

Appendix H Less Discriminatory Alternatives

The following examples demonstrate that there are additional, replicable practices for reducing reliance on police-student contact, suspension and expulsion that support school safety and academic achievement:

1. Clayton County School District, Georgia
 - a. Background

Between 1995 and 2003, the Clayton County School District, a school district with an enrollment of 50,000, started and expanded a School Resource Officer program to staff local police in schools. By 2003, the local courts had experienced a 1248 percent increase in referrals from school, of which 90 percent, according to court officials, were for infractions traditionally handled by school administrators.¹

After negative reaction to the overuse of local police in schools from the community, law enforcement and juvenile court officials, the Clayton County School District worked with local law enforcement, mental health providers and the juvenile court to develop a “School Offense Protocol” to reduce reliance upon law enforcement and court referrals for typical adolescent behavior.² The Protocol clearly distinguished those disciplinary incidents that could properly be handled by school officials and those that might warrant the involvement of law enforcement.³ After implementation of the Protocol in 2005, Clayton County experienced a 68% drop in court referrals from school and an 8% drop in middle school suspensions.⁴

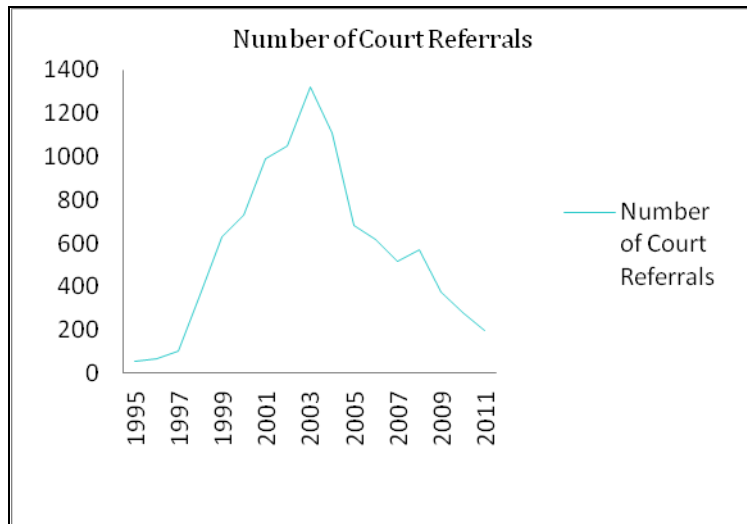
¹ Judge Steven C. Teske & Judge J. Brian Huff, *The Court’s Role in Dismantling the School-to-Prison Pipeline*, *Juv. & Fam. Justice Today*, Winter 2011, at 16, available at <http://www.ncjfcj.org/sites/default/files/Today%20Winter%202011Feature%20%282%29.pdf>.

² Cooperative Agreement between the Juvenile Court of Clayton County, the Clayton County Public School System, the Clayton County Police Department, the Riverdale Police Department, the Jonesboro Police Department, the Forest Park Police Department, the Clayton County Department of Family & Children Services, the Clayton Center for Behavioral Health Services, Robert E. Keller, District Attorney, and the Georgia Department of Juvenile Justice (2004), <http://publichealth.lsuhsu.edu/iphj/pdf/solibrary1.pdf>.

³ *Id.* at 10-13.

⁴ Steven C. Teske, *A Study of Zero Tolerance Policies in Schools: A Multi-Integrated Systems Approach to Improve Outcomes for Adolescents*, 24 *J. of Child & Adolescent Psychiatric Learning* 88, 93 (2011), available at <http://www.ncjfcj.org/sites/default/files/Zero%20Tolerance%20Policies%20in%20Schools%20%282%29.pdf>.

Figure App.1: School Referrals to Clayton County Juvenile Court⁵



b. Clayton County's Protocol Effectively Eliminated Racial Disparities in School Referrals

Not only did the protocol reduce the number of overall court referrals, it specifically improved outcomes for African-American students. Referrals of African-American students dropped by 43%.⁶ At the beginning of protocol implementation, African-American students were referred to court almost three times as often as white students. As Table App. 1 demonstrates, Clayton County effectively eliminated racial disparity in court referrals from school between white and African-American students.

