DAVID ONEK: Welcome to the Criminal Justice Conversations Podcast, a coproduction of Berkeley Law School and the Berkeley School of Journalism. I’m your host, David Onek. Criminal Justice Conversations, recorded in the Berkeley School of Journalism studios, features in depth interviews with a wide range of criminal justice leaders: law enforcement officials, policymakers, advocates, service providers, academics and others. The program gets behind the sound bites that far too often dominate the public dialog about criminal justice to have detailed, nuanced conversations about criminal justice policy.

Today’s guest is Laura Faer, the Education Rights Director for the Public Counsel Law Center. Faer is leading public counsel’s extensive statewide efforts to reform California school discipline process. She previously served as the Directing Attorney of Public Counsel’s Children’s Rights Project. As a Skadden Fellow, Faer worked to improve education outcomes and
educational quality for low-income children in some of South Los Angeles’s lowest performing schools. Last year she was named the California Lawyer Attorney of the Year after she helped secure a landmark settlement in Casey A. Begundrey, class action alleging that youth detained at the largest complex of probation camps in the nation were denied a constitutionally adequate education. Faer is a graduate of Syracuse University and Columbia Law School. And she joins us in studio this morning. Laura Faer, welcome to the program.

LAURA FAER: Thank you for having me.

ONEK: Laura, you’re leading an effort to dramatically reform the school discipline process here in California. Why is this necessary? What are the problems with the current system?

FAER: Well, David, there’s a number of problems. First of all, we have an alarming rate of suspensions in the state. In 2009, we suspended, we issued over 757,000 suspensions. And again, in 2010, we issued another 700,000. And suspensions in California can be up to five days. So we're talking about suspensions for children leaving them out of school in an unsupervised vacation that really, the number of students we’re suspending can really
fill up all of the football, baseball, basketball stadiums in the entire state. And this has true real-life impacts on our children. Because we know that suspensions, and when we suspend children, it’s really correlated with actually their involvement in the juvenile justice system with them dropping out of school and with having really poor outcomes. So it’s an unsound education policy and we have far better alternatives.

ONEK: So let’s talk about the impact it has on students. I’ve seen some statistics that students who are suspended are three times more likely to go into the juvenile justice system than similar students with similar backgrounds, similar behaviors, who weren’t suspended. So can you expound on that a little bit and why it is so important to stop the suspensions and expulsions that are leading to what many people call the school-to-prison pipeline.

FAER: Well, there’s a few things. First of all, there have been a couple of studies that have reiterated this that you just talked about. But that statistic in specific is from a very comprehensive study done in Texas that was longitudinal and actually looked at the outcomes of children over a long period of time. And I think the results are really shocking. Because
it’s not only that they were three times as likely in the same year to be entering into the juvenile justice system, but they were five times as likely to drop out of school.

And in my work, the reason this has become such a passion of mine is because I started a clinic in South Los Angeles serving children in our system in Los Angeles Unified. And anybody could have come to that clinic. But time and again, it was young people who had really been pushed out of our schools through suspensions. Some of the children who came had been out of school for as many as three to four months because they had been suspended and had a hard time actually getting back into school.

One of my clients had been suspended something close to 22 times over a year and a half period. And during that time he started to get in trouble with the law. It’s not surprising. If you send a child home, they’re often unsupervised. They don’t have other things to do. They’re going to get in trouble. And so he started racking up citations that were over thousands and thousands of dollars for various offenses. And he picked up his first actual criminal arrest. So he was basically heading down a path to entering our adult system and our juvenile justice system. And in order to pull him back, we had to actually get him back
in school and get him engaged on the right path and the right track. And there are thousands of children that are just like my client. And so we can do a much better job than we’re doing.

ONEK: And a lot of these children are low-income youth of color who are getting suspended and expelled. And maybe can you start by just telling us the numbers on what the level of racial disparity there is in the school discipline process.

FAER: So in California, African American male students are three times as likely as any other peer group to actually be suspended from school. In each of the districts, it really will depend on that district. The rate can be higher or lower. So, for example, in Los Angeles, it’s up to six times as much if you’re an African American student. If you’re a student with a disability and you’re also African American, 28% of those students are being suspended from our schools according to recent federal data that was released.

