

Keep Students off the School-to-Prison Pipeline: Replace Zero-Tolerance Policies with Restorative Justice Practices

Introduction

In this paper I show that public school zero-tolerance policies resulting in suspension and expulsion can violate a student's liberty interest in their future. I look specifically at how this violation is expressed through the school-to-prison pipeline, which is exacerbated by zero-tolerance policies. I also explore alternative disciplinary policies of restorative justice that maintain a student's liberty interest in their future and can lower a student's chances of entering the school-to-prison pipeline.

Student Liberty Interest and Zero-Tolerance Policies

In *Goss v. Lopez* the Supreme Court recognized a constitutionally protected "liberty" interest in a student's "good name, reputation, honor, or integrity" as it affects the "students standing" and "later opportunities."¹ Zero-tolerance policies can violate this liberty interest. These policies, which became widely adopted by schools in the early 1990s, mandate "the application of predetermined consequences, most often severe and punitive in nature, that are intended to be applied regardless of the seriousness of behavior, mitigating circumstances, or situational context."² The consequences of such guidelines frequently violate the liberty interest of students in their reputations and later opportunities.

Zero-tolerance policies are a major contributor to the increase in school suspensions, or out-of-the-classroom time for students. In the United States the number of

¹ *Goss v. Lopez* 419 U.S. 565 (1975)

² Skibah, Russell, Cecil R. Reynolds, et. Al. "Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendations." August 9, 2006.

schools suspensions nearly doubled from 1.7 million in 1974 to 3.1 million in 2001 as zero-tolerance policies became more prevalent.³ Zero-tolerance policies also lead to expulsion, often the most severe punishment schools can utilize. Expulsion involves “long-term separation from the school district or, in some instances, permanent separation from the school district.”⁴ The severe nature of these punishments that are tied to zero-tolerance policies can harm a student’s good standing and reputation, and limit the student’s later opportunities. This violation of a student’s liberty interest in their future becomes particularly evident when students are pushed into the school-to-prison pipeline.

School-to-Prison Pipeline

The ACLU defines the school-to-prison pipeline as “the policies and practices that push our nation’s schoolchildren, especially our most at-risk children, out of classrooms and into the juvenile and criminal justices systems.”⁵ Because zero-tolerance policies often result in suspensions and expulsions, they frequently remove students from the classroom, which in turn moves them onto the school-to-prison pipeline. The school-to-prison pipeline starts when teachers and school police assign punishments to misbehaving students that remove them from the classroom. These students then become much more likely to be introduced into the criminal justice system, even if their “crime” was relatively negligible.⁶ The punishments that arise with zero-tolerance policies have been as drastic as leading to expulsion for bringing butter knives and theater-prop swords

³ Poe-Yamagata, E., & Jones, M. (2000). *And Justice for Some*. Washington, DC: Building Blocks for Youth.

⁴ Kratochvil, Jennifer A. “In Wisconsin Expulsions, We Don’t Have to Leave Children Behind.” *Marquette Law Review*. Volume 91 Issue 4. 2008.

⁵ “Locating the School-to-Prison Pipeline” ACLU. <<https://www.aclu.org/racial-justice/what-school-prison-pipeline>>

⁶ “Elias, Marilyn. *The School-to-Prison Pipeline: Policies and Practices that Favor Incarceration over Education do us all a Grave Injustice*”

to school.⁷ Once students advance on the school-to-prison pipeline it is very difficult for students to reverse their progress. A student that enters the juvenile justice system encounters barriers to returning to traditional schools due to a tarnished record. Consequently, the vast majority of students that enter the juvenile justice system do not graduate from high school.⁸ Thus, when a zero-tolerance policy forces a student out of the classroom and onto the school-to-prison pipeline, it infringes upon a student's future opportunities and harms their reputations, violating their liberty interests.

