are most frequently suspended, but are also associated with some of our most vulnerable students—those who are at-risk for academic failure. The Office of the Deputy Mayor for Education (DME) determines a student is at-risk for academic failure if the student is "homeless, in the District's foster care system, qualifies for Temporary Assistance for Needy Families (TANF) or the Supplemental Nutrition Assistance Program (SNAP), or high school students that are one year older, or more, than the expected age for the grade in which the students are enrolled."³⁸ Although we serve all eight wards, the vast majority of our discipline work with families encompass the aforementioned sub-groups considered to be at-risk for academic failure as their families have brought issues regarding exclusionary practices to our attention. We have observed that schools, by liberally engaging in exclusionary discipline practices, are putting these students further at-risk, academically, by repeatedly removing them from the classroom. Some additional data points that are important to consider:

- 33% of our cases involving students who have been suspended also involve students who have IEP services, are undergoing evaluation, or are waiting to be evaluated.

^{10*} Black students are suspended and expelled at a rate three times greater than white students. On average, 5% of white students are suspended, compared to 16% of black students. American Indian and Native-Alaskan students are also disproportionately suspended and expelled, representing less than 1% of the student population but 2% of out-of-school suspensions and 3% of expulsions. Retrieved from: <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>

- 36% of schools in the District of Columbia have a suspension rate above the District-wide average.
- 87% of schools with a suspension rate of 20% or higher are in Wards 5, 6, 7, and 8. Additionally, these schools also tend to be at least 95% African American and have an at-risk student population of more than 60%.

Despite the implementation of reform initiatives designed to address the systemic barriers that at-risk students face in accessing their education, such as trauma-informed, restorative, and Positive Behavior Intervention Support (PBIS) initiatives, these practices have not been enough to address disproportionate exclusionary practices. These institutional practices serve to widen existing achievement gaps. One recent article proffered a theory that the “concept of disproportionality arises in education through legal mandates and leads to different definitions of ‘citizen’ for different groups.”³⁹ Legislative loopholes and school practices result in disproportionality for students of color and students with disabilities. To effectively eliminate the use of disproportionate exclusionary practices, as a city, we need to close the gaps that exist in current legislation.

In this section, we will describe the legislative loopholes and their impact, and our recommendations on how to address such loopholes. Specifically, we will discuss 1) schools’ exclusionary practices to obfuscate reporting requirements around discipline to OSSE; 2) early dismissals fit within a legislative loophole with the Pre-K Student Discipline Amendment Act which allows schools to exclude students and avoid reporting; 3) lack of common definitions of suspension, in-school suspensions, and out-of-school suspensions, which allow each LEA virtually unfettered discretion in their disciplinary practices; 4) school practices that reside outside of the law such as the creation of alternative learning environments; 5) a discussion of Council Committee on Education Chairman David Grosso’s proposed legislation as a continuation of discipline reform efforts in D.C.

Exclusionary Practices that Obfuscate Reporting Requirements

i. Do Not Admit Lists

While some schools have been making progress in reducing overall suspensions and honoring the desire for transparency in reporting suspension data required by the Pre-K Student Discipline Amendment Act of 2015, there are still a number of schools with high suspension rates for students of color and students with disabilities. While many schools are transparent regarding their practices, *The Washington Post* recently reported that in the 2015-2016 school year, at least seven high schools in D.C. were underreporting suspensions.⁴⁰ Given some of the school discipline complaints offered to our office, it appears from these cases that some schools, under pressure to decrease suspension rates, have unofficially suspended students in order to avoid restrictions outlined in Chapter 25 of the DCMR or in charter LEA disciplinary policies. For example, *The Washington Post* article reported on a practice called a “Do Not Admit List” in which DCPS schools sent out messages to staff listing students who were not permitted to enter the school building. This practice violated students’ due process rights guaranteed by DCMR Chapter 25, as schools were obligated to send their parents a written notice stating the reasons for the suspensions.⁴¹ Moreover, some of these students had been incorrectly recorded as being “unexcused absent” from school, and in at least one case, due to the school’s incorrect reporting of the absences, one student was required to appear in truancy court.⁴² Thus, the school not only illegally excluded the student from school, but further penalized the student by marking the mandated absence as “unexcused.” While “Do Not Admit Lists” were not a common issue brought to our office, our office frequently receives calls from families of students, across all grade levels, regarding schools who have engaged in exclusionary practices violating applicable disciplinary policies and laws. We will discuss these cases in more detail below, but the frequency of illegal exclusionary practices suggests that further cross-sector accountability mechanisms are needed to address schools who violate certain policies, procedures, and laws.

ii. Early Dismissals — Permissible Exclusionary Practices

A number of schools regularly engage in exclusionary practices by consistently removing students for half a school day, which is within the discretion of a school leader. The Pre-K Student Discipline Amendment Act does not consider the practice of being sent home early, or school leaders requiring certain students to come in late, for disciplinary reasons, to constitute a form of suspension. Currently, the law defines out-of-school suspensions as “the removal of a student from school attendance for an entire school day or longer.”⁴³ The definition of “suspension” creates a loophole allowing schools to repeatedly keep students out of school for numerous half-days without having to record it as a disciplinary response.

