



September 15, 2014

Mark D. Harnitchek, USN  
Director, Defense Logistics Agency  
8715 John J. Kingman Road  
Fort Belvoir, VA 22060-6221

Dear Director Harnitchek,

As education and civil rights advocates, we write to urge you to end the Department of Defense (DOD) 1033 Program's<sup>1</sup> transfer of military weapons to local school districts and police departments for use in K-12 public schools. Adding the presence of military-grade weapons to school climates that have become increasingly hostile due to their overreliance on police to handle routine student discipline can only exacerbate existing tensions, intensifying overly punitive atmospheres that criminalize and stigmatize students of color.

### **Militarizing School Police and the School-to-Prison Pipeline**

The recent events in Ferguson, Missouri, demonstrate the tensions that invariably develop between local law enforcement and the community when military equipment is unnecessarily deployed against citizens. These events also underscore the negative impact of militarization on the already tenuous relationship between communities of color and law enforcement.

Arming school police with military weapons poses the same risks to a much more vulnerable population – the nation's schoolchildren. The increasing presence of police in schools has already proven problematic, particularly for students of color and those with disabilities. Arming school police with military-grade weapons and gear creates the potential to contribute to climates that students of color already experience as hostile, and contributes to the normalization of the

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<sup>1</sup> Pursuant to 10 U.S.C. § 2576a, the Secretary of Defense is granted permanent authority to transfer defense material to federal and state agencies for use in law enforcement, particularly those associated with counter-drug and counter-terrorism activities.

criminalization of these youth, worsening educational outcomes, and producing no public safety benefits.<sup>2</sup>

While the scope of the 1033 Program transfers to K-12 public schools is difficult to determine,<sup>3</sup> the publicly available information is alarming. According to published reports, school districts around the country have received military equipment, including tools, supplies, and weapons, through the 1033 Program.<sup>4</sup> For example, the Granite School District in Utah received twelve AR-15s and two MR-16s through the Program.<sup>5</sup> Bibb County School District's campus police in Macon, Georgia, received five M-14 rifles through 1033.<sup>6</sup>

Texas school districts dominate the list of those participating in the 1033 Program, with at least 10 districts reportedly participating.<sup>7</sup> Altogether, these 10 districts have received 64 M-16 rifles, 18 M-14 rifles, 25 automatic pistols, extended magazines, and 4,500 rounds of ammunition.<sup>8</sup> Some of these Texas districts received armored plating, tactical vests, and military vehicles.<sup>9</sup> One Texas district, the Edinburg Consolidated Independent School District (CISD), has its own Special Weapons and Tactics (SWAT) team, which was outfitted through the 1033 Program.<sup>10</sup> A

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<sup>2</sup> See Caesar, Stephen, *Compton Unified Policy on Rifles Draws Criticism, but Isn't Unusual*, available at [://www.latimes.com/local/education/la-me-compton-school-guns-20140901-story.html](http://www.latimes.com/local/education/la-me-compton-school-guns-20140901-story.html); See also Klein, Karin, *Forget the L.A. Schools' IPads. What We Need to Know About Are the Grenade Launchers*, Los Angeles Times, Opinion, September 11, 2014, available at <http://www.latimes.com/opinion/opinion-la/la-ol-laUSD-grenade-assault-rifles-20140910-story.html>.

<sup>3</sup> Much of what we have been able to glean came from a list obtained directly from Defense Logistics Agency ("DLA"), as well as media reports, including a list obtained by KHOU and shared with Texas Appleseed from the Texas Department of Public Safety, the state's coordinator of the program. The Texas list includes school districts that are not included on the DLA list, and vice versa. Similarly, lists reportedly received by media outlets through Freedom of Information Act requests include districts that are not on the DLA list. The glaring discrepancies raise concerns that there may be school district police departments that have received equipment that have not been disclosed. Full disclosure of transfers under the 1033 Program will make clear the full number of weapons loaned. Therefore, we request public disclosure of all equipment transferred to K-12 school districts under the 1033 Program, especially of weaponry loaned, and the state purposes(s)/intended use(s) of such equipment, and training provided to local law enforcement prior to the receipt of such equipment.