⁵ Court referral data provided by the Clayton County Juvenile Court Email from Judge Steven C. Teske, Judge, Clayton County Juvenile Court, to Matt Cregor, Assistant Counsel, LDF (Aug. 15, 2012) (on file with LDF).

⁶ *Id.*

Table App. 1: School Referrals by Race to Clayton County Juvenile Court⁷

Year	Risk of Referral for African-American Students	Risk of Referral for White Students
2005	1.69%	0.61%
2006	1.48%	0.55%
2007	1.25%	0.71%
2008	1.39%	0.31%
2009	0.96%	0.46%
2010	0.69%	0.30%
2011	0.51%	0.51%

c. Clayton County’s Protocol Improved both Safety and Academic Achievement

Clayton County’s Protocol improved both safety and academic achievement in the district. The county experienced a 73% drop in court referrals for weapons after implementing the Protocol.⁸ Court officials believe that the drop in weapons referrals was due at least in part to improved relationships between students and school-based police.⁹ Most importantly, since the Protocol’s implementation, Clayton County School District’s graduation rate has increased by 20%.¹⁰

d. Clayton County’s Protocol is Replicable and Cost Effective

Other jurisdictions are now replicating the Clayton County School Offense Protocol and training on the Protocol is available for interested localities. The Annie E. Casey Foundation’s

⁷ Court referral data was provided by the Clayton County Juvenile Court. The enrollment figures are estimates based on the enrollment numbers and racial enrollment percentages included in the Governor’s Office of Student Achievement, *2010-11 Report Card*, available at [http://reportcard2011.gaosa.org/\(S\(uclj4f45e2l2om55sqz xu45\)\)/k12/demographics.aspx?ID=631:ALL&TestKey=EnR&TestType=demographics](http://reportcard2011.gaosa.org/(S(uclj4f45e2l2om55sqz xu45))/k12/demographics.aspx?ID=631:ALL&TestKey=EnR&TestType=demographics) (demographics for 2008-11); Governor’s Office of Student Achievement, *Report Card*, 2005-08, available at <http://reportcard2008.gaosa.org/%28S%28ubcv3jglzb02tm5swuysp3y0%29%29/k12/demographics.aspx?ID=631:ALL&TestKey=EnR&TestType=demographics> (demographics for 2005-08). Note that referral data are for the calendar year, while enrollment data are based on enrollment counts in the October leading up to the calendar year.

⁸ Teske, *supra* note 4, at 93.

⁹ *Id*; *Ending the School to Prison Pipeline: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 4 (statement of The Honorable Steven C. Teske, Chief Judge, Juvenile Court of Clayton County, GA). Georgia law mandates court referrals for instances of weapons possession, so Clayton County’s weapons referrals did not drop because students who possessed weapons were disciplined differently after the Protocol was implemented. *Id*.

¹⁰ Teske, *supra* note 4, at 93.

Juvenile Detention Alternatives Initiative (“JDAI”) provides a “Help Desk” with support and materials on these protocols for jurisdictions interested in implementing them.¹¹ The National Council of Juvenile and Family Court Judges’ School Pathways Project is developing a “toolkit” on school offense protocols and will provide training to interested localities starting in 2013.¹² A review of efforts to replicate the Protocol in other jurisdictions is underway.¹³

By properly addressing school discipline matters in school, the Clayton County Protocol is a more cost-efficient and effective model for dealing with student behavior. By reducing court appearances, attorneys’ fees and probation caseloads, Clayton County is saving funds that were unnecessarily spent on its juvenile court activities. And, with reduced juvenile probation caseloads, Clayton County probation officers have more time to better serve juvenile offenders who have more extensive needs to address than students referred for traditional adolescent behavior.¹⁴ Finally, the resultant improvement in Clayton County’s high school graduation rate and decrease in number of court-involved youth should support the long-term growth of the local economy.

