

Missouri's School-to-Prison Pipeline

Statewide Collaborative Diversity
Conference: Community Racial Disparities

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March 27, 2015

Legal Services of Eastern Missouri

- We provide free civil legal assistance to low-income individuals and the elderly in 21 counties* of eastern Missouri.
- Our unit Children's Legal Alliance focuses on education law matters.
- Low income means individuals at 125% of the Federal Poverty Level or below.

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



March 27, 2015

General Information:

THE SCHOOL-TO-PRISON PIPELINE



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THE SCHOOL-TO-PRISON PIPELINE

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



Role of the Education System

- Failing Public Schools
- Zero-Tolerance Policies
- Policing School Hallways*
- Disciplinary Alternative Education
- Barriers to School Attendance

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



Role of the Education System: Failing Public Schools

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



Role of the Education System: Zero-Tolerance Policies

- Automatic imposition of severe punishment regardless of discretion
- General move away from these policies
 - Published discipline policies
 - Graduated/Progressive discipline schemes
 - “Catch-all” clause creates loopholes
- Suspension and expulsion
 - Increased rates overall, especially for students of color and students with disabilities
 - Lack of due process protections



Role of Education System: Policing School Hallways

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



Role of Education System: Disciplinary Alternative Schools

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



Role of Poverty

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

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



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The School-to-Prison Pipeline:

MISSOURI



March 27, 2015

2014 DESE Statistics

- 50% of all Missouri students qualify for Free or Reduced-Price Lunch
- Overall Graduation Rate: 87.34%
 - Black: 75.05%; Hispanic: 80.1%; Indian 83.44%
 - Free or Reduced Lunch 80.46%; Limited English Proficient 64.48%; Special Education 75.16%
- Overall Dropout Rate: 2.4%
 - Black: 6.7%; Hispanic: 4.0%; Indian 2.5%
- Overall Number of Suspensions for greater than 10 days: 10,742
- Overall Number of Expulsions: 54



2014 DESE Statistics on Homelessness

- Federal definition under McKinney Vento of “Homeless” (broad category that includes doubling up)
- In particular in SLPS and Ferguson Florissant School District



OCR Data

SOME STATISTICS



March 27, 2015

The Process

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

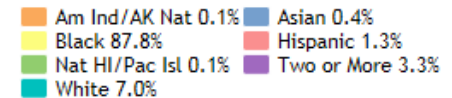
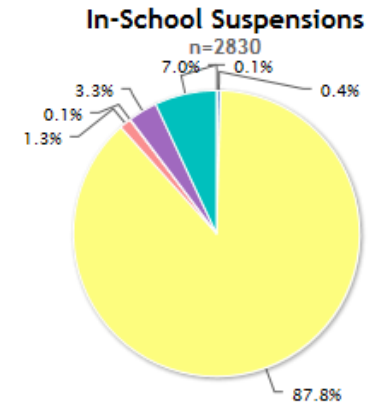
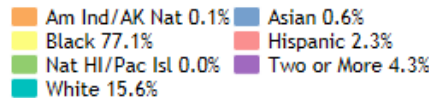
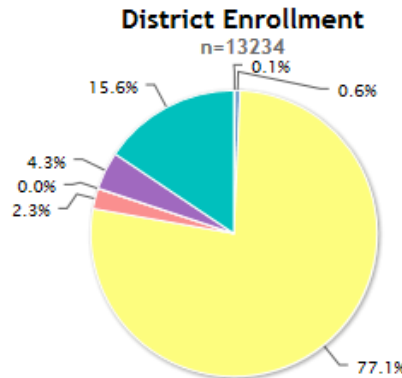


Ferguson-Florissant School District (2011-2012): All Students

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

Total District Enrollment Percentages

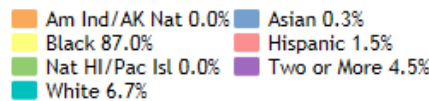
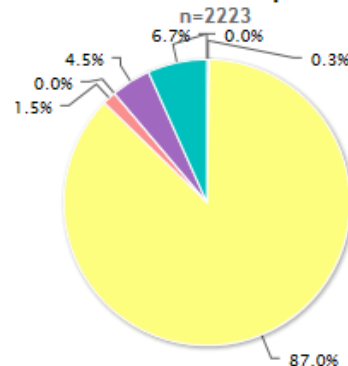
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- Asian 0.6% (blue)
- Black 77.1% (yellow)
- Hispanic 2.3% (pink)
- Two or more 4.3% (purple)
- White 15.6% (turquoise)



