



State Attorneys General Leadership in Ending the School to Prison Pipeline

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The Progressive State Leaders Committee (PSLC) works to better understand how the public perceives state attorneys general and develop methods to better communicate how actions taken by state attorneys general impact the public.

SUMMARY

Addressing the school to prison pipeline speaks to the core work of attorneys general—keeping communities safe. Through driving solutions to break the school to prison pipeline, attorneys general can address key policy priorities of many of their offices: reducing juvenile crime and reducing the disparate impact of school discipline practices for Black and Brown students. Initiatives launched by Michigan Attorney General Dana Nessel and Illinois Attorney General Kwame Raoul, in partnership with the National Education Association, have demonstrated how state attorneys general provide leadership in the effort to break the school to prison pipeline.

This paper provides details regarding these initiatives as well as recommendations for state attorney general offices to address the school to prison pipeline:

1. **Convene stakeholders**—Use the convening power of the office of the attorney general to bring together stakeholders including school districts, law enforcement, parents, and students to develop and promote innovative and sustainable ways to address the school to prison pipeline.
2. **Issue guidance**—Provide state-wide legal guidance to school districts informing them of their obligations under state civil rights laws and to give them the latitude to implement innovative programs such as restorative justice initiatives.
3. **Develop partnerships**—Strong partnerships between attorneys general offices and federal, state, and local agencies can generate good will and resources, and prompt intergovernmental action to support new policies that address the school to prison pipeline.

INTRODUCTION

Solving the school to prison pipeline has become an important civil rights issue operating at the intersection of racial justice, education, and mass incarceration. Broadly speaking, the school to prison pipeline refers to the “disturbing national trend wherein youth are funneled out of public

schools and into the juvenile and criminal legal systems”.¹ These youth are primarily Black and Brown and often come from low-income backgrounds. In addition, studies have also shown that students who were exposed to the criminal legal system, and police officers in particular, while attending school have markedly lower graduation rates and college enrollment levels than their counterparts.²

The National Education Association (NEA) has been a tremendous leader in acknowledging and working to eradicate the school to prison pipeline. In 2013, NEA made a formal commitment to ending the school to prison pipeline.³ In 2015, former NEA president Lily Eskelsen-Garcia created a task force to examine the school to prison pipeline and recommend policy initiatives. The task force recommended combatting the school to prison pipeline by addressing disparities in discipline, providing educators with training, working with community members, and engaging students and family.⁴ In 2016, NEA unanimously accepted these recommendations. In doing this, and more, NEA has been an invaluable partner for attorneys general in their work to address the school to prison pipeline.

In almost all jurisdictions in the United States, the state attorney general (referred to in this report as attorney general or AG) is the chief law enforcement officer of the state, tasked with ensuring that equal justice is a reality for all. As part of this responsibility and power, AGs can lead on education justice as well as efforts to solve the school to prison pipeline. For example, AGs can use their jurisdictional authority to convene state actors and stakeholders in developing a wide range of solutions. AGs can also provide legal guidance on the role of police officers in schools and the disparate use of suspensions as a disciplinary tool.

In 2020, the Progressive State Leaders Committee, alongside the NEA, partnered with AGs in Illinois and Michigan to use the power of their respective offices to address the school to prison pipeline. The results of this collaboration demonstrate that by working with educators and school boards, utilizing the tremendous convening power of the AG office, and providing legal guidance and support to schools, AGs can have a transformative impact on the lives of young people. This report will highlight these successful initiatives and will offer recommendations for attorneys general for initiatives that could be implemented in their respective states.

¹ *School-to-Prison Pipeline*. (2022, April 4). American Civil Liberties Union. <https://www.aclu.org/issues/juvenile-justice/juvenile-justice-school-prison-pipeline>.

² Barnum, M. (2020, February 3). New studies point to a big downside for schools bringing in more police. *Chalkbeat*. Retrieved March 31, 2023, from <https://www.chalkbeat.org/2019/2/14/21121037/new-studies-point-to-a-big-downside-for-schools-bringing-in-more-police>.