For example, we worked with a parent, Mr. Kramer, whose 7-year-old son Kevin, a 2nd grader at a DCPS school, was repeatedly sent home early. School officials told the father that they did not know how to appropriately handle his behavior. Mr. Kramer's son has an IEP for emotional and behavioral issues. The school knew that they could not suspend Kevin for his behavior as it was related to his disability, and so they repeatedly called his father and asked him to pick up his son. Rather than attempting to collaborate with Mr. Kramer to identify a long-term solution to address his son's behavioral challenges, the school continued to remove him from the classroom in a way that shifted the shared obligation to address the student's disability to the father. In another example, Ms. Brown's daughter, a Pre-K student at a charter school, was sent home early on two occasions and told to come in late on another school day. The school staff communicated that the student was having frequent behavioral issues and defying adults. Similarly, the school did not work to address the root cause of the behavioral issue but continued the practice of sending her home early every time she had behavioral challenges.

While half-day removals, or early dismissals, are not considered suspensions under the current law, we believe that mandatory removals, for any length of time, should fit the definition of "suspension" under the law and should be required to be reported in school level disciplinary data to OSSE. While some stakeholders have argued that eliminating half-day removals undermines a school's discretionary authority, the current practice, without any restrictions, currently allows school leaders to remove students from the classroom repeatedly throughout the school year. Because each early dismissal does not amount to one full school day, OSSE and other agencies monitoring disciplinary practices do not have a true sense of how many overall school days, across both sectors, of how many students have been removed from school. As a result, OSSE may implement program changes, such as dropout prevention and assistance, without understanding the full role that discipline plays in students' decisions to dropout from school. Moreover, since this data does not get reported to OSSE, and does not fit the definition of a formal exclusionary practice, there are no due process mechanisms available to parents in such situations, such as an appeal. In addition, in many instances, parents do not understand what their child did "wrong" or what to do to help them. Essentially, early dismissals often serve to remove the student from the classroom for the benefit of the school, but do not serve to support the student in understanding how to manage and regulate emotions, develop conflict resolution strategies or how to deal with the consequences of their actions. The lack of a standard definition results in misaligned program development, insufficient support of students with behavioral challenges, and incomplete data reporting. For these reasons, we are in support of the proposed legislative language, which will require schools to include early dismissals in their reporting to OSSE.

iii. Schools Inventing Illegal Discipline Procedures and Avoiding Due Process Such as Through the Creation of Alternative Learning Environments

We have observed a number of DCPS and charter schools inventing disciplinary procedures that violate the law such as the creation of "alternative learning environments" within the school.^{11*} Illegal practices such as the creation of informal learning environments disproportionately affect students with the most severe behavioral challenges. This typically includes students of color and students with disabilities. Since there has been a recent push for accountability and data collection, particularly through the Pre-K Student Discipline Amendment Act, schools have engaged in illegal disciplinary practices when they feel that the available policies and procedures do not result in improved behavior, or when they wish to avoid the due process protections required by the established discipline procedures. Creating illegal disciplinary procedures can create due process concerns for students and families, resulting in an unregulated disciplinary system while obscuring programmatic and resource needs to address behavioral challenges. For example, Ms. Bartello's son, Tyrone,^{**} was placed in an in-school segregated setting because he had numerous behavioral issues. Ms. Bartello shared with our office that the DCPS school called this segregated setting an "alternative learning environment" where students with behavioral challenges were placed to help them better focus on their schoolwork. However, this segregated setting was not a real classroom as it was staffed with a classroom aide and did not offer instruction during the school day, which violates D.C. law⁴⁴ and places students at greater risk for retention and eventual dropout. The students in this setting were also prohibited from participating in daily activities with their classmates. In this case, Tyrone was also denied the social-emotional benefits of interacting with his peers as he was separated into a restrictive setting with other students who exhibited behavioral challenges. In addition, the parents, including Ms. Bartello, had no way to appeal this placement or to even know how long their children would be kept in this alternative setting. Moreover, parents have expressed

