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GEORGIA APPLESEED CENTER FOR LAW & JUSTICE

EFFECTIVE STUDENT DISCIPLINE: KEEPING KIDS IN CLASS

IMPROVING THE “SCHOOL TO SUCCESS PIPELINE”



AN ASSESSMENT OF GEORGIA’S PUBLIC
SCHOOL DISCIPLINARY POLICIES,
PRACTICES AND OUTCOMES AND
RECOMMENDATIONS FOR CHANGE

EXECUTIVE SUMMARY

JUNE 2011 | A REPORT IN ASSOCIATION WITH

 **JUST Georgia**
building justice and safety for children™



Mission of Georgia Appleseed: To increase justice in Georgia through law and policy reform

Georgia Appleseed Center for Law & Justice is a non-partisan not-for-profit organization devoted to law that serves the public interest. Using the skills of hundreds of volunteers, mainly lawyers and other professionals, Georgia Appleseed focuses on achieving root-deep changes to laws and policies that unfairly impact children, the poor and other large groups of marginalized people in our state. Georgia Appleseed is an independent affiliate of the national Appleseed network.

JUSTGeorgia is a statewide juvenile justice coalition of community organizations and individuals created in 2006. Its purpose is to advocate for change to Georgia's juvenile code and the underlying social service systems to better serve Georgia's children and promote safer communities. The lead partner organizations are Georgia Appleseed, The Barton Child Law and Policy Center of the Emory University School of Law, and Voices for Georgia's Children. Learn more at www.JUSTGeorgia.org.

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Our JUSTGeorgia Partners



Georgia Appleseed Center for Law and Justice is pleased to collaborate with our JUSTGeorgia lead partners, Voices for Georgia’s Children and the Barton Child Law and Policy Center of Emory Law School, in this effort to assess the disciplinary policies and practices of the Georgia public school system. **JUSTGeorgia** is a statewide juvenile justice coalition created in 2006 to advocate for change to Georgia’s juvenile code and the underlying social service systems to better serve Georgia’s children and promote safer communities.

Our Georgia Appleseed Team

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Consulting Committee

Georgia Appleseed is grateful for the advice and assistance of the individual members of the *Effective Student Discipline: Keeping Kids in Class* Consulting Committee who are listed in Appendix F to the full report.

EFFECTIVE STUDENT DISCIPLINE: KEEPING KIDS IN CLASS

EXECUTIVE SUMMARY

Introduction

All of us became vividly aware of the tragic consequences of school place violence as we watched the chilling events unfold at Columbine High School in Colorado over a decade ago. More recent shooting events at Nebraska and California schools serve as continuing reminders that our schools must maintain an environment for all students that assures their physical safety and provides a setting that is conducive to teaching and learning. It is also vitally important that schools provide each individual student, even one who may present disciplinary challenges, with a reasonable chance to complete a quality high school education. After all, in many states, access to primary and secondary public education is a constitutional right. In Georgia, for example, the state constitution imposes upon the state the primary obligation to assure that *all* students are provided with an adequate education.

Some have argued that many school systems have reacted to the threat of school violence and to the need for an orderly learning environment by applying overly rigorous disciplinary practices which needlessly force kids out of class and increase their likelihood of dropping out permanently. These include certain "zero tolerance" policies, expanded use of law enforcement personnel in school discipline, and other policies and practices. Recent studies carried out in Florida, Texas, Louisiana, and the City of Philadelphia revealed the extensive use of serious disciplinary action for relatively minor misbehavior. In addition, disciplinary action is being imposed on African-American students at a rate significantly greater than that group's percentage of the public school population. The latter phenomenon was also noted in a 2005 report issued by the Georgia Department of Education ("GaDOE").

The adverse individual and societal impacts associated with an elevated high school drop out rate are enormous. The existence of the "school to prison pipeline" is beyond reasonable debate. In this Twenty-First Century, a young person who does not obtain *at least* a quality high school education will have enormous difficulties in becoming gainfully employed and potentially may be more susceptible to engaging in unlawful behavior. This is particularly true if the person is introduced into the criminal justice system prematurely.

Thus, school administrators and teachers face a very difficult task in balancing two potentially conflicting obligations: the right of all students to have a safe and effective school learning environment and the right of each student to have a reasonable chance to obtain at least a quality high school education.

