



AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

Pennsylvania

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RE: Restricting PPS school police issuance  
of summary citations.

Dear Ira:

This letter is a companion to e-mail correspondence sent to the school board and superintendent by my colleague, Ghadah Makoshi, urging a moratorium on school police issuing summary citations to students for minor infractions. The ACLU's primary concern is that recent data shows that PPS police press criminal charges disproportionately against Black students and those with disabilities. I write to you separately because we have been advised that PPS lawyers, (I'm assuming that's your office, but if I'm mistaken please re-direct me) have taken the position that the Board cannot limit the circumstances when school police officers issue summary citations. After reviewing the law, we can find no legal bar to the proposed school board action restricting how school police officers address disciplinary matters. We welcome clarification and correction if our research is incomplete.

We can find nothing in the school security chapter of the Pennsylvania Public School Code that limits the board's authority to

manage their school-safety employees. 24 P.S., Ch. 1, Art. XIII-C. There is nothing in the powers and duties section that mandates how and when school police can or should issue summary citations. See 24 P.S. § 13-1306-C (3). The Code empowers them to issue summary citations, but it does not guide enforcement.

We have been advised that your office is relying on School Board Policy 22-2 (June 21, 2017) to support the proposition that the Board cannot regulate enforcement priorities. Again, we see nothing in that Policy to limit the Board's power to manage and direct its security personnel. Indeed, § 2.1.5 lists as a step, "Contact a supervisor to discuss the information," which implies judgment and discretion is being exercised. Moreover, to the extent this, or any other PPS policy, is the obstacle, the Board has broad legal authority to promulgate, modify or rescind its own policies.

Finally, a primary motivator driving the requested change in enforcement is PPS's apparent discriminatory enforcement of summary offenses against Black students and those with disabilities.<sup>1</sup> You are undoubtedly familiar with the list of federal and Pennsylvania laws that prohibit race-based and disability-based discrimination. Now aware of the data about disparate enforcement outcomes, the Board not only can, but legally must take steps to address the problem. A failure to do so opens the District to liability for deliberate indifference to civil rights violations.

Both the Cities of Pittsburgh and Philadelphia have recently passed ordinances and taken internal management steps to limit police officers' discretion to make arrests and issue citations for minor offenses.<sup>2</sup> Both ordinances seek to address data, similar to that now

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<sup>1</sup> In Pittsburgh Public Schools (PPS), one out of every 70 Black students was issued a summary citation, compared with one out of every 400 white students enrolled in PPS. ACLU of Pennsylvania, *Student Arrests in Allegheny County: The Need for Transparency and Accountability*, (2022) (available at <https://www.endzerotolerance.org/student-arrest-report>). Black students, thus, were issued summary citations at significantly higher rates than other students, a pattern that parallels arrest data. Additionally, PPS-sponsored analysis by RMC Research Corporation determined that "over three-fourths of the incidents leading to a citation involved an African American/Black student during 2013/14 through 2019/20, higher than the proportion of these students in the district." RMC Research Corporation, *Review of Incident Report Data*, at 11 (June 8, 2021).


<sup>2</sup> See, e.g., Julia Felton, *Pittsburgh bans traffic stops for minor violations*, Pittsburgh Tribune Review (Dec. 28, 2021) (available at <https://triblive.com/local/pittsburgh-bans-traffic-stops-for-minor-violations/>); John Bacon, *Philadelphia to become first major US city to ban minor traffic stops to*

available to PPS, showing disparate enforcement of minor offenses against people of color. If municipal police departments can limit police officers' discretion to arrest and cite civilians, the School Board assuredly can, too.

We recognize that nothing has been proven, and that disparate enforcement rates may or may not reflect bias that rises to the level of actionable discrimination, but the data alone suffices to oblige the Board to take reasonable and necessary action to abate what appears to be a serious problem of discrimination. A moratorium on use of summary citations is a reasonable initial step. The school has ample authority under its disciplinary code to address problematic behavior and, of course, the police could still act when more serious crimes occur.

We are happy to discuss this further at your convenience, but felt that we needed to go on record to say that we can find no legal impediment to the Board taking measures to limit the discretion of PPS security personnel to cite students for conduct that may amount to summary criminal violations.

Respectfully,



Witold J. Walczak  
Legal Director  
ACLU of Pennsylvania

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*promote equity, curb 'negative interactions' with police*, Philadelphia Inquirer (Oct. 31, 2022) (available at <https://www.usatoday.com/story/news/nation/2021/10/31/philadelphia-ban-minor-police-traffic-stops/6224286001/>).