Violations of Student Liberty Interest

The punishments implemented with zero-tolerance policies frequently result in violations of student liberty interests. The school-to-prison pipeline illustrates specifically how future opportunities of students that receive suspensions and expulsions can be limited. Some of the most impactful limitations to student futures, and therefore violations of their liberty interests, are related to the lost in-class learning time, the disproportionate negative effects on students of color and students with educational disabilities, and the increased challenges that come with entering the juvenile justice system.

Zero-tolerance policies increase the removal of more students from the classroom, which is the first step of the school-to-prison pipeline. One type of removal is suspension. During the 2009 to 2010 school year over three million students in grades kindergarten through twelve were suspended from school, losing valuable in-class instruction time.⁹ Although temporary, missed classroom time from suspensions can hinder a student's future ability to succeed academically, and therefore violate a liberty

⁷ Shah, Nirvi. "Discipline Policies Shift with Views on What Works". Education Week. January 4, 2013.

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⁹ Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School" Losen, Daniel J. and Jonathan Gillespie. The Center for Civil Rights Remedies at The Civil Rights Project. August 2012.

interest. While many proponents of suspension believe it to be a deterrent from future misbehavior, many of the students suspended in 2009-2010 were suspended multiple times within that same year.¹⁰ Additionally, while supporters of classroom removal may believe lowering the number of suspensions will result in lower test scores, research actually suggests that a “relatively lower use of out-of-school suspensions, after controlling for race and poverty, correlates with higher test scores.”¹¹ Research also connects suspension with higher likelihoods of dropping out of school.¹² This means policies that lead to fewer suspensions, or those that are not zero-tolerance policies, are more likely to ensure a student’s liberty interest in their future ability to succeed remains intact.

In addition to suspensions, the number and length of student expulsions has also increased. One contributor to this is the 1994 Gun-Free Schools Act that requires all schools that receive federal money to expel for one-year students caught with firearms on campus. This law has led to more than 25,000 expulsions between its 1994 and 2013.¹³ This leads to students being removed from districts for long-term periods, or sometimes permanently. This removal negatively impacts a student’s ability to succeed in school. Many students who are expelled confront barriers to returning to school, and the result of expulsions at the high school level is frequently the end of a person’s basic education.¹⁴ Research shows a common consequence of punitive discipline that offends a student’s

¹⁰ Ibid

¹¹ Ibid

¹² Ibid

¹³ Shah, Nirvi. “Discipline Policies Shift with Views on What Works”. Education Week. January 4, 2013.

¹⁴ Kratochvil, Jennifer A. “In Wisconsin Expulsions, We Don’t Have to Leave Children Behind.” Marquette Law Review. Volume 91 Issue 4. 2008.

academic achievement is that it fuels a student's negative attitude towards school.¹⁵ A policy that results in automatic expulsion is a violation of the liberty interest a student has in their academic future because it impedes a student's ability to successfully complete school and can set students on the school-to-prison pipeline. In order to correct this violation public schools must utilize an alternative policy of restorative justice that keeps students off the school-to-prison pipeline in the classroom.

The repercussions of zero-tolerance policies disproportionately push students of color onto the school-to-prison pipeline. This means existing policies result in a higher proportion of liberty interest violations for students of color. As indicated, the increase in zero-tolerance policies has led to an increase in suspension and expulsion rates in United States public schools. These rates are disproportionately high for students of color. Black students are suspended and expelled at a rate three times greater than that of white students: on average five percent of white students are suspended while 16 percent of black students are suspended.¹⁶ This disproportionate assignment of punishment leads to a disproportionate amount of black students on the school-to-prison pipeline. These students are more likely to be pushed into juvenile detention facilities and potentially jail.¹⁷ This results in a student having a tarnished record and reputation, which can limit their acceptance at schools and jobs, and violates their liberty interest in their futures. A change must come to school discipline policies so that black students are not at a disadvantage to other students for punishment rate, and so no student suffers from a

¹⁵ Suvall, Cara. "Restorative Justice in Schools" Learning from Jena High School." Harvard Rights-Civil Liberties Law Review: Volume 44.

¹⁶ US DOE Civil Rights Data Collection Data Snapshot: *School Discipline*.

