

# Legal Aid of North Carolina, Inc.

## Advocates for Children's Services

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### STATEMENT FOR THE RECORD

**To:** U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights (via Stephanie\_Trifone@Judiciary-dem.Senate.gov)

**From:** Advocates for Children's Services, a project of Legal Aid of North Carolina<sup>1</sup>

**Re:** Hearing on the School-to-Prison Pipeline; December 12, 2012 at 2:00 p.m.

**Date:** December 10, 2012

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#### I. About Advocates for Children's Services

Advocates for Children's Services (ACS) is a project of Legal Aid of North Carolina (LANC). LANC is a statewide, nonprofit law firm that provides free legal services in civil matters to low-income people in order to ensure equal access to justice and to remove legal barriers to economic opportunity. ACS staff strive to ensure that all North Carolina children and youth have access to a fair, just, and equitable public education. The focus of ACS' work is providing legal advice and representation to children and youth from low-income families in education matters, such as enrollment, academic failure, special education, suspension and expulsion, and discrimination. ACS staff also educate the community about education justice issues and students' and parents' rights through trainings and presentations, publications, and media outreach. Finally, ACS staff collaborate with other advocacy organizations and service providers throughout the state. This Statement is informed by over ten years of working directly with low-income families that have been impacted by the school-to-prison pipeline.

#### II. About the School-to-Prison Pipeline

The school-to-prison pipeline is a system of laws, policies, and practices that pushes students – particularly economically disadvantaged students, students of color, and students with disabilities – out of schools and into the juvenile and criminal systems. It is caused by systemic factors, such as racism, classism, sexism, ableism, homophobia, and xenophobia. Additionally, it is the result of social and economic factors, such as poverty, a lack of parental involvement,

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<sup>1</sup> Please direct questions or requests for sources or additional information to Jason Langberg, Staff Attorney and Director of the Push Out Prevention Project, 919-226-0051 ext. 438, JasonL@LegalAidNC.org.

“The test of the morality of a society is what it does for its children.” -Dietrich Bonhoeffer



and violence. Finally, the pipeline is caused by misguided education laws, policies, and practices, such as budget cuts and resource starvation, overcrowding, unmet academic and special education needs, a lack of support staff (e.g., counselors, social workers, nurses, psychologists, and mentors) and positive alternatives to suspension, zero tolerance policies and excessive use of suspension, school policing, and high-stakes, standardized testing. The pipeline is also situated in the context of mass incarceration, a culture of fear and control, privatization, and pervasive racial and socio-economic segregation.

Students who are pushed out of school are not only at an increased risk of academic failure, mental health problems, and delinquent and criminal activity, but also they are hindered in their ability to become economically self-sufficient and engaged, courageous, creative, critical thinkers in a self-governing democracy. The pipeline is – and has been for over two decades – a moral outrage, as well as a civil and human rights crisis. Young people across the nation desperately need policymakers to act urgently – *with* students, parents, educators, and advocates – to take swift, corrective action.

ACS staff thank the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights for holding a much-needed hearing on the school-to-prison pipeline, and hope that the information contained herein is informative and helpful.<sup>2</sup>

### III. About the School-to-Prison Pipeline in North Carolina

As demonstrated by the information and data below, North Carolina has a massive, destructive, discriminatory school-to-prison pipeline. Year after year, poverty, austerity, academic failure, suspension, and policing funnel tens of thousands of students out of classrooms, onto the streets, and ultimately into the prison industrial complex.

#### **A. Poverty**

In North Carolina, one in four children lives below the poverty level (approximately \$23,000 per year for a family of four). In 2011, eleven percent of children (260,000) lived in extreme poverty (i.e., below fifty percent of the federal poverty level), thirty-nine percent (880,000) lived below 150 percent of the federal poverty level, and fifty percent (1,123,000) lived below 200 percent of the federal poverty level. The percentage of North Carolina children living in poverty is above the national average. Worse yet, the poverty rate is growing. Finally, children of color are disproportionately poor (see Chart One below).