Effective Student Discipline: Keeping Kids in Class

The Georgia Appleseed *Effective Student Discipline: Keeping Kids in Class* project has collected information that will be helpful to all stakeholders who are involved in assessment of the effectiveness of Georgia's public school system student discipline process. In this report, we present our findings and recommendations which include:

- A review and analysis of **student discipline data** collected from the schools and school districts by the GaDOE;
- a review of the **student discipline policies** in place in sixty schools in fifteen school districts located throughout the state;
- a summary of “**Voices from the Field**” compiling the results of interviews with over 200 educators and other stakeholders and of surveys of several hundred parents and students;
- an assessment of the **current state law** concerning public school student discipline.
- a summary of critical **Keys to Effective Student Discipline**;
- a suggestion for careful reconsideration of district **zero tolerance policies**, and
- a **Call to Action**

Disciplinary Action Data Review & Analysis

Georgia Appleseed, in cooperation with the Atlanta office of a Big Four accounting firm, reviewed and assessed student disciplinary data collected by school districts and compiled by GaDOE for seven years (school years 2003-04 through 2009-10).

Our key findings include:

- In School Year 2009-10, 8.1 percent of students in Georgia's K-12 public school system received at least one out of school suspension ("OSS") disciplinary action. This reflects an overall reduction from the 9.3 to 9.5% rate experienced in the first five years of the period under review.
- During the most recent school year for which credible national data are available (2005-06), Georgia ranked tenth highest among all states and the District of Columbia in the rate of OSS discipline.

- Use of exclusionary discipline is highly variable among the school districts in Georgia. In some districts, its use is rare. Other school districts consistently impose OSS on more than 20 percent of the school population annually. In some individual schools, the percentage of OSS actions can affect up to 40 percent of the students per year.

- OSS rates and graduation rates are negatively correlated. That is, schools with relatively high OSS rates tend to have lower than average graduation rates. For example, in School Year 2009-10, the cohort of schools with the highest OSS rates for the seven year period that we analyzed had an average graduation rate of 74.8 percent. This was six points lower than the reported state average graduation rate of 80.8 percent. It was also almost 15 percentage points lower than the average reported graduation rate (i.e., 89.4 percent) of the group of school districts with the lowest OSS rates during the same period.

- The vast majority of OSS actions were taken for nonviolent actions. For example, in School Year 2009-10, 69 percent of the OSS actions were imposed for such behavior. A very substantial percentage of the incidents were not described with specificity but were categorized as "other discipline incident."

- Male students received two-thirds of the OSS actions and three-quarters of the expulsions during the period under review.

- African-American students were consistently more than three times as likely to receive an OSS than students of other racial classifications. This is a state-wide phenomenon with more than 90 percent of all school districts regularly reporting OSS data suggesting potential disproportional use of this disciplinary action. Poor African-Americans were markedly more likely to receive OSS than more affluent African American students.

- Other student subgroups may also be disproportionately subjected to OSS discipline:
 - Students eligible to participate in the free or reduced meal payment program (a status often used as a surrogate for children in poverty) and English Language Learner students were subject to OSS discipline at a rate more than twice as high as students who were not in these subgroups.

 - Special Needs Students received OSS at a rate slightly higher than 1.5 times the rate experienced by General Education students.

District/School Policies

In cooperation with the Atlanta office of the law firm of Nelson Mullins Riley & Scarborough, LLP, Georgia Appleseed carried out an examination of the publicly available disciplinary policies of fifteen Georgia school districts plus individual public schools within those districts. The analysis focused on identifying any zero tolerance policies in place but also more generally assessed the disciplinary policies.

Key findings include:

- All of the districts reviewed imposed zero tolerance policies for the limited number of student behaviors for which such discipline is mandated by state law.
- Districts often impose zero tolerance or similar policies for various types of behavior beyond state mandates. There is wide variation in the types of offenses covered.
- The overarching characteristic of the policies of the districts reviewed is the broad discretion granted to school officials in the handling of most of the day-to-day disciplinary challenges faced by teachers and administrators.

Voices from the Field

During the fall of 2010, Georgia Appleseed volunteers conducted interviews throughout the state with over 200 student discipline stakeholders. These stakeholders were school district staff members (including several district superintendents) along with principals and assistant principals, teachers, counselors and other staff members with student discipline responsibilities from elementary, middle and high schools. A total of 17 school resource officers (“SROs”), i.e., law enforcement personnel whose “beat” is a school or school system, were also interviewed. We also talked with a number of attorneys who regularly advise school boards on student discipline.

In addition, we met with stakeholders from outside the school system who deal with student discipline matters that involve referrals to the juvenile or criminal justice system. Juvenile court judges, intake officers, probation officers, prosecuting attorneys and defense lawyers participated.