¹⁷ "Locating the School-to-Prison Pipeline" ACLU. <<https://www.aclu.org/racial-justice/what-school-prison-pipeline>>

violation of their liberty interests by being pushed onto the school-to-prison pipeline through harsh punishments.

Students with disabilities also suffer disproportionately from zero-tolerance policies and are pushed into the school-to-prison pipeline. This group also has their liberty interest disproportionately violated by school actions. Students with educational disabilities (those served under the Individuals with Disabilities Education Act) are more than twice as likely to receive out-of-school suspensions than students without disabilities.¹⁸ Within this group, black students with disabilities are at higher risk than white students with disabilities.¹⁹ Additionally, while 8.6 percent of students in public school are identified as having educational disabilities, these students make up 32 percent of the youth in juvenile detention centers.²⁰ As in the case of black students that are disproportionately assigned harsher punishments, the disproportionate removal of students with disabilities from the classroom results in the student having a stained record and a higher likelihood of entering the school-to-prison pipeline, which ultimately violates their liberty interest in their future. School discipline policies must not disproportionately hurt disabled students, and alternatives to zero-tolerance policies should be applied so that students are not pushed onto the school-to-prison pipeline and no longer suffer a violation of their liberty interests.

After students have been removed from the classroom and started on the school-to-prison pipeline, their odds of success fall far below their peers that are not on the

¹⁸ Ibid

¹⁹ Losen, Daniel J. and Jonathan Gillespie. "Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School." The Center for Civil Rights Remedies at The Civil Rights Project. August 2012

²⁰ Elias, Marilyn. "The School-to-Prison Pipeline: Policies and Practices that Favor Incarceration over Education do us all a Grave Injustice".

pipeline. Zero-tolerance policies can lead to school-based arrests and referrals to law enforcement. These punishments further students along the school-to-prison pipeline and can violate a student's liberty interest in their reputation and future. The future prospects of a student are hurt because "a student arrested in school is twice as likely not to graduate and four times as likely [not to graduate] if he or she appears in court."²¹ Additionally, when students are forced out of their schools they are frequently sent back to "the origin of their angst and unhappiness—their home environments or their neighborhoods, which are filled with negative influence."²² For students on the school-to-prison pipeline the affects of being arrested, which include detrimental psychological effects, lower standardized test scores, reduced employment prospects, and increased probability of future involvement with the criminal justice system, are also issues.²³ This means a student that progresses on the pipeline moves away from success. This is a clear violation of a student's liberty interest in their future. It demonstrates how the harsh punishments of zero-tolerance policies can increase the likelihood for a student to end up out of school and in the criminal justice system. The negative impacts of beginning on the school-to-prison pipeline emphasize the need for schools to adapt alternative disciplinary policies that works to restore justice and does not violate student liberty interests.

Alternative Policies of Restorative Justices

Alternative disciplinary actions can maintain student liberty interests through a shift from the harsh penalties of zero-tolerance policies that fuel the school-to-prison

²¹ Teske, Steven C. and J. Brian Huff. "When did Making Adults Mad Become a Crime? The Court's Role in Dismantling the School-to-Prison Pipeline."

²² Amurao, Carla, "Fact Sheet: How Bad is the School-to-Prison Pipeline?" <PBS.org>

²³ Kim, Catherine Y and I. India Geronimo. "Policing In Schools: Developing a Governance Document for School Resource Officers in K-12 Schools" ACLU White Paper. August 2009.

pipeline to policies of restorative justice. The dominant goals of restorative justice practices are “repairing harm caused by the offense and community participation in disciplinary procedures.”²⁴ Public school policies of restorative justice can be implemented through improved training and responses from school employees, more student involvement in the discipline process, and increased community services.

One alternative method of restorative justice that will maintain student liberty interests is an improved training and response protocol for school staff and police. These authority figures have regular contact with students and communicate with parents and/or guardians of students. There should be an understanding that disciplinary measures must apply to situations uniquely and appropriately. Violations of school rules should be clearly outlined both to school staff and students. Punishments that remove students from the classroom should come after warnings to students and parents after other forms of intervention have been attempted. This training should focus on preventative measures and the ability of students to correct their behavior in order to avoid classroom removal, starting on the school-to-prison pipeline, and a violation of a student’s liberty interest in their future.