2. Denver Public Schools, Colorado

a. Background

Denver Public Schools (“DPS”) began to expand its reliance on school security personnel and “Zero Tolerance” disciplinary approaches in 2000 following the school shootings in Columbine, Colorado.¹⁵ By 2004, the number of students referred to law enforcement by DPS increased by over 70%.¹⁶ Nearly half (42%) of the DPS students were referred for “other

¹¹ JDAI Helpdesk, <http://www.jdaihelpdesk.org> (last visited Feb. 19, 2013).

¹² Shawn C. Marsh and Cheri Ely, NCJFCJ to Launch New Project to Keep Kids in School and Out of Court, National Council of Juvenile and Family Court Judges, <http://www.ncjfcj.org/ncjfcj-launch-new-project-keep-kids-school-and-out-court> (last visited Feb. 19, 2013).

¹³ “Some of these results have been replicated in other jurisdictions including Birmingham, Alabama and Wichita, Kansas. The family court judge in Birmingham, Brian Huff, was the first to replicate this collaborative approach. During the 2007-08 school years, school police in Birmingham referred 513 students to court, of which 99% were African American and 96% were petty misdemeanor offenses. The judge also brought stakeholders together and developed a written protocol similar to that of Clayton County. The referrals declined by 75% and detention rates fell by 72%. Recently, the juvenile judge in Wichita convened stakeholders meetings and established a protocol resulting in a 50% decrease in school arrests. Judge Patricia Koch, District Court Judge of Rapides Parish, LA, is another example of judicial leadership to bring about collaborative reform to end the school-to-prison pipeline. By using her convening power, the stakeholders in her Parish have developed a system similar in concept to Clayton County that has reduced school referrals from 1,148 in 2006 to only 58 in 2011. Other jurisdictions have followed suit to change their systems to reduce school arrests including Columbus, OH; Sioux City, IA; Broward County, FL; Bibb County, GA; Middlesex County, MA; Los Angeles County, CA; and several jurisdictions in Connecticut.” *Ending the School to Prison Pipeline: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 5-6 (statement of The Honorable Steven C. Teske, Chief Judge, Juvenile Court of Clayton County, GA).

¹⁴ *Id.* at 5.

¹⁵ See Advancement Project et al., *Education on Lockdown: The Schoolhouse to Jailhouse Track* 23-24 (2005), available at http://b3cdn.net/advancement/5351180e24cb166d02_mlbrqgx1h.pdf.

¹⁶ *Id.* The Colorado Department of Education defines “referred to law enforcement” as a catch-all term for formal police/student contact that “includes situations in which a student was referred to a school resources officer; a police report was filed; and/or police were called, but no report was filed.” Colorado Department of Education, A

violations of the code of conduct,” which included use of obscenities and disruptive appearance.¹⁷

Denver’s spike in referral rates garnered both local and national attention and concern. In 2005, Padres y Jovenes Unidos, a local parent- and student-led community organization, and the Advancement Project, a national civil rights organization, issued *Education on Lockdown*, a report critical of DPS’ overreliance on school security personnel, and launched a multi-year campaign that led to an immediate drop in referral rates and culminated in partnering with DPS to revise the district’s discipline code.¹⁸ The revised code established a graduated series of consequences and interventions that were designed to reduce reliance on both exclusionary punishment and referrals to law enforcement.¹⁹ The code encouraged the use of Restorative Justice, a method for resolving conflict and improving bonds among students and between students and teachers.²⁰

b. Denver’s Revised Discipline Code Has Significantly Reduced Disciplinary Rates for Students of All Races

Since the revised code went into effect in the 2008-09 school year, DPS’ referrals have dropped to their second lowest amount in ten years (512 referrals in the 2011-2012 school year compared to a high of 1,399 in 2003-04) despite a 12 percent increase in enrollment.²¹ Referrals to law enforcement have dropped for students of all races. Referral rates for African-American students are at their second lowest rate in ten years and currently stand at half the peak referral rate in the 2002-03 school year (1.39% referral rate in 2011-12 compared to 2.81% referral rate in 2002-03).²² Latino students have experienced a near three-fourths reduction in referral rates

Brief Analysis of K-12 Student Discipline Incidents 10 (2008), available at http://www.cde.state.co.us/cdereval/download/PDF/StudentDisciplineIncidents/CDE_SDI.Analysis_2006.2007.pdf. The police contact captured by Colorado’s “referred to law enforcement” is roughly analogous to the Class C citations issued to Bryan ISD students in that it denotes formal police/student contact that does not necessarily result in arrest.