³ Flannery, M. E. (2015, January 5). The School-to-Prison Pipeline: Time to Shut it Down. *National Education Association*. Retrieved March 31, 2023, from <https://www.nea.org/advocating-for-change/new-from-nea/school-prison-pipeline-time-shut-it-down#:~:text=The%20practice%20of%20pushing%20kids,formal%20commitment%20to%20close%20it>.

⁴ Gilbert, K. (2016, December 23). The School-To-Prison Pipeline Is An Epidemic That Can Be Cured. *Racial Justice NOW!* Retrieved March 31, 2023, from <https://rjnohio.org/the-school-to-prison-pipeline-is-an-epidemic-that-can-be-cured/>,

MICHIGAN ATTORNEY GENERAL DANA NESSEL SUCCESSFULLY PROMOTED RESTORATIVE JUSTICE PRACTICES IN SCHOOLS

In Michigan, AG Nessel has worked to promote equitable restorative justice practices in school discipline. In doing this, AG Nessel has recognized that, for far too long, disciplinary practices in schools have been excessively punitive and disproportionately impact students of color. AG Nessel led a coalition of AGs in advocating for federal guidance on the school to prison pipeline and has also conducted tours of schools within her state that have engaged positively with students in cultivating an environment that treats students fairly and promotes their success.

Advocating for Restorative Practices

It has been a long-standing practice in many schools to suspend students as a disciplinary tool. As can be expected, a student who is habitually suspended is likely to suffer academically. Even more alarming is that Black students are suspended at disproportionate rates compared to other students. In fact, in 2016, the Government Accountability Office found that “nearly 24% of [B]lack students in U.S elementary and secondary schools had been suspended at least once”.⁵ By contrast, only 8% of White students and 4% of Asian students were suspended.⁶ In addition, a recent Stanford University study showed that “a 10 percentage point increase in the Black-white discipline in a school district predicts an achievement gap that is 17 percent larger than the average Black-white achievement gap.”⁷ Put simply, the use of suspensions as a disciplinary tool directly results in racial disparity and poor academic outcomes. Restorative justice practices address these issues by looking to holistically confront the challenges a student may be facing rather than suspending them or putting them into contact with law enforcement.

In an attempt to confront this glaring discrepancy and to move schools towards utilizing restorative practices, in 2014, the United States Department of Education (DOE) issued guidance to schools on student discipline. The federal guidance urged schools to re-think approaches to discipline with a view to ensure that students of color were not subject to discrimination through suspension and expulsion policies and to ensure adherence to civil rights laws.⁸ However, in 2018, the Trump administration rescinded the guidance, and no new federal guidance has been released to date.⁹

⁵ Zill, N., & Wilcox, B. (2019, November 19). The Black-White Divide in Suspensions: What Is the Role of Family? *Institute for Family Studies*. Retrieved March 31, 2023, from <https://ifstudies.org/blog/the-black-white-divide-in-suspensions-what-is-the-role-of-famil>.

⁶ Zill, N., & Wilcox, B. (2019, November 19). The Black-White Divide in Suspensions: What Is the Role of Family? *Institute for Family Studies*. Retrieved March 31, 2023, from <https://ifstudies.org/blog/the-black-white-divide-in-suspensions-what-is-the-role-of-famil>.

⁷ S, C. (2019, October 16). *Racial disparities in school discipline are linked to the achievement gap between Black and white students nationwide, according to Stanford-led study*. Stanford University School of Education. Retrieved April 16, 2023, from <https://ed.stanford.edu/news/racial-disparities-school-discipline-are-linked-achievement-gap-between-black-and-white>.

⁸ US Department of Education (ED). (n.d.). *School Climate and Student Discipline Resources*. <https://www2.ed.gov/policy/gen/guid/school-discipline/index.html>.

⁹ Marcus, Kenneth (December 21, 2018). [Letter from Assistant Secretary for Civil Rights, U.S. Department of Education, Kenneth Marcus to Colleagues]. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201812.pdf>.

a. Advocacy Through the Power of the Pen

Recognizing the need for federal guidance on this critical issue, in May 2021, Michigan Attorney General Dana Nessel led a coalition of 23 state attorneys general in submitting a letter to DOE and the United States Department of Justice (DOJ) highlighting that disciplinary data shows an overwhelming discrepancy in suspensions and expulsions between students of color and their White peers. The AGs requested that the DOE both reinstate and expand previously issued guidance that would ensure schools were seriously taking their legal obligations to administer student discipline equitably.¹⁰

