Developing Policies with Accountability for Disciplinary Equity

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LAWYERS’ COMMITTEE FOR CIVIL RIGHTS
AND ECONOMIC JUSTICE

Texas Disproportionality Summit
December 15, 2014
The Big Picture

- U.S. is increasingly racially segregated – in both our neighborhoods and schools
- We don’t know how to talk about race, racism, and difference ("clumsy race talk")
- This comes to a head in our schools
  - Individually (lack language, experience, guidance)
  - Systemically (chronically inequitable funding and resources)
- “Accountability” as a bad word, punished for trying
Choice

Two options:

- Accept status quo
- Lean into the harder conversations and follow through

We are asking you to do the latter, as you are in the best position to help teach America’s next generation in a way that unifies and strengthens all of us.
Edward Ward

- U.S. Senate Subcommittee on Ending the School to Prison Pipeline (Dec. 12, 2012)
- Edward Ward, Youth Leader from Blocks Together (Chicago)
“My school’s environment was very tense; the halls were full with school security officers whose only purpose seemed to be to serve students with detentions or suspensions. Many of the school security officers were very disrespectful to students; some of them spoke to us as if we were animals. They were constantly yelling and antagonizing us from the moment we stepped into the halls until we reached our destination. This was nerve-wracking for me, because although I was an honor student, I felt constantly in a state of alert, afraid to make even the smallest mistake or create a noise that could enable the security officers to serve me with a detention. Instead of feeling like I could trust them, I felt I couldn’t go to them for general security issues because I would first be interrogated before anything would get done.”
Black boys as young as 10 years old were:

- More likely to be mistaken to be older than their White peers (average overestimation: 4.5 years)
- Less likely to be perceived as innocent and more likely to be perceived as responsible for their actions than their White peers of the same age

176 police officers, mostly white males, tested on two types of bias:

- Prejudice questionnaire ("It is likely that blacks will bring violence to neighborhoods when they move in.")
- Dehumanization: pairing blacks and whites with large cats, such as lions, and with apes.

In reviewing these officers' conduct records, those who dehumanized Blacks were more likely to have used force against a Black child in custody.

Only dehumanization, and not police officers' prejudice against Blacks, was linked to violent encounters with Black children.
264 mostly White, female undergraduate students from large public U.S. universities

1. Rating the innocence of people (infants to age 25):
   1. Children up to 9 years old judged equally innocent, but Black children were considered significantly less innocent than other children at every age group beginning at age 10.

2. Shown photographs alongside descriptions of crimes and asked to assess age and innocence
   1. Overestimated age of Blacks by an average of 4.5 years
   2. Found them to be more culpable than same-aged Whites

3. Dehumanization and prejudice tests:
   1. Similar results to police interviewed
School discipline has changed

- Suspension and expulsion rates are at their all-time highs – practically double the rates of the 1970s.
  - 3.3 million students are suspended at least once each year
  - Over 100,000 are expelled each year
  - A Texas study found that less than 3% of disciplinary actions were for incidents that required removal under state law.

- More schools are relying on police, not just to protect school safety, but to address disciplinary issues
  - The New York City Schools’ police force is larger than the actual police forces of Boston, Las Vegas, and Washington, D.C.
  - In Florida, 69% of the state’s 21,289 arrests and referrals in 2007-08 were for misdemeanors

- More districts are sending students to “alternative schools” for student behavior.
All students are affected

- 6-year-old Salecia Johnson was handcuffed and taken from school to the police station after throwing a temper tantrum at her school in Milledgeville, GA (2012).
- 11-year-old Alexa Gonzalez was arrested for writing “I love my friends” on her desk in eraseable marker at her Queens, NY, middle school (2010).
- 15-year-old Christian Ademik hanged himself after streaking prank left him “facing expulsion and being put on sex offender registry” in Huntsville, AL (2013).
According to the American Psychological Association, the American Academy of Pediatrics, the Council of State Governments, and the Centers for Disease Control and Prevention:

Out-of-school youth are more likely to:
- Drop out of school
- Be retained a grade
- Engage in delinquent behavior
- Become involved in the juvenile and criminal justice systems
We know better

Schoolwide effects:
- Lower scores on standardized tests
- Greater teacher dissatisfaction
- No proven gains in safety

Disenfranchised youth are hit the hardest

- Students with disabilities are roughly twice as likely to receive out-of-school punishment compared to their non-disabled peers.
- LGBTQ students are likely to receive harsher disciplinary punishment than their straight-identified peers.
- Students in foster care are three times more likely to be suspended or expelled than students in the care of a guardian.
Students of color are the most affected

- African-American students are three-and-a-half times as likely to be suspended or expelled as their white peers.
- Latino students are one-and-a-half times as likely to be suspended and twice as likely to be expelled as their white peers.
- Race is a predictive factor in who will receive a discretionary suspension, even when adjusting for other demographic differences. (Council of State Governments)
Two levels of disproportionality in discipline systems

- **Race is not Neutral:** Disproportionality in School Discipline
  Russell Skiba, Robert H. Horner, Choong-Geun Chung
  Karega Rausch, Seth L. May, and Tary Tobin

  - Journal of School Psychology

- Analysis of office discipline referral data from the school-wide information system
  - 436 elementary and middle schools
  - 205,932 students who received office discipline referrals
  - Referrals organized by student ethnicity, type of problem behavior, and administrative decision.
Two levels of disproportionality in discipline systems

- **First Finding**: Students from Hispanic/Latino and African American backgrounds were more likely to be sent to the office than their white peers.