¹⁷ Advancement Project, *Education on Lockdown*, *supra* note 15, at 24.

¹⁸ See Advancement Project, *Test, Punish, and Pushout* 35 (2010), available at http://b.3cdn.net/advancement/d05cb2181a4545db07_r2im6caqe.pdf.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Colo. Dep’t of Educ., *Suspension/Expulsion Statistics for 2011-12*, <http://www.cde.state.co.us/cdereval/suspend-expelcurrent.htm>; Colo. Dep’t of Educ., *Suspension/Expulsion Statistics for 2003-04*, <http://www.cde.state.co.us/cdereval/rv2004SDIIncidents.htm>. DPS’ enrollment rate increased from 72,361 in fall 2001 to 80,890 in fall 2011. Colo. Dep’t of Educ., *Fall 2001 Pupil Membership by School, Ethnicity, Gender & Grade Level*, <http://www.cde.state.co.us/cdereval/rv2001pmlinks.htm>; Colo. Dep’t of Educ., *Fall 2011 Pupil Membership by County, District, Race/Ethnicity, and Percent Minority*, <http://www.cde.state.co.us/cdereval/rv2011pmlinks.htm>.

²² In the 2002-03 school year, the rate of African-American students referred to law enforcement peaked at 2.81 percent (387 African-American students referred out of 13,749 African-American students enrolled). Colo. Dep’t of Educ., *Suspension/Expulsion Statistics for 2002-03*, <http://www.cde.state.co.us/cdereval/rv2003SDIIncidents.htm>; Colo. Dep’t of Educ., *Fall 2002 Pupil Membership by County, District, Race/Ethnicity, and Percent Minority*, <http://www.cde.state.co.us/cdereval/rv2002pmlinks.htm>. In the 2011-12 school year, the rate of African-American students referred to law enforcement dropped to 1.39 percent (159 African-American students referred out of 11,452). Colo. Dep’t of Educ., *Suspension/Expulsion Statistics for*

(down from a peak of 2.39% in 2003-04 to 0.60% in 2011-12), as have white students (down from a peak of 1.20% in 2001-02 to 0.32% in 2011-12).²³ While the continued racial disparities in Denver's referral data indicate Denver's reforms are far from complete, the significant reductions in referral rates suggest meaningful harm reduction for students of all races. Moreover, in collaboration with Padres y Jovenes and Advancement Project, DPS and the Denver Police Department are entering into a new intergovernmental agreement to further reduce referral of DPS students to law enforcement for routine student behavior.²⁴

c. Denver Public Schools Appear Both Safer and More Academically Successful Since the Revision of the Discipline Code

Denver Public Schools appear to be both more orderly and more academically successful since the district revised its discipline code. In addition to reducing referral rates, DPS reduced the suspension rate by 33% and the expulsion rate by 54% since implementing its code revision.²⁵ DPS' four-year graduation rates have improved district-wide (from 49% in 2007-08

2011-12, <http://www.cde.state.co.us/cdereval/suspend-expelcurrent.htm>; Colo. Dep't of Educ., *Fall 2011 Pupil Membership by County, District, Race/Ethnicity, and Percent Minority*, <http://www.cde.state.co.us/cdereval/rv2011pmlinks.htm>.

