Testimony in support of H.B. 410 by Robert Cole, Managing Attorney, Advocates for Basic Legal Equality, Toledo Ohio

Chairman Brenner, Vice Chairman Hayes and Ranking Member Fedor, my name is Robert Cole. I am the Managing Attorney of the Education Practice Group at Advocates for Basic Legal Equality in Toledo and I co-chair the Legal Services Statewide Education Task Force. I appreciate the opportunity to appear and testify before this committee in support of H.B. 410.

Truancy

For student living in poverty, the usual stress of school is compounded by hunger, asthma, anxiety, fear, not enough money for supplies or books, and no quiet place to read. Many have to take care of a sibling or an older relative. Twenty percent of urban high school students surveyed by Temple University said they had missed school to care for a family member or close friend.

Yet, attendance policies that punish parents can make matters worse. 22 states define "failure to educate" as a form of child neglect. In New York, for instance—where researchers from Teachers College at Columbia University report that nearly 40 percent of high school students miss 20 or more days of school each year—the parents are reported to the child protective system. That can lead to the threat of removing the child to foster care, and kids in foster care do even worse in school.

Children in poverty are as much as 16 times more likely than middle-class and affluent children to have asthma, which is blamed for 12.8 million missed school days annually. They're twice as likely to have unmet dental needs, according to the U.S. Surgeon General's office. The Baltimore Student Attendance Campaign reports that another two million school days nationwide are lost each year to dental-related illnesses. And when they are in class, at least 25 percent of urban students may not be able to see the blackboard. That's how many are estimated to have unaddressed vision problems.

ABLE represents families and children who face obstacles that, on the one hand, make educational opportunities and the benefits of learning more difficult, and on the other hand denies access to the classroom contributing to the School to Prison Pipeline. I would like to

discuss two cases that demonstrate how the criminalization of tardiness and lack of attendance in school leads to the exclusion of at risk children from the classroom.

Ms. Jones and her daughter, LaNaeisha, were referred to the MLPC by LaNaeisha's medical providers to assist the family in improving their stability and obtaining appropriate supports for LaNaeisha. LaNaeisha attends TPS and has some significant medical needs. Ms. Jones was referred to Juvenile Court by TPS and she was charged with contributing to the delinquency of a child due to chronic truancy.

Ms. Jones is a single mother doing her best to provide for herself and her four children. The family was homeless for a five month period in 2013-2014 and Ms. Jones had struggled since that time to get back on her feet. LaNaeisha was diagnosed with Blount's disease in 2013 and has had difficulty with mobility since that time. While attending Harvard Elementary, she fell while attempting to walk to school one morning and could not walk the distance between her home and Harvard. For her safety, her mother did not allow her to walk to school following that incident. Ms. Jones asked Harvard Elementary for transportation assistance multiple times and was denied each time. The Harvard staff was aware that the family was homeless and that she was transporting her children to school until she lost her vehicle. After the loss of her vehicle, she resorted to paying for cabs and paying other people to take the children to school when she could afford to do so. Ms. Jones was involved with the Truancy Mediation Program last school year and has tried to ensure that her children attend school regularly and on time.

LaNaeisha's Blount's disease and mobility issues have worsened over time. Ms. Jones lacks wheelchair-accessible transportation to drive LaNaeisha to school. Ms. Jones now had a van, but transportation in a non-accessible vehicle was very difficult and dangerous because LaNaeisha weighs around 300 pounds. She is diagnosed with morbid obesity, asthma, and borderline diabetes in addition to Blount's disease.

LaNaeisha has missed a lot of school this year due to her medical condition and lack of transportation. Without transportation provided by the district, LaNaeisha was unable to attend many days at the start of the school year. Her physician's office attempted to contact TPS on several occasions to request transportation assistance for this student. On or around September

28, TPS agreed to provide transportation due to LaNaeisha's medical needs after her doctor's nurse advocated on her behalf and explained the severity of her condition. LaNaeisha continued to miss school for medical appointments, however, Ms. White reports that many of her doctor's notes were misplaced by the school secretary and the medical absences were inappropriately marked as unexcused absences.

In late September 2015, Ms. Jones requested that her daughter be evaluated for special education services and the district refused, citing the 41 days of school LaNaeisha missed the previous school year. Ms. Jones spoke with the school psychologist and explained those absences were the result of her medical condition and lack of transportation. She said the school psychologist said she was just going by what Harvard Elementary reported to her.

LaNaeisha had surgery in November 2015. She was placed on home instruction from November 3, 2015 – January 4, 2016 because of her surgery and recovery needs. When she returned to school, the transportation that had been previously provided had stopped. Her doctor's office contacted the school again, and a 504 Plan was implemented on January 19, 2016 to provide for transportation and self-care assistance. LaNaeisha began receiving transportation in January, 2016.