^{11*} creation of alternative learning environments: Alternative education programs – broadly defined as educational activities that fall outside the traditional K–12 curriculum—include home schooling, general educational development (GED) programs, gifted and talented programs, and charter schools (Aron, 2006). Because individual states or school districts define and determine the features of their alternative education programs (Lehr, Lanners, & Lange, 2003), programs may differ in target population, setting, services, and structure. Definition retrieved from: <http://files.eric.ed.gov/fulltext/ED546775.pdf>

^{**} Names of students and families have been changed to protect confidentiality.

frustration that they did not understand how the early dismissal would address the behavior in question as the removal was not documented in writing. In these cases, parents were kept out of the process and prevented from any possible collaboration with the school to assist in alleviating these challenges. At the time of Ms. Bartello's call to our office, Tyrone had already been placed in the "alternative learning environment" for more than three weeks. When Ms. Bartello complained to our office, she mentioned there were a number of other students in the classroom and it was likely that those parents also had objections to their students being placed in this "alternative learning environment" but did not know where to turn to help.

While it was a problematic practice to place Ms. Bartello's son in an alternative learning setting, it is particularly egregious when students with disabilities are placed in alternative learning settings because it violates IDEA's Least Restrictive Environment provision. For example, Ms. Prince's son, John, had an IEP for autism from an out-of-state school district. Under IDEA, John has the right to be educated in the least restrictive environment possible.⁴⁵ Moreover, prior to the enactment of IDEA, persons with disabilities only had their most basic needs attended to, such as "minimal food, clothing, and shelter."⁴⁶ At that time, the focus was on providing persons with disabilities with their basic needs rather than focusing on education and rehabilitation. Now, there is a focus on the ability of all students to have access to learning and thrive academically. John's right to the least restrictive environment was violated when he was placed in an alternative learning environment without following a placement policy in which the more restrictive setting would have to be discussed prior to placement. In fact, placing students in more restrictive settings than is appropriate for their diagnosis is a violation of IDEA. The school principal was aware that her decision to move John into an alternative learning environment was illegal; however, she argued that she did not know what else to do and would continue her practice because it was working for the other children. In this particular case, after a vigorous intervention by our office, our staff was able to get her son moved out of the alternative setting and back into the appropriate classroom with his peers. John also fell behind academically throughout the year, because the school refused to update his IEP until the last day of school, even though his mother was initially told that the IEP meeting would convene within 30 days of her request.

When we first contacted the school principal about this alternative setting, she initially refused to move John and Tyrone back into their regular classrooms, and she did not agree to put any limits on the use of the alternative setting for these students. Instead, the school principal insisted that she had to keep the students out of the general education classroom due to their behavioral challenges. It was only after we escalated the case to the DCPS Office of the General Counsel and the DCPS Office of Specialized Instruction, with questions raised as to the legality of the practice that the school principal had engaged in, that the practice was immediately suspended and both students were quietly reintegrated back into their general education classrooms.

We have also seen charter schools engage in illegal disciplinary practices, such as in the case of Ms. McDonald whose son had an IEP for autism. Ms. McDonald called us because she felt as if her elementary school aged son was being suspended too frequently and she felt that the school was not following his IEP. Written school policy required staff to hold manifestation meetings every time a student with a disability was suspended if the suspensions appeared to be part of a "pattern."^{12*} When we inquired about the situation with school leadership, we learned that the school had created a different, more flexible, discipline policy for this student, which allowed them to suspend him more freely. This discipline policy was not written down nor aligned with the discipline policy outlined in the charter school's handbook, which states that the school should hold manifestation meetings anytime a student with a disability is suspended repeatedly. When our office inquired into this matter, the school attempted to mitigate its non-compliance by amending the student's IEP, without meeting with the parent. The school included the following language: "the team uses a modified consequences system to support his social-emotional growth and support his challenges related to Autism Spectrum Disorder...the school-wide behavior and discipline plan, as outlined in the parent handbook...has been modified to adapt to the [student's] individual social-emotional needs."^{13*} In another public charter school case, Ms. Brown's daughter, a Pre-K4 student, was suspended twice and sent home early twice, for "violent behavior." In reviewing the incident reports, it appeared that the school labeled the child's behavior as "violent" when these temper tantrums were not abnormal behavior for a four-year-old. However, in the District, it is unlawful to suspend a Pre-K student unless their behavior willfully caused or attempted to cause injury or threatened serious bodily injury to another person.⁴⁷ In this case, the student posed no such threat of harm. This case is similar to other cases our office has handled where it appears that schools expand the definition of "threat to serious bodily injury"⁴⁸ in order to suspend Pre-K students.