²³ In the 2003-04 school year, the rate of Latino students referred to law enforcement peaked at 2.39 percent (982 Latino students referred out of 41,166 Latino students enrolled). Colo. Dep't of Educ., *Suspension/Expulsion Statistics for 2003-04*, <http://www.cde.state.co.us/cdereval/rv2004SDIIncidents.htm>; Colo. Dep't of Educ., *Fall 2003 Pupil Membership by County, District, Race/Ethnicity, and Percent Minority*, <http://www.cde.state.co.us/cdereval/download/pdf/2003PM/20032004PMBYDISTRICT%25MINORITY.pdf>. In the 2011-12 school year, the rate of Latino students referred to law enforcement dropped to 0.6 percent (283 Latino students referred out of 47,109). Colo. Dep't of Educ., *Suspension/Expulsion Statistics for 2011-12*, <http://www.cde.state.co.us/cdereval/suspend-expelcurrent.htm>; Colo. Dep't of Educ., *Fall 2011 Pupil Membership by County, District, Race/Ethnicity, and Percent Minority*, <http://www.cde.state.co.us/cdereval/rv2011pmlinks.htm>. In the 2001-02 school year, the rate of white students referred to law enforcement peaked at 1.20 percent (181 white students referred out of 15,124 white students enrolled). Colo. Dep't of Educ., *Suspension/Expulsion Statistics for 2001-02*, <http://www.cde.state.co.us/cdereval/download/pdf/2002SDI/2001-02SDIWhite.pdf>; Colo. Dep't of Educ., *Fall 2001 Pupil Membership by County, District, Race/Ethnicity, and Percent Minority*, <http://www.cde.state.co.us/cdereval/download/pdf/2001PM/2001DenverCountyPM.pdf>. In the 2011-12 school year, the rate of white students referred to law enforcement dropped to 0.32 percent (53 white students referred out of 16,506). Colo. Dep't of Educ., *Suspension/Expulsion Statistics for 2011-12*, <http://www.cde.state.co.us/cdereval/download/PDF/2012SDI/WhitebyDistrict.pdf>; Colo. Dep't of Educ., *Fall 2011 Pupil Membership by County, District, Race/Ethnicity, and Percent Minority*, <http://www.cde.state.co.us/cdereval/download/PDF/2011PM/PupilMembershipbyCountyDistrictRace-EthnicityandPercentMinority.pdf>.

²⁴ Nirvi Shah, *With New Effort, Denver Tackles School-to-Prison Pipeline*, Education Week, Rules for Engagement Blog (Feb. 19, 2013, 7:09 AM), <http://blogs.edweek.org/edweek/rulesforengagement/IGA%20with%20summary.pdf>

²⁵ In 2007-08, DPS enrolled 73,053 students, suspended 10,161 students (a 13.90% suspension rate) and expelled 123 students (a 0.17% expulsion rate). Colo. Dep't of Educ., *Fall 2007 Pupil Membership by County, District, Race/Ethnicity, and Percent Minority*, <http://www.cde.state.co.us/cdereval/download/PDF/2007PM/District/Dist%25Minority.pdf>; Colo. Dep't of Educ., *Suspension/Expulsion Statistics for 2007-08*, <http://www.cde.state.co.us/cdereval/download/PDF/2007-2008SDI/TotalRaceData.pdf>. DPS enrolled 80,890 students in the 2011-12 school year, suspended 7,523 (a 9.30% suspension rate) and expelled 63 students (a 0.078% expulsion rate). Colo. Dep't of Educ., *Suspension/Expulsion Statistics for 2011-12*, <http://www.cde.state.co.us/cdereval/download/PDF/2012SDI/2012AllbyDistrict.pdf>; Colo. Dep't of Educ., *Fall 2011 Pupil Membership by County, District, Race/Ethnicity, and Percent Minority*,

to 59% in 2010-11) and for African Americans as well (up from 56% in 2007-08 to 58% in 2011-2012).²⁶

3. Waco Independent School District

In 2010, the Criminal Justice Division of Governor Rick Perry's office decided to support a pilot project to create a "positive policing" model for school districts with high ticketing rates. The program's goal is to identify alternatives to the use of Class C ticketing whose use would not have a negative impact on school safety. After the Waco Independent School District ("Waco ISD") expressed an interest, the Governor's office began working with the school district and stakeholders to create a pilot program implemented during the 2011-12 school year.