In addition, at the start of 2021 school year, Attorney General Nessel sent a letter to all Michigan public school principals and superintendents. In this letter, she reminded educators that “Michigan law now *requires* schools to consider restorative practices when it comes to student discipline”.¹¹ She also shared that “studies have shown one of the most effective methods of reducing these (racial) disparities is the implementation of restorative justice programs and practices”.¹²

b. Advocacy Through the Power to Convene

School Tours

AG Nessel has expanded her advocacy work for restorative practices by launching a series of school tours, focused on successful restorative justice programs in her state. The purpose of these tours was to shine a positive light and bring much needed attention to schools and educators who are taking innovative approaches to address the school to prison pipeline.

One of the successful programs that AG Nessel highlighted was the restorative justice program in the Lincoln Park school districts. On September 17, 2021, AG Nessel, NEA President Becky Pringle, and Michigan Education Association (MEA) President Paula Herber traveled to Raupp Elementary School in Lincoln Park, Michigan, to learn more about and bring awareness to the Lincoln Park Public Schools Resilient Schools Project. The Resilient Schools Project is an initiative that recognizes the role that exposure to trauma and poverty has on the ability of a student to focus on school. For instance, rather than using suspension as an immediate disciplinary tool, students at some Lincoln Park Public Schools have access to

¹⁰ Nessel, Dana (May 24, 2021). [Letter from Attorney General of Michigan Dana Nessel, et al. to the Honorable Miguel A. Cardona to Secretary of Education, U.S. Department of Education and the Honorable Merrick B. Garland, Attorney General, U.S. Department of Justice]. Retrieved from https://ncdoj.gov/wp-content/uploads/2021/05/School-Discipline_Multi-State-letter_Final.pdf.

¹¹ Nessel, Dana (October 13, 2021) [Letter from Attorney General of Michigan Dana Nessel, et al. to Michigan Public School Principals and Superintendents]. Retrieved from <https://www.michigan.gov/ag/-/media/Project/Websites/AG/restorative-practices/restorative-practices-for-students.pdf?rev=ed26438a5c3f41ae9abd6c1554d6024e&hash=5B619D7BAFB2F025EA3FD1A938CD9865>.

¹² Nessel, Dana (October 13, 2021) [Letter from Attorney General of Michigan Dana Nessel, et al. to Michigan Public School Principals and Superintendents]. Retrieved from <https://www.michigan.gov/ag/-/media/Project/Websites/AG/restorative-practices/restorative-practices-for-students.pdf?rev=ed26438a5c3f41ae9abd6c1554d6024e&hash=5B619D7BAFB2F025EA3FD1A938CD9865>.

sensory rooms that allow them to reset their minds and mental health services. In addition, teachers are trained to both recognize trauma in a child and prepare individualized learning plans that bolster their success.

After the visit to Raupp Elementary School, AG Nessel, using the power of her elected office, assisted in convening a meeting between the DOE, the DOJ, and Michigan educators. During this meeting, DOE and DOJ officials learned more about the restorative justice practices at the Lincoln Park schools as well as the importance of issuing federal guidance that would support and bolster this very important work. The educators also had the rare opportunity to take questions from the DOE and DOJ officials on the success of their restorative justice practices and share best practices.

In addition, in April 2022, AG Nessel spotlighted another initiative by Riverside Middle School, where approximately 97% percent of staff have been trained in restorative practices and where the amount of “fights suspensions and expulsions has dropped since the last time the district had a full year of in-school education.”¹³

Movie Screening

On October 26, 2021, AG Nessel participated in a panel discussion after the screening of a film, *On These Grounds*. The movie documents the path of a Black girl who was assaulted by a police officer as he attempted to remove her from class for allegedly being disruptive. The violence enacted on the young student had an outsized impact on her future endeavors. After the premiere of the movie, AG Nessel and MEA President Paula Herbert spoke about the school to prison pipeline and the work being done in Michigan to promote restorative justice principles.

In engaging so thoroughly with the community, AG Nessel is using the power and credibility of the AG office to dismantle to school to prison pipeline.