In-School Suspension Percentages

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

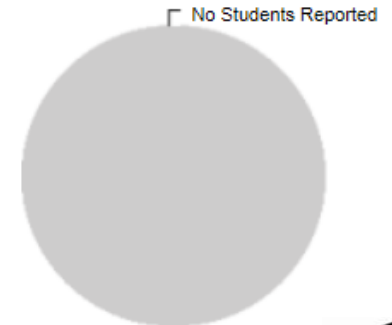
Out-of-School Suspensions



Out-of-School Suspension Percentages

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- Asian 0.3%
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- Hispanic 1.5%
- Two or More 4.5%
- White 6.7%

Expulsions

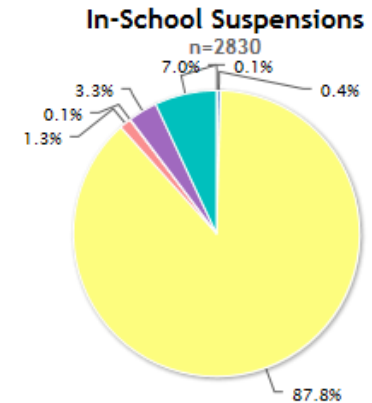
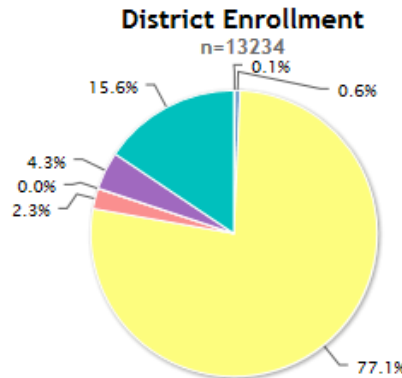


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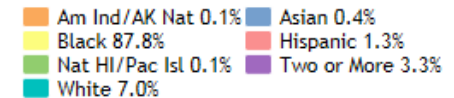
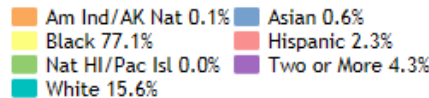
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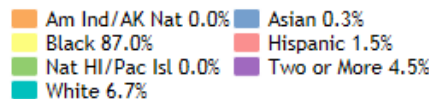
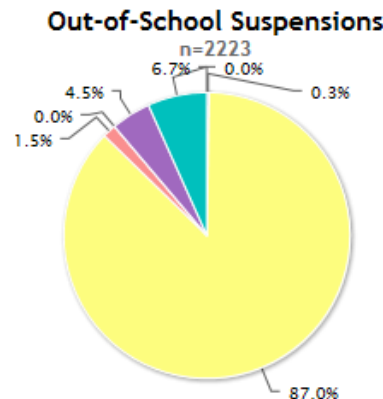
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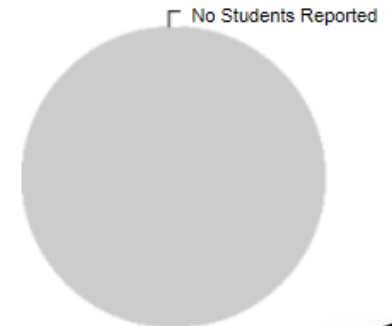