Children living in poverty are at an increased risk of: poor nutrition, hunger, and food insecurity; inadequate access to quality physical and mental health care; substandard and unstable housing; exposure to unsafe neighborhoods, violence, and criminal activity; having overworked, overstressed caretakers; carrying the burden of caring for relatives; less participation in positive after-school and summer activities; less cognitive stimulation; poor home circumstances for learning; being unable to perceive the benefits of education; abuse and neglect; chronic stress; behavioral, emotional, physical health, and mental health problems; and social marginalization. These effects of poverty, which teachers and other school staff are

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<sup>2</sup> This Statement uses the most recent, publicly available data.

expected to handle with dwindling resources, have substantial negative impacts on educational outcomes.

## **B. Austerity and Resource Starvation**

North Carolina consistently ranks among the seven worst states for public education funding. In 2009, North Carolina's average per pupil expenditure, adjusted for regional cost differences, was \$9,024; the eighth worst in the nation. In 2011, the North Carolina General Assembly cut, over the following two years, nearly a billion dollars from the state budget for public education.

In addition to being inadequate, state funding of public education in North Carolina is inequitable. Special needs allotments are capped for intellectually gifted students, students with disabilities, and students with limited English proficiency. These additional funds are capped at a percentage of average daily membership (ADM). In other words, districts receive a percentage increase in funding up to the cap, regardless of the actual numbers of special needs students who reside in the district. This leads to inequitable funding for the schools with the highest numbers of special needs students.

As a result of draconian budget cuts to public education over the last four years, North Carolina public schools have lost over 17,000 positions (including teachers, teacher assistants, clerical staff, custodians, and nurses), increased class sizes, decreased course selections and programming, had fewer textbooks and equipment, postponed needed school repairs and construction, and added significant time to bus routes. With fewer resources, less support, and larger classes, teachers and principals struggle to prevent and manage misbehavior.

## **C. Academic Failure**

Students who are failing academically are more likely to disengage from the educational process, be retained and drop out, lose incentive and motivation to follow school rules and norms, and misbehave and be subjected to suspension, expulsion, arrest, and adjudication. North Carolina has too many students who experience academic failure. During 2011-12, nearly one-third of students in grades three through eight (225,710) were below grade level in reading and/or math as measured by the end-of-grade (EOG) exams. Fewer than half of Black students were proficient in reading and math on the EOGs (see Chart Two below). Latino students, economically disadvantaged students, students with limited English proficiency, and students with disabilities were also on the lower end of massive achievement gaps (see Table One below). In 2011, the National Assessment of Education Progress (NAEP), which is a more accurate and reliable measure of student achievement, revealed an even grimmer snapshot of academic failure in North Carolina (see Table Two below).

State law requires Personal Education Plans (PEPs) for students who are at risk of academic failure, and state and federal laws require Individualized Education Programs (IEPs) for students with disabilities. PEPs and IEPs should provide meaningful, individualized interventions; however, in reality, they typically are not provided, not individualized, or not implemented.

Eventually, many students drop out or otherwise fail to graduate. Twenty percent of students who started high school in 2008-09 did not graduate within four years, and nineteen percent did not graduate within five years (for disparity data, see Chart Three and Chart Four below). During 2010-11, 15,342 students formally dropped out of school.

#### **D. Suspension and Expulsion**

North Carolina is one of the worst states in the nation when it comes to suspending students. During 2010-11 (the most recent year for which data is publicly available), public schools gave out 277,206 short-term suspensions (i.e., suspensions lasting one to ten school days), 2,621 long-term suspensions (i.e., suspensions lasting eleven school days or more), and sixty-six expulsions (i.e., indefinite removal). Approximately one of ten North Carolina students receives at least one short-term suspension each year. When looking at high school students only, this ratio rises to one of seven students. The average length of short-term suspensions was 2.78 school days and the average length of long-term suspensions was 51.4 school days. Over 17,000 students received multiple suspensions that accumulated to more than ten school days. In total, students missed over 900,000 school days as a result of suspension. What is worse, these shocking numbers do not even include in-school suspensions, bus suspensions, 365-day suspensions, and placement in alternatives programs and schools. Most of the young people in the state's youth prisons (called "youth development centers") have experienced time away from school. During 2011, eighty percent of committed juveniles had histories of serious problems in school (e.g., truancy, suspensions, and expulsions), and an average of thirty-six days of suspension in the year prior to their commitment.