Waco ISD is demographically similar to Bryan ISD in many respects. Waco ISD is roughly the same size as Bryan ISD – with a student enrollment of 15,251 during the 2011-12 school year.²⁷ About 31 percent of the Waco ISD student body is African American, 56 percent of students are Hispanic, and 11 percent of Waco ISD's students are white.²⁸ While the school district had a slightly higher percentage of students who were determined to be "economically disadvantaged" (88 percent) or "at risk" (70 percent) in 2011-12, these numbers are also comparable to Bryan ISD.²⁹ Waco ISD's use of ticketing prior to implementation was also similar, with 649 tickets issued in 2010-11.³⁰

The model for the Waco ISD project drew upon the success of Clayton County, described above, and other school districts that had dramatically reduced referrals to law enforcement.³¹ Waco ISD put into place a three-tiered system that provided school-wide prevention programs, targeted interventions for students who did not respond to school-wide programs and more intensive interventions for students who needed additional supports.³² Waco ISD also amended its policy to limit the use of Class C ticketing, requiring the use of the three-tiered intervention

<http://www.cde.state.co.us/cdereval/download/PDF/2011PM/PupilMembershipbyCountyDistrictRace-EthnicityandPercentMinority.pdf>.

²⁶ Colo. Dep't of Educ., *Graduates and Completers by District, Gender, Race/Ethnicity, Class of 2008*, <http://www.cde.state.co.us/cdereval/rv2008GradLinks.htm>; Colo. Dep't of Educ., *Graduates and Completers by District, Gender, Race/Ethnicity, Class of 2012*, <http://www.cde.state.co.us/cdereval/gradcurrent.htm>.

²⁷ Texas Educ. Agency, *Academic Excellence Indicator System, 2011-12 District Performance Report for Waco ISD*, available at <http://ritter.tea.state.tx.us/perfreport/aeis/2012/district.srch.html> (search "Waco").

²⁸ *Id.*

²⁹ *Id.*

³⁰ See Appendix I (Office of the Governor, Criminal Justice Division, Waco ISD & Public Policy Research Institute of Texas A&M University, *Positive Policing in Waco ISD: Re-thinking Law Enforcement in Texas Schools*, PowerPoint presentation). This is substantially lower than the number of tickets issued when Texas Appleseed conducted its data analysis of school-based ticketing. The data provided for that analysis showed more than 1,000 tickets issued during the 2006-07 school year.

³¹ Waco ISD and the Governor Perry's office consulted with Judge Steven C. Teske, who developed the Clayton County program, when they were drafting the Waco ISD model. For other localities outside of Texas using this model, see *supra* note 13.

³² See Appendix I

system before ticketing unless the student posed a safety threat to the campus or general public.³³ The policy specifically required alternatives in lieu of ticketing for “Disorderly Conduct” violations if the student’s behavior did not pose a threat or represent a willful violation after the student had been given a warning.³⁴

Though this program is only in its second year of implementation, early data analysis—provided by the Texas A&M Public Policy Research Institute (the same entity that collaborated on the Council of State Governments study)—is very promising. Ticketing dropped 77 percent between the preceding year and the first year of the pilot’s implementation, with only 148 citations issued in 2011-12.³⁵ Given these positive results, Waco ISD is expanding the pilot to include alternatives to exclusionary school discipline this school year.

³³ See Appendix J at 4 (Waco ISD, Law Enforcement Operations Policy Section 7.26, Title – Juvenile Offender Guidelines (2012)).

³⁴ *Id.*

³⁵ Appendix I While the number of African-American students ticketed is still disproportionate to their representation within the student body, the number of African-American students who received tickets fell 77 percent after the pilot was implemented, with 209 African-American students receiving tickets the year prior to implementation and 48 receiving tickets after implementation.