Louisiana Center
for Children's Rights

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Via Electronic Mail Only

Jennifer Coco
Chair, Act 522 Commission on Student Behavior & Discipline
Senior Staff Attorney, Children's Rights Practice Group
Southern Poverty Law Center
1055 St. Charles Avenue, Suite 505
New Orleans, LA 70130

Dear Ms. Coco:

On behalf of the Louisiana Center for Children's Rights (LCCR), I write to convey our overall support for the proposed changes to the Louisiana school discipline law, Louisiana Revised Statute 17:416, and to highlight certain respects in which we believe the changes could be further improved.

LCCR defends the right of Louisiana's most vulnerable children to fairness, dignity, and opportunity. We defend young people in Louisiana's juvenile justice system through both direct representation and policy advocacy. Many of our clients have been subject to harsh school discipline policies and practices, both before and after their introduction into the juvenile justice system. Our experience in representing these children has led us to believe that overly punitive disciplinary treatment frustrates rather than facilitates the development and rehabilitation of youth. We believe that children learn best when they remain in the classroom and receive the interventions and supports that they need to thrive in school.

Overall, we support the proposed changes to the law. We believe that the reorganization of the proposed law brings much needed clarity to a convoluted and poorly organized area of the legislative code. We support the move towards limiting "zero tolerance" approaches to discipline and we endorse the various ways in which the changes encourage schools to employ interventions and supports.

At the same time, we believe that various aspects of the proposed law could benefit from further improvement, and below we identify some of the potential ways in which those improvements might be made.

<u>Juvenile Justice Concerns</u>

As a juvenile justice organization, we are particularly concerned with the provisions of the existing discipline law that limit the reenrollment of those youth who have been adjudicated delinquent of felony-level offenses following a period of incarceration and that permit schools to expel students for committing offenses that have no connection to the school environment.

Although the proposed revisions would make it clear that children cannot be excluded from a school district simply because of a juvenile adjudication and subsequent incarceration, the revisions would continue to allow districts to place children returning from a period of incarceration into an alternative school for "good cause." Proposed Recommendations for Legislative Changes to 17:416 ("Proposed Law"), at pp. 19-20. In addition, the revisions leave unchanged the current law's stipulation that individual schools may expel children for felony-level juvenile offenses, including those that were in no way connected to the child's school. Proposed Law at p. 19.

We believe that all children are entitled to an education and that Louisiana law should not bar children from returning to school when they are released from incarceration. We further believe that – absent a particular, demonstrable risk to the safety of other students at the school if the student is allowed to remain in the school – the juvenile justice system should function as the exclusive avenue for addressing offenses that are in no way connected to a school. We feel that school-inflicted punishment for such offenses is both unfair to students and unjustified by countervailing policy considerations. For these reasons, we would encourage the Commission to consider further restricting schools' disciplinary powers under these circumstances.

In addition, we have concerns that the revisions leave unchanged features of current law that violate students' confidentiality rights under the Louisiana Children's Code. Louisiana Children's Code Article 412 provides that juvenile court proceedings are closed and permits the disclosure of records only by leave of the juvenile court. By permitting schools to take disciplinary action based upon a student's incarceration or an adjudication, current law frequently places schools in the position of seeking information about the results of proceedings that are supposed to be confidential. This concern further bolsters our conclusion that schools should not be permitted to discipline students for juvenile offenses unrelated to school.

Finally, although we appreciate that the proposed law "presumptively" favors the placement of students returning from incarceration into a regular education program, we are concerned about provisions of the proposed law that permit the placement of a child in alternative school upon a showing of good cause. Proposed Law at p. 19. We believe that the "good cause" standard is vague and susceptible to misuse. We suggest instead that the Commission recommend a more specific and student-friendly standard in its place. The law might, for instance, limit the use of alternative programs to circumstances in which such a program has been prescribed by order of the juvenile court (or other court with jurisdiction over the child), or permit placement in an alternative program only when there exists a serious, documentable, safety risk to placing the student back into the regular school program.

Due Process

We favor many of the Committee's proposed changes to the "due process" provisions of the discipline law. Proposed Law at p. 7. Among other things, we believe that these changes will help to clarify the procedure for both parents and school districts when students are facing expulsion and will help to limit the amount of time that students spend out of school. But here too we have lingering concerns.