<sup>4</sup> Carlisle, Nate, *Granite District Using Military M-16s to Defend Schools*, Salt Lake Tribune, February 23, 2014, available at <http://www.sltrib.com/sltrib/news/57563036-78/police-johnson-rifles-granite.html.csp>.

<sup>5</sup> *Id.*

<sup>6</sup> Mike Stucka, *Ex-military Guns, Vehicles in Hands of Midstate Police*, The Telegraph, August 24, 2014.

<sup>7</sup> KHOU, *Texas School Districts Militarize Campus Cops with Free Surplus Weapons, Armored Vehicles* (September 5, 2014). There are two Texas districts included on the list embedded in the muckrock.com article, cited in Footnote 14 herein, leaving us to question whether there are other districts participating that are not yet publicly reported.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Andrew Kreighbaum, *Edinburg CISD Police Tout SWAT Unit*, Brownsville Herald, April 8, 2013.

local news article depicts the Edinburg CISD SWAT team in full military fatigues, wearing bullet-proof vests, guns drawn, and standing next to a military vehicle.<sup>11</sup> School buses can be seen in the background.<sup>12</sup>

In California, at least half a dozen school districts reportedly allow campus officers to carry high-powered rifles.<sup>13</sup> Five districts received weapons or vehicles through the 1033 Program.<sup>14</sup> Two of those districts – San Diego Unified and Los Angeles Unified – received Mine-Resistant Ambush Protected (or MRAP) vehicles.<sup>15</sup> In addition to an MRAP, Los Angeles Unified School Police received 61 assault rifles (M-16s) and three grenade launchers.<sup>16</sup> It is frankly difficult to imagine how a grenade launcher, or any of these items, could be safely used in any scenario involving schools.

Additional states receiving equipment through the 1033 Program for school police include Florida, Georgia, Kansas, Michigan, and Nevada.<sup>17</sup> Los Angeles Unified School District, San Diego, Detroit, and Palm Beach County, all recipients of military surplus, are among the 50 largest districts in the nation.<sup>18</sup>

The presence of school police armed with military weapons threatens to strain already tense relationships between students and school police, especially in communities of color.<sup>19</sup> The recent decision by the Compton Unified District in California to allow school police officers to carry heavy weaponry, including AR-15s,<sup>20</sup> shortly after a federal complaint was filed on behalf of Latino students alleging school police engaged in racial profiling and excessive use of force, is

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Rezvani, Arezou, et. al, *MRAPs and Bayonets: What We Know About the Pentagon's 1033 Program, List of Agencies Receiving Equipment*, National Public Radio, Sept. 2, 2014, available at [www.npr.org/2014/09/02/342494225/mraps-and-bayonets-what-we-know-about-the-pentagons-1033-program](http://www.npr.org/2014/09/02/342494225/mraps-and-bayonets-what-we-know-about-the-pentagons-1033-program).

<sup>14</sup> Shawn Musgrave, *CA releases 1033 program data*, MuckRock, September 8, 2014, available at <https://www.muckrock.com/news/archives/2014/sep/08/california-releases-1033-program-data/>

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Rezvani, *supra* note 13. Reported states and districts receiving equipment through the 1033 Program include: California (Baldwin Park; Oakland Unified; Los Angeles; Stockton Unified); Florida (Washington; Bay; Palm Beach County); Georgia (Fulton County; Dooly County); Kansas (Auburn Washburn); Michigan (Detroit; Schoolcraft) Nevada (Washoe County); Texas (Ector County; Ennis; Spring Branch; Frenship; Aledo; Edinburg; San Antonio; Trinity; Beaumont); Utah (Granite). *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Critics in Compton, though, say that the increased firepower will add fuel to an already volatile relationship between school police and students. *Supra*, note 2.