Students are suspended for very minor offenses, including for untucked shirts, hugging a teacher, and having a nose ring. For example, in the Wake County Public School System during 2010-11, twenty-nine percent of short-term suspensions were given for "disrespect of staff." In Guilford County Schools, twenty-four percent of short-term suspensions were given for "inappropriate language." In Charlotte-Mecklenburg Schools, sixteen percent of short-term suspensions were given for "disruptive behavior."

North Carolina's exorbitant suspension rates disproportionately impact male students, Black students, and students with disabilities. During 2010-11, male students received seventy-two percent of short-term suspensions, seventy-seven percent of long-term suspensions, and ninety percent of expulsions. As demonstrated by Chart Five and Chart Six below, American-Indian students, Hispanic students, and especially Black students were disproportionately suspended. The short-term rate for Black students was four times greater than the short-term suspension rate for White students, and the long-term suspension rate was three and a half times greater. Black students were also punished more harshly than similarly-situated White students. For example, in the Wake County Public School System in 2010-11, among first time "offenders" who committed "cell phone use," seventy-two percent of the Black students were suspended compared to thirty percent of the White students. Students with disabilities represented approximately fourteen percent of the total student population, but received twenty-six percent of short-term suspensions.

### **E. School Policing**

North Carolina schools are also heavily policed. During 2008-09, there were 849 law enforcement officers assigned to patrol public schools on a full-time basis (called “school resource officers” or “SROs”). This was a 249 percent increase since the first recorded baseline in 1995-96. Three hundred and thirty of the 375 high schools and 315 of the 450 middle schools had exclusive SRO coverage (i.e., their own, full-time SRO). Twenty percent of elementary schools received some form of service from SROs. Nearly half of SROs carried a TASER. While the presence of SROs expanded rapidly – with no research to support their effectiveness in improving school safety – they still lacked meaningful limitations, oversight, training, and accountability. The educational environment has further been criminalized by the prevalence of metal detectors and surveillance cameras. Students are treated as potential criminals. Recently, Gaston County school officials forced Latino students to sign a contract indicating that they are gang members and allowing schools to monitor and suspend them. A new, arguably unconstitutional, state law criminalizes students who use a computer to “intimidate or torment” a school employee. Penalties can be as much as sixty days in jail or a \$1,000 fine for students as young as sixteen, who are treated as adults under state law.

The over-policing of North Carolina public schools contributes to excessive numbers of students being funneled directly from schools to the juvenile system. During 2011, forty-three percent of all juvenile delinquency complaints were school-based. As demonstrated by Table Three below, thousands of the school-based complaints were for minor offenses – such as communicating threats, disorderly conduct, and being ungovernable or truant – that should have been handled using alternatives that are more productive than court involvement. Black students were disproportionately subject to complaints. During 2010-11, they represented twenty-six percent of the student population but received forty-five percent of school-based delinquency complaints. Over the last five years (2007 to 2011), non-school-based delinquency complaints decreased by twenty-five percent, whereas school-based delinquency complaints decreased by only twelve percent. To make matters worse, North Carolina is one of two states in the nation that *automatically* charges, prosecutes, and sentences all sixteen- and seventeen-year-olds as adults.

### **IV. Recommendations for the Federal Government**

The federal government can help dismantle the school-to-prison pipeline in North Carolina by taking the following measures.

- A. Provide adequate funding for poverty reduction programs, such as early childhood education, housing assistance, nutrition assistance, unemployment assistance, Medicaid, Medicare, Social Security, Supplemental Security Income, and Temporary Assistance for Needy Families;
- B. Protect and expand the Earned Income Tax Credit and the Child Tax Credit;
- C. Create a federally-mandated living wage;

