

Testimony of Max Eden
Before the House Committee on the Judiciary
March 20, 2018

Good morning Mr. Chairman, ranking member Nadler, and distinguished members of the committee.

My name is Max Eden. I am a senior fellow at the Manhattan Institute for Policy Research where my work focuses on federal education policy and school discipline. Safety ought to be the first priority of our schools. Unfortunately, school leaders have faced coercion from a 2014 Dear Colleague Letter to post ever-lower statistics reflecting troubling and violent behavior.

The mantra of vigilance is, “If you see something, say something.” But in too many schools, principals are now essentially told, “If you see something, don’t say or do anything. Because if you do, *you’ll* be the one to get in trouble.”

The tragedy in Parkland, Florida should never have happened. Yet, despite a string of alleged violence and death threats, Nikolas Cruz passed a criminal background check.ⁱ When the FBI received a tip, they saw a young man without even an arrest record.ⁱⁱ

How? Perhaps because of a policy initiative explicitly intended to lower juvenile arrests. In 2013, Broward County school district overhauled its discipline code and entered into the “PROMISE” agreement with the Broward County Sheriff’s Office to decriminalize violent and non-violent misdemeanors and create additional barriers to school-based arrest.ⁱⁱⁱ

Not surprisingly, school-based arrests plummeted from 1,056 in 2012 to 392 in 2016.^{iv} Across Broward County, juvenile arrests fell from 6,853 in 2012 to 3,644 in 2016.^v Broward Superintendent Robert Runcie and Sheriff Scott Israel took great pride in these declines. Israel declared that he judges his success “by the number of kids we keep out of jail, not the number we put in jail.”^{vi}

Neither is an appropriate metric.

Schools and law enforcement ought to judge their success by how well they keep children safe. But Jeff Bell, the president of the Broward Sheriff’s Office Deputy Association, has reported that this policy shift stripped his officers of discretion. He said that the school district didn’t want “police officers making arrests on campus and they don’t want the drugs to be found on campus and they don’t want the warrants to be served on campus because it looks like there is bad stats at the school.”^{vii} Unfortunately, it seems that leaders in Broward County prioritized statistical self-satisfaction over student safety.

As a researcher, I had heard this tragic story so many times before. Last September, in the Urban Assembly School for Wildlife Conservation in New York City, after years of administrators opting to hide rather than address school violence, a student (whose mother’s warning that he might bring a knife to school was not taken seriously) stabbed and killed his classmate, Matthew McCree.^{viii} Ballou High School in Washington, D.C., which received a glowing profile in the

Washington Post for lowering suspensions in 2016.^{ix} This past January, a special education student was attacked, allegedly with a stun gun, for not letting his classmates use his phone and died a few weeks later. At least, that's what his family believed caused his death. The school would not confirm that the attack occurred on campus.^x At Lincoln High School in San Diego, a male student with cerebral palsy was raped in the bathroom. The teacher who caught the rapist in the act tried to raise the alarm. But the administration downgraded the event to an "obscene act." They did not even attempt expulsion. For their part, the police did not even inform the mother that her son had been raped.^{xi}

These are just the stories that make the news. And, shamefully, appalling as they are, it's not the stories from urban schools serving students of color that shocks our nation's conscience. Yet these tragedies, and the tragedy in Parkland, all have a common theme: adults putting their own professional interest in producing lower disciplinary statistics ahead of their sacred charge to keep our schoolchildren safe. Perhaps because, in all of these districts, that's what policy pressures adults to do.

Broward Superintendent Runcie has said, "Some of my staff joke that the Obama administration might have taken our policies and framework and developed them into national guidelines."^{xii} That is not a funny joke. Shortly after Broward (voluntarily) changed course on school safety, the Obama administration issued a "Dear Colleague Letter" to coerce school districts across America to follow suit.^{xiii}

That letter threatened school districts with federal investigations on the basis of disciplinary statistics. Schools were told that even if their rules were totally fair, even if they were administered totally fairly, they could face a federal investigation and be held liable for "unlawful discrimination" if students of different races broke the rules at different rates. Before the 2014 Letter, an investigation would stop if the allegations were not substantiated. But after the letter, even if the allegation were found false, it still triggered a years-long, district-wide investigation.

The American people have not yet been informed about the true nature or scope of these so-called "investigations." Hundreds of school districts serving millions of students were subjected to years-long fishing expeditions explicitly intended to force them to overhaul their approach to school safety. The nationwide sea-change in school discipline was engineered through coercion in secret by bureaucrats. This was the most egregious federal overreach in the history of American education. Without even issuing a regulation, the Department of Education proscribed and prescribed how teachers could manage the students in their classrooms. The Trump administration has faithfully executed this systematic effort to undo traditional school discipline.

No doubt, this policy was well-intended. The Obama administration was concerned about the racial gap in school suspensions, and was worried about the potentially alienating effects of "exclusionary" discipline.^{xiv} Teachers surely ought to make every effort to avoid bias and to build a positive culture.

But you can't build a stronger school culture by striking fear into the hearts of principals. That's what this policy did. The message was: get the numbers down, or else. Very bad things can happen when adults prioritize statistics over students.