Slide drawn from Russell Skiba’s presentation at “Civil Rights and School Discipline” (Sept. 2010), a conference hosted by the U.S. Departments of Education and Justice.
Proportion of students per ethnicity with an Office Discipline Referral (436 Elem and Middle Schools 05-06)

Proportion of Students with ODR

- Native American
- Asian
- Hispanic/Latino
- African American
- White/Non-Hisp
- Pacific Islander

Middle Schools vs Elementary Schools
Two levels of disproportionality in discipline systems

- **First Finding**: Students from Hispanic/Latino and African American backgrounds were more likely to be sent to the office than their white peers.
- **Second Finding**: If students from Hispanic/Latino or African American backgrounds were sent to the office, they were more likely than white students to receive a consequence that resulted in their being removed from school (suspension/expulsion)

Slide drawn from Russell Skiba’s presentation at “Civil Rights and School Discipline” (Sept. 2010), a conference hosted by the U.S. Departments of Education and Justice.
Two levels of disproportionality in discipline systems

<table>
<thead>
<tr>
<th></th>
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The table shows a decreasing trend from Detention to Out of school suspension as the level of misconduct increases from Minor to Use/Possession.
Two levels of disproportionality in discipline systems

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Subjective vs. Objective Offenses

White students more often referred for:
- Smoking
- Vandalism
- Leaving without permission
- Obscene language

African-American students more often referred for:
- Disrespect
- Excessive noise
- Threat
- Loitering
Focus on Texas

- 9-year statewide study of discipline in Texas’ public schools
- Analyzed individual student discipline and juvenile justice records
- Tracked close to one million students
60% of students experienced at least one disciplinary removal (in-school or out-of school suspension, disciplinary alternative placement, or expulsion)

92% of removals were for discretionary offenses under schools’ codes of conduct

3% of removals were mandatory under state law
Disproportionality by Race

- 75% of African-Americans experienced at least one removal during study (compared to 65% of Latinos and 47% of Whites)

- Black and Latino students’ first disciplinary removal was due to a code of conduct violation at a rate (94% and 93% respectively) similar to Whites (93%).

- Black (26%) and Latino (19%) students were far more likely to receive an out-of-school suspension for their first offense compared to White students (10%).
Disproportionality by Race

Controlling for all variables, Africans Americans were:

- Most Likely to be removed for discretionary violation
- Least likely removed for mandatory violation

Multivariate analyses, which enabled researchers to control for 83 different variables in isolating the effect of race alone on disciplinary actions, found that African-American students had a 31 percent higher likelihood of a school discretionary action, compared to otherwise identical white and Hispanic students.
Disproportionality by Disability

- Nearly \( \frac{3}{4} \) of students with disabilities were removed at least once, compared to 55% of students without disabilities.
Suspended students:

- **More likely to be held back** (31% of suspended students repeated a grade, compared to 5% of non-suspended students)

- **More likely to drop out** (About 10 percent of students suspended or expelled between seventh and twelfth grade dropped out. About 59 percent of those students disciplined 11 times or more did not graduate from high school during the study period)

- **One discretionary suspension, twice as likely to repeat a grade** (A student who was suspended or expelled for a discretionary violation was *twice as likely* to repeat his or her grade compared to a student with the same characteristics, attending a similar school, who had not been suspended or expelled)
More than one in seven students was in contact with the juvenile justice system (i.e., contact with a county’s juvenile probation department) at least once between seventh and twelfth grade.

Nearly half of those students who were disciplined 11 or more times were in contact with the juvenile justice system. In contrast, 2 percent of the students who had no school disciplinary actions were in contact with the juvenile justice system.

When controlling for campus and individual student characteristics, the data revealed that a student who was suspended or expelled for a discretionary violation was nearly three times as likely to be in contact with the juvenile justice system the following year.
Half of the 1,504 high schools analyzed had disciplinary rates consistent with what researchers had projected, based on the characteristics/risk factors of the student population and the school campus.

The other half of the high schools, however, had actual disciplinary rates that varied greatly from what was projected:

- 339 (or 22.5 percent) had disciplinary rates that were significantly higher than what researchers had projected.
- 409 of the schools (or 27.2 percent) had disciplinary rates that were significantly lower than what had been projected.
Question

How can we close the “achievement gap” or end the “dropout crisis” if students aren’t allowed in school?
#4: Accountability for Disciplinary Equity

- **Clear, actionable procedures for enhancing equity**
  - Remove harmful practices
  - Data collection
  - Hiring preferences
  - Professional development

- **“True” accountability**
  - Such as equity outcomes in administrator and teacher evaluations
Procedures for Enhancing Equity

- Creating safe space for conversations on race, difference, and racism
- Reviewing office disciplinary data by race and disability
- Allowing the data to speak – and support hard conversations
- Unpacking individual disciplinary incidents
- Incorporating and supporting culturally responsive practices and providing an academically rigorous education
On January 8\textsuperscript{th}, the U.S. Departments of Education and Justice released joint policy guidance on how they are enforcing federal civil rights laws to ensure that school discipline is handled in a nondiscriminatory manner.

