

Zero Tolerance: Is this the Answer to School Safety?

The recent school shootings have brought discipline and climate in schools to the forefront of many discussions both in politics and around the dinner table. Parents, politicians, and school administrators are trying to find a solution to keep students safe in schools. One solution in place has been strict discipline policies such as Zero Tolerance. Zero Tolerance was born out of the Safe and Gun Free School Act of 1994¹. The Act mandates federally funded educational agencies to expel students who either bring a gun to school or possess a gun at school, for no less than one year². This is the only federal law that mandates a specific disciplinary action for a student's misbehavior. Some form of Zero Tolerance has been adopted in school districts' discipline policies across the country and often is expanded to include all weapons and other minor offences. These policies have led to high suspension rates, which have a disparate impact on minorities and disabled students. This article will explore the impact of suspension on students and alternative disciplinary approaches that have been successful.

Appropriate and effective discipline is necessary to ensure a school climate that is conducive to a safe learning environment for all students to achieve academic success. Suspension has been overused and inconsistently administered. Punishment is the main focus of many school discipline codes. There are four theories behind punishment: deterrence, retribution, rehabilitation, and incapacitation. These should also be considered when punishing students. Deterrence is a major factor but rehabilitation should be equally

¹ Sundius, Jane and Farneth, Molly. "Putting Kids Out of School: What's Causing High Suspension Rates and Why They Are Dangerous To Students, Schools, And Communities". January 2008.

http://www.opensocietyfoundations.org/sites/default/files/whitepaper2_2008099.pdf

² *Id.* at 2.

as important. In a school setting, rehabilitation should take the form of correcting the behavior and encouraging positive behavior. Minors are afforded the juvenile court system in order to focus on rehabilitation rather than face the adult criminal justice system. The juvenile justice system was created for more flexibility in dealing with minors to correct their behavior and develop law-abiding citizens. Zero Tolerance policies aim to deter misbehavior but have not been successful. Thus, focusing on rehabilitation may offer a better solution to deterring students from repeating the misbehavior.

The Juvenile Justice System has become intertwined with school systems due to these strict discipline policies. Schools are criminalizing students by suspending students for minor infractions and at times referring them to law enforcement. This has led to what is known as the school-to-prison pipeline. With the increased presence of law enforcement officers in schools, more students are being arrested for school based offences. The juvenile court system has been forced to take on the role of principal. Suspension alone increases a student's likelihood of being involved with the juvenile justice system. Because schools discipline policies often require that a student is referred to law enforcement when suspended students are beginning an ongoing involvement with the criminal justice system, which serves as a catalyst in the school-to-prison pipeline. As a result students are being pushed out of schools and into prisons at an alarming rate. More flexible discipline policies that address the underlying factors of disruptive behavior rather than adhering to a rigid policy such as zero tolerance may prove more effective.

Suspension has been shown to be an ineffective way to improve behavior. Students who are suspended are more likely to repeat misbehavior and to be suspended multiple times. Studies have shown that the range of students who have been suspended on multiple occasions is 35-42%³. Indicating that suspension does not deter misbehavior. Suspension may actually be an incentive for students to repeat misbehavior to avoid school. Often, students who are suspended are unsupervised. The lack of adult supervision allows for students to engage in risky and illegal behavior and contributes to academic failure.

Students who are suspended are more likely to drop out of school than other students. The disruption in students' education during periods of suspension increases academic failure and drop out. Many of the students who are suspended are already disengaged with their teachers and school. Suspension acts as a catalyst of disengagement between students and teachers. Often these students are already behind or having trouble academically. Suspended students fall further behind in school, which leads to grade retention and eventually to drop out.

Students who are suspended are significantly more likely to become involved in the juvenile justice system than their peers even when they are not referred to law enforcement for misbehavior in school. Students are more likely to engage in a smoking, alcohol use, carrying a weapon, fighting, and sexual intercourse when they are removed

³ *Id.* at 9.

from school due to the lack of supervision⁴. The strongest predictor for involvement in the juvenile justice system is suspension and the lack of a meaningful bond with school⁵.

Students with discipline problems often have mental illness and home life stress. Suspension increases student shame, alienation, rejection, and breaking of healthy adult bonds thereby exacerbating negative mental health outcomes for young people⁶.

Suspension has been linked to future antisocial behavior⁷. Suspension adds to the life stress the student is already suffering and can predispose the student to higher risk of behavioral problems⁸.