^{12*} Internal case notes.

^{13*} Internal case notes.

iv. Current Political Landscape Regarding Discipline

There have been a number of citywide mechanisms designed to transform the state of discipline in the District. As mentioned above, the Council of the District of Columbia enacted the Pre-K Student Discipline Amendment Act of 2015 to prohibit schools from suspending students in Pre-Kindergarten programs except in cases where the student causes or threatens “serious bodily injury” against themselves or others.⁴⁹ Further, the Committee on Education, led by Councilmember David Grosso, is currently proposing legislation that focuses on exclusionary discipline. This legislation, if enacted, would affect both traditional public schools and public charter schools in D.C., reforming student discipline and creating a more coordinated approach for reforming school discipline practices. While we understand that certain provisions may change through the legislative process, in this section, we will provide an analysis of the legislation by providing commentary on some of the overall principles that permeate throughout the legislation. This legislation, if enacted, would be the first time that D.C. established a cross-sector threshold for discipline.

First, the proposed legislation offers common definitions and procedures that can be used across both education sectors in an effort to promote greater objectivity for schools in administering discipline. Potentially, the creation of common definitions, students and families can expect some additional consistency as to how certain terms are defined irrespective of whether students attend DCPS or public charter schools. Using common definitions will also render OSSE’s data collection more reliable as schools across both sectors will submit data using the same definitions concerning their disciplinary practices. The proposed legislation provides a two-pronged definition for suspension: it defines a suspension as a “temporary removal from the student’s daily class schedule as a disciplinary action that is greater than half a school day,”⁵⁰ and it defines out-of-school suspension as, “the removal of a student from school attendance as a disciplinary action for the entire school day or longer.”⁵¹ It is helpful that a temporary removal from a student’s daily class schedule that exceeds half a school day would be considered a suspension and therefore reportable. As we mentioned earlier in this discipline section, there are school principals who have removed students from the classroom and placed them in alternative learning environments without instruction and for indefinite periods of time. Such a removal under this proposed common definition would have to be reported to OSSE. Moreover, the Committee has sought to address the early dismissals problem by requiring schools to report all exclusions from school throughout the school year. Exclusions are defined as “the removal of a student from the student’s daily class schedule for disciplinary reasons, including a suspension, expulsion, or involuntary withdrawal.” While schools are still permitted to dismiss students early, they will have to report the exclusion from school, and thus, the hope is that schools will be disincentivized from engaging in this practice. Thus the proposed legislation will begin to address the issue that OSSE mentioned in a recent annual state of discipline report in which they provided, “the District does not have standardized legal definitions or requirements for in-school suspensions, out-of-school suspensions, or expulsions for schools across educational sectors.”⁵² Accordingly, the proposed legislation will improve OSSE’s ability to collect reliable data on a state level, which will provide critical data on the true state of suspensions and its impact upon marginalized students attending D.C. Public Schools.

During the consideration of the Pre-K Student Discipline Amendment Act of 2015, nine charter schools provided a joint letter to the D.C. Council in which they argued that “sending a child home midday is of a materially different character than full or multi-day suspensions.”⁵³ By calling the early dismissals “exclusions”, the proposed legislative language treats the removals as official suspensions, but not the same as a full day suspension. This approach is definitely more palatable to both education sectors as the legislation is soon to be introduced by the Committee on Education.

In addition to providing common definitions of discipline-related terms, this legislation seeks to encourage schools to get to the root of what is causing certain behavior and to resort to restorative practices rather than utilizing punitive approaches to address challenging behaviors exhibited in school. Thus, in an effort to ensure exclusionary discipline is used as a last resort, this proposed legislation outlines prerequisite actions for a school to take before suspending a student. For example, the legislation uses similar language to DCMR Chapter 25 and OSSE’s non-regulatory discipline guidance by emphasizing positive approaches to discipline, incorporating clear expectations of policies, rights, and responsibilities, and preventative and restorative practices.⁵⁴ Such an approach requires schools to consider positive interventions and to assess why the previous measures used have not worked. Thus, schools will be required to consider how to restore the child before resorting to punitive discipline. The proposed language extends the non-regulatory guidance that OSSE issued into legislative mandates to ensure that schools always consider alternative methods to discipline. The underlying principle in this legislation focuses on restoring students to the overall school community rather than removing them from their school community. This proposed legislation forces schools to focus on putting a child’s needs first and to consider strategies that are the least disruptive to a student’s learning environment.