- D. Provide funding for state and local initiatives aimed at improving school safety and creating fair discipline practices, such as reducing school and class size, implementing Positive Behavior Interventions and Supports (PBIS), using restorative justice practices, enhancing parent involvement, and improving teacher training in behavior management;
- E. Improve collection of school discipline data (for specific recommendations see DANIEL J. LOSEN, THE CIVIL RIGHTS PROJECT AT UCLA, GOOD DISCIPLINE: LEGISLATION FOR EDUCATION REFORM (2011), [http://www.greatlakescenter.org/docs/Policy\\_Briefs/Losen\\_Discipline\\_LB.pdf](http://www.greatlakescenter.org/docs/Policy_Briefs/Losen_Discipline_LB.pdf));
- F. Improve and expand the timely enforcement of civil rights laws and regulations by the Department of Justice and the Office for Civil Rights of the U.S. Department of Education;
- G. Provide guidance to states and districts seeking to make progressive school discipline reforms using research-based best practices (Note: In July 2011, the U.S. Department of Education and U.S. Department of Justice announced the launch of the Supportive School Discipline Initiative to “address the school-to-prison pipeline” and “support good discipline practices to foster safe and productive learning environments in every classroom;” however, after nearly a year and a half, the Initiative has not amounted to much.);
- H. Improve the U.S. Department of Education, Office of Special Education and Rehabilitative Services’ oversight of state compliance with special education laws; and
- I. Stop forcing cash-strapped states and school districts – through legislation like “No Child Left Behind” and programs like “Race to the Top” – to adopt market-based reforms (e.g., performance pay and high-stakes, standardized testing) that contribute to the pipeline by diverting valuable resources, weakening and narrowing the curriculum, promoting unhealthy competition, and creating perverse incentives to push out lower-performing students.

Charts and Tables

Chart 1: Percent of students in poverty by race (2011)

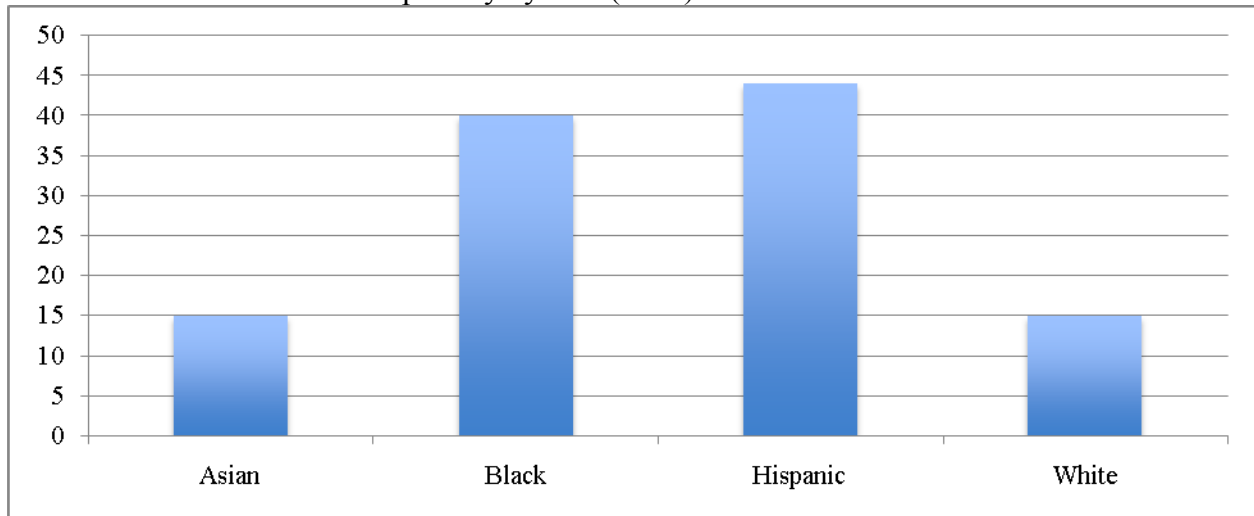


Chart 2: Percent of students proficient in reading and math on the EOGs by race (2011-12)