Finally, Georgia Appleseed distributed an electronic survey instrument designed to elicit the view of the two other key stakeholder groups involved in student discipline issues—students and their parents. This survey was created and distributed in close cooperation with the Georgia PTA.

The large number of often widely varying views expressed cannot be readily summarized in this Executive Summary. The reader is encouraged to review the “Recurring Themes” outlined at pages 63-74 and 77-78 of the full report.

Legal Setting

Most of the statutory law related to public school student discipline is found in Title 20, Chapter 2, Article 16, Part 2 of the Georgia Code. The current statute reflects the substantial revision of the law in this area that occurred when the Georgia General Assembly passed the "Improved Student Learning Environment & Discipline Act of 1999." Some vestiges of the earlier law remain in force and the 1999 legislation has been subject to some amendments.

Local Control

Perhaps the overarching theme of Georgia's student discipline law is the strong reliance on local control in the development of overall discipline policies and the application of those policies in individual cases. Thus, primary responsibility for student discipline policy development and implementation rests with the local school districts and the schools are subject only to a limited number of state mandates or minimum standards. Districts are mandated to "... provide for disciplinary action against students who violate student codes of conduct." In addition, districts are directed to provide for parental involvement in developing and updating the codes.

The student codes of conduct must address a long list of behaviors that may occur on school grounds, at school-related activities, or on school buses. These behaviors range from physical assault and weapons offenses to "disrespectful conduct" and truancy. Each district must send a copy of its adopted policies to the GaDOE in order to be eligible for state education funding but the law makes no mention of any substantive review by GaDOE.

Georgia law continues the theme of local control by emphasizing the authority of the individual classroom teacher to maintain order. The teacher also has broad authority to remove from the classroom a student who repeatedly or substantially interferes with the teacher's ability to teach, subject to oversight and review by the local school principal.

Limited State Mandates

Georgia law does include a limited number of provisions establishing minimum standards or other requirements that are to be implemented by local school districts. Some of these provisions arguably weigh in favor of imposing a zero tolerance approach to student discipline. Other provisions, however, seem to point the way to a more nuanced discretionary approach.

For the most part, Georgia law defers to the districts the responsibility for determining the appropriate level of disciplinary response to violations of student codes of conduct. In a limited number of situations, however, the General Assembly has mandated certain minimum disciplinary responses which can be interpreted as "zero tolerance." Specifically, these provisions

can be activated by bringing a firearm to school, by multiple incidents of bullying, or by committing an act of physical violence against a teacher or other school personnel.

On the other hand, a number of statutory provisions arguably require the exercise of sound discretion in the development of school disciplinary policy. Of particular interest is the provision that requires that the district discipline policies include a "progressive discipline process." This process is defined as one designed to create the expectation that the degree of discipline will be in proportion to the severity of the behavior leading to the discipline, that the previous discipline history of the student being disciplined and other relevant factors will be taken into account, and that all due process procedures required by federal and state law will be followed. This provision can be read to prohibit any sort of zero tolerance or other policy that would limit the discretion of a school disciplinary official to take into account the factors listed in the statute.

In addition, a few statutory provisions require that codes of conduct be "age appropriate." At least implicitly, this is recognition that codes of conduct should provide sufficient discretion to take into account the relative culpability of students of significantly different levels of maturity.

The following language appears at several points in the school discipline statute: "It is the policy of this state that it is preferable to reassign disruptive students to alternative educational settings rather than to suspend or expel such students from school." This language would seem to be a clear statement that, at least as to "disruptive" students, out of school suspensions or expulsions alone should be an option of last resort. The law also authorizes training programs in conflict management and resolution and in cultural diversity for voluntary implementation by local boards of education for school employees, parents and guardians, and students. Finally, GaDOE is required to provide assistance upon request to school districts seeking to establish a "climate management program." One of the purposes of such a program is to decrease "... student suspensions, expulsions, dropouts, and other negative aspects of the total school environment."

Keys to Effective Student Discipline

An effective student discipline program in a school is one that properly balances the need to maintain an environment for *all* students that is safe and conducive to learning with the right of *each* student to have a reasonable opportunity to obtain an adequate education. While there are circumstances that warrant the imposition of disciplinary action that removes a student from the classroom, such action should be taken only after a reasonable effort is made to address the student's behavior through less stringent measures unless immediate action is required to protect the safety of the student or others.

Based upon our interviews with educational stakeholders from around the state and our independent research and analysis, Georgia Appleseed has identified the following attributes of an effective student discipline program. Many of these attributes are the same as those that contribute to a school's overall educational excellence. This is not surprising since effective

student discipline does not exist in its own discrete “box” but rather must part of an integrated learning delivery strategy.