Ms. Jones maintained that her children are doing pretty well academically, despite absences and late arrivals. When she lacked transportation for LaNaeisha, often the other children had to miss school because Ms. Jones could not leave LaNaeisha home alone while taking her other children to school. Ms. Jones says her three other children are often late to school because it is difficult for Ms. White to get LaNaeisha out of bed, bathed, dressed, and ready for school and also get the other children to school on time. LaNaeisha's size and mobility issues make it difficult for her mother to move her and provide self-care assistance on her own. Ms. White also struggles with mental health and has experienced a lot of trauma in her life, which makes it difficult for her to trust that her children will be safe walking to school on their own.

As a result of the advocacy on behalf of Ms. Jones by the MLPC, the truancy charges were dismissed last week.

We also represented a senior in a high school in the TPS district. Javon was on an IEP for most of the years he was in school. He lived with his mother and two younger siblings. Javon had numerous suspensions and an expulsion for behaviors associated with his disability. A number of Javon's suspensions were due to his absents from school or his tardiness to classes. The high school that Javon attended had a "Zero Tolerance" policy regarding tardiness. When a class period was to start, the door to the classroom was closed and locked and any student in the hallway after the start of a class period was then required to go to the Dean of Students office and was written up for being tardy to class. After a certain number of tar dies, the student was suspended.

Javon needed to work to contribute to support of his family. He worked for the Toledo Blade delivering newspapers. The Blade's policy was that all newspapers had to be delivered to homes before 5:00 a.m. Javon would get up at 3:00 a.m. and deliver newspapers until 5:00 a.m. and then he would return home and sleep for a couple of hour before school. He would often be late for first period which lead to a number of suspensions from school and, on occasion would miss school which also contributed to his suspensions. We were able to advocate for Javon which resulted in his being returned to school which allowed Javon to graduate.

Developmentally Appropriate Discipline

Currently in Ohio, many school districts make no distinction for violations of the Student Code of Conduct based on the age of the child. We should based legal requirements regarding school discipline policies on best practices and a recognition of the differences in social-emotional skill development and cognitive developmental stage of the child involved in the behavior that results in discipline.

Suspension in the early grades is becoming a disturbing trend: Elementary schools are suspending children who are still learning to read, control their bodies and manage their emotions to deal with their behavior problems. In the past few weeks, reports surfaced in the Washington, DC metro area about young children who have been suspended or expelled for fighting, throwing tantrums and disrupting the class. Recently, a 6-year-old was suspended for

brushing against his friend's groin while playing. Also last year, a 9-year-old boy was suspended for two days for putting a "kick me" sign on another student.

A suspension won't make that 9-year-old think twice about making another sign. Many students in this age group, especially in kindergarten and the early grades, may not even understand why they've been told not to get on the school bus for one or two days in row. The "lesson" of their punishment is likely lost on them. According to the Civil Rights Project at UCLA and The Equity Project at Indiana University, suspension can actually harm students in the long-term. Suspended students are more likely to struggle academically and drop out of school because often they are the same students who need the most support from school. Missing multiple days or being suspended multiple times only drags students further behind.

Children learn to act appropriately through their interactions with parents, teachers and peers. But not every child develops the social-emotional skills that help them control their behavior -- such as understanding their feelings, managing emotions, regulating behavior and developing empathy -- at the same time. And not every child has had the benefit of an early education and stable home situation that gives them a chance to practice these skills.

One study from Child Trends reported that kindergarten teachers rate 20 percent of their students lacking these skills. Many children learn to manage their emotions or control their impulses in kindergarten and first grade. But for others it sometimes takes much longer. That's why elementary schools should use discipline as teaching tool instead of as punishment.

Better disciplining options exist. In many cases, students with troubling behavior should meet with the guidance counselor whose job is to build a relationship with the student, uncover the roots of the behavior problems and help parents and teachers decide how to address them. Some innovative schools and preschools are also starting to use mental health specialists to give teachers tips on preventing children's outbursts and handling challenging behavior.

"There is actually a lot teachers can do to prevent problem behavior," says Walter Gilliam, director of the Edward Zigler Center in Child Development and Social Policy at the Yale Child Study Center. By sticking to routines and smoothing transitions from one activity to the next, he

says, chaotic behavior problems can be curtailed.

Alternatives to suspension take more thought, time and in some cases investment -- like making counselors available. But those investments are worth it to help children learn from their mistakes, and develop the skills that will ultimately keep bad behavior from repeating. In the early grades, discipline should be a teaching tool. Suspension does not teach. All too often, it is the canned response. When it comes to young children, even one suspension is too many.