v. D.C. Moves Towards Banning Suspensions for Grades Kindergarten-Eighth Grade

Finally, this legislation, positioned to be among the most progressive discipline legislation in the United States, proposes dramatic limitations on the use of out-of-school suspensions. The proposed language seeks to ban suspensions for students in Kindergarten through Grade 8. The language in this legislative proposal would still contain an important exception, as provided in the Pre-K Student Discipline Amendment Act of 2015, as students can continue to be suspended for “willfully caused or attempted to cause bodily injury, or threatened serious bodily injury to another person, except in self-defense.”⁵⁵ While many advocates for reforms by school discipline would still request that the ban be extended through the 12th grade,⁵⁶ the bill does create additional restrictions on the use of out-of-school suspensions in Grades 9-12.⁵⁷ Suspensions are only to be used for the most severe incidents as defined in the school's discipline policy, and cannot be used in response to first time incidents (except violence), uniform violations, tardiness or unexcused absence. In addition, disciplinary actions for purely behavioral infractions such as disobedience or talking back, and incidents off campus are prohibited except if they disrupt the school environment. Accordingly, the proposed language is promising because it signals the changing perceptions around the use of exclusionary discipline as a method of addressing behavior in the classroom. In conclusion, the Grosso legislation is an important step to ending disproportionality in the administration of discipline to D.C. public school students and encouraging school leaders to be more thoughtful about how to steer challenging behavior into improved, positive behavior which will improve academic outcomes of all students.

C. RACE AND EQUITY FRAMEWORK

In response to persistent achievement gaps faced by districts across the nation, some cities have opted to take a targeted approach through the creation of equity plans. Equity plans^{14*} are a district-level attempt to break down the barriers our children face through dedicated planning, implementation, and continuous improvement. While ESSA gives states the flexibility to measure and improve schools, its sole purpose is not to target the academic disparities between race and class in districts. Therefore, an equity plan is necessary to guide districts' efforts in solving problems that are unique to their communities. Similarly, instead of practicing “random acts of equity,”⁵⁸ a district can create an equity plan to demonstrate a move toward a focused and prioritized effort to dismantle systemic barriers that low-income students and students of color experience. After analyzing sixteen urban school districts across the U.S.,^{15*} our office offers a framework, adopted from the Portland Office of Government Relations, a local governmental office for the city of Portland, Oregon of core principles to ground our District's thinking in equity.^{16*}

Core Principles:

- 1. Operate with Urgency:** There is a growing disparity between the success of students of color and their white peers. Only one-in-four African American students are able to read on grade level. The same is true of Latino students. There is a need to coordinate a comprehensive approach that identifies and eliminates the roots of this disparity.
- 2. Create Organizational Capacity:** Effectively recognize the systemic barriers that our District's children face, and make policy recommendations to remove the barriers so that resources are distributed equitably to our economically disadvantaged students of color and students with disabilities. The District of Columbia already has systems in place to make this possible. DCPS has initiatives aimed at empowering young men and women of color.⁵⁹ This past year, the Chancellor led an engagement campaign focused on obtaining feedback from across eight wards about the state of DCPS and how it can better serve all families.⁶⁰ Similarly, the new five year strategic plan for DCPS highlights the need for equity by pledging increased resources to low-income communities and schools.⁶¹

^{14*} Minneapolis School District provides this definition: “Educational equity” means raising the achievement of all students while 1. narrowing the gaps between the lowest and highest performing students, and 2. eliminating the racial or cultural predictability and disproportionality of which students groups occupy the highest and lowest achievement categories including rates of graduation.” An educational equity plan serves as a blueprint and strategic plan to implement equitable practices into policy and curriculum.

^{15*} Some of the school districts we reviewed include Portland Public Schools, Los Angeles Unified School District, Miami-Dade County Public Schools, Minneapolis Public Schools, Montgomery County Public Schools, New York City Public Schools, Oakland Unified School District. For a full list of the public schools we reviewed, please visit our website at educationombudsman.dc.gov.

^{16*} Office of Equity and Human Rights, City of Portland. (n.d.) Citywide Racial Equity Goals and Strategies. Retrieved from: <https://www.portlandoregon.gov/oehr/article/537589>

These programs could serve as models for further initiatives as long as they are conducted as part of a single goal, namely removing barriers that prevent or discourage students and families from engaging with and succeeding in the traditional school system.