Photo: Guidance release in Baltimore, MD.
A Bold and Necessary Step

- The Departments acknowledge that “racial discrimination in school discipline is a real problem” and substantial racial disparities in discipline data are not explained by more frequent or more serious misbehavior by students of color.

- The Departments acknowledge that without change; there will continue to be long-term, serious consequences; and a direct funnel of students into the school-to-prison pipeline.
Dear Colleague Letter: clarifies the civil rights obligations of school districts to discipline without discrimination on the basis of race, color, or national origin

Guiding Principles with action steps

Directory of Federal Resources

Compendium: State by State Database of School Discipline Laws and Regulations [online and searchable]

http://ed.gov/school-discipline
What does the Guidance say?

- **Different treatment:**
  - Selective enforcement (who’s called out for being disruptive?)

- **Disparate impact:**
  - Significant disparities lead to two questions:
    - Is there an educational necessity behind the policy or practice?
    - If so, is there a less discriminatory alternative?
  - Red flag: Zero Tolerance

- **Scope:**
  - Schools can be liable for discriminatory actions of school security involved in school discipline
Guidance Remedies

- Training on disciplinary policies for all students and teachers
  - Teacher training for applying subjective disciplinary criteria
  - Teacher training in cultural awareness and in working with racially and ethnically diverse student populations
- School-based supports for struggling students
- Designating a school official as a “discipline supervisor”
- School-wide needs assessments (including perspectives of students, parents, and teachers)
- Planning for improving teacher-student relationships and on-site mentoring
  - Identify teachers struggling with classroom management and provide guidance and support
Guidance Remedies: Policies

Nondiscriminatory, fair, and age-appropriate discipline policies:

- **High expectations**: Ensure that school discipline policies specifically and positively state high expectations for student behavior, promote respect for others, and make clear that engaging in harassment and violence, among other problem behaviors, is unacceptable.

- **Disciplinary alternatives**: Ensure that discipline policies include a range of measures that students may take to improve their behavior prior to disciplinary action.

- **Clearly defined**: Develop or revise written discipline policies to clearly define offense categories and base disciplinary penalties on specific and objective criteria whenever possible. If certain offense categories have progressive sanctions, clearly set forth the range of sanctions for each infraction.
Nondiscriminatory, fair, and age-appropriate discipline policies:

- **Proportionate discipline**: Ensure that the sanctions outlined by the school’s discipline policies are proportionate to the misconduct.
- **Clearly defined**: Review standards for disciplinary referrals and revise policies to include clear definitions of offenses and procedures for all school personnel to follow when making referrals.
- **Identified authority**: Clearly designate who has the authority to identify discipline violations and/or assign penalties for misconduct.
- **First instance**: Ensure that the school’s written discipline policy regarding referrals to disciplinary authorities or the imposition of sanctions distinguishes between those students who have violated the school’s discipline policy for the first time and those students who repeatedly commit a particular violation of the discipline policy.
- **Due Process**: Ensure that appropriate due process procedures are in place and applied equally to all students and include a clearly explained opportunity for the student to appeal the school’s disciplinary action.
Examples

Alton Middle School, Alton, IL

- Two schools merged to form 3rd largest IL school in 2006
- Twenty students expelled in first year

Since implementing PBIS:

- Office disciplinary referrals down 32%
- Out-of-school suspension down 26%
- "Racial discipline gap" is shrinking
- Scores improve & achievement gap narrows
Parents, Students, & Advocates as Allies

- Padres y Jovenes Unidos worked with the Advancement Project and Denver Public Schools to:
  - Revise the district’s discipline code and embed the principles of restorative justice
  - Secure funding for professional development on restorative justice.

- Denver’s suspension rate has dropped by over 40% while its arrest rate has dropped by 60%, racial disparities in discipline are dropping too.
To address a 1248% increase in court referrals from school, Clayton County Juvenile Court convened education and justice stakeholders to delineate between:

- Discipline matters, to be handled by schools, and,
- Safety matters, to be handled by law enforcement.

The Protocol has led to:

- 70% reduction in court referrals
- 8% reduction in suspensions
- 24% increase in graduation rates
- Racial proportionality in court referrals
Tools for Your Toolbox

- Federal Guidance (http://ed.gov/school-discipline)
- My Brother’s Keeper (http://www.whitehouse.gov/my-brothers-keeper)
- Discipline Disparities Research Collaborative (http://www.indiana.edu/~atlantic/briefing-papers/)
Today, education is perhaps the most important function of state and local governments . . . Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. . .
Who is welcome in our schools?
Contact Information

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and Economic Justice
mcregor@lawyerscom.org