<sup>20</sup> *Id.*

a stark example of the failure of school administrators to consider the potential for misuse.<sup>21</sup> While some school administrators and police departments claim that such weaponry is needed to respond to potential violence post-Sandy Hook and Columbine, research concludes that there is no evidence that these types of weapons would be effective in combating or responding to these situations.<sup>22</sup>

### **Impact of Increased Police Presence in Schools**

As organizations that have worked vigilantly to ensure that all students have equal educational access and opportunity, we have repeatedly raised concerns about the growing police presence in our nation's schools and the resulting disproportional pushout of students of color, often due to minor disciplinary infractions.<sup>23</sup> For decades, we have witnessed the increased criminalization of our nation's youth, especially youth of color and students with disabilities, through the implementation of "zero tolerance" school discipline practices enacted after high-profile tragic school shootings.<sup>24</sup> Instead of improving school safety, these practices have blurred the lines between school discipline and school safety, pushing students out of school<sup>25</sup> and into the juvenile justice system, particularly through increased reliance on police in schools to handle routine discipline matters.<sup>26</sup>

Research shows that increased police presence in schools results in more school-based arrests and referrals to the juvenile justice system.<sup>27</sup> Increased police presence in schools has disproportionately affected the number of students of color and students with disabilities being referred to the juvenile justice system. For instance, black students represent 16 percent of national enrollment, but 27 percent of students referred by schools to law enforcement and 31

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<sup>21</sup> *Id.*

<sup>22</sup> Jane Meredith Adams, *Compton Latest District with Assault Rifles*, EdSource.org (August 21, 2014)(quoting the director of operations at the Educator's School Safety Network, who noted that studies of school shootings show that they often take place so quickly that it is difficult for law enforcement to respond regardless of what weapons they have at hand, and that the most effective method of combating school violence is prevention); *See also* Interdisciplinary Group on Preventing School and Community Violence, *December 2012 Connecticut School Shooting Position Statement*, available at [http://curry.virginia.edu/uploads/resourceLibrary/Updated\\_Lists-7-30-13-OFFICIAL\\_FOR\\_DISSEMINATION-Connecticut\\_School\\_Shooting\\_Position\\_Statement.pdf](http://curry.virginia.edu/uploads/resourceLibrary/Updated_Lists-7-30-13-OFFICIAL_FOR_DISSEMINATION-Connecticut_School_Shooting_Position_Statement.pdf)

<sup>23</sup> "We have seen young people who are pushed out of schools by hostile and prison-like school cultures. We have seen time, energy, and resources devoted to the criminalization, not the education, of young people." *Police in Schools Are Not the Answer to the Newton Shooting*, January 2013, at 4, Joint Brief of the NAACP Legal Defense and Educational Fund, Inc., Advancement Project, Dignity in Schools Campaign, and the Alliance for Educational Justice, available at [http://www.naacpldf.org/files/publications/Police in Schools are Not the Answer to the Newtown Shooting - Jan. 2013.pdf](http://www.naacpldf.org/files/publications/Police%20in%20Schools%20are%20Not%20the%20Answer%20to%20the%20Newtown%20Shooting%20-%20Jan.%202013.pdf).

<sup>24</sup> *Id.* at 3-4.

<sup>25</sup> *Id.* at 6.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 7-8.

percent of students subjected to a school-related arrest in the 2011-2012 school year.<sup>28</sup> Students with disabilities, although representing only 12 percent of the overall student population, comprised a quarter of students referred to law enforcement in the 2011-2012 school year.<sup>29</sup>

Data show that these students suffer from poor educational outcomes and feelings of alienation and disengagement from the learning environment.<sup>30</sup> In fact, heavy reliance on police in schools to handle routine discipline is shown to result in tense school climates, intensifying student feelings of intimidation and distrust of authority.<sup>31</sup> A survey of students in Palm Beach County (one of the districts participating in the 1033 Program) found that 65 percent of surveyed students felt “something other than protected, including intimidated and harassed”<sup>32</sup> by school police.