Out-of-School Suspension Percentages

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



Expulsions



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

Total Enrollment of Students with Disabilities

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

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

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

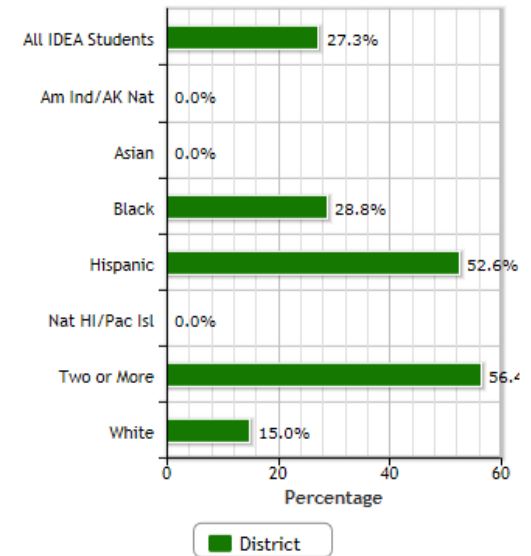
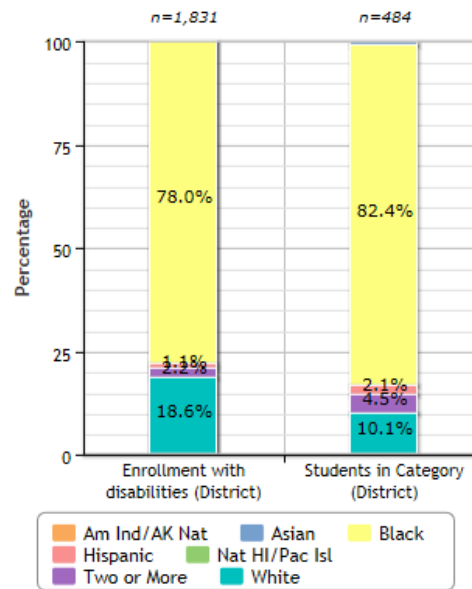
Proportion of all Students with Disabilities with one or more ISS

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

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

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

Race/Ethnicity



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

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

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

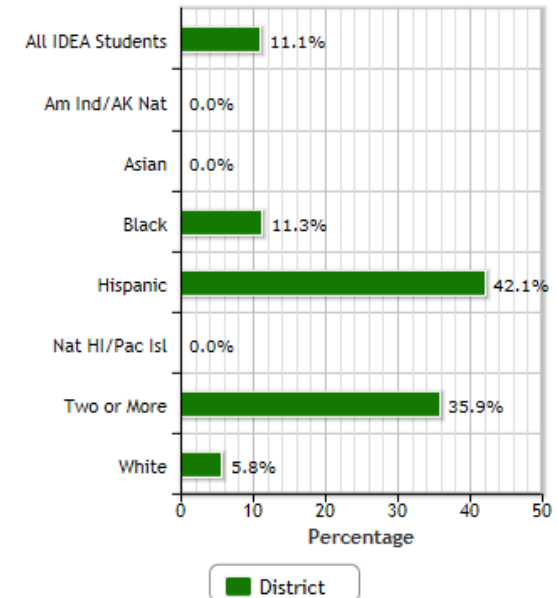
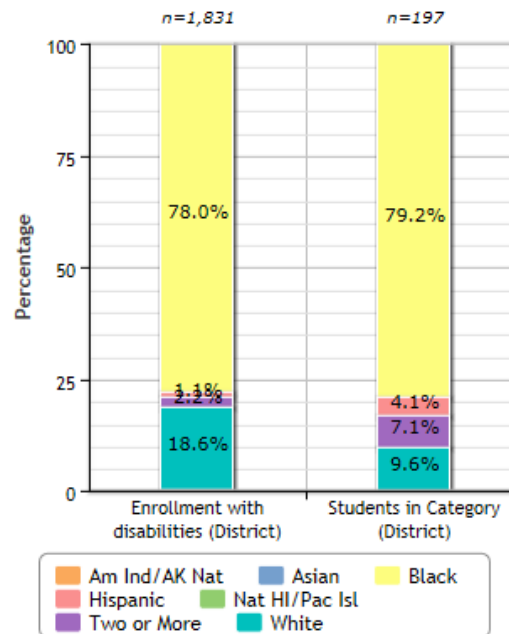
Proportion of all Students with Disabilities with one OSS