This fear-based drive to decrease disciplinary statistics has destabilized urban schools, and has put our nation's most at-risk students at further risk.^{xv} When teachers have their hands tied in handling classroom disruption, student learning suffers.^{xvi} When principals are pressured to lower disciplinary statistics, violence can go unaddressed or unrecorded.

Teachers are often too scared of retaliation to report these issues to the press. But three districts under Department of Education investigation have given their teachers the opportunity to speak anonymously on this issue. I will share several of the comments with you. These comments are representative; I urge the members of the committee to review these horrifying accounts for themselves in the documents footnoted.^{xvii}

Oklahoma City

"Students are yelling, cursing, hitting and screaming at teachers and nothing is being done but teachers are being told to teach and ignore the behaviors that are very hard to do now these students know there is nothing a teacher can do. Good students are now suffering because of the abuse and issues plaguing these classrooms."

"School environment is unsafe. I do not feel safe. Teachers are afraid. Students have little or no consequences for behavior that is often outright violent toward students and staff. Please help us!"

Buffalo

"Students are threatening teachers with violence and in many cases are physically attacking teachers without consequences."

"I have never seen anything like it. The behavior is unreal. The students know that they can get away with acting out because there are no real consequences. The kids are controlling the schools – fights, furniture being thrown, students eloping, nonstop verbal abuse/swearing at staff from students. The list goes on and on. It's an unsafe environment."

Fresno

"I had a student punch another student in the face while in line. The perpetrator was sent back to class without a suspension."

"A student said he would shoot and kill me. Three students heard the threat as "shoot and kill," but the administration believed the perpetrator who claimed he said he was going to prank me with a slingshot. Administration said that since he didn't specifically use the word gun it was not as serious a threat as I thought."

Teachers surveys are troubling. In Denver, 32 percent of teachers say that disciplinary issues have harmed their personal safety.^{xviii} In Portland, 34 percent of teachers say their school is unsafe.^{xix} In Syracuse, 66 percent of teachers say they've worried about their safety.^{xx} Students surveys are troubling. In New York City, Washoe County, and Seattle, fewer students in half or more predominantly minority schools reported feeling safe in the wake of a discipline reform.^{xxi}

Unfortunately, such survey data is scarce. And with suspicious frequency, school districts that adopt these reforms discontinue conducting or publishing annual student surveys (e.g., Charlotte, New Haven, Portland, and Broward County). This leaves parents and the public mostly in the dark regarding school safety.

It used to be the case that we could view school discipline statistics as a reasonable proxy for school order and safety. But no longer. After all, the twin pressures to lower the stats and maintain order provide an incentive for administrators to simply take school discipline off the books. In Washington, D.C., high school principals district-wide simply stopped telling the district about suspensions.^{xxii} In Buffalo, 81 percent of teachers believe that their administrators under-report disciplinary problems.^{xxiii} In Denver, 61 percent say that discipline problems are not properly documented.^{xxiv} But in most places, we don't ask.

This raises one profoundly troubling question: how can we know whether students are safe? For the most part, local reporters seem content to report that lower suspensions, expulsions, or in-school arrests mean that schools are getting safer. That certainly could be true. But it could also be true that schools are getting less safe, precisely because school leaders are no longer willing to impose serious consequences on troubling and violent behavior.

When CNN's Jake Tapper pressed Sheriff Scott Israel about what role the Broward's PROMISE program played in the fact that Cruz was never arrested, Israel defended the program and noted that his officers can't be faulted because "there's no malfeasance or misfeasance if you don't know about something."^{xxv} Perhaps not. But the explicit aim of Broward's new approach to school safety was to keep students like Cruz off the police's radar.

This raises another profoundly troubling question: Who and what else is slipping through the cracks in other schools that have been forced to adopt a similar approach?

The 2014 Dear Colleague Letter did not explicitly pressure districts to adopt Broward's PROMISE program. However, President Obama invited Superintendent Runcie to a White House summit to highlight PROMISE.^{xxvi} And Department of Education investigators, over the objections of school districts, asserted authority to review the actions of law enforcement officers on school grounds, informing school districts that they would be held liable for any allegedly "discriminatory actions" taken by law enforcement. This likely had a chilling effect on school resource officers, and it is unclear how many districts responded to federal pressure by adopting programs similar to PROMISE.

The 2014 Dear Colleague Letter aimed to improve school climate by forcing school districts to severely limit the use of "exclusionary" consequences such as suspensions, expulsions, and law-enforcement referrals. But, again, school culture can't be improved by threatening school leaders. If you're a principal and you see something, the federal government has given you a strong reason to do or say nothing.

This top-down, fear-based pressure must stop. The federal government must not make principals prioritize statistics over students. To prevent school violence and future tragedies, we must let our teachers, who love and care for their students, exercise their own best judgment once again.

Biography

Max Eden is a senior fellow at the Manhattan Institute. Before joining MI, he was program manager of the education policy studies department at the American Enterprise Institute. Eden's research interests include early education, school choice, and federal education policy. He was coeditor, with Frederick M. Hess, of *The Every Student Succeeds Act: What It Means for Schools, Systems, and States* (2017). Eden's work has appeared in scholarly and popular outlets, such as the *Journal of School Choice*, *Encyclopedia of Education Economics and Finance*, *Washington Post*, *U.S. News and World Report*, *National Review*, *Claremont Review of Books*, and *The Weekly Standard*. He holds a B.A. in history from Yale University.

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