ONEK: So over one-quarter of students. That’s unbelievable.

FAER: That’s right. And other statistics have shown that if you are a student with a single parent that you are actually
two to four times as likely to be suspended. So we are actually punishing not only our students of color, our students of disabilities, but our students who are our most vulnerable students. And when we send them home, again, the question is, what are we trying to do, right? So we’re trying to actually take care of a behavior problem. We want the child to actually improve behavior, come back to school, learn a lesson and actually behave better. But we know that we’re going to send a child home, again, somewhere that’s likely unsupervised, somewhere where they potentially may not get the supports they need. And without actually teaching them a real lesson. Like how do you do this differently next time? This is not the way to do it. The research actually shows that when you suspend a child, except for the most egregious offenses, violent offenses, right, that you are far more likely to actually have the problem exacerbate. The actual behavior gets worse.

ONEK: And if we just take a step back and think about this, it just makes absolutely no sense. If you’re a student who doesn’t like school, so you misbehave or you skip school, your punishment for not going to school is that you don’t have to go to school. I mean, I’m a parent. It’s absurd that that is the current regime that we’re under that people would ever think
that that would be effective.

FAER: Right. And what’s even more shocking is you look at what’s happening to those 700,000 suspensions, 42% of them, nearly half of them, are for one offense. And it’s called willful defiance. And under our education code, if you ask any educator that was a vice principal in Los Angeles who was quoted as saying, you know, it’s the giant umbrella. You can fit pretty much anything in there. And if you ask one educator or another educator or a student or a parent, what does this even mean? The definitions really range from anything refusing to take your hat off in class, talking back, not showing up with your homework, tapping your pencil on the desk. It can be pretty much anything. So we have this very broad definition. And it’s really covering most of the suspensions that are sending our children out of class.

ONEK: And I know there’s a bill in the works to try to fix that, which we’ll get to in a moment. But I want to turn back to the racial disparities for a moment. Because I spent a lot of my career working on reducing racial disparities in the juvenile justice system. And we’ve had folks like James Bell and others on this show talking about that issue. And there is the issue of what happens once youth of color get in the juvenile justice
system and get processed.

But when we wonder why there are so many youth of color at the front door of detention, at the front door of the juvenile justice system, the two stats we’ve talked about, if youth of color are three times more likely to be suspended or expelled, and then kids who are suspended and expelled are three times more likely to go into the juvenile justice system, you can see how in order to stem the flow of youth of color into the juvenile justice system, we’ve got to do something in the schools to stop this path.

FAER: Right. And this is, you know, you spoke earlier about the school-to-prison pipeline. This is one of the pieces of that, right. And so at Public Counsel, one of the things that we really are working is trying to get at every step in that school-to-prison pipeline. And really it does start with those suspensions.

When I look at the records of my clients, when I looked at the records of Joey or José or, you know, some of the young women that I worked with, it was really clear that it all started with suspensions. Right? So you could see that first suspension
for willful defiance. And you would have that parent who has to leave work and already is often in a really unstable housing situation. And it would start to shift the entire structure of the family. And then you would see the child pick up a citation. And then you would see that they were out for more days of school. And then you would see they didn’t want to come back. Right? And so you really are setting up a pattern that really gives children no other option.

Because in the communities that we’re talking about where the majority of children are being suspended, we have a high number of school police in those schools. We have a larger number oftentimes of police on the streets in those neighborhoods because they are often high crime areas. And so you actually really are setting up a system that is almost encouraging the involvement of children in the juvenile justice system, as really an only, as an option for them.

ONEK: And another thing that struck me about it, I did a lot of these cases. I began my legal career as we talked about at Legal Services for Children, where I was a Skadden Fellow and did a whole lot of school discipline cases. I had clients all over the area. One thing that really struck me was the huge
variation school district to school district in terms of how
school discipline was meted out. And you could have two kids who
basically did the same thing in two different counties right
next to each other and being treated in incredibly different
ways. Is that still a big problem, the lack of consistency in
the way school discipline is applied throughout the state?