In the report, we address and discuss in detail the need for:

- Focused and Intentional Leadership
- Committed and Well-Trained Teachers
- Parental/Community Engagement, and
- An Integrated Approach involving equally robust attention to all four required elements of a student code of conduct:
 - Standards of Behavior
 - Progressive Discipline Process
 - Student Support Process
 - Parental Involvement Process

We also spend substantial time in the report discussing the potential implementation of the “positive behavioral interventions and supports” (“PBIS”) framework as at least one avenue to an integrated approach to effective student discipline and behavior management. A PBIS effort recently initiated in one Georgia school district was described as follows:

Positive Behavior Support, commonly referred to as PBS, is a proactive school-wide approach to discipline. In essence, it's a way to stop misbehavior before it starts through a systematic process of teaching, modeling, and reinforcing expected school behavior. PBS focuses on the creation of effective and positive learning environments as a means of increasing academic achievement. PBS methods are research-based and have a strong track record of significantly reducing the occurrence of problem school behaviors. Results include increased academic performance, increased safety, and more positive school climates.

A Perspective on Zero Tolerance

Many Georgia school districts have adopted zero tolerance policies designed to deter and punish various types of misbehavior. These policies mandate out-of-class discipline (and sometimes court referrals) for the prohibited behaviors without regard to the student’s intent or other mitigating circumstances. Several of the educators who participated in our interview process strongly support such policies and argue that they have been effective in limiting undesirable behavior such as fighting and drug use. Others argue against the use of these policies or at least urge that some level of discretion be exercised in their application. Doubters

point to numerous examples of absurd results that can be the unintended consequences of strict adherence to zero tolerance.

School districts have substantial authority to re-evaluate and modify any zero tolerance policies that go beyond state mandates. Furthermore, with regard to the state-mandated policies, two of the three expressly apply only to intentional acts so that the issue of intent must already be addressed in applying these policies. Avenues also exist to allow for the application of some discretion in the context of the firearms in school statute.

Given the strong divergence of views on this issue, Georgia Appleseed urges each school district to initiate a process to review carefully its zero tolerance policies. In particular, we suggest that districts consider whether it would be appropriate to make it clear that such policies apply only to knowing and intentional actions. This effort could be undertaken as part of the annual review of the student code of conduct carried out by most districts.

Call to Action

Georgia Appleseed has assessed student disciplinary data submitted by all schools in Georgia for the last seven complete school years. Georgia Appleseed has comprehensively analyzed the student discipline requirements imposed on and guidance provided to school systems by the General Assembly and by the state Department of Education. We have considered the findings of researchers who have assessed student discipline in other states. We have heard the voices of hundreds of education stakeholders through our interviews and the parent/student survey. Based on these efforts, Georgia Appleseed makes the following recommendations for action by state education policy makers and the parents of Georgia's current and future public school students.

Public Education as "Priority No. 1"

Public policy in an era of limited resources mandates the establishment of clear governmental spending priorities. Assuring quality public education for all of Georgia's children should be Priority No. 1.

The investment that we make in our children today will pay a significant return in the form of the personal enrichment of each individual's life, the enhanced capacity of each individual to participate meaningfully in our democracy, and the heightened potential economic productivity of each individual. In addition, society will collectively benefit from reduced costs for social services and prisons. If we do not commit to this level of effort, however, even in the face of limited economic resources, we face the grim reality of a growing permanent underclass with all its associated economic and societal costs.

Full Disclosure

Georgia Appleseed recommends that each public school be required to make full public disclosure annually of its student discipline performance using data that is required to be collected under existing law. Specifically, the school should report incidence rates for in-school suspensions, out-of-school suspensions, and expulsions (with and without an alternative education setting placement). The incidence rates (i.e., percentage of students at the school and in the district receiving such discipline) should be compared to the state average incident rate and to the range of incident rates statewide for the school year in question. The data should be presented for all students and for individual subgroups based on grade level, gender, race, students with disability status, and eligibility for free and reduced lunch.

Assessment of Alternative Education Settings

The need for more and better alternative education options for students who do not perform well in the traditional general education setting was a recurring theme in our education stakeholder interviews. Georgia Appleseed recommends that the Georgia Department of Education carry out an assessment of the alternative education settings currently in place in Georgia and issue a report to the General Assembly and the public. The report should assess the quality of the educational experience in such settings based upon criteria to be developed by the Department. The report should also include recommendations as to actions that should be taken to assure that every alternative education setting provides a quality education opportunity to each assigned student.