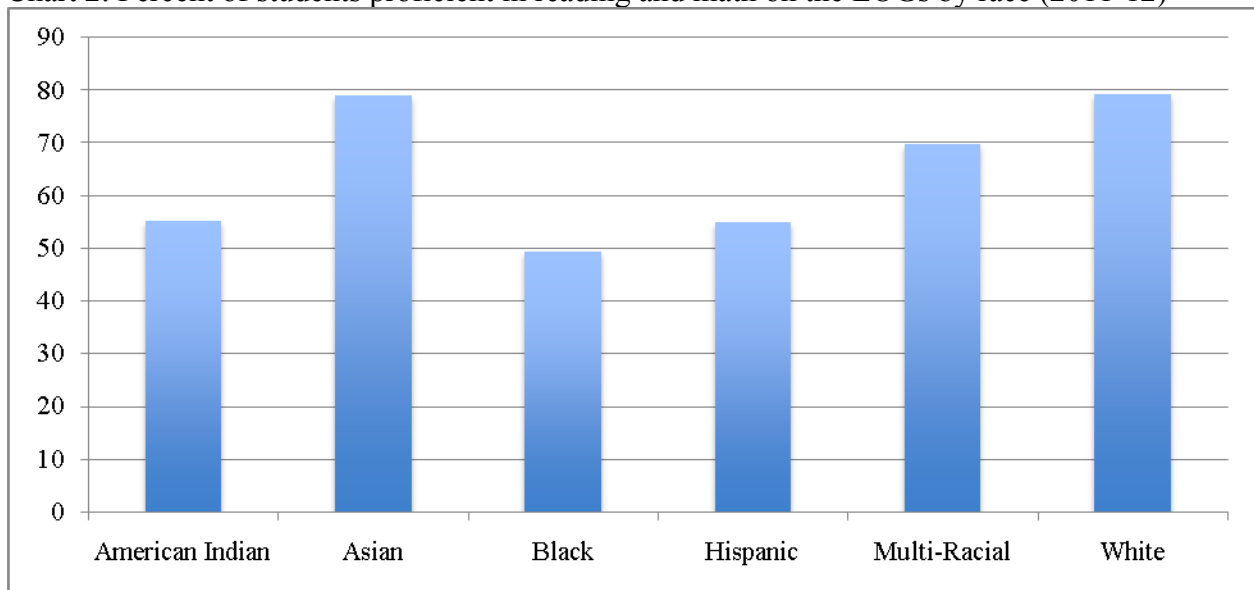


Table 1: Proficiency on EOGs and EOCs (2011-12)

Subgroup	% Proficient on all EOGs
Economically disadvantaged	54.2
Not economically disadvantaged	84.1
Limited English proficient	31.7
Not limited English proficient	70.0
Students with disabilities	32.8
Non-disabled students	72.5

Table 2: National Assessment of Educational Progress (2011)

Test	% Below Basic	% Below Proficient
4 <sup>th</sup> grade reading	32	66
4 <sup>th</sup> grade math	12	56
8 <sup>th</sup> grade reading	26	69
8 <sup>th</sup> grade math	25	63

Chart 3: Four-year cohort graduation rates by race (2011-12)

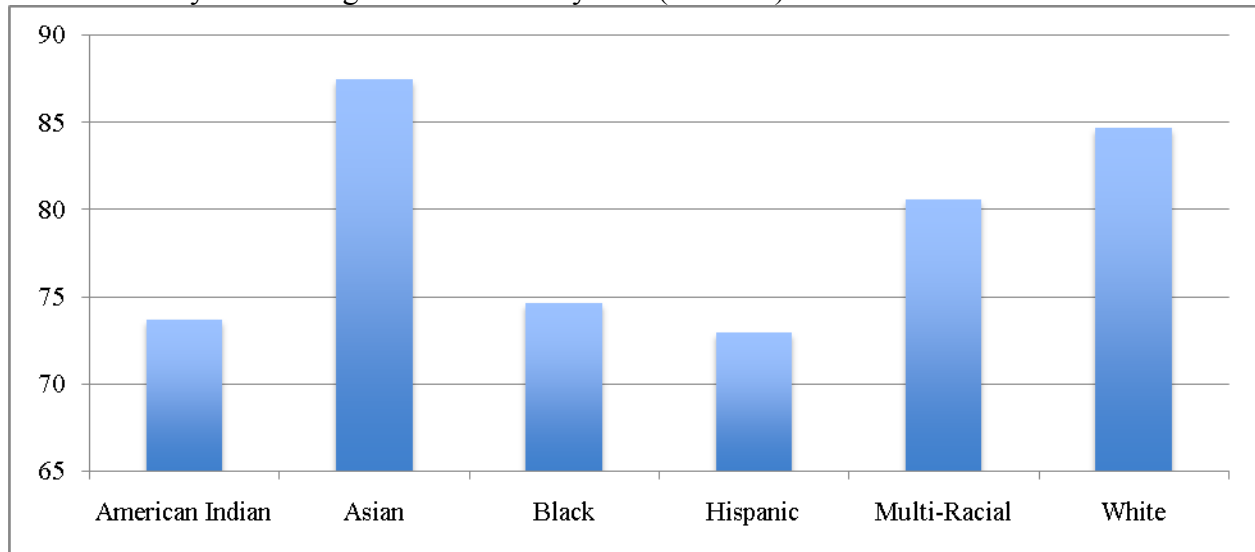


Chart 4: Four-year cohort graduation rates (2011-12)