Perhaps most troubling and relevant to the concerns expressed post-Ferguson are the frequent allegations raised regarding inappropriate and excessive use of force by school police on students. In schools all over the nation, school police carry and use Tasers and pepper spray in situations that do not call for this type of weaponry.<sup>33</sup> Each school year brings a new series of local news articles highlighting students tased or pepper-sprayed for little more than “clenching their fists” or “taking an aggressive stance.”<sup>34</sup> Some students have been tased or pepper-sprayed and mistaken for an aggressor, when they were, in fact, attempting to break up a fight.<sup>35</sup>

In Wake County, North Carolina, overly punitive discipline practices led several civil rights organizations to file a complaint alleging that the civil rights of black students were violated when they were excessively disciplined for minor misbehavior.<sup>36</sup> The Wake County complaint

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<sup>28</sup> Department of Education-Office for Civil Rights, Civil Rights Data Collection, March 21, 2014, *Data Snapshot: School Discipline*, available at <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>.

<sup>29</sup> *Id.*

<sup>30</sup> *Supra*, note 23, at 7.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 11.

<sup>33</sup> CBS Evening News, *Don't Tase Students at School, Activists Say* (April 16, 2014).

<sup>34</sup> *Id.*; See also *Cedar Creek Student in Coma Days After Being Tased by Deputy*, November 22, 2013, available at <http://www.myfoxaustin.com/story/24047726/cedar-creek-students-protest-following-tasing-of-student>; Gamiz, Jr., Manuel, *Judge: Jury Must Decide Tasing of Dieruff Student*, August 22, 2014, available at <http://www.mcall.com/news/breaking/mc-allentown-dieruff-student-taser-case-decision-20140822-story.html>; Marlene Kennedy, *Enough! Say Students Tased In School*, Courthouse News Service, March 21, 2014, available at <http://www.courthousenews.com/2014/03/21/66358.htm>.

<sup>35</sup> Villarreal, Alex, *RRISD Student Tased by Officer During Fight*, April 15, 2014, available at <http://www.myfoxaustin.com/story/25257340/officer-tases-rrisd-student>. “According to Round Rock Police, the boy wasn’t fighting. It turns out, he was one of several people trying to stop the fight.” *Id.*

<sup>36</sup> Hui, T. Keung, *Groups File Federal Complaint Over Wake County School Policing*, January 22, 2014, available at <http://www.newsobserver.com/2014/01/22/3555022/groups-file-federal-complaint.html>.

highlighted several egregious instances of use of pepper spray and Tasers, resulting in significant injury to students.<sup>37</sup> In Texas, advocates have called on state leadership to ban the use of Tasers and pepper spray on students for years. The urgency of this request was amplified following the tasing of a student that resulted in Traumatic Brain Injury.<sup>38</sup> Although the FBI opened an investigation of this incident, to date, Texas' state leadership refuses to consider banning the use of such weapons by police in schools.<sup>39</sup>

Introducing military-grade weapons into environments in which more mundane weapons – like Tasers and pepper spray – are already misused is deeply troubling. These weapons simply have no place in educational settings.

### **Re-prioritizing Federal Investment – Alternatives to Overreliance on Police and Militarization**

We applaud recent Administration efforts to address concerns about the impact of overly punitive discipline practices like school-based arrests for minor offenses, including the issuance of historic Joint Discipline Guidance by the Department of Education (ED) and the Department of Justice (DOJ) encouraging districts to implement alternative discipline practices, such as Restorative Justice, Positive Behavior Interventions and Supports (PBIS), or Social and Emotional Learning (SEL) curricula.<sup>40</sup> This Guidance was followed by the release of the findings of a three-year study resulting from the Administration's Supportive School Discipline Initiative (SSDI) – and formulated with the input of law enforcement – concluding that police should not be used in schools to handle routine discipline matters.<sup>41</sup>

Federal support of the 1033 Program's lending of military weapons to local school districts is in contravention of these efforts to minimize police presence in schools. In fact, it appears to place the federal government's imprimatur on arming school police with high-powered military weapons.