Despite all of the negative impacts correlated with out-of-school suspension, overuse is widespread in school districts across the country. Many school districts have adopted and expanded the zero tolerance policy to include all weapons and other minor misbehaviors. Students are removed from schools for offences including: attendance violations, disrespect, drugs, weapons, fighting, etc. In Maryland Public Schools 2006-2007, the majority of out-of-school suspensions were for disrespect (37%), the next highest reason was for fighting (28%)⁹. Only 2% were for weapons, which was the original basis for the Safe and Gun Free School Act. Guns only account for a fraction of

⁴ *Id.* at 11.

⁵ Skiba, Russel J. "Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary Practice". August 2000. <http://www.indiana.edu/~safeschl/ztze.pdf>

⁶ *Id.*

⁷ Iselin, Anne-Marie. "Research on School Suspension". North Carolina Family Impact Seminar. Center for Child and Family Policy Duke University. http://www.childandfamilypolicy.duke.edu/pdfs/familyimpact/2010/Suspension_Research_Brief_2010-04-27.pdf

⁸ "Fix School Discipline" Public Counsel. http://www.fixschooldiscipline.org/wp-content/uploads/2012/03/Fix-School-Discipline-Facts_FINAL.pdf

⁹ Sundius & Farneth, *supra* note 1, http://www.opensocietyfoundations.org/sites/default/files/whitepaper2_20080919.pdf

the weapons suspensions. Suspensions are used mostly for subjective offences rather than for serious violent offenses that may pose danger to the learning environment.

Not only are suspensions administered for minor offences but suspensions are also given inconsistently. Disciplinary codes vary among districts and are vague. Individual schools interpret and apply the codes, which have contributed to overuse, bias, and inconsistency in the application of disciplinary exclusion policies. There is variance among schools in the same district and teacher variance in schools. The inconsistent and bias administration of suspension has led to the disproportionate impact of suspensions on minority and disabled students.

African Americans have the highest suspension rate across the country. On average African Americans are suspended at a rate of 17% (1 out of 6) compared to 8% (1 out of 8) Native Americans, 7% (1 out of 14) Latinos, 5% (1 out of 20) Whites, and 2% (1 out of 50) Asians, Nationwide¹⁰. In most states African Americans have the highest rates of suspension. Illinois has the highest rate of suspension for African Americans at a rate of 25%.¹¹ The suspension rate gap between African American and White students is 21.3% in Illinois¹². African American students are more likely to be punished for reasons that require judgment of a teacher or administrator such as disrespect, excessive noise, and loitering. Research has not shown that the suspension rate is indicative of African Americans misbehaving more than their peers. African

¹⁰ Losen, Daniel J. and Jonathan Gillespie. "Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School" August 2012. <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-ccrr-research/losen-gillespie-opportunity-suspended-2012.pdf>

¹¹ Losen & Gillespie, *supra* note 7 at 7.

¹² *Id.*

American Students are suspended at higher rates than white students for the same offences.

Disabled students are suspended at two times the rate of their peers across all racial groups. Disabled students make up about 11% of school-aged students but make up about 20% of the students who are suspended¹³. The Individuals with Disabilities in Education Act (IDEA) has been amended to implement procedures to protect students with disabilities from being punished for behaviors that are associated with their disability¹⁴. Despite the fact that students with disabilities are suspended at a rate 3.5 to 7 times more than their peers controlling for gender and race, Illinois suspends 42% of disabled African American students. These are some of our most vulnerable students. These students are in need of individualized attention and flexible approach to discipline to help them succeed academically rather than kicked out of school to further damage their mental health.

Zero Tolerance was aimed at creating safer schools and eliminating guns in schools yet most suspensions are for nonviolent offenses unrelated to guns or weapons in general and has not produced better learning environments, deterred future misbehavior, or stimulated effective parental involvement. Zero Tolerance has not achieved the goals its proponents set out when signing it into law. This is a cause for concern and begs the question; what are the alternatives? Some states such as Connecticut and Maryland have proposed legislation that requires alternative discipline and replaces out-of-school suspensions with in-school

¹³ Sundius & Farneth, *supra* note 1 at 6.

¹⁴ Cortiella, Candace. "IDEA Close Up: Disciplining Students with Disabilities". <http://www.greatschools.org/special-education/LD-ADHD/996-idea-2004-close-up-disciplining-students-with-disabilities.gs>

suspension¹⁵. These laws were created to reduce the overuse of out-of-school suspensions and to keep at-risk students in school to combat many of the negative outcomes associated with out-of-school suspensions. These laws do not eliminate out-of-school suspension as an option for discipline but limit that option to severe offences and dangerous students.