- 3. Implement a Racial Equity Lens:** Educational inequity is not random, nor is it a school-level problem. It functions on a systemic-level. Out of nearly 400 cases our office accepted last year, 89% of callers identified as persons of color and 31% of our cases came from residents of Ward 8, which has the highest concentration of economically distressed families. Problems affecting these students need to be viewed as more than just discipline, academic or special education issues. They need to be seen as evidence of the disparities that exist in different parts of our city and to be resolved in ways that help to empower these students, rather than administer punitive actions that further marginalize them, such as through the denial of special education services, disparate practices regarding suspensions and expulsions, and retention of students with unaddressed disabilities.
- 4. Be Data Driven:** Our District's decisions should be data-informed and data-driven. In order to effectively measure the existing problems within our education system, schools must identify policies and practices that are best supported by evidence, and honestly measure progress toward equity goals. In doing so, we are then able to use reliable data to guide us. The District of Columbia has resources that make it possible to examine issues as they arise. Every year OSSE releases a citywide equity report to provide discipline and attendance information by student subgroup, as well as by individual school. Similarly, the LearnDC website also provides information on student and school performance by geographic area, school and subgroup. School officials should utilize this data to drive policy decisions.
- 5. Create Accountability:** Build systems that push schools, administrators and officials to meet equity goals. OSSE already has the capacity to create accountability systems. ESSA and the reauthorization of the Elementary and Secondary Education Act, affords OSSE increased flexibility in how they measure school quality and the ability to intervene in underperforming schools. ESSA offers new accountability and reporting requirements, with the goal of increased transparency of school spending, improved teacher quality, and increased student academic performance. For example, in addition to measuring math and reading scores required under the No Child Left Behind Act, ESSA requires schools to measure and report data on graduation rates, English Language Learner growth, and a state's choice of a non-academic indicator. This non-academic indicator requires states to look beyond the scope of academics in measuring school quality and student success. For D.C., ESSA provided an opportunity to address its inequitable discipline practices by selecting suspension data to be included as a non-academic indicator and connecting it to ratings in school quality. The District declined to use suspensions as one of its non-academic indicators. Future amendments to the District's state plan should incorporate measures for measuring improvement of disproportionality.
- 6. Engage Transparently with the Community:** We have an equity problem: 86% of the overall D.C. student population are African American and Hispanic/Latino. Data from SY 16-17 demonstrates that more than two-thirds of these students have not met proficiency levels on the latest PARCC results. In addition, fewer than 25 students with disabilities score proficient or better than on the alternate PARCC assessment. Many parents do not fully understand that the public school systems in D.C. are not preparing their children to be college and career ready. Instead, as a city, we often celebrate statistically insignificant growth measures for our most vulnerable students without acknowledging that we need to experience far more growth in order to prepare our students for their lives beyond DCPS and public charter schools. As a city, we have not equipped parents to meaningfully participate in their child's education. We must move the conversation around parent choice from merely selecting from various schools to building the capacity of parents to be smart shoppers and equip parents to evaluate schools on the quality of the academic program, size, safety, location, and other factors. 9 in 10^{17*} parents think their students are performing at or above grade level, even though national data from NAEP demonstrates otherwise. This perception is also consistent with our casework and community conversations in which parents have expressed that they do not have necessary tools to support their children at home. Many parents have expressed the need for a detailed explanation of what their students are expected to learn over the course of the school year and during each month. In addition, many parents have expressed needing activities to improve English and math, tips on how to advocate for their child, and homework. While school systems need to think about ways to provide this support, we need to first think about how to present the true state of our D.C. public schools in a way that bridges the disconnect between how parents perceive their child's school and the actual facts regarding the data for students

^{17*} Learning Heroes, Univision Communications, and Hart Research Associates. (2017). Parents 2017: Unleashing Their Potential and Power. Survey report.

of color and students with disabilities. We can only achieve true equity if 1) we acknowledge and address some of the institutional barriers that have created inequitable learning outcomes for students of color and students with disabilities and 2) we equip families and students with the tools they need to become active participants. True transparency by education leaders regarding the state of our public school systems will create opportunities for parents to become activated to start demanding better results from their school systems for their children. It starts with our city being more transparent with parents and stakeholders regarding how our school level and systemic practices are adversely affecting student learning outcomes.

- 7. Reflect, Change, and Grow:** Mistakes will happen. Our District's educational institutions must reflect honestly and frequently on progress. We have created a culture in which we are often afraid to publicly acknowledge our mistakes for fear of retribution. We are also hesitant to acknowledge the adult shortcomings in meeting the goal to ensure all students attain success in the classroom. We have overwhelming evidence that demonstrates that the educational outcomes are not meeting our goals. Being honest, transparent, and open to feedback will allow us to change, grow, and make the necessary adjustments. Thus, as a city, we must practice continual reflection on our progress to keep us committed to our equity goals.