FAER: Absolutely. And I think what’s really key is the research
backs that up. So I can talk to you, just as you’ve talked about
seeing it really anecdotally. I saw the same thing. You could be
in two schools in South Los Angeles and one is really focused
on keeping all their kids in school. They’re using alternatives
to discipline that actually really focus on how are we going to
keep kids who are struggling in school? What systems do we have
in place to teach them how to behave better in school and to
involve their parents when there’s a struggle?

And then you have a school down the street, same population of
kids, that you walk into and you can feel it. It’s chaotic.
The structures are not in place. So not only are the children
who are probably struggling the most often the ones who have
emotional difficulties, who are actually having, you know,
who have disabilities who may have actually been victims of
actually violence in their communities or witness violence. And so you see in two different schools two totally different things happening. And the children in that school that is more chaotic are the ones that are more likely to get removed and they’re the ones that the ones that are more likely to be funneled into our juvenile justice system.

And the research says the same thing. The research says look, the biggest predictor in terms of how many students are going to be suspended really comes down to teacher-student ratios. It comes down to the administration of that school and how it’s being done. And there’s also a correlation with academic achievement. Some of our lower performing schools are also removing the most children.

ONEK: So what are the alternatives that work? What are schools that are doing this right, what are they doing?

FAER: So what’s really exciting is that when I started this work, you know, it was hard to define really good alternatives that could be applied to the entire school. And now we have a number of alternatives that have really good research behind them. They’ve been tested. And some of them, over a thousand
schools. And they not only, not only, not only, reduce our suspensions and expulsion rates, but they also result in improved academic achievement. You’ve got teachers that are much more happy to be at the school, because it actually is more structured. Children are accountable and everybody’s on the same page about how we treat them. And you are getting a higher attendance rate. Because when you actually make that school more structured and you serve those children that are struggling the most, it makes a better environment for everybody. The school climate improves.

And so a couple of those alternatives. One’s called Positive Behavior Interventions and Supports. And really it is a research-based method that is based on, you know, really kind of a fundamental concept of we teach children many other things. But we assume that they come to school with the tools to know how to behave perfectly. Right? And so, one of the things it acknowledges that we need to actually be very explicit with our children about what our expectations are and what they need to do to do right in school and to behave appropriately, and we need to be positive with them.
We need to give them incentives to actually behave well. Because one of the things you find in the schools that I work in is that those children that are struggling the most, that are behaving the worst, often get the most attention. Because their schools that are under-resourced. So those children take up a lot of people’s time. And so it actually almost encourages other students to follow in their path. So we flip the script. And we say we’re going to really encourage kids to work in a positive way.

And another incredible strategy is restorative practices or restorative justice. I’m sure there are other folks who have spoken with you about how that works actually inside the juvenile justice system and how it has, you know, resulted in a safer juvenile justice system and actually a better way for young people to relate. But one of the things that’s great about it, it actually is a way to reintegrate the child into the community, the child who has struggled with their behavior or has done something that someone may say is quote, unquote wrong. So instead of removing them like we do with the suspension, we say how do we reintegrate them and hold them accountable and make them actually a more integral part of this community. So they actually feel more connected. They understand how their
behavior is harming someone else. And they take responsibility for their actions. So it’s not only a lesson they learn in class, but is a lesson they can take onto the street and to every day. And it’s the kind of lesson we want them to learn so that they can actually function really well in society.

ONEK: And yes, certainly we’ve talked about restorative justice a lot on this program. And I know in the school setting, San Francisco Unified has a whole regime of restorative justice being the main way that discipline will be meted out going forward in San Francisco. I don’t know if the people that did that particularly.

FAER: Yeah. We’ve been looking at a lot of the different, there actually are a number of school districts actually implementing these alternative practices. And I know that San Francisco is implementing it in a number of its schools. And I think it’s pretty recent in terms of actually their adoption. And I think some of their schools are really actually showing incredible improvements and others they’re still moving forward.