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

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

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

Race/Ethnicity



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

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

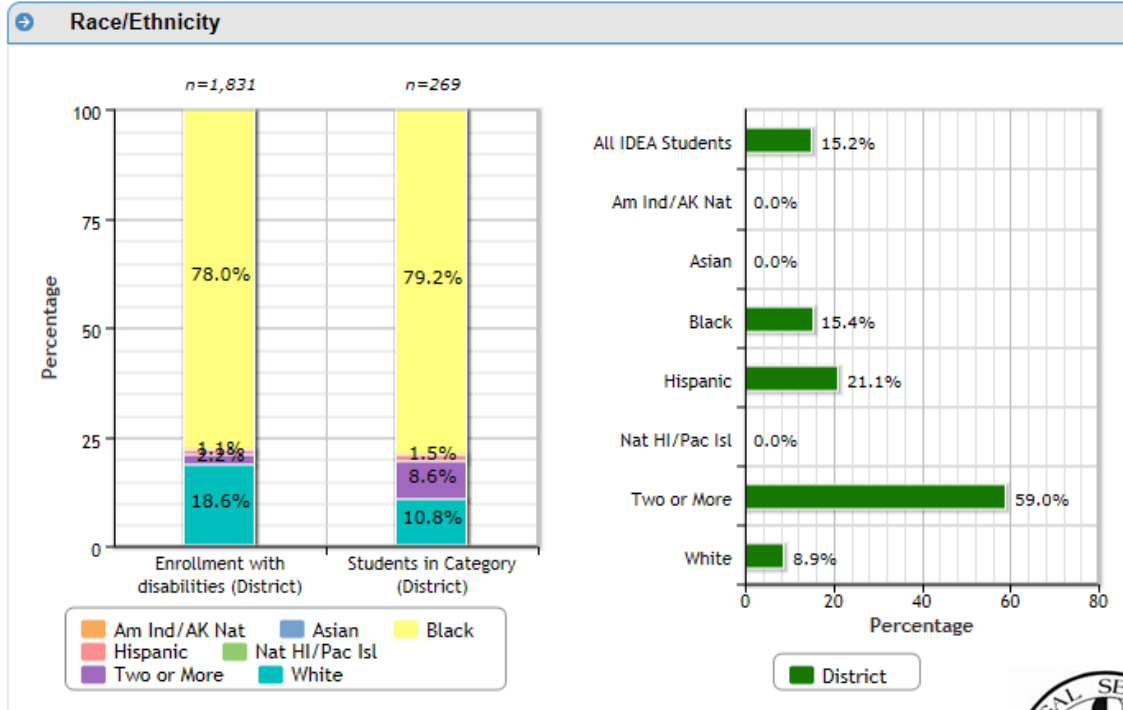
- Black 79.2% (yellow)
- Hispanic 1.5% (pink)
- Two or More 8.6% (purple)
- White 10.8% (turquoise)