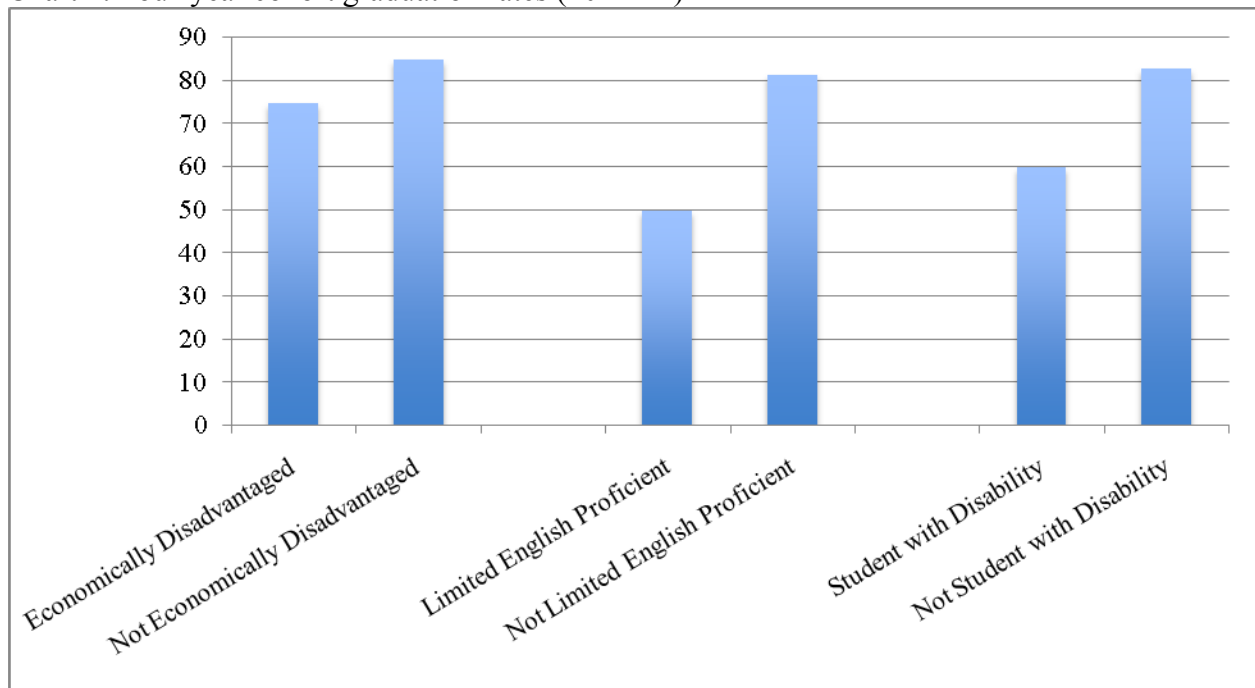




Chart 5: Short-term suspension rates (per 10 enrolled) by race (2010-11)