ONEK: Let me talk about what some of the objections to some of the alternatives you’re talking about. First of all, in this era
of schools scraping by for cash, people are saying well, this is going to be too expensive. We’d love to do this. Your heart’s in the right place, but there’s no way we can afford some of the alternatives that you’re talking about with the resources we currently have at the school. We wish we did. But we just don’t have them. What’s your response to that?

FAER: So I have a three-part response to this. OK. First of all, I’ll do the legal response first. Under the existing education code for almost all these suspensions we’re talking about, the majority of suspensions in the state, educators are required to put in place alternative means of correction. They have to exhaust them before they actually suspend a child. So you are actually breaking the law if you don’t actually put in place something to try to see how you can help this child before you suspend them. So the first thing is, it’s already required. And what these alternatives are, they’re actually effective ways to do what you’re already required to do under the law.

Second, in the schools that we’re talking about, if you don’t have a fundamental basic system and structure in place to hold students accountable and keep your school safe in a way that actually allows people to learn, then we’re talking about having
schools with 25% or more of their students being suspended. That’s a failure, right? And those students with, for those schools with 25% or more often have our highest dropout rates. So in order to teach, in order for children to learn, this is like the basic structure of a company. It’s the basic structure of a school. You have to have some sort of system in place that actually allows kids to move forward.

And last, and I think most important maybe for folks is that, you know, for many of the schools we’re talking about, this actually does not cost very much. OK. And it actually brings in more revenue. So we have a, for example, an example is in Woodside, Pioneer High School they have actually brought in close to $90,000 this year from their estimates because they’ve improved their attendance rates. So they spent a very small amount upfront in terms of relatively small over a few years. And now the program’s not only paying for itself, it’s bringing in revenue to their school.

ONEK: And explain how that is with the average daily attendance.

FAER: So average daily attendance, right, you actually get paid if you’re a school, if a child comes to school and attends.
So what happens with these alternative programs is that your attendance rate goes up. You lose money when you suspend a child. You lose money when a child doesn’t show up to school. So because these alternatives, many of them, right, they actually result in increased attendance and better attendance by all of the kids, which is really critical. Right? We know that the link also between attendance, like you said, and dropout is really strong. So we want to encourage attendance. We want to reduce chronic absences and chronic truancy. And so this is a strategy that works on all of those levels.

And the very last thing, so there’s four actually, which is that positive behavior and interventions and supports is actually, you can use federal funding and you can use mental health services ACT dollars to help pay for that. And so it’s actually PBIS itself is actually explicitly talked about in our federal laws. And there are a number of districts now around the state and counties who have taken proactive steps to really do the training and implementation, begin to do the training and implementation around this. So what I say to schools, is it’s happening. The training is out there. And it’s available to you. And it really does save money over time.
ONEK: So what do you say to the teacher or principal who says look, I care about all these kids. I want to help all these kids. But in my seventh period class, Johnny just, I spend 50% of my time on him. And it’s really taking away from the rest of the class. And he makes me feel unsafe. And, you know, I have a good heart. I want to help all my students, but it really isn't fair to me or to the school or to all the other students to have him in the class. If he could just go to a different school or not come to our school, somewhere that could meet his needs better, it would be better for him and it would be better for my students. How do you counter that argument?

FAER: So I think that’s what’s really important is that these alternatives don’t say that if Johnny would do better ultimately in another school, he needs another setting. He can go to another setting. Right? What the alternatives we’re talking about do is they actually create a tiered set of interventions in a set of strategies to help and support teachers. Right? They’re about actually, I feel like most teachers actually are working sort of in a silo. They actually have to handle all these things and the one thing that if they haven’t given support or the school doesn’t have a structure in place, is they can send them to the office, right? And so what’s really
important about these alternatives is that there’s a structure. And so in PBIS you actually have tiered interventions. And the research really shows that 70% of the kids from the basics of teaching them positive behavior and an anti-violence curriculum and really setting up some basic structures in your school, you can actually address most of those issues.