Proportion of all Students with Disabilities with more than one OSS

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

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

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



Springfield School District (2011-2012): All Students

Total District Enrollment Percentages

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

In-School Suspension Percentages

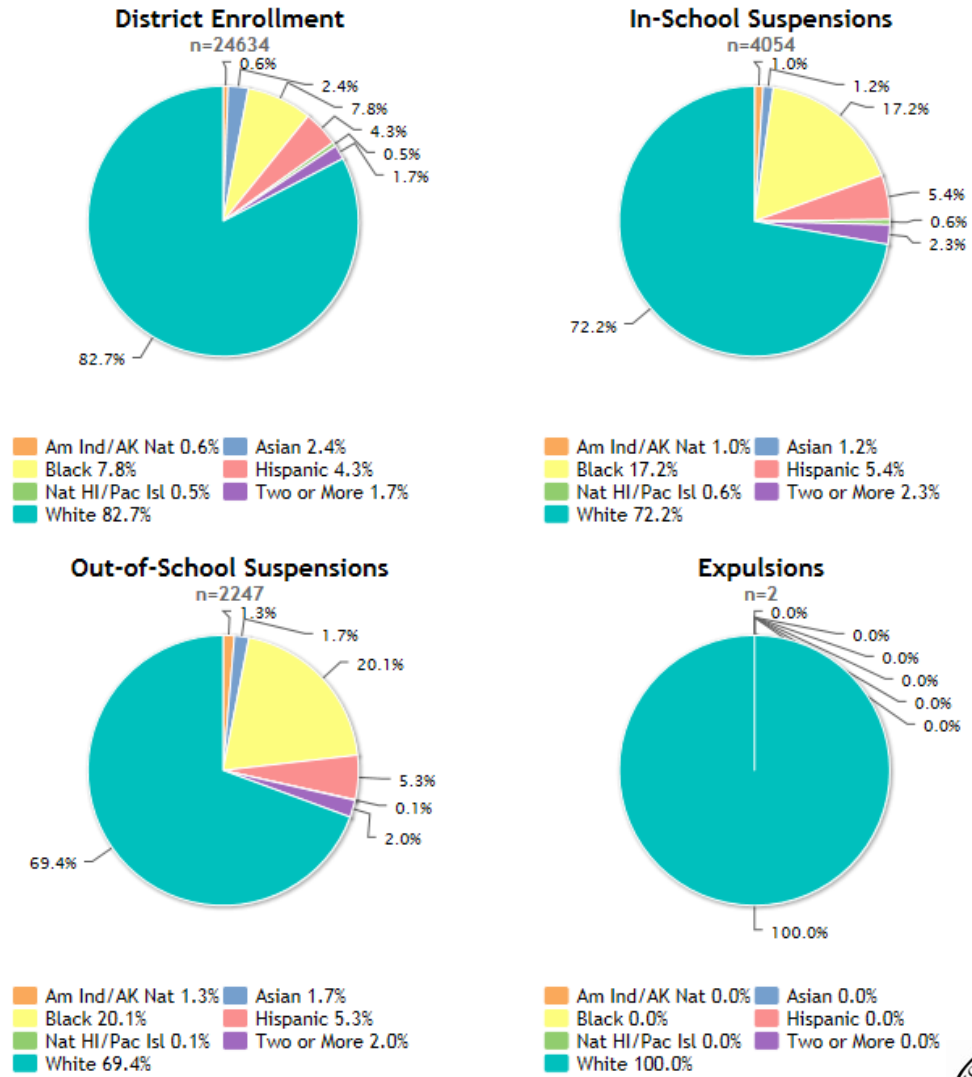
- American Indian 0.1%
- Asian 1.2%
- Black 17.2%
- Hispanic 5.4%
- Hawaiian/Pacific Islander 0.6%
- Two or More 2.3%
- White 72.2%

Out-of-School Suspension Percentages

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

Expulsions – White (no disability) 100%

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



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

Total Enrollment of Students with Disabilities

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

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

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

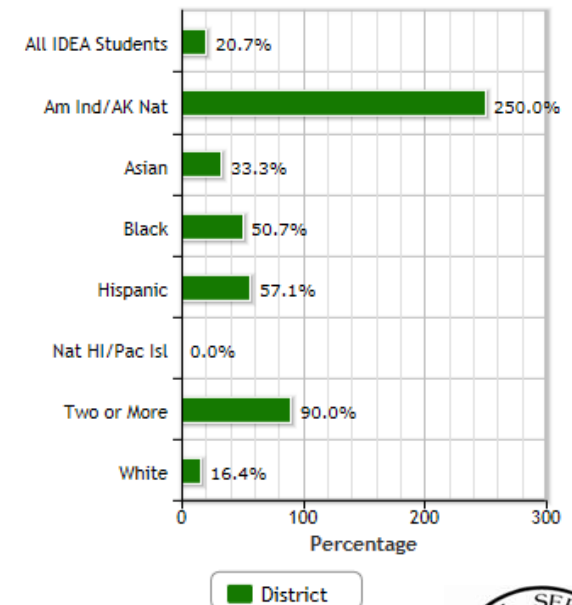
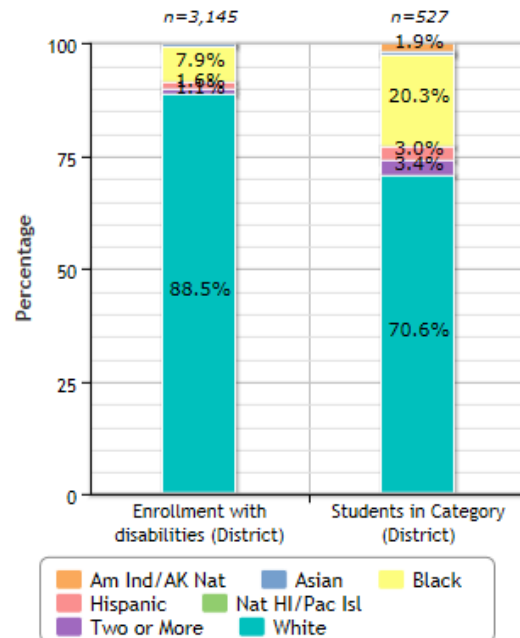
Proportion of all Students with Disabilities with one or more ISS