As mentioned earlier, the D.C. public school systems have recently engaged in a number of equity initiatives. DCPS recently announced that they were investing 2.6 million dollars to support efforts to close the achievement gap.⁶² All 115 DCPS schools will receive funding based on the number and concentration of students who scored Level 1 or 2 on the 2017 Partnership for Assessment of Readiness for College and Careers (PARCC) assessment.⁶³ Last school year, DCPS reported that it has experienced gains in the number of students scoring a 4 or 5 on PARCC, including increases of 6.4 percentage points in English language arts and 3.5 percentage points in Math.⁶⁴ This growth was observed across grade levels and student subgroups. While it is important to note positive work within the District, it must be coupled with the recognition of the serious problems that still remain.

Some equity initiatives are trying to address these problems by funding initiatives geared toward the most under-resourced schools. Excellence through Equity (EtE) funding will support the work schools are doing to ensure more students are performing on or above grade level. Chancellor Wilson's public statement provided, "to close the achievement gap, D.C. Public Schools must provide more resources and supports to the students who need it most."⁶⁵ The Chancellor's public statement further provided, "excellence through equity allows us to focus on equity, while supporting schools in innovation around key priorities like social-emotional learning and attendance. The students with the most need received the most resources."⁶⁶ Some of the DCPS funding initiatives include addressing attendance rates for all students, offering additional instructional support, such as tutoring and after-school programs, or investing in social-emotional learning initiatives and opportunities to ensure that students feel challenged and prepared for learning.

Other initiatives address nonacademic needs that also contribute to student learning. The D.C. Public Charter School Board's goal is to ensure that schools are serving all students who come to them. One such initiative, called the Mystery Caller initiative, entails PCSB staff posing as parents of students with disabilities to ensure that schools are not counseling out or turning away at-risk students. PCSB also conducts internal audits to address disproportionality in suspensions, expulsions, and attendance.⁶⁷ Initiatives such as these are important in addressing equity problems while ensuring accountability. A comprehensive approach ensures that such initiatives are conducted with fidelity across the school system and in accordance with District-wide goals. Adopting a District-wide, comprehensive equity policy based on shared goals and a commitment to accountability toward those equity goals, helps ensure that the District is both committed and equipped to implement lasting change. We believe such equity initiatives are important and integral to ensuring that performance can improve for all students. Equity initiatives work because they are "premised upon the assumption that students with different learning needs require different levels of resources and varied instructional approaches."⁶⁸

We recommend that stakeholders, such as DCPS, PCSB, OSSE, and DME, develop a coordinated equity framework in order to support struggling learners across all wards. In doing so, the equity plan should explicitly state the outcomes the District is trying to achieve; clearly outline and present the goals publicly in the SMART format (Specific, Measurable, Ambitious, Realistic, and Time-Oriented); describe the strategies and actions our public school systems will take to meet such identified goals; and detail an implementation plan of strategies and initiatives that includes timelines, benchmarks goals, and metrics essential to carry out a successful equity plan.



Section IV: 2017 Annual Recommendations

SPECIAL EDUCATION

- ▶ We have observed that RTI is not implemented consistently across LEAs, which creates institutional barriers to special education services that are available to our most vulnerable populations. Thus, the District should promulgate legislation that defines how the RTI process is implemented across LEAs, to include: Child Find, General Education, and Parental Requests for Evaluation.
- ▶ We have observed schools retain students suspected of having disabilities without receiving an evaluation to determine eligibility. This means that students are assessed on standards that they may not be able to physically address. The District should develop a procedure for determining whether and if students suspected of having a disability should be retained and a process for appeal.
 - The District should develop accountability and reporting requirements to ensure students are not retained as a result of a failure to implement Child Find or honor a request for evaluation.
- ▶ We have observed LEAs apply overly stringent and inconsistent criteria for determining eligibility, limiting providers' ability to provide services for struggling students. Thus, the District should define "adverse impact on educational performance" eligibility criteria that applies to all LEAs.
 - The definitions should utilize current best practices and peer reviewed research and include both academic and non-academic factors of suspected disability to reflect the effects of poverty and trauma on cognitive functioning and brain development.