Training and Support

Effective Behavior Management

The General Assembly should assure that adequate resources are provided so that training and support services are available to assure that every school that wishes to implement an integrated student behavior management program should be able to do so within the next five years.

Special Education Students

Another recurring theme, especially in survey comments from parents, was that general education teachers were often ill prepared to manage the behaviors of students with disabilities assigned to their classroom. A detailed study of the extent to which general education teachers receive such specialized training and the feasibility of expanding such training opportunities were beyond the scope of this report. Because of the prevalence of these comments, however, Georgia Appleseed recommends that the Georgia Department of Education evaluate any such need for increased training.

Statutory Revisions

School Disruption

Section 20-2-1181 of the Georgia Code makes it unlawful "... for any person to knowingly and intentionally or recklessly disrupt or interfere with the operation of any public school, public school bus, or public school bus stop." A violation of this provision is punishable as a misdemeanor of a high and aggravated nature.

Based on our review of a number of juvenile court records this "disruption" statute is widely used and sometimes reflects the highest number of individual counts filed. Despite a recent amendment, this law provides too great an opportunity for unnecessary criminalization of behavior that should be handled at the school level rather than by the court system. Any serious misbehavior by a student can still be charged under a wide variety of specific statutory provisions.

Since the statute may well have a legitimate purpose if applied to someone who is not a student at the school, we suggest that language be added to the statute to make it clear that it does not apply to a student who is enrolled in the public school or is assigned to the school bus or bus stop where the disruption occurs.

Tribunal Witness Subpoenas

Before a long term suspension or an expulsion is imposed, the student may dispute the proposed action at an administrative hearing or "tribunal." In tribunal proceedings, due process for students includes, among other rights, the ability to present evidence relevant to the disposition of the disciplinary matter. Georgia law provides that school boards have the authority to summon witnesses. Students and their parents periodically request that subpoenas be issued to witnesses to compel their presence at tribunal hearings. A recent Georgia appeals court ruling concluded that such summons were not enforceable. As a matter of fundamental fairness, we urge the General Assembly to enact legislation as soon as possible to make school board subpoena power enforceable.

Student Discipline Reporting Matters

Our analysis revealed that school referrals to juvenile and adults courts are not being consistently reported by all school systems. In addition, many school systems make extensive use of an identifier code designated "other discipline incident" which makes it difficult to assess the reported data meaningfully. It is important to all of Georgia's K-12 public education stakeholders that student discipline data be accurately and consistently reported at the school, district and state level. We urge GaDOE to work with the stakeholders to:

- Add appropriate codes to the student discipline data reporting guidance to assure accurate reporting of disciplinary referrals to alternative education *programs*;

- Clarify the scope of the requirement to report court referrals from the schools;
- Clarify the circumstances in which the Discipline Incident Type Code 24 ("Other Discipline Incident") may be used.

It Takes a Parent

In most Georgia school districts, the student codes of conduct focus much more on standards of behavior and progressive discipline procedures than they do on student supports and parental involvement. We urge the school systems to address this issue through the implementation of an integrated behavioral management approach that gives proper effect to all four co-equal requirements for the student code of conduct.

This call, however, is directed to parents.

Georgia Appleseed recognizes that many parents are already deeply and effectively involved in the education of their children. Many parents, however, are not. Georgia Appleseed is also fully aware of the many obstacles to effective parental involvement especially for low income or single parent families or for parents who are English Language Learners or are from cultures where direct involvement in schools is not the norm.

The unfortunate truth, however, is that systemic change will not likely occur in many school districts without an effective demand for such change by a broad cross section of parents. Therefore, we urge parents who review this report to become aware of the disciplinary practices and outcomes in their district and school and to advocate for change in circumstances where the system relies excessively upon out of class disciplinary actions.

Georgia Appleseed hopes to be able to facilitate a response to this call for enhanced parental involvement. We will advocate for the full disclosure of disciplinary action data as discussed in this Call to Action. We also plan to present the findings of this report to groups of parents around the state. Such presentations will be tailored to present data relating to the district and schools in the locale where the presentation is being made. In cooperation with other stakeholder and advocacy groups we will also seek to inform parents as to effective means to coalesce on a “grassroots” level and present their views to decision makers at the state, district and school level.

Many important players must be involved to assure that Georgia students have both a safe school environment and a meaningful opportunity to obtain a quality high school education. One thing is sure though: It takes a parent!