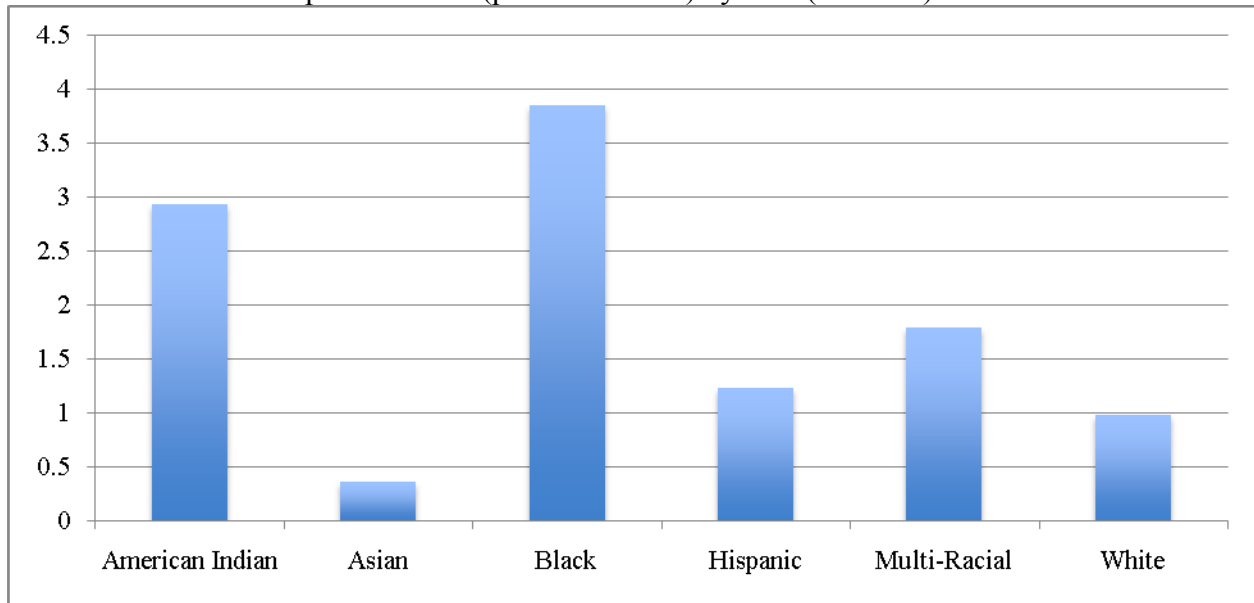


Chart 6: Long-term suspension rates (per 100,000 enrolled) by race (2010-11)

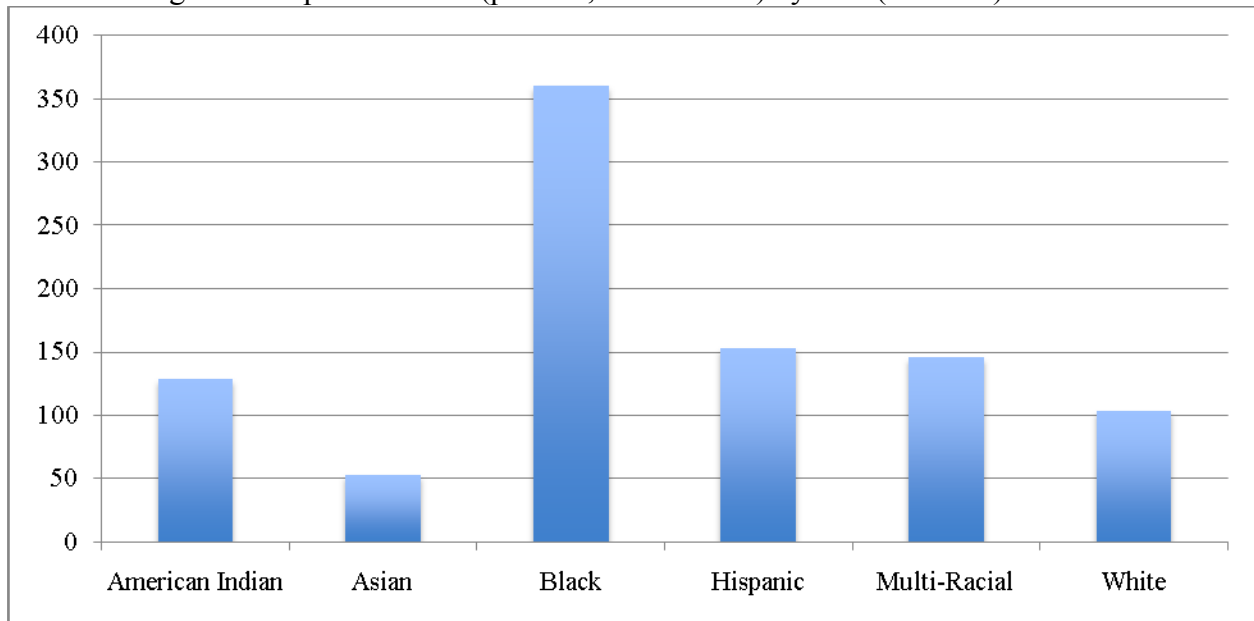


Table 3: School-based delinquency complaints for minor offenses (2010-11)

Offense	Complaints	Offense	Complaints
Communicating threats	716	Simple affray	1,589
Disorderly conduct	2,190	Simple assault	2,266
Misdemeanor larceny	798	Ungovernable or truant	1,202