DISCIPLINE

- ▶ Create regulations around discipline that establish a minimum threshold for when and how to discipline children. In last year's annual report, we recommended that OSSE should publish state-level regulations that provide a basic floor of due process protections. In June 2014, OSSE released its report, "Reducing Out-of-School Suspensions and Expulsions in the District of Columbia Public and Public Charter Schools." Though OSSE has put forth several recommendations for supporting students with discipline problems, recent data on suspensions collected by our office suggest that these recommendations are not far reaching enough to reduce exclusionary discipline. It is clear that mandated action is necessary to ensure that LEAs are held accountable for the number of times that they suspend their students. We recommend establishing a maximum percentage of suspensions that schools cannot surpass, weighted by the percent of an LEA's student body that belongs in one or more subgroups that have historically been disproportionately impacted.^{69,70} Councilmember Grosso's office has supported such a concept by including language in which schools cannot suspend students in Grades K-8 with narrow exceptions provided.
- ▶ Require set-asides in funding for schools that have demonstrated disproportionality in disciplinary practices. These schools will be required to devote a minimum percentage of staff to restorative justice and trauma informed training and professional development.
 - To complement this legislation and prevent disincentives for reporting of exclusionary discipline, Council should also require that OSSE implement mandatory, randomized audits, which would include cross-referencing in-seat attendance, absence, and discipline records to track use of unofficial, undocumented discipline practices, such as counseling out. To help increase transparency in this area, Council should legislate consequences for repeat offenders who violate their own discipline policies.

DISCIPLINE, CONT.

- ▶ Provide funding, accountability, and other incentives to encourage the development of positive school climates. Schools lack resources and supports to appropriately support students with disabilities and other at-risk factors, and choose exclusionary discipline practices as a short-term solution to difficult issues. Providing additional funding for positive school climate practices will help support individual LEAs while providing incentives for other LEAs to change their practices.
- ▶ Create mechanisms to ensure students receive the appropriate instruction during periods of suspension. Many parents have shared that their students are not receiving their classroom work and homework during periods of suspension. The proposed legislation requires the affected school provide quality instruction by, “a certified teacher with grade and class appropriate material,” so when a student rejoins class they have not fallen behind academically. We are supportive of such language in the proposed legislation.
- ▶ Revise the Pre-K Student Discipline Amendment Act of 2015 and expand the reach to ban suspensions of some of our youngest students. Students at a young age should not be suspended for engaging in behaviors that are developmentally appropriate. Houston Public Schools has banned formal and informal suspensions for K-2 students. The 2017-18 Houston Public Schools policy also provides several supportive practices for students who are suspended or as alternatives to suspension, including substance abuse classes and community intervention for first time drug or alcohol use, and access to enrichment programming while in an alternative setting. Similarly, Minneapolis Public Schools banned suspensions for PreK-1 students for non-violent behaviors. Further, the State of Illinois has enacted laws requiring that districts first use non-exclusionary alternatives before resorting to suspensions. The law also bans zero tolerance policies and requires school districts limit the use of long-term suspensions. Thus, by limiting the scope in which exclusionary discipline can be used, large urban school districts have moved towards limiting the impact of exclusionary discipline. We are supportive of Chairman Grosso's legislation that seeks to change the culture around suspensions by further restricting its use in all D.C. public schools.



Section V: Conclusion -- Looking Ahead

Over more than three and a half years of operation, we have been honored to touch the lives of nearly 1,500 families through resolution in their individual cases. We have found through the course of our work that we are helping some of the most vulnerable students and families in D.C. We continue to look for ways to work more collaboratively with some of our District Government agencies and community based organizations in order to meet the needs of the “whole child.” Our goal is for all D.C. public school parents and families to be aware of our services should they require them. At the Office of the Ombudsman for Public Education, we welcome your input and hope to meet you in the coming school year.





Section VI: Appendix

“Within 120 days of the end of each school year, submit to the State Board of Education and make publicly available, a report summarizing the work of the Ombudsman during the previous school year, including an analysis of the types, and number of complaints.”⁷¹

Work Summary for the School Year 2016-2017

Complaints received:

380 complaints through August 15, 2017

Complaints examined and resolved informally:

76% of the total number of all cases (providing information, coaching, finding solutions, etc.)

289

Complaints examined and resolved through a formal process:

71 (19%)

Complaints dismissed as “unfounded”:

9 cases (2%)

Complaints pending as of August 1, 2017:

5 additional cases were pending as of August 15, 2017

Recommendations made:

60 cases (16%)

Recommendations that were followed, to the extent that it can be determined:

49 cases (82%)

ENDNOTES

- ¹ 3-A DCMR § 38–35I. Retrieved from: <https://beta.code.dccouncil.us/dc/council/code/titles/38/chapters/3A/>
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- ⁸ Hayes, L. (2017, January 26). In Wards 7 and 8, Feeding the Food Insecure is a Team Effort. *Washington City Paper*. Retrieved from: <http://www.washingtoncitypaper.com/food/young-hungry/article/20850165/in-wards-7-and-8-feeding-the-food-insecure-is-a-team-effort>
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