ILLINOIS ATTORNEY GENERAL RAOUL DEVELOPED STRONG PARTNERSHIPS TO PROMOTE AND SUPPORT NEW METHODS FOR ADDRESSING THE SCHOOL TO PRISON PIPELINE

Illinois Attorney General Kwame Raoul has been a leader in the fight to end the school to prison pipeline. In 2021, AG Raoul issued detailed guidance to school districts regarding their legal obligation to administer disciplinary policies while respecting students’ civil rights. In addition, AG Raoul created a program that partnered law enforcement, mental health professionals, and students in constructing a more holistic approach to assisting students who have experienced violence and trauma in their lives. In doing this, AG Raoul has worked to create a supportive environment that respects the rights of students and provides them with pathways to a successful future.

¹³ Herndon, D. (2022, April 12). Restorative practices training proving to be successful in the Crestwood School District. *Press and Guide*. <https://www.pressandguide.com/2022/04/06/restorative-practices-training-proving-to-be-successful-in-the-crestwood-district/>.

a. Total Access Collaborative for Trauma Informed Care (TACTIC) program

The TACTIC program first began in Park Forest, Illinois, a town south of Chicago, Illinois. The TACTIC program brings many stakeholders to the table with the goal of identifying and assisting students who have had exposure to trauma and violence. The program is multifaceted and combines several strategic elements to accomplish this goal. First, there is a training element in which the broader school community is educated on the causes of trauma and how trauma affects students. Second, the TACTIC program provides needs assessments to community police departments focused on reviewing protocol to ensure adherence to best practices on trauma training. Finally, the program constructs a collaborative partnership between law enforcement and school districts to ensure that schools are aware of students who have recently had interactions with the police in the community. As a result of these collaborations and trainings, schools are notified that a particular student may need to be treated with care and consideration in light of that incident, with the goal of preventing future incidents where police would be involved.

TATIC has proven to be a successful in decreasing minor arrests in Park Forest—since training began in 2016, young persons in custody have decreased by 80 percent.

b. Guidance to School Districts

On December 17, 2021, as a result in part of a lack of federal guidance, AG Raoul, along with the Illinois State Board of Education, issued state guidance to Illinois school districts aimed at ensuring that disciplinary practices by schools adhered to civil rights laws.¹⁴ In announcing the guidance, AG Raoul stated that “school districts have a responsibility to ensure that disciplinary policies do not disproportionately impact students of color.”¹⁵

The guidance begins by reminding school districts of existing state and federal civil rights protections for students. In particular, AG Raoul indicated that although the 2014 federal guidance promoting equitable school discipline was rescinded by the Trump administration, Illinois remains committed to the core principles that undergirded that guidance. The new guidance from the IL AG and State Board of Education informed school districts that the Illinois Attorney General has the statutory authority to commence investigations and civil actions to protect the civil rights of Illinois residents. This guidance also cautioned school districts that they can be investigated by the AG’s office—not only if intentional discrimination can be proven, but if there exists any practice and/or policy that results in a disparate impact, regardless of malicious intent.

In addition, the guidance raised awareness that some school discipline practices can cause a disparate impact in outcomes for students of color. It also noted that although in 2016

¹⁴ Office of the Illinois Attorney General. (2022, March 1). *ATTORNEY GENERAL RAOUL, STATE BOARD OF EDUCATION ANNOUNCE GUIDANCE TO COMBAT SCHOOL-TO-PRISON PIPELINE* [Press release]. https://ag.state.il.us/pressroom/2022_03/20220301.html.

¹⁵ Office of the Illinois Attorney General. (2022, March 1). *ATTORNEY GENERAL RAOUL, STATE BOARD OF EDUCATION ANNOUNCE GUIDANCE TO COMBAT SCHOOL-TO-PRISON PIPELINE* [Press release]. https://ag.state.il.us/pressroom/2022_03/20220301.html.

the Illinois state legislature passed legislation that severely regulated the use of suspensions as a disciplinary tool,¹⁶ there was still a disparity in suspensions between Black and White students. As such, the guidance suggests that schools develop reviews that severely scrutinize data on disciplinary action outcomes and modify as necessary when the evidence points towards disparate impact. Importantly, AG Raoul and the Board recognized that hair and dress codes often target Black female students, and they strongly cautioned schools to ensure that any enforcement of these policies do not result in discrimination.