State laws are one step in the right direction. There are also alternatives to suspension and school exclusion as disciplinary actions. Two of the main alternatives have been Positive Behavioral Intervention and Support (PBIS) and Restorative Justice. PBIS is focused on changing the underlying attitudes and policies concerning how behaviors are addressed. PBIS is a prevention-oriented way of teaching and supporting appropriate student behavior¹⁶. The goal is to create a social culture that decreases negative behaviors and promotes positive behavior expectations.

PBIS teaches the behavior expected of students, supports students in developing the behavior, and rewards students for exhibiting the behavior. PBIS allows schools to have a flexible approach to discipline. Schools that have implemented PBIS have experienced a decrease in suspensions and improved perception of school safety¹⁷. PBIS improves academic performance by increasing students' time in school. Since students are not being suspended and missing school they are able to obtain more instructional time.

¹⁵ Losen & Gillespie supra note 10 at 9.

¹⁶ <http://www.pbis.org/school/default.aspx>

¹⁷ Putnam, Robert F., Horner, Robert H. and Algozzine, Robert. "Academic Achievement and the Implementation of School-Wide Behavior Support" http://www.pbis.org/pbis_newsletter/volume_3/issue1.aspx

PBIS further demonstrates that a rigid discipline policy does not improve school climate. A flexible discipline policy such as PBIS allows students to receive individualized behavioral intervention that focuses on the underlying cause of the misbehavior. Students misbehave for a variety of reasons and in order to correct the behavior the underlying factors need to be addressed and positive behavior needs to be enforced. Students have to learn the behaviors that are expected of them.

Restorative Justice is another alternative to suspension. Restorative Justice is not an established system of discipline like PBIS but is a guide to responding to conflict and harm based on three principals: accountability, community safety, and competency development¹⁸. Restorative Justice aims to hold students accountable for their actions and provide an opportunity to correct the harm they have caused. Restorative Justice aims to build community through relationships, to increase social skills, and build on the strengths of students¹⁹. This model of discipline looks beyond mere punishment and addresses the underlying causes for the misbehavior and teaches positive behavior. Restorative Justice in schools fosters awareness of how the misbehavior affects everyone and encourages the expression of feelings, avoids scolding, actively involves students, and emphasizes the difference between the disapproval of the behavior and not of the student²⁰.

¹⁸ Ashley, Jessica and Burke, Kimberley. "Implementing restorative justice: A guide for schools".

<http://www.icjia.state.il.us/public/pdf/BARJ/SCHOOL%20BARJ%20GUIDEBOOK.pdf>

¹⁹ *Id.*

²⁰ Ashley & Burke, *supra* note 15,

<http://www.icjia.state.il.us/public/pdf/BARJ/SCHOOL%20BARJ%20GUIDEBOOK.pdf>

Restorative Justice can take on various forms such as student circles, mediations, and peer juries. Student Circles brings students together to talk about issues and resolve conflicts. Circles offer an opportunity for safe and open communication. Meditation and conferencing brings together the affected parties to resolve the conflict. Peer Juries involve students hearing cases of minor school offences. Juries serve to develop an agreement for the student to repair the harm caused. These three forms of restorative justice have been successful in the schools that have implemented them and have reduced suspension²¹.

Restorative Justice is successful because it allows students to be involved at all stages of the process of student discipline. Students are better able to understand the consequences of their actions and work to develop ways to correct the behavior. Restorative Justice has not been implemented in as many schools as PBIS and thus has less data available but it has grown as an alternative discipline policy that schools are considering. Restorative Justice can be limiting because it brings both the victim and the perpetrator together and some offences are not appropriate for restorative justice.

Conclusion

An effective and appropriate discipline policy is important to create a safe and positive school climate, however, discipline needs to not only punish the student for misbehaving but also promote positive behavior and future learning. Discipline Codes in schools have focused on the punishment aspect and not on the rehabilitation aspect. This is why the juvenile court was created to focus more on

²¹ *Id.*

rehabilitation because minors still have time to correct the behavior. Schools should focus on this and look for alternatives that promote better learning outcomes.

Out-of-school suspension does not achieve these goals. Contrary to some beliefs, test scores and drop out rates do not improve in schools with high suspension rates. Out-of-school suspensions do more harm than good, contributing to the school-to-prison pipeline, exacerbating the disengagement of students and teachers, and disproportionately affecting minority and disabled students. Flexibility is key, states that have drafted legislation to reflect this notion along with schools implementing alternative discipline procedures are on the right track to turning around the trend of overusing suspension. Removing students only moves the problems from the classroom to the streets and addressing the problem early will create positive outcomes for everyone. PBIS and Restorative Justice are two alternatives that have been successful at improving school climate and should be implemented in more schools.