First, regarding the time period within which a school must convene an expulsion hearing, while we believe that the Committee's proposed 15-day maximum marks a significant improvement over the current law's failure to prescribe any such maximum, we would nonetheless favor an even shorter limit. Proposed Law at p. 7. In our view, schools should be required to make every

effort to mitigate the harmful effects of absences incurred as a result of an expulsion hearing, and we believe the law could do more to incentivize schools to act in this way.

Additionally, we believe that in order to create a meaningful right to challenge an expulsion decision in court, parents should be given longer than 10 days to bring their appeals of an adverse expulsion decision to court. Proposed Law at p. 7. It is unrealistic to expect a parent – especially a parent operating without representation – to bring their case to court in only 10 days. Something on the order of a 30-day period is necessary to ensure that parents receive a meaningful opportunity to seek judicial redress for wrongful expulsion decisions.

Finally, although we appreciate that the law seeks to minimize the negative impact of a school removal on students by allowing students to receive credit for work completed while they are suspended or awaiting an expulsion hearing, we would suggest making the statement on credit for work completed during a removal from school even stronger. In particular, we would suggest that the law provide that children "shall" receive the same credit originally available for work completed while they are out of school if it is satisfactorily and timely completed. Proposed Law at p. 7.

Serious Disciplinary Incidents

As noted above, we support the preamble statement that schools' attempts to address student behavior should, to the maximum extent possible, be focused on interventions and supports rather than school removals. Proposed Law at p. 1. Underlying this position is the principle that schools should not take a "zero tolerance" approach to discipline. While we were very pleased to see that the proposed revisions eliminate the mandatory expulsion for the fourth suspension in a school year (Proposed Law at p. 9), we were disheartened to see that the proposed bill maintains many of the "zero tolerance" standards that the existing law employs. Specifically, the proposed law continues to *mandate* lengthy expulsions for controlled substances and firearms, *mandate* that a student expelled for a these violations complete a rehabilitation program prior to returning to school, and *mandate* a referral to the district attorney. Proposed law at pp. 13, 15, 16, 17. We believe that these decisions concerning expulsion should be rendered on an individualized, case-specific basis by those best equipped to make them at the local school or school district level, not prescribed *ex ante* in a categorical fashion.

Additionally, we have concerns about the length of the mandatory expulsion terms contained within both the original discipline law and the proposed revisions. As currently written the law provides for a *minimum* expulsion of four semesters for a firearm or controlled substance offense, and the proposed revisions would leave that provision fully intact. Proposed Law at pp. 15, 16. A minimum term of two school years – with the potential for a significantly longer expulsion – represents a significant portion of a child's time in school. In general, and as noted above, we suggest that schools and administrators be given the discretion and flexibility to determine the length of expulsions on an individualized and case-specific basis, and that the law include these time periods as *maximum* rather than *minimum* expulsion terms.

Evidence-Based Interventions and Supports

As noted above, we were encouraged to see that the proposed law encourages schools to pursue interventions short of removal that can help to address students' behavior. Proposed Law at p. 1. We do believe that the interventions and supports schools employ should be "evidence-based,"

so as to ensure that students receive the benefit of proven and effective attempts to address behavioral issues.

To that end, we would propose that the proposed law expressly stipulate that interventions and supports should be evidence-based. Such a requirement would bring this section of the law into alignment with other sections dealing with the treatment of children. *See, e.g.*, the "use of evidence-based and promising services [should be used] wherever possible" in the development of programs and policies in the juvenile justice context, La. R.S. § 15:1442; *see also* La. R.S. §§ 15:945 and 15:971.

School Codes of Conduct

Finally, we wish to highlight our support for the proposal regarding school codes of conduct. We are pleased that the revised law would encourage schools to limit expulsions to serious offenses or the accumulation of numerous minor offenses. Proposed Law at p. 7. We agree that expulsions should be "reserved for the most severe tier of behavioral infractions involving weapons, drugs, or when the safety of students and staff has been put in imminent jeopardy." *Id.* We believe that this allows districts the flexibility to create their own codes of conduct while making clear that expulsion is to be used only in limited circumstances.

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As stated above, we are generally supportive of the proposed changes to the discipline law, and we are grateful to the Commission's Working Group for its sustained work on this effort. While there remains room for improvement, we are happy to see a move toward prioritizing interventions and supports and minimizing out-of-school removals.

Sincerely,

Anna Arkin-Gallagher
Staff Attorney
Member, Act 522 Commission on
Student Behavior & Discipline