The guidance also addressed the role of police officers in schools, and recognized that for non-White students, the presence of police officers engenders fear and not a feeling of comfort or safety. In addition, there is a widespread recognition that “research does not show that police in schools enhance student safety.”¹⁷ As such, schools should re-think student safety and invest in mental health professionals and social workers to ensure that schools are a safe and welcoming school environment for all students.

AG Raoul has already demonstrated a willingness to use the guidance to swiftly act to ensure schools are complying with state civil rights laws. Although Illinois law precludes using fines to discipline students, it was uncovered that some school officials were circumventing this law by sending students to police officers for discipline, and the police officer would issue a ticket to the student for violations (including vaping, fighting, and littering) of local ordinances.¹⁸ In May 2022, AG Raoul opened an investigation into the school discipline practices of Township High School District 211 soon after reporting uncovered a significant amount of ticketing in the district and racial disparities in ticketing practices.¹⁹ One of the major reasons the office was able to act swiftly when this information was uncovered was because the legal analysis to support the investigation had already been achieved through the guidance.

In issuing this strong and robust guidance, as well as utilizing it as a tool to quickly act on potential violations of Illinois civil rights law, AG Raoul has demonstrated a strong commitment to protecting students and addressing the root causes that result in the school to prison pipeline.

RECOMMENDATIONS FOR AG OFFICES

1. Utilize the Convening Power of the Office of Attorney General

The Office of the Attorney General inherently has tremendous power to convene and bolster collaboration between relevant stakeholders and government agencies. AG Nessel

¹⁶ School Code, 105 Illinois Compiled Statutes 5/10–22.6(b-10).

¹⁷ *Guidance to School Districts: Legal Standards and Enforcement of Civil Rights Laws Related to School Discipline in Illinois*. (2021). Retrieved April 16, 2023, from <https://bloximages.newyork1.vip.townnews.com/wrex.com/content/tncms/assets/v3/editorial/f/01/f01a5ea4-9983-11ec-8635-0f2999772e53/621e55fedcbb8.pdf>.

¹⁸ Richards, J.S.C.S. (2023, March 3). New Bill Could End Police Ticketing in Illinois Schools. *ProPublica*. <https://www.propublica.org/article/illinois-school-police-tickets-law-reform>.

¹⁹ Cohen, J. S. R. S. (2022, May 25). Illinois Will Investigate Possible Civil Rights Violations in Student Ticketing. *ProPublica*. <https://www.propublica.org/article/illinois-will-investigate-possible-civil-rights-violations-in-student-ticketing>.

demonstrated this by convening educators and senior officials from multiple federal agencies and brokering an honest and productive conversation. AGs should encourage collaboration between stakeholders, including school districts, law enforcement, parents, and students in thinking through creative and sustainable ways to address the school to prison pipeline. No individual entity can singularly achieve this, but with collaboration and convening, there can be a collective solution.

2. Issue Legal Guidance

As can be seen with AGs Nessel and Raoul, there is immense value in providing school districts with written legal guidance. Formal guidance not only provides schools with a sense of direction, but also serves as a strong statement of intent and priority on the part of the AG. In clarifying the legal obligations of school districts towards their students, an AG sets the standard for school districts across the state. Such guidance can also give schools permission to experiment and innovate where the AG clarifies that state law does not prohibit schools from implementing programs such as restorative justice initiatives. This allows for school districts to engage in self-reflection and can assist them in understanding their obligations to the students.

3. Develop Strong Partnerships, Including with State and Local Agencies

Both AGs Nessel and Raoul found success with their initiatives by developing strong partnerships with local and state officials. Their partners brought a unique perspective that proved valuable. For example, with the TATIC program, working with local officials in Park Forest helped the program succeed. Other offices seeking to address the school to prison pipeline should consider the local or state organizations (both government and non-governmental) that they can enlist to support their initiatives.

The Progressive State Leaders Committee is a 501(c)(4) advocacy organization that promotes progressive policies centered on justice, fairness, and equity for all persons. The Committee advances solutions to emerging legal and policy issues on both the federal and state level, with a focus on how state attorneys general and other decision-makers can promote innovative and progressive policies grounded in the rule of law.
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