And then there are the young people like Johnny who need additional tiered interventions, right? So they may need some support out of the classroom. They may need the parent to come in. They may need a behavior contract. They may need some additional counseling, those types of things. And it’s really, the teacher’s not supposed to be isolated doing this on their own, right? This creates a system actually of support for them. And it actually creates a way for them, because that same teacher is going to say I feel awful. The teachers who come into education want to help Johnny.

ONEK: Yup.

FAER: Many of the teachers I that I work with and have worked with in the past, Johnny is the person that they wanted to help, right? And so what we’re talking about is not being willy-nilly
or chaotic or inconsistent in our application. We're talking about actually putting in strategies that work for these kids.

ONEK: And I think that’s exactly right. That a lot of teachers, a lot of teachers I’ve spoken to about this issue feel isolated. They want help. And so they’re not aware of the alternatives. Either their school doesn’t have the alternatives or they’re not aware of what the alternatives are. So if you trained a teacher and said, you know, here are three or four alternative things you could do rather than the steps that we’ve been taking in the past, number one.

And number two, and I think this is changing, but a lot of educators don’t understand the negative impact of having a kid get involved, even having one touch with the juvenile justice system. Because they think hey, you know, maybe they can get help there. Juvenile justice is not a place to get services. All the research shows that if you have one touch with the juvenile justice system, you’re much more likely to get deeper and deeper into the system than kids who have a similar background who did not have that contact. And so I think with education and training that teachers and administrators should be very, very supportive of the things that you’re talking about. But it’s
important to make sure that they do understand what it means if
the police are called in, what the long-term outcomes are of
that. And that they understand that they have alternatives that
they can put in place.

FAER: Yes, absolutely. And I think, you know, what’s really
exciting, as you mentioned, there are a number of very large
districts in our state and administrators who are standing out
and saying this works, folks. You need to follow my lead. We
have Oakland Unified School District who is also implementing
restorative justice and also PBIS, and a number of the other
alternative strategies. And they’re standing out in front of
these policies and saying we know that this is, the correlation
is so strong we want to stand and support it. As you mentioned,
San Francisco Unified already adopted policies. Los Angeles
Unified, one of the first districts in the state to actually
adopt positive behavior interventions and supports as an
alternative.

So, you know, Vla Hill Unified, the superintendent there
actually came and spoke in support of, in Sacramento, of one of
the bills because she saw in her own school before she became a
principal, how it totally transformed her school and was saving
children’s lives and keeping them in class. And so she reached out and is bringing her entire district to try to change the numbers, because they actually are, that district is actually one of the highest suspending districts in the state.

ONEK: Let’s move on to the package of bills that you’re supporting now. There are eight different bills. Could you kind of summarize what the main points are? They do touch on many of things we’ve already talked about here. But why don’t you tell me what the most important things you’re trying to change at the statewide level through this package of bills?

FAER: So, if we put it in sort of three different themes. You know, one of the key pieces is really strengthening our alternative means of correction, right? So strengthening the alternatives and really targeting our highest, highest suspending schools. Because those are the schools that need the most support and need also encouragement, strong encouragement to take another tack. And what we’re talking about really, right, is alternatives that work.

Another theme of this is really looking at the suspensions that are for the most minor and the lowest category, right?
Not violent. There’s 24 ways you can suspend a child at least in the code, the education code. And looking at one of those categories is willful defiance is obviously one of the biggest categories. And so trying to figure out ways for us using a different approach to holding children accountable who are willfully defiant, to holding them accountable for their behavior that doesn’t result in poor education outcomes and, you know, for many of the kids, actually a vacation. And as you said, something that they might look forward to. You don’t want to encourage negative behavior.

And then another piece is about data. We really need in California to have a better handle on both the impacts and also on who is impacted by our suspension and expulsion policies. And we need to get that data in a way that people can access it throughout the state. Currently the state only reports the sheer numbers of suspensions and expulsions. And then there’s a little bit of information about some of the higher level offenses. And so what we’re asking for is data that’s more readily accessible, so that you and your community can take a look and say here’s what we need to focus on. Here’s where we need to target our resources. Here are the children that are really bearing the brunt of all of these suspensions and expulsions. And what can
we do to maybe help turn this around?

