

jps <jps@jpscanlan.com>

8/12/2019 4:04 PM

## Fwd: Key errors in the Beyond Suspensions report

To pkirsanow@beneschlaw.com • gheriot@sandiego.edu • mxavierbrier@usccr.gov •  
debo.adebile@wilmerhale.com • michael@michaelyaki.com

---

This is a note for all Commissioners. I am sending directly only to Commissioners or staff for whom I have email addresses.

Dear Commissioners:

This follows on the forwarded note, where I explained that the most provocative findings in the *Beyond Suspensions* report – (at 35) that 44 percent of black girls with disabilities received multiple out-of-school suspensions and (at 67) that almost 40 percent of all black students with disabilities received multiple out-of-school suspensions – were not true. The report's error involved confusing (a) the proportions of black students with disabilities receiving multiple suspension with (b) the proportion black students with disabilities made up of students with disabilities who received multiple suspension.

As one might expect with so provocative a figure, the 40 percent figure is being featured in reportage of the *Beyond Suspensions* report, as in these two treatments  
<https://www.usnews.com/news/education-news/articles/2019-07-23/civil-rights-commission-tackles-discipline-of-black-students-with-disabilities>  
<https://www.scoop.it/topic/alternative-dispute-resolution-mediation-and-restorative-justice>

Both make this statement, largely tracking language of the *Beyond Suspensions* report at page 67:

“Of those students, 32 percent of black students with disabilities were suspended once and almost 40 percent were suspended repeatedly, meaning, the report underscores, that black students with disabilities were almost three times more likely to be suspended compared to white students with disabilities.”

I assume that the 32 percent figure is also not true and that it is fact the proportion black students with disabilities make up of students with disabilities receiving single suspensions. If both figures were true, the proportion of black students with disabilities receiving one or more suspensions would be 72 percent. I suggest the Commission will find that the reality is that somewhere between 20 and 30 percent of black students with disabilities received one or more suspensions and probably somewhere around 10 percent received multiple suspensions. .

Other reportage regarding the *Beyond Suspensions* report is likely also to highlight these provocative figures, possibly picking up on fact that the 32 percent and 40 percent figures would mean that 72 percent of black students with disabilities received one or more suspensions. Thus, the Commission should regard correcting these figures to be a pressing matter.

Further, both of the references cite those figures, as was done in the *Beyond Suspensions* report, in connection with the fact that black students with disabilities were three times more likely to be suspended than white students with disabilities. That black students with disabilities were almost three times as likely to be suspended as white students with disabilities may well be correct. But, as discussed in the forwarded note, the approximately 3..0 black-white ratio was presented as if it were larger among students with disabilities than among students without disabilities, which is very likely incorrect. Thus, checking and correcting this matter before it, too, is highlighted as a key *Beyond Suspensions* report finding is also a pressing matter.

James P. Scanlan  
Attorney at Law  
1527 30<sup>th</sup> Street, NW  
Washington, DC 20007  
[jps@jpscanlan.com](mailto:jps@jpscanlan.com)

----- Original Message -----

From: jps <jps@jpscanlan.com>

To: pkirsanow@beneschlaw.com, gheriot@sandiego.edu, mxavierbrier@usccr.gov

Date: August 6, 2019 at 1:47 PM

Subject: Key errors in the Beyond Suspensions report

This is a note for all Commissioners. I am sending directly only to Commissioners or staff for whom I have email addresses.

Dear Commissioners:

I intend shortly to write the Commission a letter discussing, with reference to the statistical issue addressed in my testimony, implications of the fact that the *Beyond Suspensions* report leads the public to believe, among other things, that generally reducing suspensions will tend to reduce, rather than increase, the ratio of the black suspension rate to the white suspension and that generally reducing the use of restraints and seclusion will tend to reduce, rather than increase, the proportion students with disabilities make up of secluded or restrained students.

In the meantime, however, I thought I should alert the Commission to three rather serious errors/misrepresentations in the report that pertain to some of the report's most provocative or key findings. While I will address these matters further in the planned letter, I suggest that the Commission start checking these matters now and ensure any incorrect information does not get further disseminated.