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

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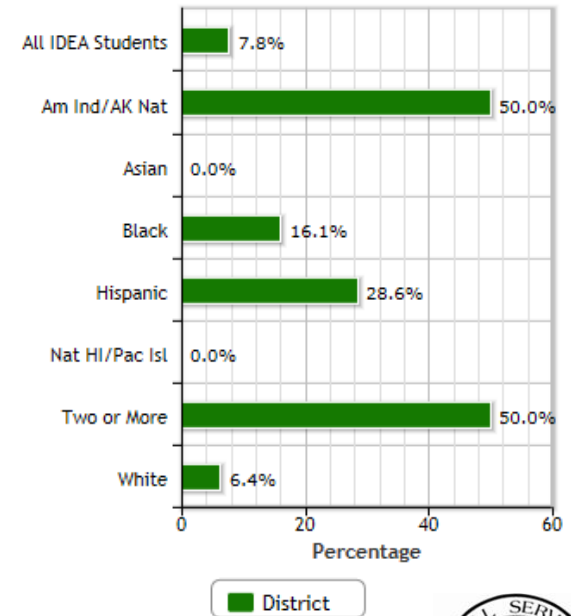
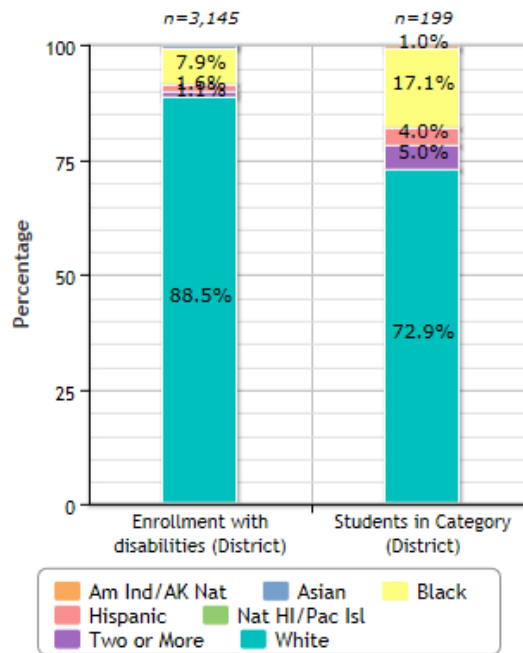
Proportion of all Students with Disabilities with one OSS