These harmful practices are unacceptable for our nation's students. The investment of tax dollars must be re-prioritized to focus on ensuring that educators and other staff in schools are trained to de-escalate conflict, employ alternative less punitive (culturally and community-responsive) discipline practices, like SEL, and learn and implement developmentally-appropriate

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<sup>37</sup> *Id.*

<sup>38</sup> See Cathaleen Qiao Chen, *Advocates Urge Perry to Ban Tasers in Schools* (April 15, 2014).

<sup>39</sup> Texas advocates have called on the Texas Commission on Law Enforcement, the Texas Education Agency, and Governor Perry to place common-sense restrictions around use of Tasers and pepper spray on students. Each claims not to have the authority to do so. *See Id.*

<sup>40</sup> Joint Department of Justice and Department of Education Discipline Guidance, "Dear Colleague Letter," available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>.

<sup>41</sup> Morgan, Emily, et. al., Council of State Governments Justice Center, *The School Discipline Consensus Report*, at 183, available at [http://csgjusticecenter.org/wp-content/uploads/2014/06/The\\_School\\_Discipline\\_Consensus\\_Report.pdf](http://csgjusticecenter.org/wp-content/uploads/2014/06/The_School_Discipline_Consensus_Report.pdf).

discipline responses. Experts have repeatedly emphasized that the best way to guard against violence in schools is to prevent it.<sup>42</sup> Many have warned that an approach that is overly reliant on policing exacerbates the problems that can lead to violence.<sup>43</sup>

## **Conclusion**

We urge you to act to end the arming of school police with military weapons through the 1033 Program. To this end, we also request a comprehensive accounting of all school districts receiving equipment through the 1033 program, detailing the type of equipment received and its stated intended use. Taxpayer dollars should be steered away from investments in increased law enforcement and militarization of schools and towards supporting solutions that address the root causes of school safety concerns and provide students with the services and supports they need to succeed.

Thanks for your consideration of this important matter. Please contact Deborah Fowler with Texas Appleseed at [dfowler@texasappleseed.net](mailto:dfowler@texasappleseed.net) or Janel George with the NAACP Legal Defense and Educational Fund, Inc, at [jgeorge@naacpldf.org](mailto:jgeorge@naacpldf.org), if you have any questions.

Sincerely,

ACLU Texas  
Advancement Project  
Advocates for Children of New York  
Center for Community Alternatives  
Center for Public Representation  
Children's Law Center  
Community Rights Campaign  
Disability Rights Texas  
Dr. Dan Losen-UCLA Center for Civil Rights Remedies (for affiliation purposes only)  
Education Law Center  
Families and Friends of Louisiana's Incarcerated Children  
Gwinnett SToPP  
Justice for Families  
Juvenile Justice Project of Louisiana  
Juvenile Law Center  
Lawyers' Committee for Civil Rights and Economic Justice  
Legal Aid Justice Center  
Louisiana Center for Children's Rights  
National Center for Youth Law  
National Juvenile Justice Network

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<sup>42</sup> Interdisciplinary Group on Preventing School and Community Violence, *supra*, note 22.

<sup>43</sup> "Inclinations to intensify security in schools should be reconsidered. We cannot and should not turn our schools into fortresses." *Id.* at 1.

Public Counsel  
Texas Criminal Justice Coalition

cc: Eric Holder, Attorney General, U.S. Department of Justice  
Chuck Hagel, Secretary, U.S. Department of Defense  
Arne Duncan, Secretary, U.S. Department of Education