ONEK: And part of that data would be breaking everything down by race and ethnicity as well as by special education status, right? So you can start to see, we can’t start to address the racial disparities until we are measuring them. And the fact that that isn't being done now is very problematic. That is one specific bill does that. Is there opposition to that? I don’t see how anyone could be opposed to that one.

FAER: Actually that is a universally really supported bill. And I think because everybody would like to have more information in the state about what can be done. I don’t think there’s really, you know, frankly, I actually don’t think there’s a disagreement about the fact that we can do better. And I think that there is a real sense from all parts of the state that if we had better data and we had it more accessible at the community level and really accessible at the state level in a public way, policy makers, educators, parents, students, teachers, everybody could, we could be doing a better job in really understanding the problem and making better policy.
ONEK: And what have been the challenges in some of the first two themes that you talked about? What, who is opposed and what is their reasoning? And have you been able to convince the people to come on over to your side?

FAER: Well, I mean, there hasn’t been, we haven’t had, we have a lot of support for actually all these bills. We actually have really a statewide support for a number of organizations and entities, including law enforcement and, you know, as I mentioned, a number of educators in different school districts, and parents. And some of the bills, the Teachers Association is behind.

So it’s really the two issues that I think are ones we’ve already discussed about. One is the idea that, you know, we don’t have the resources do to this this year. And I think the other issue really is a sense that, you know, we want to be able to remove kids when we want to be able to remove them. Right? And I think that it’s an old outdated notion unfortunately. At one point in time there may have been a sense that research supported the fact that when you remove a child, that things go better for your school and they also get better for the child. The child comes back, has learned their lesson, behaves better
the next day. And also we are making the school a better place for all children.

But really the research is really clear. Two decades of research now. Study after study in different settings that really shows the opposite is true. So it’s unsound education policy. And when we have alternatives that actually will do what we want, right, which is teach that child how to behave better, to come back to school and do a better job in class and also that will make your school climate better. I don’t think there’s an excuse anymore for not choosing those alternatives.

ONEK: And what does the outlook look like for these packages of bills as the legislator comes back and they continue to move through the legislative process?

FAER: Well, they are all sort of in the final phases. They’re in, several of them are actually going directly to the floor in the second House. And then they will move to the governor’s office, hopefully, if they pass.

ONEK: Do you have an indication from the governor of where he stands on these issues?
FAER: At this point we do not. At this point we do not. And then a few others of them are headed for appropriations committee.

ONEK: And why do you think it is, this is an issue that has suddenly gotten a lot of attention? The problems have been there for decades. And there have been good people working in the trenches on these issues for a long time. What is it that finally mobilized this movement where now we have legislation that’s moving through and it looks like there are going to be at least some if not many of the changes you’re talking about, have a good chance of becoming law.

FAER: So I think it’s because a lot of factors have come together at once. I think that we’ve seen in other parts actually of the nation, we’ve seen other districts and states actually taking a lead on trying to make changes. I think that also the data at the federal level has gotten much clearer and been very consistent about the disproportionality and the disparities. We mentioned before not only the disproportionality statewide, but nationwide it’s a 3.5 times more likely risk rate for African American students. And we look at the juvenile justice numbers, we see, I can’t remember if it’s 70 or 80% are
really all students of color.

I think that there have been a number of studies that have come up, particularly in the last ten years that have really given us alternatives that work, right? And I also think that children and families in their communities have been identifying this as a top issue that’s actually impacting the community, impacting the health of their children and the health of their families in their community. And I think it’s come to a place where folks are saying enough. We need a better option here. And because there are ones available, we want it to happen.

ONEK: All right. Well, Laura Faer, thank you so much for joining us.

FAER: Thank you for having me.

ONEK: Thank you for listening to the Criminal Justice Conversations Podcast. You can find this episode of the program, and all prior episodes, on our website at www.law.berkeley.edu/cjconversations, on NPR KALW’s website, and on iTunes. You can also become a fan of Criminal Justice Conversations on Facebook, and you can follow us on Twitter on
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