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

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

Race/Ethnicity



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

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

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

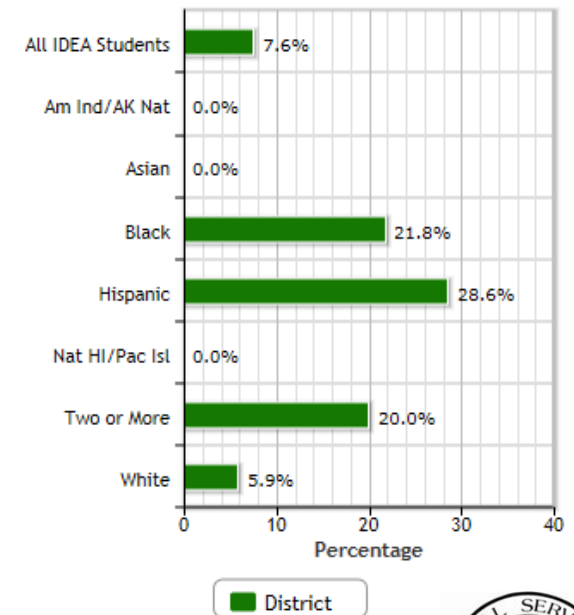
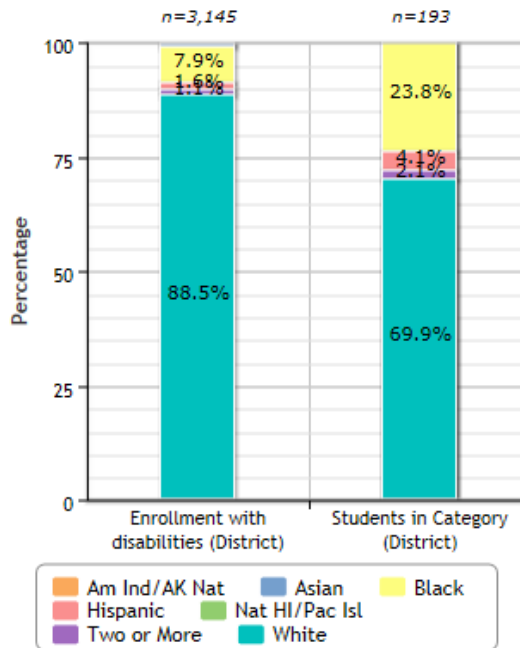
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Of the total students with disabilities enrolled in the district, what proportion received more than one out-of-school suspension?

Race/Ethnicity



Remedies

- Filing with the Office of Civil Rights
- Direct Advocacy v. Litigation
- US Department of Education
Recommendations



Remedies

OCR Filing

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



Remedies

OCR Filing Examples

South Orange-Maplewood School District

- The ACLU filed an OCR complaint against the South Orange-Maplewood School District (SOMSD) in New Jersey alleging out-of-school suspension creates a disparate impact on students of color and those with disabilities in violation of Title VI and Section 504.
- SOMSD's black-white suspension gap is 12%, which is substantially greater than the state average of 8.7%
- Students with disabilities are suspended at a rate of 21.3%, while those without are at a rate of 7.7%.
- These results are compounded for black students with disabilities at 30.6%.
- Requesting resolution agreement rather than a formal finding of Title VI or Section 504 violation.
 - insurances that out-of-school suspensions are used as a last resort and should be proportional to serious offenses only,
 - that disciplinary interventions are monitored for their impact on identified subgroups,
 - contracting with an independent consultant and creation of a review team,
 - implementation of positive interventions and supports and evidence-based policies, implementation of a restorative justice approach,
 - classroom management training, and
 - behavior intervention plans for students who are suspended with disabilities

Loleta & Eureka Sch. Dist.

- The National Center for Youth Law and ACLU filed an OCR complaint alleging the towns of Loleta and Eureka intentionally discriminate against Native American and Black students, as well as those with disabilities by levying disproportionate discipline for minor infractions and forcing these populations out of mainstream schools at disproportionate rates.
- Alleges school faculty and staff encourage pervasive racial harassment and physical assaults and teach a racially-offensive and culturally-denigrating curriculum.
- Coupled with routine suspensions and expulsions for minor behavior result in the push-out of these populations.
 - Black students are suspended 5x their enrollment rate, Native American students at 3x, and white students at their enrollment rate.
 - Native American students pushed into high risk alternative schools that do not appropriately prepare students for college



Remedies

Missouri Litigation Example

- D.S. v. HSD (North St. Louis County school district):
 - D.S. was 13 year old boy (7th grader) expelled for non-violent offense and HSD refused to provide any alternative education.
 - Filed in circuit court in St. Louis County against HSD and State and others seeking declaratory and injunctive relief, asking Defendants to provide an adequate alternative education to D.S. during his expulsion.
 - We argued Defendants' actions violated the Missouri Constitution, 167.164 RSMo., and the Equal Protection Clause under the Missouri Constitution since HSD and the State provided alternative education to other similarly situated students.