The improved training of teachers, faculty, and school police officers should also create an environment in which students view them as helpers and mentors. The training should establish that the frontal lobe of middle and high school students is not yet fully developed, so “youth are biologically wired to exhibit risk-taking behaviors, impulsive responses, and poor judgment.”²⁵ This fact does not make inappropriate behavior

²⁴ Suvall, Cara. “Restorative Justice in Schools” Learning from Jena High School.” Harvard Rights-Civil Liberties Law Review: Volume 44.

²⁵ Andrews, D.A., Bonta, J., & Wormith, J. The recent past and near future of risk and/or needs assessment, Crime &

acceptable, but rather establishes that there must be the opportunity for developing students to learn appropriate behavior. Additional sensitivity training should make teachers aware of the disproportionate number of punishments allocated to black and disabled students so that they can work to fix this problem. Guiding school authorities away from zero-tolerance policies and towards restorative justice practices can help decrease the amount of students pushed onto the school-to-prison pipeline and will better maintain students' liberty interest in their futures.

Another restorative justice tactic that can maintain a student's opportunity to succeed in school and their liberty interest in their future is a collaborative disciplinary process. One way to achieve this is through peer court. Peer court gives students the opportunity to better understand violations of school rules and the consequences associated with those violations. It can serve as an outlet for students to be heard by teachers and peers, and also help students to better listen to one another. Zero-tolerance policies can "exacerbate both the normative challenges of early adolescence and the potential mismatch between the adolescent's development stage and the structure of secondary schools."²⁶ Practices of restorative justice can overcome this mismatch with an increase in student involvement in the discipline, and in the process maintain a student's liberty interest in their future.

A final restorative justice tactic to maintain a student's liberty interest in their future is to increase and encourage community resources in schools. Public schools do not have all the resources on site that can benefit their students, and often supplemental

Delinquency, 52(1). 2006.

²⁶ Skibah, Russell, Cecil R. Reynolds, et. al. "Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendations." August 9, 2006.

services exist in the community. Schools can improve partnerships with such services. It is important that the options for students are diverse in order to serve a diverse student body. The Children's Defense Fund denotes health care, mental health services, disability support, and parent and family involvement and empowerment as areas that are causally linked to the removal of students from public school and ultimately push students onto the school-to-prison pipeline.²⁷ "It is essential that schools are linked to other community resources that can assess and provide interventions for the child and family to reduce the risk of disruptive behavior."²⁸ Rather than classroom removal and a push onto the school-to-prison pipeline, resources should be offered to the students so they have the opportunity to succeed in school and their liberty interest in their future remains intact. This will incorporate the broader community into a support system for students, and help ensure the chance for students to maintain the path towards success and away from the school-to-prison pipeline.

Conclusion

In *Brown v. Board of Education* Justice Earl Warren stated, "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunities of an education. Such an opportunity, where the state has undertaken to provide it, is a right that must be made available on equal terms."²⁹ In order to ensure that the opportunities of an education are provided on equal terms to all students in a way that

²⁷ Stanczyk, Alexandra. "Best Practices for Dismantling the School to Prison Pipeline." "Civil Liberties Union of Georgia. August 8, 2007.

²⁸ Teske, Steven C. and J. Brian Huff. "When did Making Adults Mad Become a Crime? The Court's Role in Dismantling the School-to-Prison Pipeline."

²⁹ *Brown v. Board of Education*, 347 US 483 (1954)

maintains a student's liberty interest in their future, a shift away from zero-tolerance policies that perpetuate the school-to-prison pipeline must be made. Schools must design their disciplinary policies around restorative justice, and implement practices that better train and prepare school staff to respond to students, incorporate students in the process, and promote community services available for students. This will improve the future prospects for all students and no longer violate a student's liberty interest in their future.