First, putting disparities measurement issues aside, the most provocative findings in the report are (at 35) that 44 percent of black girls with disabilities received multiple out-of-school suspensions and (at 67) that almost 40 percent of all black students with disabilities received multiple out-of-school suspensions. These figures are indeed quite shocking, and, if true, would almost certainly mean that black rate of one-or-more suspensions among students with disabilities is well above 50 percent and may approach 100 percent. Both statements are based on the report's Figure 8 (at 74). But as a careful reader of Figure 8 would recognize, though the Figure purports to show (a) the percentages (proportions) of each racial/gender group that received multiple suspensions, it in fact shows (b) the proportion persons in each group who received multiple suspension made up of all persons in the gender group receiving multiple suspensions. By way of example for anyone who does not find the difference between (a) and (b) to be evident, students with disabilities made up 71 percent of students who were physically restrained during the 2015-16 school year (as mentioned in the report at 57), but only (by my calculation) 1.4 percent of students with disabilities were subjected to restraints. I suspect that the actual rates at which black students with disabilities receive multiple suspensions is around the 14 percent figure shown for the 2009-10 school year in Table 1 of the reference in note 190.

Second, the crucial finding with respect to the focus of the report – and in fact the entire race/disability intersection project – is that (at 67) the ratio of the black suspension rate to the white suspension rate was larger among students with disabilities than among students without disabilities. The finding, which is based on Commission staff analysis of raw data and with actual rates for persons with disabilities not shown and with rates or ratio for students without disabilities not shown, is almost certainly wrong. For reasons discussed in my written testimony (at 6) and scores of other places (see, e.g., references 1 to 3 below), one would expect the black-white ratio to be larger among students without disabilities (where rates are generally lower) than among students with disabilities.

Further, Figure 1 of reference in note 190 shows that, in the 2009-10 period studied, the black-white ratio was 4.0 among students without disabilities compared with 2.98 for students with disabilities. And, according to method used in Tables 6 to 8 of my testimony, to the extent the forces causing black and white suspension rates to differ can be measured, they are stronger among students without disabilities than among students with disabilities. While it is not inconceivable that the 2015-16 data examined by Commission staff in fact show a larger black-white ratio among students with disabilities than students without disabilities, it would be a remarkable finding.

Third, exemplary of the report's effort to lead the reader to believe that generally reducing discipline rates will tend to reduce the ratio of the black suspension rate to the white suspension rate, and of the continuing need for such policies that generally reduce discipline rates, is the following sentence that follows such discussion at the end of the first full paragraph on page 148: "For instance, there was an approximately 20 percent drop in

out-of-school suspensions between the 2011–12 and the 2013–14 school year; however, racial disparities still remained where black K–12 students were 3.8 times as likely to receive an out-of-school suspension as white students during the 2013–14 school year.”

Contrary to the implication of the statement, the black-white ratio did not “remain” as high as 3.8, it had increased from 3.57 in the 2011-12 school year. See page 2 of the 2014 Data Snapshot, which shows black and white suspension rates of 16.4% and 4.6%. That is, the ratio did not remain as high as 3.8 despite the 20 percent drop in suspensions, (oversimplifying a little) it increased to 3.8 because of the general reductions.

The above are things that caught my attention while looking certain matters of special interest to me. But issues of the type noted suggest that the report should be checked quite carefully.

Sincerely,

James P. Scanlan  
Attorney at Law  
1527 30<sup>th</sup> Street, NW  
Washington, DC 20007  
[jps@jpscanlan.com](mailto:jps@jpscanlan.com)

1. United States Exports Its Most Profound Ignorance About Racial Disparities to the United Kingdom,” Federalist Society Blog (Nov. 2, 2017)

<https://fedsoc.org/commentary/blog-posts/united-states-exports-its-most-profound-ignorance-about-racial-disparities-to-the-united-kingdom>

2. “It’s easy to misunderstand gaps and mistake good fortune for a crisis,” Minneapolis Star Tribune (Feb. 8, 2014)

<http://www.startribune.com/opinion/commentaries/244080771.html>

3. “The Mismeasure of Health Disparities in Massachusetts and Less Affluent Places,” Quantitative Methods Seminar, Department of Quantitative Health Sciences, University of Massachusetts Medical School (Nov. 18, 2015) ([Abstract](#))

[http://jpscanlan.com/images/Univ\\_Mass\\_Medical\\_School\\_Seminar\\_Nov.\\_18,\\_2015\\_.pdf](http://jpscanlan.com/images/Univ_Mass_Medical_School_Seminar_Nov._18,_2015_.pdf)