Remedies

Missouri Litigation Example

- 9th Grade student L.W. transferred to a Virtual Learning Center as a disciplinary measure
 - Three hours/day
 - Online program with available instructor
- L.W. disciplined for stealing public bus tickets in first day at VLC
 - Removed from school
 - Continue virtual learning at home
 - No computer at home, limited computer access at library, history of educational disabilities
- LSEM on behalf of parent files case requesting declaratory and injunctive relief for L.W. to return to the school environment
- Alleges de facto expulsion without due process rights
 - Official discipline designation
 - Not told of right to appeal
- Alleges improper discipline
 - Disciplined for Type 1 offense: incidents that severely interfere with safety and learning, threatening or harmful, Safe Schools Act violations
 - Stealing bus tickets not harmful or safety risk



Remedies

US Dept. of Ed. Recommendations

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



The Law

FEDERAL AND MISSOURI



March 27, 2015

Missouri Law – Enrollment

- Mo. Rev. Stat. 167.020
- Resident of district
 - “a person both physically resides within a school district and is domiciled within that district”
 - Domicile of minor = domicile of parent/guardian
- Homeless student enrollment guided under McKinney Vento



Missouri Law – All Students

- Mo. Rev. Stat. 167.161: Suspension or Expulsion of a Pupil
- Mo. Rev. Stat. 167.164: Suspension or Expulsion Not to Relieve Duty to Educate
- Mo. Rev. Stat. 167.171: Summary and Statewide Suspension or Expulsion
- Mo. Rev. Stat. 160.261: Safe Schools Act



Missouri Law – All Students

167.161: Suspension or Expulsion

- “conduct which is prejudicial to good order and discipline in the schools or which tends to impair the moral or good conduct of the pupils”
- Prior disciplinary actions cannot be sole basis
- Procedural requirements
 - notice and hearing
 - good faith effort



Missouri Law – All Students

167.164: Not Relieve Duty to Educate

- “shall not relieve the state or the suspended student’s parents or guardians of their responsibilities to educate the student”
- Districts encouraged to use ISS
- District pays cost of alternative education
- May contract with other political subdivisions, public agencies, non-profits, or private agencies



Missouri Law – All Students

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 - notice and hearing
 - good faith effort



Missouri Law – All Students

167.171: Summary and Statewide

- Superintendent may expel for up to 180 days (long-term suspension)
- Board must agree
- No remittance or enrollment for violation of the Safe Schools Act (may get alternative education)
- Superintendent may determine whether to enroll new students with active suspension or expulsions
 - From any public or private school in any U.S. state
 - Determine whether new district would suspend/expel for same conduct
 - Yes – not required to enroll while suspension/expulsion active
 - No – required to enroll



Missouri Law – All Students

160.261: Safe Schools Act

- Clearly establish a written discipline policy
 - Provide to all students/parents
 - Educate employees on interpretations and specifics
- Report acts of school violence
 - “exertion of physical force by a student with the intent to do physical injury”
 - On school property, on school bus, during school activities
- Minimum list of offenses that correspond to adult crimes (murder, kidnapping, assault, rape, sodomy, burglary, robbery, distribution of drugs, arson, voluntary and involuntary manslaughter, felonious restraint, property damage, weapon possession, child molestation, sexual misconduct, sexual abuse, harassment, and stalking)
- Weapons at school
 - Suspension for no less than one year
 - Firearm, blackjack, concealable firearm, explosive weapon, firearm silencer, gas gun, knife, knuckles, machine gun, projectile weapon, rifle, shotgun, spring gun, switchblade



Individuals with Disabilities Education Act and Section 504– Children with Disabilities

- When is a child a “child with a disability”?
- What does being identified mean for a child?
 - Protection from suspension/expulsion?
- What is a free appropriate public education?
 - What about post-secondary transition?



Manifestation Determination

- When does this meeting have to occur?
- What is the legal standard discussed?
- What if the child is not yet identified?

